CONFERENCE BASE TEXT (HR 4173):

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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SEC. 2. DEFINITIONS.

As used in this Act, the following definitions shall apply, except as the context otherwise requires or as otherwise specifically provided in this Act:

(1) AFFILIATE.—The term “affiliate” means any company that controls, is controlled by, or is under common control with another company.
(2) APPROPRIATE FEDERAL BANKING AGENCY.—On and after the transfer date, the term “appropriate Federal banking agency” has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), as amended by title III.

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

(4) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection established under title X.


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

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

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

(9) **Federal banking agency.**—The term—

(A) “Federal banking agency” means, individually, the Board of Governors, the Office of the Comptroller of the Currency, and the Corporation; and

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

(10) **Functionally regulated subsidiary.**—The term “functionally regulated subsidiary” has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).

(11) **Primary financial regulatory agency.**—The term “primary financial regulatory agency” means—

(A) the appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act, except to the extent that an institution is or the activities of an institution are otherwise described in subparagraph (B), (C), (D), or (E);
(B) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934;

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

(iii) any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;
(vi) any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

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

(xii) the Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and
(xiii) any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(C) the Commodity Futures Trading Commission, with respect to any futures commission merchant, any commodity trading adviser, and any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act, with respect to the commodities activities of such entity and activities that are incidental to such commodities activities;

(D) the State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and
(E) the Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(12) Prudential Standards.—The term “prudential standards” means enhanced supervision and regulatory standards developed by the Board of Governors under section 115 or 165.

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

(14) Securities Terms.—The—

(A) terms “broker”, “dealer”, “issuer”, “nationally recognized statistical ratings organization”, “security”, and “securities laws” have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(B) term “investment adviser” has the same meaning as in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2); and

(C) term “investment company” has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).
(15) STATE.—The term “State” means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

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

(17) OTHER INCORPORATED DEFINITIONS.—

(A) FEDERAL DEPOSIT INSURANCE ACT.—


(B) HOLDING COMPANIES.—The term—
(i) “bank holding company” has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);

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

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

SEC. 3. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 4. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act or the amendments made by this Act, this Act and such amendments shall take effect 1 day after the date of enactment of this Act.
SEC. 5. BUDGETARY EFFECTS.

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

SEC. 6. ANTITRUST SAVINGS CLAUSE.

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

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the “Financial Stability Act of 2010”.
SEC. 102. DEFINITIONS.

(a) In General.—For purposes of this title, unless the context otherwise requires, the following definitions shall apply:

(1) Bank holding company.—The term “bank holding company” has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), shall be treated as a bank holding company for purposes of this title.

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

(3) Member agency.—The term “member agency” means an agency represented by a voting member of the Council.

(4) Nonbank financial company definitions.—

(A) Foreign nonbank financial company.—The term “foreign nonbank financial company” means a company (other than a company that is, or is treated in the United States
as, a bank holding company or a subsidiary thereof) that is—

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

(ii) predominantly engaged in, including through a branch in the United States, financial activities, as defined in paragraph (6).

(B) U.S. nonbank financial company.—The term “U.S. nonbank financial company” means a company (other than a bank holding company or a subsidiary thereof, or a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)) that is—

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

(ii) predominantly engaged in financial activities as defined in paragraph (6).

(C) Nonbank financial company.—The term “nonbank financial company” means a U.S. nonbank financial company and a foreign nonbank financial company.
(D) **Nonbank Financial Company Supervised by the Board of Governors.**—
The term “nonbank financial company supervised by the Board of Governors” means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.


(6) **Predominantly Engaged.**—A company is “predominantly engaged in financial activities” if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of
1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7) **Significant Institutions.**—The terms “significant nonbank financial company” and “significant bank holding company” have the meanings given those terms by rule of the Board of Governors.

(b) **Definitional Criteria.**—The Board of Governors shall establish, by regulation, the requirements for determining if a company is predominantly engaged in financial activities, as defined in subsection (a)(6).

(c) **Foreign Nonbank Financial Companies.**—For purposes of the authority of the Board of Governors under this title with respect to foreign nonbank financial companies, references in this title to “company” or “subsidiary” include only the United States activities and subsidiaries of such foreign company.

**Subtitle A—Financial Stability Oversight Council**

**SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.**

(a) **Establishment.**—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.
(b) Membership.—The Council shall consist of the following members:

(1) Voting Members.—The voting members, who shall each have 1 vote on the Council shall be—

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

(B) the Chairman of the Board of Governors;

(C) the Comptroller of the Currency;

(D) the Director of the Bureau;

(E) the Chairman of the Commission;

(F) the Chairperson of the Corporation;

(G) the Chairperson of the Commodity Futures Trading Commission;

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

(I) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) Nonvoting Members.—The Director of the Office of Financial Research—

(A) shall serve in an advisory capacity as a nonvoting member of the Council; and
(B) may not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council.

(c) TERMS; VACANCY.—

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

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

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

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

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

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

(g) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

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

(i) **COMPENSATION OF MEMBERS.**—

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

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

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

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

**SEC. 112. COUNCIL AUTHORITY.**

(a) **PURPOSES AND DUTIES OF THE COUNCIL.**—
(1) IN GENERAL.—The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected bank holding companies or nonbank financial companies;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

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

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

(A) collect information from member agencies and other Federal and State financial regulatory agencies and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;
(B) provide direction to, and request data
and analyses from, the Office of Financial Re-
search to support the work of the Council;

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

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

(E) recommend to the member agencies
general supervisory priorities and principles re-
reflecting the outcome of discussions among the
member agencies;

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

(G) require supervision by the Board of
Governors for nonbank financial companies that
may pose risks to the financial stability of the
United States in the event of their material fi-
nancial distress or failure, pursuant to section
113;
(H) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

(I) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII), and require such utilities and activities to be subject to standards established by the Board of Governors;

(J) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;
(K) make determinations regarding exemptions in title VII, where necessary;

(L) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council;

and

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

(i) the activities of the Council;

(ii) significant financial market developments and potential emerging threats to the financial stability of the United States;

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

(iv) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and
(III) to maintain investor confidence.

(b) Authority To Obtain Information.—

(1) In general.—The Council may receive, and may request the submission of, any data or information from the Office of Financial Research and member agencies, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

(B) to otherwise carry out any of the provisions of this title.

(2) Submissions by the Office and Member Agencies.—Notwithstanding any other provision of law, the Office of Financial Research and any member agency are authorized to submit information to the Council.

(3) Financial Data Collection.—

(A) In general.—The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank finan-
cial company or bank holding company participates, or the nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.

(B) Mitigation of Report Burden.—Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agencies.

(C) Mitigation in Case of Foreign Financial Companies.—Before requiring the submission of reports from a company that is a foreign nonbank financial company or foreign-based bank holding company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.
(4) **Back-up Examination by the Board of Governors.**—If the Council is unable to determine whether the financial activities of a nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraph (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(5) **Confidentiality.**—

(A) **In General.**—The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this subsection and subtitle B.

(B) **Retention of Privilege.**—The submission of any nonpublicly available data or information under this subsection and subtitle B shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or
State court) to which the data or information is otherwise subject.

(C) **Freedom of Information Act.—** Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and subtitle B.

**SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.**

(a) **U.S. Nonbank Financial Companies Supervised by the Board of Governors.—**

(1) **Determination.—** The Council, on a non-delegable basis and by a vote of not fewer than 2⁄3 of the members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States.
(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

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

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

(D) the extent and types of the off-balance-sheet exposures of the company;

(E) the extent and types of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

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

(G) the importance of the company as a source of credit for low income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;
(H) the recommendation, if any, of a member of the Council;

(I) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(J) the extent to which—

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

(ii) ownership of assets under management is diffuse; and

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

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) Determination.—The Council, on a non-delegable basis and by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title, if the Council determines that material financial distress at the foreign nonbank fi-
An financial company would pose a threat to the financial stability of the United States.

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

(A) the degree of leverage of the company;

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

(C) the amount and types of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding;

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

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

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

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

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

(I) the extent to which—

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

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

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

(e) ANTI-EVASION.—

(1) DETERMINATIONS.—In order to avoid eva-
sion of this title, the Council, on its own initiative
or at the request of the Board of Governors, may de-
termine, on a nondelegable basis and by a vote of
not fewer than 2⁄3 of the members then serving, in-
cluding an affirmative vote by the Chairperson,
that—

(A) material financial distress related to fi-
nancial activities conducted directly or indi-
rectly by a company incorporated or organized
under the laws of the United States or any
State or the financial activities in the United
States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in subsection (b)(2);

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

(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this title, consistent with paragraph (3).

(2) REPORT.—Upon making a determination under paragraph (1), the Council shall submit a report to the appropriate committees of Congress detailing the reasons for making such determination.

(3) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES; ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—

(A) Establishment of an intermediate holding company.—Upon a determination under paragraph (1), the company that is the subject of the determination may establish an intermediate holding company in
which the financial activities of such company
and its subsidiaries shall be conducted (other
than the activities described in section
167(b)(2)) in compliance with any regulations
or guidance provided by the Board of Gov-
ernors. Such intermediate holding company
shall be subject to the supervision of the Board
of Governors and to prudential standards under
this title as if the intermediate holding company
were a nonbank financial company supervised
by the Board of Governors.

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

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

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

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

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

(C) does not include internal financial ac-
tivities conducted for the company or any affili-
ate thereof, including internal treasury, invest-
ment, and employee benefit functions.

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

(d) **Reevaluation and Rescission.**—The Council
shall—

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

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

(e) **Notice and Opportunity for Hearing and
Final Determination.**—

(1) **In general.**—The Council shall provide to
a nonbank financial company written notice of a
proposed determination of the Council, including an
explanation of the basis of the proposed determina-
tion of the Council, that such nonbank financial
company shall be supervised by the Board of Gov-
ernors and shall be subject to prudential standards
in accordance with this title.
(2) HEARING.—Not later than 30 days after
the date of receipt of any notice of a proposed deter-
mination under paragraph (1), the nonbank finan-
cial company may request, in writing, an oppor-
tunity for a written or oral hearing before the Coun-
cil to contest the proposed determination. Upon re-
ceipt of a timely request, the Council shall fix a time
(not later than 30 days after the date of receipt of
the request) and place at which such company may
appear, personally or through counsel, to submit
written materials (or, at the sole discretion of the
Council, oral testimony and oral argument).

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

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

(f) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

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

(3) INTERNATIONAL COORDINATION.—In making a determination under paragraph (1), the Council shall consult with the appropriate home country supervisor, if any, of the foreign nonbank financial company that is being considered for such a determination.

(4) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request,
in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(5) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (4), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(g) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to
such nonbank financial company under subsection (a), (b), or (e).

(h) **JUDICIAL REVIEW.**—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

(i) **INTERNATIONAL COORDINATION.**—In exercising its duties under this title with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, the Council shall consult with appropriate foreign regulatory authorities, to the extent appropriate.
SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

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

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the
Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

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

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

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

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;
(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

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

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

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

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

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) Contingent Capital.—

(1) Study Required.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—
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(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

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

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.
(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

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

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

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

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding
company described in subsection (a), and
subsidiaries thereof;
(iv) results of the study required by
paragraph (1); and
(v) any other factor that the Council
deems appropriate.

(d) Resolution Plan and Credit Exposure Re-
ports.—

(1) Resolution Plan.—The Council may
make recommendations to the Board of Governors
concerning the requirement that each nonbank fi-
nancial company supervised by the Board of Gov-
ernors and each bank holding company described in
subsection (a) report periodically to the Council, the
Board of Governors, and the Corporation, the plan
of such company for rapid and orderly resolution in
the event of material financial distress or failure.

(2) Credit Exposure Report.—The Council
may make recommendations to the Board of Gov-
ernors concerning the advisability of requiring each
nonbank financial company supervised by the Board
of Governors and bank holding company described in
subsection (a) to report periodically to the Council,
the Board of Governors, and the Corporation on—
(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

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

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

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.
may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

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

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been re-
required to provide to other Federal or State regulatory agencies;

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

(C) externally audited financial statements.

(2) Availability.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) Confidentiality.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

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

(a) Applicability.—This section shall apply to—

(1) any entity that—

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

(B) received financial assistance under or participated in the Capital Purchase Program
established under the Troubled Asset Relief
Program authorized by the Emergency Eco-
nomic Stabilization Act of 2008; and
(2) any successor entity (as defined by the
Board of Governors, in consultation with the Coun-
cil) to an entity described in paragraph (1).

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

c) Appeal.—

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

(2) Decision.—
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(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

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

(ii) if, not later than 1 year after the date of submission of the report under subparagraph (A), the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of
the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term “nonbank financial company” under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—
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(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

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

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

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

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

(1) within a reasonable time after receiving the dispute resolution request;
(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) Form of Decision.—Any Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

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

(d) Binding Effect.—Any decision made by the Council under subsection (c) shall be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) In General.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the
conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, financial markets of the United States, or low-income, minority, or underserved communities.

(b) Procedure for Recommendations to Regulators.—

(1) Notice and Opportunity for Comment.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) Criteria.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

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

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

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

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

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

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

(2) the implementation of, or failure to implement such recommendation on the part of a primary financial regulatory agency; and

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

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any
standards or safeguards implemented under this section.

(2) Determination of primary financial regulatory agency to continue.—

(A) In general.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether such standards should remain in effect.

(B) Appeal process.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) Mitigatory Actions.—If the Board of Governors determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an
affirmative vote of not fewer than 2/3 of the Council members then serving, shall require the subject company—

(1) to terminate one or more activities;
(2) to impose conditions on the manner in which the company conducts 1 or more activities; or
(3) if the Board of Governors determines that such action is inadequate to mitigate a threat to the financial stability of the United States in its recommendation, to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) NOTICE AND HEARING.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

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

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

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

(d) APPLICATION TO FOREIGN FINANCIAL COMPA-
nies.—The Board of Governors may prescribe regulations
regarding the application of this section to foreign
nonbank financial companies supervised by the Board of
Governors and foreign-based bank holding companies—
(1) giving due regard to the principles of national treatment and equality of competitive opportunity; and

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

SEC. 122. GAO AUDIT OF COUNCIL.

(a) Authority To Audit.—The Comptroller General of the United States may audit the activities of—

(1) the Council; and

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

(b) Access To Information.—

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

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

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

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

Subtitle B—Office of Financial Research

SEC. 151. DEFINITIONS.

For purposes of this subtitle—

(1) the terms “Office” and “Director” mean the Office of Financial Research established under this subtitle and the Director thereof, respectively;
(2) the term “financial company” has the same meaning as in title II, and includes an insured depository institution and an insurance company;

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

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

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

(6) the term “position data”—

(A) means data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(B) includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position;
(7) the term “financial contract” means a legally binding agreement between 2 or more counterparties, describing rights and obligations relating to the future delivery of items of intrinsic or extrinsic value among the counterparties; and

(8) the term “financial instrument” means a financial contract in which the terms and conditions are publicly available, and the roles of one or more of the counterparties are assignable without the consent of any of the other counterparties (including common stock of a publicly traded company, government bonds, or exchange traded futures and options contracts).

SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.

(a) Establishment.—There is established within the Department of the Treasury the Office of Financial Research.

(b) Director.—

(1) in general.—The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

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

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

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

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

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

(d) **OFFICE PERSONNEL.**—

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

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

(3) COMPARABILITY.—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—

(A) by striking “Finance Board,” and inserting “Finance Board, the Office of Financial Research, and the Bureau of Consumer Financial Protection”; and

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

(e) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Director may procure temporary and intermittent services under section 3109(b) of title 5,
United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(g) CONTRACTING AND LEASING AUTHORITY.—Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law, the Director may—

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

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

(h) NON-COMPETE.—The Director and any staff of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office, may not, for a period of 1 year after last having access to such transaction or position data or business confidential information, be employed by or provide advice or consulting services to a financial com-
pany, regardless of whether that entity is required to re-
port to the Office. For staff whose access to business con-
fidential information was limited, the Director may pro-
vide, on a case-by-case basis, for a shorter period of post-
employment prohibition, provided that the shorter period
does not compromise business confidential information.

(i) Technical and Professional Advisory Com-
mittees.—The Office, in consultation with the Chair-
person, may appoint such special advisory, technical, or
professional committees as may be useful in carrying out
the functions of the Office, and the members of such com-
mittees may be staff of the Office, or other persons, or
both.

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

(k) Executive Schedule Compensation.—Sec-
tion 5314 of title 5, United States Code, is amended by
adding at the end the following new item:

“Director of the Office of Financial Research.”
SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.

(a) PURPOSE AND DUTIES.—The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council, as set forth in subtitle A, and to support member agencies, by—

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

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

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

(4) developing tools for risk measurement and monitoring;

(5) performing other related services;

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

(7) assisting such member agencies in determining the types and formats of data authorized by this Act to be collected by such member agencies.

(b) ADMINISTRATIVE AUTHORITY.—The Office may—

(1) share data and information, including software developed by the Office, with the Council and member agencies, which shared data, information, and software—
(A) shall be maintained with at least the same level of security as is used by the Office; and

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

(2) sponsor and conduct research projects; and

(3) assist, on a reimbursable basis, with financial analyses undertaken at the request of other Federal agencies that are not member agencies.

(c) Rulemaking Authority.—

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

(2) Standardization.—Member agencies, in consultation with the Office, shall implement regulations promulgated by the Office under paragraph (1) to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2). If a member agency fails to implement such regulations prior to the expiration of the 3-year period following the date of publication of final regulations, the Office, in consultation with the Chairperson, may implement such reg-
ulations with respect to the financial entities under
the jurisdiction of the member agency.

(d) Testimony.—

(1) In general.—The Director of the Office shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives annually on the activities of the Office, including the work of the Data Center and the Research and Analysis Center, and the assessment of the Office of significant financial market developments and potential emerging threats to the financial stability of the United States.

(2) No prior review.—No officer or agency of the United States shall have any authority to require the Director to submit the testimony required under paragraph (1) or other Congressional testimony to any officer or agency of the United States for approval, comment, or review prior to the submission of such testimony. Any such testimony to Congress shall include a statement that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

(e) Additional reports.—The Director may pro-
vide additional reports to Congress concerning the finan-
cial stability of the United States. The Director shall not-
ify the Council of any such additional reports provided

to Congress.

(f) SUBPOENA.—

(1) IN GENERAL.—The Director may require

from a financial company, by subpoena, the produc-
tion of the data requested under subsection (a)(1)

and section 154(b)(1), but only upon a written find-
ing by the Director that—

(A) such data is required to carry out the

functions described under this subtitle; and

(B) the Office has coordinated with the

relevant primary financial regulatory agency, as

required under section 154(b)(1)(B)(ii).

(2) FORMAT.—Subpoenas under paragraph (1)

shall bear the signature of the Director, and shall be

served by any person or class of persons designated

by the Director for that purpose.

(3) ENFORCEMENT.—In the case of contumacy

or failure to obey a subpoena, the subpoena shall be

enforceable by order of any appropriate district
court of the United States. Any failure to obey the

order of the court may be punished by the court as

a contempt of court.
SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBILITIES OF PRIMARY PROGRAMMATIC UNITS.

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

(1) the Data Center; and

(2) the Research and Analysis Center.

(b) DATA CENTER.—

(1) GENERAL DUTIES.—

(A) DATA COLLECTION.—The Data Center, on behalf of the Council, shall collect, validate, and maintain all data necessary to carry out the duties of the Data Center, as described in this subtitle. The data assembled shall be obtained from member agencies, commercial data providers, publicly available data sources, and financial entities under subparagraph (B).

(B) AUTHORITY.—

(i) IN GENERAL.—The Office may, as determined by the Council or by the Director in consultation with the Council, require the submission of periodic and other reports from any financial company for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates,
or the financial company itself, poses a threat to the financial stability of the United States.

(ii) Mitigation of Report Burden.—Before requiring the submission of a report from any financial company that is regulated by a member agency or any primary financial regulatory agency, the Office shall coordinate with such agencies and shall, whenever possible, rely on information available from such agencies.

(C) Rulemaking.—The Office shall promulgate regulations pursuant to subsections (a)(1), (a)(2), (a)(7), and (e)(1) of section 153 regarding the type and scope of the data to be collected by the Data Center under this paragraph.

(2) Responsibilities.—

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

(i) a financial company reference database;

(ii) a financial instrument reference database; and
(iii) formats and standards for Office data, including standards for reporting financial transaction and position data to the Office.

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

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

(4) CATALOG OF FINANCIAL ENTITIES AND INSTRUMENTS.—The Data Center shall maintain a catalog of the financial entities and instruments reported to the Office.

(5) AVAILABILITY TO THE COUNCIL AND MEMBER AGENCIES.—The Data Center shall make data collected and maintained by the Data Center available to the Council and member agencies, as necessary to support their regulatory responsibilities.

(6) OTHER AUTHORITY.—The Office shall, after consultation with the member agencies, provide certain data to financial industry participants and to the general public to increase market transparency and facilitate research on the financial system, to
the extent that intellectual property rights are not
violated, business confidential information is prop-
erly protected, and the sharing of such information
poses no significant threats to the financial system
of the United States.

(c) Research and Analysis Center.—

(1) General duties.—The Research and
Analysis Center, on behalf of the Council, shall de-
velop and maintain independent analytical capabili-
ties and computing resources—

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

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

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

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

(E) to maintain expertise in such areas as
may be necessary to support specific requests
for advice and assistance from financial regulators;

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

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

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

(d) Reporting Responsibilities.—

(1) Required reports.—Not later than 2 years after the date of enactment of this Act, and not later than 120 days after the end of each fiscal year thereafter, the Office shall prepare and submit a report to Congress.

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

(A) an analysis of any threats to the financial stability of the United States;

(B) the status of the efforts of the Office in meeting the mission of the Office; and
(C) key findings from the research and analysis of the financial system by the Office.

SEC. 155. FUNDING.

(a) Financial Research Fund.—

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

(2) Fund receipts.—All amounts provided to the Office under subsection (e), and all assessments that the Office receives under subsection (d) shall be deposited into the Financial Research Fund.

(3) Investments authorized.—

(A) Amounts in fund may be invested.—The Director may request the Secretary to invest the portion of the Financial Research Fund that is not, in the judgment of the Director, required to meet the needs of the Office.

(B) Eligible investments.—Investments shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Financial Research Fund, as determined by the Director.
(4) Interest and proceeds credited.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Financial Research Fund shall be credited to and form a part of the Financial Research Fund.

(b) Use of Funds.—

(1) In general.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall be immediately available to the Office, and shall remain available until expended, to pay the expenses of the Office in carrying out the duties and responsibilities of the Office.

(2) Fees, assessments, and other funds not government funds.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall not be construed to be Government funds or appropriated monies.

(3) Amounts not subject to apportionment.—Notwithstanding any other provision of law, amounts in the Financial Research Fund shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority, or for any other purpose.

(c) Interim funding.—During the 2-year period following the date of enactment of this Act, the Board of
Governors shall provide to the Office an amount sufficient
to cover the expenses of the Office.

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

SEC. 156. TRANSITION OVERSIGHT.

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

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce;

and

(3) establishes comprehensive employee training
and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Office shall submit an
annual report to the Committee on Banking, Hous-
ing, and Urban Affairs of the Senate and the Com-
mittee on Financial Services of the House of Rep-
resentatives that includes the plans described in
paragraph (2).

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

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

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

(ii) steps taken to foster innovation
and creativity;

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

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

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

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;
(v) part-time work;
(vi) job sharing;
(vii) parental leave benefits and childcare assistance;
(viii) domestic partner benefits;
(ix) other workplace flexibilities; or
(x) any combination of the items described in clauses (i) through (ix).

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

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;
(ii) streamlined employment application processes;
(iii) the provision of timely notification of the status of employment applications to applicants; and
(iv) the collection of information to measure indicators of hiring effectiveness.

(e) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.
(d) **Rule of Construction.**—Nothing in this section may be construed to affect—

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

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

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

**Sec. 161. Reports by and Examinations of Nonbank Financial Companies by the Board of Governors.**

(a) **Reports.**—

(1) **In General.**—The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to
which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and

(B) compliance by the company or subsidiary with the requirements of this subtitle.

(2) USE OF EXISTING REPORTS AND INFORMATION.—In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

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

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

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

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

(3) AVAILABILITY.—Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(b) EXAMINATIONS.—
(1) IN GENERAL.—Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to inform the Board of Governors of—

(A) the nature of the operations and financial condition of the company and such subsidiary;  

(B) the financial, operational, and other risks within the company that may pose a threat to the safety and soundness of such company or to the financial stability of the United States;  

(C) the systems for monitoring and controlling such risks; and  

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

(2) USE OF EXAMINATION REPORTS AND INFORMATION.—For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any depository institution subsidiary or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).
(c) Coordination With Primary Financial Regulatory Agency.—The Board of Governors shall—

(1) provide to the primary financial regulatory agency for any company or subsidiary, reasonable notice before requiring a report, requesting information, or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the fullest extent possible.

SEC. 162. ENFORCEMENT.

(a) In General.—Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company, as provided in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

(b) Enforcement Authority for Functionally Regulated Subsidiaries.—

(1) Referral.—If the Board of Governors determines that a condition, practice, or activity of a
depositary institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.
SEC. 163. ACQUISITIONS.

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

(b) ACQUISITION OF NONBANK COMPANIES.—

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

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for
the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

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

(5) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(e)(8) of
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the Clayton Act (15 U.S.C. 18a(c)(8)), the trans-
actions subject to the requirements of paragraph (1)
shall be treated as if Board of Governors approval
is not required.

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

A nonbank financial company supervised by the
Board of Governors shall be treated as a bank holding
company for purposes of the Depository Institutions Man-
agement Interlocks Act (12 U.S.C. 3201 et seq.), except
that the Board of Governors shall not exercise the author-
ity provided in section 7 of that Act (12 U.S.C. 3207)
to permit service by a management official of a nonbank
financial company supervised by the Board of Governors
as a management official of any bank holding company
with total consolidated assets equal to or greater than
$50,000,000,000, or other nonaffiliated nonbank financial
company supervised by the Board of Governors (other
than to provide a temporary exemption for interlocks re-
sulting from a merger, acquisition, or consolidation).
SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

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

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards established under subsections
(b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000, but the Board of Governors may establish an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under subsections (b) through (f).

(b) Development of Prudential Standards.—

(1) In general.—

(A) Required standards.—The Board of Governors shall, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements;

(ii) leverage limits;

(iii) liquidity requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) Additional standards authorized.—The Board of Governors may, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding com-
panies described in subsection (a), that in-
clude—

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

(2) Standards for Foreign Financial Com-
panies.—In applying the standards set forth in
paragraph (1) to any foreign nonbank financial com-
pany supervised by the Board of Governors or for-
eign-based bank holding company, the Board of Gov-
ernors shall—

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

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

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

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

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

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

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

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection; and

(C) take into account any recommendations of the Council under section 115.

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

(c) CONTINGENT CAPITAL.—
(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may promulgate regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In establishing regulations under this subsection, the Board of Governors shall consider—

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

(B) an appropriate transition period for implementation of a conversion under this subsection;

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

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and
(E) any other factor that the Board of Governors deems appropriate.

(d) Resolution Plan and Credit Exposure Reports.—

(1) Resolution Plan.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) Credit Exposure Report.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

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

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company, as applicable, of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a time frame determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under
title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Gov-
ernors and the Corporation, to facilitate an or-
derly resolution of such company under title 11,
United States Code, in the event of the failure
of such company, in any case in which—

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

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

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

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks
that the failure of any individual company could
pose to a nonbank financial company supervised by
the Board of Governors or a bank holding company
described in subsection (a), the Board of Governors,
by regulation, shall prescribe standards that limit
such risks.

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

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

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

(B) all repurchase agreements and reverse
repurchase agreements with the company, and
all securities borrowing and lending trans-
actions with the company, to the extent that
such transactions create credit exposure for the
nonbank financial company supervised by the
Board of Governors or a bank holding company
described in subsection (a);
(C) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(D) all purchases of or investment in securities issued by the company;

(E) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

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

(4) AttributioN RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RuleMAking.—The Board of Governors may issue such regulations and orders, including
definitions consistent with this section, as may be necessary to administer and carry out this subsection.

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

(7) **Transition Period.**—

(A) **In General.**—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) **Extension Authorized.**—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) **Enhanced Public Disclosures.**—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies de-
scribed in subsection (a) in order to support market eval-
uation of the risk profile, capital adequacy, and risk man-
agement capabilities thereof.

(g) Risk Committee.—

(1) Nonbank financial companies super-
vised by the Board of Governors.—The Board
of Governors shall require each nonbank financial
company supervised by the Board of Governors that
is a publicly traded company to establish a risk com-
mittee, as set forth in paragraph (3), not later than
1 year after the date of receipt of a notice of final
determination under section 113(d)(3) with respect
to such nonbank financial company supervised by
the Board of Governors.

(2) Certain bank holding companies.—

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

(B) Permissive regulations.—The
Board of Governors may require each bank
holding company that is a publicly traded com-
pany and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

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

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.
(4) Rulemaking.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(h) Stress Tests.—The Board of Governors shall conduct analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether the companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions, and shall require such companies to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses. The Board of Governors may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States.

SEC. 166. EARLY REMEDIATION REQUIREMENTS.

(a) In General.—The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors
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or a bank holding company described in section 165(a),

except that nothing in this subsection authorizes the provi-

sion of financial assistance from the Federal Government.

(b) Purpose of the Early Remediation Re-

quirements.—The purpose of the early remediation re-

quirements under subsection (a) shall be to establish a se-

ries of specific remedial actions to be taken by a nonbank

financial company supervised by the Board of Governors

or a bank holding company described in section 165(a)

that is experiencing increasing financial distress, in order

to minimize the probability that the company will become

insolvent and the potential harm of such insolvency to the

financial stability of the United States.

(c) Remediation Requirements.—The regulations

prescribed by the Board of Governors under subsection (a)

shall—

(1) define measures of the financial condition of

the company, including regulatory capital, liquidity

measures, and other forward-looking indicators; and

(2) establish requirements that increase in

stringency as the financial condition of the company

declines, including—

(A) requirements in the initial stages of fi-
nancial decline, including limits on capital dis-

tributions, acquisitions, and asset growth; and
(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

SEC. 167. AFFILIATIONS.

(a) AFFILIATIONS.—Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(b) REQUIREMENT.—

(1) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, the Board of Governors may require such company to establish and conduct all or a portion of such activities that are determined to be financial in nature or incidental thereto in or through an intermediate holding company established pursuant to regulation of the Board of Governors, not later than
90 days (or such longer period as the Board of Governors may deem appropriate) after the date on which the nonbank financial company supervised by the Board of Governors is notified of the determination of the Board of Governors under this section.

(2) Internal Financial Activities.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities conducted for a nonbank financial company supervised by the Board of Governors or any affiliate, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity of such company during the year prior to the date of enactment of this Act, such company may continue to engage in such activity as long as at least 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to such company, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(c) Regulations.—The Board of Governors—
(1) shall promulgate regulations to establish the
criteria for determining whether to require a
nonbank financial company supervised by the Board
of Governors to establish an intermediate holding
company under subsection (a); and

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

SEC. 168. REGULATIONS.

Except as otherwise specified in this subtitle, not
later than 18 months after the transfer date, the Board
of Governors shall issue final regulations to implement
this subtitle and the amendments made by this subtitle.
SEC. 169. AVOIDING DUPLICATION.

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this subtitle that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

SEC. 170. SAFE HARBOR.

(a) REGULATIONS.—The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) CONSIDERATIONS.—In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 113 in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require supervision by the Board of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not
meet the criteria for exemption established under subsection (a).

(d) **Revisions.**—

(1) **In General.**—The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(2) **Transition Period.**—No revisions under paragraph (1) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(e) **Report.**—The Chairperson of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale
for exemption and empirical evidence to support the criteria for exemption.

SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIREMENTS.

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

(1) GENERALLY APPLICABLE LEVERAGE CAPITAL REQUIREMENTS.—The term “generally applicable leverage capital requirements” means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) GENERALLY APPLICABLE RISK-BASED CAPITAL REQUIREMENTS.—The term “generally applicable risk-based capital requirements” means—
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(A) the risk-based capital requirements, as
established by the appropriate Federal banking
agencies to apply to insured depository institu-
tions under the prompt corrective action regula-
tions implementing section 38 of the Federal
Deposit Insurance Act, regardless of total con-
solidated asset size or foreign financial expo-
sure; and

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

(b) MINIMUM CAPITAL REQUIREMENTS.—

(1) MINIMUM LEVERAGE CAPITAL REQUIRE-
MENTS.—The appropriate Federal banking agencies
shall establish minimum leverage capital require-
ments on a consolidated basis for insured depository
institutions, depository institution holding compa-
nies, and nonbank financial companies identified
under section 113. The minimum leverage capital re-
quirements established under this paragraph shall
not be less than the generally applicable leverage
capital requirements, which shall serve as a floor for
any capital requirements that the agency may re-
quire, nor quantitatively lower than the generally ap-
plicable leverage capital requirements that were in
effect for insured depository institutions as of the
date of enactment of this Act.

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

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

(A) IN GENERAL.—Subject to the rec-
ommendations of the Council, in accordance
with section 120, the Federal banking agencies shall develop capital requirements applicable to all institutions covered by this section that address the risks that the activities of such institutions pose, not only to the institution engaging in the activity, but to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

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

(i) significant volumes of activity in derivatives, securitized products purchased and sold, financial guarantees purchased and sold, securities borrowing and lending, and repurchase agreements and reverse repurchase agreements;

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

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

**TITLE II—ORDERLY LIQUIDATION AUTHORITY**

**SEC. 201. DEFINITIONS.**

(a) IN GENERAL.—In this title, the following definitions shall apply:

(1) **ADMINISTRATIVE EXPENSES OF THE RECEIVER.**—The term “administrative expenses of the receiver” includes—

(A) the actual, necessary costs and expenses incurred by the Corporation as receiver for a covered financial company in liquidating a covered financial company; and

(B) any obligations that the Corporation as receiver for a covered financial company determines are necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company.

(2) **BANKRUPTCY CODE.**—The term “Bankruptcy Code” means title 11, United States Code.

(3) **BRIDGE FINANCIAL COMPANY.**—The term “bridge financial company” means a new financial company organized by the Corporation in accordance
with section 210(h) for the purpose of resolving a covered financial company.

(4) **Claim.**—The term “claim” means any right of payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) **Company.**—The term “company” has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)), except that such term includes any company described in paragraph (11), the majority of the securities of which are owned by the United States or any State.

(6) **Court.**—The term “Court” means the United States District Court for the District of Columbia, unless the context otherwise requires.

(7) **Covered broker or dealer.**—The term “covered broker or dealer” means a covered financial company that is a broker or dealer that—

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

(B) is a member of SIPC.

(8) **Covered financial company.**—The term “covered financial company”—
(A) means a financial company for which a determination has been made under section 203(b); and
(B) does not include an insured depository institution.

(9) COVERED SUBSIDIARY.—The term “covered subsidiary” means a subsidiary of a covered financial company, other than—
(A) an insured depository institution;
(B) an insurance company; or
(C) a covered broker or dealer.

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

(11) FINANCIAL COMPANY.—The term “financial company” means any company that—
(A) is incorporated or organized under any provision of Federal law or the laws of any State;
(B) is—
(i) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)), and including any company described in paragraph (5);

(ii) a nonbank financial company supervised by the Board of Governors;

(iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) other than a company described in clause (i) or (ii); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) (other than a subsidiary that is an insured depository institution or an insurance company); and
(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), a governmental entity, or a regulated entity, as defined under section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)).

(12) Fund.—The term “Fund” means the Orderly Liquidation Fund established under section 210(n).

(13) Insurance Company.—The term “insurance company” means any entity that is—

(A) engaged in the business of insurance;

(B) subject to regulation by a State insurance regulator; and

(C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.

(14) Nonbank Financial Company.—The term “nonbank financial company” has the same meaning as in section 102(a)(4)(C).

(15) Nonbank Financial Company Supervised by the Board of Governors.—The term
“nonbank financial company supervised by the Board of Governors” has the same meaning as in section 102(a)(3)(D).

(16) SIPC.—The term “SIPC” means the Securities Investor Protection Corporation.

(b) DEFINITIONAL CRITERIA.—For purpose of the definition of the term “financial company” under subsection (a)(11), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

SEC. 202. JUDICIAL REVIEW.

(a) COMMENCEMENT OF ORDERLY LIQUIDATION.—

(1) Petition to district court.—

(A) District court review.—
(i) **Petition to District Court.**—

Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary shall notify the Corporation and the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as receiver, the Secretary shall appoint the Corporation as receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as receiver.

(ii) **Form and Content of Order.**—The Secretary shall present all relevant findings and the recommendation made pursuant to section 203(a) to the
Court. The petition shall be filed under

seal.

(iii) **DETERMINATION.**—On a strictly confidential basis, and without any prior public disclosure, the Court, after notice to the covered financial company and a hearing in which the covered financial company may oppose the petition, shall determine whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

(iv) **ISSUANCE OF ORDER.**—If the Court determines that the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11)—

(I) is not arbitrary and capricious, the Court shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company; or
(II) is arbitrary and capricious, 
the Court shall immediately provide to 
the Secretary a written statement of 
each reason supporting its determina-
tion, and afford the Secretary an im-
mediate opportunity to amend and 
refile the petition under clause (i).

(v) Petition Granted by Operation of Law.—If the Court does not 
make a determination within 24 hours of 
receipt of the petition—

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

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

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

(B) Effect of Determination.—The 
determination of the Court under subparagraph 
(A) shall be final, and shall be subject to appeal 
only in accordance with paragraph (2). The de-
cision shall not be subject to any stay or injunction pending appeal. Upon conclusion of its proceedings under subparagraph (A), the Court shall provide immediately for the record a written statement of each reason supporting the decision of the Court, and shall provide copies thereof to the Secretary and the covered financial company.

(C) CRIMINAL PENALTIES.—A person who recklessly discloses a determination of the Secretary under section 203(b) or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for under subparagraph (A), shall be fined not more than $250,000, or imprisoned for not more than 5 years, or both.

(2) APPEAL OF DECISIONS OF THE DISTRICT COURT.—

(A) APPEAL TO COURT OF APPEALS.—

(i) IN GENERAL.—Subject to clause (ii), the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction of an appeal of a final decision of the Court filed by the Secretary or a covered financial company, through its
board of directors, notwithstanding section 210(a)(1)(A)(i), not later than 30 days after the date on which the decision of the Court is rendered or deemed rendered under this subsection.

(ii) Condition of Jurisdiction.—

The Court of Appeals shall have jurisdiction of an appeal by a covered financial company only if the covered financial company did not acquiesce or consent to the appointment of a receiver by the Secretary under paragraph (1)(A).

(iii) Expedite.—The Court of Appeals shall consider any appeal under this subparagraph on an expedited basis.

(iv) Scope of Review.—For an appeal taken under this subparagraph, review shall be limited to whether the determination of the Secretary that a covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

(B) Appeal to the Supreme Court.—
(i) In General.—A petition for a writ of certiorari to review a decision of the Court of Appeals under subparagraph (A) may be filed by the Secretary or the covered financial company, through its board of directors, notwithstanding section 210(a)(1)(A)(i), with the Supreme Court of the United States, not later than 30 days after the date of the final decision of the Court of Appeals, and the Supreme Court shall have discretionary jurisdiction to review such decision.

(ii) Written Statement.—In the event of a petition under clause (i), the Court of Appeals shall immediately provide for the record a written statement of each reason for its decision.

(iii) Expedition.—The Supreme Court shall consider any petition under this subparagraph on an expedited basis.

(iv) Scope of Review.—Review by the Supreme Court under this subparagraph shall be limited to whether the determination of the Secretary that the covered financial company is in default or in
danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

(b) Establishment and Transmittal of Rules and Procedures.—

(1) In general.—Not later than 6 months after the date of enactment of this Act, the Court shall establish such rules and procedures as may be necessary to ensure the orderly conduct of proceedings, including rules and procedures to ensure that the 24-hour deadline is met and that the Secretary shall have an ongoing opportunity to amend and refile petitions under subsection (a)(1).

(2) Publication of rules.—The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded and shall be transmitted to—

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

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

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

(D) the Committee on Financial Services of the House of Representatives.
(c) Provisions Applicable to Financial Companies.—

(1) Bankruptcy Code.—Except as provided in this subsection, the provisions of the Bankruptcy Code and rules issued thereunder, and not the provisions of this title, shall apply to financial companies that are not covered financial companies for which the Corporation has been appointed as receiver.

(2) This Title.—The provisions of this title shall exclusively apply to and govern all matters relating to covered financial companies for which the Corporation is appointed as receiver, and no provisions of the Bankruptcy Code or the rules issued thereunder shall apply in such cases.

(d) Time Limit on Receivership Authority.—

(1) Baseline Period.—Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

(2) Extension of Time Limit.—The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the
Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

(A) to—

(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

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

(3) SECOND EXTENSION OF TIME LIMIT.—

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

(B) ADDITIONAL REPORT REQUIRED.—Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the
Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

(4) ONGOING LITIGATION.—The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and
(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

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

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

(5) REGULATIONS.—The Corporation may issue regulations governing the termination of receiverships under this title.

(6) NO LIABILITY.—The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

(e) STUDY OF BANKRUPTCY AND ORDERLY LIQUIDATION PROCESS FOR FINANCIAL COMPANIES.—

(1) STUDY.—

(A) IN GENERAL.—The Administrative Office of the United States Courts and the Comp-
troller General of the United States shall each
monitor the activities of the Court, and each
such Office shall conduct separate studies re-
garding the bankruptcy and orderly liquidation
process for financial companies under the
Bankruptcy Code.

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

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

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

(iii) ways to make the orderly liquidation
process under the Bankruptcy Code
for financial companies more effective.

(2) REPORTS.—Not later than 1 year after the
date of enactment of this Act, in each successive
year until the third year, and every fifth year after
that date of enactment, the Administrative Office of
the United States Courts and the Comptroller Gen-
eral of the United States shall submit to the Com-
mittee on Banking, Housing, and Urban Affairs and
the Committee on the Judiciary of the Senate and
the Committee on Financial Services and the Com-
mittee on the Judiciary of the House of Representa-
tives separate reports summarizing the results of the
studies conducted under paragraph (1).

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

(1) STUDY.—

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

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

(i) the extent to which international
coordination currently exists;
(ii) current mechanisms and structures for facilitating international cooperation;

(iii) barriers to effective international coordination; and

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

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Secretary a report summarizing the results of the study conducted under paragraph (1).

(g) STUDY OF PROMPT CORRECTIVE ACTION IMPLEMENTATION BY THE APPROPRIATE FEDERAL AGENCIES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.
(2) **ISSUES TO BE STUDIED.**—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

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

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

(4) **COUNCIL REPORT OF ACTION.**—Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations
made to the Federal primary financial regulatory agencies under section 120.

SEC. 203. SYSTEMIC RISK DETERMINATION.

(a) WRITTEN RECOMMENDATION AND DETERMINATION.—

(1) VOTE REQUIRED.—

(A) IN GENERAL.—On their own initiative, or at the request of the Secretary, the Corporation and the Board of Governors shall consider whether to make a written recommendation described in paragraph (2) with respect to whether the Secretary should appoint the Corporation as receiver for a financial company. Such recommendation shall be made upon a vote of not fewer than 2⁄3 of the members of the Board of Governors then serving and 2⁄3 of the members of the board of directors of the Corporation then serving.

(B) CASES INVOLVING COVERED BROKERS OR DEALERS.—In the case of a covered broker or dealer, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is a covered broker or dealer, the Commission and the Board of Governors, at
the request of the Secretary, or on their own
initiative, shall consider whether to make the
written recommendation described in paragraph
(2) with respect to the financial company. Sub-
ject to the requirements in paragraph (2), such
recommendation shall be made upon a vote of
not fewer than 2/3 of the members of the Board
of Governors then serving and the members of
the Commission then serving, and in consulta-
tion with the Corporation.

(2) Recommendation required.—Any writ-
ten recommendation pursuant to paragraph (1) shall
contain—

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

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

(C) a description of the effect that the de-
fault of the financial company would have on
economic conditions or financial stability for
low income, minority, or underserved commu-
nities;
(D) a recommendation regarding the nature and the extent of actions to be taken under this title regarding the financial company;

(E) an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company;

(F) an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company;

(G) an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants;

and

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

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

(1) the financial company is in default or in danger of default;
the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States;

(3) no viable private sector alternative is available to prevent the default of the financial company;

(4) any effect on the claims or interests of creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under this title is appropriate, given the impact that any action taken under this title would have on financial stability in the United States;

(5) any action under section 204 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the cost to the general fund of the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company;

(6) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and
(7) the company satisfies the definition of a financial company under section 201.

(c) DOCUMENTATION AND REVIEW.—

(1) IN GENERAL.—The Secretary shall—

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

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

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

(2) REPORT TO CONGRESS.—Not later than 24 hours after the date of appointment of the Corporation as receiver for a covered financial company, the Secretary shall provide written notice of the recommendations and determinations reached in accordance with subsections (a) and (b) to the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, which shall consist of a summary of the basis for the determination, including, to the extent available at the time of the determination—
(A) the size and financial condition of the covered financial company;

(B) the sources of capital and credit support that were available to the covered financial company;

(C) the operations of the covered financial company that could have had a significant impact on financial stability, markets, or both;

(D) identification of the banks and financial companies which may be able to provide the services offered by the covered financial company;

(E) any potential international ramifications of resolution of the covered financial company under other applicable insolvency law;

(F) an estimate of the potential effect of the resolution of the covered financial company under other applicable insolvency law on the financial stability of the United States;

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

(H) the potential effect of the appointment of a receiver by the Secretary on the financial system, financial markets, and banks and other financial companies; and
(I) whether resolution of the covered financial company under other applicable insolvency law would cause banks or other financial companies to experience severe liquidity distress.

(3) REPORTS TO CONGRESS AND THE PUBLIC.—

(A) IN GENERAL.—Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

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

(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366 of title 12, Code of
Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

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

(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.
(B) AMENDMENTS.—The Corporation shall, on a timely basis, not less frequently than quarterly, amend or revise and resubmit the reports prepared under this paragraph, as necessary.

(C) CONGRESSIONAL TESTIMONY.—The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this title shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

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

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

(B) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no
reasonable prospect for the company to avoid
such depletion;

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

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

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

(A) the basis for the determination;

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

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

(D) the likely disruptive effect of the deter-
mination and such action on the reasonable ex-
pectations of creditors, counterparties, and
shareholders, taking into account the impact
any action under this title would have on financial stability in the United States, including whether the rights of such parties will be disrupted.

(d) CORPORATION POLICIES AND PROCEDURES.—As soon as is practicable after the date of enactment of this Act, the Corporation shall establish policies and procedures that are acceptable to the Secretary governing the use of funds available to the Corporation to carry out this title, including the terms and conditions for the provision and use of funds under sections 204(d), 210(h)(2)(G)(iv), and 210(h)(9).

(e) TREATMENT OF INSURANCE COMPANIES AND INSURANCE COMPANY SUBSIDIARIES.—

(1) IN GENERAL.—Notwithstanding subsection (b), if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any subsidiary or affiliate of such company that is not excepted under paragraph (2), shall be conducted as provided under such State law.

(2) EXCEPTION FOR SUBSIDIARIES AND AFFILIATES.—The requirement of paragraph (1) shall not apply with respect to any subsidiary or affiliate of
an insurance company that is not itself an insurance company.

(3) **BACKUP AUTHORITY.**—Notwithstanding paragraph (1), with respect to a covered financial company described in paragraph (1), if, after the end of the 60-day period beginning on the date on which a determination is made under section 202(a) with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State.

**SEC. 204. ORDERLY LIQUIDATION OF COVERED FINANCIAL COMPANIES.**

(a) **PURPOSE OF ORDERLY LIQUIDATION AUTHORITY.**—It is the purpose of this title to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. The authority provided in this
title shall be exercised in the manner that best fulfills such purpose, so that—

(1) creditors and shareholders will bear the losses of the financial company;

(2) management responsible for the condition of the financial company will not be retained; and

(3) the Corporation and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.

(b) CORPORATION AS RECEIVER.—Upon the appointment of the Corporation under section 202, the Corporation shall act as the receiver for the covered financial company, with all of the rights and obligations set forth in this title.

(c) CONSULTATION.—The Corporation, as receiver—

(1) shall consult with the primary financial regulatory agency or agencies of the covered financial company and its covered subsidiaries for purposes of
ensuring an orderly liquidation of the covered financial company;

(2) may consult with, or under subsection (a)(1)(B)(v) or (a)(1)(L) of section 210, acquire the services of, any outside experts, as appropriate to inform and aid the Corporation in the orderly liquidation process;

(3) shall consult with the primary financial regulatory agency or agencies of any subsidiaries of the covered financial company that are not covered subsidiaries, and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate; and

(4) shall consult with the Commission and the Securities Investor Protection Corporation in the case of any covered financial company for which the Corporation has been appointed as receiver that is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) and is a member of the Securities Investor Protection Corporation, for the purpose of determining whether to transfer to a bridge financial company organized by the Corpora-
tion as receiver, without consent of any customer, customer accounts of the covered financial company.

(d) **Funding for Orderly Liquidation.**—Upon its appointment as receiver for a covered financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or appropriate, the Corporation may make available to the receivership, subject to the conditions set forth in section 206 and subject to the plan described in section 210(n)(11), funds for the orderly liquidation of the covered financial company. All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for—

(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;
(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary;

and

(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 210.

SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS AND DEALERS.

(a) APPOINTMENT OF SIPC AS TRUSTEE.—

(1) APPOINTMENT.—Upon the appointment of the Corporation as receiver for any covered broker or dealer, the Corporation shall appoint, without any need for court approval, the Securities Investor Protection Corporation to act as trustee for the liquidation under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) of the covered broker or dealer.

(2) ACTIONS BY SIPC.—
(A) FILING.—Upon appointment of SIPC under paragraph (1), SIPC shall promptly file with any Federal district court of competent jurisdiction specified in section 21 or 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78u, 78aa), an application for a protective decree under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) as to the covered broker or dealer. The Federal district court shall accept and approve the filing, including outside of normal business hours, and shall immediately issue the protective decree as to the covered broker or dealer.

(B) ADMINISTRATION BY SIPC.—Following entry of the protective decree, and except as otherwise provided in this section, the determination of claims and the liquidation of assets retained in the receivership of the covered broker or dealer and not transferred to the bridge financial company shall be administered under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) by SIPC, as trustee for the covered broker or dealer.

(C) DEFINITION OF FILING DATE.—For purposes of the liquidation proceeding, the term
“filing date” means the date on which the Corporation is appointed as receiver of the covered broker or dealer.

(D) Determination of Claims.—As trustee for the covered broker or dealer, SIPC shall determine and satisfy, consistent with this title and with the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), all claims against the covered broker or dealer arising on or before the filing date.

(b) Powers and Duties of SIPC.—

(1) In General.—Except as provided in this section, upon its appointment as trustee for the liquidation of a covered broker or dealer, SIPC shall have all of the powers and duties provided by the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), including, without limitation, all rights of action against third parties, and shall conduct such liquidation in accordance with the terms of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), except that SIPC shall have no powers or duties with respect to assets and liabilities transferred by the Corporation from the covered broker or dealer to any bridge financial company established in accordance with this title.
(2) LIMITATION OF POWERS.—The exercise by SIPC of powers and functions as trustee under subsection (a) shall not impair or impede the exercise of the powers and duties of the Corporation with regard to—

(A) any action, except as otherwise provided in this title—

(i) to make funds available under section 204(d);

(ii) to organize, establish, operate, or terminate any bridge financial company;

(iii) to transfer assets and liabilities;

(iv) to enforce or repudiate contracts;

or

(v) to take any other action relating to such bridge financial company under section 210; or

(B) determining claims under subsection (e).

(3) PROTECTIVE DECREE.—SIPC and the Corporation, in consultation with the Commission, shall jointly determine the terms of the protective decree to be filed by SIPC with any court of competent jurisdiction under section 21 or 27 of the Securities
Exchange Act of 1934 (15 U.S.C. 78u, 78aa), as re-
quired by subsection (a).

(4) **QUALIFIED FINANCIAL CONTRACTS.**—Not-
withstanding any provision of the Securities Investor
Protection Act of 1970 to the contrary (including
section 5(b)(2)(C) of that Act (15 U.S.C. 78eee(b)(2)(C))), the rights and obligations of any
party to a qualified financial contract (as that term
is defined in section 210(c)(8)) to which a covered
broker or dealer for which the Corporation has been
appointed receiver is a party shall be governed exclu-
sively by section 210, including the limitations and
restrictions contained in section 210(e)(10)(B).

(e) **LIMITATION ON COURT ACTION.**—Except as oth-
everwise provided in this title, no court may take any action,
including any action pursuant to the Securities Investor
Protection Act of 1970 or the Bankruptcy Code, to re-
strain or affect the exercise of powers or functions of the
Corporation as receiver for a covered broker or dealer and
any claims against the Corporation as such receiver shall
be determined in accordance with subsection (e) and such
claims shall be limited to money damages.

(d) **ACTIONS BY CORPORATION AS RECEIVER.**—

(1) **IN GENERAL.**—Notwithstanding any other
provision of this title, no action taken by the Cor-
poration as receiver with respect to a covered broker or dealer shall—

(A) adversely affect the rights of a customer to customer property or customer name securities;

(B) diminish the amount or timely payment of net equity claims of customers; or

(C) otherwise impair the recoveries provided to a customer under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(2) Net proceeds.—The net proceeds from any transfer, sale, or disposition of assets of the covered broker or dealer, or proceeds thereof by the Corporation as receiver for the covered broker or dealer shall be for the benefit of the estate of the covered broker or dealer, as provided in this title.

(e) Claims against the Corporation as Receiver.—Any claim against the Corporation as receiver for a covered broker or dealer for assets transferred to a bridge financial company established with respect to such covered broker or dealer—

(1) shall be determined in accordance with section 210(a)(2); and
may be reviewed by the appropriate district or territorial court of the United States in accordance with section 210(a)(5).

(f) SATISFACTION OF CUSTOMER CLAIMS.—

(1) OBLIGATIONS TO CUSTOMERS.—Notwithstanding any other provision of this title, all obligations of a covered broker or dealer or of any bridge financial company established with respect to such covered broker or dealer to a customer relating to, or net equity claims based upon, customer property or customer name securities shall be promptly discharged by SIPC, the Corporation, or the bridge financial company, as applicable, by the delivery of securities or the making of payments to or for the account of such customer, in a manner and in an amount at least as beneficial to the customer as would have been the case had the actual proceeds realized from the liquidation of the covered broker or dealer under this title been distributed in a proceeding under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver and without any transfer of assets or liabilities to a bridge financial company, and with a filing date as of the
date on which the Corporation is appointed as receiver.

(2) SATISFACTION OF CLAIMS BY SIPC.—SIPC, as trustee for a covered broker or dealer, shall satisfy customer claims in the manner and amount provided under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), as if the appointment of the Corporation as receiver had not occurred, and with a filing date as of the date on which the Corporation is appointed as receiver. The Corporation shall satisfy customer claims, to the extent that a customer would have received more securities or cash with respect to the allocation of customer property had the covered financial company been subject to a proceeding under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver, and with a filing date as of the date on which the Corporation is appointed as receiver.

(g) PRIORITIES.—

(1) CUSTOMER PROPERTY.—As trustee for a covered broker or dealer, SIPC shall allocate customer property and deliver customer name securities in accordance with section 8(c) of the Securities In-
2(e)).

(2) OTHER CLAIMS.—All claims other than
those described in paragraph (1) (including any un-
paid claim by a customer for the allowed net equity
claim of such customer from customer property)
shall be paid in accordance with the priorities in sec-
tion 210(b).

(h) RULEMAKING.—The Commission and the Cor-
poration, after consultation with SIPC, shall jointly issue
rules to implement this section.

SEC. 206. MANDATORY TERMS AND CONDITIONS FOR ALL
ORDERLY LIQUIDATION ACTIONS.

In taking action under this title, the Corporation
shall—

(1) determine that such action is necessary for
purposes of the financial stability of the United
States, and not for the purpose of preserving the
covered financial company;

(2) ensure that the shareholders of a covered fi-
nancial company do not receive payment until after
all other claims and the Fund are fully paid;

(3) ensure that unsecured creditors bear losses
in accordance with the priority of claim provisions in
section 210;
(4) ensure that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time at which the Corporation is appointed receiver); and

(5) not take an equity interest in or become a shareholder of any covered financial company or any covered subsidiary.

SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER.

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the shareholders or creditors thereof for acquiescing in or consenting in good faith to the appointment of the Corporation as receiver for the covered financial company under section 203.

SEC. 208. DISMISUAL AND EXCLUSION OF OTHER ACTIONS.

(a) IN GENERAL.—Effective as of the date of the appointment of the Corporation as receiver for the covered financial company under section 202 or the appointment of SIPC as trustee for a covered broker or dealer under section 205, as applicable, any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code or the Securities Investor Protection Act of 1970 shall be dismissed, upon notice to
the Bankruptcy Court (with respect to a case commenced 
under the Bankruptcy Code), and upon notice to SIPC 
(with respect to a covered broker or dealer) and no such 

case or proceeding may be commenced with respect to a 
covered financial company at any time while the orderly 
liquidation is pending.

(b) REVESTING OF ASSETS.—Effective as of the date 
of appointment of the Corporation as receiver, the assets 
of a covered financial company shall, to the extent they 
have vested in any entity other than the covered financial 
company as a result of any case or proceeding commenced 
with respect to the covered financial company under the 
Bankruptcy Code, the Securities Investor Protection Act 
of 1970, or any similar provision of State liquidation or 
insolvency law applicable to the covered financial company, 
revest in the covered financial company.

(c) LIMITATION.—Notwithstanding subsections (a) 
and (b), any order entered or other relief granted by a 
bankruptcy court prior to the date of appointment of the 
Corporation as receiver shall continue with the same valid-
ity as if an orderly liquidation had not been commenced.

SEC. 209. RULEMAKING; NON-CONFLICTING LAW.

The Corporation shall, in consultation with the Coun-
cil, prescribe such rules or regulations as the Corporation 
considers necessary or appropriate to implement this title,
including rules and regulations with respect to the rights, interests, and priorities of creditors, counterparties, security entitlement holders, or other persons with respect to any covered financial company or any assets or other property of or held by such covered financial company, and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act. To the extent possible, the Corporation shall seek to harmonize applicable rules and regulations promulgated under this section with the insolvency laws that would otherwise apply to a covered financial company.

SEC. 210. POWERS AND DUTIES OF THE CORPORATION.

(a) Powers and Authorities.—

(1) General powers.—

(A) Successor to covered financial company.—The Corporation shall, upon appointment as receiver for a covered financial company under this title, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company and its assets, and of any stockholder, member, officer, or director of such company; and

(ii) title to the books, records, and assets of any previous receiver or other legal
custodian of such covered financial company.

(B) Operation of the covered financial company during the period of orderly liquidation.—The Corporation, as receiver for a covered financial company, may—

(i) take over the assets of and operate the covered financial company with all of the powers of the members or shareholders, the directors, and the officers of the covered financial company, and conduct all business of the covered financial company;

(ii) collect all obligations and money owed to the covered financial company;

(iii) perform all functions of the covered financial company, in the name of the covered financial company;

(iv) manage the assets and property of the covered financial company, consistent with maximization of the value of the assets in the context of the orderly liquidation; and
(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as receiver.

(C) FUNCTIONS OF COVERED FINANCIAL COMPANY OFFICERS, DIRECTORS, AND SHAREHOLDERS.—

(i) IN GENERAL.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this title.

(ii) PRESUMPTION.—There shall be a strong presumption that the Corporation, as receiver for a covered financial company, will remove management responsible for the failed condition of the covered financial company.

(D) ADDITIONAL POWERS AS RECEIVER.—The Corporation shall, as receiver for a covered financial company, and subject to all legally enforceable and perfected security interests and all legally enforceable security entitlements in respect of assets held by the covered financial company, liquidate, and wind-up the affairs of
a covered financial company, including taking steps to realize upon the assets of the covered financial company, in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

(E) ADDITIONAL POWERS WITH RESPECT TO FAILING SUBSIDIARIES OF A COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—In any case in which a receiver is appointed for a covered financial company under section 202, the Corporation may appoint itself as receiver of any covered subsidiary of the covered financial company that is organized under Federal law or the laws of any State, if the Corporation and the Secretary jointly determine that—

(I) the covered subsidiary is in default or in danger of default;

(II) such action would avoid or mitigate serious adverse effects on the
financial stability or economic conditions of the United States; and

(III) such action would facilitate the orderly liquidation of the covered financial company.

(ii) TREATMENT AS COVERED FINANCIAL COMPANY.—If the Corporation is appointed as receiver of a covered subsidiary of a covered financial company under clause (i), the covered subsidiary shall thereafter be considered a covered financial company under this title, and the Corporation shall thereafter have all the powers and rights with respect to that covered subsidiary as it has with respect to a covered financial company under this title.

(F) ORGANIZATION OF BRIDGE COMPANIES.—The Corporation, as receiver for a covered financial company, may organize a bridge financial company under subsection (h).

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), the Corporation, as receiver for a covered financial company, may—
(I) merge the covered financial company with another company; or

(II) transfer any asset or liability of the covered financial company (including any assets and liabilities held by the covered financial company for security entitlement holders, any customer property, or any assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—With respect to a transaction described in clause (i)(I) that requires approval by a Federal agency—

(I) the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval;

(II) if, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall
promptly notify the Attorney General of the United States of the proposed transaction, and the Attorney General shall provide the required report not later than 10 days after the date of the request; and

(III) if notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section 7A, or is extended pursuant to subsection (e)(2) of such section 7A.

(iii) SETOFF.—Subject to the other provisions of this title, any transferee of assets from a receiver, including a bridge financial company, shall be subject to such claims or rights as would prevail over the rights of such transferee in such assets under applicable noninsolvency law.
(H) Payment of Valid Obligations.—
The Corporation, as receiver for a covered financial company, shall, to the extent that funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver, in accordance with the prescriptions and limitations of this title.

(I) Applicable Noninsolvency Law.—
Except as may otherwise be provided in this title, the applicable noninsolvency law shall be determined by the noninsolvency choice of law rules otherwise applicable to the claims, rights, titles, persons, or entities at issue.

(J) Subpoena Authority.—

(i) In General.—The Corporation, as receiver for a covered financial company, may, for purposes of carrying out any power, authority, or duty with respect to the covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any
power established under section 8(n) of the Federal Deposit Insurance Act, as if the Corporation were the appropriate Federal banking agency for the covered financial company, and the covered financial company were an insured depository institution.

(ii) Rule of Construction.—This subparagraph may not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) or under any other provision of law.

(K) Incidental Powers.—The Corporation, as receiver for a covered financial company, may exercise all powers and authorities specifically granted to receivers under this title, and such incidental powers as shall be necessary to carry out such powers under this title.

(L) Utilization of Private Sector.—In carrying out its responsibilities in the management and disposition of assets from the covered financial company, the Corporation, as receiver for a covered financial company, may utilize the services of private persons, including
real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector, and the Corporation determines that utilization of such services is practicable, efficient, and cost effective.

(M) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation, as receiver for a covered financial company, shall succeed by operation of law to the rights, titles, powers, and privileges described in subparagraph (A), and shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims provisions under this section.
(N) Coordination with foreign financial authorities.—The Corporation, as receiver for a covered financial company, shall coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the orderly liquidation of any covered financial company that has assets or operations in a country other than the United States.

(O) Restriction on transfers.—

(i) Selection of accounts for transfer.—If the Corporation establishes one or more bridge financial companies with respect to a covered broker or dealer, the Corporation shall transfer to one of such bridge financial companies, all customer accounts of the covered broker or dealer, and all associated customer name securities and customer property, unless the Corporation, after consulting with the Commission and SIPC, determines that—

(I) the customer accounts, customer name securities, and customer property are likely to be promptly transferred to another broker or dealer that is registered with the Commis-
sion under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 73o(b)) and is a member of SIPC; or

(II) the transfer of the accounts to a bridge financial company would materially interfere with the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

(ii) Transfer of Property.—SIPC, as trustee for the liquidation of the covered broker or dealer, and the Commission shall provide any and all reasonable assistance necessary to complete such transfers by the Corporation.

(iii) Customer Consent and Court Approval Not Required.—Neither customer consent nor court approval shall be required to transfer any customer accounts or associated customer name securities or customer property to a bridge financial company in accordance with this section.
(iv) Notification of SIPC and Sharing of Information.—The Corporation shall identify to SIPC the customer accounts and associated customer name securities and customer property transferred to the bridge financial company. The Corporation and SIPC shall cooperate in the sharing of any information necessary for each entity to discharge its obligations under this title and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) including by providing access to the books and records of the covered financial company and any bridge financial company established in accordance with this title.

(2) Determination of Claims.—

(A) In general.—The Corporation, as receiver for a covered financial company, shall report on claims, as set forth in section 203(c)(3). Subject to paragraph (4) of this subsection, the Corporation, as receiver for a covered financial company, shall determine claims in accordance with the requirements of this subsection and regulations prescribed under section 209.
(B) NOTICE REQUIREMENTS.—The Corporation, as receiver for a covered financial company, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

(i) promptly publish a notice to the creditors of the covered financial company to present their claims, together with proof, to the receiver by a date specified in the notice, which shall be not earlier than 90 days after the date of publication of such notice; and

(ii) republish such notice 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) MAILING REQUIRED.—The Corporation as receiver shall mail a notice similar to the notice published under clause (i) or (ii) of subparagraph (B), at the time of such publication, to any creditor shown on the books and records of the covered financial company—

(i) at the last address of the creditor appearing in such books;

(ii) in any claim filed by the claimant;

or
(iii) upon discovery of the name and address of a claimant not appearing on the books and records of the covered financial company, not later than 30 days after the date of the discovery of such name and address.

(3) Procedures for resolution of claims.—

(A) Decision period.—

(i) In general.—Prior to the 180th day after the date on which a claim against a covered financial company is filed with the Corporation as receiver, or such later date as may be agreed as provided in clause (ii), the Corporation shall notify the claimant whether it accepts or objects to the claim, in accordance with subparagraphs (B), (C), and (D).

(ii) Extension of time.—By written agreement executed not later than 180 days after the date on which a claim against a covered financial company is filed with the Corporation, the period described in clause (i) may be extended by written agreement between the claimant
and the Corporation. Failure to notify the
claimant of any disallowance within the
time period set forth in clause (i), as it
may be extended by agreement under this
clause, shall be deemed to be a disallow-
ance of such claim, and the claimant may
file or continue an action in court, as pro-
vided in paragraph (4).

(iii) Mailing of notice sufficient.—The requirements of clause (i)
shall be deemed to be satisfied if the notice
of any decision with respect to any claim
is mailed to the last address of the claim-
ant which appears—

(I) on the books, records, or both

of the covered financial company;

(II) in the claim filed by the

claimant; or

(III) in documents submitted in

proof of the claim.

(iv) Contents of notice of dis-
allowance.—If the Corporation as re-
ceiver objects to any claim filed under
clause (i), the notice to the claimant shall
contain—
(I) a statement of each reason for the disallowance; and

(II) the procedures required to file or continue an action in court, as provided in paragraph (4).

(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received by the receiver on or before the date specified in the notice under paragraph (2)(B)(i), which is proved to the satisfaction of the receiver.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed, and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by a claimant after the date specified in the notice published under paragraph (2)(B)(i), and such claim may be considered by the receiver under sub-paragraph (B), if—
(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Corporation may object to any portion of any claim by a creditor or claim of a security, preference, setoff, or priority which is not proved to the satisfaction of the Corporation.

(ii) PAYMENTS TO UNDERSECURED CREDITORS.—In the case of a claim against a covered financial company that is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim; and
(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal reserve bank, or the Corporation, to any covered financial company; or

(II) subject to clause (ii), any legally enforceable and perfected security interest in the assets of the covered financial company securing any such extension of credit.

(E) LEGAL EFFECT OF FILING.—

(i) Statute of Limitations tolled.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.
(ii) **No prejudice to other actions.**—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of appointment of the receiver for the covered financial company.

(4) **Judicial determination of claims.**—

(A) **In general.**—Subject to subparagraph (B), a claimant may file suit on a claim (or continue an action commenced before the date of appointment of the Corporation as receiver) in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located (and such court shall have jurisdiction to hear such claim).

(B) **Timing.**—A claim under subparagraph (A) may be filed before the end of the 60-day period beginning on the earlier of—

   (i) the end of the period described in paragraph (3)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (3)(A)(ii)) with respect to any claim
against a covered financial company for
which the Corporation is receiver; or

(ii) the date of any notice of disallow-
ance of such claim pursuant to paragraph
(3)(A)(i).

(C) Statute of Limitations.—If any
claimant fails to file suit on such claim (or to
continue an action on such claim commenced
before the date of appointment of the Corpora-
tion as receiver) prior to the end of the 60-day
period described in subparagraph (B), the claim
shall be deemed to be disallowed (other than
any portion of such claim which was allowed by
the receiver) as of the end of such period, such
disallowance shall be final, and the claimant
shall have no further rights or remedies with re-
spect to such claim.

(5) Expedited Determination of Claims.—

(A) Procedure Required.—The Cor-
poration shall establish a procedure for exp-
dited relief outside of the claims process estab-
lished under paragraph (3), for any claimant
that alleges—

(i) the existence of a legally valid and
enforceable or perfected security interest in
property of a covered financial company, or
is an entitlement holder that has obtained
control of any legally valid and enforceable
security entitlement in respect of any asset
held by the covered financial company for
which the Corporation has been appointed
receiver; and

(ii) that irreparable injury will occur
if the claims procedure established under
paragraph (3) is followed.

(B) Determination Period.—Prior to
the end of the 90-day period beginning on the
date on which a claim is filed in accordance
with the procedures established pursuant to
subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow
such claim, or any portion thereof; or

(II) whether such claim should be
determined pursuant to the proce-
dures established pursuant to para-
graph (3);

(ii) notify the claimant of the deter-
mination; and
(iii) if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

(C) Period for Filing or Renewing Suit.—Any claimant who files a request for expedited relief shall be permitted to file suit (or continue a suit filed before the date of appointment of the Corporation as receiver seeking a determination of the rights of the claimant with respect to such security interest (or such security entitlement) after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date on which the Corporation denies the claim or a portion thereof.

(D) Statute of Limitations.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (C), the claim shall be deemed to be disallowed as of the end of such period (other
than any portion of such claim which was al-
lowed by the receiver), such disallowance shall
be final, and the claimant shall have no further
rights or remedies with respect to such claim.

(E) **Legal effect of filing.**—

(i) **Statute of limitations**

TOLLED.—For purposes of any applicable
statute of limitations, the filing of a claim
with the receiver shall constitute a com-
mencement of an action.

(ii) **No prejudice to other ac-
tions.**—Subject to paragraph (8), the fil-
ing of a claim with the receiver shall not
prejudice any right of the claimant to con-
tinue any action which was filed before the
appointment of the Corporation as receiver
for the covered financial company.

(6) **Agreements against interest of the**
receiver.—No agreement that tends to diminish or
defeat the interest of the Corporation as receiver in
any asset acquired by the receiver under this section
shall be valid against the receiver, unless such agree-
ment—

(A) is in writing;
(B) was executed by an authorized officer or representative of the covered financial company, or confirmed in the ordinary course of business by the covered financial company; and

(C) has been, since the time of its execution, an official record of the company or the party claiming under the agreement provides documentation, acceptable to the receiver, of such agreement and its authorized execution or confirmation by the covered financial company.

(7) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation as receiver may, in its discretion and to the extent that funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the receiver pursuant to a final determination pursuant to paragraph (3) or (5), as applicable; or

(iii) determined by the final judgment of a court of competent jurisdiction.

(B) LIMITATION.—A creditor shall, in no event, receive less than the amount that the
creditor is entitled to receive under paragraphs (2) and (3) of subsection (d), as applicable.

(C) Payment of dividends on claims.—The Corporation as receiver may, in its sole discretion, and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation as receiver, by reason of any such payment or for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) Rulemaking by the Corporation.—The Corporation may prescribe such rules, including definitions of terms, as the Corporation deems appropriate to establish an interest rate for or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estate of a covered financial company, except that no such interest shall be paid until the Corporation as receiver has satisfied the principal amount of all creditor claims.

(8) Suspension of legal actions.—

(A) In general.—After the appointment of the Corporation as receiver for a covered fi-
nancial company, the Corporation may request a stay in any judicial action or proceeding in which such covered financial company is or becomes a party, for a period of not to exceed 90 days.

(B) **Grant of Stay by All Courts Required.**—Upon receipt of a request by the Corporation pursuant to subparagraph (A), the court shall grant such stay as to all parties.

(9) **Additional Rights and Duties.**—

(A) **Prior Final Adjudication.**—The Corporation shall abide by any final, non-appealable judgment of any court of competent jurisdiction that was rendered before the appointment of the Corporation as receiver.

(B) **Rights and Remedies of Receiver.**—In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the date of appointment of the Corporation as receiver under section 202) and the Corporation, including removal to Federal court and all appellate rights; and
(ii) not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution.—No attachment or execution may be issued by any court upon assets in the possession of the Corporation as receiver for a covered financial company.

(D) Limitation on judicial review.—Except as otherwise provided in this title, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

(E) Disposition of assets.—In exercising any right, power, privilege, or authority as receiver in connection with any covered financial company for which the Corporation is
acting as receiver under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner that—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) mitigates the potential for serious adverse effects to the financial system;

(iv) ensures timely and adequate competition and fair and consistent treatment of offerors; and

(v) prohibits discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers.

(10) Statute of limitations for actions brought by receiver.—

(A) In general.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver for a covered financial company shall be—
(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law.

(B) DATE ON WHICH A CLAIM ACCRUES.— For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in subparagraph (A) shall be the later of—

(i) the date of the appointment of the Corporation as receiver under this title; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—
(i) In general.—In the case of any tort claim described in clause (ii) for which the applicable statute of limitations under State law has expired not more than 5 years before the date of appointment of the Corporation as receiver for a covered financial company, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitations.

(ii) Claims described.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(11) Avoidable transfers.—

(A) Fraudulent transfers.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of the covered financial company in property, or any obligation incurred by the covered financial company, that was made or incurred at or within 2 years before the time of commencement, if—
(i) the covered financial company voluntarily or involuntarily—

(I) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the covered financial company was or became, on or after the date on which such transfer was made or such obligation was incurred, indebted; or

(II) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii) the covered financial company voluntarily or involuntarily—

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the cov-
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ered financial company was an unreasonably small capital;

(III) intended to incur, or believed that the covered financial company would incur, debts that would be beyond the ability of the covered financial company to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property—

(i) to or for the benefit of a creditor;

(ii) for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) that was made while the covered financial company was insolvent;
(iv) that was made—

(I) 90 days or less before the date on which the Corporation was appointed receiver; or

(II) more than 90 days, but less than 1 year before the date on which the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider; and

(v) that enables the creditor to receive more than the creditor would receive if—

(I) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code;

(II) the transfer had not been made; and

(III) the creditor received payment of such debt to the extent provided by the provisions of chapter 7 of the Bankruptcy Code.

(C) POST-RECEIVERSHIP TRANSACTIONS.—

The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that was
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not authorized under this title by the Corporation as receiver.

(D) Right of Recovery.—To the extent that a transfer is avoided under subparagraph (A), (B), or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

   (i) the initial transferee of such transfer or the person for whose benefit such transfer was made; or

   (ii) any immediate or mediate transferee of any such initial transferee.

(E) Rights of Transferee or Obligee.—The Corporation may not recover under subparagraph (D)(ii) from—

   (i) any transferee that takes for value, including in satisfaction of or to secure a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

   (ii) any immediate or mediate good faith transferee of such transferee.
(F) DEFENSES.—Subject to the other provisions of this title—

(i) a transferee or obligee from which the Corporation seeks to recover a transfer or to avoid an obligation under subparagraph (A), (B), (C), or (D) shall have the same defenses available to a transferee or obligee from which a trustee seeks to recover a transfer or avoid an obligation under; and

(ii) the authority of the Corporation to recover a transfer or avoid an obligation shall be subject to subsections (b) and (c) of section 546, section 547(e), and section 548(c) of the Bankruptcy Code.

(G) RIGHTS UNDER THIS SECTION.—The rights of the Corporation as receiver under this section shall be superior to any rights of a trustee or any other party (other than a Federal agency) under the Bankruptcy Code.

(H) RULES OF CONSTRUCTION; DEFINITIONS.—For purposes of—

(i) subparagraphs (A) and (B)—
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(I) the term “insider” has the same meaning as in section 101(31) of the Bankruptcy Code;

(II) a transfer is made when such transfer is so perfected that a bona fide purchaser from the covered financial company against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the date on which the Corporation is appointed as receiver for the covered financial company, such transfer is made immediately before the date of such appointment; and

(III) the term “value” means property, or satisfaction or securing of a present or antecedent debt of the covered financial company, but does not include an unperformed promise to furnish support to the covered financial company; and
(ii) subparagraph (B)—

(I) the covered financial company

is presumed to have been insolvent on

and during the 90-day period imme-

diately preceding the date of appoint-

ment of the Corporation as receiver;

and

(II) the term “insolvent” has the

same meaning as in section 101(32)

of the Bankruptcy Code.

(12) SETOFF.—

(A) GENERALLY.—Except as otherwise

provided in this title, any right of a creditor to

offset a mutual debt owed by the creditor to

any covered financial company that arose before

the Corporation was appointed as receiver for

the covered financial company against a claim

of such creditor may be asserted if enforceable

under applicable noninsolvency law, except to

the extent that—

(i) the claim of the creditor against

the covered financial company is dis-

allowed;
(ii) the claim was transferred, by an entity other than the covered financial company, to the creditor—

(I) after the Corporation was appointed as receiver of the covered financial company; or

(II)(aa) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company; and

(bb) while the covered financial company was insolvent (except for a setoff in connection with a qualified financial contract); or

(iii) the debt owed to the covered financial company was incurred by the covered financial company—

(I) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company;

(II) while the covered financial company was insolvent; and

(III) for the purpose of obtaining a right of setoff against the covered
financial company (except for a setoff in connection with a qualified financial contract).

(B) INSUFFICIENCY.—

(i) IN GENERAL.—Except with respect to a setoff in connection with a qualified financial contract, if a creditor offsets a mutual debt owed to the covered financial company against a claim of the covered financial company on or within the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company, the Corporation may recover from the creditor the amount so offset, to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(I) the date that is 90 days before the date on which the Corporation is appointed as receiver for the covered financial company; or

(II) the first day on which there is an insufficiency during the 90-day period preceding the date on which the Corporation is appointed as re-
receiver for the covered financial company.

(ii) DEFINITION OF INSUFFICIENCY.—In this subparagraph, the term “insufficiency” means the amount, if any, by which a claim against the covered financial company exceeds a mutual debt owed to the covered financial company by the holder of such claim.

(C) INSOLVENCY.—The term “insolvent” has the same meaning as in section 101(32) of the Bankruptcy Code.

(D) PRESUMPTION OF INSOLVENCY.—For purposes of this paragraph, the covered financial company is presumed to have been insolvent on and during the 90-day period preceding the date of appointment of the Corporation as receiver.

(E) LIMITATION.—Nothing in this paragraph (12) shall be the basis for any right of setoff where no such right exists under applicable noninsolvency law.

(F) PRIORITY CLAIM.—Except as otherwise provided in this title, the Corporation as receiver for the covered financial company may
sell or transfer any assets free and clear of the
setoff rights of any party, except that such
party shall be entitled to a claim, subordinate
to the claims payable under subparagraphs (A),
(B), (C), and (D) of subsection (b)(1), but sen-
ior to all other unsecured liabilities defined in
subsection (b)(1)(E), in an amount equal to the
value of such setoff rights.

(13) ATTACHMENT OF ASSETS AND OTHER IN-
JUNCTIVE RELIEF.—Subject to paragraph (14), any
court of competent jurisdiction may, at the request
of the Corporation as receiver for a covered financial
company, issue an order in accordance with Rule 65
of the Federal Rules of Civil Procedure, including an
order placing the assets of any person designated by
the Corporation under the control of the court and
appointing a trustee to hold such assets.

(14) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal
Rules of Civil Procedure shall apply with re-
spect to any proceeding under paragraph (13),
without regard to the requirement that the ap-
plicant show that the injury, loss, or damage is
irreparable and immediate.
(B) State proceeding.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of the State provide substantially similar protections of the right of the parties to due process as provided under Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) Treatment of claims arising from breach of contracts executed by the Corporation as receiver.—Notwithstanding any other provision of this title, any final and non-appealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinuette such agreement.
(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver for a covered financial company shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation is appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) and section 203(c)(3) shall be made available to the public by the Corporation.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—The Corporation shall prescribe such regulations and establish such retention schedules as are necessary to maintain the documents and records of the Corporation generated in ex-
ercising the authorities of this title and the
records of a covered financial company for
which the Corporation is appointed re-
ceiver, with due regard for—

(I) the avoidance of duplicative
record retention; and

(II) the expected evidentiary
needs of the Corporation as receiver
for a covered financial company and
the public regarding the records of
covered financial companies.

(ii) RETENTION OF RECORDS.—Un-
less otherwise required by applicable Fed-
eral law or court order, the Corporation
may not, at any time, destroy any records
that are subject to clause (i).

(iii) RECORDS DEFINED.—As used in
this subparagraph, the terms “records”
and “records of a covered financial com-
pany” mean any document, book, paper,
map, photograph, microfiche, microfilm,
computer or electronically-created record
generated or maintained by the covered fi-
nancial company in the course of and nec-
ecessary to its transaction of business.
(b) **Priority of Expenses and Unsecured Claims.**—

(1) **In General.**—Unsecured claims against a covered financial company, or the Corporation as receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of $11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the ex-
tent of the number of employees covered by each such plan, multiplied by $11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F), (G), or (H)).

(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G) or (H)).

(G) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

(H) Any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other per-
sons with interests in the equity of the covered financial company.

(2) Post-receivership financing priority.—In the event that the Corporation, as receiver for a covered financial company, is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company, which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) Claims of the United States.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) Creditors similarly situated.—All claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(E)(ii)) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary—
(i) to maximize the value of the assets of the covered financial company;

(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

(iii) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

(iv) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in paragraphs (2) and (3) of subsection (d).

(5) SECURED CLAIMS UNAFFECTED.—This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security.
(6) Priority of expenses and unsecured claims in the orderly liquidation of SIPC member.—Where the Corporation is appointed as receiver for a covered broker or dealer, unsecured claims against such covered broker or dealer, or the Corporation as receiver for such covered broker or dealer under this section, that are proven to the satisfaction of the receiver under section 205(e), shall have the priority prescribed in paragraph (1), except that—

(A) SIPC shall be entitled to recover administrative expenses incurred in performing its responsibilities under section 205 on an equal basis with the Corporation, in accordance with paragraph (1)(A);

(B) the Corporation shall be entitled to recover any amounts paid to customers or to SIPC pursuant to section 205(f), in accordance with paragraph (1)(B);

(C) SIPC shall be entitled to recover any amounts paid out of the SIPC Fund to meet its obligations under section 205 and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), which claim shall be subordinate to the claims payable under subpara-
(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—
In addition to any other rights that a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

(A) to which the covered financial company is a party;

(B) the performance of which the Corporation as receiver, in the discretion of the Corporation, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the Corporation as receiver determines, in the discretion of the Corporation, will pro-
mote the orderly administration of the affairs of
the covered financial company.

(2) Timing of repudiation.—The Corporation, as receiver for any covered financial company, shall determine whether or not to exercise the rights of repudiation under this section within a reasonable period of time.

(3) Claims for damages for repudiation.—

(A) In general.—Except as provided in paragraphs (4), (5), and (6) and in subparagraphs (C), (D), and (E) of this paragraph, the liability of the Corporation as receiver for a covered financial company for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the Corporation as receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or
repudiation of such contract or agree-
ment.

(B) NO LIABILITY FOR OTHER DAM-
AGES.—For purposes of subparagraph (A), the
term “actual direct compensatory damages”
does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or oppor-
tunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDI-
ATION OF QUALIFIED FINANCIAL CONTRACTS.—
In the case of any qualified financial contract
or agreement to which paragraph (8) applies,
compensatory damages shall be—

(i) deemed to include normal and rea-
sonable costs of cover or other reasonable
measures of damages utilized in the indus-
tries for such contract and agreement
claims; and

(ii) paid in accordance with this para-
graph and subsection (d), except as other-
wise specifically provided in this sub-
section.
(D) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF DEBT OBLIGATION.—In the case of any debt for borrowed money or evidenced by a security, actual direct compensatory damages shall be no less than the amount lent plus accrued interest plus any accreted original issue discount as of the date the Corporation was appointed receiver of the covered financial company and, to the extent that an allowed secured claim is secured by property the value of which is greater than the amount of such claim and any accrued interest through the date of repudiation or disaffirmance, such accrued interest pursuant to paragraph (1).

(E) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF CONTINGENT OBLIGATION.—In the case of any contingent obligation of a covered financial company consisting of any obligation under a guarantee, letter of credit, loan commitment, or similar credit obligation, the Corporation may, by rule or regulation, prescribe that actual direct compensatory damages shall be no less than the estimated value of the claim as of the date the Cor-
poration was appointed receiver of the covered financial company, as such value is measured based on the likelihood that such contingent claim would become fixed and the probable magnitude thereof.

(4) Leases under which the covered financial company is the lessee.—

(A) In general.—If the Corporation as receiver disaffirms or repudiates a lease under which the covered financial company is the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent.—Notwithstanding subparagraph (A), the lessor under a lease to which subparagraph (A) would otherwise apply shall—

(i) be entitled to the contractual rent accruing before the later of the date on which—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the les-
sor is in default or breach of the
terms of the lease;
(ii) have no claim for damages under
any acceleration clause or other penalty
 provision in the lease; and
(iii) have a claim for any unpaid rent,
subject to all appropriate offsets and de-
fenses, due as of the date of the appoint-
ment which shall be paid in accordance
with this paragraph and subsection (d).

(5) LEASES UNDER WHICH THE COVERED FI-
NANCIAL COMPANY IS THE LESSOR.—

(A) IN GENERAL.—If the Corporation as
receiver for a covered financial company repudi-
ates an unexpired written lease of real property
of the covered financial company under which
the covered financial company is the lessor and
the lessee is not, as of the date of such repudi-
ation, in default, the lessee under such lease
may either—

(i) treat the lease as terminated by
such repudiation; or

(ii) remain in possession of the lease-
hold interest for the balance of the term of
the lease, unless the lessee defaults under
the terms of the lease after the date of
such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE
REMAINING IN POSSESSION.—If any lessee
under a lease described in subparagraph (A) re-
mains in possession of a leasehold interest pur-
suant to clause (ii) of subparagraph (A)—

(i) the lessee—

(I) shall continue to pay the con-
tractual rent pursuant to the terms of
the lease after the date of the repudi-
ation of such lease; and

(II) may offset against any rent
payment which accrues after the date
of the repudiation of the lease, any
damages which accrue after such date
due to the nonperformance of any ob-
ligation of the covered financial com-
pany under the lease after such date;
and

(ii) the Corporation as receiver shall
not be liable to the lessee for any damages
arising after such date as a result of the
repudiation, other than the amount of any
offset allowed under clause (i)(II).
(6) Contracts for the sale of real property.—

(A) In general.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(6)) for the sale of real property, and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of subparagraph (A)—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and
(II) may offset against any such payments any damages which accrue after such date due to the non-performance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the Corporation as receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the Corporation as receiver to assign the contract described in subparagraph (A) and sell the property, subject to
the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the Corporation as receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the date of appointment shall be—

(i) a claim to be paid in accordance with subsections (a), (b), and (d); and

(ii) deemed to have arisen as of the date on which the receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If,
in the case of any contract for services described in subparagraph (A), the Corporation as receiver accepts performance by the other person before making any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the Corporation as receiver for services referred to in subparagraph (B) in connection with a contract described in subparagraph (B) shall not affect the right of the Corporation as receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—

Subject to subsection (a)(8) and paragraphs (9)
and (10) of this subsection, and notwithstanding any other provision of this section, any other provision of Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the date of appointment of the Corporation as receiver for such covered financial company at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts or agreements described in clause (i), including any master agreement for such contracts or agreements.
(B) Applicability of other provisions.—Subsection (a)(8) shall apply in the case of any judicial action or proceeding brought against the Corporation as receiver referred to in subparagraph (A), or the subject covered financial company, by any party to a contract or agreement described in subparagraph (A)(i) with such covered financial company.

(C) Certain transfers not avoidable.—

(i) In general.—Notwithstanding subsection (a)(11), (a)(12), or (c)(12), section 5242 of the Revised Statutes of the United States, or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as the Corporation or as receiver for a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

(ii) Exception for certain transfers.—Clause (i) shall not apply to any
transfer of money or other property in connection with any qualified financial contract with a covered financial company if the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or the Corporation as receiver appointed for such company.

(D) Certain contracts and agreements defined.—For purposes of this subsection, the following definitions shall apply:

(i) Qualified financial contract.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract.—The term “securities contract”—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan,
group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;
(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or an option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

(V) means any margin loan;
(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (X), other than subclause (II), together with all supplements to any such master agree-
ment, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (X), other than subclause (II); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract.—The term “commodity contract” means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for
future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any...
agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (VIII); or
any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date that is more than 10 days after the date on which the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”),
as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the
master agreement that is referred to
in subclause (I), (II), or (III); or

(V) any security agreement or ar-
angement or other credit enhance-
ment related to any agreement or
transaction referred to in subclause
(I), (II), (III), or (IV), including any
guarantee or reimbursement obliga-
tion in connection with any agreement
or transaction referred to in any such
subclause.

(v) REPURCHASE AGREEMENT.—The
term “repurchase agreement” (which defi-
nition also applies to a reverse repurchase
agreement)—

(I) means an agreement, includ-
ing related terms, which provides for
the transfer of one or more certifi-
cates of deposit, mortgage related se-
curities (as such term is defined in
section 3 of the Securities Exchange
Act of 1934), mortgage loans, inter-
ests in mortgage-related securities or
mortgage loans, eligible bankers’ ac-
ceptances, qualified foreign govern-
ment securities (which, for purposes
of this clause, means a security that is
a direct obligation of, or that is fully
guaranteed by, the central government
of a member of the Organization for
Economic Cooperation and Develop-
ment, as determined by regulation or
order adopted by the Board of Gov-
ernors), or securities that are direct
obligations of, or that are fully guar-
anteed by, the United States or any
agency of the United States against
the transfer of funds by the transferee
of such certificates of deposit, eligible
bankers’ acceptances, securities, mort-
gage loans, or interests with a simul-
taneous agreement by such transferee
to transfer to the transferor thereof
certificates of deposit, eligible bank-
ers’ acceptances, securities, mortgage
loans, or interests as described above,
at a date certain not later than 1 year
after such transfers or on demand,
against the transfer of funds, or any
other similar agreement;
(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Corporation determines, by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this sub-
clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or
other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a for-
ward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or
transaction that is not a swap agree-
ment under this clause, except that
the master agreement shall be consid-
ered to be a swap agreement under
this clause only with respect to each
agreement or transaction under the
master agreement that is referred to
in subclause (I), (II), (III), or (IV);
and

(VI) any security agreement or
arrangement or other credit enhance-
ment related to any agreement or
transaction referred to in any of
clauses (I) through (V), including any
guarantee or reimbursement obliga-
tion in connection with any agreement
or transaction referred to in any such
clause.

(vii) Definitions relating to de-
fault.—When used in this paragraph and
paragraph (10)—

(I) the term “default” means,
with respect to a covered financial
company, any adjudication or other
official decision by any court of com-
petent jurisdiction, or other public au-

thority pursuant to which the Cor-

poration has been appointed receiver;

and

(II) the term “in danger of de-

fault” means a covered financial com-

pany with respect to which the Cor-

poration or appropriate State author-

ity has determined that—

(aa) in the opinion of the

Corporation or such authority—

(AA) the covered financial company is not likely to

be able to pay its obligations

in the normal course of business; and

(BB) there is no rea-

sonable prospect that the

covered financial company

will be able to pay such obli-
gations without Federal as-

sistance; or

(bb) in the opinion of the

Corporation or such authority—
(AA) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(BB) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any of clauses (i) through (vi) (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contact. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that
are themselves qualified financial contracts.

(ix) Transfer.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the covered financial company.

(x) Person.—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) Clarification.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract or to disaffirm or repudiate any such contract in accordance with this subsection.

(F) Walkaway Clauses Not Effective.—
(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the 3rd business day following the date of the appointment of the Corporation as receiver.
(iii) **Walkaway clause defined.**—

For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of the status of such party as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by the Corporation as receiver for such covered financial company, and not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(G) **Certain obligations to clearing organizations.**—In the event that the Corporation has been appointed as receiver for a covered financial company which is a party to any qualified financial contract cleared by or
subject to the rules of a clearing organization
(as defined in paragraph (9)(D)), the receiver
shall use its best efforts to meet all margin, col-
lateral, and settlement obligations of the cov-
ered financial company that arise under quali-
fied financial contracts (other than any margin,
collateral, or settlement obligation that is not
enforceable against the receiver under para-
graph (8)(F)(i) or paragraph (10)(B)), as re-
quired by the rules of the clearing organization
when due. Notwithstanding any other provision
of this title, if the receiver fails to satisfy any
such margin, collateral, or settlement obliga-
tions under the rules of the clearing organiza-
tion, the clearing organization shall have the
immediate right to exercise, and shall not be
stayed from exercising, all of its rights and
remedies under its rules and applicable law with
respect to any qualified financial contract of the
covered financial company, including, without
limitation, the right to liquidate all positions
and collateral of such covered financial com-
pany under the company’s qualified financial
contracts, and suspend or cease to act for such
covered financial company, all in accordance
with the rules of the clearing organization.

(H) RECORDKEEPING.—

(i) JOINT RULEMAKING.—The Federal
primary financial regulatory agencies shall
jointly prescribe regulations requiring that
financial companies maintain such records
with respect to qualified financial contracts
(including market valuations) that the
Federal primary financial regulatory agen-
cies determine to be necessary or appro-
priate in order to assist the Corporation as
receiver for a covered financial company in
being able to exercise its rights and fulfill
its obligations under this paragraph or
paragraph (9) or (10).

(ii) TIME FRAME.—The Federal pri-
mary financial regulatory agencies shall
prescribe joint final or interim final regu-
lations not later than 24 months after the
date of enactment of this Act.

(iii) BACK-UP RULEMAKING AUTHOR-
ITY.—If the Federal primary financial reg-
ulatory agencies do not prescribe joint final
or interim final regulations within the time
frame in clause (ii), the Chairperson of the Council shall prescribe, in consultation with the Corporation, the regulations required by clause (i).

(iv) CATEGORIZATION AND TIERING.—The joint regulations prescribed under clause (i) shall, as appropriate, differentiate among financial companies by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of qualified financial contracts, interconnectedness to the financial system, and any other factors deemed appropriate.

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default, which includes any qualified financial contract, the Corporation as receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has
been appointed or which is otherwise the
subject of a bankruptcy or insolvency pro-
ceeding—

(I) all qualified financial con-
tracts between any person or any af-
iliate of such person and the covered
financial company in default;

(II) all claims of such person or
any affiliate of such person against
such covered financial company under
any such contract (other than any
claim which, under the terms of any
such contract, is subordinated to the
claims of general unsecured creditors
of such company);

(III) all claims of such covered fi-
nancial company against such person
or any affiliate of such person under
any such contract; and

(IV) all property securing or any
other credit enhancement for any con-
tract described in subclause (I) or any
claim described in subclause (II) or
(III) under any such contract; or
(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the Corporation as receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit en-
hancements are enforceable substantially to the
same extent as permitted under this section.

(C) Transfer of Contracts Subject
to the Rules of a Clearing Organiza-
tion.—In the event that the Corporation as re-
ceiver for a financial institution transfers any
qualified financial contract and related claims,
property, or credit enhancement pursuant to
subparagraph (A)(i) and such contract is
cleared by or subject to the rules of a clearing
organization, the clearing organization shall not
be required to accept the transferee as a mem-
ber by virtue of the transfer.

(D) Definitions.—For purposes of this
paragraph—

(i) the term “financial institution”
means a broker or dealer, a depository in-
stitution, a futures commission merchant,
a bridge financial company, or any other
institution determined by the Corporation,
by regulation, to be a financial institution;
and

(ii) the term “clearing organization”
has the same meaning as in section 402 of
the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—

(i) NOTICE.—The Corporation shall provide notice in accordance with clause (ii), if—

(II) the Corporation as receiver for a covered financial company in default or in danger of default transfers any assets or liabilities of the covered financial company; and

(ii) TIMING.—The Corporation as receiver for a covered financial company shall notify any person who is a party to any contract described in clause (i) of such transfer not later than 5:00 p.m. (eastern time) on the 3rd business day following the date of the appointment of the Corporation as receiver.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—
(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) solely by reason of or incidental to the appointment under this section of the Corporation as receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the Corporation has been appointed as receiver)—

(I) until 5:00 p.m. (eastern time) on the 3rd business day following the date of the appointment; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the Corporation as receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company, if the Cor-
poration has taken steps reasonably cal-
culated to provide notice to such person by
the time specified in subparagraph (A).

(C) Treatment of Bridge Financial
Company.—For purposes of paragraph (9), a
bridge financial company shall not be consid-
ered to be a covered financial company for
which a conservator, receiver, trustee in bank-
ruptcy, or other legal custodian has been ap-
pointed, or which is otherwise the subject of a
bankruptcy or insolvency proceeding.

(D) Business Day Defined.—For pur-
poses of this paragraph, the term “business
day” means any day other than any Saturday,
Sunday, or any day on which either the New
York Stock Exchange or the Federal Reserve
Bank of New York is closed.

(11) Disaffirmance or Repudiation of
Qualified Financial Contracts.—In exercising
the rights of disaffirmance or repudiation of the
Corporation as receiver with respect to any qualified
financial contract to which a covered financial com-
pany is a party, the Corporation shall either—

(A) disaffirm or repudiate all qualified fi-
nancial contracts between—
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(i) any person or any affiliate of such

person; and

(ii) the covered financial company in
default; or

(B) disaffirm or repudiate none of the
qualified financial contracts referred to in sub-
paragraph (A) (with respect to such person or
any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER IN-
terests not avoidable.—No provision of this
subsection shall be construed as permitting the
avoidance of any—

(A) legally enforceable or perfected secu-

rity interest in any of the assets of any covered
financial company, except in accordance with
subsection (a)(11); or

(B) legally enforceable interest in customer
property, security entitlements in respect of as-
sets or property held by the covered financial
company for any security entitlement holder.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The Corporation, as re-

ceiver for a covered financial company, may en-

force any contract, other than a liability insur-
ance contract of a director or officer, a financial
institution bond entered into by the covered financial company, notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency, the appointment of or the exercise of rights or powers by the Corporation as receiver, the filing of the petition pursuant to section 202(a)(1), or the issuance of the recommendations or determination, or any actions or events occurring in connection therewith or as a result thereof, pursuant to section 203.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the Corporation as receiver to enforce or recover under a liability insurance contract of a director or officer or financial institution bond under other applicable law.

(C) CONSENT REQUIREMENT AND IPSO FACTO CLAUSES.—

(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any
contract to which the covered financial company is a party (and no provision in any such contract providing for such default, termination, or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the Corporation as receiver for the covered financial company during the 90 day period beginning from the appointment of the Corporation as receiver.

(ii) EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the Corporation as receiver to fail to com-
ply with otherwise enforceable provisions of such contract.

(D) CONTRACTS TO EXTEND CREDIT.—Notwithstanding any other provision in this title, if the Corporation as receiver enforces any contract to extend credit to the covered financial company or bridge financial company, any valid and enforceable obligation to repay such debt shall be paid by the Corporation as receiver, as an administrative expense of the receivership.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characteriza-
tion, definition, or treatment of any similar terms
under any other statute, regulation, or rule, includ-
ing the Gramm-Leach-Bliley Act, the Legal Cer-
tainty for Bank Products Act of 2000, the securities
laws (as that term is defined in section 3(a)(47) of
the Securities Exchange Act of 1934), and the Com-
modity Exchange Act.

(16) ENFORCEMENT OF CONTRACTS GUARAN-
TEED BY THE COVERED FINANCIAL COMPANY.—

(A) IN GENERAL.—The Corporation, as re-
ceiver for a covered financial company or as re-
ceiver for a subsidiary of a covered financial
company (including an insured depository insti-
tution) shall have the power to enforce con-
tracts of subsidiaries or affiliates of the covered
financial company, the obligations under which
are guaranteed or otherwise supported by or
linked to the covered financial company, not-
withstanding any contractual right to cause the
termination, liquidation, or acceleration of such
contracts based solely on the insolvency, finan-
cial condition, or receivership of the covered fi-
nancial company, if—

(i) such guaranty or other support
and all related assets and liabilities are
transferred to and assumed by a bridge financial company or a third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding) within the same period of time as the Corporation is entitled to transfer the qualified financial contracts of such covered financial company; or

(ii) the Corporation, as receiver, otherwise provides adequate protection with respect to such obligations.

(B) RULE OF CONSTRUCTION.—For purposes of this paragraph, a bridge financial company shall not be considered to be a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method utilized by the Corporation
for a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of any such covered financial company.

(2) **Maximum Liability.**—The maximum liability of the Corporation, acting as receiver for a covered financial company or in any other capacity, to any person having a claim against the Corporation as receiver or the covered financial company for which the Corporation is appointed shall equal the amount that such claimant would have received if—

(A) the Corporation had not been appointed receiver with respect to the covered financial company; and

(B) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code, or any similar provision of State insolvency law applicable to the covered financial company.

(3) **Special Provision for Orderly Liquidation by SIPC.**—The maximum liability of the Corporation, acting as receiver or in its corporate capacity for any covered broker or dealer to any customer of such covered broker or dealer, with respect to customer property of such customer, shall be—
(A) equal to the amount that such cus-
tomer would have received with respect to such
customer property in a case initiated by SIPC
under the Securities Investor Protection Act of
1970 (15 U.S.C. 78aaa et seq.); and

(B) determined as of the close of business
on the date on which the Corporation is ap-
pointed as receiver.

(4) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—Subject to subsection
(o)(1)(E)(ii), the Corporation, with the approval
of the Secretary, may make additional pay-
ments or credit additional amounts to or with
respect to or for the account of any claimant or
category of claimants of the covered financial
company, if the Corporation determines that
such payments or credits are necessary or ap-
propriate to minimize losses to the Corporation
as receiver from the orderly liquidation of the
covered financial company under this section.

(B) LIMITATIONS.—

(i) PROHIBITION.—The Corporation
shall not make any payments or credit
amounts to any claimant or category of
claimants that would result in any claim-
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ant receiving more than the face value

amount of any claim that is proven to the

satisfaction of the Corporation.

(ii) No Obligation.—Notwith-

standing any other provision of Federal or

State law, or the Constitution of any State,

the Corporation shall not be obligated, as

a result of having made any payment

under subparagraph (A) or credited any

amount described in subparagraph (A) to

or with respect to, or for the account, of

any claimant or category of claimants, to

make payments to any other claimant or
category of claimants.

(C) Manner of Payment.—The Corpora-
tion may make payments or credit amounts
under subparagraph (A) directly to the claim-
ants or may make such payments or credit such
amounts to a company other than a covered fi-
nancial company or a bridge financial company
established with respect thereto in order to in-
duce such other company to accept liability for
such claims.

(e) Limitation on Court Action.—Except as pro-
vided in this title, no court may take any action to restrain
or affect the exercise of powers or functions of the receiver hereunder, and any remedy against the Corporation or receiver shall be limited to money damages determined in accordance with this title.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver for such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by the Corporation as receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under this title.
(2) Actions covered.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) Savings clause.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) Damages.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the covered financial company shall include principal losses and appropriate interest.

(h) Bridge Financial Companies.—

(1) Organization.—

(A) Purpose.—The Corporation, as receiver for one or more covered financial companies or in anticipation of being appointed receiver for one or more covered financial compa-
nies, may organize one or more bridge financial
companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of
a bridge financial company under subparagraph
(A) with respect to a covered financial com-
pany, such bridge financial company may—

(i) assume such liabilities (including
liabilities associated with any trust or cus-
tody business, but excluding any liabilities
that count as regulatory capital) of such
covered financial company as the Corpora-
tion may, in its discretion, determine to be
appropriate;

(ii) purchase such assets (including
assets associated with any trust or custody
business) of such covered financial com-
pany as the Corporation may, in its discre-
tion, determine to be appropriate; and

(iii) perform any other temporary
function which the Corporation may, in its
discretion, prescribe in accordance with
this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—Except as provided
in subparagraph (H), where the covered finan-
cial company is a covered broker or dealer, the Corporation, as receiver for a covered financial company, may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies, with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—
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(i) establish the terms of the charter
of a bridge financial company and the
rights, powers, authorities, and privileges
of a bridge financial company granted by
the charter or as an incident thereto; and

(ii) provide for, and establish the
terms and conditions governing, the man-
agement (including the bylaws and the
number of directors of the board of direc-
tors) and operations of the bridge financial
company.

(E) TRANSFER OF RIGHTS AND PRIVI-
LEGES OF COVERED FINANCIAL COMPANY.—

(i) In general.—Notwithstanding
any other provision of Federal or State
law, the Corporation may provide for a
bridge financial company to succeed to and
assume any rights, powers, authorities, or
privileges of the covered financial company
with respect to which the bridge financial
compny was established and, upon such
determination by the Corporation, the
bridge financial company shall immediately
and by operation of law succeed to and as-
sume such rights, powers, authorities, and privileges.

(ii) **Effective without approval.**—Any succession to or assumption by a bridge financial company of rights, powers, authorities, or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) **Corporate governance and election and designation of body of law.**—To the extent permitted by the Corporation and consistent with this section and any rules, regulations, or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures that are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.
(G) Capital.—

(i) Capital not required.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) No contribution by the Corporation required.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) Authority.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.
(iv) Operating Funds in Lieu of Capital and Implementation Plan.— Upon the organization of a bridge financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge financial company, subject to the plan described in subsection (n)(11), funds for the operation of the bridge financial company in lieu of capital.

(H) Bridge Brokers or Dealers.—

(i) In General.—The Corporation, as receiver for a covered broker or dealer, may approve articles of association for one or more bridge financial companies with respect to such covered broker or dealer, which bridge financial company or companies shall, by operation of law and immediately upon approval of its articles of association—

(I) be established and deemed registered with the Commission under the Securities Exchange Act of 1934 and a member of SIPC;
(II) operate in accordance with such articles and this section; and

(III) succeed to any and all registrations and memberships of the covered financial company with or in any self-regulatory organizations.

(ii) OTHER REQUIREMENTS.—Except as provided in clause (i), and notwithstanding any other provision of this section, the bridge financial company shall be subject to the Federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission, as is necessary or appropriate in the public interest or for the protection of investors.

(iii) TREATMENT OF CUSTOMERS.—Except as otherwise provided by this title, any customer of the covered broker or dealer whose account is transferred to a bridge financial company shall have all the rights, privileges, and protections under section 205(f) and under the Securities Investor Protection Act of 1970 (15 U.S.C.
78aaa et seq.), that such customer would have had if the account were not transferred from the covered financial company under this subparagraph.

(iv) Operation of Bridge Brokers or Dealers.—Notwithstanding any other provision of this title, the Corporation shall not operate any bridge financial company created by the Corporation under this title with respect to a covered broker or dealer in such a manner as to adversely affect the ability of customers to promptly access their customer property in accordance with applicable law.

(3) Interests in and Assets and Obligations of Covered Financial Company.—Notwithstanding paragraph (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in
accordance with, and subject to the restrictions
set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not
assume, acquire, or succeed to any obligation
that a covered financial company for which the
Corporation has been appointed receiver may
have to any shareholder, member, general part-
ner, limited partner, or other person with an in-
terest in the equity of the covered financial
compagny that arises as a result of the status of
that person having an equity claim in the cov-
ered financial company.

(4) Bridge financial company treated as
being in default for certain purposes.—A
bridge financial company shall be treated as a cov-
ered financial company in default at such times and
for such purposes as the Corporation may, in its dis-
cretion, determine.

(5) Transfer of assets and liabilities.—

(A) Authority of corporation.—The
Corporation, as receiver for a covered financial
company, may transfer any assets and liabilities
of a covered financial company (including any
assets or liabilities associated with any trust or
custody business) to one or more bridge finan-
cial companies, in accordance with and subject to the restrictions of paragraph (1).

(B) Subsequent Transfers.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(C) Treatment of Trust or Custody Business.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) Effective without Approval.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company, to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.
(E) **Equitable treatment of similarly situated creditors.**—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1), in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(ii)) that does not comply with this subparagraph, if—

(i) the Corporation determines that such action is necessary—

(I) to maximize the value of the assets of the covered financial company;

(II) to maximize the present value return from the sale or other disposal of the assets of the covered financial company; or

(III) to minimize the amount of any loss realized upon the sale or
other disposition of the assets of the covered financial company; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided under paragraphs (2) and (3) of subsection (d).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of not longer than 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.
(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company or confirmed in the ordinary course of business by the covered financial company; and

(C) has been on the official record of the company, since the time of its execution, or with which, the party claiming under the agreement provides documentation of such agreement and its authorized execution or confirmation by the covered financial company that is acceptable to the receiver.

(8) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, of-
ficers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) FUNDING AUTHORIZED.—The Corporation may, subject to the plan described in subsection (n)(11), provide funding to facilitate any transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13) with respect to any bridge financial
company, or facilitate the acquisition by a bridge financial company of any assets, or the assumption of any liabilities, of a covered financial company for which the Corporation has been appointed receiver.

(10) **EXEMPT TAX STATUS.**—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) **FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.**—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a notification is required under section 7A
of the Clayton Act with respect to such transaction, the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under section 7A(b)(2) of the Clayton Act, or extended under section 7A(e)(2) of that Act.

(12) **Duration of Bridge Financial Company.**—Subject to paragraphs (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date on which it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for no more than 3 additional 1-year periods.

(13) **Termination of Bridge Financial Company Status.**—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the date of the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other
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than the Corporation and other than another
bridge financial company;

(C) the sale of 80 percent, or more, of the
capital stock of the bridge financial company to
a person other than the Corporation and other
than another bridge financial company;

(D) at the election of the Corporation, ei-
either the assumption of all or substantially all of
the liabilities of the bridge financial company by
a company that is not a bridge financial com-
pany, or the acquisition of all or substantially
all of the assets of the bridge financial company
by a company that is not a bridge financial
company, or other entity as permitted under
applicable law; and

(E) the expiration of the period provided in
paragraph (12), or the earlier dissolution of the
bridge financial company, as provided in para-

(14) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A
merger or consolidation, described in paragraph
(12)(A) shall be conducted in accordance with,
and shall have the effect provided in, the provi-
sions of applicable law. For the purpose of ef-
fecting such a merger or consolidation, the
bridge financial company shall be treated as a
corporation organized under the laws of the
State of Delaware (unless the law of another
State has been selected by the bridge financial
compny in accordance with paragraph (2)(F)),
and the Corporation shall be treated as the sole
shareholder thereof, notwithstanding any other
provision of State or Federal law.

(B) CHARTER CONVERSION.—Following
the sale of a majority of the capital stock of the
bridge financial company, as provided in para-
graph (13)(B), the Corporation may amend the
charter of the bridge financial company to re-
fect the termination of the status of the bridge
financial company as such, whereupon the com-
pany shall have all of the rights, powers, and
privileges under its constituent documents and
applicable Federal or State law. In connection
therewith, the Corporation may take such steps
as may be necessary or convenient to reincor-
porate the bridge financial company under the
laws of a State and, notwithstanding any provi-
sions of Federal or State law, such State-char-
tered corporation shall be deemed to succeed by
operation of law to such rights, titles, powers, and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company, as provided in paragraph (13)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the
State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (13)(D), at the election of the Corporation, the bridge financial company may retain its status as such for the period provided in paragraph (12) or may be dissolved at the election of the Corporation.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(15) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if the status of a bridge financial company as such
has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (13)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date on which the bridge financial company was chartered, or any extension thereof, as provided in paragraph (12).

(B) PROCEDURES.—The Corporation shall remain the receiver for a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as receiver for a bridge financial company shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies under this title. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges
and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to the Corporation as receiver for a covered financial company under this title and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(16) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or
(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien, only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(ii) HEARING.—The hearing required pursuant to this subparagraph shall be before a court of the United States, which shall have jurisdiction to conduct such hearing and to authorize a bridge financial
company to obtain secured credit under clause (i).

(D) Burden of Proof.—In any hearing under this paragraph, the Corporation has the burden of proof on the issue of adequate protection.

(E) Qualified Financial Contracts.—No credit or debt obtained or issued by a bridge financial company may contain terms that impair the rights of a counterparty to a qualified financial contract upon a default by the bridge financial company, other than the priority of such counterparty’s unsecured claim (after the exercise of rights) relative to the priority of the bridge financial company’s obligations in respect of such credit or debt, unless such counterparty consents in writing to any such impairment.

(17) Effect on Debts and Liens.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether
or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) SHARING RECORDS.—If the Corporation has been appointed as receiver for a covered financial company, other Federal regulators shall make all records relating to the covered financial company available to the Corporation, which may be used by the Corporation in any manner that the Corporation determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—

The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of the covered financial company, or any other person employed by or providing services to a covered financial company, shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.
(2) SCHEDULING.—The court shall expedite the consideration of any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver for any covered financial company, and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act, as if the covered financial company were an insured depository institution, the Corporation were the appro-
priate Federal banking agency for the company, and
any foreign financial authority were the foreign
banking authority; and

(2) may maintain an office to coordinate for-
eign investigations or investigations on behalf of for-
eign financial authorities.

(l) Prohibition on Entering Secrecy Agree-
ments and Protective Orders.—The Corporation
may not enter into any agreement or approve any protec-
tive order which prohibits the Corporation from disclosing
the terms of any settlement of an administrative or other
action for damages or restitution brought by the Corpora-
tion in its capacity as receiver for a covered financial com-
pany.

(m) Liquidation of Certain Covered Financial
Companies or Bridge Financial Companies.—

(1) In General.—Except as specifically pro-
vided in this section, and notwithstanding any other
provision of law, the Corporation, in connection with
the liquidation of any covered financial company or
bridge financial company with respect to which the
Corporation has been appointed as receiver, shall—

(A) in the case of any covered financial
company or bridge financial company that is or
has a subsidiary that is a stockbroker, but is
not a member of the Securities Investor Protection Corporation, apply the provisions of sub-
chapter III of chapter 7 of the Bankruptcy Code, in respect of the distribution to any cus-
tomer of all customer name securities and cus-
tomer property, as if such covered financial
company or bridge financial company were a
debtor for purposes of such subchapter; or

(B) in the case of any covered financial
company or bridge financial company that is a
commodity broker, apply the provisions of sub-
chapter IV of chapter 7 the Bankruptcy Code,
in respect of the distribution to any customer of
all customer property, as if such covered finan-
cial company or bridge financial company were
a debtor for purposes of such subchapter.

(2) DEFINITIONS.—For purposes of this sub-
section—

(A) the terms “customer”, “customer
name securities”, and “customer property”
have the same meanings as in section 741 of
title 11, United States Code; and

(B) the terms “commodity broker” and
“stockbroker” have the same meanings as in
section 101 of the Bankruptcy Code.
(n) **ORDERLY LIQUIDATION FUND.**—

(1) *ESTABLISHMENT.*—There is established in the Treasury of the United States a separate fund to be known as the “Orderly Liquidation Fund”, which shall be available to the Corporation to carry out the authorities contained in this title, for the cost of actions authorized by this title, including the orderly liquidation of covered financial companies, payment of administrative expenses, the payment of principal and interest by the Corporation on obligations issued under paragraph (6), and the exercise of the authorities of the Corporation under this title.

(2) *PROCEEDS.*—Amounts received by the Corporation, including assessments received under subsection (o), proceeds of obligations issued under paragraph (6), interest and other earnings from investments, and repayments to the Corporation by covered financial companies, shall be deposited into the Fund.

(3) *MANAGEMENT.*—The Corporation shall manage the Fund in accordance with this subsection and the policies and procedures established under section 203(d).

(4) *INVESTMENTS.*—At the request of the Corporation, the Secretary may invest such portion of
amounts held in the Fund that are not, in the judgment of the Corporation, required to meet the current needs of the Corporation, in obligations of the United States having suitable maturities, as determined by the Corporation. The interest on and the proceeds from the sale or redemption of such obligations shall be credited to the Fund.

(5) Authority to issue obligations.—

(A) Corporation authorized to issue obligations.—Upon appointment by the Secretary of the Corporation as receiver for a covered financial company, the Corporation is authorized to issue obligations to the Secretary.

(B) Secretary authorized to purchase obligations.—The Secretary may, under such terms and conditions as the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31,
United States Code, are extended to include such purchases.

(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus an interest rate surcharge to be determined by the Secretary, which shall be greater than the difference between—

(i) the current average rate on an index of corporate obligations of comparable maturity; and

(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.

(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may sell, upon such terms and conditions as the Secretary shall determine, any of the obligations acquired under this paragraph.

(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations are extended to include such purchases.
obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are
available for repayment, after the time period
described in subparagraph (A).

(7) RULEMAKING.—The Corporation and the
Secretary shall jointly, in consultation with the
Council, prescribe regulations governing the calcula-
tion of the maximum obligation limitation defined in
this paragraph.

(8) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this section
shall be construed to affect the authority of the
Corporation under subsection (a) or (b) of sec-
tion 14 or section 15(c)(5) of the Federal De-
posit Insurance Act (12 U.S.C. 1824,
1825(c)(5)), the management of the Deposit In-
surance Fund by the Corporation, or the resolu-
tion of insured depository institutions, provided
that—

(i) the authorities of the Corporation
contained in this title shall not be used to
assist the Deposit Insurance Fund or to
assist any financial company under appli-
cable law other than this Act;

(ii) the authorities of the Corporation
relating to the Deposit Insurance Fund, or
any other responsibilities of the Corpora-
tion under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

(B) VALUATION.—For purposes of determining the amount of obligations under this subsection—

(i) the Corporation shall include as an obligation any contingent liability of the Corporation pursuant to this title; and

(ii) the Corporation shall value any contingent liability at its expected cost to the Corporation.

(9) ORDERLY LIQUIDATION PLAN.—Amounts in the Fund shall be available to the Corporation with regard to a covered financial company for which the Corporation is appointed receiver after the Corporation has developed an orderly liquidation plan that is acceptable to the Secretary with regard to such covered financial company, including the provision and use of funds, including taking any actions specified under section 204(d) and subsection
(h)(2)(G)(iv) and (h)(9) of this section, and payments to third parties. The orderly liquidation plan shall take into account actions to avoid or mitigate potential adverse effects on low income, minority, or underserved communities affected by the failure of the covered financial company, and shall provide for coordination with the primary financial regulatory agencies, as appropriate, to ensure that such actions are taken. The Corporation may, at any time, amend any orderly liquidation plan approved by the Secretary with the concurrence of the Secretary.

(10) IMPLEMENTATION EXPENSES.—

(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

(B) REQUESTS FOR REIMBURSEMENT.—

The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) DEFINITION.—As used in this paragraph, the term “implementation expenses”—
(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

(o) ASSESSMENTS.—

(1) RISK-BASED ASSESSMENTS.—

(A) ELIGIBLE FINANCIAL COMPANIES DEFINED.—For purposes of this subsection, the term “eligible financial company” means any bank holding company with total consolidated assets equal to or greater than $50,000,000,000 and any nonbank financial company supervised by the Board of Governors.

(B) ASSESSMENTS.—The Corporation shall charge one or more risk-based assessments in accordance with the provisions of subparagraph (D), if such assessments are necessary to pay in full the obligations issued by the Corporation
to the Secretary within 60 months of the date
of issuance of such obligations.

(C) EXTENSIONS AUTHORIZED.—The Cor-
poration may, with the approval of the Sec-
retary, extend the time period under subpara-
graph (C)(iii), if the Corporation determines
that an extension is necessary to avoid a serious
adverse effect on the financial system of the
United States.

(D) APPLICATION OF ASSESSMENTS.—To
meet the requirements of subparagraph (C), the
Corporation shall—

(i) impose assessments, as soon as
practicable, on any claimant that received
additional payments or amounts from the
Corporation pursuant to subsection (b)(4),
(d)(4), or (h)(5)(E), except for payments
or amounts necessary to initiate and con-
tinue operations essential to implemen-
tation of the receivership or any bridge fi-
nancial company, to recover on a cumu-
lative basis, the entire difference be-
tween—

(I) the aggregate value the claim-
ant received from the Corporation on
a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (C), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies;

and

(II) financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies.

(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the
receivership or any bridge financial company described in subparagraph (E)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

(2) GRADUATED ASSESSMENT RATE.—The Corporation shall impose assessments on a graduated basis, with financial companies having greater assets and risk being assessed at a higher rate.

(3) NOTIFICATION AND PAYMENT.—The Corporation shall notify each financial company of that company’s assessment under this subsection. Any financial company subject to assessment under this subsection shall pay such assessment in accordance with the regulations prescribed pursuant to paragraph (6).

(4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under this subsection, the Corporation shall—

(A) take into account economic conditions generally affecting financial companies, so as to allow assessments to be lower during less favorable economic conditions;

(B) take into account any assessments imposed on—
(i) an insured depository institution subsidiary of a financial company pursuant to section 7 or section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1823(c)(4)(G));

(ii) a financial company or subsidiary of such company that is a member of SIPC pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd); and

(iii) a financial company or subsidiary of such company that is an insurance company pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of rehabilitation, liquidation, or other State insolvency proceeding with respect to one or more insurance companies;

(C) take into account the financial condition of the financial company, including the extent and type of off-balance-sheet exposures of the financial company;

(D) take into account the risks presented by the financial company to the financial stability of the United States economy;
(E) take into account the extent to which the financial company or group of financial companies has benefitted, or likely would benefit, from the orderly liquidation of a covered financial company and the use of the Fund under this title;

(F) distinguish among different classes of assets or different types of financial companies (including distinguishing among different types of financial companies, based on their levels of capital and leverage) in order to establish comparable assessment bases among financial companies subject to this subsection;

(G) take into account the extent to which assets are managed rather than owned by the financial company and the extent to which ownership of assets under management is diffuse;

(H) establish the parameters for the graduated assessment requirement in paragraph (2); and

(I) take into account such other risk-related factors as the Corporation, in consultation with the Secretary, deems appropriate.

(5) COLLECTION OF INFORMATION.—The Corporation may impose on covered financial companies
such collection of information requirements as the Corporation deems necessary to carry out this subsection after the appointment of the Corporation as receiver under this title.

(6) RULEMAKING.—

(A) IN GENERAL.—The Corporation shall prescribe regulations to carry out this subsection. The Corporation shall consult with the Secretary in the development and finalization of such regulations.

(B) EQUITABLE TREATMENT.—The regulations prescribed under subparagraph (A) shall take into account the differences in risks posed to the financial stability of the United States by financial companies, the differences in the liability structures of financial companies, and the different bases for other assessments that such financial companies may be required to pay, to ensure that assessed financial companies are treated equitably and that assessments under this subsection reflect such differences.

(p) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) IN GENERAL.—No provision described in paragraph (2) shall be enforceable against or impose
any liability on any person, as such enforcement or
liability shall be contrary to public policy.

(2) Prohibited provisions.—A provision de-
scribed in this paragraph is any term contained in
any existing or future standstill, confidentiality, or
other agreement that, directly or indirectly—

(A) affects, restricts, or limits the ability
of any person to offer to acquire or acquire;

(B) prohibits any person from offering to
acquire or acquiring; or

(C) prohibits any person from using any
previously disclosed information in connection
with any such offer to acquire or acquisition of,
all or part of any covered financial company, includ-
ing any liabilities, assets, or interest therein, in con-
nection with any transaction in which the Corpora-
tion exercises its authority under this title.

(q) Other exemptions.—

(1) In general.—When acting as a receiver
under this title—

(A) the Corporation, including its fran-
chise, its capital, reserves and surplus, and its
income, shall be exempt from all taxation im-
posed by any State, county, municipality, or
local taxing authority, except that any real
property of the Corporation shall be subject to
State, territorial, county, municipal, or local
taxation to the same extent according to its
value as other real property is taxed, except
that, notwithstanding the failure of any person
to challenge an assessment under State law of
the value of such property, such value, and the
tax thereon, shall be determined as of the pe-
riod for which such tax is imposed;

(B) no property of the Corporation shall be
subject to levy, attachment, garnishment, fore-
closure, or sale without the consent of the Cor-
poration, nor shall any involuntary lien attach
to the property of the Corporation; and

(C) the Corporation shall not be liable for
any amounts in the nature of penalties or fines,
including those arising from the failure of any
person to pay any real property, personal prop-
erty, probate, or recording tax or any recording
or filing fees when due; and

(D) the Corporation shall be exempt from
all prosecution by the United States or any
State, county, municipality, or local authority
for any criminal offense arising under Federal,
State, county, municipal, or local law, which
was allegedly committed by the covered financial company, or persons acting on behalf of the covered financial company, prior to the appointment of the Corporation as receiver.

(2) LIMITATION.—Paragraph (1) shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

(r) CERTAIN SALES OF ASSETS PROHIBITED.—

(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, COVERED FINANCIAL COMPANIES.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a covered financial company by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations, the aggregate amount of which exceeds $1,000,000, to such covered financial company;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and
(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any covered financial company;

(B) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or

(C) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company.

(2) CONVICTED DEBTORS.—Except as provided in paragraph (3), a person may not purchase any asset of such institution from the receiver, if that person—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit such an offense, affecting any covered financial company; and
(B) is in default on any loan or other extension of credit from such covered financial company which, if not paid, will cause substantial loss to the Fund or the Corporation.

(3) Settlement of Claims.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any covered financial company to any person, if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of 1 or more claims that have been, or could have been, asserted by the Corporation against the person.

(4) Definition of Default.—For purposes of this subsection, the term “default” means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(s) Recoupment of Compensation from Senior Executives and Directors.—

(1) In General.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date
on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) Cost Considerations.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) Rulemaking.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term “compensation” to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

SEC. 211. MISCELLANEOUS PROVISIONS.

(a) Clarification of Prohibition Regarding Concealment of Assets From Receiver or Liquidating Agent.—Section 1032(1) of title 18, United States Code, is amended by inserting “the Federal Deposit Insurance Corporation acting as receiver for a covered financial company, in accordance with title II of the Restoring American Financial Stability Act of 2010,” before “or the National Credit”.
(b) CONFORMING AMENDMENT.—Section 1032 of title 18, United States Code, is amended in the section heading, by striking “of financial institution”.


(d) FDIC INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing—

(A) a description of actions taken by the Corporation as receiver;

(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;
(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 203(d) and orderly liquidation plan under section 210(n)(14);

(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Corporation shall include in the semi-annual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate
committees of Congress, if requested, to present each such report.

(4) FUNDING.—

(A) INITIAL FUNDING.—The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) ADDITIONAL FUNDING.—If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

(5) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

e) TREASURY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of
any covered financial company under this title, including collecting and summarizing—

(A) a description of actions taken by the Secretary under this title;

(B) an analysis of the approval by the Secretary of the policies and procedures of the Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the
appropriate committees of Congress, if requested, to
present each such report.

(4) **Termination of Responsibilities.**—The
duties and responsibilities of the Inspector General
of the Department of the Treasury under this sub-
section shall terminate 1 year after the date on
which the obligations purchased by the Secretary
from the Corporation under section 210 are fully re-
deemed.

(f) **Primary Financial Regulatory Agency In-
spector General Reviews.**—

(1) **Scope.**—Upon the appointment of the Cor-
poration as receiver for a covered financial company
supervised by a Federal primary financial regulatory
agency or the Board of Governors under section
165, the Inspector General of the agency or the
Board of Governors shall make a written report re-
viewing the supervision by the agency or the Board
of Governors of the covered financial company,
which shall—

(A) evaluate the effectiveness of the agency
or the Board of Governors in carrying out its
supervisory responsibilities with respect to the
covered financial company;
(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

(D) recommend appropriate administrative or legislative action.

(2) REPORTS AND TESTIMONY.—Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing
any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

(a) No Other Funding.—Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

(b) Limit on Governmental Actions.—No governmental entity may take any action to circumvent the purposes of this title.

(c) Conflict of Interest.—In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

SEC. 213. BAN ON CERTAIN ACTIVITIES BY SENIOR EXECUTIVES AND DIRECTORS.

(a) Prohibition Authority.—The Board of Governors or, if the covered financial company was not super-
vised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) AUTHORITY TO ISSUE ORDER.—The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

(iv) any written agreement between such company and such agency;

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or
(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such senior executive or director; or

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) AUTHORIZED ACTIONS.—

(1) IN GENERAL.—The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a
period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

(2) Procedures.—The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

(d) Regulations.—The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

SEC. 214. PROHIBITION ON TAXPAYER FUNDING.

(a) Liquidation Required.—All financial companies put into receivership under this title shall be liquidated. No taxpayer funds shall be used to prevent the liquidation of any financial company under this title.

(b) Recovery of Funds.—All funds expended in the liquidation of a financial company under this title shall
be recovered from the disposition of assets of such finan-
cial company, or shall be the responsibility of the financial
sector, through assessments.

(c) NO LOSSES TO TAXPAYERS.—Taxpayers shall
bear no losses from the exercise of any authority under
this title.

TITLE III—TRANSFER OF POW-
ERS TO THE COMPTROLLER
OF THE CURRENCY, THE COR-
PORATION, AND THE BOARD
OF GOVERNORS

SEC. 300. SHORT TITLE.

This title may be cited as the “Enhancing Financial
Institution Safety and Soundness Act of 2010”.

SEC. 301. PURPOSES.

The purposes of this title are—

(1) to provide for the safe and sound operation
of the banking system of the United States;

(2) to preserve and protect the dual system of
Federal and State-chartered depository institutions;

(3) to ensure the fair and appropriate super-
vision of each depository institution, regardless of
the size or type of charter of the depository institu-
tion; and
(4) to streamline and rationalize the supervision
of depository institutions and the holding companies
of depository institutions.

SEC. 302. DEFINITION.

In this title, the term “transferred employee” means,
as the context requires, an employee transferred to the
Office of the Comptroller of the Currency or the Corpora-
tion under section 322.

Subtitle A—Transfer of Powers and
Duties

SEC. 311. TRANSFER DATE.

(a) TRANSFER DATE.—Except as provided in sub-
section (b), the term “transfer date” means the date that
is 1 year after the date of enactment of this Act.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The Secretary, in con-
sultation with the Comptroller of the Currency, the
Director of the Office of Thrift Supervision, the
Chairman of the Board of Governors, and the Chair-
person of the Corporation, may extend the period
under subsection (a) and designate a transfer date
that is not later than 18 months after the date of
enactment of this Act, if the Secretary transmits to
the Committee on Banking, Housing, and Urban Af-
fairs of the Senate and the Committee on Financial Services of the House of Representatives—

(A) a written determination that commencement of the orderly process to implement this title is not feasible by the date that is 1 year after the date of enactment of this Act;

(B) an explanation of why an extension is necessary to commence the process of orderly implementation of this title;

(C) the transfer date designated under this subsection; and

(D) a description of the steps that will be taken to initiate the process of an orderly and timely implementation of this title within the extended time period.

(2) PUBLICATION OF NOTICE.—Not later than 270 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register notice of any transfer date designated under paragraph (1).

SEC. 312. POWERS AND DUTIES TRANSFERRED.

(a) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.
(b) Functions of the Office of Thrift Supervision.—

(1) Savings and loan holding company functions transferred.—

(A) Transfer of functions.—There are transferred to the Board of Governors all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision (including the authority to issue orders) relating to—

(i) the supervision of—

(I) any savings and loan holding company; and

(II) any subsidiary (other than a depository institution) of a savings and loan holding company; and

(ii) all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to savings and loan holding companies.

(B) Powers, authorities, rights, and duties.—The Board of Governors shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of
Thrift Supervision on the day before the transfer date relating to the functions and authority transferred under subparagraph (A).

(2) ALL OTHER FUNCTIONS TRANSFERRED.—

(A) BOARD OF GOVERNORS.—All rule-making authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision under section 11 of the Home Owners’ Loan Act (12 U.S.C. 1468) relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders and under section 5(q) of such Act relating to tying arrangements is transferred to the Board of Governors.

(B) COMPTROLLER OF THE CURRENCY.—Except as provided in paragraph (1) and subparagraph (A)—

(i) there are transferred to the Office of the Comptroller of the Currency and the Comptroller of the Currency—

(I) all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, relating to Federal savings associations; and
(II) all rulemaking authority of
the Office of Thrift Supervision and
the Director of the Office of Thrift
Supervision, respectively, relating to
savings associations; and

(ii) the Office of the Comptroller of
the Currency and the Comptroller of the
Currency shall succeed to all powers, au-
thorities, rights, and duties that were vest-
ed in the Office of Thrift Supervision and
the Director of the Office of Thrift Super-
vision, respectively, on the day before the
transfer date relating to the functions and
authority transferred under clause (i).

(C) CORPORATION.—Except as provided in
paragraph (1) and subparagraphs (A) and
(B)—

(i) all functions of the Office of Thrift
Supervision and the Director of the Office
of Thrift Supervision relating to State sav-
ings associations are transferred to the
Corporation; and

(ii) the Corporation shall succeed to
all powers, authorities, rights, and duties
that were vested in the Office of Thrift Su-
pervision and the Director of the Office of
Thrift Supervision on the day before the
transfer date relating to the functions
transferred under clause (i).

(c) CONFORMING AMENDMENTS.—Section 3(q) of
the Federal Deposit Insurance Act (12 U.S.C. 1813(q))
is amended by striking paragraphs (1) through (4) and
inserting the following:

“(1) the Office of the Comptroller of the Cur-
rency, in the case of—

“(A) any national banking association;

“(B) any Federal branch or agency of a
foreign bank; and

“(C) any Federal savings association;

“(2) the Federal Deposit Insurance Corpora-
tion, in the case of—

“(A) any State nonmember insured bank;

“(B) any foreign bank having an insured
branch; and

“(C) any State savings association;

“(3) the Board of Governors of the Federal Re-
serve System, in the case of—

“(A) any State member bank;

“(B) any branch or agency of a foreign
bank with respect to any provision of the Fed-
eral Reserve Act which is made applicable under the International Banking Act of 1978;

“(C) any foreign bank which does not operate an insured branch;

“(D) any agency or commercial lending company other than a Federal agency;

“(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966;

“(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

“(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company.”.

(d) CONSUMER PROTECTION.—Nothing in this section may be construed to limit or otherwise affect the transfer of powers under title X.
SEC. 313. ABOLISHMENT.

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

SEC. 314. AMENDMENTS TO THE REVISED STATUTES.

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

“SEC. 324. COMPTROLLER OF THE CURRENCY.

“(a) OFFICE OF THE COMPTROLLER OF THE CURRENCY ESTABLISHED.—There is established in the Department of the Treasury a bureau to be known as the ‘Office of the Comptroller of the Currency’ which is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.

“(b) COMPTROLLER OF THE CURRENCY.—

“(1) IN GENERAL.—The chief officer of the Office of the Comptroller of the Currency shall be known as the Comptroller of the Currency. The Comptroller of the Currency shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any
regulation by the Comptroller of the Currency, and
may not intervene in any matter or proceeding be-
fore the Comptroller of the Currency (including
agency enforcement actions), unless otherwise spe-
cifically provided by law.

“(2) ADDITIONAL AUTHORITY.—The Com-
troller of the Currency shall have the same authority
with respect to functions transferred to the Com-
troller of the Currency under the Enhancing Finan-
cial Institution Safety and Soundness Act of 2010
as was vested in the Director of the Office of Thrift
Supervision on the transfer date, as defined in sec-
tion 311 of that Act.”.

(b) SUPERVISION OF FEDERAL SAVINGS ASSOCIA-
TIONS.—Chapter 9 of title VII of the Revised Statutes of
the United States (12 U.S.C. 1 et seq.) is amended by
inserting after section 327A (12 U.S.C. 4a) the following:

“SEC. 327B. DEPUTY COMPTROLLER FOR THE SUPER-
VISION AND EXAMINATION OF FEDERAL SAV-
INGS ASSOCIATIONS.

“The Comptroller of the Currency shall designate a
Deputy Comptroller, who shall be responsible for the su-
pervision and examination of Federal savings associa-
tions.”.
(c) Amendment to Section 329.—Section 329 of the Revised Statutes of the United States (12 U.S.C. 11) is amended by inserting before the period at the end the following: “or any Federal savings association”.

(d) Effective Date.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 315. FEDERAL INFORMATION POLICY.

Section 3502(5) of title 44, United States Code, is amended by inserting “Office of the Comptroller of the Currency,” after “the Securities and Exchange Commission,”.

SEC. 316. SAVINGS PROVISIONS.

(a) Office of Thrift Supervision.—

(1) Existing rights, duties, and obligations not affected.—Sections 312(b) and 313 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that existed on the day before the transfer date.

(2) Continuation of suits.—This title shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Super-
vision or the Office of Thrift Supervision before the transfer date, except that—

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

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

(C) for any action or proceeding arising out of a function of the Office of Thrift Super-
vision or the Director of the Office of Thrift
Supervision transferred to the Corporation by
this title, the Corporation shall be substituted
for the Office of Thrift Supervision or the Di-
rector of the Office of Thrift Supervision as a
party to the action or proceeding on and after
the transfer date.

(b) Continuation of Existing OTS Orders, Res-
olutions, Determinations, Agreements, Regula-
tions, etc.—All orders, resolutions, determinations,
agreements, and regulations, interpretative rules, other in-
terpretations, guidelines, procedures, and other advisory
materials, that have been issued, made, prescribed, or al-
lowed to become effective by the Office of Thrift Super-
vision or the Director of the Office of Thrift Supervision,
or by a court of competent jurisdiction, in the performance
of functions that are transferred by this title and that are
in effect on the day before the transfer date, shall continue
in effect according to the terms of such orders, resolutions,
determinations, agreements, and regulations, interpretative
rules, other interpretations, guidelines, procedures,
and other advisory materials, and shall be enforceable by
or against—

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

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

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

(1) BY THE BOARD OF GOVERNORS.—Not later than the transfer date, the Board of Governors shall—

(A) identify the regulations continued under subsection (b) that will be enforced by the Board of Governors; and

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(2) BY OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Not later than the transfer date, the Office of the Comptroller of the Currency shall—

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

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

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

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

(B) publish a list of the regulations identified under subparagraph (A) in the Federal
Register.

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

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision, which the Office of Thrift Supervision in performing functions transferred by this title, has proposed before the transfer date but has not published as a final regulation before such date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to the terms of the proposed regulation.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of Thrift Supervision, which the Office of Thrift Supervision, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Office of the Comptroller of the Currency or the Board of Governors, as ap-
propriate, according to the terms of the interim or final regulation.

SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL BANKING AGENCIES.

On and after the transfer date, any reference in Federal law to the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, in connection with any function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision transferred under section 312(b) or any other provision of this subtitle, shall be deemed to be a reference to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors, as appropriate and consistent with the amendments made in subtitle E.

SEC. 318. FUNDING.

(a) COMPENSATION OF EXAMINERS.—Section 5240 of the Revised Statutes of the United States (12 U.S.C. 481 et seq.) is amended—

(1) in the second undesignated paragraph (12 U.S.C. 481), in the fourth sentence, by striking “without regard to the provisions of other laws applicable to officers or employees of the United States” and inserting the following: “set and ad-
justed subject to chapter 71 of title 5, United States
Code, and without regard to the provisions of other
laws applicable to officers or employees of the
United States”; and

(2) in the third undesignated paragraph (12
U.S.C. 482), in the first sentence, by striking “shall
fix” and inserting “shall, subject to chapter 71 of
title 5, United States Code, fix”.

(b) FUNDING OF OFFICE OF THE COMPTROLLER OF
THE CURRENCY.—Chapter 4 of title LXII of the Revised
Statutes is amended by inserting after section 5240 (12
U.S.C. 481, 482) the following:

“SEC. 5240A. The Comptroller of the Currency may
collect an assessment, fee, or other charge from any entity
described in section 3(q)(1) of the Federal Deposit Insur-
ance Act (12 U.S.C. 1813(q)(1)), as the Comptroller de-
determines is necessary or appropriate to carry out the re-
sponsibilities of the Office of the Comptroller of the Cur-
rency. In establishing the amount of an assessment, fee,
or charge collected from an entity under this section, the
Comptroller of the Currency may take into account the
nature and scope of the activities of the entity, the amount
and type of assets that the entity holds, the financial and
managerial condition of the entity, and any other factor,
as the Comptroller of the Currency determines is appro-
propriate. Funds derived from any assessment, fee, or charge collected or payment made pursuant to this section may be deposited by the Comptroller of the Currency in accordance with the provisions of section 5234. Such funds shall not be construed to be Government funds or appropriated monies, and shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or any other provision of law. The authority of the Comptroller of the Currency under this section shall be in addition to the authority under section 5240.

“The Comptroller of the Currency shall have sole authority to determine the manner in which the obligations of the Office of the Comptroller of the Currency shall be incurred and its disbursements and expenses allowed and paid, in accordance with this section, except as provided in chapter 71 of title 5, United States Code (with respect to compensation).”.

(c) Funding of Board of Governors.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following:

“(s) Assessments, Fees, and Other Charges for Certain Companies.—

“(1) In general.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that
is equal to the total expenses the Board estimates are necessary or appropriate to carry out the responsibilities of the Board with respect to such companies.

“(2) COMPANIES.—The companies described in this paragraph are—

“(A) all bank holding companies having total consolidated assets of $50,000,000,000 or more;

“(B) all savings and loan holding companies having total consolidated assets of $50,000,000,000 or more; and

“(C) all nonbank financial companies supervised by the Board under section 113 of the Restoring American Financial Stability Act of 2010.”.

(d) CORPORATION EXAMINATION FEES.—Section 10(e) of the Federal Deposit Insurance Act (12 U.S.C. 1820(e)) is amended by striking paragraph (1) and inserting the following:

“(1) REGULAR AND SPECIAL EXAMINATIONS OF DEPOSITORY INSTITUTIONS.—The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) or of any entity described in section
3(q)(2) may be assessed by the Corporation against the institution or entity to meet the expenses of the Corporation in carrying out such examinations, or as the Corporation determines is necessary or appropriate to carry out the responsibilities of the Corporation.”.

(e) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 319. CONTRACTING AND LEASING AUTHORITY.

Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law, the Office of the Comptroller of the Currency may—

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

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).
Subtitle B—Transitional Provisions

SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—Before the transfer date, the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall—

(1) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors in accordance with this title;

(2) determine jointly, from time to time—

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

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

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

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

(b) AGENCY CONSULTATION.—When requested jointly by the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors to do so before the transfer date, the Office of Thrift Supervision shall—

(1) pay to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges that the Office of Thrift Supervision is authorized by law to impose, such amounts as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a);

(2) detail to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such personnel as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be appropriate under subsection (a); and
(3) make available to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such property and provide to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such administrative services as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a).

(c) NOTICE REQUIRED.—The Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall jointly give the Office of Thrift Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly intend to make under subsection (b).

SEC. 322. TRANSFER OF EMPLOYEES.

(a) IN GENERAL.—

(1) OFFICE OF THRIFT SUPERVISION EMPLOYEES.—

(A) IN GENERAL.—All employees of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation for employment in accordance with this section.
(B) Allocating Employees for Transfer to Receiving Agencies.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the functions that are transferred to the Office of the Comptroller of the Currency or the Corporation by this title; and

(ii) consistent with the determination under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation.

(2) Employees Transferred; Service Periods Credited.—For purposes of this section, periods of service with a Federal home loan bank, a joint office of Federal home loan banks, or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(3) Appointment Authority for Excepted Service Transferred.—
(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Office of Thrift Supervision under Federal law that relates to the functions transferred under section 312, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Comptroller of the Currency or the Chairperson of the Corporation, as appropriate.

(B) DECLINING TRANSFERS ALLOWED.—The Comptroller of the Currency or the Chairperson of the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed under that authority) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(4) ADDITIONAL APPOINTMENT AUTHORITY.—Notwithstanding any other provision of law, the Office of the Comptroller of the Currency and the Corporation may appoint transferred employees to posi-
tions in the Office of the Comptroller of the Cur-
rency or the Corporation, respectively.

(b) TIMING OF TRANSFERS AND POSITION ASSIGN-
MENTS.—Each employee to be transferred under sub-
section (a)(1) shall—

(1) be transferred not later than 90 days after
the transfer date; and

(2) receive notice of the position assignment of
the employee not later than 120 days after the effec-
tive date of the transfer of the employee.

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding any other
provision of law, the transfer of employees under
this subtitle shall be deemed a transfer of functions
for the purpose of section 3503 of title 5, United
States Code.

(2) PRIORITY.—If any provision of this subtitle
conflicts with any protection provided to a trans-
ferred employee under section 3503 of title 5,
United States Code, the provisions of this subtitle
shall control.

(d) EMPLOYEE STATUS AND ELIGIBILITY.—The
transfer of functions and employees under this subtitle,
and the abolition of the Office of Thrift Supervision
under section 313, shall not affect the status of the trans-
ferred employees as employees of an agency of the United States under any provision of law.

(c) Equal Status and Tenure Positions.—

(1) Status and Tenure.—Each transferred employee from the Office of Thrift Supervision shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

(2) Functions.—To the extent practicable, each transferred employee shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation, as applicable, responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

(f) No Additional Certification Requirements.—An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position at the Office of the Comptroller of the Currency or the Corporation, if the examiner carries out examinations of the same type of institutions as an employee of the Office of the Comp-
troller of the Currency or the Corporation as the employee
was responsible for carrying out before the date on which
the employee was transferred.

(g) Personnel Actions Limited.—

(1) 2-Year Protection.—Except as provided
in paragraph (2), during the 2-year period beginning
on the transfer date, an employee holding a perma-
nent position on the day before the date on which
the employee was transferred shall not be involun-
tarily separated or involuntarily reassigned outside
the locality pay area (as defined by the Office of
Personnel Management) of the employee.

(2) Exceptions.—The Comptroller of the Cur-
rency and the Chairperson of the Corporation, as
applicable, may—

(A) separate a transferred employee for
cause, including for unacceptable performance;
or

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

(h) Pay.—

(1) 2-Year Protection.—Except as provided
in paragraph (2), during the 2-year period beginning
on the date on which the employee was transferred
under this subtitle, a transferred employee shall be
paid at a rate that is not less than the basic rate
of pay, including any geographic differential, that
the transferred employee received during the pay pe-
period immediately preceding the date on which the
employee was transferred.

(2) EXCEPTIONS.—The Comptroller of the Cur-
rency or the Corporation may reduce the rate of
basic pay of a transferred employee—

(A) for cause, including for unacceptable
performance; or

(B) with the consent of the transferred
employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—
This subsection shall apply to a transferred em-
ployee only during the period that the transferred
employee remains employed by Office of the Com-
troller of the Currency or the Corporation.

(4) PAY INCREASES PERMITTED.—Nothing in
this subsection shall limit the authority of the Com-
troller of the Currency or the Chairperson of the
Corporation to increase the pay of a transferred em-
ployee.

(i) BENEFITS.—
(1) **Retirement benefits for transferred employees.**—

(A) **In general.**—

(i) **Continuation of existing retirement plan.**—Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) **Employer’s contribution.**—

The Comptroller of the Currency or the Chairperson of the Corporation, as appropriate, shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) **Definition.**—In this paragraph, the term “existing retirement plan” means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee
was enrolled on the day before the date on which the employee was transferred.

(2) Benefits other than retirement benefits.—

(A) During first year.—

(i) Existing plans continue.—

During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee was transferred under this title, including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) Employer’s contribution.—

The Office of the Comptroller of the Currency or the Corporation, as appropriate, shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

(B) Dental, vision, or life insurance after first year.—If, after the 1-year period
beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as the case may be, will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee was transferred, a transferred employee who is a member of the program may, before the decision takes effect and without regard to any regularly scheduled open season, elect to enroll in—

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

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

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

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the
Comptroller of the Currency or the Corporation
determines that the Office of the Comptroller of
the Currency or the Corporation, as appro-
priate, will not continue to participate in any
long term care insurance program of an agency
from which an employee transferred, a trans-
ferred employee who is a member of such a pro-
gram may, before the decision takes effect, elect
to apply for coverage under the Federal Long
Term Care Insurance Program established
under chapter 90 of title 5, United States Code,
under the underwriting requirements applicable
to a new active workforce member, as described
in part 875 of title 5, Code of Federal Regula-
tions (or any successor thereto).

(D) CONTRIBUTION OF TRANSFERRED EM-
PLOYEE.—

(i) IN GENERAL.—Subject to clause
(ii), a transferred employee who is enrolled
in a plan under the Federal Employees
Health Benefits Program shall pay any
employee contribution required under the
plan.

(ii) COST DIFFERENTIAL.—The Office
of the Comptroller of the Currency or the
Corporation, as applicable, shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on the date of enactment of this Act and the plan provided by the Office of the Comptroller of the Currency or the Corporation, as the case may be, under this section.

(iii) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this sub-
paragraph that are not otherwise paid for
by a transferred employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant, as
defined in section 8901 of title 5, United
States Code, who is enrolled in a life insur-
ance plan administered by an agency from
which employees are transferred under this
title on the day before the transfer date
shall be eligible for coverage by a life insur-
ance plan under sections 8706(b),
8714a, 8714b, or 8714c of title 5, United
States Code, or by a life insurance plan es-

tablished by the Office of the Comptroller
of the Currency or the Corporation, as ap-
plicable, without regard to any regularly
scheduled open season or any requirement
of insurability.

(ii) CONTRIBUTION OF TRANSFERRED
EMPLOYEE.—

(I) IN GENERAL.—Subject to
subclause (II), a transferred employee
enrolled in a life insurance plan under
this subparagraph shall pay any em-

ployee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on the date of enactment of this Act and the benefits provided under this section.

(III) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Federal Employees’ Group Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to
reimburse the Federal Employees’ 
Group Life Insurance Fund for the 
cost to the Federal Employees’ Group 
Life Insurance Fund of providing ben-
efits under this subparagraph not oth-
wise paid for by a transferred em-
ployee under subclause (I).

(IV) CREDIT FOR TIME EN-
ROLLED IN OTHER PLANS.—For any 
transferred employee, enrollment in a 
life insurance plan administered by 
the agency from which the employee 
transferred, immediately before enroll-
ment in a life insurance plan under 
chapter 87 of title 5, United States 
Code, shall be considered as enroll-
ment in a life insurance plan under 
that chapter for purposes of section 
8706(b)(1)(A) of title 5, United 
States Code.

(j) INCORPORATION INTO AGENCY PAY SYSTEM.—
Not later than 2 years after the transfer date, the Com-
troller of the Currency and the Chairperson of the Cor-
poration shall place each transferred employee into the es-
established pay system and structure of the appropriate em-
ploying agency.

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

(1) may not take any action that would unfairly
disadvantage a transferred employee relative to any
other employee of the Office of the Comptroller of
the Currency or the Corporation on the basis of
prior employment by the Office of Thrift Super-
vision; and

(2) may take such action as is appropriate in
an individual case to ensure that a transferred em-
ployee receives equitable treatment, with respect to
the status, tenure, pay, benefits (other than benefits
under programs administered by the Office of Per-
sonnel Management), and accrued leave or vacation
time for prior periods of service with any Federal
agency of the transferred employee.

(l) REORGANIZATION.—

(1) IN GENERAL.—If the Comptroller of the
Currency or the Chairperson of the Corporation de-
determines, during the 2-year period beginning 1 year
after the transfer date, that a reorganization of the
staff of the Office of the Comptroller of the Cur-
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rency or the Corporation, respectively, is required,  
the reorganization shall be deemed a “major reorga-
nization” for purposes of affording affected employ-
ees retirement under section 8336(d)(2) or  
8414(b)(1)(B) of title 5, United States Code.  
(2) SERVICE CREDIT.—For purposes of this  
subsection, periods of service with a Federal home  
loan bank or a joint office of Federal home loan  
banks shall be credited as periods of service with a  
Federal agency.

SEC. 323. PROPERTY TRANSFERRED.  
(a) PROPERTY DEFINED.—For purposes of this sec-
tion, the term “property” includes all real property (in-
cluding leaseholds) and all personal property, including  
computers, furniture, fixtures, equipment, books, ac-
counts, records, reports, files, memoranda, paper, reports  
of examination, work papers, and correspondence related  
to such reports, and any other information or materials.  
(b) PROPERTY OF THE OFFICE OF THRIFT SUPER-
VISION.—Not later than 90 days after the transfer date,  
all property of the Office of Thrift Supervision that the  
Comptroller of the Currency and the Chairperson of the  
Corporation jointly determine is used, on the day before  
the transfer date, to perform or support the functions of  
the Office of Thrift Supervision transferred to the Office
of the Comptroller of the Currency or the Corporation under this title, shall be transferred to the Office of the Comptroller of the Currency or the Corporation in a manner consistent with the transfer of employees under this subtitle.

(c) Contracts Related to Property Transferred.—Each contract, agreement, lease, license, permit, and similar arrangement relating to property transferred to the Office of the Comptroller of the Currency or the Corporation by this section shall be transferred to the Office of the Comptroller of the Currency or the Corporation, as appropriate, together with the property to which it relates.

(d) Preservation of Property.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

SEC. 324. FUNDS TRANSFERRED.

The funds that, on the day before the transfer date, the Director of the Office of Thrift Supervision (in consultation with the Comptroller of the Currency, the Chairman of the Board of Governors) determines are not necessary to dispose of the affairs of the Office of Thrift Supervision under section 325 and are available to the Office of Thrift Super-
vision to pay the expenses of the Office of Thrift Supervision—

(1) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(2)(B), shall be transferred to the Office of the Comptroller of the Currency on the transfer date;

(2) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(2)(C), shall be transferred to the Corporation on the transfer date; and

(3) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(A), shall be transferred to the Board of Governors on the transfer date.

SEC. 325. DISPOSITION OF AFFAIRS.

(a) Authority of Director.—During the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of the Office of Thrift Supervision relating to any function transferred to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors under this title—
(A) manage the employees of the Office of Thrift Supervision who have not yet been transferred and provide for the payment of the compensation and benefits of the employees that accrue before the date on which the employees are transferred under this title; and

(B) manage any property of the Office of Thrift Supervision, until the date on which the property is transferred under section 323; and

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

(b) STATUS OF DIRECTOR.—

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

(A) to wind up the Office of Thrift Supervision; and

(B) to carry out the transfer under this subtitle during such 90-day period.
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(2) **OTHER PROVISIONS.**—For purposes of paragraph (1), the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

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

(B) entitled to receive compensation at the same annual rate of basic pay that the Director of the Office of Thrift Supervision received on the day before the transfer date.

**SEC. 326. CONTINUATION OF SERVICES.**

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

(1) continue to provide such services, subject to reimbursement by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, until the transfer of functions under this title is complete; and
(2) consult with the Comptroller of the Currency, the Chairperson of the Corporation, or the Chairman of the Board of Governors, as appropriate, to coordinate and facilitate a prompt and orderly transition.

Subtitle C—Federal Deposit Insurance Corporation

SEC. 331. DEPOSIT INSURANCE REFORMS.

(a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(1) by striking subparagraph (D); and

(2) by redesignating subparagraph (C) as subparagraph (D).

(b) ASSESSMENT BASE.—The Corporation shall amend the regulations issued by the Corporation under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) to define the term “assessment base” with respect to an insured depository institution for purposes of that section 7(b)(2), as an amount equal to—

(1) the average consolidated total assets of the insured depository institution during the assessment period; minus

(2) the sum of—
(A) the average tangible equity of the insured depository institution during the assessment period; and

(B) in the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker’s bank (as that term is used in section 5136 of the Revised Statutes (12 U.S.C. 24)), an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) for a custodial bank or a banker’s bank.

SEC. 332. MANAGEMENT OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

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

(1) in subsection (a)(1)(B), by striking “Director of the Office of Thrift Supervision” and inserting “Director of the Consumer Financial Protection Bureau”;
(2) by amending subsection (d)(2) to read as follows:

“(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency, the acting Comptroller of the Currency shall be a member of the Board of Directors in the place of the Comptroller of the Currency.”; and

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

(b) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

Subtitle D—Other Matters

SEC. 341. BRANCHING.

Notwithstanding the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any other provision of Federal or State law, a savings association that becomes a bank may—

(1) continue to operate any branch or agency that the savings association operated immediately before the savings association became a bank; and
(2) establish, acquire, and operate additional branches and agencies at any location within any State in which the savings association operated a branch immediately before the savings association became a bank, if the law of the State in which the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State.

SEC. 342. OFFICE OF MINORITY AND WOMEN INCLUSION.

(a) Office of Minority and Women Inclusion.—

(1) Establishment.—

(A) In general.—Except as provided in subparagraph (B), not later than 6 months after the date of enactment of this Act, each agency shall establish an Office of Minority and Women Inclusion that shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities.

(B) Bureau.—The Bureau shall establish an Office of Minority and Women Inclusion not later than 6 months after the designated transfer date established under section 1062.
(2) Transfer of Responsibilities.—Each agency that, on the day before the date of enactment of this Act, assigned the responsibilities described in paragraph (1) (or comparable responsibilities) to another office of the agency shall ensure that such responsibilities are transferred to the Office.

(b) Director.—

(1) In General.—The Director of each Office shall be appointed by, and shall report to, the agency administrator.

(2) Duties.—Each Director shall develop standards for—

(A) equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency;

(B) increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency; and

(C) assessing the diversity policies and practices of entities regulated by the agency.

(c) Inclusion in All Levels of Business Activities.—

(1) In General.—The Director of each Office shall develop and implement standards and procedures to ensure, to the maximum extent possible, the
inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts.

(2) CONTRACTS.—The processes established by each agency for review and evaluation for contract proposals and for hiring service providers shall include a component that gives consideration to the diversity of the applicant.

(3) TERMINATION.—

(A) DETERMINATION.—The standards and procedures developed and implemented under paragraph (1) shall include a procedure for the Director to make a determination that an agency contractor has failed to make a good faith effort to include minorities and women in the workforce of the contractor. Such procedure shall include a written statement, in a form and with such content as the Director shall prescribe, that the contractor shall ensure, to the maximum extent possible, the inclusion of women and minorities in the workforce of the contractor and, as applicable, by subcontractors.
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(B) Effect of Determination.—

(i) Recommendation to Agency Administrator.—Upon a determination described in subparagraph (A), the Director shall make a recommendation to the agency administrator that the contract be terminated.

(ii) Action by Agency Administrator.—Upon receipt of a recommendation under clause (i), the agency administrator may—

(I) terminate the contract;

(II) make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor; or

(III) take other appropriate action.

(d) Applicability.—This section shall apply to all contracts of an agency for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. The contracts referred to in this subsection include all contracts for all business and activities of an
agency, at all levels, including contracts for the issuance
or guarantee of any debt, equity, or security, the sale of
assets, the management of the assets of the agency, the
making of equity investments by the agency, and the im-
plementation by the agency of programs to address eco-

(e) REPORTS.—Each Office shall submit to Congress
an annual report regarding the actions taken by the agen-
cy and the Office pursuant to this section, which shall in-
clude—

(1) a statement of the total amounts paid by
the agency to contractors since the previous report;

(2) the percentage of the amounts described in
paragraph (1) that were paid to contractors de-
scribed in subsection (c)(1);

(3) the successes achieved and challenges faced
by the agency in operating minority and women out-
reach programs;

(4) the challenges the agency may face in hiring
qualified minority and women employees and con-
tracting with qualified minority-owned and women-
owned businesses; and

(5) any other information, findings, conclusions,
and recommendations for legislative or agency ac-
tion, as the Director determines appropriate.
(f) **DIVERSITY IN AGENCY WORKFORCE.**—Each agency shall take affirmative steps to seek diversity in the workforce of the agency, at all levels of the agency, consistent with the demographic diversity of the United States and the Federal Government, which shall include—

1. recruiting at historically black colleges and universities, Hispanic-serving institutions, women’s colleges, and colleges that typically serve majority minority populations;
2. sponsoring and recruiting at job fairs in urban communities;
3. placing employment advertisements in newspapers and magazines oriented toward minorities and women;
4. partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;
5. where feasible, partnering with inner-city high schools, girls’ high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and
(6) any other mass media communications that
the Office determines necessary.

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

(1) AGENCY.—The term “agency” means—
    (A) the Department of the Treasury;
    (B) the Corporation;
    (C) the Federal Housing Finance Agency;
    (D) each of the Federal reserve banks;
    (E) the Board;
    (F) the National Credit Union Administra-
        tion;
    (G) the Office of the Comptroller of the
        Currency;
    (H) the Commission; and
    (I) the Bureau.

(2) AGENCY ADMINISTRATOR.—The term
    “agency administrator” means the head of an agen-
    cy.

(3) MINORITY.—The term “minority” has the
    same meaning as in section 1204(c) of the Financial
    Institutions Reform, Recovery, and Enforcement Act

(4) MINORITY-OWNED BUSINESS.—The term
    “minority-owned business” has the same meaning as
in section 21A(r)(4)(A) of the Federal Home Loan
Bank Act (12 U.S.C. 1441a(r)(4)(A)), as in effect
on the day before the transfer date.

(5) OFFICE.—The term “Office” means the Of-
lice of Minority and Women Inclusion established by
an agency under subsection (a).

(6) WOMEN-OWNED BUSINESS.—The term
“women-owned business” has the meaning given the
term “women’s business” in section 21A(r)(4)(B) of
the Federal Home Loan Bank Act (12 U.S.C.
1441a(r)(4)(B)), as in effect on the day before the
transfer date.

Subtitle E—Technical and
Conforming Amendments

SEC. 351. EFFECTIVE DATE.

Except as provided in section 365(a), the amend-
ments made by this subtitle shall take effect on the trans-
fer date.

SEC. 352. ALTERNATIVE MORTGAGE TRANSACTION PARITY

ACT OF 1982.

Section 804(a)(3) of the Alternative Mortgage Trans-
action Parity Act of 1982 (12 U.S.C. 3803(a)(3)) is
amended—

(1) by striking “savings and loan associations”
and inserting “savings associations”; and
(2) by striking “Director of the Office of Thrift Supervision” each place that term appears and inserting “Board of Governors of the Federal Reserve System”.


Section 256(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)) is amended—

(1) in paragraph (4), by striking subparagraphs (C) and (G); and

(2) by redesignating subparagraphs (D), (E), (F), and (H) as subparagraphs (C), (D), (E), and (F), respectively.


Section 232(a) of the Bank Enterprise Act of 1991 (12 U.S.C. 1834(a)) is amended—

(1) in the subsection heading, by striking “BY FEDERAL RESERVE BOARD”;

(2) in paragraph (1)—

(A) by striking “The Board of Governors of the Federal Reserve System,” and inserting “The Comptroller of the Currency”; and

(B) by striking “section 7(b)(2)(H)” and inserting “section 7(b)(2)(E)”;
(3) in paragraph (2)(A), by striking “Board” and inserting “Comptroller”; and

(4) in paragraph (3)—

(A) by redesignating subparagraphs (A) through (C) as subparagraphs (B) through (D), respectively; and

(B) by inserting before subparagraph (B) the following:

“(A) COMPTROLLER.—The term ‘Comptroller’ means the Comptroller of the Currency.”.

SEC. 355. BANK HOLDING COMPANY ACT OF 1956.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) in section 2(j)(3) (12 U.S.C. 1841(j)(3)), strike “Director of the Office of Thrift Supervision” and inserting “appropriate Federal banking agency”;

(2) in section 4 (12 U.S.C. 1843)—

(A) in subsection (i)—

(i) in paragraph (4)—

(I) in subparagraph (A)—

(aa) in the subparagraph heading, by striking “TO DIRECTOR”; and
(bb) by striking “Board” and all that follows through the end of the subparagraph and inserting “Board shall solicit comments and recommendations from—

“(i) the Comptroller of the Currency, with respect to the acquisition of a Federal savings association; and

“(ii) the Federal Deposit Insurance Corporation, with respect to the acquisition of a State savings association.”.

(II) in subparagraph (B), by striking “Director” each place that term appears and inserting “Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable,”;

(ii) in paragraph (5)—

(I) in subparagraph (B), by striking “Director with” and inserting “Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, with”; and
(II) by striking “Director” each place that term appears and inserting “Comptroller of the Currency or the Federal Deposit Insurance Corporation”;

(iii) in paragraph (6), by striking “Director” and inserting “Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable,”; and

(iv) by striking paragraph (7); and

(3) in section 5(f) (12 U.S.C. 1844(f))—

(A) by striking “subpena” each place that term appears and inserting “subpoena”;

(B) by striking “subpenas” each place that term appears and inserting “subpoenas”; and

(C) by striking “subpenaed” and inserting “subpoenaed”.

SEC. 356. BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.

Section 106(b)(1) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(1)) is amended in the undesignated matter following subparagraph (E) by inserting “issue such regulations as are necessary to carry out this section, and, in consultation with the Comptroller
of the Currency and the Federal Deposit Insurance Com-
pany, may” after “The Board may”.

SEC. 357. BANK PROTECTION ACT OF 1968.

The Bank Protection Act of 1968 (12 U.S.C. 1881 et seq.) is amended—

(1) in section 2 (12 U.S.C. 1881), by striking “the term” and all that follows through the end of the section and inserting “the term ‘Federal supervisory agency’ means the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).’’;

(2) in section 3 (12 U.S.C. 1882), by striking “and loan” each place that term appears; and

(3) in section 5 (12 U.S.C. 1884), by striking “and loan”.

SEC. 358. BANK SERVICE COMPANY ACT.

The Bank Service Company Act (12 U.S.C. 1861 et seq.) is amended—

(1) in section 1(b)(4) (12 U.S.C. 1861(b)(4))—

(A) by striking “Director of the Office of Thrift Supervision” and inserting “appropriate Federal banking agency”; and

(B) by striking “, the Federal Savings and Loan Insurance Corporation,”; and
(2) in section 7(c)(2) (12 U.S.C. 1867(c)(2)),

by inserting “each” after “notify”.


(1) in section 803 (12 U.S.C. 2902)—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting

“and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)” after “banks”;

(ii) in subparagraph (B), by striking

“and bank holding companies” and inserting “, bank holding companies, and savings and loan holding companies”; and

(iii) in subparagraph (C), by striking

“, and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation).”; and

(B) by striking paragraph (2) (relating to the Office of Thrift Supervision), as added by section 744(q) of the Financial Institutions Re-
form, Recovery, and Enforcement Act of 1989 (Public Law 101–73; 103 Stat. 440); and

(2) in section 806 (12 U.S.C. 2905), by inserting “, except that the Comptroller of the Currency shall prescribe regulations applicable to savings associations and the Board of Governors shall prescribe regulations applicable to noninsured State member banks, bank holding companies and savings and loan holding companies,” after “supervisory agency”.

SEC. 360. CRIME CONTROL ACT OF 1990.

The Crime Control Act of 1990 is amended—

(1) in section 2539(c)(2) (28 U.S.C. 509 note)—

(A) by striking subparagraphs (C) and (D); and

(B) by redesignating subparagraphs (E) through (H) as subparagraphs (C) through (G), respectively; and

(2) in section 2554(b)(2) (Public Law 101–647; 104 Stat. 4890)—

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

(B) in subparagraph (B), by striking “, the Director” and all that follows through
“Trust Corporation” and inserting “or the Federal Deposit Insurance Corporation”.

SEC. 361. DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) is amended—

(1) in section 207 (12 U.S.C. 3206)—

(A) in paragraph (1), by inserting before the comma at the end the following: “and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)”;

(B) in paragraph (2), by striking “, and bank holding companies” and inserting “, bank holding companies, and savings and loan holding companies”;

(C) in paragraph (3), by striking “Corporation,” and inserting “Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),”;

(D) by striking paragraph (4);

(E) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and
(F) in paragraph (5), as so redesignated, by striking “through (5)” and inserting “through (4)”;

(2) in section 209 (12 U.S.C. 3207)—

   (A) in paragraph (1), by inserting before the comma at the end the following: “and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)”;

   (B) in paragraph (2), by striking “, and bank holding companies” and inserting “, bank holding companies, and savings and loan holding companies”;

   (C) in paragraph (3), by striking “Corporation,” and inserting “Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),”;

   (D) by striking paragraph (4); and

   (E) by redesignating paragraph (5) as paragraph (4); and

(3) in section 210(a) (12 U.S.C. 3208(a))—

   (A) by striking “his” and inserting “the”; and

and
(B) by inserting “of the Attorney General” after “enforcement functions”.

SEC. 362. EMERGENCY HOMEOWNERS’ RELIEF ACT.

Section 110 of the Emergency Homeowners’ Relief Act (12 U.S.C. 2709) is amended in the second sentence, by striking “Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation” and inserting “Housing Finance Agency”.

SEC. 363. FEDERAL CREDIT UNION ACT.

The Federal Credit Union Act (12 U.S.C. 1781 et seq.) is amended—

(1) in section 107(8) (12 U.S.C. 1757(8)), by striking “or the Federal Savings and Loan Insurance Corporation”;

(2) in section 205 (12 U.S.C. 1785)—

(A) in subsection (b)(2)(G)(i), by striking “the Office of Thrift Supervision and”; and

(B) in subsection (i)(1), by striking “or the Federal Savings and Loan Insurance Corporation”; and

(3) in section 206(g)(7) (12 U.S.C. 1786(g)(7))—

(A) in subparagraph (A)—

(i) in clause (ii), by striking “(b)(8)” and inserting “(b)(9)”;
(ii) in clause (v)—

(I) by striking “depository” and inserting “financial”; and

(II) by adding “and” at the end;

(iii) in clause (vi)—

(I) by striking “Board” and inserting “Agency”; and

(II) by striking “; and” and inserting a period; and

(iv) by striking clause (vii); and

(B) in subparagraph (D)—

(i) in clause (iii), by adding “and” at the end;

(ii) in clause (iv)—

(I) by striking “Board” and inserting “Agency”; and

(II) by striking “and” at the end;

and

(iii) by striking clause (v).

**SEC. 364. FEDERAL DEPOSIT INSURANCE ACT.**

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 3 (12 U.S.C. 1813)—
(A) in subsection (b)(1)(C), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; (B) in subsection (l)(5), in the matter preceding subparagraph (A), by striking “Director of the Office of Thrift Supervision,”; and (C) in subsection (z), by striking “the Director of the Office of Thrift Supervision,”; (2) in section 7 (12 U.S.C. 1817)— (A) in subsection (a)— (i) in paragraph (2)— (I) in subparagraph (A)— (aa) in the first sentence, by striking “the Director of the Office of Thrift Supervision,”; (bb) in the second sentence— (AA) by striking “the Director of the Office of Thrift Supervision,” and inserting “to”; and (BB) by inserting “to” before “any Federal home”; and
(cc) by striking “Finance Board” each place that term appears and inserting “Finance Agency”; and

(II) in subparagraph (B), by striking “the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision,” and inserting “the Comptroller of the Currency and the Board of Governors of the Federal Reserve System,”;

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

(iii) in paragraph (6), by striking “section 232(a)(3)(C)” and inserting “section 232(a)(3)(D)”; and
(iv) in paragraph (7), by striking “,
the Director of the Office of Thrift Supervision,”; and
(B) in subsection (n)—
(i) in the heading, by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;
(ii) in the first sentence—
(I) by striking “the Director of
the Office of Thrift Supervision” and inserting “the Comptroller of the Currency”; and
(II) by inserting “Federal” before “savings associations”;
(iii) in the third sentence, by striking “, the Financing Corporation, and the Resolution Funding Corporation”; and
(iv) by striking “the Director” each place that term appears and inserting “the Comptroller”; (3) in section 8 (12 U.S.C. 1818)—
(A) in subsection (a)(8)(B)(ii), in the last sentence, by striking “Director of the Office of Thrift Supervision” each place that term app-
pears and inserting “Comptroller of the Currency”;

(B) in subsection (e)(7)—

(i) in subparagraph (A)—

(I) in clause (v), by inserting “and” after the semicolon;

(II) in clause (vi)—

(aa) by striking “Board” and inserting “Agency”; and

(bb) by striking “; and” and inserting a period; and

(III) by striking clause (vii); and

(ii) in subparagraph (D)—

(I) in clause (iii), by inserting “and” after the semicolon;

(II) in clause (iv)—

(aa) by striking “Board” and inserting “Agency”; and

(bb) by striking “; and” and inserting a period; and

(III) by striking clause (v);

(C) in subsection (j)—

(i) in paragraph (3), by inserting “or” after the semicolon;
(ii) in paragraph (4), by striking “;
or” and inserting a period; and
(iii) by striking paragraph (5);
(D) in subsection (o), by striking “Director
of the Office of Thrift Supervision” and insert-
ing “Comptroller of the Currency”; and
(E) in subsection (w)(3)(A), by striking
“Office of Thrift Supervision”;
(4) in section 10 (12 U.S.C. 1820)—
(A) in subsection (d)(5), by striking “or
the Resolution Trust Corporation” each place
that term appears; and
(B) in subsection (k)(5)(B)—
(i) in clause (ii), by inserting “and”
after the semicolon;
(ii) in clause (iii), by striking “; and”
and inserting a period; and
(iii) by striking clause (iv);
(5) in section 11 (12 U.S.C. 1821)—
(A) in subsection (e)—
(i) in paragraph (2)(A)(ii), by striking
“(other than section 21A of the Federal
Home Loan Bank Act)”;
(ii) in paragraph (4), by striking “Ex-
cept as otherwise provided in section 21A
of the Federal Home Loan Bank Act and
notwithstanding” and inserting “Notwith-
standing”; (iii) in paragraph (6)— (I) in the heading, by striking “DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION” and inserting “COMPTROLLER OF THE CURRENCY”; (II) in subparagraph (A)— (aa) by striking “or the Resolution Trust Corporation”; and (bb) by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and (III) in subparagraph (B)— (aa) by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and (bb) by striking “affairs—” and all that follows through the period at the end and inserting “affairs.”; and
(iv) in paragraph (12)(A), by striking “or the Resolution Trust Corporation”;

(B) in subsection (d)—

(i) in paragraph (17)(A), by striking “, or the Director of the Office of Thrift Supervision”; and

(ii) in paragraph (18)(B), by striking “or the Director of the Office of Thrift Supervision”;

(C) in subsection (m)—

(i) in paragraph (9), by striking “or the Director of the Office of Thrift Supervision, as appropriate”;  

(ii) in paragraph (16), by striking “or the Director of the Office of Thrift Supervision, as appropriate” each place that term appears; and

(iii) in paragraph (18), by striking “or the Director of the Office of Thrift Supervision, as appropriate” each place that term appears;

(D) in subsection (n)—

(i) in paragraph (1)(A)—

(I) by striking “, or the Director of the Office of Thrift Supervision,
with respect to” and inserting “or”; and

(II) by striking “applicable,” and inserting “applicable,”;

(ii) in paragraph (2)(A), by striking “or the Director of the Office of Thrift Supervision”;

(iii) in paragraph (4)(D), by striking “and the Director of the Office of Thrift Supervision, as appropriate,”;

(iv) in paragraph (4)(G), by striking “and the Director of the Office of Thrift Supervision, as appropriate,”; and

(v) in paragraph (12)(B), by striking “or the Director of the Office of Thrift Supervision, as appropriate,” each place that term appears;

(E) in subsection (p)—

(i) in paragraph (2)(B), by striking “the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,” and inserting “or the Corporation,”; and
(ii) in paragraph (3)(B), by striking “, the FSLIC Resolution Fund, the Resolution Trust Corporation,”; and
(F) in subsection (r), by striking “and the Resolution Trust Corporation”;
(7) in section 18 (12 U.S.C. 1828)—
(A) in subsection (c)(2)—
(i) in subparagraph (A), by inserting “or a Federal savings association” before the semicolon;
(ii) in subparagraph (B), by adding “and” at the end;
(iii) in subparagraph (C), by striking “(except” and all that follows through “; and” and inserting “or a State savings association.”; and
(iv) by striking subparagraph (D);
(B) in subsection (g), by striking “and the Director of the Office of Thrift Supervision” and inserting “the Comptroller of the Currency”;
(C) in subsection (i)(2)(C), by striking
“Director of the Office of Thrift Supervision”
and inserting “Corporation”; and

(D) in subsection (m)—

(i) in paragraph (1)—

(I) in subparagraph (A), by strik-
ing “and the Director of the Office of
Thrift Supervision” and inserting “or
the Comptroller of the Currency, as
appropriate,”; and

(II) in subparagraph (B), by strik-
ing “and orders of the Director
of the Office of Thrift Supervision”
and inserting “of the Comptroller of
the Currency and orders of the Cor-
poration and the Comptroller of the
Currency”;

(ii) in paragraph (2)—

(I) in subparagraph (A), by strik-
ing “Director of the Office of Thrift
Supervision” and inserting “Com-
troller of the Currency, as appro-
priate,”; and

(II) in subparagraph (B)—
(aa) in the matter before clause (i), by striking “Director of the Office of Thrift Supervision” and inserting “Corporation or the Comptroller of the Currency, as appropriate,”; and

(bb) in the matter following clause (ii)—

(AA) in the first sentence, by striking “Director of the Office of Thrift Supervision” and inserting “Office of the Comptroller of the Currency, as appropriate,”; and

(BB) by striking the second sentence and inserting the following: “The Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to ter-
minate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.”; and

(iii) in paragraph (3)—

(I) in subparagraph (A), in the second sentence—

(aa) by inserting “, in the case of a Federal savings association,” before “consult with”; and

(bb) by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(II) in subparagraph (B)—

(aa) in the subparagraph heading, by striking “DIRECTOR” and inserting “COMPTROLLER OF THE CURRENCY”;

(bb) by striking “Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and
(ee) by inserting “as to Federal savings associations” after “compliance”;

(8) in section 19(e) (12 U.S.C. 1829(e))—

(A) in paragraph (1), by striking “Director of the Office of Thrift Supervision” and inserting “Board of Governors of the Federal Reserve System”; and

(B) in paragraph (2), by striking “Director of the Office of Thrift Supervision” and inserting “Board of Governors of the Federal Reserve System”; and

(9) in section 28 (12 U.S.C. 1831e)—

(A) in subsection (e)—

(i) in paragraph (2)—

(I) in subparagraph (A)(ii), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate”;

(II) in subparagraph (C), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate,”; and
(III) in subparagraph (F), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate”; and

(ii) in paragraph (3)—

(I) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate”; and

(II) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency or the Corporation, as appropriate,”; and

(B) in subsection (h)(2), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency, of the Corporation,”.

SEC. 365. FEDERAL HOME LOAN BANK ACT.

(a) REPEAL OF SECTION 18(c).—Effective 90 days after the transfer date, section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is repealed.
(b) **REPEAL OF SECTION 21A.**—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is repealed.

**SEC. 366. FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.**


1. in section 1315(b) (12 U.S.C. 4515(b)), by striking “the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.” and inserting “and the Federal Deposit Insurance Corporation.”; and
2. in section 1317(c) (12 U.S.C. 4517(c)), by striking “the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision” and inserting “or the Federal Deposit Insurance Corporation”.

**SEC. 367. FEDERAL RESERVE ACT.**

The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—

1. in section 11(a)(2) (12 U.S.C. 248(a)(2))—
   (A) by inserting “State savings associations that are insured depository institutions
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(as defined in section 3 of the Federal Deposit Insurance Act),” after “case of insured”; (B) by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; (C) by inserting “Federal” before “savings association which”; and (D) by striking “savings and loan association” and inserting “savings association”; and (2) in section 19(b) (12 U.S.C. 461(b))— (A) in paragraph (1)(F), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and (B) in paragraph (4)(B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”. SEC. 368. FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended— (1) in section 203 (12 U.S.C. 1812 note), by striking subsection (b); (2) in section 302(1) (12 U.S.C. 1467a note), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;
(3) in section 305(12 U.S.C. 1464 note), by striking subsection (b);

(4) in section 308(a) (12 U.S.C. 1463 note), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(5) in section 402 (12 U.S.C. 1437 note)—

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

(B) by striking subsection (b);

(C) in subsection (e)—

(i) in paragraph (1), by striking “Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(ii) in each of paragraphs (2), (3), and (4), by striking “Director of the Office of Thrift Supervision” each place that term appears and inserting “Comptroller of the Currency”; and

(D) by striking “Federal Housing Finance Board” each place that term appears and inserting “Federal Housing Finance Agency”;

(6) in section 1103(a) (12 U.S.C. 3332(a)), by striking “and the Resolution Trust Corporation”;

(7) in section 1205(b) (12 U.S.C. 1818 note)—
(A) in paragraph (1)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraphs (C) through (F) as subparagraphs (B) through (E), respectively; and

(B) in paragraph (2), by striking “paragraph (1)(F)” and inserting “paragraph (1)(E)”;

(8) in section 1206 (12 U.S.C. 1833b)—

(A) by striking “Board, the Oversight Board of the Resolution Trust Corporation” and inserting “Agency, and”; and

(B) by striking “, and the Office of Thrift Supervision”;

(9) in section 1216 (12 U.S.C. 1833e)—

(A) in subsection (a)—

(i) in paragraph (3), by adding “and” at the end;

(ii) in paragraph (4), by striking the semicolon at the end and inserting a period;

(iii) by striking paragraphs (2), (5), and (6); and
(iv) by redesignating paragraphs (3) and (4), as paragraphs (2) and (3), respectively;

(B) in subsection (c)—

(i) by striking “the Director of the Office of Thrift Supervision,” and inserting “and”; and

(ii) by striking “the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation”; and

(C) in subsection (d)—

(i) by striking paragraphs (3), (5), and (6); and

(ii) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4), and (5), respectively.


Section 3(a)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking “, the Office of Thrift Supervision”.

SEC. 370. HOME OWNERS’ LOAN ACT.

The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended—
(1) in section 1 (12 U.S.C. 1461), by striking the table of contents;

(2) in section 2 (12 U.S.C. 1462), as amended by this Act—

(A) by striking paragraphs (1) and (3);

(B) by redesignating paragraph (2) as paragraph (1);

(C) by redesignating paragraphs (4) through (9) as paragraphs (2) through (7), respectively; and

(D) by adding at the end the following:

“(8) BOARD.—The term ‘Board’, other than in the context of the Board of Directors of the Corporation, means the Board of Governors of the Federal Reserve System.

“(9) COMPTROLLER.—The term ‘Comptroller’ means the Comptroller of the Currency.”;

(3) in section 3 (12 U.S.C. 1462a)—

(A) by striking the section heading and inserting the following:

“SEC. 3. ADMINISTRATIVE PROVISIONS.”;

(B) by striking subsections (a), (b), (c), (d), (h), (i), and (j);
(C) by redesignating subsections (e), (f), and (g), as subsections (a) through (e), respectively;

(D) in subsection (a), as so redesignated, in the matter preceding paragraph (1), by striking “The Director” and inserting “In accordance with subtitle A of title III of the Restoring American Financial Stability Act of 2010, the appropriate Federal banking agency”;

(E) in subsection (b), as so redesignated, by striking “or any other provision of law administered by the Director”; and

(F) in subsection (c), as so redesignated—

(i) by striking “Director” and inserting “Comptroller and the Corporation”; and

(ii) by striking “include—” and all that follows through “(2) a description” and inserting the following: “include a description”;

(4) in section 4 (12 U.S.C. 1463)—

(A) in subsection (a)—

(i) in the subsection heading, by striking “FEDERAL”;
(ii) by striking paragraphs (1) and (2) and inserting the following:

“(1) Examination and safe and sound operation.—

“(A) Federal savings associations.—

The Comptroller shall provide for the examination and safe and sound operation of Federal savings associations.

“(B) State savings associations.—The Corporation shall provide for the examination and safe and sound operation of State savings associations.

“(2) Regulations for savings associations.—The Comptroller may prescribe regulations with respect to savings associations, as the Comptroller determines to be appropriate to carry out the purposes of this Act.”; and

(iii) in paragraph (3), by striking “Director” each place that term appears and inserting “Comptroller and the Corporation”; 

(B) in subsection (b)—

(i) in paragraph (2)—

(I) in subparagraph (A), by adding “and” at the end;
(II) in subparagraph (B), by striking “; and” and inserting a period; and

(III) by striking subparagraph (C); and

(ii) by striking “Director” each place that term appears and inserting “Comptroller”;

(C) in subsection (e)—

(i) by striking “All regulations and policies of the Director” and inserting “The regulations of the Comptroller and the policies of the Comptroller and the Corporation”; and

(ii) by striking “of the Currency”;

(D) in subsection (e)(5), by striking “Director” and inserting “Comptroller”;

(E) in subsection (f), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; and

(F) in subsection (h), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;
(i) in paragraph (5)—

(I) in subparagraph (A), by striking “Director” and inserting “appropriate Federal banking agency”; and

(II) in subparagraph (B)—

(aa) by striking “The Director” and inserting “The appropriate Federal banking agency”; and

(bb) by striking “the Director” and inserting “the appropriate Federal banking agency”; and

(ii) except as provided in clause (i), by striking “Director” each place that term appears and inserting “Comptroller”;

(B) in subsection (d)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking “Director’s own name and through the Director’s own attorneys” and inserting “the name of the appropriate Federal banking agency and through the attorneys of the appropriate Federal banking agency”; and
(II) in subparagraph (B)(v)—

(aa) by striking “subpenas” and inserting “subpoenas”; and

(bb) by striking “subpena” and inserting “subpoena”;

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) by striking “Director of the Office of Thrift Supervision” and inserting “appropriate Federal banking agency”; and

(bb) by striking “Director determines, in the Director’s discretion” and inserting “appropriate Federal banking agency determines, in the discretion of the appropriate Federal banking agency”;

(II) in subparagraph (E)(ii), in the first sentence, by striking “Director, at the Director’s discretion” and inserting “Comptroller at the discretion of the Comptroller”; and

(III) except as provided in subclauses (I) and (II), in subparagraphs
(B), (C), (D), and (E), by striking “Director” each place that term appears and inserting “Comptroller”; (iii) in paragraph (3), in subparagraph (B)—

(I) in the subparagraph heading, by striking “OR RTC”; and

(II) by striking “Corporation or the Resolution Trust”; 

(iv) in paragraph (6)—

(I) in subparagraph (A), by striking “Director” and inserting “Comptroller”; and

(II) in subparagraphs (B)(i) and (C), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; 

(v) in paragraph (7)—

(I) in subparagraph (C), by striking “Director” and inserting “the Comptroller or the Corporation, as appropriate,”; and

(II) by striking subparagraph (E) and inserting the following:
“(E) ADMINISTRATION BY THE COMPTROLLER AND THE CORPORATION.—The Comptroller may issue such regulations, and the appropriate Federal banking agency may issue such orders, including those issued pursuant to section 8 of the Federal Deposit Insurance Act, as may be necessary to administer and carry out this paragraph and to prevent evasion of this paragraph.”;

(vi) in each of paragraphs (1), (3), and (7), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; and

(vii) except as provided in clauses (i) through (vi), by striking “Director” each place that term appears and inserting “Comptroller”;

(C) in subsection (i)—

(i) in paragraph (2), in the heading, by striking “DIRECTOR” and inserting “COMPTROLLER”; and

(ii) in paragraph (5)(A), by striking “of the Currency”;
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(D) in subsection (o)(2)(B), by striking “Director’s determination” and inserting “determination of the Comptroller”;

(E) in subsection (q)—

(i) in paragraph (6), by striking “of Governors of the Federal Reserve System”;

and

(ii) by striking “Director” each place that term appears and inserting “Board”; 

(F) in subsection (s)—

(i) in paragraph (3), by striking “Director’s discretion, the Director” and inserting “discretion of the appropriate Federal banking agency, the appropriate Federal banking agency,”;

(ii) in paragraph (4), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; and

(iii) in paragraph (5), by striking “Director’s approval” and inserting “approval of the appropriate Federal banking agency”; 

(G) in subparagraph (t)—
(i) in paragraph (1), by striking sub-
paragraph (D);
(ii) by striking paragraph (3) and in-
serting the following:
“(3) [Repealed].”;
(iii) in paragraph (5)—
(I) in subparagraph (B), by
striking “Corporation, in its sole dis-
cretion” and inserting “appropriate
Federal banking agency, in the sole
discretion of the appropriate Federal
banking agency”; and
(II) by striking subparagraph
(D);
(iv) in paragraph (6)—
(I) by striking subparagraph (A)
and inserting the following:
“(A) [Reserved].”;
(II) in subparagraph (B), by
striking “Director” each place that
term appears and inserting “ap-
propriate Federal banking agency”;
(III) in subparagraph (C)—
(aa) in clause (i), by striking
“Director’s prior approval” and
inserting “prior approval of the appropriate Federal banking agency”; 

(bb) in clause (ii), by striking “Director’s discretion” and inserting “discretion of the appropriate Federal banking agency”; and 

(ee) by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; 

(IV) in subparagraph (E), by striking “Director shall” and inserting “appropriate Federal banking agency may”; and 

(V) in subparagraph (F), by striking “Director” and all that follows through the end of the subparagraph and inserting “appropriate Federal banking agency under this Act or any other provision of law.”; 

(v) in paragraph (7), by striking “Director” each place that term appears and
inserting “appropriate Federal banking agency”;

(vi) by striking paragraph (8) and inserting the following:

“(8) [Repealed].”;

(vii) in paragraph (9)—

(I) in subparagraph (A), by striking “Director” and inserting “Comptroller”;

(II) in subparagraph (C), by striking “of the Currency”; and

(III) by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(viii) except as provided in clauses (i) through (vii), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; 

(H) in subsection (u), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; 

(I) in subsection (v)—

(i) in paragraph (2), by striking “Director’s determinations” and inserting “de-
terminations of the appropriate Federal banking agency”; and

(ii) by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(J) in subsection (w)(1)—

(i) in subparagraph (A)(II), by striking “Director’s intention” and inserting “intention of the Comptroller”; and

(ii) in subparagraph (B), by striking “Director’s intention” and inserting “intention of the Comptroller”; and

(K) except as provided in subparagraphs (A) through (J), by striking “Director” each place that term appears and inserting “Comptroller”;

(6) in section 8 (12 U.S.C. 1466a), by striking “Director” each place that term appears and inserting “Comptroller”;

(7) in section 9 (12 U.S.C. 1467)—

(A) in subsection (a), by striking “assessed by the Director” and all that follows through the end of the subsection and inserting the following: “assessed by—
“(1) the Comptroller, against each such Federal savings association, as the Comptroller deems necessary or appropriate; and

“(2) the Corporation, against each such State savings association, as the Corporation deems necessary or appropriate.”;

(B) in subsection (e)—

(i) by striking “Only the Director” and inserting “The Comptroller”; and

(ii) by striking “Director’s designee” and inserting “designee of the Comptroller”;  

(C) by striking subsection (f) and inserting the following:

“(f) [Reserved].”;  

(D) in subsection (g)—

(i) in paragraph (1), by striking “Director” and inserting “appropriate Federal banking agency”; and

(ii) in paragraph (2), by striking “Director, or the Corporation, as the case may be,” and inserting “appropriate Federal banking agency for the savings association”; 
(E) in subsection (i), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; 

(F) in subsection (j), by striking “Director’s sole discretion” and inserting “sole discretion of the appropriate Federal banking agency”; 

(G) in subsection (k), by striking “Director may assess against institutions for which the Director is the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act,” and inserting “appropriate Federal banking agency may assess against an institution”; and 

(H) except as provided in subparagraphs (A) through (G), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; 

(8) in section 10 (12 U.S.C. 1467a)— 

(A) in subsection (a)(1), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; 

(B) in subsection (b)— 

(i) in paragraph (2), by striking “and the regional office of the Director of the
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district in which its principal office is lo-
ed,”; and

(ii) in paragraph (6), by striking “Di-
tector’s own motion or application” and in-
serting “motion or application of the
Board”;

(C) in subsection (c)—

(i) in paragraph (2)(F), by striking
“of Governors of the Federal Reserve Sys-
tem”;

(ii) in paragraph (4)(B), in the sub-
paragraph heading, by striking “BY DIREC-
tor”; 

(iii) in paragraph (6)(D), in the sub-
paragraph heading, by striking “BY DIREC-
tor”; and

(iv) in paragraph (9)(E), by inserting
“(in consultation with the appropriate Fed-
eral banking agency)” after “including a
determination”; 

(D) in subsection (g)(5)(B), by striking
“the Director’s discretion” and inserting “the
discretion of the Board”;
(E) in subsection (l), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”;

(F) in subsection (m), by striking “Director” and inserting “appropriate Federal banking agency”;

(G) in subsection (s)—

(i) in paragraph (2)—

(I) in subparagraph (B)(ii), by striking “Director’s judgment” and inserting “judgment of the appropriate Federal banking agency for the savings association”; and

(II) by striking “Director” each place that term appears and inserting “appropriate Federal banking agency for the savings association”; and

(ii) in paragraph (4), by striking “Director” and inserting “Comptroller”; and

(H) except as provided in subparagraphs (A) through (G), by striking “Director” each place that term appears and inserting “Board”; and

(9) in section 11 (12 U.S.C. 1468), by striking “Director” each place that term appears and inserting “appropriate Federal banking agency”; and
(10) in section 12 (12 U.S.C. 1468a), by strik-
ing “the Director” and inserting “a Federal banking
agency”.

SEC. 371. HOUSING ACT OF 1948.

Section 502(c) of the Housing Act of 1948 (12
U.S.C. 1701c(c)) is amended—

(1) in the matter preceding paragraph (1), by
striking “and the Director of the Office of Thrift
Supervision” and inserting “, the Comptroller of the
Currency, and the Federal Deposit Insurance Cor-
poration”; and

(2) in paragraph (3), by striking “Board” and
inserting “Agency”.

SEC. 372. HOUSING AND COMMUNITY DEVELOPMENT ACT

Section 543 of the Housing and Community Develop-
is amended—

(1) in subsection (e)(1)—

(A) by striking subparagraphs (D) through
(F); and

(B) by redesignating subparagraphs (G)
and (H) as subparagraphs (D) and (E), respec-
tively; and

(2) in subsection (f)—
(A) in paragraph (2), by striking “the Office of Thrift Supervision,” each place that term appears; and

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking “the Office of Thrift Supervision,”; and

(ii) in subparagraph (D), by striking “Office of Thrift Supervision,” and inserting “Comptroller of the Currency.”

SEC. 373. HOUSING AND URBAN-RURAL RECOVERY ACT OF 1983.


SEC. 374. NATIONAL HOUSING ACT.

Section 202(f) of the National Housing Act (12 U.S.C. 1708(f)) is amended—

(1) by striking paragraph (5) and inserting the following:

“(5) if the mortgagee is a national bank, a subsidiary or affiliate of such bank, a Federal savings association or a subsidiary or affiliate of a savings association, the Comptroller of the Currency;”;

"
(2) in paragraph (6), by adding “and” at the end;

(3) in paragraph (7)—

(A) by inserting “or State savings association” after “State bank”; and

(B) by striking “; and” and inserting a period; and

(4) by striking paragraph (8).

SEC. 375. NEIGHBORHOOD REINVESTMENT CORPORATION ACT.

Section 606(c)(3) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8105(c)(3)) is amended by striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”.

SEC. 376. PUBLIC LAW 93–100.

Section 5(d) of Public Law 93–100 (12 U.S.C. 1470(a)) is amended—

(1) in paragraph (1), by striking “Federal Savings and Loan Insurance Corporation with respect to insured institutions, the Board of Governors of the Federal Reserve System with respect to State member insured banks, and the Federal Deposit Insurance Corporation with respect to State non-member insured banks” and inserting “appropriate Federal banking agency, with respect to the institu-
tions subject to the jurisdiction of each such agen-

cy,”; and

(2) in paragraph (2), by striking “supervisory” and inserting “banking”.

SEC. 377. SECURITIES EXCHANGE ACT OF 1934.


(1) in section 3(a)(34) (15 U.S.C. 78c(a)(34))—

(A) in subparagraph (A)—

(i) in clause (i), by striking “or a sub-
sidiary or a department or division of any such bank” and inserting “a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association”;

(ii) in clause (ii), by striking “or a subsidiary or a department or division of such subsidiary” and inserting “a sub-
sidiary or a department or division of such
subsidiary, or a savings and loan holding company”; 

(iii) in clause (iii), by striking “or a subsidiary or department or division thereof;” and inserting “a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and”;

(iv) by striking clause (iv); and

(v) by redesignating clause (v) as clause (iv);

(B) in subparagraph (B)—

(i) in clause (i), by striking “or a subsidiary of any such bank” and inserting “a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a sub-
sidiary of any such Federal savings association”; 

(ii) in clause (ii), by striking “or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph” and inserting “a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company”; 

(iii) in clause (iii), by striking “or a subsidiary thereof;” and inserting “a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and”; 

(iv) by striking clause (iv); and 

(v) by redesignating clause (v) as clause (iv); 

(C) in subparagraph (C)—
(i) in clause (i), by striking “bank” and inserting “bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation”;

(ii) in clause (ii), by striking “or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph” and inserting “a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company”;

(iii) in clause (iii), by striking “System)” and inserting, “System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and”;

(iv) by striking clause (iv); and
(v) by redesignating clause (v) as clause (iv);

(D) in subparagraph (D)—

(i) in clause (i), by inserting after “bank” the following: “or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation”; 

(ii) in clause (ii), by adding “and” at the end;

(iii) by striking clause (iii);

(iv) by redesignating clause (iv) as clause (iii); and

(v) in clause (iii), as so redesignated, by inserting after “bank” the following: “or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation”; 

(E) in subparagraph (F)—

(i) in clause (i), by inserting after “bank” the following: “or a Federal sav-
ings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation”;

(ii) by striking clause (ii);

(iii) by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively; and

(iv) in clause (iii), as so redesignated, by inserting before the semicolon the following: “or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation”;

(F) in subparagraph (G)—

(i) in clause (i), by inserting after “national bank” the following: “, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation,”;
(ii) in clause (iii)—

(I) by inserting after “bank)” the following: “; a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation,”; and

(II) by adding “and” at the end;

(iii) by striking clause (iv); and

(iv) by redesignating clause (v) as clause (iv); and

(G) in the undesignated matter following subparagraph (H), by striking “, and the term ‘District of Columbia savings and loan association’ means any association subject to examination and supervision by the Office of Thrift Supervision under section 8 of the Home Owners’ Loan Act of 1933”;
(B) by striking “(3)” and all that follows through “vested in the Office of Thrift Supervision” and inserting “and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation”; and

(C) in the second sentence, by striking “the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision” and inserting “and the Federal Deposit Insurance Corporation”;  

(3) in section 15C(g)(1) (15 U.S.C. 78o–5(g)(1)), by striking “the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation,”; and

(4) in section 23(b)(1) (15 U.S.C. 78w(b)(1)), by striking “, other than the Office of Thrift Supervision,”.

SEC. 378. TITLE 18, UNITED STATES CODE.

Title 18, United States Code, is amended—

(1) in section 212(e)(2)—

(A) by striking subparagraph (C); and
(B) by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively;

(2) in section 657, by striking “Office of Thrift Supervision, the Resolution Trust Corporation,”;

(3) in section 981(a)(1)(D)—

(A) by striking “Resolution Trust Corporation,”; and

(B) by striking “or the Office of Thrift Supervision”;

(4) in section 982(a)(3)—

(A) by striking “Resolution Trust Corporation,”; and

(B) by striking “or the Office of Thrift Supervision”;

(5) in section 1006—

(A) by striking “Office of Thrift Supervision,”; and

(B) by striking “the Resolution Trust Corporation,”;

(6) in section 1014—

(A) by striking “the Office of Thrift Supervision”; and

(B) by striking “the Resolution Trust Corporation,”; and
(7) in section 1032(1)—

(A) by striking “the Resolution Trust Cor-
poration,”; and

(B) by striking “or the Director of the Of-
vice of Thrift Supervision”.

SEC. 379. TITLE 31, UNITED STATES CODE.

Title 31, United States Code, is amended—

(1) in section 321—

(A) in subsection (e)—

(i) in paragraph (1), by adding “and” at the end;

(ii) in paragraph (2), by striking “; and” and inserting a period; and

(iii) by striking paragraph (3); and

(B) by striking subsection (e); and

(2) in section 714(a), by striking “the Office of
the Comptroller of the Currency, and the Office of
Thrift Supervision.” and inserting “and the Office of
the Comptroller of the Currency.”.

TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS
AND OTHERS

SEC. 401. SHORT TITLE.

This title may be cited as the “Private Fund Invest-
ment Advisers Registration Act of 2010”.

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SEC. 402. DEFINITIONS.

(a) INVESTMENT ADVISERS ACT OF 1940 DEFINITIONS.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

“(29) The term ‘private fund’ means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.

“(30) The term ‘foreign private adviser’ means any investment adviser who—

“(A) has no place of business in the United States;

“(B) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser;

“(C) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

“(D) neither—
“(i) holds itself out generally to the public in the United States as an investment adviser; nor

“(ii) acts as—

“(I) an investment adviser to any investment company registered under the Investment Company Act of 1940;

or

“(II) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53), and has not withdrawn its election.”.

(b) OTHER DEFINITIONS.—As used in this title, the terms “investment adviser” and “private fund” have the same meanings as in section 202 of the Investment Advisers Act of 1940, as amended by this title.

SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended—
(1) in paragraph (1), by inserting “, other than
an investment adviser who acts as an investment ad-
viser to any private fund,” before “all of whose”;

(2) by striking paragraph (3) and inserting the
following:

“(3) any investment adviser that is a foreign
private adviser;”; and

(3) in paragraph (5), by striking “or” at the end;

(4) in paragraph (6), by striking the period at
the end and inserting “; or”; and

(5) by adding at the end the following:

“(7) any investment adviser, other than any en-
tity that has elected to be regulated or is regulated
as a business development company pursuant to sec-
tion 54 of the Investment Company Act of 1940 (15
U.S.C. 80a–54), who solely advises—

“(A) small business investment companies
that are licensees under the Small Business In-
vestment Act of 1958;

“(B) entities that have received from the
Small Business Administration notice to pro-
ceed to qualify for a license as a small business
investment company under the Small Business
Investment Act of 1958, which notice or license has not been revoked; or

“(C) applicants that are affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending.”.

SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS; DISCLOSURES.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

“(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

“(1) IN GENERAL.—The Commission may require any investment adviser registered under this title—

“(A) to maintain such records of, and file with the Commission such reports regarding, private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for
the assessment of systemic risk by the Financial Stability Oversight Council (in this subsection referred to as the ‘Council’); and

“(B) to provide or make available to the Council those reports or records or the information contained therein.

“(2) TREATMENT OF RECORDS.—The records and reports of any private fund to which an investment adviser registered under this title provides investment advice shall be deemed to be the records and reports of the investment adviser.

“(3) REQUIRED INFORMATION.—The records and reports required to be maintained by a private fund and subject to inspection by the Commission under this subsection shall include, for each private fund advised by the investment adviser, a description of—

“(A) the amount of assets under management and use of leverage, including off-balance-sheet leverage;

“(B) counterparty credit risk exposure;

“(C) trading and investment positions;

“(D) valuation policies and practices of the fund;

“(E) types of assets held;
“(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

“(G) trading practices; and

“(H) such other information as the Commission, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised.

“(4) MAINTENANCE OF RECORDS.—An investment adviser registered under this title shall maintain such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

“(5) FILING OF RECORDS.—The Commission shall issue rules requiring each investment adviser to a private fund to file reports containing such infor-
mation as the Commission deems necessary and ap-
propriate in the public interest and for the protec-
tion of investors or for the assessment of systemic
risk.

“(6) EXAMINATION OF RECORDS.—

“(A) PERIODIC AND SPECIAL EXAMINA-
TIONS.—The Commission—

“(i) shall conduct periodic inspections
of the records of private funds maintained
by an investment adviser registered under
this title in accordance with a schedule es-
tablished by the Commission; and

“(ii) may conduct at any time and
from time to time such additional, special,
and other examinations as the Commission
may prescribe as necessary and appro-
priate in the public interest and for the
protection of investors, or for the assess-
ment of systemic risk.

“(B) AVAILABILITY OF RECORDS.—An in-
vestment adviser registered under this title shall
make available to the Commission any copies or
extracts from such records as may be prepared
without undue effort, expense, or delay, as the
Commission or its representatives may reasonably request.

“(7) INFORMATION SHARING.—

“(A) IN GENERAL.—The Commission shall make available to the Council copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Council may consider necessary for the purpose of assessing the systemic risk posed by a private fund.

“(B) CONFIDENTIALITY.—The Council shall maintain the confidentiality of information received under this paragraph in all such reports, documents, records, and information, in a manner consistent with the level of confidentiality established for the Commission pursuant to paragraph (8). The Council shall be exempt from section 552 of title 5, United States Code, with respect to any information in any report, document, record, or information made available, to the Council under this subsection.”.

“(8) COMMISSION CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission may not be compelled to dis-
close any report or information contained therein re-
quired to be filed with the Commission under this
subsection, except that nothing in this subsection
authorizes the Commission—

“(A) to withhold information from Con-
gress, upon an agreement of confidentiality; or

“(B) prevent the Commission from com-
plying with—

“(i) a request for information from
any other Federal department or agency or
any self-regulatory organization requesting
the report or information for purposes
within the scope of its jurisdiction; or

“(ii) an order of a court of the United
States in an action brought by the United
States or the Commission.

“(9) OTHER RECIPIENTS CONFIDENTIALITY.—
Any department, agency, or self-regulatory organiza-
tion that receives reports or information from the
Commission under this subsection shall maintain the
confidentiality of such reports, documents, records,
and information in a manner consistent with the
level of confidentiality established for the Commiss-
ion under paragraph (8).

“(10) PUBLIC INFORMATION EXCEPTION.—
“(A) In General.—The Commission, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the Commission under this subsection, shall be exempt from the provisions of section 552 of title 5, United States Code, with respect to any such report, document, record, or information. Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts ascertained during an examination, as provided by section 210(b) of this title.

“(B) Proprietary Information.—For purposes of this paragraph, proprietary information includes—

“(i) sensitive, non-public information regarding the investment or trading strategies of the investment adviser;

“(ii) analytical or research methodologies;

“(iii) trading data;
“(iv) computer hardware or software containing intellectual property; and

“(v) any additional information that the Commission determines to be proprietary.

“(11) ANNUAL REPORT TO CONGRESS.—The Commission shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.”.

SEC. 405. DISCLOSURE PROVISION AMENDMENT.

Section 210(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10(c)) is amended by inserting before the period at the end the following: “or for purposes of assessment of potential systemic risk”.

SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) is amended—

(1) in subsection (a), by inserting before the period at the end of the first sentence the following: “, including rules and regulations defining technical, trade, and other terms used in this title, except that the Commission may not define the term ‘client’ for purposes of paragraphs (1) and (2) of section 206
to include an investor in a private fund managed by
an investment adviser, if such private fund has en-
tered into an advisory contract with such adviser’’;
and
(2) by adding at the end the following:

“(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The
Commission and the Commodity Futures Trading Com-
mission shall, after consultation with the Council but not
later than 12 months after the date of enactment of the
Private Fund Investment Advisers Registration Act of
2010, jointly promulgate rules to establish the form and
content of the reports required to be filed with the Com-
mission under subsection 204(b) and with the Commodity
Futures Trading Commission by investment advisers that
are registered both under this title and the Commodity
Exchange Act (7 U.S.C. 1a et seq.).”.

SEC. 407. EXEMPTION OF VENTURE CAPITAL FUND ADVIS-
ERS.

Section 203 of the Investment Advisers Act of 1940
(15 U.S.C. 80b–3) is amended by adding at the end the
following:

“(l) EXEMPTION OF VENTURE CAPITAL FUND AD-
VISERS.—No investment adviser shall be subject to the
registration requirements of this title with respect to the
provision of investment advice relating to a venture capital
fund. Not later than 1 year after the date of enactment of this subsection, the Commission shall issue final rules to define the term ‘venture capital fund’ for purposes of this subsection.”.

SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRI
VATE EQUITY FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

“(m) EXEMPTION OF AND REPORTING BY PRIVATE EQUITY FUND ADVISERS.—

“(1) IN GENERAL.—Except as provided in this subsection, no investment adviser shall be subject to the registration or reporting requirements of this title with respect to the provision of investment advice relating to a private equity fund or funds.

“(2) MAINTENANCE OF RECORDS AND ACCESS BY COMMISSION.—Not later than 1 year after the date of enactment of this subsection, the Commission shall issue final rules—

“(A) to require investment advisers described in paragraph (1) to maintain such records and provide to the Commission such annual or other reports as the Commission taking into account fund size, governance, investment
strategy, risk, and other factors, as the Commission determines necessary and appropriate in the public interest and for the protection of investors; and

“(B) to define the term ‘private equity fund’ for purposes of this subsection.”.

SEC. 409. FAMILY OFFICES.

(a) IN GENERAL.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking “or (G)” and inserting the following: “; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H)”.

(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940, as added by this section, regarding the definition of the term “family office” shall provide for an exemption that—

(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act; and

(2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices.
SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)(1)) is amended—

(1) in subparagraph (A)—

(A) by striking “$25,000,000” and inserting “$100,000,000”; and

(B) by striking “or” at the end;

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

(3) by adding at the end the following:

“(C) is an adviser to a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn its election.”.

SEC. 411. CUSTODY OF CLIENT ASSETS.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by adding at the end the following new section:

“SEC. 223. CUSTODY OF CLIENT ACCOUNTS.

“An investment adviser registered under this title shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation,
verification of such assets by an independent public ac-
countant, as the Commission may, by rule, prescribe.”.

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STAND-
ARD.

(a) In General.—The Commission shall adjust any
net worth standard for an accredited investor, as set forth
in the rules of the Commission under the Securities Act
of 1933, so that the individual net worth of any natural
person, or joint net worth with the spouse of that person,
at the time of purchase, is more than $1,000,000 (as such
amount is adjusted periodically by rule of the Commis-
ion), excluding the value of the primary residence of such
natural person, except that during the 4-year period that
begins on the date of enactment of this Act, any net worth
standard shall be $1,000,000, excluding the value of the
primary residence of such natural person.

(b) Review and Adjustment.—

(1) Initial review and adjustment.—

(A) Initial review.—The Commission
may undertake a review of the definition of the
term “accredited investor”, as such term ap-
plies to natural persons, to determine whether
the requirements of the definition, excluding the
requirement relating to the net worth standard
described in subsection (a), should be adjusted
or modified for the protection of investors, in
the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—
Upon completion of a review under subpara-
graph (A), the Commission may, by notice and
comment rulemaking, make such adjustments
to the definition of the term “accredited inves-
tor”, excluding adjusting or modifying the re-
quirement relating to the net worth standard
described in subsection (a), as such term ap-
plies to natural persons, as the Commission
may deem appropriate for the protection of in-
vestors, in the public interest, and in light of
the economy.

(2) SUBSEQUENT REVIEWS AND ADJUST-
MENT.—

(A) SUBSEQUENT REVIEWS.—Not earlier
than 4 years after the date of enactment of this
Act, and not less frequently than once every 4
years thereafter, the Commission shall under-
take a review of the definition, in its entirety,
of the term “accredited investor”, as defined in
section 230.215 of title 17, Code of Federal
Regulations, or any successor thereto, as such
term applies to natural persons, to determine
whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—

Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term “accredited investor”, as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

SEC. 413. GAO STUDY AND REPORT ON ACCREDITED INVESTORS.

The Comptroller General of the United States shall conduct a study on the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in private funds, and shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study
not later than 3 years after the date of enactment of this Act.

SEC. 414. GAO STUDY ON SELF-REGULATORY ORGANIZATION FOR PRIVATE FUNDS.

The Comptroller General of the United States shall—

(1) conduct a study of the feasibility of forming a self-regulatory organization to oversee private funds; and

(2) submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study, not later than 1 year after the date of enactment of this Act.

SEC. 415. COMMISSION STUDY AND REPORT ON SHORT SELLING.

(a) Studies.—The Division of Risk, Strategy, and Financial Innovation of the Commission shall conduct—

(1) a study, taking into account current scholarship, on the state of short selling on national securities exchanges and in the over-the-counter markets, with particular attention to the impact of recent rule changes and the incidence of—

(A) the failure to deliver shares sold short;

or
(B) delivery of shares on the fourth day following the short sale transaction; and

(2) a study of—

(A) the feasibility, benefits, and costs of requiring reporting publicly, in real time short sale positions of publicly listed securities, or, in the alternative, reporting such short positions in real time only to the Commission and the Financial Industry Regulatory Authority; and

(B) the feasibility, benefits, and costs of conducting a voluntary pilot program in which public companies will agree to have all trades of their shares marked “short”, “market maker short”, “buy”, “buy-to-cover”, or “long”, and reported in real time through the Consolidated Tape.

(b) REPORTS.—The Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(1) on the results of the study required under subsection (a)(1), including recommendations for market improvements, not later than 2 years after the date of enactment of this Act; and
(2) on the results of the study required under subsection (a)(2), not later than 1 year after the date of enactment of this Act.

SEC. 416. TRANSITION PERIOD.

Except as otherwise provided in this title, this title and the amendments made by this title shall become effective 1 year after the date of enactment of this Act, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission.

TITLE V—INSURANCE
Subtitle A—Office of National Insurance

SEC. 501. SHORT TITLE.

This subtitle may be cited as the “Office of National Insurance Act of 2010”.

SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL INSURANCE.

(a) Establishment of Office.—Subchapter I of chapter 3 of subtitle I of title 31, United States Code, is amended—

(1) by redesignating section 312 as section 315;

(2) by redesignating section 313 as section 312;

and
(3) by inserting after section 312 (as so redesignated) the following new sections:

“SEC. 313. OFFICE OF NATIONAL INSURANCE.

“(a) Establishment.—There is established within the Department of the Treasury the Office of National Insurance.

“(b) Leadership.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined under section 3132 of title 5, United States Code.

“(c) Functions.—

“(1) Authority pursuant to direction of Secretary.—The Office, pursuant to the direction of the Secretary, shall have the authority—

“(A) to monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system;

“(B) to monitor the extent to which traditionally underserved communities and consumers, minorities (as such term is defined in section 1204(e) of the Financial Institutions
Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance;

“(C) to recommend to the Financial Stability Oversight Council that it designate an insurer, including the affiliates of such insurer, as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors pursuant to title I of the Restoring American Financial Stability Act of 2010;

“(D) to assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

“(E) to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating International Insurance Agreements on Prudential Measures;
“(F) to determine, in accordance with subsection (f), whether State insurance measures are preempted by International Insurance Agreements on Prudential Measures;

“(G) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance; and

“(H) to perform such other related duties and authorities as may be assigned to the Office by the Secretary.

“(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

“(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as such insurance is determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), and crop insurance, as established by the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

“(e) GATHERING OF INFORMATION.—

“(1) IN GENERAL.—In carrying out the functions required under subsection (c), the Office may—
“(A) receive and collect data and information on and from the insurance industry and insurers;

“(B) enter into information-sharing agreements;

“(C) analyze and disseminate data and information; and

“(D) issue reports regarding all lines of insurance except health insurance.

“(2) Collection of information from insurers and affiliates.—

“(A) In general.—Except as provided in paragraph (3), the Office may require an insurer, or any affiliate of an insurer, to submit such data or information as the Office may reasonably require in carrying out the functions described under subsection (c).

“(B) Rule of construction.—Notwithstanding any other provision of this section, for purposes of subparagraph (A), the term ‘insurer’ means any entity that writes insurance or reinsures risks and issues contracts or policies in 1 or more States.

“(3) Exception for small insurers.—Paragraph (2) shall not apply with respect to any insurer
or affiliate thereof that meets a minimum size threshold that the Office may establish, whether by order or rule.

“(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or any affiliate of an insurer, the Office shall coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) to determine if the information to be collected is available from, or may be obtained in a timely manner by, such State insurance regulator, individually or collectively, another regulatory agency, or publicly available sources. Notwithstanding any other provision of law, each such relevant State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

“(5) CONFIDENTIALITY.—

“(A) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any
Federal or State court) to which the data or information is otherwise subject.

“(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any nonpublicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

“(C) INFORMATION SHARING AGREEMENT.—Any data or information obtained by the Office may be made available to State insurance regulators, individually or collectively, through an information sharing agreement that—

“(i) shall comply with applicable Federal law; and
“(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

“(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

“(6) SUBPOENAS AND ENFORCEMENT.—The Director shall have the power to require by subpoena the production of the data or information requested under paragraph (2), but only upon a written finding by the Director that such data or information is required to carry out the functions described under subsection (c) and that the Office has coordinated with such regulator or agency as required under paragraph (4). Subpoenas shall bear the signature of the Director and shall be served by any person or class of persons designated by the Director for that purpose. In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United
States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

“(f) Preemption of State Insurance Measures.—

“(1) Standard.—A State insurance measure shall be preempted if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

“(A) results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to an international insurance agreement on prudential measures than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

“(B) is inconsistent with an International Insurance Agreement on Prudential Measures.

“(2) Determination.—

“(A) Notice of potential inconsistency.—Before making any determination under paragraph (1), the Director shall—

“(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;
“(ii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable International Insurance Agreement on Prudential Measures;

“(iii) provide interested parties a reasonable opportunity to submit written comments to the Office; and

“(iv) consider any comments received.

“(B) SCOPE OF REVIEW.—For purposes of this subsection, the determination of the Director regarding State insurance measures shall be limited to the subject matter contained within the international insurance agreement on prudential measure involved.

“(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

“(i) notify the appropriate State of the determination and the extent of the inconsistency;

“(ii) establish a reasonable period of time, which shall not be less than 30 days,
before the determination shall become effective; and

“(iii) notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the inconsistency.

“(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Director shall—

“(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

“(B) notify the appropriate State.

“(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

“(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review).
“(h) REGULATIONS, POLICIES, AND PROCEDURES.—
The Secretary may issue orders, regulations, policies, and
procedures to implement this section.

“(i) CONSULTATION.—The Director shall consult
with State insurance regulators, individually or collect-
ively, to the extent the Director determines appropriate,
in carrying out the functions of the Office.

“(j) SAVINGS PROVISIONS.—Nothing in this section
shall—

“(1) preempt—

“(A) any State insurance measure that
governs any insurer’s rates, premiums, under-
writing, or sales practices;

“(B) any State coverage requirements for
insurance;

“(C) the application of the antitrust laws
of any State to the business of insurance; or

“(D) any State insurance measure gov-
erning the capital or solvency of an insurer, ex-
cept to the extent that such State insurance
measure results in less favorable treatment of a
non-United State insurer than a United States
insurer;
“(2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2010; or

“(3) affect the preemption of any State insurance measure otherwise inconsistent with and pre-empted by Federal law.

“(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or reg- ulatory authority over the business of insurance.

“(l) ANNUAL REPORT TO CONGRESS.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the insurance industry, any actions taken by the Office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures), and any other information as deemed relevant by the Director or as requested by such Committees.

“(m) STUDY AND REPORT ON REGULATION OF INSURANCE.—
“(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Director shall conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the United States.

“(2) CONSIDERATIONS.—The study and report required under paragraph (1) shall be based on and guided by the following considerations:

“(A) Systemic risk regulation with respect to insurance.

“(B) Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk.

“(C) Consumer protection for insurance products and practices, including gaps in state regulation.

“(D) The degree of national uniformity of state insurance regulation.

“(E) The regulation of insurance companies and affiliates on a consolidated basis.

“(F) International coordination of insurance regulation.
“(3) ADDITIONAL FACTORS.—The study and report required under paragraph (1) shall also examine the following factors:

“(A) The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

“(B) The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

“(C) The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

“(D) The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance.

“(E) The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.

“(F) The potential consequences of subjecting insurance companies to a Federal resolution authority, including the effects of any Federal resolution authority—
“(i) on the operation of State insurance guaranty fund systems, including the loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority;

“(ii) on policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

“(iii) in the case of life insurance companies, the loss of the special status of separate account assets and separate account liabilities; and

“(iv) on the international competitiveness of insurance companies.

“(G) Such other factors as the Director determines necessary or appropriate, consistent with the principles set forth in paragraph (2).

“(4) REQUIRED RECOMMENDATIONS.—The study and report required under paragraph (1) shall also contain any legislative, administrative, or regulatory recommendations, as the Director determines appropriate, to carry out or effectuate the findings set forth in such report.
“(5) CONSULTATION.—With respect to the
study and report required under paragraph (1), the
Director shall consult with the National Association
of Insurance Commissioners, consumer organiza-
tions, representatives of the insurance industry and
policyholders, and other organizations and experts,
as appropriate.

“(n) USE OF EXISTING RESOURCES.—To carry out
this section, the Office may employ personnel, facilities,
and any other resource of the Department of the Treasury
available to the Secretary.

“(o) DEFINITIONS.—In this section and section 314,
the following definitions shall apply:

“(1) AFFILIATE.—The term ‘affiliate’ means,
with respect to an insurer, any person who controls,
is controlled by, or is under common control with the
insurer.

“(2) INSURER.—The term ‘insurer’ means any
person engaged in the business of insurance, includ-
ing reinsurance.

“(3) INTERNATIONAL INSURANCE AGREEMENT
ON PRUDENTIAL MEASURES.—The term ‘Inter-
national Insurance Agreement on Prudential Meas-
ures’ means a written bilateral or multilateral agree-
ment entered into between the United States and a
foreign government, authority, or regulatory entity regarding prudential measures applicable to the business of insurance or reinsurance.

“(4) NON-UNITED STATES INSURER.—The term ‘non-United States insurer’ means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

“(5) OFFICE.—The term ‘Office’ means the Office of National Insurance established by this section.

“(6) STATE INSURANCE MEASURE.—The term ‘State insurance measure’ means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

“(7) STATE INSURANCE REGULATOR.—The term ‘State insurance regulator’ means any State regulatory authority responsible for the supervision of insurers.

“(8) UNITED STATES INSURER.—The term ‘United States insurer’ means—

“(A) an insurer that is organized under the laws of a State; or
“(B) a United States branch of a non-
United States insurer.

“(p) Authorization of Appropriations.—There are authorized to be appropriated for the Office for each fiscal year such sums as may be necessary.


“(a) In General.—The Secretary of the Treasury is authorized to negotiate and enter into International Insurance Agreements on Prudential Measures on behalf of the United States.

“(b) Savings Provision.—Nothing in this section or section 313 shall be construed to affect the development and coordination of United States international trade policy or the administration of the United States trade agreements program. It is to be understood that the negotiation of International Insurance Agreements on Prudential Measures under such sections is consistent with the requirement of this subsection.

“(c) Consultation.—The Secretary shall consult with the United States Trade Representative on the negotiation of International Insurance Agreements on Prudential Measures, including prior to initiating and concluding any such agreements.”.
(b) **DUTIES OF SECRETARY.**—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking “; and” and inserting a semicolon;

(2) in paragraph (8)(C), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.”.

(c) **CLERICAL AMENDMENT.**—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

“Sec. 312. Terrorism and financial intelligence.
Sec. 313. Office of National Insurance.
Sec. 314. International insurance agreements on prudential measures.
Sec. 315. Continuing in office.”.

**Subtitle B—State-based Insurance Reform**

**SEC. 511. SHORT TITLE.**

This subtitle may be cited as the “Nonadmitted and Reinsurance Reform Act of 2010”.
SEC. 512. EFFECTIVE DATE.

Except as otherwise specifically provided in this subtitle, this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle.

PART I—NONADMITTED INSURANCE

SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE’S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured’s home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this subtitle, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any
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State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.
(c) Allocation Based on Tax Allocation Report.—To facilitate the payment of premium taxes among the States, an insured’s home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured’s home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 522. REGULATION OF NONADMITTED INSURANCE BY INSURED’S HOME STATE.

(a) Home State Authority.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured’s home State.

(b) Broker Licensing.—No State other than an insured’s home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) Enforcement Provision.—With respect to section 521 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold
to, solicited by, or negotiated with an insured whose home
State is another State shall be preempted with respect to
such application.

(d) Workers’ Compensation Exception.—This
section may not be construed to preempt any State law,
rule, or regulation that restricts the placement of workers’
compensation insurance or excess insurance for self-funded
workers’ compensation plans with a nonadmitted insur-
er.

SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-
BASE.

After the expiration of the 2-year period beginning
on the date of the enactment of this subtitle, a State may
not collect any fees relating to licensing of an individual
or entity as a surplus lines broker in the State unless the
State has in effect at such time laws or regulations that
provide for participation by the State in the national in-
surance producer database of the NAIC, or any other
equivalent uniform national database, for the licensure of
surplus lines brokers and the renewal of such licenses.

SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELI-
GIBILITY.

A State may not—

(1) impose eligibility requirements on, or other-
wise establish eligibility criteria for, nonadmitted in-
surfers domiciled in a United States jurisdiction, ex-
cept in conformance with such requirements and cri-
teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
dmitted Insurance Model Act, unless the State has
adopted nationwide uniform requirements, forms,
and procedures developed in accordance with section
521(b) of this subtitle that include alternative na-
tionwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing
nonadmitted insurance with, or procuring non-
admitted insurance from, a nonadmitted insurer
domiciled outside the United States that is listed on
the Quarterly Listing of Alien Insurers maintained
by the International Insurers Department of the
NAIC.

SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL
PURCHASERS.

A surplus lines broker seeking to procure or place
nonadmitted insurance in a State for an exempt commer-
cial purchaser shall not be required to satisfy any State
requirement to make a due diligence search to determine
whether the full amount or type of insurance sought by
such exempt commercial purchaser can be obtained from
admitted insurers if—
(1) the broker procuring or placing the surplus
lines insurance has disclosed to the exempt commer-
cial purchaser that such insurance may or may not
be available from the admitted market that may pro-
vide greater protection with more regulatory over-
sight; and

(2) the exempt commercial purchaser has sub-
sequently requested in writing the broker to procure
or place such insurance from a nonadmitted insurer.

SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MAR-
KET.

(a) IN GENERAL.—The Comptroller General of the
United States shall conduct a study of the nonadmitted
insurance market to determine the effect of the enactment
of this part on the size and market share of the non-
admitted insurance market for providing coverage typi-
cally provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and ana-
lyze—

(1) the change in the size and market share of
the nonadmitted insurance market and in the num-
ber of insurance companies and insurance holding
companies providing such business in the 18-month
period that begins upon the effective date of this
subtitle;
(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) CONSULTATION WITH NAIC.—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services
of the House of Representatives regarding the findings of
the study not later than 30 months after the effective date
of this subtitle.

SEC. 527. DEFINITIONS.

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

(1) ADMITTED INSURER.—The term “admitted insurer” means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) AFFILIATE.—The term “affiliate” means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) AFFILIATED GROUP.—The term “affiliated group” means any group of entities that are all affiliated.

(4) CONTROL.—An entity has “control” over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or
(B) the entity controls in any manner the
election of a majority of the directors or trust-
ees of the other entity.

(5) EXEMPT COMMERCIAL PURCHASER.—The
term “exempt commercial purchaser” means any
person purchasing commercial insurance that, at the
time of placement, meets the following requirements:

(A) The person employs or retains a quali-
fied risk manager to negotiate insurance cov-
erage.

(B) The person has paid aggregate nation-
wide commercial property and casualty insur-
ance premiums in excess of $100,000 in the im-
mediately preceding 12 months.

(C)(i) The person meets at least 1 of the
following criteria:

(I) The person possesses a net worth
in excess of $20,000,000, as such amount
is adjusted pursuant to clause (ii).

(II) The person generates annual rev-
enues in excess of $50,000,000, as such
amount is adjusted pursuant to clause (ii).

(III) The person employs more than
500 full-time or full-time equivalent em-
ployees per individual insured or is a mem-
ber of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or,
in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) INDEPENDENTLY PROCURED INSURANCE.—The term “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer.

(8) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(9) NONADMITTED INSURANCE.—The term “nonadmitted insurance” means any property and
casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.


(11) **NONADMITTED INSURER.**—The term “nonadmitted insurer”—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

(12) **QUALIFIED RISK MANAGER.**—The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:
(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

   (i)(I) has a bachelor’s degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

   (II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

   (bb) has 1 of the following designations:

   (AA) a designation as a Chartered Property and Casualty Under-
writer (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance
coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(13) PREMIUM TAX.—The term "premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assess-
ments, registration fees, and any other compensation
given in consideration for a contract of insurance.

(14) **Surplus Lines Broker.**—The term “sur-
plus lines broker” means an individual, firm, or cor-
poration which is licensed in a State to sell, solicit,
or negotiate insurance on properties, risks, or expo-
sures located or to be performed in a State with
nonadmitted insurers.

**PART II—REINSURANCE**

**SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND
REINSURANCE AGREEMENTS.**

(a) Credit for Reinsurance.—If the State of
domicile of a ceding insurer is an NAIC-accredited State,
or has financial solvency requirements substantially simi-
lar to the requirements necessary for NAIC accreditation,
and recognizes credit for reinsurance for the insurer’s
ceded risk, then no other State may deny such credit for
reinsurance.

(b) Additional Preemption of
Extraterritorial Application of State Law.—In
addition to the application of subsection (a), all laws, regu-
lations, provisions, or other actions of a State that is not
the domiciliary State of the ceding insurer, except those
with respect to taxes and assessments on insurance com-
panies or insurance income, are preempted to the extent
that they—

(1) restrict or eliminate the rights of the ceding
insurer or the assuming insurer to resolve disputes
pursuant to contractual arbitration to the extent
such contractual provision is not inconsistent with
the provisions of title 9, United States Code;

(2) require that a certain State’s law shall gov-
ern the reinsurance contract, disputes arising from
the reinsurance contract, or requirements of the re-
insurance contract;

(3) attempt to enforce a reinsurance contract
on terms different than those set forth in the rein-
surance contract, to the extent that the terms are
not inconsistent with this part; or

(4) otherwise apply the laws of the State to re-
insurance agreements of ceding insurers not domi-
ciled in that State.

SEC. 532. REGULATION OF REINSURER SOLVENCY.

(a) Domiciliary State Regulation.—If the State
of domicile of a reinsurer is an NAIC-accredited State or
has financial solvency requirements substantially similar
to the requirements necessary for NAIC accreditation,
such State shall be solely responsible for regulating the
financial solvency of the reinsurer.
(b) Nondomiciliary States.—

(1) Limitation on financial information requirements.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) Receipt of information.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 533. DEFINITIONS.

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

(1) Ceding insurer.—The term “ceding insurer” means an insurer that purchases reinsurance.

(2) Domiciliary state.—The terms “State of domicile” and “domiciliary State” mean, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.
(3) **Reinsurance.**—The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(4) **Reinsurer.**—

(A) **In General.**—The term “reinsurer” means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) **Determination.**—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

**PART III—RULE OF CONSTRUCTION**

**SEC. 541. RULE OF CONSTRUCTION.**

Nothing in this subtitle or the amendments made by this subtitle shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this subtitle and any amendments
to this subtitle and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

SEC. 542. SEVERABILITY.

If any section or subsection of this subtitle, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this subtitle, and the application of the provision to any other person or circumstance, shall not be affected.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

SEC. 601. SHORT TITLE.

This title may be cited as the “Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010”.

SEC. 602. DEFINITION.

For purposes of this title, a company is a “commercial firm” if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))) and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 per-
cent of the consolidated annual gross revenues of the company.

SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT OF 1956.

(a) MORATORIUM.—

(1) DEFINITIONS.—In this subsection—

(A) the term “credit card bank” means an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

(B) the term “industrial bank” means an institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

(C) the term “trust bank” means an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)).

(2) MORATORIUM ON PROVISION OF DEPOSIT INSURANCE.—The Corporation may not approve an application for deposit insurance under section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815)
that is received after November 23, 2009, for an industrial bank, a credit card bank, or a trust bank that is directly or indirectly owned or controlled by a commercial firm.

(3) **CHANGE IN CONTROL.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the appropriate Federal banking agency shall disapprove a change in control, as provided in section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), of an industrial bank, a credit card bank, or a trust bank if the change in control would result in direct or indirect control of the industrial bank, credit card bank, or trust bank by a commercial firm.

(B) **EXCEPTIONS.**—Subparagraph (A) shall not apply to a change in control of an industrial bank, credit card bank, or trust bank that—

(i) is in danger of default, as determined by the appropriate Federal banking agency; or

(ii) results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial
bank, credit card bank, or trust bank in a
bona fide merger with or acquisition by an-
other commercial firm, as determined by
the appropriate Federal banking agency.

(4) SUNSET.—This subsection shall cease to
have effect 3 years after the date of enactment of
this Act.

(b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY ACT OF 1956.—

(1) STUDY REQUIRED.—The Comptroller Gen-
eral of the United States shall carry out a study to
determine whether it is necessary, in order to
strengthen the safety and soundness of institutions
or the stability of the financial system, to eliminate
the exceptions under section 2 of the Bank Holding
Company Act of 1956 (12 U.S.C. 1841) for institu-
tions described in—

(A) section 2(a)(5)(E) of the Bank Hold-
ing Company Act of 1956 (12 U.S.C.
1841(a)(5)(E));

(B) section 2(a)(5)(F) of the Bank Hold-
ing Company Act of 1956 (12 U.S.C.
1841(a)(5)(F));
(C) section 2(e)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(e)(2)(D));


(E) section 2(e)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(e)(2)(H)); and

(F) section 2(e)(2)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(e)(2)(B)).

(2) CONTENT OF STUDY.—

(A) IN GENERAL.—The study required under paragraph (1), with respect to the institutions referenced in each of subparagraphs (A) through (E) of paragraph (1), shall, to the extent feasible be based on information provided to the Comptroller General by the appropriate Federal or State regulator, and shall—

(i) identify the types and number of institutions excepted from section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) under each of the subpara-
graphs described in subparagraphs (A) through (E) of paragraph (1);

(ii) generally describe the size and geographic locations of the institutions described in clause (i);

(iii) determine the extent to which the institutions described in clause (i) are held by holding companies that are commercial firms;

(iv) determine whether the institutions described in clause (i) have any affiliates that are commercial firms;

(v) identify the Federal banking agency responsible for the supervision of the institutions described in clause (i) on and after the transfer date;

(vi) determine the adequacy of the Federal bank regulatory framework applicable to each category of institution described in clause (i), including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between an institution, the holding company of the institution, and any other affiliate of the institution; and
(vii) evaluate the potential consequences of subjecting the institutions described in clause (i) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe and sound operation of each category of institution, and the impact on the types of activities in which such institutions, and the holding companies of such institutions, may engage.

(B) SAVINGS ASSOCIATIONS.—With respect to institutions described in paragraph (1)(F), the study required under paragraph (1) shall—

(i) determine the adequacy of the Federal bank regulatory framework applicable to such institutions, including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between an institution, the holding company of the institution, and any other affiliate of the institution; and

(ii) evaluate the potential consequences of subjecting the institutions des-
scribed in paragraph (1)(F) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe and sound operation of such institutions, and the impact on the types of activities in which such institutions, and the holding companies of such institutions, may engage.

(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).

SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COMPANIES; REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.

(a) REPORTS BY BANK HOLDING COMPANIES.—Sections 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended—

(1) by striking subparagraph (B) and inserting the following:
“(B) USE OF EXISTING REPORTS AND
OTHER SUPERVISORY INFORMATION.—The
Board shall, to the fullest extent possible, use—

“(i) reports and other supervisory in-
formation that the bank holding company
or any subsidiary thereof has been required
to provide to other Federal or State regu-
latory agencies;

“(ii) externally audited financial state-
ments of the bank holding company or
subsidiary;

“(iii) information otherwise available
from Federal or State regulatory agencies;
and

“(iv) information that is otherwise re-
quired to be reported publicly.”; and

(2) by adding at the end the following:

“(C) AVAILABILITY.—Upon the request of
the Board, the bank holding company or a sub-
vasive of the bank holding company shall
promptly provide to the Board any information
described in clauses (i) through (iii) of subpara-
graph (B).”.

(b) EXAMINATIONS OF BANK HOLDING COMPA-
NIES.—Section 5(e)(2) of the Bank Holding Company Act
of 1956 (12 U.S.C. 1844(e)(2)) is amended to read as follows:

“(2) EXAMINATIONS.—

“(A) IN GENERAL.—The Board may make examinations of a bank holding company and each subsidiary of a bank holding company in order to—

“(i) inform the Board of—

“(I) the nature of the operations and financial condition of the bank holding company and the subsidiary;

“(II) the financial, operational, and other risks within the bank holding company system that may pose a threat to—

“(aa) the safety and soundness of the bank holding company or of any depository institution subsidiary of the bank holding company; or

“(bb) the stability of the financial system of the United States; and

“(III) the systems of the bank holding company for monitoring and
controlling the risks described in sub-
clause (II); and

“(ii) monitor the compliance of the
bank holding company and the subsidiary
with this Act and any other applicable pro-
visions of Federal law.

“(B) USE OF REPORTS TO REDUCE EXAM-
INATIONS.—For purposes of this paragraph, the
Board shall, to the fullest extent possible, rely
on—

“(i) examination reports made by
other Federal or State regulatory agencies
relating to a bank holding company and
any subsidiary of a bank holding company;
and

“(ii) the reports and other informa-
tion required under paragraph (1).

“(C) COORDINATION WITH OTHER REGU-
LATORS.—The Board shall—

“(i) provide reasonable notice to, and
consult with, the appropriate Federal
banking agency or State regulatory agency
of a subsidiary that is a depository institu-
tion or a functionally regulated subsidiary
of a bank holding company before com-
mencing an examination of the subsidiary
under this section; and
“(ii) to the fullest extent possible,
avoid duplication of examination activities,
reporting requirements, and requests for
information.”.

(c) AUTHORITY TO REGULATE FUNCTIONALLY REG-
ULATED SUBSIDIARIES OF BANK HOLDING COMP-
ANIES.—The Bank Holding Company Act of 1956 (12
U.S.C. 1841 et seq.) is amended—

(1) in section 5(c) (12 U.S.C. 1844(c)), by
striking paragraph (3) and inserting the following:
“(3) [Reserved]”; and

(2) by striking section 10A (12 U.S.C. 1848a).

(d) ACQUISITIONS OF BANKS.—Section 3(c) of the
Bank Holding Company Act of 1956 (12 U.S.C. 1842(e))
is amended by adding at the end the following:
“(7) FINANCIAL STABILITY.—In every case, the
Board shall take into consideration the extent to
which a proposed acquisition, merger, or consolida-
tion would result in greater or more concentrated
risks to the stability of the United States banking or
financial system.”.

(e) ACQUISITIONS OF NONBANKS.—
(1) NOTICE PROCEDURES.—Section 4(j)(2)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)(A)) is amended by striking “or unsound banking practices” and inserting “unsound banking practices, or risk to the stability of the United States banking or financial system”.

(2) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—Section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)) is amended to read as follows:

“(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—

“(i) IN GENERAL.—Except as provided in subsection (j) with regard to the acquisition of a savings association and clause (ii), a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

“(ii) EXCEPTION.—A financial holding company may not acquire a company, without the prior approval of the Board, in a transaction in which the total consoli-
dated assets to be acquired by the financial holding company exceed $25,000,000,000.

“(iii) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of this paragraph shall be treated as if Board of Governors approval is not required.”.

(f) BANK MERGER ACT TRANSACTIONS.—Section 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(5)) is amended, in the matter immediately following subparagraph (B), by striking “and the convenience and needs of the community to be served” and inserting “the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system”.

(g) REPORTS BY SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(b)(2) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)(2) is amended—

(1) by striking “Each savings” and inserting the following:

“(A) IN GENERAL.—Each savings”; and

(2) by adding at the end the following:
“(B) USE OF EXISTING REPORTS AND
OTHER SUPERVISORY INFORMATION.—The
Board shall, to the fullest extent possible, use—
“(i) reports and other supervisory in-
formation that the savings and loan hold-
ing company or any subsidiary thereof has
been required to provide to other Federal
or State regulatory agencies;
“(ii) externally audited financial state-
ments of the savings and loan holding com-
pany or subsidiary;
“(iii) information that is otherwise
available from Federal or State regulatory
agencies; and
“(iv) information that is otherwise re-
quired to be reported publicly.
“(C) AVAILABILITY.—Upon the request of
the Board, a savings and loan holding company
or a subsidiary of a savings and loan holding
company shall promptly provide to the Board
any information described in clauses (i) through
(iii) of subparagraph (B).”.

(h) EXAMINATION OF SAVINGS AND LOAN HOLDING
COMPANIES.—
(1) DEFINITIONS.—Section 2 of the Home Owners’ Loan Act (12 U.S.C. 1462) is amended by adding at the end the following:

“(10) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(11) FUNCTIONALLY REGULATED SUBSIDIARY.—The term ‘functionally regulated subsidiary’ has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).”.

(2) EXAMINATION.—Section 10(b) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)) is amended by striking paragraph (4) and inserting the following:

“(4) EXAMINATIONS.—

“(A) IN GENERAL.—The Board may make examinations of a savings and loan holding company and each subsidiary of a savings and loan holding company system, in order to—

“(i) inform the Board of—

“(I) the nature of the operations and financial condition of the savings
and loan holding company and the
subsidiary;

“(II) the financial, operational,
and other risks within the savings and
loan holding company system that
may pose a threat to—

“(aa) the safety and sound-
ness of the savings and loan
holding company or of any depos-
itory institution subsidiary of the
savings and loan holding com-
pany; or

“(bb) the stability of the fi-
nancial system of the United
States; and

“(III) the systems of the savings
and loan holding company for moni-
toring and controlling the risks de-
described in subclause (II); and

“(ii) monitor the compliance of the
savings and loan holding company and the
subsidiary with this Act and any other ap-
plicable provisions of Federal law.

“(B) USE OF REPORTS TO REDUCE EXAMI-
nations.—For purposes of this subsection, the
Board shall, to the fullest extent possible, rely on—

“(i) the examination reports made by other Federal or State regulatory agencies relating to a savings and loan holding company and any subsidiary; and

“(ii) the reports and other information required under paragraph (2).

“(C) COORDINATION WITH OTHER REGULATORS.—The Board shall—

“(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency or State regulatory agency of a subsidiary that is a depository institution or a functionally regulated subsidiary of a savings and loan holding company before commencing an examination of the subsidiary under this section; and

“(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.”.

(i) DEFINITION OF THE TERM “SAVINGS AND LOAN HOLDING COMPANY”.—Section 10(a)(1)(D)(ii) of the
Home Owners’ Loan Act (12 U.S.C. 1467a(a)(1)(D)(ii)) is amended to read as follows:

“(ii) **EXCLUSION.**—The term ‘savings and loan holding company’ does not include—

“(I) a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or to any company directly or indirectly controlled by such company (other than a savings association); or

“(II) a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in section 2(e)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(e)(2)(D)).”.

(j) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the transfer date.
SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMISSIBLE ACTIVITIES OF DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.

Section 6 of the Bank Holding Company Act of 1956 (12 U.S.C. 1845) is amended to read as follows:

“SEC. 6. ASSURING CONSISTENT OVERSIGHT OF PERMISSIBLE ACTIVITIES OF DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.

“(a) Definitions.—

“(1) Definitions.—In this section—

“(A) the terms ‘depository institution holding company’, ‘Federal depository institution’, ‘State member bank’, ‘State nonmember bank’, and ‘State savings association’ have the same meanings as in section 3(w) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w));

“(B) the term ‘functionally regulated subsidiary’ has the same meaning as in section 5(c)(5); and

“(C) the term ‘lead Federal banking agency’ means—

“(i) the Board, in the case of any depository institution holding company hav—
“(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are State member banks; or

“(II) a subsidiary that is a State member bank and a subsidiary that is a Federal depository institution, State nonmember bank, or State savings association, if the total assets of all subsidiaries that are State member banks exceed the total assets of all subsidiaries that are Federal depository institutions, State nonmember banks, or State savings associations;

“(ii) the Office of the Comptroller of the Currency, in the case of any depository institution holding company having—

“(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are Federal depository institutions; or

“(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State bank or State savings association, if the total con-
solidated assets of all subsidiaries that
are Federal depository institutions ex-
ceed the total consolidated assets of
all subsidiaries that are State banks
or State depository institutions; and
“(iii) the Federal Deposit Insurance
Corporation, in the case of any depository
institution holding company having—
“(I) a subsidiary that is an in-
sured depository institution, if all
such insured depository institutions
are State nonmember banks or State
savings associations; or
“(II) a subsidiary that is a Fed-
eral depository institution or a State
member bank and a subsidiary that is
a State nonmember bank or a State
savings association, if the total con-
solidated assets of all subsidiaries that
are State nonmember banks or State
savings associations exceed the total
consolidated assets of all subsidiaries
that are Federal depository institu-
tions or State member banks.
“(2) Determination of total assets.—
“(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Board of Governors, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, in order to avoid disruptive transfers of regulatory responsibility, shall issue joint regulations that specify—

“(i) the source of data for determining the total assets of a depository institution for purposes of this section; and

“(ii) the interval and frequency at which the total assets of a depository institution will be determined, as provided in subparagraph (B)(ii).

“(B) CONTENT.—The regulations issued under subparagraph (A)—

“(i) shall use information contained in the reports described in paragraph (3), other regulatory reports, audited financial statements, or other comparable sources;

“(ii) shall establish the frequency with which the total assets of depository institutions are determined, at an interval that—
“(I) avoids undue disruption in regulatory oversight;
“(II) facilitates nondisruptive transfers of regulatory responsibility; and
“(III) is not shorter than 2 years; and
“(iii) may provide for more frequent determinations of the total assets of a depository institution than are established under clause (ii), to take into account a transaction outside the ordinary course of business, including a merger, acquisition, or other circumstance, as determined jointly by the Board of Governors, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

“(3) INTERIM PROVISIONS.—Until the date on which final regulations issued under paragraph (2) are effective, for purposes this section, the total assets of a depository institution shall be determined by reference to the total assets reported in the most recent Consolidated Report of Income and Condition or Thrift Financial Report (or any successor thereof) filed by the depository institution with the Fed-
eral Deposit Insurance Corporation or the Office of Thrift Supervision, as applicable, before the transfer date established under section 311 of the Restoring American Financial Stability Act of 2010.

“(b) LEAD AGENCY SUPERVISION.—

“(1) IN GENERAL.—The lead Federal banking agency for each depository institution holding company shall make examinations of the activities of each nondepository institution subsidiary (other than a functionally regulated subsidiary) of the depository institution holding company that are permissible for depository institution subsidiaries of the depository institution holding company, to determine whether the activities—

“(A) present safety and soundness risks to any depository institution subsidiary of the depository institution holding company;

“(B) are conducted in accordance with applicable law; and

“(C) are subject to appropriate systems for monitoring and controlling the financial, operating, and other risks of the activity and protecting the depository institution subsidiaries of the holding company.
“(2) PROCESS FOR EXAMINATION.—An examination under paragraph (1) shall be carried out under the authority of the lead Federal banking agency, as if the nondepository institution subsidiary were an insured depository institution for which the lead Federal banking agency is the appropriate Federal banking agency.

“(c) COORDINATION.—The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation shall each coordinate the supervision of subsidiaries described in subsection (b) with the supervision by the Board of Governors of the holding companies of the subsidiaries described in subsection (b), in a manner that—

“(1) avoids duplication;

“(2) shares information relevant to the supervision of the depository institution holding company by each agency;

“(3) achieves the objectives of subsection (b); and

“(4) ensures that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by the 2 agencies.

“(d) REFERRALS FOR ENFORCEMENT.—
“(1) RECOMMENDATION OF ACTION BY BOARD OF GOVERNORS.—The Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as lead Federal banking agency for a depository institution holding company, based on information obtained pursuant to the responsibilities of the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, respectively, under subsection (b), may submit to the Board of Governors, in writing, a recommendation that the Board of Governors take enforcement action against a nondepository institution subsidiary (other than a functionally regulated subsidiary) of the depository institution holding company, together with an explanation of the concerns giving rise to the recommendation.

“(2) BACK-UP AUTHORITY OF THE LEAD FEDERAL BANKING AGENCY.—If, within the 60-day period beginning on the date on which the Board of Governors receives a recommendation under paragraph (1), the Board of Governors does not take enforcement action against a nondepository institution subsidiary or provide a plan for enforcement action that is acceptable to the lead Federal banking agency, the lead Federal banking agency (upon the au-
thorization of the Comptroller, or the Federal De-
posit Insurance Corporation, upon a vote of its
members, as applicable) may take the recommended
enforcement action, in the same manner as if the
subsidiary were an insured depository institution for
which the lead Federal banking agency is the appro-
priate Federal banking agency.”.

SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COM-
PANIES TO REMAIN WELL CAPITALIZED AND
WELL MANAGED.

(a) AMENDMENT.—Section 4(l)(1) of the Bank Hold-
ing Company Act of 1956 (12 U.S.C. 1843(l)(1)) is
amended—

(1) in subparagraph (B), by striking “and” at
the end;

(2) by redesignating subparagraph (C) as sub-
paragraph (D);

(3) by inserting after subparagraph (B) the fol-
lowing:

“(C) the bank holding company is well
capitalized and well managed; and”;

(4) in subparagraph (D)(ii), as so redesignated,
by striking “subparagraphs (A) and (B)” and insert-
ing “subparagraphs (A), (B), and (C)”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the transfer date.

**SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.**

(a) **ACQUISITION OF BANKS.**—Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended by striking “adequately capitalized and adequately managed” and inserting “well capitalized and well managed”.

(b) **INTERSTATE BANK MERGERS.**—Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended by striking “will continue to be adequately capitalized and adequately managed” and inserting “will be well capitalized and well managed”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the transfer date.

**SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.**

(a) **AFFILIATE TRANSACTIONS.**—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking subparagraph (D) and inserting the following:
“(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and”;

(B) in paragraph (7)—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: “, including a purchase of assets subject to an agreement to repurchase”;

(ii) in subparagraph (C), by striking “, including assets subject to an agreement to repurchase,”;

(iii) in subparagraph (D)—

(I) by inserting “or other debt obligations” after “acceptance of securities”; and

(II) by striking “or” at the end;

and

(iv) by adding at the end the following:

“(F) a transaction with an affiliate that involves the borrowing or lending of securities, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate; or
“(G) a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate;”;

(2) in subsection (e)—

(A) in paragraph (1)—

(i) in the matter preceding subpar- graph (A), by striking “subsidiary” and all that follows through “time of the trans- action” and inserting “subsidiary, and any credit exposure of a member bank or a subsidiary to an affiliate resulting from a securities borrowing or lending transaction, or a derivative transaction, shall be se- cured at all times”; and

(ii) in each of subparagraphs (A) through (D), by striking “or letter of cred- it” and inserting “letter of credit, or credit exposure”;  

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), re- spectively;
(D) in paragraph (2), as so redesignated, by inserting before the period at the end “, or credit exposure to an affiliate resulting from a securities borrowing or lending transaction, or derivative transaction”; and

(E) in paragraph (3), as so redesignated—

(i) by inserting “or other debt obligations” after “securities”; and

(ii) by striking “or guarantee” and all that follows through “behalf of,” and inserting “guarantee, acceptance, or letter of credit issued on behalf of, or credit exposure from a securities borrowing or lending transaction, or derivative transaction to,”;

(3) in subsection (d)(4), in the matter preceding subparagraph (A), by striking “or issuing” and all that follows through “behalf of,” and inserting “issuing a guarantee, acceptance, or letter of credit on behalf of, or having credit exposure resulting from a securities borrowing or lending transaction, or derivative transaction to,”; and

(4) in subsection (f)—

(A) in paragraph (2)—

(i) by striking “or order”;
(ii) by striking “if it finds” and all that follows through the end of the paragraph and inserting the following: “if—

“(i) the Board finds the exemption to be in the public interest and consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding; and

“(ii) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under clause (i), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.”;

(iii) by striking the Board and inserting the following:

“(A) IN GENERAL.—The Board”; and

(iv) by adding at the end the following:

“(B) ADDITIONAL EXEMPTIONS.—

“(i) NATIONAL BANKS.—The Comptroller of the Currency may, by order, ex-
empt a transaction of a national bank from
the requirements of this section if—

“(I) the Board and the Office of
the Comptroller of the Currency joint-
ly find the exemption to be in the
public interest and consistent with the
purposes of this section and notify the
Federal Deposit Insurance Corpora-
tion of such finding; and

“(II) before the end of the 60-
day period beginning on the date on
which the Federal Deposit Insurance
Corporation receives notice of the
finding under subclause (I), the Fed-
eral Deposit Insurance Corporation
does not object, in writing, to the
finding, based on a determination that
the exemption presents an unaccept-
able risk to the Deposit Insurance
Fund.

“(ii) STATE BANKS.—The Federal
Deposit Insurance Corporation may, by
order, exempt a transaction of a State non-
member bank, and the Board may, by
order, exempt a transaction of a State
member bank, from the requirements of this section if—

“(I) the Board and the Federal Deposit Insurance Corporation jointly find that the exemption is in the public interest and consistent with the purposes of this section; and

“(II) the Federal Deposit Insurance Corporation finds that the exemption does not present an unacceptable risk to the Deposit Insurance Fund.”; and

(B) by adding at the end the following:

“(4) Amounts of covered transactions.—

The Board may issue such regulations or interpretations as the Board determines are necessary or appropriate with respect to the manner in which a netting agreement may be taken into account in determining the amount of a covered transaction between a member bank or a subsidiary and an affiliate, including the extent to which netting agreements between a member bank or a subsidiary and an affiliate may be taken into account in determining whether a covered transaction is fully secured for purposes of subsection (d)(4). An interpretation
under this paragraph with respect to a specific member bank, subsidiary, or affiliate shall be issued jointly with the appropriate Federal banking agency for such member bank, subsidiary, or affiliate.”.

(b) TRANSACTIONS WITH AFFILIATES.—Section 23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e)) is amended—

(1) by striking the undesignated matter following subparagraph (B);

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(4) by striking “The Board” and inserting the following:

“(1) IN GENERAL.—The Board”;

(5) in paragraph (1)(B), as so redesignated—

(A) in the matter preceding clause (i), by inserting before “regulations” the following:

“subject to paragraph (2), if the Board finds that an exemption or exclusion is in the public interest and is consistent with the purposes of
this section, and notifies the Federal Deposit Insurance Corporation of such finding,’’; and

(B) in clause (ii), by striking the comma at the end and inserting a period; and

(6) by adding at the end the following:

“(2) EXCEPTION.—The Board may grant an exemption or exclusion under this subsection only if, during the 60-day period beginning on the date of receipt of notice of the finding from the Board under paragraph (1)(B), the Federal Deposit Insurance Corporation does not object, in writing, to such exemption or exclusion, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.”.

(c) HOME OWNERS’ LOAN ACT.—Section 11 of the Home Owners’ Loan Act (12 U.S.C. 1468) is amended by adding at the end the following:

“(d) EXEMPTIONS.—

“(1) FEDERAL SAVINGS ASSOCIATIONS.—The Comptroller of the Currency may, by order, exempt a transaction of a Federal savings association from the requirements of this section if—

“(A) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and con-
sistent with the purposes of this section and no-
otify the Federal Deposit Insurance Corporation
of such finding; and

“(B) before the end of the 60-day period
beginning on the date on which the Federal De-
posit Insurance Corporation receives notice of
the finding under subparagraph (A), the Fed-
eral Deposit Insurance Corporation does not ob-
ject, in writing, to the finding, based on a de-
termination that the exemption presents an un-
acceptable risk to the Deposit Insurance Fund.

“(2) STATE SAVINGS ASSOCIATION.—The Fed-
eral Deposit Insurance Corporation may, by order,
exempt a transaction of a State savings association
from the requirements of this section if the Board
and the Federal Deposit Insurance Corporation
jointly find that—

“(A) the exemption is in the public interest
and consistent with the purposes of this section;

and

“(B) the exemption does not present an
unacceptable risk to the Deposit Insurance
Fund.”.

(d) EFFECTIVE DATE.—The amendments made by
this section shall take effect 1 year after the transfer date.
SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.  

(a) Amendment.—Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended—
   (1) by striking paragraph (3); and
   (2) by redesignating paragraph (4) as paragraph (3).

(b) Prospective Application of Amendment.—The amendments made by this section shall apply with respect to any covered transaction between a bank and a subsidiary of the bank, as those terms are defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), that is entered into on or after the date of enactment of this Act.

(c) Effective Date.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

(a) National Banks.—Section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)) is amended—
   (1) in paragraph (1), by striking “shall include” and all that follows through the end of the
paragraph and inserting the following: “shall include—

“(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

“(B) to the extent specified by the Comptroller of the Currency, any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

“(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;”;

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

(3) by adding at the end the following:

“(3) the term ‘derivative transaction’ includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any
quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.”.

(b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the Home Owners’ Loan Act (12 U.S.C. 1464(u)(3)) is amended by striking “Director” each place that term appears and inserting “Comptroller of the Currency”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 611. APPLICATION OF NATIONAL BANK LENDING LIMITS TO INSURED STATE BANKS.

(a) AMENDMENT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

“(y) APPLICATION OF LENDING LIMITS TO INSURED STATE BANKS.—Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) shall apply to each insured State bank, in the same manner and to the same extent as if the insured State bank were a national banking association.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 1 year after the transfer date.
SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.

(a) CONVERSION OF A NATIONAL BANKING ASSOCIATION TO A STATE BANK.—The Act entitled “An Act to provide for the conversion of national banking associations into and their merger or consolidation with State banks, and for other purposes.” (12 U.S.C. 214 et seq.) is amended by adding at the end the following:

“SEC. 10. PROHIBITION ON CONVERSION.

“A national banking association may not convert to a State bank or State savings association during any period in which the national banking association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Comptroller of the Currency with respect to a significant supervisory matter.”.

(b) CONVERSION OF A STATE BANK TO A NATIONAL BANK.—Section 5154 of the Revised Statutes of the United States (12 U.S.C. 35) is amended by adding at the end the following: “The Comptroller of the Currency may not approve the conversion of a State bank or State savings association to a national banking association during any period in which the State bank or State savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a State bank supervi-
visor or the appropriate Federal banking agency with re-
spect to a significant supervisory matter.”.

(c) Conversion of a Federal Savings Association to a National or State Bank or State Savings Association.—Section 5(i) of the Home Owners’ Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following:

“(6) Limitation on certain conversions by federal savings associations.—A Federal savings association may not convert to a national bank or State bank or State savings association during any period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Office of Thrift Supervision or the Comptroller of the Currency with respect to a significant supervisory matter.”.

SEC. 613. DE NOVO BRANCHING INTO STATES.

(a) National Banks.—Section 5155(g)(1)(A) of the Revised Statutes of the United States (12 U.S.C. 36(g)(1)(A)) is amended to read as follows:

“(A) the law of the State in which the branch is located, or is to be located, would per-
mit establishment of the branch, if the national
bank were a State bank chartered by such State; and”.

(b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

“(i) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State; and”.

SEC. 614. LENDING LIMITS TO INSIDERS.

(a) EXTENSIONS OF CREDIT.—Section 22(h)(9)(D)(i) of the Federal Reserve Act (12 U.S.C. 375b(9)(D)(i)) is amended—

(1) by striking the period at the end and inserting “; or”;

(2) by striking “a person” and inserting “the person”;

(3) by striking “extends credit by making” and inserting the following: “extends credit to a person by—

“(I) making”; and

(4) by adding at the end the following:

“(II) having credit exposure to

the person arising from a derivative
transaction (as defined in section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b))), repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 615. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.

(a) AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

“(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

“(1) IN GENERAL.—An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve Act), unless—
“(A) the transaction is on market terms;
and

“(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

“(2) RULEMAKING.—The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.”.

(b) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 22(d) of the Federal Reserve Act (12 U.S.C. 375) is amended to read as follows:

“(d) [Reserved].”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.
SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS OF HOLDING COMPANIES.

(a) Capital Levels of Bank Holding Companies.—Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended by inserting after “regulations” the following: “(including regulations relating to the capital requirements of bank holding companies)”.

(b) Capital Levels of Savings and Loan Holding Companies.—Section 10(g)(1) of the Home Owners’ Loan Act (12 U.S.C. 1467a(g)(1)) is amended by inserting after “orders” the following: “(including regulations relating to capital requirements for savings and loan holding companies)”.

(c) Source of Strength.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 38 (12 U.S.C. 1831o) the following:

“SEC. 38A. SOURCE OF STRENGTH.

“(a) Holding Companies.—The appropriate Federal banking agency for a bank holding company or savings and loan holding company shall require the bank holding company or savings and loan holding company to serve as a source of financial strength for any subsidiary of the bank holding company or savings and loan holding company that is a depository institution.
“(b) OTHER COMPANIES.—If an insured depository institution is not the subsidiary of a bank holding company or savings and loan holding company, the appropriate Federal banking agency for the insured depository institution shall require any company that directly or indirectly controls the insured depository institution to serve as a source of financial strength for such institution.

“(c) REPORTS.—The appropriate Federal banking agency for an insured depository institution described in subsection (b) may, from time to time, require the company, or a company that directly or indirectly controls the insured depository institution to submit a report, under oath, for the purposes of—

“(1) assessing the ability of such company to comply with the requirement under subsection (b); and

“(2) enforcing the compliance of such company with the requirement under subsection (b).

“(d) RULES.—Not later than 1 year after the transfer date, as defined in section 311 of the Enhancing Financial Institution Safety and Soundness Act of 2010, the appropriate Federal banking agencies shall jointly issue final rules to carry out this section.

“(e) DEFINITION.—In this section, the term ‘source of financial strength’ means the ability of a company that
directly or indirectly owns or controls an insured depository institution to provide financial assistance to such insured depository institution in the event of the financial distress of the insured depository institution.”.

(d) Effective Date.—The amendments made by this section shall take effect on the transfer date.

SEC. 617. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.

(a) Amendment.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking subsection (i); and

(2) by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(b) Effective Date.—The amendments made by this section shall take effect on the transfer date.

SEC. 618. SECURITIES HOLDING COMPANIES.

(a) Definitions.—In this section—

(1) the term ‘‘associated person of a securities holding company’’ means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;

(2) the term ‘‘foreign bank’’ has the same meaning as in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7));
the term ''insured bank'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(4) the term ''securities holding company''—

(A) means—

(i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and

(ii) the associated persons of a person described in clause (i); and

(B) does not include a person that is—

(i) a nonbank financial company supervised by the Board under title I;

(ii) an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) or a savings association;

(iii) an affiliate of an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) or an affiliate of a savings association;
(iv) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a));

(v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(vi) subject to comprehensive consolidated supervision by a foreign regulator;

(5) the term “supervised securities holding company” means a securities holding company that is supervised by the Board of Governors under this section; and

(6) the terms “affiliate”, “bank”, “bank holding company”, “company”, “control”, “savings association”, and “subsidiary” have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(b) Supervision of a Securities Holding Company Not Having a Bank or Savings Association Affiliate.—

(1) In general.—A securities holding company that is required by a foreign regulator or provision of foreign law to be subject to comprehensive
consolidated supervision may register with the Board of Governors under paragraph (2) to become a supervised securities holding company. Any securities holding company filing such a registration shall be supervised in accordance with this section, and shall comply with the rules and orders prescribed by the Board of Governors applicable to supervised securities holding companies.

(2) Registration as a Supervised Securities Holding Company.—

(A) Registration.—A securities holding company that elects to be subject to comprehensive consolidated supervision shall register by filing with the Board of Governors such information and documents as the Board of Governors, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(B) Effective Date.—A securities holding company that registers under subparagraph (A) shall be deemed to be a supervised securities holding company, effective on the date that is 45 days after the date of receipt of the registration information and documents under subparagraph (A) by the Board of Governors, or
within such shorter period as the Board of Governors, by rule or order, may determine.

(c) **SUPERVISION OF SECURITIES HOLDING COMPANIES.**—

(1) **RECORDKEEPING AND REPORTING.**—

(A) **RECORDKEEPING AND REPORTING REQUIRED.**—Each supervised securities holding company and each affiliate of a supervised securities holding company shall make and keep for periods determined by the Board of Governors such records, furnish copies of such records, and make such reports, as the Board of Governors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) **FORM AND CONTENTS.**—

(i) **IN GENERAL.**—Any record or report required to be made, furnished, or kept under this paragraph shall—

(I) be prepared in such form and according to such specifications (in-
public accounting firm), as the Board
of Governors may require; and

(II) be provided promptly to the
Board of Governors at any time, upon
request by the Board of Governors.

(ii) CONTENTS.—Records and reports
required to be made, furnished, or kept
under this paragraph may include—

(I) a balance sheet or income
statement of the supervised securities
holding company or an affiliate of a
supervised securities holding company;

(II) an assessment of the consoli-
dated capital and liquidity of the su-
pervised securities holding company;

(III) a report by an independent
auditor attesting to the compliance of
the supervised securities holding com-
pany with the internal risk manage-
ment and internal control objectives of
the supervised securities holding com-
pany; and

(IV) a report concerning the ex-
tent to which the supervised securities
holding company or affiliate has com-
plied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) Use of existing reports.—

(A) In general.—The Board of Governors shall, to the fullest extent possible, accept reports in fulfillment of the requirements of this paragraph that a supervised securities holding company or an affiliate of a supervised securities holding company has been required to provide to another regulatory agency or a self-regulatory organization.

(B) Availability.—A supervised securities holding company or an affiliate of a supervised securities holding company shall promptly provide to the Board of Governors, at the request of the Board of Governors, any report described in subparagraph (A), as permitted by law.

(3) Examination authority.—

(A) Focus of examination authority.—The Board of Governors may make examinations of any supervised securities holding company and any affiliate of a supervised securities holding company to carry out this sub-
section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) Deferral to Other Examinations.—For purposes of this subparagraph, the Board of Governors shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary or any institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

(d) Capital and Risk Management.—

(1) In General.—The Board of Governors shall, by regulation or order, prescribe capital adequacy and other risk management standards for supervised securities holding companies that are appropriate to protect the safety and soundness of the supervised securities holding companies and address the risks posed to financial stability by supervised securities holding companies.

(2) Differentiation.—In imposing standards under this subsection, the Board of Governors may
differentiate among supervised securities holding
companies on an individual basis, or by category,
taking into consideration the requirements under
paragraph (3).

(3) CONTENT.—Any standards imposed on a
supervised securities holding company under this
subsection shall take into account—

(A) the differences among types of busi-
ness activities carried out by the supervised se-
curities holding company;

(B) the amount and nature of the financial
assets of the supervised securities holding com-
pany;

(C) the amount and nature of the liabilities
of the supervised securities holding company,
including the degree of reliance on short-term
funding;

(D) the extent and nature of the off-balance sheet exposures of the supervised securi-
ties holding company;

(E) the extent and nature of the trans-
actions and relationships of the supervised secu-
rities holding company with other financial
companies;
(F) the importance of the supervised securities holding company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the financial system; and

(G) the nature, scope, and mix of the activities of the supervised securities holding company.

(4) Notice.—A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital requirement.

(e) Exception for Insured Depository Institutions.—No insured depository institution shall be subject to any of the requirements set forth in subsections (c) and (d).

(f) Other Provisions of Law Applicable to Supervised Securities Holding Companies.—

(1) Federal Deposit Insurance Act.—Subsections (b), (e) through (s), and (u) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F),
or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) Bank Holding Company Act of 1956.—Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company

SEC. 619. RESTRICTIONS ON CAPITAL MARKET ACTIVITY BY BANKS AND BANK HOLDING COMPANIES.

(a) DEFINITIONS.—In this section—

(1) the terms “hedge fund” and “private equity fund” mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or a similar fund, as jointly determined by the appropriate Federal banking agencies; and

(2) the term “proprietary trading”—

(A) means purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company, for the trading book (or such other portfolio as the
Federal banking agencies may determine) of
such institution, company, or subsidiary; and

(B) subject to such restrictions as the Fed-
eral banking agencies may determine, does not
include purchasing or selling, or otherwise ac-
quiring or disposing of, stocks, bonds, options,
commodities, derivatives, or other financial in-
struments on behalf of a customer, as part of
market making activities, or otherwise in con-
nection with or in facilitation of customer rela-
tionships, including risk-mitigating hedging ac-
tivities related to such a purchase, sale, acquisi-
tion, or disposal; and

(3) the term “sponsoring”, when used with re-
spect to a hedge fund or private equity fund,
means—

(A) serving as a general partner, managing
member, or trustee of the fund;

(B) in any manner selecting or controlling
(or having employees, officers, directors, or
agents who constitute) a majority of the direc-
tors, trustees, or management of the fund; or

(C) sharing with the fund, for corporate,
marketing, promotional, or other purposes, the
same name or a variation of the same name.
(b) Prohibition on Proprietary Trading.—

(1) In general.—Subject to the recommendations and modifications of the Council under subsection (g), and except as provided in paragraph (2) or (3), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit proprietary trading by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company.

(2) Excepted obligations.—

(A) In general.—The prohibition under this subsection shall not apply with respect to an investment that is otherwise authorized by Federal law in—

(i) obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(ii) obligations, participations, or other instruments of, or issued by, the
Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, including obligations fully guaranteed as to principal and interest by such entities; and

(iii) obligations of any State or any political subdivision of a State.

(B) CONDITIONS.—The appropriate Federal banking agencies may impose conditions on the conduct of investments described in subparagraph (A).

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(3) FOREIGN ACTIVITIES.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibition under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.
(c) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations and modifications of the Council under subsection (g), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, from sponsoring or investing in a hedge fund or a private equity fund.

(2) APPLICATION TO FOREIGN ACTIVITIES OF FOREIGN FIRMS.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibitions and restrictions under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.
(d) Investments in Small Business Investment Companies and Investments Designed To Promote the Public Welfare.—

(1) In general.—A prohibition imposed by the appropriate Federal banking agencies under subsection (c) shall not apply with respect an investment otherwise authorized under Federal law that is—

(A) an investment in a small business investment company, as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(B) designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(2) Rule of construction.—Nothing in paragraph (1) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(e) Limitations on Relationships With Hedge Funds and Private Equity Funds.—

(1) Covered transactions.—An insured depository institution, a company that controls, directly or indirectly, an insured depository institution
or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may not enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with such hedge fund or private equity fund.

(2) AFFILIATION.—An insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371e–1) as if such institution, company, or subsidiary were a member bank and such hedge fund or private equity fund were an affiliate.

(f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR CERTAIN NONBANK FINANCIAL COMPANIES.—
(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations and modifications of the Council under subsection (g), the Board of Governors shall adopt rules imposing additional capital requirements and specifying additional quantitative limits for nonbank financial companies supervised by the Board of Governors under section 113 that engage in proprietary trading or sponsoring and investing in hedge funds and private equity funds.

(2) EXCEPTIONS.—The rules under this subsection shall not apply with respect to the trading of an investment that is otherwise authorized by Federal law—

(A) in obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(B) in obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, including
obligations fully guaranteed as to principal and interest by such entities;

(C) in obligations of any State or any political subdivision of a State;

(D) in a small business investment company, as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(E) that is designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(g) COUNCIL STUDY AND RULEMAKING.—

(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this Act, the Council—

(A) shall complete a study of the definitions under subsection (a) and the other provisions under subsections (b) through (f), to assess the extent to which the definitions under subsection (a) and the implementation of subsections (a) through (f) would—

(i) promote and enhance the safety and soundness of depository institutions and the affiliates of depository institutions;
(ii) protect taxpayers and enhance financial stability by minimizing the risk that depository institutions and the affiliates of depository institutions will engage in unsafe and unsound activities;

(iii) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(iv) reduce inappropriate conflicts of interest between the self-interest of depository institutions, affiliates of depository institutions, and financial companies supervised by the Board, and the interests of the customers of such institutions and companies;

(v) raise the cost of credit or other financial services, reduce the availability of credit or other financial services, or impose other costs on households and businesses in the United States;

(vi) limit activities that have caused undue risk or loss in depository institutions, affiliates of depository institutions,
and financial companies supervised by the Board of Governors, or that might reasonably be expected to create undue risk or loss in such institutions, affiliates, and companies; and

(vii) appropriately accommodates the business of insurance within an insurance company subject to regulation in accordance with State insurance company investment laws;

(B) shall make recommendations regarding the definitions under subsection (a) and the implementation of other provisions under subsections (b) through (f), including any modifications to the definitions, prohibitions, requirements, and limitations contained therein that the Council determines would more effectively implement the purposes of this section; and

(C) may make recommendations for prohibiting the conduct of the activities described in subsections (b) and (c) above a specific threshold amount and imposing additional capital requirements on activities conducted below such threshold amount.
(2) RULEMAKING.—Not earlier than the date of completion of the study required under paragraph (1), and not later than 9 months after the date of completion of such study—

(A) the appropriate Federal banking agencies shall jointly issue final regulations implementing subsections (b) through (e), which shall reflect any recommendations or modifications made by the Council pursuant to paragraph (1)(B); and

(B) the Board of Governors shall issue final regulations implementing subsection (f), which shall reflect any recommendations or modifications made by the Council pursuant to paragraph (1)(B).

(h) TRANSITION.—

(1) IN GENERAL.—The final regulations issued by the appropriate Federal banking agencies and the Board of Governors under subsection (g)(2) shall provide that, effective 2 years after the date on which such final regulations are issued, no insured depository institution, company that controls, directly or indirectly, an insured depository institution, company that is treated as a bank holding company for purposes of the Bank Holding Company Act of
1956 (12 U.S.C. 1841 et seq.), or subsidiary of such
institution or company, may retain any investment
or relationship prohibited under such regulations.

(2) EXTENSION.—

(A) IN GENERAL.—The appropriate Fed-
eral banking agency for an insured depository
institution or a company described in paragraph
(1) may, upon the application of any such com-
pany, extend the 2-year period under paragraph
(1) with respect to such company, if the appro-
priate Federal banking agency determines that
an extension would not be detrimental to the
public interest.

(B) TIME PERIOD FOR EXTENSION.—An
extension granted under subparagraph (A) may
not exceed—

(i) 1 year for each determination
made by the appropriate Federal banking
agency under subparagraph (A); and

(ii) a total of 3 years with respect to
any 1 company.
SEC. 620. CONCENTRATION LIMITS ON LARGE FINANCIAL FIRMS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

"SEC. 13. CONCENTRATION LIMITS ON LARGE FINANCIAL FIRMS.

"(a) DEFINITIONS.—In this section—

"(1) the term ‘Council’ means the Financial Stability Oversight Council;

"(2) the term ‘financial company’ means—

"(A) an insured depository institution;

"(B) a bank holding company;

"(C) a savings and loan holding company;

"(D) a company that controls an insured depository institution;

"(E) a nonbank financial company supervised by the Board under title I of the Restoring American Financial Stability Act of 2010; and

"(F) a foreign bank or company that is treated as a bank holding company for purposes of this Act; and

"(3) the term ‘liabilities’ means—

"(A) with respect to a United States financial company—
“(i) the total risk-weighted assets of the financial company, as determined under the risk-based capital rules applicable to bank holding companies, as adjusted to reflect exposures that are deducted from regulatory capital; less

“(ii) the total regulatory capital of the financial company under the risk-based capital rules applicable to bank holding companies;

“(B) with respect to a foreign-based financial company—

“(i) the total risk-weighted assets of the United States operations of the financial company, as determined under the applicable risk-based capital rules, as adjusted to reflect exposures that are deducted from regulatory capital; less

“(ii) the total regulatory capital of the United States operations of the financial company, as determined under the applicable risk-based capital rules; and

“(C) with respect to an insurance company or other nonbank financial company supervised by the Board, such assets of the company as
the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies.

“(b) Concentration Limit.—Subject to the recommendations by the Council under subsection (e), a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

“(c) Exception to Concentration Limit.—With the prior written consent of the Board, the concentration limit under subsection (b) shall not apply to an acquisition—

“(1) of a bank in default or in danger of default;

“(2) with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 13(e) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)); or

“(3) that would result only in a de minimis increase in the liabilities of the financial company.
“(d) RULEMAKING AND GUIDANCE.—The Board shall issue regulations implementing this section in accordance with the recommendations of the Council under subsection (e), including the definition of terms, as necessary. The Board may issue interpretations or guidance regarding the application of this section to an individual financial company or to financial companies in general.

“(e) COUNCIL STUDY AND RULEMAKING.—

“(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this section, the Council shall—

“(A) complete a study of the extent to which the concentration limit under this section would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of United States financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States; and

“(B) make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement this section.

“(2) RULEMAKING.—Not later than 9 months after the date of completion of the study under para-
graph (1), and notwithstanding subsections (b) and (d), the Board shall issue final regulations implementing this section, which shall reflect any recommendations by the Council under paragraph (1)(B).”.

SEC. 621. INTERSTATE MERGER TRANSACTIONS.

(a) INTERSTATE MERGER TRANSACTIONS.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following:

“(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

“(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which the Corporation provides assistance under section 13.

“(C) In this paragraph—
“(i) the term ‘interstate merger transaction’ means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

“(ii) the term ‘home State’ means—

“(I) with respect to a national bank, the State in which the main office of the bank is located;

“(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

“(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.”.

(b) ACQUISITIONS BY BANK HOLDING COMPANIES.—

(1) IN GENERAL.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(A) in subsection (i), by adding at the end the following:
“(8) INTERSTATE ACQUISITIONS.—

“(A) IN GENERAL.—The Board may not approve an application by a bank holding company to acquire an insured depository institution under subsection (c)(8) or any other provision of this Act if—

“(i) the home State of such insured depository institution is a State other than the home State of the bank holding company; and

“(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

“(B) EXCEPTION.—Subparagraph (A) shall not apply to an acquisition that involves an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).”; and
(B) in subsection (k)(6)(B), by striking “savings association” and inserting “insured depository institution”.

(2) DEFINITIONS.—Section 2(o)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)(4)) is amended—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C)(ii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(D) with respect to a State savings association, the State by which the savings association is chartered; and

“(E) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.”.

(e) ACQUISITIONS BY SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(e)(2) of the Home Owners’ Loan Act (12 U.S.C. 1467a(e)(2)) is amended—
(1) in paragraph (2)—

(A) in subparagraph (C), by striking “or” at the end;

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

(C) by adding at the end the following:

“(E) in the case of an application by a savings and loan holding company to acquire an insured depository institution, if—

“(i) the home State of the insured depository institution is a State other than the home State of the savings and loan holding company;

“(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States; and

“(iii) the acquisition does not involve an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section
13 of the Federal Deposit Insurance Act
(12 U.S.C. 1823).”); and

(2) by adding at the end the following:

“(7) DEFINITIONS.—For purposes of paragraph

(2)(E)—

“(A) the terms ‘default’, ‘in danger of de-

fault’, and ‘insured depository institution’ have

the same meanings as in section 3 of the Fed-

eral Deposit Insurance Act (12 U.S.C. 1813);

and

“(B) the term ‘home State’ means—

“(i) with respect to a national bank,

the State in which the main office of the

bank is located;

“(ii) with respect to a State bank or

State savings association, the State by

which the savings association is chartered;

“(iii) with respect to a Federal sav-

nings association, the State in which the

home office (as defined by the regulations

of the Director of the Office of Thrift Su-

pervision, or, on and after the transfer
date, the Comptroller of the Currency) of

the Federal savings association is located;

and
“(iv) with respect to a savings and loan holding company, the State in which the amount of total deposits of all insured depository institution subsidiaries of such company was the greatest on the date on which the company became a savings and loan holding company.”.

SEC. 622. QUALIFIED THRIFT LENDERS.

Section 10(m)(3) of the Home Owners’ Loan Act (12 U.S.C. 1467a(m)(3)) is amended—

(1) by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall immediately be subject to the restrictions under subparagraph (B).”; and

(2) in subparagraph (B)(i), by striking subclause (III) and inserting the following:

“(III) DIVIDENDS.—The savings association may not pay dividends, except for dividends that—

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

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

and

“(cc) are specifically approved by the Comptroller of the Currency and the Board after a written request submitted to the Comptroller of the Currency and the Board by the savings association not later than 30 days before the date of the proposed payment.

“(IV) Regulatory authority.—A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464) and subject to actions authorized by section 5(d) of the Home Owners’ Loan Act (12 U.S.C. 1464(d)).”.

SEC. 623. TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL HOLDING COMPANIES.

Section 10(o) of the Home Owners’ Loan Act (12 U.S.C. 1467a(o) is amended by adding at the end the following:
“(11) DIVIDENDS.—

“(A) DECLARATION OF DIVIDENDS.—

“(i) ADVANCE NOTICE REQUIRED.—
Each subsidiary of a mutual holding company that is a savings association shall give the appropriate Federal banking agency notice not later than 30 days before the date of a proposed declaration by the board of directors of the savings association of any dividend on the guaranty, permanent, or other nonwithdrawable stock of the savings association.

“(ii) INVALID DIVIDENDS.—Any dividend described in clause (i) that is declared without giving notice to the appropriate Federal banking agency under clause (i), or that is declared during the 30-day period preceding the date of a proposed declaration for which notice is given to the appropriate Federal banking agency under clause (i), shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

“(B) WAIVER OF DIVIDENDS.—A mutual holding company may waive the right to receive
any dividend declared by a subsidiary of the mutual holding company, if—

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

“(ii) the mutual holding company gives written notice to the Board of the intent of the mutual holding company to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.

“(C) Resolution included in waiver notice.—A notice of a waiver under subparagraph (B) shall include a copy of the resolution of the board of directors of the mutual holding company, in such form and substance as the Board may determine, together with any supporting materials relied upon by the board of directors of the mutual holding company, con-
cluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company.

“(D) STANDARDS FOR WAIVER OF DIVIDEND.—The Board may not object to a waiver of dividends under subparagraph (B) if—

“(i) the waiver would not be detrimental to the safe and sound operation of the savings association; and

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

“(E) VALUATION.—

“(i) IN GENERAL.—The Board shall consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

“(ii) EXCEPTION.—In the case of a savings association that has reorganized into a mutual holding company and has
issued minority stock from a mid-tier stock holding company or a subsidiary stock savings association of the mutual holding company before December 1, 2009, the appropriate Federal banking agency shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.”.

TITLE VII—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

SEC. 701. SHORT TITLE. This title may be cited as the “Wall Street Transparency and Accountability Act of 2010”.

Subtitle A—Regulation of Over-the-Counter Swaps Markets

PART I—REGULATORY AUTHORITY

SEC. 711. DEFINITIONS. In this subtitle, the terms “prudential regulator”, “swap”, “swap dealer”, “major swap participant”, “swap data repository”, “associated person of a swap dealer or major swap participant”, “eligible contract participant”, “swap execution facility”, “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, and “associated person of a security-based swap
dealer or major security-based swap participant” have the meanings given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

SEC. 712. REVIEW OF REGULATORY AUTHORITY.

(a) Regulatory Authority.—

(1) In general.—Except as provided in paragraphs (4) and (8), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall each prescribe such regulations as may be necessary to carry out the purposes of this title.

(2) Coordination, consistency, and comparability.—Both Commissions required under paragraph (1) to prescribe regulations shall consult and coordinate with each other for the purposes of assuring, to the extent possible, that the regulations prescribed by each such Commission are consistent and comparable with the regulations prescribed by the other.

(3) Procedures and deadline.—Such regulations shall be prescribed in accordance with applicable requirements of title 5, United States Code, and, shall be issued in final form not later than 180 days after the date of enactment of this Act.

(4) Applicability.—The requirements of paragraph (1) shall not apply to an order issued—
(A) in connection with or arising from a violation or potential violation of any provision of the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(B) in connection with or arising from a violation or potential violation of any provision of the securities laws; or

(C) in any proceeding that is conducted on the record in accordance with sections 556 and 557 of title 5, United States Code.

(5) EFFECT.—Nothing in this subsection authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(6) RULES; ORDERS.—In developing and promulgating rules or orders pursuant to this subsection, each Commission shall consider the views of the prudential regulators.

(7) TREATMENT OF SIMILAR PRODUCTS AND ENTITIES.—

(A) IN GENERAL.—In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities
and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

(B) EFFECT.—Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.

(8) MIXED SWAPS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly prescribe such regulations regarding mixed swaps, as described in section 1a(47)(D) of the Commodity Exchange Act (7 U.S.C. 1a(47)(D)) and in section 3(a)(68)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(D)), as may be necessary to carry out the purposes of this title.

(b) LIMITATION.—

(1) COMMODITY FUTURES TRADING COMMISSION.—Nothing in this title, unless specifically provided, confers jurisdiction on the Commodity Futures Trading Commission to issue a rule, regula-
tion, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to its activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap data repositories;

(iv) associated persons of a security-based swap dealer or major security-based swap participant;

(v) eligible contract participants with respect to security-based swaps; or

(vi) swap execution facilities with respect to security-based swaps.

(2) Securities and Exchange Commission.—Nothing in this title, unless specifically provided, confers jurisdiction on the Securities and Exchange Commission or State securities regulators to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or
(B) with regard to its activities or functions concerning swaps—

(i) swap dealers;

(ii) major swap participants;

(iii) swap data repositories;

(iv) persons associated with a swap dealer or major swap participant;

(v) eligible contract participants with respect to swaps; or

(vi) swap execution facilities with respect to swaps.

(3) Prohibition on Certain Futures Associations and National Securities Associations.—

(A) Futures Associations.—Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no futures association registered under section 17 of the Commodity Exchange Act (7 U.S.C. 21) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any security-based swap, except that this shall not limit the authority of a registered futures association to examine for compliance with and
enforce its rules on advertising and capital adequacy.

(B) National securities associations.—Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any swap, except that this shall not limit the authority of a national securities association to examine for compliance with and enforce its rules on advertising and capital adequacy.

(c) Objection to Commission Regulation.—

(1) Filing of petition for review.—

(A) In general.—If either Commission referred to in this section determines that a final rule, regulation, or order of the other Commission conflicts with subsection (a)(7) or (b), then the complaining Commission may obtain review of the final rule, regulation, or order in the United States Court of Appeals for the District of Columbia Circuit by filing in the
court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside.

(B) Expedited Proceeding.—A proceeding described in subparagraph (A) shall be expedited by the United States Court of Appeals for the District of Columbia Circuit.

(2) Transmittal of Petition and Record.—

(A) In General.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after the date of filing by the complaining Commission to the Secretary of the responding Commission.

(B) Duty of Responding Commission.—On receipt of the copy of a petition described in paragraph (1), the responding Commission shall file with the United States Court of Appeals for the District of Columbia Circuit—

(i) a copy of the rule, regulation, or order under review (including any documents referred to therein); and
(ii) any other materials prescribed by
the United States Court of Appeals for the
District of Columbia Circuit.

(3) STANDARD OF REVIEW.—The United States
Court of Appeals for the District of Columbia Cir-
cuit shall—

(A) give deference to the views of neither
Commission; and

(B) determine to affirm or set aside a rule,
regulation, or order of the responding Commiss-
ion under this subsection, based on the deter-
mination of the court as to whether the rule,
regulation, or order is in conflict with sub-
section (a)(7) or (b), as applicable.

(4) JUDICIAL STAY.—The filing of a petition by
the complaining Commission pursuant to paragraph
(1) shall operate as a stay of the rule, regulation, or
order until the date on which the determination of
the United States Court of Appeals for the District
of Columbia Circuit is final (including any appeal of
the determination).

(d) ADOPTION OF RULES ON UNCLEARED SWAPS.—
Notwithstanding subsections (b) and (e), the Commodity
Futures Trading Commission and the Securities and Ex-
change Commission shall, after consulting with each other Commission, adopt rules—

(1) to require the maintenance of records of all activities relating to transactions in swaps and security-based swaps under the respective jurisdictions of the Commodity Futures Trading Commission and the Securities and Exchange Commission that are uncleared;

(2) to make available, consistent with section 8 of the Commodity Exchange Act (7 U.S.C. 12), to the Securities and Exchange Commission information relating to swaps transactions that are uncleared; and

(3) to make available to the Commodity Futures Trading Commission information relating to security-based swaps transactions that are uncleared.

(e) DEFINITIONS.—Notwithstanding subsections (b) and (e), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly adopt rules to define the term “security-based swap agreement” in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).
(f) **Global Rulemaking Timeframe.**—Unless otherwise provided in a particular provision of this title, or an amendment made by this title, the Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, shall individually, and not jointly, promulgate rules and regulations required of each Commission under this title or an amendment made by this title not later than 180 days after the date of enactment of this Act.

(g) **Expedited Rulemaking Process.**—The Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, may use emergency and expedited procedures (including any administrative or other procedure as appropriate) to carry out this title and the amendments made by this title if, in either of the Commissions’ discretion, it considers it necessary to do so.

SEC. 713. **Recommendations for Changes to Portfolio Margining Laws.**

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the prudential regulators shall submit to the appropriate committees of Congress recommendations for legislative changes to the Federal laws to facilitate the portfolio margining of securities and contracts of sale of commodities for fu-
ture delivery and options on such contracts, commodity
options, swaps, and other financial instrument positions.

SEC. 714. ABUSIVE SWAPS.
The Commodity Futures Trading Commission or the
Securities and Exchange Commission, or both, individually
may, by rule or order—

(1) collect information as may be necessary con-
cerning the markets for any types of—

(A) swap (as defined in section 1a of the
Commodity Exchange Act (7 U.S.C. 1a)); or

(B) security-based swap (as defined in sec-
tion 1a of the Commodity Exchange Act (7
U.S.C. 1a)); and

(2) issue a report with respect to any types of
swaps or security-based swaps that the Commodity
Futures Trading Commission or the Securities and
Exchange Commission determines to be detrimental
to—

(A) the stability of a financial market; or

(B) participants in a financial market.

SEC. 715. AUTHORITY TO PROHIBIT PARTICIPATION IN
SWAP ACTIVITIES.
Except as provided in section 4 of the Commodity Ex-
change Act (7 U.S.C. 6) (as amended by section 738), if
the Commodity Futures Trading Commission or the Secu-
rities and Exchange Commission determines that the regu-
lation of swaps or security-based swaps markets in a for-
eign country undermines the stability of the United States
financial system, either Commission, in consultation with
the Secretary of the Treasury, may prohibit an entity
domiciled in the foreign country from participating in the
United States in any swap or security-based swap activi-
ties.

SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT

BAILOUTS OF SWAPS ENTITIES.

(a) Prohibition on Federal Assistance.—Not-
withstanding any other provision of law (including regula-
tions), no Federal assistance may be provided to any
swaps entity with respect to any swap, security-based
swap, or other activity of the swaps entity.

(b) Definitions.—In this section:

(1) Federal assistance.—The term “Federal
assistance” means the use of any funds, including
advances from any Federal Reserve credit facility,
discount window, or pursuant to the third undesig-
nated paragraph of section 13 of the Federal Re-
serve Act (12 U.S.C. 343) (relating to emergency
lending authority), Federal Deposit Insurance Cor-
poration insurance, or guarantees for the purpose
of—
(A) making any loan to, or purchasing any
stock, equity interest, or debt obligation of, any
swaps entity;
(B) purchasing the assets of any swaps en-
tity;
(C) guaranteeing any loan or debt issuance
of any swaps entity; or
(D) entering into any assistance arrange-
ment (including tax breaks), loss sharing, or
profit sharing with any swaps entity.

(2) SWAPS ENTITY.—The term “swaps entity”
means any swap dealer, security-based swap dealer,
major swap participant, major security-based swap
participant, swap execution facility, designated con-
tract market, national securities exchange, central
counterparty, clearing house, clearing agency, or de-
rivatives clearing organization that is registered
under—
(A) the Commodity Exchange Act (7
U.S.C. 1 et seq.);
(B) the Securities Exchange Act of 1934
(15 U.S.C. 78a et seq.); or
(C) any other Federal or State law (includ-
ing regulations).
SEC. 717. NEW PRODUCT APPROVAL CFTC—SEC PROCESS.

(a) Amendments to the Commodity Exchange Act.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) is amended—

(1) in clause (i) by striking “This” and inserting “(I) Except as provided in subclause (II), this”; and

(2) by adding at the end of clause (i) the following:

“(II) This Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements, and transactions involving, and may permit the listing for trading pursuant to section 5c(e) of, a put, call, or other option on 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof, that is exempted by the Securities and Exchange Commission pursuant to sec-
tion 36(a)(1) of the Securities Exchange Act of 1934 with the condition that the Commission exercise concurrent jurisdiction over such put, call, or other option; provided, however, that nothing in this paragraph shall be construed to affect the jurisdiction and authority of the Securities and Exchange Commission over such put, call, or other option.”.


“SEC. 3B. SECURITIES-RELATED DERIVATIVES.

“(a) Any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof) shall be deemed a security for purposes of the securities laws.

“(b) With respect to any agreement, contract, or transaction (or class thereof) that is exempted by the
Commodity Futures Trading Commission pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof), references in the securities laws to the ‘purchase’ or ‘sale’ of a security shall be deemed to include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under such agreement, contract, or transaction, as the context may require.”

(c) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

“(10) Notwithstanding the provisions of paragraph (2), the time period within which the Commission is required by order to approve a proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved is stayed pending a determination by the Commission upon the request of the Commodity Futures Trading Commission or its Chairman that the Commission issue a determination as to whether a product that is the subject of such proposed rule change is a se-
security pursuant to section 718 of the Wall Street Transparency and Accountability Act of 2010.”.

(d) AMENDMENT TO COMMODITY EXCHANGE ACT.—

Section 5c(e)(1) of the Commodity Exchange Act (7 U.S.C. 7a–2(e)(1)) is amended—

(1) by striking “Subject to paragraph (2)” and inserting the following:

“(A) ELECTION.—Subject to paragraph (2)”;

(2) by adding at the end the following:

“(B) CERTIFICATION.—The certification of a product pursuant to this paragraph shall be stayed pending a determination by the Commission upon the request of the Securities and Exchange Commission or its Chairman that the Commission issue a determination as to whether the product that is the subject of such certification is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity pursuant to section 718 of the Wall Street Transparency and Accountability Act of 2010.”.
SEC. 718. DETERMINING STATUS OF NOVEL DERIVATIVE PRODUCTS.

(a) Process for Determining the Status of a Novel Derivative Product.—

(1) Notice.—

(A) In general.—Any person filing a proposal to list or trade a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) may concurrently provide notice and furnish a copy of such filing with both the Securities and Exchange Commission and the Commodity Futures Trading Commission. Any such notice shall state that notice has been made with both Commissions.

(B) Notification.—If no concurrent notice is made pursuant to subparagraph (A), within 5 business days after determining that a proposal that seeks to list or trade a novel derivative product may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall
notify the other Commission and provide a copy of such filing to the other Commission.

(2) Request for Determination.—

(A) In General.—No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Commodity Futures Trading Commission may request that the Securities and Exchange Commission issue a determination as to whether a product is a security, as defined in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

(B) Request.—No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Securities and Exchange Commission may request that the Commodity Futures Trading Commission issue a determination as to whether a product is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity subject to the Commodity Futures Trading Commission’s exclusive jurisdiction under section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)).
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(C) Requirement relating to request.—A request under subparagraph (A) or (B) shall be made by submitting such request, in writing, to the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable.

(D) Effect.—Nothing in this paragraph shall be construed to prevent—

(i) the Commodity Futures Trading Commission from requesting that the Securities and Exchange Commission grant an exemption pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78mm(a)(1)) with respect to a product that is the subject of a filing under paragraph (1); or

(ii) the Securities and Exchange Commission from requesting that the Commodity Futures Trading Commission grant an exemption pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with respect to a product that is the subject of a filing under paragraph (1), Provided, however, that nothing in this subparagraph shall be construed to require the
Commodity Futures Trading Commission or the Securities and Exchange Commission to issue an exemption requested pursuant to this subparagraph; provided further, That an order granting or denying an exemption described in this subparagraph and issued under paragraph (3)(B) shall not be subject to judicial review pursuant to subsection (b).

(E) WITHDRAWAL OF REQUEST.—A request under subparagraph (A) or (B) may be withdrawn by the Commission making the request at any time prior to a determination being made pursuant to paragraph (3) for any reason by providing written notice to the head of the other Commission.

(3) DETERMINATION.—Notwithstanding any other provision of law, no later than 120 days after the date of receipt of a request—

(A) under subparagraph (A) or (B) of paragraph (2), unless such request has been withdrawn pursuant to paragraph (2)(E), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall, by order, issue the determination requested in subparagraph (A) or (B) of
paragraph (2), as applicable, and the reasons therefore; or

(B) under paragraph (2)(D), unless such request has been withdrawn, the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall grant an exemption or provide reasons for not

granting such exemption, provided that any decision by the Securities and Exchange Commission not to grant such exemption shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y).

(b) JUDICIAL RESOLUTION.—

(1) IN GENERAL.—The Commodity Futures Trading Commission or the Securities and Exchange Commission may petition the United States Court of Appeals for the District of Columbia Circuit for review of a final order of the other Commission, with respect to a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) that it believes affects its statutory jurisdiction, including an order or orders issued under subsection (a)(3)(A), by filing in such court, within 60 days after the date of entry
of such order, a written petition requesting a review of the order. Any such proceeding shall be expedited by the Court of Appeals.

(2) Transmittal of petition and record.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the order under review and any documents referred to therein, and any other materials prescribed by the court.

(3) Standard of review.—The court, in considering a petition filed pursuant to paragraph (1), shall give no deference to, or presumption in favor of, the views of either Commission.

(4) Judicial stay.—The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the order, until the date on which the determination of the court is final (including any appeal of the determination).

PART II—REGULATION OF SWAP MARKETS

SEC. 721. DEFINITIONS.

(a) In General.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—
(1) by redesignating paragraphs (2), (3) and (4), (5) through (17), (18) through (23), (24) through (28), (29), (30), (31) through (33), and (34) as paragraphs (6), (8) and (9), (11) through (23), (26) through (31), (34) through (38), (40), (41), (44) through (46), and (51), respectively;

(2) by inserting after paragraph (1) the following:

“(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

“(3) ASSOCIATED PERSON OF A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘associated person of a security-based swap dealer or major security-based swap participant’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

“(4) ASSOCIATED PERSON OF A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘associated person of a swap dealer or major swap participant’ means—
“(i) any partner, officer, director, or branch manager of a swap dealer or major swap participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a swap dealer or major swap participant);

“(ii) any person that directly or indirectly controls, is controlled by, or is under common control with, a swap dealer or major swap participant; and

“(iii) any employee of a swap dealer or major swap participant.

“(B) Exclusion.—Other than for purposes of section 4s(b)(6), the term ‘associated person of a swap dealer or major swap participant’ does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

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

(3) by inserting after paragraph (6) (as redesignated by paragraph (1)) the following:
“(7) CLEARED SWAP.—The term ‘cleared swap’ means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.”;

(4) in paragraph (9) (as redesignated by paragraph (1)), by striking “except onions” and all that follows through the period at the end and inserting the following: “except onions (as provided in section 13–1) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.”;

(5) by inserting after paragraph (9) (as redesignated by paragraph (1)) the following:

“(10) COMMODITY POOL.—

“(A) IN GENERAL.—The term ‘commodity pool’ means any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any—

“(i) commodity for future delivery, se-
“(ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
“(iii) commodity option authorized under section 4c; or
“(iv) leverage transaction authorized under section 19.
“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘commodity pool’ any investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(6) by striking paragraph (11) (as redesignated by paragraph (1)) and inserting the following:
“(11) COMMODITY POOL OPERATOR.—
“(A) IN GENERAL.—The term ‘commodity pool operator’ means any person—
“(i) engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either
directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interest, including any—

“(I) commodity for future delivery, security futures product, or swap;

“(II) agreement, contract, or transaction described in section 2(e)(2)(C)(i) or section 2(e)(2)(D)(i);

“(III) commodity option authorized under section 4c; or

“(IV) leverage transaction authorized under section 19; or

“(ii) who is registered with the Commission as a commodity pool operator.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘commodity pool operator’ any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;
(7) in paragraph (12) (as redesignated by paragraph (1)), in subparagraph (A)—

(A) in clause (i)—

(i) in subclause (I), by striking “made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility” and inserting “, security futures product, or swap”;

(ii) by redesignating subclauses (II) and (III) as subclauses (III) and (IV);

(iii) by inserting after subclause (I) the following:

“(II) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)”;

and

(iv) in subclause (IV) (as so redesignated), by striking “or”;

(B) in clause (ii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(iii) is registered with the Commission as a commodity trading advisor; or

“(iv) the Commission, by rule or regulation, may include if the Commission de-
terms that the rule or regulation will effectuate the purposes of this Act.”;

(8) in paragraph (17) (as redesignated by paragraph (1)), in subparagraph (A), in the matter preceding clause (i), by striking “paragraph (12)(A)” and inserting “paragraph (18)(A)”;

(9) in paragraph (18) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) in the matter following clause

(vii)(III)—

(I) by striking “section 1a (11)(A)” and inserting “paragraph (17)(A)”; and

(II) by striking “$25,000,000” and inserting “$50,000,000”; and

(ii) in clause (xi), in the matter preceding subclause (I), by striking “total assets in an amount” and inserting “amounts invested on a discretionary basis, the aggregate of which is”;

(10) by striking paragraph (22) (as redesignated by paragraph (1)) and inserting the following:

“(22) Floor broker.—
“(A) IN GENERAL.—The term ‘floor broker’ means any person—

“(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person—

“(I) any commodity for future delivery, security futures product, or swap; or

“(II) any commodity option authorized under section 4c; or

“(ii) who is registered with the Commission as a floor broker.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘floor broker’ any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades for any other person if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(11) by striking paragraph (23) (as redesignated by paragraph (1)) and inserting the following:
“(23) FLOOR TRADER.—

“(A) IN GENERAL.—The term ‘floor trader’ means any person—

“(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account—

“(I) any commodity for future delivery, security futures product, or swap; or

“(II) any commodity option authorized under section 4c; or

“(ii) who is registered with the Commission as a floor trader.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘floor trader’ any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades solely for such person’s own account if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;
(12) by inserting after paragraph (23) (as redesignated by paragraph (1)) the following:

“(24) FOREIGN EXCHANGE FORWARD.—The term ‘foreign exchange forward’ means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.

“(25) FOREIGN EXCHANGE SWAP.—The term ‘foreign exchange swap’ means a transaction that solely involves—

“(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and

“(B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.”;

(13) by striking paragraph (28) (as redesignated by paragraph (1)) and inserting the following:

“(28) FUTURES COMMISSION MERCHANT.—
"(A) IN GENERAL.—The term ‘futures
commission merchant’ means an individual, as-
sociation, partnership, corporation, or trust—

“(i) that—

“(I) is engaged in soliciting or in
accepting orders for—

“(aa) the purchase or sale of
a commodity for future delivery;

“(bb) a security futures
product;

“(cc) a swap;

“(dd) any agreement, con-
tract, or transaction described in
section 2(c)(2)(C)(i) or section
2(c)(2)(D)(i);

“(ee) any commodity option
authorized under section 4c; or

“(ff) any leverage trans-
action authorized under section
19; or

“(II) is acting as a counterparty
in any agreement, contract, or trans-
action described in section
2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

and
“(III) in or in connection with the activities described in subclause (I) or (II), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

“(ii) that is registered with the Commission as a futures commission merchant.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘futures commission merchant’ any person who engages in soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this Act, and who accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(14) in paragraph (30) (as redesignated by paragraph (1)), in subparagraph (B), by striking “state” and inserting “State”;
by striking paragraph (31) (as redesignated by paragraph (1)) and inserting the following:

“(31) INTRODUCING BROKER.—

“(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)—

“(i) who—

“(I) is engaged in soliciting or in accepting orders for—

“(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

“(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

“(ee) any commodity option authorized under section 4e; or

“(dd) any leverage transaction authorized under section 19; and
“(II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

“(ii) who is registered with the Commission as an introducing broker.

“(B) Further Definition.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘introducing broker’ any person who engages in soliciting or accepting orders for any agreement, contract, or transaction subject to this Act, and who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(16) by inserting after paragraph (31) (as redesignated by paragraph (1)) the following:

“(32) Major Security-Based Swap Participant.—The term ‘major security-based swap participant’ has the meaning given the term in section
3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

“(33) MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major swap participant’ means any person who is not a swap dealer, and—

“(i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding—

“(I) positions held for hedging or mitigating commercial risk; and

“(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; or

“(ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the
financial stability of the United States
banking system or financial markets; or

“(iii)(I) is a financial entity, other
than an entity predominantly engaged in
providing financing for the purchase of an
affiliate’s merchandise or manufactured
goods, that is highly leveraged relative to
the amount of capital it holds; and

“(II) maintains a substantial position
in outstanding swaps in any major swap
category as determined by the Commission.

“(B) DEFINITION OF SUBSTANTIAL POSI-
tion.—For purposes of subparagraph (A), the
Commission shall define by rule or regulation
the term ‘substantial position’ at the threshold
that the Commission determines to be prudent
for the effective monitoring, management, and
oversight of entities that are systemically im-
portant or can significantly impact the financial
system of the United States.

“(C) SCOPE OF DESIGNATION.—For pur-
poses of subparagraph (A), a person may be
designated as a major swap participant for 1 or
more categories of swaps without being classi-
fied as a major swap participant for all classes
of swaps.”

(17) by inserting after paragraph (38) (as re-
designated by paragraph (1)) the following:

“(39) PRUDENTIAL REGULATOR.—The term
‘prudential regulator’ means—

“(A) the Office of the Comptroller of the
Currency, in the case of—

“(i) any national banking association;

“(ii) any Federal branch or agency of
a foreign bank; or

“(iii) any Federal savings association;

“(B) the Federal Deposit Insurance Cor-
poration, in the case of—

“(i) any insured State bank;

“(ii) any foreign bank having an in-
sured branch; or

“(iii) any State savings association;

“(C) the Board, in the case of—

“(i) any noninsured State member
bank;

“(ii) any branch or agency of a for-
eign bank with respect to any provision of
the Federal Reserve Act (12 U.S.C. 221 et
seq.) which is made applicable under the

“(iii) any foreign bank which does not operate an insured branch;

“(iv) any agency or commercial lending company other than a Federal agency; or

“(v) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1464 et seq.); and

“(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).”;

(18) in paragraph (40) (as redesignated by paragraph (1))—

(A) by striking subparagraph (B);
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(B) by redesignating subparagraphs (C),

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(D), and (E) as subparagraphs (B), (C), and

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(F), respectively;

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(C) in subparagraph (C) (as so redesignated), by striking ‘‘and’’;
(D) by inserting after subparagraph (C)
(as so redesignated) the following:
‘‘(D) a swap execution facility registered
under section 5h;
‘‘(E) a swap data repository registered

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under section 21; and’’;

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(19) by inserting after paragraph (41) (as re-

13
14

designated by paragraph (1)) the following:
‘‘(42) SECURITY-BASED

SWAP.—The

term ‘se-

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curity-based swap’ has the meaning given the term

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in section 3(a) of the Securities Exchange Act of

17

1934 (15 U.S.C. 78c(a)).

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‘‘(43) SECURITY-BASED

SWAP DEALER.—The

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term ‘security-based swap dealer’ has the meaning

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given the term in section 3(a) of the Securities Ex-

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change Act of 1934 (15 U.S.C. 78c(a)).’’;

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(20) in paragraph (46) (as redesignated by

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paragraph (1)), by striking ‘‘subject to section

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2(h)(7)’’ and inserting ‘‘subject to section 2(h)(5)’’;


(21) by inserting after paragraph (46) (as re-designated by paragraph (1)) the following:

“(47) Swap.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction—

“(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

“(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

“(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based
on the value or level of 1 or more interest
or other rates, currencies, commodities, se-
curities, instruments of indebtedness, indi-
ces, quantitative measures, or other finan-
cial or economic interests or property of
any kind, or any interest therein or based
on the value thereof, and that transfers, as
between the parties to the transaction, in
whole or in part, the financial risk associ-
ated with a future change in any such
value or level without also conveying a cur-
rent or future direct or indirect ownership
interest in an asset (including any enter-
prise or investment pool) or liability that
incorporates the financial risk so trans-
ferred, including any agreement, contract,
or transaction commonly known as—

“(I) an interest rate swap;
“(II) a rate floor;
“(III) a rate cap;
“(IV) a rate collar;
“(V) a cross-currency rate swap;
“(VI) a basis swap;
“(VII) a currency swap;
“(VIII) a foreign exchange swap;
(IX) a total return swap;

(X) an equity index swap;

(XI) an equity swap;

(XII) a debt index swap;

(XIII) a debt swap;

(XIV) a credit spread;

(XV) a credit default swap;

(XVI) a credit swap;

(XVII) a weather swap;

(XVIII) an energy swap;

(XIX) a metal swap;

(XX) an agricultural swap;

(XXI) an emissions swap; and

(XXII) a commodity swap;

(iv) that is an agreement, contract, or transaction that is, or in the future becomes commonly known to the trade as a swap;

(v) including any security-based swap agreement which meets the definition of ‘swap agreement’ as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or vola-
tility of any security or any group or index
of securities, or any interest therein; or

“(vi) that is any combination or per-
mutation of, or option on, any agreement,
contract, or transaction described in any of
clauses (i) through (v).

“(B) EXCLUSIONS.—The term ‘swap’ does
not include—

“(i) any contract of sale of a com-
modity for future delivery (or option on
such a contract), leverage contract author-
ized under section 19, security futures
product, or agreement, contract, or trans-
action described in section 2(c)(2)(C)(i) or
section 2(c)(2)(D)(i);

“(ii) any sale of a nonfinancial com-
modity or security for deferred shipment or
delivery, so long as the transaction is in-
tended to be physically settled;

“(iii) any put, call, straddle, option, or
privilege on any security, certificate of de-
posit, or group or index of securities, in-
cluding any interest therein or based on
the value thereof, that is subject to—
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“(I) the Securities Act of 1933
(15 U.S.C. 77a et seq.); and
“(II) the Securities Exchange
Act of 1934 (15 U.S.C. 78a et seq.);
“(iv) any put, call, straddle, option, or
privilege relating to a foreign currency en-
tered into on a national securities exchange
registered pursuant to section 6(a) of the
Securities Exchange Act of 1934 (15
U.S.C. 78f(a));
“(v) any agreement, contract, or
transaction providing for the purchase or
sale of 1 or more securities on a fixed basis
that is subject to—
“(I) the Securities Act of 1933
(15 U.S.C. 77a et seq.); and
“(II) the Securities Exchange
Act of 1934 (15 U.S.C. 78a et seq.);
“(vi) any agreement, contract, or
transaction providing for the purchase or
sale of 1 or more securities on a contingent
basis that is subject to the Securities Act
of 1933 (15 U.S.C. 77a et seq.) and the
Securities Exchange Act of 1934 (15
U.S.C. 78a et seq.), unless the agreement,
contract, or transaction predicates the purchase or sale on the occurrence of a bona
fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

“(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a));

“(viii) any agreement, contract, or transaction that is—

“(I) based on a security; and

“(II) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a))) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

“(ix) any agreement, contract, or transaction a counterparty of which is a
Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

“(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

“(C) Rule of Construction Regarding Master Agreements.—

“(i) In general.—Except as provided in clause (ii), the term ‘swap’ includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

“(ii) Exception.—For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).
“(D) MIXED SWAP.—The term ‘security-based swap’ includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

“(E) TREATMENT OF FOREIGN EXCHANGE SWAPS AND FORWARDS.—

“(i) IN GENERAL.—Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination that either foreign exchange swaps or foreign exchange forwards or both—
“(I) should be not be regulated as swaps under this Act; and

“(II) are not structured to evade the Wall Street Transparency and Accountability Act of 2010 in violation of any rule promulgated by the Commission pursuant to section 111(c) of that Act.

“(ii) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

“(iii) REPORTING.—Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository
that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

“(iv) BUSINESS STANDARDS.—Notwithstanding a written determination by the Secretary pursuant to clause (i), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).

“(v) SECRETARY.—For purposes of this subparagraph only, the term ‘Secretary’ means the Secretary of the Treasury.

“(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS.—

“(i) REGISTERED ENTITIES.—Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization shall not be exempt from any
provision of this Act or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

“(ii) RETAIL TRANSACTIONS.—Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).

“(48) SWAP DATA REPOSITORY.—The term ‘swap data repository’ means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties.

“(49) SWAP DEALER.—

“(A) IN GENERAL.—The term ‘swap dealer’ means any person who—

“(i) holds itself out as a dealer in swaps;

“(ii) makes a market in swaps;
“(iii) regularly engages in the purchase and sale of swaps in the ordinary course of business; or

“(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

“(B) Inclusion.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

“(C) Exception.—The term ‘swap dealer’ does not include a person that buys or sells swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

“(50) Swap Execution Facility.—The term ‘swap execution facility’ means a facility in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, through any means
of interstate commerce, including any trading facility, that—

“(A) facilitates the execution of swaps between persons; and

“(B) is not a designated contract market.”; and

(22) in paragraph (51) (as redesignated by paragraph (1)), in subparagraph (A)(i), by striking “partipants” and inserting “participants”.

(b) AUTHORITY TO DEFINE TERMS.—The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term “commercial risk”; and

(2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle.

(c) MODIFICATION OF DEFINITIONS.—To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms “swap”, “swap dealer”, “major swap participant”, and “eligible contract participant”.

(d) EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking
“except that” and all that follows through the period at the end and inserting the following: “except that—

“(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

“(i) with respect to—

“(I) paragraphs (2), (3), (4), (5), and (7), clause (vii)(III) of paragraph (17), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), 2(c)(D), 4(a), 4(a)(b), 4(d)(c), 4(d)(d), 4(r), 4(s), 5(b)(a), 5(b)(b), 5(d), 5(g), 5(h), 5(b)(e), 5(b)(i), 8(e), and 21; and

“(II) section 206(e) of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78e note); and

“(ii) in subsection (c) of section 111 and section 132 of the Wall Street Transparency and Accountability Act of 2010; and
“(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)) if the Commissions determine that the exemption would be consistent with the public interest.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (cc)—

(i) in subitem (AA), by striking “section 1a(20)” and inserting “section 1a”; and

(ii) in subitem (BB), by striking “section 1a(20)” and inserting “section 1a”; and

(B) in item (dd), by striking “section 1a(12)(A)(ii)” and inserting “section 1a(18)(A)(ii)”.

(2) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended by striking “section 1a(6)” and inserting “section 1a”.
(3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 60–1(a)(1)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(5) Section 5a(b)(2)(F) of the Commodity Exchange Act (7 U.S.C. 7a(b)(2)(F)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(6) Section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a–1(a)) is amended, in the matter preceding paragraph (1), by striking “section 1a(9)” and inserting “section 1a”.

(7) Section 5c(e)(2)(B) of the Commodity Exchange Act (7 U.S.C. 7a–2(e)(2)(B)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.


(A) in subclause (I), by striking “section 1a(12)(B)(ii)” and inserting “section 1a(18)(B)(ii)”;

and
(B) in subclause (II), by striking “section 1a(12)” and inserting “section 1a(18)”.

(9) Section 402 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) in subsection (a)(7), by striking “section 1a(20)” and inserting “section 1a”;

(B) in subsection (b)(2), by striking “section 1a(12)” and inserting “section 1a”;

(C) in subsection (c), by striking “section 1a(4)” and inserting “section 1a”.

SEC. 722. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended in the first sentence—

(1) by inserting “the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and” after “otherwise provided in”;

(2) by striking “(e) through (i) of this section” and inserting “(e) and (f)”;

(3) by striking “contracts of sale” and inserting “swaps or contracts of sale”; and
(4) by striking “or derivatives transaction execution facility registered pursuant to section 5 or 5a” and inserting “pursuant to section 5”.

(b) Regulation of Swaps Under Federal and State Law.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

“(h) Regulation of Swaps as Insurance Under State Law.—A swap—

“(1) shall not be considered to be insurance;

and

“(2) may not be regulated as an insurance contract under the law of any State.”.

(c) Agreements, Contracts, and Transactions Traded on an Organized Exchange.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking “or” at the end;

(2) by redesignating clause (ii) as clause (iii);

and

(3) by inserting after clause (i) the following:

“(ii) a swap; or”.

(d) Applicability.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 723(a)(3)) is amended by adding at the end the following:
“(i) APPLICABILITY.—The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

“(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

“(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.”.

(e) JUST AND REASONABLE RATES.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:

“(vi) Notwithstanding the exclusive jurisdiction of the Commission with respect to accounts, agreements, and transactions involving swaps or contracts of sale of a commodity for future delivery under this


Act, no provision of this Act shall be con-
strued—

“(I) to supersede or limit the au-
tority of the Federal Energy Regu-
latory Commission under the Federal
Power Act (16 U.S.C. 791a et seq.) or
the Natural Gas Act (15 U.S.C. 717
et seq.);

“(II) to restrict the Federal En-
ergy Regulatory Commission from
carrying out the duties and respon-
sibilities of the Federal Energy Regu-
latory Commission to ensure just and
reasonable rates and protect the pub-
lic interest under the Acts described
in subclause (I); or

“(III) to supersede or limit the
authority of a State regulatory au-
thority (as defined in section 3(21) of
the Federal Power Act (16 U.S.C.
796(21)) that has jurisdiction to regu-
late rates and charges for the sale of
electric energy within the State, or re-
strict that State regulatory authority
from carrying out the duties and re-
sponsibilities of the State regulatory authority pursuant to the jurisdiction of the State regulatory authority to regulate rates and charges for the transmission or sale of electric energy.

“(vii) Nothing in clause (vi) shall affect the Commission’s authority with respect to the trading, execution, or clearing of any agreement, contract, or transaction on or subject to the rules of a registered entity, including a designated contract market, derivatives clearing organization, or swaps execution facility.”.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

“(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—
“(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

“(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

“(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).”.

SEC. 723. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) by striking subsections (d), (e), (g), and (h); and

(B) by redesignating subsection (i) as subsection (g).

(2) SWAPS; LIMITATION ON PARTICIPATION.—

Section 2 of the Commodity Exchange Act (7 U.S.C.
2) (as amended by paragraph (1)) is amended by inserting after subsection (e) the following:

“(d) SWAPS.—Nothing in this Act (other than subparagraphs (A), (B), (C), and (D) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e), 2(h), 4(e), 4a, 4b, and 4b–1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2), (f), and (h) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities or Commission registrants) governs or applies to a swap.

“(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.”.

(3) MANDATORY CLEARING OF SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

“(h) CLEARING REQUIREMENT.—

“(1) SUBMISSION.—
“(A) IN GENERAL.—Except as provided in paragraphs (9) and (10), any person who is a party to a swap shall submit such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

“(B) OPEN ACCESS.—The rules of a registered derivatives clearing organization shall—

“(i) prescribe that all swaps with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization; and

“(ii) provide for nondiscriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility, subject to the requirements of section 5(b).

“(2) COMMISSION APPROVAL.—

“(A) IN GENERAL.—A derivatives clearing organization shall submit to the Commission for prior approval any group, category, type, or class of swaps that the derivatives clearing or-
ganization seeks to accept for clearing, which
submission the Commission shall make available
to the public.

“(B) DEADLINE.—The Commission shall
take final action on a request submitted pursu-
ant to subparagraph (A) not later than 90 days
after submission of the request, unless the de-
rivatives clearing organization submitting the
request agrees to an extension of the time limi-
tation established under this subparagraph.

“(C) APPROVAL.—The Commission shall
approve, unconditionally or subject to such
terms and conditions as the Commission deter-
mines to be appropriate, any request submitted
pursuant to subparagraph (A) if the Commis-
sion finds that the request is consistent with
section 5b(c)(2). The Commission shall not ap-
prove any such request if the Commission does
not make such finding.

“(D) RULES.—The Commission shall
adopt rules for a derivatives clearing organiza-
tion's submission for approval, pursuant to this
paragraph, of any group, category, type, or
class of swaps that the derivative clearing orga-
nization seeks to accept for clearing.
“(3) Stay of clearing requirement.—At any time after issuance of an approval pursuant to paragraph (2):

“(A) Review process.—The Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap, or the group, category, type, or class of swaps, and the clearing arrangement.

“(B) Deadline.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or the group, category, type, or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

“(C) Determination.—Upon completion of the review undertaken pursuant to subparagraph (A)—

“(i) the Commission may determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or
the group, category, type, or class of
swaps, must be cleared pursuant to this
subsection if the Commission finds that
such clearing—

“(I) is consistent with section
5b(c)(2); and

“(II) is otherwise in the public
interest, for the protection of inves-
tors, and consistent with the purposes
of this Act;

“(ii) the Commission may determine
that the clearing requirement of paragraph
(1) shall not apply to the swap, or the
group, category, type, or class of swaps; or

“(iii) if a determination is made that
the clearing requirement of paragraph (1)
shall no longer apply, then it shall still be
permissible to clear such swap, or the
group, category, type, or class of swaps.

“(D) RULES.—The Commission shall
adopt rules for reviewing, pursuant to this
paragraph, a derivatives clearing organization’s
clearing of a swap, or a group, category, type,
or class of swaps that the Commission has ac-
cepted for clearing.
“(4) Swaps required to be accepted for clearing.—

“(A) Rulemaking.—The Commission shall adopt rules to further identify any group, category, type, or class of swaps not submitted for approval under paragraph (2) that the Commission deems should be accepted for clearing. In adopting such rules, the Commission shall take into account the following factors:

“(i) The extent to which any of the terms of the group, category, type, or class of swaps, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions.

“(ii) The volume of transactions in the group, category, type, or class of swaps.

“(iii) The extent to which the terms of the group, category, type, or class of swaps are similar to the terms of other agreements, contracts, or transactions that are cleared.

“(iv) Whether any differences in the terms of the group, category, type, or class of swaps, compared to other agreements,
contracts, or transactions that are cleared, are of economic significance.

“(v) Whether a derivatives clearing organization is prepared to clear the group, category, type, or class of swaps and such derivatives clearing organization has in place effective risk management systems.

“(vi) Any other factors the Commission determine to be appropriate.

“(B) OTHER DESIGNATIONS.—At any time after the adoption of the rules required under subparagraph (A), the Commission may separately designate a particular swap or class of swaps as subject to the clearing requirement in paragraph (1), taking into account the factors described in clauses (i) through (vi) of subparagraph (A) and the rules adopted under such subparagraph.

“(C) IN GENERAL.—In accordance with subparagraph (A), the Commission shall, consistent with the public interest, adopt rules under the expedited process described in subparagraph (D) to establish criteria for deter-
mining that a swap, or any group, category, type, or class of swap is required to be cleared.

“(D) EXPEDITED RULEMAKING AUTHORITY.—

“(i) PROCEDURE.—The promulgation of regulations under subparagraph (A) may be made without regard to—

“(I) the notice and comment provisions of section 553 of title 5, United States Code; and

“(II) chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’).

“(ii) AGENCY RULEMAKING.—In carrying out subparagraph (A), the Commission shall use the authority provided under section 808 of title 5, United States Code.

“(5) PREVENTION OF EVASION.—

“(A) IN GENERAL.—The Commission may prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.
“(B) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall—

“(i) investigate the relevant facts and circumstances;

“(ii) within 30 days issue a public report containing the results of the investigation; and

“(iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

“(C) EFFECT ON AUTHORITY.—Nothing in this paragraph shall—

“(i) authorize the Commission to require a derivatives clearing organization to list for clearing a swap, group, category, type, or class of swaps if the clearing of
the swap, group, category, type, or class of
swaps would adversely affect the business
operations of the derivatives clearing orga-
nization, threaten the financial integrity of
the derivatives clearing organization, or
pose a systemic risk to the derivatives
clearing organization; and

“(ii) affect the authority of the Com-
mission to enforce the open access provi-
sions of paragraph (1) with respect to a
swap, group, category, type, or class of
swaps that is listed for clearing by a de-
rivatives clearing organization.

“(6) REQUIRED REPORTING.—

“(A) BOTH COUNTERPARTIES.—Both
counterparties to a swap that is not cleared by
any derivatives clearing organization shall re-
port such a swap either to a registered swap
data repository described in section 21 or, if
there is no repository that would accept the
swap, to the Commission pursuant to section
4r.

“(B) TIMING.—Counterparties to a swap
shall submit the reports required under sub-
paragraph (A) not later than such time period
as the Commission may by rule or regulation prescribe.

“(7) Transition rules.—

“(A) Reporting transition rules.—

Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(i) Swaps entered into before date of enactment of this subsection.—Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap data repository or the Commission not later than 180 days after the effective date of this subsection.

“(ii) Swaps entered into on or after date of enactment of this subsection.—Swaps entered into on or after such date of enactment shall be reported to a registered swap data repository or the Commission not later than the later of—

“(I) 90 days after such effective date; or
“(II) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(B) CLEARING TRANSITION RULES.—

“(i) SWAPS ENTERED INTO BEFORE THE DATE OF THE ENACTMENT OF THIS SUBSECTION.—Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to subparagraph (A)(i).

“(ii) SWAPS ENTERED INTO BEFORE APPLICATION OF CLEARING REQUIREMENT.—Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to subparagraph (A)(ii).

“(8) TRADE EXECUTION.—

“(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—
“(i) execute the transaction on a board of trade designated as a contract market under section 5; or

“(ii) execute the transaction on a swap execution facility registered under section 5h or a swap execution facility that is exempt from registration under section 5h(e) of this Act.

“(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or to swap transactions where a commercial end user opts to use the clearing exemption under paragraph (10).

“(9) REQUIRED EXEMPTION.—Subject to paragraph (4), the Commission shall exempt a swap from the requirements of paragraphs (1) and (8) and any rules issued under this subsection, if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(i) of this Act will accept the swap for clearing.

“(10) END USER CLEARING EXEMPTION.—
(A) Definition of commercial end user.—

(i) In general.—In this paragraph, the term ‘commercial end user’ means any person other than a financial entity described in clause (ii) who, as its primary business activity, owns, uses, produces, processes, manufactures, distributes, mer-
chandises, or markets goods, services, or commodities (which shall include but not be limited to coal, natural gas, electricity, ethanol, crude oil, gasoline, propane, dis-
tillates, and other hydrocarbons) either in-
dividually or in a fiduciary capacity.

(ii) Financial entity.—The term ‘financial entity’ means—

(I) a swap dealer, major swap participant, security-based swap deal-
er, or major security-based swap par-
ticipant;

(II) a person predominantly en-
gaged in activities that are in the business of banking or financial in na-
ture, as defined in section 4(k) of the Bank Holding Company Act of 1956;
“(III) a person predominantly engaged in activities that are financial in nature;

“(IV) a commodity pool or a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); or

“(V) a person that is registered or required to be registered with the Commission.

“(B) END USER CLEARING EXEMPTION.—

“(i) IN GENERAL.—Subject to clause (ii), in the event that a swap is subject to the mandatory clearing requirement under paragraph (1), and 1 of the counterparties to the swap is a commercial end user, that counterparty—

“(I)(aa) may elect not to clear the swap, as required under paragraph (1); or

“(bb) may elect to require clearing of the swap; and

“(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the de-
derivatives clearing organization at
which the swap will be cleared.

“(ii) LIMITATION.—A commercial end
user may only make an election under
clause (i) if the end user is using the swap
to hedge its own commercial risk.

“(C) TREATMENT OF AFFILIATES.—

“(i) IN GENERAL.—An affiliate of a
commercial end user (including affiliate en-
tities predominantly engaged in providing
financing for the purchase of the merchan-
dise or manufactured goods of the com-
mercial end user) may make an election
under subparagraph (B)(i) only if the affil-
iate, acting on behalf of the commercial
dern user and as an agent, uses the swap
to hedge or mitigate the commercial risk of
the commercial end user parent or other
affiliate of the commercial end user that is
not a financial entity.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a com-
mercial end user shall not use the exemp-
tion under subparagraph (B) if the affil-
iate is—
“(I) a swap dealer;
“(II) a security-based swap dealer;
“(III) a major swap participant;
“(IV) a major security-based swap participant;
“(V) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a–3(c));
“(VI) a commodity pool;
“(VII) a bank holding company with over $50,000,000,000 in consolidated assets; or
“(VIII) an affiliate of any entity described in subclauses (I) through (VII).
“(D) Abuse of Exemption.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B). The Commission may also request information from

those entities claiming the clearing exemption as necessary to prevent abuse of the exemption described in subparagraph (B).

“(E) Option to clear.—

“(i) Swaps required to be cleared entered into with a financial entity.—With respect to any swap that is subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a financial entity that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the financial entity shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

“(ii) Swaps not required to be cleared entered into with a financial entity or commercial end user.—With respect to any swap that is not subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a financial entity or
commercial end user, the financial entity
or commercial end user—

“(I) may elect to require clearing
of the swap; and

“(II) shall have the sole right to
select the derivatives clearing organi-
zation at which the swap will be
cleared.”.

(b) COMMODITY EXCHANGE ACT.—Section 2 of the
Commodity Exchange Act (7 U.S.C. 2) is amended by
adding at the end the following:

“(j) AUDIT COMMITTEE APPROVAL.—Exemptions
from the requirements of subsection (h)(1) to clear a swap
and subsection (h)(8) to trade a swap through a board
of trade or swap execution facility shall be available to
a counterparty that is an issuer of securities that are reg-
istered under section 12 of the Securities Exchange Act
of 1934 (15 U.S.C. 78l) or that is required to file reports
pursuant to section 15(d) of the Securities Exchange Act
of 1934 (15 U.S.C. 78o) only if the issuer’s audit com-
mittee has reviewed and approved its decision to enter into
swaps that are subject to such exemptions.”.

(e) GRANDFATHER PROVISIONS.—

(1) LEGAL CERTAINTY FOR CERTAIN TRANS-
ACTIONS IN EXEMPT COMMODITIES.—Not later than
60 days after the date of enactment of this Act, a
person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).

(2) Consideration; Authority of Commodity Futures Trading Commission.—The Commodity Futures Trading Commission—

(A) shall consider any petition submitted under subparagraph (A) in a prompt manner; and

(B) may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period.

(3) Agricultural Swaps.—

(A) In general.—Except as provided in subparagraph (B), no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).
(B) Exception.—Notwithstanding subparagraph (A), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.

(4) Required Reporting.—If the exception described in section 2(h)(8)(B) of the Commodity Exchange Act applies, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to section 2(h)(8)(B) of the Commodity Exchange Act.

SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREATMENT.

(a) Segregation Requirements for Cleared Swaps.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 732) is amended by adding at the end the following:
“(f) SWAPS.—

“(1) Registration requirement.—It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this Act with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.

“(2) Cleared swaps.—

“(A) Segregation required.—A futures commission merchant shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer.

“(B) Commingling prohibited.—Money, securities, and property of a swaps customer
described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or be used to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.

“(3) Exceptions.—

“(A) Use of Funds.—

“(i) In General.—Notwithstanding paragraph (2), money, securities, and property of a swaps customer of a futures commission merchant described in paragraph (2) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a derivatives clearing organization.

“(ii) Withdrawal.—Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organiz-
tion, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

“(B) COMMISSION ACTION.—Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customer of a futures commission merchant described in paragraph (2) may be commingled and deposited as provided in this section with any other money, securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swaps customer of the futures commission merchant.

“(4) PERMITTED INVESTMENTS.—Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State,
and in obligations fully guaranteed as to principal
and interest by the United States, or in any other
investment that the Commission may by rule or reg-
ulation prescribe, and such investments shall be
made in accordance with such rules and regulations
and subject to such conditions as the Commission
may prescribe.

“(5) COMMODITY CONTRACT.—A swap cleared
by or through a derivatives clearing organization
shall be considered to be a commodity contract as
such term is defined in section 761 of title 11,
United States Code, with regard to all money, secu-
rities, and property of any swaps customer received
by a futures commission merchant or a derivatives
clearing organization to margin, guarantee, or se-
cure the swap (including money, securities, or prop-
erty accruing to the customer as the result of the
swap).

“(6) PROHIBITION.—It shall be unlawful for
any person, including any derivatives clearing orga-
nization and any depository institution, that has re-
ceived any money, securities, or property for deposit
in a separate account or accounts as provided in
paragraph (2) to hold, dispose of, or use any such
money, securities, or property as belonging to the
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depositing futures commission merchant or any per-
son other than the swaps customer of the futures
commission merchant.”.

(b) Bankruptcy Treatment of Cleared
Swaps.—Section 761 of title 11, United States Code, is
amended—

(1) in paragraph (4), by striking subparagraph
(F) and inserting the following:

“(F)(i) any other contract, option, agree-
ment, or transaction that is similar to a con-
tract, option, agreement, or transaction referred
to in this paragraph; and

“(ii) with respect to a futures commission
merchant or a clearing organization, any other
contract, option, agreement, or transaction, in
each case, that is cleared by a clearing organi-
ization;”; and

(2) in paragraph (9)(A)(i), by striking “the
commodity futures account” and inserting “a com-
modity contract account”.

(c) Segregation Requirements for Uncleared
Swaps.—Section 4s of the Commodity Exchange Act (as
added by section 731) is amended by adding at the end
the following:

“(l) Segregation Requirements.—
“(1) Segregation of assets held as collateral in uncleared swap transactions.—

“(A) Notification.—A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty.

“(B) Segregation and maintenance of funds.—At the request of a counterparty to a swap that provides funds or other property to a swap dealer or major swap participant to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall—

“(i) segregate the funds or other property for the benefit of the counterparty; and

“(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate
from the assets and other interests of the

swap dealer or major swap participant.

“(2) APPLICABILITY.—The requirements de-
scribed in paragraph (1) shall—

“(A) apply only to a swap between a
counterparty and a swap dealer or major swap
participant that is not submitted for clearing to
a derivatives clearing organization; and

“(B)(i) not apply to variation margin pay-
ments; or

“(ii) not preclude any commercial arrange-
ment regarding—

“(I) the investment of segregated
funds or other property that may only be
invested in such investments as the Com-
mmission may permit by rule or regulation;
and

“(II) the related allocation of gains
and losses resulting from any investment
of the segregated funds or other property.

“(3) USE OF INDEPENDENT THIRD-PARTY
CUSTODIANS.—The segregated account described in
paragraph (1) shall be—

“(A) carried by an independent third-party
custodian; and
“(B) designated as a segregated account
for and on behalf of the counterparty.

“(4) REPORTING REQUIREMENT.—If the
counterparty does not choose to require segregation
of the funds or other property supplied to margin,
guarantee, or secure the obligations of the
counterparty, the swap dealer or major swap partici-
pant shall report to the counterparty of the swap
dealer or major swap participant on a quarterly
basis that the back office procedures of the swap
dealer or major swap participant relating to margin
and collateral requirements are in compliance with
the agreement of the counterparties.”.

SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.

(a) Registration Requirement.—Section 5b of
the Commodity Exchange Act (7 U.S.C. 7a–1) is amended
by striking subsections (a) and (b) and inserting the fol-
lowing:

“(a) Registration Requirement.—

“(1) In general.—Except as provided in para-
graph (2), it shall be unlawful for a derivatives
clearing organization, directly or indirectly, to make
use of the mails or any means or instrumentality of
interstate commerce to perform the functions of a
derivatives clearing organization with respect to—
“(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

“(i) excluded from this Act by subsection (a)(1)(C)(i), (c), or (f) of section 2; or

“(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

“(B) a swap.

“(2) Exception.—Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

“(b) Voluntary Registration.—A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.”.

(b) Registration for Depository Institutions and Clearing Agencies; Exemptions; Compliance Officer; Annual Reports.—Section 5b of the Com-
modity Exchange Act (7 U.S.C. 7a–1) is amended by adding at the end the following:

“(g) REQUIRED REGISTRATION FOR DEPOSITORY INSTITUTIONS AND CLEARING AGENCIES.—A person that is required to be registered as a derivatives clearing organization under this section shall register with the Commission regardless of whether the person is a depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(h) EXISTING DEPOSITORY INSTITUTIONS AND CLEARING AGENCIES.—

“(1) IN GENERAL.—A depository institution or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before the date of enactment of this subsection—

“(A) the depository institution cleared swaps as a multilateral clearing organization; or

“(B) the clearing agency cleared swaps.
“(2) Conversion of depository institutions.—A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

“(i) Exemptions.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission determines that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission or the appropriate government authorities in the home country of the organization. Such conditions may include, but are not limited to, requiring that the derivatives clearing organization be available for inspection by the Commission and make available all information requested by the Commission.

“(j) Designation of Chief Compliance Officer.—
“(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the derivatives clearing organization;

“(B) review the compliance of the derivatives clearing organization with respect to the core principles described in subsection (c)(2);

“(C) in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this Act (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;
“(F) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

“(i) compliance office review;
“(ii) look-back;
“(iii) internal or external audit finding;
“(iv) self-reported error; or
“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the derivatives clearing organization of the compliance officer with respect to this Act (including regulations); and

“(ii) each policy and procedure of the derivatives clearing organization of the compliance officer (including the code of
ethics and conflict of interest policies of
the derivatives clearing organization).

“(B) REQUIREMENTS.—A compliance re-
port under subparagraph (A) shall—

“(i) accompany each appropriate fi-
nancial report of the derivatives clearing
organization that is required to be fur-
nished to the Commission pursuant to this
section; and

“(ii) include a certification that, under
penalty of law, the compliance report is ac-
curate and complete.”.

(c) CORE PRINCIPLES FOR DERIVATIVES CLEARING
ORGANIZATIONS.—Section 5b(c) of the Commodity Ex-
change Act (7 U.S.C. 7a–1(c)) is amended by striking
paragraph (2) and inserting the following:

“(2) CORE PRINCIPLES FOR DERIVATIVES
CLEARING ORGANIZATIONS.—

“(A) COMPLIANCE.—

“(i) IN GENERAL.—To be registered
and to maintain registration as a deriva-
tives clearing organization, a derivatives
clearing organization shall comply with
each core principle described in this para-
graph and any requirement that the Com-
mission may impose by rule or regulation pursuant to section 8a(5).

“(ii) Discretion of derivatives clearing organization.—Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.

“(B) Financial resources.—

“(i) In general.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

“(ii) Minimum amount of financial resources.—Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

“(I) enable the organization to meet its financial obligations to its members and participants notwith-
standing a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

“(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

“(i) IN GENERAL.—Each derivatives clearing organization shall establish—

“(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

“(II) appropriate standards for determining the eligibility of agree-
ments, contracts, and transactions submitted to the derivatives clearing organization for clearing.

“(ii) REQUIRED PROCEDURES.—Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

“(iii) REQUIREMENTS.—The participation and membership requirements of each derivatives clearing organization shall—

“(I) be objective;

“(II) be publicly disclosed; and

“(III) permit fair and open access.

“(D) RISK MANAGEMENT.—

“(i) IN GENERAL.—Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through
the use of appropriate tools and procedures.

“(ii) Measurement of Credit Exposure.—Each derivatives clearing organization shall—

“(I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

“(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

“(iii) Limitation of Exposure to Potential Losses from Defaults.—Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—
“(I) the operations of the derivatives clearing organization would not be disrupted; and

“(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

“(iv) MARGIN REQUIREMENTS.—The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

“(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS.—Each model and parameter used in setting margin requirements under clause (iv) shall be—

“(I) risk-based; and

“(II) reviewed on a regular basis.

“(E) SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—

“(i) complete money settlements on a timely basis (but not less frequently than once each business day);
“(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);

“(iii) ensure that money settlements are final when effected;

“(iv) maintain an accurate record of the flow of funds associated with each money settlement;

“(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;

“(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

“(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

“(F) TREATMENT OF FUNDS.—

“(i) REQUIRED STANDARDS AND PROCEDURES.—Each derivatives clearing orga-
nization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

“(ii) HOLDING OF FUNDS AND ASSETS.—Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

“(iii) PERMISSIBLE INVESTMENTS.—Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

“(G) DEFAULT RULES AND PROCEDURES.—

“(i) IN GENERAL.—Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

“(I) become insolvent; or
“(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

“(ii) DEFAULT PROCEDURES.—Each derivatives clearing organization shall—

“(I) clearly state the default procedures of the derivatives clearing organization;

“(II) make publicly available the default rules of the derivatives clearing organization; and

“(III) ensure that the derivatives clearing organization may take timely action—

“(aa) to contain losses and liquidity pressures; and

“(bb) to continue meeting each obligation of the derivatives clearing organization.

“(H) RULE ENFORCEMENT.—Each derivatives clearing organization shall—

“(i) maintain adequate arrangements and resources for—
“(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

“(II) the resolution of disputes;

“(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

“(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

“(I) SYSTEM SAFEGUARDS.—Each derivatives clearing organization shall—

“(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;
“(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

“(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

“(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

“(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

“(J) REPORTING.—Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

“(K) RECORDKEEPING.—Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—
“(i) in a form and manner that is acceptable to the Commission; and

“(ii) for a period of not less than 5 years.

“(L) PUBLIC INFORMATION.—

“(i) IN GENERAL.—Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

“(ii) AVAILABILITY OF INFORMATION.—Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

“(iii) PUBLIC DISCLOSURE.—Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—

“(I) the terms and conditions of each contract, agreement, and trans-
action cleared and settled by the derivatives clearing organization;

“(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

“(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

“(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

“(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

“(M) INFORMATION-SHARING.—Each derivatives clearing organization shall—

“(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and
“(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.

“(N) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not—

“(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

“(ii) impose any material anticompetitive burden.

“(O) GOVERNANCE FITNESS STANDARDS.—

“(i) GOVERNANCE ARRANGEMENTS.— Each derivatives clearing organization shall establish governance arrangements that are transparent—

“(I) to fulfill public interest requirements; and

“(II) to support the objectives of owners and participants.
“(ii) FITNESS STANDARDS.—Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

“(I) directors;

“(II) members of any disciplinary committee;

“(III) members of the derivatives clearing organization;

“(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

“(V) any party affiliated with any individual or entity described in this clause.

“(P) CONFLICTS OF INTEREST.—Each derivatives clearing organization shall—

“(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and

“(ii) establish a process for resolving conflicts of interest described in clause (i).
“(Q) COMPOSITION OF GOVERNING BOARDS.—Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

“(R) LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.

“(S) MODIFICATION OF CORE PRINCIPLES.—The Commission may conform the core principles established in this paragraph to reflect evolving United States and international standards.”.

(d) CONFLICTS OF INTEREST.—The Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment.
(c) Reporting Requirements.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) (as amended by subsection (b)) is amended by adding at the end the following:

“(k) Reporting Requirements.—

“(1) Duty of derivatives clearing organizations.—Each derivatives clearing organization that clears swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this Act.

“(2) Data collection and maintenance requirements.—The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for—

“(A) swaps data reported to swap data repositories; and

“(B) swaps traded on swap execution facilities.

“(3) Reports on security-based swap agreements to be shared with the Securities and Exchange Commission.—

“(A) In general.—A derivatives clearing organization that clears security-based swap
agreements (as defined in section 3(a)(78) of
the Securities Exchange Act) shall, upon re-
quest, make available to the Securities and Ex-
change Commission all books and records relat-
ing to such security-based swap agreements,
consistent with the confidentiality and disclo-
sure requirements of section 8.

“(B) **Jurisdiction.**—Nothing in this
paragraph shall affect the exclusive jurisdiction
of the Commission to prescribe recordkeeping
and reporting requirements for a derivatives
clearing organization that is registered with the
Commission.”

“(4) **Information Sharing.**—Subject to sec-
tion 8, and upon request, the Commission shall
share information collected under paragraph (2)
with—

“(A) the Board;

“(B) the Securities and Exchange Commiss-
ion;

“(C) each appropriate prudential regulator;

“(D) the Financial Stability Oversight
Council;

“(E) the Department of Justice; and
“(F) any other person that the Commission determines to be appropriate, including—

“(i) foreign financial supervisors (including foreign futures authorities);

“(ii) foreign central banks; and

“(iii) foreign ministries.

“(5) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the Commission may share information with any entity described in paragraph (4)—

“(A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and

“(B) each entity shall agree to indemnify the Commission for any expenses arising from litigation relating to the information provided under section 8.

“(6) PUBLIC INFORMATION.—Each derivatives clearing organization that clears swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by
the Commission to comply with the public reporting
requirements contained in section 2(a)(13).”.

(f) PUBLIC DISCLOSURE.—Section 8(e) of the Com-
modity Exchange Act (7 U.S.C. 12(e)) is amended in the
last sentence—

(1) by inserting “, central bank and min-
istries,” after “department” each place it appears;
and

(2) by striking “. is a party.” and inserting “,
is a party.”.

(g) LEGAL CERTAINTY FOR IDENTIFIED BANKING
PRODUCTS.—

(1) REPEALS.—The Legal Certainty for Bank
Products Act of 2000 (7 U.S.C. 27 et seq.) is
amended—

(A) by striking sections 404 and 407 (7
U.S.C. 27b, 27e);

(B) in section 402 (7 U.S.C. 27), by strik-
ing subsection (d); and

(C) in section 408 (7 U.S.C. 27f)—

(i) in subsection (e)—

(I) by striking “in the case” and
all that follows through “a hybrid”
and inserting “in the case of a hy-
brid”;
(II) by striking “; or” and inserting a period; and

(III) by striking paragraph (2);

(ii) by striking subsection (b); and

(iii) by redesignating subsection (c) as subsection (b).

(2) LEGAL CERTAINTY FOR BANK PRODUCTS

ACT OF 2000.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

“(a) EXCLUSION.—Except as provided in subsection (b) or (c)—

“(1) the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to, an identified banking product; and

“(2) the definitions of ‘security-based swap’ in section 3(a)(68) of the Securities Exchange Act of 1934 and ‘security-based swap agreement’ in section 3(a)(78) of the Securities Exchange Act of 1934 do not include any identified bank product.
“(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

“(1) would meet the definition of a ‘swap’ under section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a) or a ‘security-based swap’ under that section 3(a)(68) of the Securities Exchange Act of 1934; and

“(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified bank product that—

“(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

“(2) meets the definition of swap in section 1a(47) of the Commodity Exchange Act or security-
based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and

“(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

SEC. 726. RULEMAKING ON CONFLICT OF INTEREST.

(a) In General.—Not later than 180 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commodity Futures Trading Commission shall determine whether to adopt rules to establish limits on the control of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in section 102) supervised by the Board, an affiliate of such a bank holding company or nonbank financial company, a swap dealer,
major swap participant, or associated person of a swap
dealer or major swap participant.

(b) PURPOSES.—The Commission shall adopt rules if
it determines, after the review described in subsection (a),
that such rules are necessary or appropriate to improve
the governance of, or to mitigate systemic risk, promote
competition, or mitigate conflicts of interest in connection
with a swap dealer or major swap participant’s conduct
of business with, a derivatives clearing organization, con-
tract market, or swap execution facility that clears or
posts swaps or makes swaps available for trading and in
which such swap dealer or major swap participant has a
material debt or equity investment.

SEC. 727. PUBLIC REPORTING OF SWAP TRANSACTION
DATA.

Section 2(a) of the Commodity Exchange Act (7
U.S.C. 2(a)) is amended by adding at the end the fol-
lowing:

“(13) PUBLIC AVAILABILITY OF SWAP TRAN-
SACTION DATA.—

“(A) DEFINITION OF REAL-TIME PUBLIC
REPORTING.—In this paragraph, the term ‘real-
time public reporting’ means to report data re-
lating to a swap transaction as soon as techno-
logically practicable after the time at which the
swap transaction has been executed.

“(B) PURPOSE.—The purpose of this sec-
tion is to authorize the Commission to make
swap transaction and pricing data available to
the public in such form and at such times as
the Commission determines appropriate to en-
hance price discovery.

“(C) GENERAL RULE.—The Commission is
authorized and required to provide by rule for
the public availability of swap transaction and
pricing data as follows:

“(i) With respect to those swaps that
are subject to the mandatory clearing re-
quirement described in subsection (h)(1)
(including those swaps that are exempted
from the requirement pursuant to sub-
section (h)(10)), the Commission shall re-
quire real-time public reporting for such
transactions.

“(ii) With respect to those swaps that
are not subject to the mandatory clearing
requirement described in subsection (h)(1),
but are cleared at a registered derivatives
clearing organization, the Commission
shall require real-time public reporting for such transactions.

“(iii) With respect to swaps that are not cleared at a registered derivatives clearing organization and which are reported to a swap data repository or the Commission under subsection (h)(6), the Commission shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on such swap trading volumes and positions.

“(iv) With respect to swaps that are exempt from the requirements of subsection (h)(1), the Commission shall require real-time public reporting for such transactions.

“(D) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.

“(E) RULEMAKING REQUIRED.—With respect to the rule providing for the public availability of transaction and pricing data for
swaps described in clauses (i) and (ii) of sub-
paragraph (C), the rule promulgated by the
Commission shall contain provisions—

“(i) to ensure such information does
not identify the participants;

“(ii) to specify the criteria for deter-
mining what constitutes a large notional
swap transaction (block trade) for par-
ticular markets and contracts;

“(iii) to specify the appropriate time
delay for reporting large notional swap
transactions (block trades) to the public;

and

“(iv) that take into account whether
the public disclosure will materially reduce
market liquidity.

“(F) TIMELINESS OF REPORTING.—Par-
ties to a swap (including agents of the parties
to a swap) shall be responsible for reporting
swap transaction information to the appropriate
registered entity in a timely manner as may be
prescribed by the Commission.

“(14) SEMIANNUAL AND ANNUAL PUBLIC RE-
PORTING OF AGGREGATE SWAP DATA.—
“(A) In general.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

“(i) the trading and clearing in the major swap categories; and

“(ii) the market participants and developments in new products.

“(B) Use; consultation.—In preparing a report under subparagraph (A), the Commission shall—

“(i) use information from swap data repositories and derivatives clearing organizations; and

“(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.”.

SEC. 728. SWAP DATA REPOSITORIES.

The Commodity Exchange Act is amended by inserting after section 20 (7 U.S.C. 24) the following:

“SEC. 21. SWAP DATA REPOSITORIES.

“(a) Registration requirement.—
“(1) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.

“(2) INSPECTION AND EXAMINATION.—Each registered swap data repository shall be subject to inspection and examination by any representative of the Commission.

“(3) COMPLIANCE WITH CORE PRINCIPLES.—

“(A) IN GENERAL.—To be registered, and maintain registration, as a swap data repository, the swap data repository shall comply with—

“(i) the core principles described in this subsection; and

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) REASONABLE DISCRETION OF SWAP DATA REPOSITORY.—Unless otherwise determined by the Commission by rule or regulation, a swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap data
repository complies with the core principles described in this subsection.

“(b) STANDARD SETTING.—

“(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.

“(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap data repositories.

“(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.

“(4) SHARING OF INFORMATION WITH SECURITIES AND EXCHANGE COMMISSION.—Registered swap data repositories shall make available to the Securities and Exchange Commission, upon request, all books and records relating to security-based swap agreements that are maintained by such swap data repository, consistent with the confidentiality and disclosure requirements of section 8. Nothing in this paragraph shall affect the exclusive jurisdiction of
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the Commission to prescribe recordkeeping and re-
porting requirements for a swap data repository that
is registered with the Commission.

“(c) DUTIES.—A swap data repository shall—

“(1) accept data prescribed by the Commission
for each swap under subsection (b);

“(2) confirm with both counterparties to the
swap the accuracy of the data that was submitted;

“(3) maintain the data described in paragraph
(1) in such form, in such manner, and for such pe-
period as may be required by the Commission;

“(4)(A) provide direct electronic access to the
Commission (or any designee of the Commission, in-
cluding another registered entity); and

“(B) provide the information described in para-
graph (1) in such form and at such frequency as the
Commission may require to comply with the public
reporting requirements contained in section
2(a)(13);

“(5) at the direction of the Commission, estab-
lish automated systems for monitoring, screening,
and analyzing swap data, including compliance and
frequency of end user clearing exemption claims by
individual and affiliated entities;
“(6) maintain the privacy of any and all swap
transaction information that the swap data reposi-
tory receives from a swap dealer, counterparty, or
any other registered entity; and

“(7) on a confidential basis pursuant to section
8, upon request, and after notifying the Commission
of the request, make available all data obtained by
the swap data repository, including individual
counterparty trade and position data, to—

“(A) each appropriate prudential regulator;

“(B) the Financial Stability Oversight
Council;

“(C) the Securities and Exchange Commis-

“(D) the Department of Justice; and

“(E) any other person that the Commis-

“(i) foreign financial supervisors (in-
cluding foreign futures authorities);

“(ii) foreign central banks;

“(iii) foreign ministries; and

“(8) establish and maintain emergency proce-
dures, backup facilities, and a plan for disaster re-
covery that allows for the timely recovery and re-
sumption of operations and the fulfillment of the responsibilities and obligations of the organization.

“(d) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the swap data repository may share information with any entity described in subsection (c)(7)—

“(1) the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and

“(2) each entity shall agree to indemnify the swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 8.

“(e) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each swap data repository shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the swap data repository;
“(B) review the compliance of the swap
data repository with respect to the core prin-
ciples described in subsection (f);

“(C) in consultation with the board of the
swap data repository, a body performing a func-
tion similar to the board of the swap data re-
pository, or the senior officer of the swap data
repository, resolve any conflicts of interest that
may arise;

“(D) be responsible for administering each
policy and procedure that is required to be es-
tablished pursuant to this section;

“(E) ensure compliance with this Act (in-
cluding regulations) relating to agreements,
contracts, or transactions, including each rule
prescribed by the Commission under this sec-
tion;

“(F) establish procedures for the remediation
of noncompliance issues identified by the
chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or
“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of non-compliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the swap data repository of the chief compliance officer with respect to this Act (including regulations); and

“(ii) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and
“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

“(f) **CORE PRINCIPLES APPLICABLE TO SWAP DATA REPOSITORIES.**—

“(1) **ANTITRUST CONSIDERATIONS.**—Unless necessary or appropriate to achieve the purposes of this Act, a swap data repository shall not

“(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

“(2) **GOVERNANCE ARRANGEMENTS.**—Each swap data repository shall establish governance arrangements that are transparent—

“(A) to fulfill public interest requirements; and

“(B) to support the objectives of the Federal Government, owners, and participants.

“(3) **CONFLICTS OF INTEREST.**—Each swap data repository shall—
“(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository; and

“(B) establish a process for resolving conflicts of interest described in subparagraph (A).

“(g) REQUIRED REGISTRATION FOR SWAP DATA REPOSITORIES.—Any person that is required to be registered as a swap data repository under this section shall register with the Commission regardless of whether that person is also licensed as a bank or registered with the Securities and Exchange Commission as a swap data repository.

“(h) RULES.—The Commission shall adopt rules governing persons that are registered under this section.”.

SEC. 729. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act is amended by inserting after section 4q (7 U.S.C. 6o–1) the following:

“SEC. 4r. REPORTING AND RECORDKEEPING FOR UNCLEARED SWAPS.

“(a) REQUIRED REPORTING OF SWAPS NOT ACCEPTED BY ANY DERIVATIVES CLEARING ORGANIZATION.—

“(1) IN GENERAL.—Each swap that is not accepted for clearing by any derivatives clearing organization shall be reported to—

“(A) a swap data repository described in section 21; or
“(B) in the case in which there is no swap data repository that would accept the swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

“(2) TRANSITION RULE FOR PREENACTMENT SWAPS.—

“(A) Swaps entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010.—Each swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered swap data repository or the Commission by a date that is not later than—

“(i) 30 days after issuance of the interim final rule; or

“(ii) such other period as the Commission determines to be appropriate.

“(B) COMMISSION RULEMAKING.—The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each
swap entered into before the date of enactment
as referenced in subparagraph (A).

“(C) EFFECTIVE DATE.—The reporting
provisions described in this section shall be ef-
fective upon the enactment of this section.

“(3) REPORTING OBLIGATIONS.—

“(A) SWAPS IN WHICH ONLY 1
COUNTERPARTY IS A SWAP DEALER OR MAJOR
SWAP PARTICIPANT.—With respect to a swap in
which only 1 counterparty is a swap dealer or
major swap participant, the swap dealer or
major swap participant shall report the swap as
required under paragraphs (1) and (2).

“(B) SWAPS IN WHICH 1 COUNTERPARTY
IS A SWAP DEALER AND THE OTHER A MAJOR
SWAP PARTICIPANT.—With respect to a swap in
which 1 counterparty is a swap dealer and the
other a major swap participant, the swap dealer
shall report the swap as required under para-
graphs (1) and (2).

“(C) OTHER SWAPS.—With respect to any
other swap not described in subparagraph (A)
or (B), the counterparties to the swap shall se-
lect a counterparty to report the swap as re-
quired under paragraphs (1) and (2).
“(b) DUTIES OF CERTAIN INDIVIDUALS.—Any individual or entity that enters into a swap shall meet each requirement described in subsection (c) if the individual or entity did not—

“(1) clear the swap in accordance with section 2(h)(1); or

“(2) have the data regarding the swap accepted by a swap data repository in accordance with rules (including timeframes) adopted by the Commission under section 21.

“(c) REQUIREMENTS.—An individual or entity described in subsection (b) shall—

“(1) upon written request from the Commission, provide reports regarding the swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and

“(2) maintain books and records pertaining to the swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—

“(A) any representative of the Commission;

“(B) an appropriate prudential regulator;
“(C) the Securities and Exchange Commission;
“(D) the Financial Stability Oversight Council; and
“(E) the Department of Justice.
“(d) IDENTICAL DATA.—In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by swap data repositories under section 21.”.

SEC. 730. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4s (as added by section 731) the following:

“SEC. 4t. LARGE SWAP TRADER REPORTING.

“(a) Prohibition.—
“(1) In general.—Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—
“(A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as
shall be established periodically by the Commission; and

“(B) the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.

“(2) EXCEPTION.—Paragraph (1) shall not apply if—

“(A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

“(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any designated contract market or swap execution facility, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

“(b) REQUIREMENTS.—
“(1) In general.—Books and records described in subsection (a)(2)(B) shall—

“(A) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation;

“(B) be open at all times to inspection and examination by any representative of the Commission; and

“(C) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in security-based swap agreements (as that term is defined in section 3(a)(78) of the Securities Exchange Act of 1934), and consistent with the confidentiality and disclosure requirements of section 8.

“(2) Jurisdiction.—Nothing in paragraph (1) shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for large swap traders under this section.

“(c) Applicability.—For purposes of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include the swaps, futures, and
cash or spot transactions and positions of any persons di-
rectly or indirectly controlled by the person.

“(d) Significant Price Discovery Function.—

In making a determination as to whether a swap performs
or affects a significant price discovery function with re-
spect to registered entities, the Commission shall consider
the factors described in section 4a(a)(3).”.

SEC. 731. REGISTRATION AND REGULATION OF SWAP DEAL-
ERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.)
is amended by inserting after section 4r (as added by sec-
tion 729) the following:

“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-
ERS AND MAJOR SWAP PARTICIPANTS.

“(a) Registration.—

“(1) Swap dealers.—It shall be unlawful for
any person to act as a swap dealer unless the person
is registered as a swap dealer with the Commission.

“(2) Major swap participants.—It shall be
unlawful for any person to act as a major swap par-
ticipant unless the person is registered as a major
swap participant with the Commission.

“(b) Requirements.—
“(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

“(2) CONTENTS.—

“(A) IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

“(B) CONTINUAL REPORTING.—A person that is registered as a swap dealer or major swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

“(3) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

“(4) RULES.—Except as provided in subsections (c), (e), and (f), the Commission may prescribe rules applicable to non-bank swap dealers and non-bank major swap participants, including rules that limit the activities of swap dealers and major swap participants.
“(5) Transition.—Rules under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(6) Statutory disqualification.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

“(c) Dual Registration.—

“(1) Swap dealer.—Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a security-based swap dealer.

“(2) Major swap participant.—Any person that is required to be registered as a major swap
participant under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a major security-based swap participant.

“(d) Rulemakings.—

“(1) In general.—The Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

“(2) Exception for prudential requirements.—

“(A) In general.—The Commission may not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a prudential regulator.

“(B) Applicability.—Subparagraph (A) does not limit the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(e) Capital and Margin Requirements.—

“(1) In general.—

“(A) Swap dealers and major swap participants that are depository insti-
TIONS.—Each registered swap dealer and major swap participant that is a depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), shall meet such minimum capital requirements and minimum initial and variation margin requirements as the appropriate Federal banking agency shall by rule or regulation prescribe under paragraph (2)(A) to help ensure the safety and soundness of the swap dealer or major swap participant.

“(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT DEPOSITORY INSTITUTIONS.—Each registered swap dealer and major swap participant that is not a depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission and the Securities and Exchange Commission shall by rule or regulation prescribe under paragraph (2)(B) to help ensure the safety and soundness of the swap dealer or major swap participant.

“(2) RULES.—
“(A) Swap dealers and major swap participants that are depository institutions.—The appropriate Federal banking agencies, in consultation with the Commission and the Securities and Exchange Commission, shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants that are depository institutions, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

“(B) Swap dealers and major swap participants that are not depository institutions.—The Commission shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants that are not depository institutions, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

“(3) Capital.—

“(A) Swap dealers and major swap participants that are depository institutions.—The capital requirements prescribed under paragraph (2)(A) for swap dealers and
major swap participants that are depository institutions shall contain—

“(i) a capital requirement that is greater than zero for swaps that are cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(i); and

“(ii) to offset the greater risk to the swap dealer or major swap participant and to the financial system arising from the use of swaps that are not cleared, substantially higher capital requirements for swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(i) than for swaps that are cleared.

“(B) Swap dealers and major swap participants that are not depository institutions.—The capital requirements prescribed under paragraph (2)(B) for swap dealers and major swap participants that are not depository institutions shall be as strict as or stricter than the capital requirements pre-
scribed for swap dealers and major swap participants that are depository institutions under paragraph (2)(A).

“(C) CAPITAL.—In setting capital requirements for a person that is designated as a swap dealer or a major swap participant for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer or a major swap participant.

“(D) RULE OF CONSTRUCTION.—

“(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

“(I) of the Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) (except for section
4f(a)(3)) in accordance with section 4f(b); or


“(ii) Futures Commission Merchants and Other Dealers.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this Act or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(4) Margin.—
“(A) Swap dealers and major swap participants that are depository institutions.—The appropriate Federal banking agency for swap dealers and major swap participants that are depository institutions shall impose both initial and variation margin requirements in accordance with paragraph (2)(A) on all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(i).

“(B) Swap dealers and major swap participants that are not depository institutions.—The Commission and the Securities and Exchange Commission shall impose both initial and variation margin requirements in accordance with paragraph (2)(B) for swap dealers and major swap participants that are not depository institutions on all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(i). Any such initial and variation margin requirements shall be as strict as or stricter
than the margin requirements prescribed under paragraph (4)(A).

“(5) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the appropriate Federal banking agency with respect to swap dealers and major swap participants that are depository institutions and the Commission with respect to swap dealers and major swap participants that are not depository institutions may permit the use of noncash collateral, as the agency or the Commission determines to be consistent with—

“(A) preserving the financial integrity of markets trading swaps; and

“(B) preserving the stability of the United States financial system.

“(6) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

“(A) IN GENERAL.—The appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.
“(B) COMPARABILITY.—The entities described in subparagraph (A) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for—

“(i) swap dealers; and

“(ii) major swap participants.

“(7) REQUESTED MARGIN.—If any party to a swap that is exempt from the margin requirements of paragraph (4)(A)(i) pursuant to the provisions of paragraph (4)(A)(ii), or from the margin requirements of paragraph (4)(B)(i) pursuant to the provisions of paragraph (4)(B)(ii), requests that such swap be margined, then—

“(A) the exemption shall not apply; and

“(B) the counterparty to such swap shall provide the requested margin.

“(8) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—Paragraph (4) shall not apply to initial and variation margin for swaps in which 1 of the counterparties is not—

“(A) a swap dealer;

“(B) a major swap participant; or
“(C) a financial entity as described in section 2(h)(9)(A)(ii), and such counterparty is eligible for and utilizing the commercial end user clearing exemption under section 2(h)(9).

“(f) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant—

“(A) shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant;

“(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and
“(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

“(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

“(g) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

“(3) COUNTERPARTY RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.
“(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—The Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

“(h) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such business conduct standards as may be prescribed by the Commission by rule or regulation that relate to—

“(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

“(B) diligent supervision of the business of the registered swap dealer and major swap participant;

“(C) adherence to all applicable position limits; and

“(D) such other matters as the Commission determines to be appropriate.

“(2) SPECIAL RULE; FIDUCIARY DUTIES TO CERTAIN ENTITIES.—
“(A) GOVERNMENTAL ENTITIES.—A swap dealer that provides advice regarding, or offers to enter into, or enters into a swap with a State, State agency, city, county, municipality, or other political subdivision of a State or a Federal agency shall have a fiduciary duty to the State, State agency, city, county, municipality, or other political subdivision of a State, or the Federal agency, as appropriate.

“(B) PENSION PLANS; ENDOWMENTS; RETIREMENT PLANS.—A swap dealer that provides advice regarding, or offers to enter into, or enters into a swap with a pension plan, endowment, or retirement plan shall have a fiduciary duty to the pension plan, endowment, or retirement plan, as appropriate.

“(3) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

“(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the swap dealer or major swap participant to any counterparty
to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—

“(i) information about the material risks and characteristics of the swap;

“(ii) the source and amount of any fees or other material remuneration that the swap dealer or major swap participant would directly or indirectly expect to receive in connection with the swap;

“(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

“(iv)(I) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate derivatives clearing organization; and

“(II) for uncleared swaps, the daily mark of the swap dealer or the major swap participant;

“(C) establish a standard of conduct for a swap dealer or major swap participant to com-
municate in a fair and balanced manner based on principles of fair dealing and good faith;

“(D) establish a standard of conduct for a swap dealer or major swap participant, with re-

spect to a counterparty that is an eligible con-

tract participant within the meaning of sub-

clause (I) or (II) of clause (vii) of section 1a(18) of this Act, to have a reasonable basis to believe that the counterparty has an inde-

pendent representative that—

“(i) has sufficient knowledge to evalu-

ate the transaction and risks;

“(ii) is not subject to a statutory dis-

qualification;

“(iii) is independent of the swap deal-

er or major swap participant;

“(iv) undertakes a duty to act in the best interests of the counterparty it rep-

resents;

“(v) makes appropriate disclosures;

and

“(vi) will provide written representa-

tions to the eligible contract participant re-

garding fair pricing and the appropriateness of the transaction; and
“(E) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

“(4) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

“(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

“(2) RULES.—The Commission shall adopt rules governing documentation and back office standards for swap dealers and major swap participants.

“(j) DUTIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:
“(1) Monitoring of Trading.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

“(2) Risk Management Procedures.—The swap dealer or major swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.

“(3) Disclosure of General Information.—The swap dealer or major swap participant shall disclose to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning—

“(A) terms and conditions of its swaps;

“(B) swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to swaps; and

“(D) other information relevant to its trading in swaps.

“(4) Ability to Obtain Information.—The swap dealer or major swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary infor-
mation to perform any of the functions described in this section; and

“(B) provide the information to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request.

“(5) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and
“(B) address such other issues as the Commission determines to be appropriate.

“(6) Antitrust Considerations.—Unless necessary or appropriate to achieve the purposes of this Act, a swap dealer or major swap participant shall not—

“(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading or clearing.

“(k) Designation of Chief Compliance Officer.—

“(1) In general.—Each swap dealer and major swap participant shall designate an individual to serve as a chief compliance officer.

“(2) Duties.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the swap dealer or major swap participant;

“(B) review the compliance of the swap dealer or major swap participant with respect to the swap dealer and major swap participant requirements described in this section;
“(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this Act (including regulations) relating to swaps, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of non-compliance issues.
“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the swap dealer or major swap participant with respect to this Act (including regulations); and

“(ii) each policy and procedure of the swap dealer or major swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the swap dealer or major swap participant that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.”.
SEC. 732. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by inserting after subsection (b) the following:

“(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

“(1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and

“(2) address such other issues as the Commission determines to be appropriate.

“(d) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—
“(1) IN GENERAL.—Each futures commission merchant shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the futures commission merchant;

“(B) review the compliance of the futures commission merchant with respect to requirements described in this section;

“(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this Act (including regulations and each rule prescribed by the Commission under this section) relating, but not limited, to—

“(i) contracts of sale of a commodity for future delivery;
“(ii) options on the contracts described in clause (i);

“(iii) commodity options;

“(iv) retail foreign exchange and retail commodity transactions;

“(v) security futures products;

“(vi) leverage contracts; and

“(vii) swaps;

“(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief
compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the futures commission merchant with respect to this Act (including regulations); and

“(ii) each policy and procedure of the futures commission merchant of the chief compliance officer (including the code of ethics and conflict of interest policies).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the futures commission merchant that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.”.

SEC. 733. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act is amended by inserting after section 5g (7 U.S.C. 7b–2) the following:

“SEC. 5h. SWAP EXECUTION FACILITIES.

“(a) REGISTRATION.—
“(1) IN GENERAL.—No person may operate a
facility for the trading or processing of swaps unless
the facility is registered as a swap execution facility
or as a designated contract market under this sec-
tion.

“(2) DUAL REGISTRATION.—Any person that is
registered as a swap execution facility under this
section shall register with the Commission regardless
of whether the person also is registered with the Se-
curities and Exchange Commission as a swap execu-
tion facility.

“(b) TRADING AND TRADE PROCESSING.—A swap
execution facility that is registered under subsection (a)
may—

“(1) make available for trading any swap; and
“(2) facilitate trade processing of any swap.

“(c) IDENTIFICATION OF FACILITY USED TO TRADE
SWAPS BY CONTRACT MARKETS.—A board of trade that
operates a contract market shall, to the extent that the
board of trade also operates a swap execution facility and
uses the same electronic trade execution system for listing
and executing trades of swaps on or through the contract
market and the swap execution facility, identify whether
the electronic trading of such swaps is taking place on or
1 through the contract market or the swap execution facility.

“(d) Core Principles for Swap Execution Facilities.—

“(1) Compliance with core principles.—

“(A) In general.—To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with—

“(i) the core principles described in this subsection; and

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) Reasonable discretion of swap execution facility.—Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.

“(2) Compliance with rules.—A swap execution facility shall—
“(A) establish and enforce compliance with any rule of the swap execution facility, including—

“(i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and

“(ii) any limitation on access to the swap execution facility;

“(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

“(i) to provide market participants with impartial access to the market; and

“(ii) to capture information that may be used in establishing whether rule violations have occurred;

“(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and

“(D) provide by its rules that when a swap dealer or major swap participant enters into or
facilitates a swap that is subject to the mandatory clearing requirement of section 2(h), the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under section 2(h)(8).

“(3) Swaps not readily susceptible to manipulation.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

“(4) Monitoring of trading and trade processing.—The swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

“(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

“(ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

“(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and discipli-
nary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

“(B) provide the information to the Commission on request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) POSITION LIMITS OR ACCOUNTABILITY.—

“(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.
“(B) Position Limits.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility shall set its position limitation at a level no higher than the Commission limitation.

“(C) Position Enforcement.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), a swap execution facility shall reject any proposed swap transaction if, based on information readily available to a swap execution facility, any proposed swap transaction would cause a swap execution facility customer that would be a party to such swap transaction to exceed such position limitation.

“(7) Financial Integrity of Transactions.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1).

“(8) Emergency Authority.—The swap execution facility shall adopt rules to provide for the ex-
exercise of emergency authority, in consultation or co-
operation with the Commission, as is necessary and
appropriate, including the authority to liquidate or
transfer open positions in any swap or to suspend or
curtail trading in a swap.

“(9) **Timely publication of trading information.**—

“(A) *In general.*—The swap execution
facility shall make public timely information on
price, trading volume, and other trading data
on swaps to the extent prescribed by the Com-
mission.

“(B) **Capacity of swap execution facility.**—The swap execution facility shall be
required to have the capacity to electronically
capture trade information with respect to trans-
actions executed on the facility.

“(10) **Recordkeeping and reporting.**—

“(A) *In general.*—A swap execution fa-
cility shall—

“(i) maintain records of all activities
relating to the business of the facility, in-
cluding a complete audit trail, in a form
and manner acceptable to the Commission
for a period of 5 years; and

“
“(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this Act.

“(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.

“(11) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall not—

“(A) adopt any rules or taking any actions that result in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading or clearing.

“(12) CONFLICTS OF INTEREST.—The swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and
“(B) establish a process for resolving the conflicts of interest.

“(13) FINANCIAL RESOURCES.—

“(A) IN GENERAL.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

“(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

“(14) SYSTEM SAFEGUARDS.—The swap execution facility shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

“(i) are reliable and secure; and

“(ii) have adequate scalable capacity;
“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

“(i) the timely recovery and resumption of operations; and

“(ii) the fulfillment of the responsibilities and obligations of the swap execution facility; and

“(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued—

“(i) order processing and trade matching;

“(ii) price reporting;

“(iii) market surveillance and

“(iv) maintenance of a comprehensive and accurate audit trail.

“(15) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a chief compliance officer.

“(B) DUTIES.—The chief compliance officer shall—
“(i) report directly to the board or to
the senior officer of the facility;

“(ii) review compliance with the core
principles in this subsection;

“(iii) in consultation with the board of
the facility, a body performing a function
similar to that of a board, or the senior of-
officer of the facility, resolve any conflicts of
interest that may arise;

“(iv) be responsible for establishing
and administering the policies and proce-
dures required to be established pursuant
to this section;

“(v) ensure compliance with this Act
and the rules and regulations issued under
this Act, including rules prescribed by the
Commission pursuant to this section; and

“(vi) establish procedures for the re-
mediation of noncompliance issues found
during compliance office reviews, look
backs, internal or external audit findings,
self-reported errors, or through validated
complaints.

“(C) REQUIREMENTS FOR PROCEDURES.—

In establishing procedures under subparagraph
(B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(D) ANNUAL REPORTS.—

“(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(I) the compliance of the swap execution facility with this Act; and

“(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

“(ii) REQUIREMENTS.—The chief compliance officer shall—

“(I) submit each report described in clause (i) with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to this section; and
“(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

“(e) Exemptions.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.

“(f) Rules.—The Commission shall prescribe rules governing the regulation of alternative swap execution facilities under this section.”.

SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

(a) In general.—Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a, 7a–3) are repealed.

(b) Conforming Amendments.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) in subsection (a)(1)(A), in the first sentence, by striking “or 5a”; and

(B) in paragraph (2) of subsection (g) (as redesignated by section 723(a)(1)(B)), by strik-
ing “section 5a of this Act” and all that follows through “5d of this Act” and inserting “section 5b of this Act”.


(A) by striking “that—” and all that follows through “(i) has been designated” and inserting “that has been designated”;

(B) by striking “; or” and inserting “; and” and

(C) by striking clause (ii).

SEC. 735. DESIGNATED CONTRACT MARKETS.

(a) CRITERIA FOR DESIGNATION.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (b).

(b) CORE PRINCIPLES FOR CONTRACT MARKETS.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (d) and inserting the following:

“(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

“(1) DESIGNATION AS CONTRACT MARKET.—

“(A) IN GENERAL.—To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—
“(i) any core principle described in this subsection; and

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) Reasonable discretion of contract market.—Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

“(2) Compliance with rules.—

“(A) In general.—The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

“(i) access requirements;

“(ii) the terms and conditions of any contracts to be traded on the contract market; and

“(iii) rules prohibiting abusive trade practices on the contract market.
“(B) Capacity of contract market.—
The board of trade shall have the capacity to
detect, investigate, and apply appropriate sanc-
tions to any person that violates any rule of the
contract market.

“(C) Requirement of rules.—The rules
of the contract market shall provide the board
of trade with the ability and authority to obtain
any necessary information to perform any func-
tion described in this subsection, including the
capacity to carry out such international infor-
mation-sharing agreements as the Commission
may require.

“(3) Contracts not readily subject to
manipulation.—The board of trade shall list on
the contract market only contracts that are not
readily susceptible to manipulation.

“(4) Prevention of market disruption.—
The board of trade shall have the capacity and re-
sponsibility to prevent manipulation, price distortion,
and disruptions of the delivery or cash-settlement
process through market surveillance, compliance,
and enforcement practices and procedures, includ-
ing—
“(A) methods for conducting real-time monitoring of trading; and

“(B) comprehensive and accurate trade reconstructions.

“(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—

“(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

“(B) MAXIMUM ALLOWABLE POSITION LIMITATION.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

“(6) EMERGENCY AUTHORITY.—The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—
“(A) to liquidate or transfer open positions in any contract;

“(B) to suspend or curtail trading in any contract; and

“(C) to require market participants in any contract to meet special margin requirements.

“(7) **Availability of General Information.**—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

“(A) the terms and conditions of the contracts of the contract market; and

“(B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and

“(ii) the rules and specifications describing the operation of the contract market’s—

“(I) electronic matching platform; or

“(II) trade execution facility.

“(8) **Daily Publication of Trading Information.**—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

“(9) **Execution of Transactions.**—
“(A) IN GENERAL.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

“(B) RULES.—The rules of the board of trade may authorize, for bona fide business purposes—

“(i) transfer trades or office trades;

“(ii) an exchange of—

“(I) futures in connection with a cash commodity transaction;

“(II) futures for cash commodities; or

“(III) futures for swaps; or

“(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.
“(10) **Trade Information.**—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—

“(A) to assist in the prevention of customer and market abuses; and

“(B) to provide evidence of any violations of the rules of the contract market.

“(11) **Financial Integrity of Transactions.**—The board of trade shall establish and enforce—

“(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

“(B) rules to ensure—

“(i) the financial integrity of any—

“(I) futures commission merchant; and

“(II) introducing broker; and

“(ii) the protection of customer funds.
“(12) PROTECTION OF MARKETS AND MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules—

“(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

“(B) to promote fair and equitable trading on the contract market.

“(13) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

“(14) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

“(15) GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce ap-
propriate fitness standards for directors, members of
any disciplinary committee, members of the contract
market, and any other person with direct access to
the facility (including any party affiliated with any
person described in this paragraph).

“(16) CONFLICTS OF INTEREST.—The board of
trade shall establish and enforce rules—

“(A) to minimize conflicts of interest in
the decision-making process of the contract
market; and

“(B) to establish a process for resolving
conflicts of interest described in subparagraph
(A).

“(17) COMPOSITION OF GOVERNING BOARDS OF
CONTRACT MARKETS.—The governance arrange-
ments of the board of trade shall be designed to per-
mit consideration of the views of market partici-
pants.

“(18) RECORDKEEPING.—The board of trade
shall maintain records of all activities relating to the
business of the contract market—

“(A) in a form and manner that is accept-
able to the Commission; and

“(B) for a period of at least 5 years.
“(19) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—

“(A) adopt any rule or taking any action that results in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading on the contract market.

“(20) SYSTEM SAFEGUARDS.—The board of trade shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

“(C) periodically conduct tests to verify that backup resources are sufficient to ensure
continued order processing and trade matching,
price reporting, market surveillance, and main-
tenance of a comprehensive and accurate audit trail.

“(21) FINANCIAL RESOURCES.—

“(A) IN GENERAL.—The board of trade
shall have adequate financial, operational, and
managerial resources to discharge each respon-
sibility of the board of trade.

“(B) DETERMINATION OF ADEQUACY.—

The financial resources of the board of trade
shall be considered to be adequate if the value
of the financial resources exceeds the total
amount that would enable the contract market
to cover the operating costs of the contract market
for a 1-year period, as calculated on a rolling basis.”.

SEC. 736. MARGIN.

Section 8a(7) of the Commodity Exchange Act (7 U.S.C. 12a(7)) is amended—

(1) in subparagraph (C), by striking “, except-
ing the setting of levels of margin”;
(2) by redesignating subparagraphs (D)
through (F) as subparagraphs (E) through (G), re-
spectively; and
(3) by inserting after subparagraph (C) the following:

“(D) margin requirements, provided that the rules, regulations, or orders shall—

“(i) be limited to protecting the financial integrity of the derivatives clearing organization;

“(ii) be designed for risk management purposes to protect the financial integrity of transactions; and

“(iii) not set specific margin amounts;”.

SEC. 737. POSITION LIMITS.

(a) AGGREGATE POSITION LIMITS.—Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

(1) by inserting after ““(a)” the following:

“(1) IN GENERAL.—”;

(2) in the first sentence, by striking “on electronic trading facilities with respect to a significant price discovery contract” and inserting “swaps that perform or affect a significant price discovery function with respect to registered entities”; and

(3) in the second sentence—
(A) by inserting “, including any group or class of traders,” after “held by any person”; and

(B) by striking “on an electronic trading facility with respect to a significant price discovery contract,” and inserting “swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity,”; and

(4) by adding at the end the following:

“(2) AGGREGATE POSITION LIMITS.—The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based on the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

“(A) contracts listed by designated contract markets;
“(B) with respect to an agreement, contract, or transaction that settles against, or in relation to, any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade;

“(C) swaps traded on or subject to the rules of a swap execution facility; and

“(D) swaps not traded on or subject to the rules of a swap execution facility that perform or affect a significant price discovery function with respect to a registered entity.

“(3) Significant price discovery function.—In making a determination as to whether a swap performs or affects a significant price discovery function with respect to a registered entity, the Commission shall consider, as appropriate, the following factors:

“(A) Price linkage.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major
price parameter, of another contract traded on
a registered entity based on the same under-
lying commodity, to value a position, transfer or
convert a position, financially settle a position,
or close out a position.

“(B) ARBITRAGE.—The extent to which
the price for the swap is sufficiently related to
the price of another contract traded on a reg-
istered entity based on the same underlying
commodity so as to permit market participants
to effectively arbitrage between the markets by
simultaneously maintaining positions or exe-
cuting trades in the swaps on a frequent and
recurring basis.

“(C) MATERIAL PRICE REFERENCE.—The
extent to which, on a frequent and recurring
basis, bids, offers, or transactions in a contract
traded on a registered entity are directly based
on, or are determined by referencing, the price
generated by the swap.

“(D) MATERIAL LIQUIDITY.—The extent
to which the volume of swaps being traded in
the commodity is sufficient to have a material
effect on another contract traded on a reg-
istered entity.
“(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a contract traded on a registered entity.

“(4) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, or any transaction or class of transactions from any requirement that the Commission establishes under this section with respect to position limits.”.

(b) CONFORMING AMENDMENTS.—Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility or facilities”; and

(2) in paragraph (2), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility”.
SEC. 738. FOREIGN BOARDS OF TRADE.

(a) In General.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended—

(1) in the first sentence, by striking “The Commission” and inserting the following:

“(2) Persons located in the United States.—

“(A) In general.—The Commission”;

(2) in the second sentence, by striking “Such rules and regulations” and inserting the following:

“(B) Different requirements.—Rules and regulations described in subparagraph (A)”;

(3) in the third sentence—

(A) by striking “No rule or regulation” and inserting the following:

“(C) Prohibition.—Except as provided in paragraphs (1) and (2), no rule or regulation”;

(B) by striking “that (1) requires” and inserting the following: “that—

“(i) requires”; and

(C) by striking “market, or (2) governs” and inserting the following: “market; or

“(ii) governs”; and

(4) by inserting before paragraph (2) (as designated by paragraph (1)) the following:
“(1) FOREIGN BOARDS OF TRADE.—

“(A) IN GENERAL.—It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

“(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—
“(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

“(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

“(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction
that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

“(aa) the information that the foreign board of trade will make publicly available;

“(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

“(IV) provides information to the Commission regarding large trader positions in the agreement, contract,
or transaction that is comparable to
the large trader position information
collected by the Commission for the 1
or more contracts against which the
agreement, contract, or transaction
traded on the foreign board of trade
settles; and

“(V) provides the Commission
such information as is necessary to
publish reports on aggregate trader
positions for the agreement, contract,
or transaction traded on the foreign
board of trade that are comparable to
such reports on aggregate trader posi-
tions for the 1 or more contracts
against which the agreement, con-
tact, or transaction traded on the
foreign board of trade settles.

“(B) EXISTING FOREIGN BOARDS OF
TRADE.—Subparagraph (A) shall not be effec-
tive with respect to any foreign board of trade
to which, prior to the date of enactment of this
paragraph, the Commission granted direct ac-
cess permission until the date that is 180 days
after that date of enactment.”
(b) Liability of Registered Persons Trading on a Foreign Board of Trade.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting “or by subsection (e)” after “Unless exempted by the Commission pursuant to subsection (e)”; and

(2) by adding at the end the following:

“(e) Liability of Registered Persons Trading on a Foreign Board of Trade.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with paragraphs (1) and (2) of subsection (b).”.

(c) Contract Enforcement for Foreign Futures Contracts.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) (as amended by section 739) is amended by adding at the end the following:

“(6) Contract enforcement for foreign futures contracts.—A contract of sale of a commodity for future delivery traded or executed on or
through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.”.

SEC. 739. LEGAL CERTAINTY FOR SWAPS.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:

“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

“(A) IN GENERAL.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, the hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.
“(B) Swaps.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party to an agreement, contract, or transaction shall be entitled to rescind, or recover any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction—

“(i) to meet the definition of a swap under section 1a; or

“(ii) to be cleared in accordance with section 2(h)(1).

“(5) Legal certainty for long-term swaps entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010.—

“(A) In general.—Any swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment, shall not be subject to the
mandatory clearing requirements under this Act.

“(B) EFFECT ON SWAPS.—Unless specifically reserved in the applicable bilateral trading agreement, neither the enactment of the Wall Street Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased costs, regulatory change, or similar event under a bilateral trading agreement (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the bilateral trading agreement.

“(C) POSITION LIMITS.—Any position limit established under the Wall Street Transparency and Accountability Act of 2010 shall not apply to a position acquired in good faith prior to the effective date of any rule, regulation, or order under the Act that establishes the position limit; provided, however, that such positions shall be attributed to the trader if the trader’s
position is increased after the effective date of such position limit rule, regulation, or order.”.

SEC. 740. MULTILATERAL CLEARING ORGANIZATIONS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421, 4422) are repealed.

SEC. 741. ENFORCEMENT.

(a) ENFORCEMENT AUTHORITY.—The Commodity Exchange Act is amended by inserting after section 4b (7 U.S.C. 6b) the following:

“SEC. 4b–1. ENFORCEMENT AUTHORITY.

“(a) COMMISSION.—Except as provided in subsections (b), (c), and (d), the Commission shall have primary authority to enforce the amendments made by the Wall Street Transparency and Accountability Act of 2010 with respect to any person.

“(b) APPROPRIATE FEDERAL BANKING AGENCIES.—The appropriate Federal banking agency for swap dealers or major swap participants that are depository institutions, as that term is defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), shall have exclusive authority to enforce the provisions of section 4s(e) and other prudential requirements of this Act, with respect to depository institutions that are swap dealers or major swap participants.
“(c) Referrals.—

“(1) Prudential regulators.—If the prudential regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant, or any affiliate or division of the swap dealer or major swap participant, may have engaged in conduct that constitutes a violation of the nonprudential requirements of this Act (including section 4s or rules adopted by the Commission under that section), the prudential regulator shall promptly notify the Commission in a written report that includes—

“(A) a request that the Commission initiate an enforcement proceeding under this Act; and

“(B) an explanation of the facts and circumstances that led to the preparation of the written report.

“(2) Commission.—If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 4s or rules adopted by the Commission under that section, the
Commission may notify the prudential regulator of the conduct in a written report that includes—

“(A) a request that the prudential regulator initiate an enforcement proceeding under this Act or any other Federal law (including regulations); and

“(B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.

“(d) Backstop Enforcement Authority.—

“(1) Initiation of Enforcement Proceeding by Prudential Regulator.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.

“(2) Initiation of Enforcement Proceeding by Commission.—If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a
written report under subsection (c)(2), the Commission may initiate an enforcement proceeding.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(A) in subsection (a)(2), by striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”;

(B) in subsection (b), by striking “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”; and

(C) by adding at the end the following:

“(e) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value thereof)—

“(1) to employ any device, scheme, or artifice to defraud;
“(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

“(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”.

(2) Section 4c(a)(1) of the Commodity Exchange Act (7 U.S.C. 6c(a)(1)) is amended by inserting “or swap” before “if the transaction is used or may be used”.

(3) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended in the first sentence by inserting “or of any swap,” before “or has willfully made”.

(4) Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence, in the matter preceding the proviso, by inserting “or of any swap,” before “or otherwise is violating”.

(5) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a–1(a)) is amended in the matter preceding the proviso by inserting “or any swap” after “commodity for future delivery”. 

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(6) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended—

(A) in subsection (a)—

(i) in paragraph (2), by inserting “or of any swap,” before “or to corner”; and

(ii) in paragraph (4), by inserting “swap data repository,” before “or futures association” and

(B) in subsection (e)(1)—

(i) by inserting “swap data repository,” before “or registered futures association”; and

(ii) by inserting “, or swaps,” before “on the basis”.

(7) Section 9(a) of the Commodity Exchange Act (7 U.S.C. 13(a)) is amended by adding at the end the following:

“(6) Any person to abuse the end user clearing exemption under section 2(h)(4), as determined by the Commission.”.

(8) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by adding at the end the following:

“(11) SWAPS.—
“(A) IN GENERAL.—Subject to subparagraph (B), this section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap data repository, or swap execution facility, regardless of whether the dealer, participant, organization, repository, or facility is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or prudential regulator for purposes of the amendments made by the Wall Street Transparency and Accountability Act of 2010.

“(B) LIMITATION.—The authority described in subparagraph (A) shall be limited by, and exercised in accordance with, section 4b–1 of the Commodity Exchange Act.”.

(9) Section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)) is amended—

(A) by striking “(dd),” each place it appears;

(B) in clause (iii), by inserting “, and accounts or pooled investment vehicles described in clause (vi),” before “shall be subject to”; and
(C) by adding at the end the following:

“(vi) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).”.

(10) Section 2(c)(2)(C) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)) is amended—

(A) by striking “(dd),” each place it appears;

(B) in clause (ii)(I), by inserting “, and accounts or pooled investment vehicles described in clause (vii),” before “shall be subject to”;

and

(C) by adding at the end the following:

“(vii) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).”.
Section 1a(19)(A)(iv)(II) of the Commodity Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II)) (as redesignated by section 721(a)(1)) is amended by inserting before the semicolon at the end the following: “provided, however, that for purposes of section 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the term ‘eligible contract participant’ shall not include a commodity pool in which any participant is not otherwise an eligible contract participant”.

SEC. 742. RETAIL COMMODITY TRANSACTIONS.

(a) In General.—Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking “(to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))” and inserting “, 5b, or 12(e)(2)(B))”; and

(2) in paragraph (2), by adding at the end the following:

“(D) Retail commodity transactions.—

“(i) Applicability.—Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

“(I) entered into with, or offered to (even if not entered into with), a
person that is not an eligible contract participant or eligible commercial entity; and

“(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

“(ii) EXCEPTIONS.—This subparagraph shall not apply to—

“(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

“(II) any security;

“(III) a contract of sale that—

“(aa) results in actual delivery within 28 days or such other period as the Commission may determine by rule or regulation based upon the typical commer-
cial practice in cash or spot mar-

kets for the commodity involved;
or

“(bb) creates an enforceable

obligation to deliver between a

seller and a buyer that have the

ability to deliver and accept deliv-

er, respectively, in connection

with the line of business of the

seller and buyer; or

“(IV) an agreement, contract, or

transaction that is listed on a national

securities exchange registered under

section 6(a) of the Securities Ex-

change Act of 1934 (15 U.S.C.

78f(a)); or

“(V) an identified banking prod-

uct, as defined in section 402(b) of

the Legal Certainty for Bank Prod-

ucts Act of 2000 (7 U.S.C.27(b)).

“(iii) ENFORCEMENT.—Sections 4(a),

4(b), and 4b apply to any agreement, con-

tract, or transaction described in clause (i),
as if the agreement, contract, or trans-
action was a contract of sale of a commodity for future delivery.

“(iv) Eligible commercial entity.—For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.

“(v) Actual delivery.—For purposes of clause (ii)(III), the term ‘actual delivery’ does not include delivery to a third party in a financed transaction in which the commodity is held as collateral.”.

(b) Gramm-Leach-Bliley Act.—Section 206(a) of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note) is amended, in the matter preceding paragraph (1), by striking “For purposes of” and inserting “Except as provided in subsection (e), for purposes of”.

(e) Conforming Amendments Relating to Retail Foreign Exchange Transactions.—
Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (aa), by inserting “United States” before “financial institution”;

(B) by striking items (dd) and (ff);

(C) by redesignating items (ee) and (gg) as items (dd) and (ff), respectively; and

(D) in item (dd) (as so redesignated), by striking the semicolon and inserting “; or”.

Section 2(c)(2) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)) (as amended by subsection (a)(2)) is amended by adding at the end the following:

“(E) PROHIBITION.—

“(i) DEFINITION OF FEDERAL REGULATORY AGENCY.—In this subparagraph, the term ‘Federal regulatory agency’ means—

“(I) the Commission;

“(II) the Securities and Exchange Commission;

“(III) an appropriate Federal banking agency;
“(IV) the National Credit Union Association; and

“(V) the Farm Credit Administration.

“(ii) PROHIBITION. — A person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and conditions as the Federal regulatory agency shall prescribe.

“(iii) REQUIREMENTS OF RULES AND REGULATIONS. —

“(I) IN GENERAL. — The rules and regulations described in clause (ii) shall prescribe appropriate requirements with respect to—

“(aa) disclosure;

“(bb) recordkeeping;
“(cc) capital and margin;
“(dd) reporting;
“(ee) business conduct;
“(ff) documentation; and
“(gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.

“(II) TREATMENT.—The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.”.

SEC. 743. OTHER AUTHORITY.

Unless otherwise provided by the amendments made by this subtitle, the amendments made by this subtitle do not divest any appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, or other Federal or State
agency of any authority derived from any other applicable law.

SEC. 744. RESTITUTION REMEDIES.

Section 6c(d) of the Commodity Exchange Act (7 U.S.C. 13a–1(d)) is amended by adding at the end the following:

“(3) EQUITABLE REMEDIES.—In any action brought under this section, the Commission may seek, and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including—

“(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and

“(B) disgorgement of gains received in connection with such violation.”.

SEC. 745. ENHANCED COMPLIANCE BY REGISTERED ENTITIES.

(a) EFFECT OF INTERPRETATION.—Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended by striking paragraph (2) and inserting the following:

“(2) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) may provide
the exclusive means for complying with each section described in paragraph (1).”).

(b) New Contracts, New Rules, and Rule Amendments.—

(1) In General.—A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument, or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

(2) Rule Review.—The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity, on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such
time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

(3) Stay of Certification for Rules.—

(A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.

(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission—

(i) withdraws the stay prior to that time; or

(ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this Act (including regulations under this Act).
(4) PRIOR APPROVAL.—

(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(10) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.
(5) APPROVAL.—

(A) RULES.—The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this subtitle (including regulations).

(B) CONTRACTS AND INSTRUMENTS.—The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this subtitle (including regulations).

(C) SPECIAL RULE FOR REVIEW AND APPROVAL OF EVENT CONTRACTS AND SWAPS CONTRACTS.—

(i) EVENT CONTRACTS.—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i)), by a designated contract market or swap execution facility, the Commission may determine
that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

(I) activity that is unlawful under any Federal or State law;

(II) terrorism;

(III) assassination;

(IV) war;

(V) gaming; or

(VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

(ii) PROHIBITION.—No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

(iii) SWAPS CONTRACTS.—

(I) IN GENERAL.—In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon
request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.

(II) REQUIREMENTS.—Any such criteria, conditions, or rules shall consider—

(aa) the financial integrity of the derivatives clearing organization; and

(bb) any other factors which the Commission determines may be appropriate.

(iv) DEADLINE.—The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.
(c) VIOLATION OF CORE PRINCIPLES.—Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended by striking subsection (d).

SEC. 746. INSIDER TRADING.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:

“(3) CONTRACT OF SALE.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into—
“(A) a contract of sale of a commodity for future delivery (or option on such a contract);

“(B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a))); or

“(C) a swap.

“(4) NONPUBLIC INFORMATION.—

“(A) IMPARTING OF NONPUBLIC INFORMATION.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or
investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into—

“(i) a contract of sale of a commodity for future delivery (or option on such a contract);

“(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(iii) a swap.

“(B) KNOWING USE.—It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into—

“(i) a contract of sale of a commodity for future delivery (or option on such a contract);
“(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(iii) a swap.

“(C) THEFT OF NONPUBLIC INFORMATION.—It shall be unlawful for any person to steal, convert, or misappropriate, by any means whatsoever, information held or created by any department or agency of the Federal Government that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with
the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into—

“(i) a contract of sale of a commodity for future delivery (or option on such a contract);

“(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(iii) a swap.

Provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or swap described in clauses (i), (ii), or (iii).”.
SEC. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) (as amended by section 746) is amended by adding at the end the following:

“(5) DISRUPTIVE PRACTICES.—It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—

“(A) violates bids or offers;

“(B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or

“(C) is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).

“(6) RULEMAKING AUTHORITY.—The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices described in paragraph (5) and any other trading practice that is disruptive of fair and equitable trading.

“(7) USE OF SWAPS TO DEFRAUD.—It shall be unlawful for any person to enter into a swap knowing, or acting in reckless disregard of the fact, that
its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party.”.

SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding at the end the following:

“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION.

“(a) DEFINITIONS.—In this section:

“(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term ‘covered judicial or administrative action’ means any judicial or administrative action brought by the Commission under this Act that results in monetary sanctions exceeding $1,000,000.

“(2) FUND.—The term ‘Fund’ means the Commodity Futures Trading Commission Customer Protection Fund established under subsection (g).

“(3) MONETARY SANCTIONS.—The term ‘monetary sanctions’, when used with respect to any judicial or administrative action means—

“(A) any monies, including penalties, disgorgement, restitution, and interest ordered to be paid; and
“(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

“(4) ORIGINAL INFORMATION.—The term ‘original information’ means information that—

“(A) is derived from the independent knowledge or analysis of a whistleblower;

“(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

“(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

“(5) RELATED ACTION.—The term ‘related action’, when used with respect to any judicial or administrative action brought by the Commission under this Act, means any judicial or administrative action brought by an entity described in subclauses (i) through (vi) of subsection (g)(2)(B) that is based upon the original information provided by a whistle-

blower pursuant to subsection (a) that led to the
successful enforcement of the Commission action.

“(6) SUCCESSFUL RESOLUTION.—The term
‘successful resolution’, when used with respect to
any judicial or administrative action brought by the
Commission under this Act, includes any settlement
of such action.

“(7) WHISTLEBLOWER.—The term ‘whistle-
blower’ means any individual, or 2 or more individ-
uals acting jointly, who provides information relating
to a violation of this Act to the Commission, in a
manner established by rule or regulation, by the
Commission.

“(b) AWARDS.—

“(1) IN GENERAL.—In any covered judicial or
administrative action, or related action, the Commis-
sion, under regulations prescribed by the Commis-
sion and subject to subsection (c), shall pay an
award or awards to 1 or more whistleblowers who
voluntarily provided original information to the
Commission that led to the successful enforcement
of the covered judicial or administrative action, or
related action, in an aggregate amount equal to—

“(A) not less than 10 percent, in total, of
what has been collected of the monetary sanc-
tions imposed in the action or related actions;

and

“(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

“(2) PAYMENT OF AWARDS.—Any amount paid under paragraph (1) shall be paid from the Fund.

“(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

“(1) DETERMINATION OF AMOUNT OF AWARD.—

“(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

“(B) CRITERIA.—In determining the amount of an award made under subsection (b), the Commission shall take into account—

“(i) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

“(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;
(iii) the programmatic interest of the Commission in deterring violations of the Act (including regulations under the Act) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and

(iv) such additional relevant factors as the Commission may establish by rule or regulation.

(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

(i) a appropriate regulatory agency;

(ii) the Department of Justice;

(iii) a registered entity;

(iv) a registered futures association;

or

(v) a self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

or

(vi) a law enforcement organization;
“(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

“(C) to any whistleblower who submits information to the Commission that is based on the facts underlying the covered action submitted previously by another whistleblower;

“(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule or regulation, require.

“(d) REPRESENTATION.—

“(1) PERMITTED representation.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

“(2) REQUIRED representation.—

“(A) IN general.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower submits the information upon which the claim is based.

“(B) DISCLOSURE of identity.—Prior to the payment of an award, a whistleblower shall
disclose the identity of the whistleblower and
provide such other information as the Commiss-
ion may require, directly or through counsel
for the whistleblower.

"(e) No Contract Necessary.—No contract with
the Commission is necessary for any whistleblower to re-
cieve an award under subsection (b), unless otherwise re-
quired by the Commission, by rule or regulation.

"(f) Appeals.—

"(1) In General.—Any determination made
under this section, including whether, to whom, or in
what amount to make awards, shall be in the discre-
tion of the Commission.

"(2) Appeals.—Any determination described
in paragraph (1) may be appealed to the appropriate
court of appeals of the United States not more than
30 days after the determination is issued by the
Commission.

"(3) Review.—The court shall review the de-
termination made by the Commission in accordance
with section 7064 of title 5, United States Code.

"(g) Commodity Futures Trading Commission
Customer Protection Fund.—

"(1) Establishment.—There is established in
to be known as the ‘Commodity Futures Trading Commission Customer Protection Fund’.

“(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

“(A) the payment of awards to whistle-blowers as provided in subsection (a); and

“(B) the funding of customer education initiatives designed to help customers protect themselves against fraud or other violations of this Act, or the rules and regulations thereunder.

“(3) DEPOSITS AND CREDITS.—There shall be deposited into or credited to the Fund—

“(A) any monetary judgment collected by the Commission in any judicial or administrative action brought by the Commission under this Act, that is not otherwise distributed to victims of a violation of this Act or the rules and regulations thereunder underlying such action, unless the balance of the Fund at the time the monetary judgment is collected exceeds $100,000,000; and

“(B) all income from investments made under paragraph (4).
“(4) INVESTMENTS.—

“(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission’s judgment, required to meet the current needs of the Fund.

“(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission.

“(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

“(5) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Commission shall transmit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives a report on—
“(A) the Commission’s whistleblower award program under this section, including a
description of the number of awards granted
and the types of cases in which awards were
granted during the preceding fiscal year;
“(B) customer education initiatives de-
scribed in paragraph (2)(B) that were funded
by the Fund during the preceding fiscal year;
“(C) the balance of the Fund at the begin-
ing of the preceding fiscal year;
“(D) the amounts deposited into or cred-
ited to the Fund during the preceding fiscal
year;
“(E) the amount of earnings on invest-
ments of amounts in the Fund during the pre-
ceding fiscal year;
“(F) the amount paid from the Fund dur-
ing the preceding fiscal year to whistleblowers
pursuant to subsection (b);
“(G) the amount paid from the Fund dur-
ing the preceding fiscal year for customer edu-
cation initiatives described in paragraph (2)(B);
“(H) the balance of the Fund at the end
of the preceding fiscal year; and
“(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

“(h) PROTECTION OF WHISTLEBLOWERS.—

“(1) PROHIBITION AGAINST RETALIATION.—

“(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

“(i) in providing information to the Commission in accordance with subsection (b); or

“(ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

“(B) ENFORCEMENT.—

“(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in
paragraph (C), unless the individual who is alleging discharge or other discrimination in violation of subparagraph (A) is an employee of the federal government, in which case the individual shall only bring an action under section 1221 of title 5, United States Code.

“(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.

“(iii) STATUTE OF LIMITATIONS.—An action under this subsection may not be brought more than 2 years after the date on which the violation reported in subparagraph (A) is committed.

“(C) RELIEF.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

“(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;
“(ii) the amount of back pay otherwise owed to the individual, with interest; and

“(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney’s fees.

“(2) CONFIDENTIALITY.—

“(A) INFORMATION PROVIDED.—

“(i) IN GENERAL.—Except as provided in subparagraph (B), all information provided to the Commission by a whistleblower shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of a department or agency of the Federal Government, under section 552 of title 5, United States Code (commonly known as the ‘Freedom of Information Act’) or otherwise, unless and until required to be disclosed to a defendant or re-
spondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (B).

"(ii) CONSTRUCTION.—For purposes of section 552 of title 5, United States Code, this paragraph shall be considered to be a statute described in subsection (b)(3)(B) of that section.

"(iii) EFFECT.—Nothing in this paragraph is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

"(B) AVAILABILITY TO GOVERNMENT AGENCIES.—

"(i) IN GENERAL.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary or appropriate to accomplish the purposes of this Act and protect customers
and in accordance with clause (ii), be made available to—

“(I) the Department of Justice;

“(II) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

“(III) a registered entity, registered futures association, or self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

“(IV) a State attorney general in connection with any criminal investigation;

“(V) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and

“(VI) a foreign futures authority.

“(ii) MAINTENANCE OF INFORMATION.—Each of the entities, agencies, or persons described in clause (i) shall maintain information described in that clause as confidential and privileged, in accord-


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ance with the requirements in subparagraph (A).

“(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

“(i) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

“(j) IMPLEMENTING RULES.—The Commission shall issue final rules or regulations implementing the provisions of this section not later than 270 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(k) ORIGINAL INFORMATION.—Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided such information was submitted after the date of enact-
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“(l) AWARDS.—A whistleblower may receive an award pursuant to this section regardless of whether any violation of a provision of this Act, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(m) PROVISION OF FALSE INFORMATION.—A whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18, United States Code.”.

SEC. 749. CONFORMING AMENDMENTS.

(a) Section 2(c)(1) of the Commodity Exchange Act (7 U.S.C. 2(c)(1)) is amended, in the matter preceding subparagraph (A), by striking “5a (to the extent provided in section 5a(g)),”.

(b) Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 724) is amended—

(1) in subsection (a)—
(A) in the matter preceding paragraph

(1)—

(i) by striking “engage as” and inserting “be a”; and

(ii) by striking “or introducing broker” and all that follows through “or derivatives transaction execution facility”;

(B) in paragraph (1), by striking “or introducing broker”; and

(C) in paragraph (2), by striking “if a futures commission merchant,”; and

(2) by adding at the end the following:

“(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.”.

(c) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended—

(1) by striking ““(3) Subsection (1) of this sect-

tion” and inserting the following:

“(3) EXCEPTION.—

“(A) IN GENERAL.—Paragraph (1)”; and

(2) by striking “to any investment trust” and all that follows through the period at the end and
inserting the following: "to any commodity pool that
is engaged primarily in trading commodity interests.

"(B) ENGAGED PRIMARILY.—For purposes
of subparagraph (A), a commodity trading advi-
sor or a commodity pool shall be considered to
be ‘engaged primarily’ in the business of being
a commodity trading advisor or commodity pool
if it is or holds itself out to the public as being
engaged primarily, or proposes to engage pri-
marily, in the business of advising on com-
modity interests or investing, reinvesting, own-
ing, holding, or trading in commodity interests,
respectively.

"(C) COMMODITY INTERESTS.—For pur-
poses of this paragraph, commodity interests
shall include contracts of sale of a commodity
for future delivery, options on such contracts,
security futures, swaps, leverage contracts, for-
eign exchange, spot and forward contracts on
physical commodities, and any monies held in
an account used for trading commodity inter-
ests.”.

(d) Section 5e of the Commodity Exchange Act (7
U.S.C. 7a–2) is amended—

(1) in subsection (a)(1)—
(A) by striking “, 5a(d),” ; and

(B) by striking “and section (2)(h)(7) with respect to significant price discovery contracts,” ; and

(2) in subsection (f)(1), by striking “section 4d(e) of this Act” and inserting “section 4d(e)”.

(e) Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) is amended by striking “or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,”.

(f) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking “, or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,”.

(g) Section 12(e)(2)(B) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)(B)) is amended—

(1) by striking “section 2(c), 2(d), 2(f), or 2(g) of this Act” and inserting “section 2(c) or 2(f) of this Act”; and

(2) by striking “2(h) or”.

(h) Section 17(r)(1) of the Commodity Exchange Act (7 U.S.C. 21(r)(1)) is amended by striking “section 4d(e) of this Act” and inserting “section 4d(e)”.
(i) Section 22(b)(1)(A) of the Commodity Exchange Act (7 U.S.C. 25(b)(1)(A)) is amended by striking “section 2(h)(7) or”.

(j) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended—

(1) by striking “section 2(e), 2(d), 2(f), or 2(g) of such Act” and inserting “section 2(e), 2(f), or 2(i) of that Act”; and

(2) by striking “2(h) or”.

SEC. 750. STUDY ON OVERSIGHT OF CARBON MARKETS.

(a) INTERAGENCY WORKING GROUP.—There is established to carry out this section an interagency working group (referred to in this section as the “interagency group”) composed of the following members or designees:

(1) The Chairman of the Commodity Futures Trading Commission (referred to in this section as the “Commission”), who shall serve as Chairman of the interagency group.

(2) The Secretary of Agriculture.

(3) The Secretary of the Treasury.

(4) The Chairman of the Securities and Exchange Commission.

(5) The Administrator of the Environmental Protection Agency.


(8) The Administrator of the Energy Information Administration.

(b) Administrative Support.—The Commission shall provide the interagency group such administrative support services as are necessary to enable the interagency group to carry out the functions of the interagency group under this section.

(c) Consultation.—In carrying out this section, the interagency group shall consult with representatives of exchanges, clearinghouses, self-regulatory bodies, major carbon market participants, consumers, and the general public, as the interagency group determines to be appropriate.

(d) Study.—The interagency group shall conduct a study on the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

(e) Report.—Not later than 180 days after the date of enactment of this Act, the interagency group shall submit to Congress a report on the results of the study conducted under subsection (b), including recommendations
for the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

SEC. 751. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.

Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) (as amended by section 727) is amended by adding at the end the following:

“(15) ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.—

“(A) ESTABLISHMENT.—

“(i) IN GENERAL.—An Energy and Environmental Markets Advisory Committee is hereby established.

“(ii) MEMBERSHIP.—The Committee shall have 9 members.

“(iii) ACTIVITIES.—The Committee’s objectives and scope of activities shall be—

“(I) to conduct public meetings;

“(II) to submit reports and recommendations to the Commission (including dissenting or minority views, if any); and
“(III) otherwise to serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation by the Commission.

“(B) REQUIREMENTS.—

“(i) IN GENERAL.—The Committee shall hold public meetings at such intervals as are necessary to carry out the functions of the Committee, but not less frequently than 2 times per year.

“(ii) MEMBERS.—Members shall be appointed to 3-year terms, but may be removed for cause by vote of the Commission.

“(C) APPOINTMENT.—The Commission shall appoint members with a wide diversity of opinion and who represent a broad spectrum of interests, including hedgers and consumers.

“(D) REIMBURSEMENT.—Members shall be entitled to per diem and travel expense reimbursement by the Commission.
“(E) FACA.—The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).”.

SEC. 752. INTERNATIONAL HARMONIZATION.

In order to promote effective and consistent global regulation of swaps and security-based swaps, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Financial Stability Oversight Council, and the Treasury Department—

(1) shall, both individually and collectively, consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of such swaps; and

(2) may, both individually and collectively, agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors and swap counterparties.

SEC. 753. ANTIMARKET MANIPULATION AUTHORITY.

(a) Prohibition Regarding Manipulation and False Information.—Subsection (c) of section 6 of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended to read as follows:
“(c) Prohibition Regarding Manipulation and False Information.—

“(1) Prohibition Against Manipulation.—

It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010.

“(A) Special Provision for Manipulation by False Reporting.—Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in
reckless disregard of the fact, that such report
is false, misleading or inaccurate.

“(B) Effect on other law.—Nothing
in this paragraph shall affect, or be construed
to affect, the applicability of section 9(a)(2).

“(2) Prohibition regarding false inform-
mation.—It shall be unlawful for any person to
make any false or misleading statement of a mate-
rial fact to the Commission, including in any reg-
istration application or any report filed with the
Commission under this Act, or any other informa-
tion relating to a swap, or a contract of sale of a
commodity, in interstate commerce, or for future de-
ivery on or subject to the rules of any registered en-
tity, or to omit to state in any such statement any
material fact that is necessary to make any state-
ment of a material fact made not misleading in any
material respect, if the person knew, or reasonably
should have known, the statement to be false or mis-
leading.

“(3) Other manipulation.—In addition to
the prohibition in paragraph (1), it shall be unlawful
for any person, directly or indirectly, to manipulate
or attempt to manipulate the price of any swap, or
of any commodity in interstate commerce, or for fu-
ture delivery on or subject to the rules of any registered entity.

“(4) Enforcement.—

“(A) Authority of Commission.—If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

“(B) Contents of complaint.—A complaint under subparagraph (A) shall—

“(i) contain a description of the charges against the person that is the subject of the complaint; and

“(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

“(C) Hearing.—A hearing described in subparagraph (B)(ii)—
“(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);

“(ii) shall require the person to show cause regarding why—

“(I) an order should not be made—

“(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

“(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

“(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

“(iii) may be held before—

“(I) the Commission; or

“(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is re-
corded in written form and submitted to the Commission.

“(5) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of this Act, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

“(6) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

“(7) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for serv-
ice of process in a foreign country, except that a
subpoena to be served on a person who is not to be
found within the territorial jurisdiction of any court
of the United States may be issued only on the prior
approval of the Commission.

“(8) Refusal to obey.—In case of contumacy
by, or refusal to obey a subpoena issued to, any per-
son, the Commission may invoke the aid of any
court of the United States within the jurisdiction in
which the investigation or proceeding is conducted,
or where such person resides or transacts business,
in requiring the attendance and testimony of wit-
tnesses and the production of books, papers, cor-
respondence, memoranda, and other records. Such
court may issue an order requiring such person to
appear before the Commission or member or Admin-
istrative Law Judge or other officer designated by
the Commission, there to produce records, if so or-
dered, or to give testimony touching the matter
under investigation or in question.

“(9) Failure to obey.—Any failure to obey
such order of the court may be punished by the
court as a contempt thereof. All process in any such
case may be served in the judicial district wherein
such person is an inhabitant or transacts business or wherever such person may be found.

“(10) EVIDENCE.—On the receipt of evidence under paragraph (4)(C)(iii), the Commission may—

“(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

“(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

“(C) assess such person—

“(i) a civil penalty of not more than an amount equal to the greater of—

“(I) $140,000; or

“(II) triple the monetary gain to such person for each such violation; or

“(ii) in any case of manipulation or attempted manipulation in violation of this subsection or section 9(a)(2), a civil pen-
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the greater of—
“(I) $1,000,000; or
“(II) triple the monetary gain to
the person for each such violation;
and
“(D) require restitution to customers of
damages proximately caused by violations of the
person.
“(11) ORDERS.—
“(A) NOTICE.—The Commission shall pro-
vide to a person described in paragraph (10)
and the appropriate governing board of the reg-
istered entity notice of the order described in
paragraph (10) by—
“(i) registered mail;
“(ii) certified mail; or
“(iii) personal delivery.
“(B) REVIEW.—
“(i) IN GENERAL.—A person de-
scribed in paragraph (10) may obtain a re-
view of the order or such other equitable
relief as determined to be appropriate by a
court described in clause (ii).
“(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

“(I) for the circuit in which the petitioner carries out the business of the petitioner; or

“(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

“(C) PROCEDURE.—

“(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

“(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in
subparagraph (B)(ii) the record theretofore made.

“(iii) **Jurisdiction of Appropriate Court.**—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) shall have jurisdiction to affirm, set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.”.

(b) **Cease and Desist Orders, Fines.**—Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended to read as follows:

“(d) If any person (other than a registered entity), is violating or has violated subsection (c) or any other provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmation of such order, shall fail or refuse to obey or comply
with such order, such person shall be guilty of a mis-
demeanor and, upon conviction thereof, shall be fined not
more than the higher of $140,000 or triple the monetary
gain to such person, or imprisoned for not less than 6
months nor more than 1 year, or both, except that if such
failure or refusal to obey or comply with such order in-
volves any offense within subsection (a) or (b) of section
9 of this Act, such person shall be guilty of a felony and,
upon conviction thereof, shall be subject to the penalties
of said subsection (a) or (b): Provided, That any such
cease and desist order under this subsection against any
respondent in any case of manipulation shall be issued
only in conjunction with an order issued against such re-
spondent under subsection (c). Each day during which
such failure or refusal to obey or comply with such order
continues shall be deemed a separate offense.”.

(c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—

Section 22(a)(1) of the Commodity Exchange Act (7
U.S.C. 25(a)(1)) is amended by striking subparagraph
(D) and inserting the following:

“(D) who purchased or sold a contract re-
ferred to in subparagraph (B) hereof or swap if
the violation constitutes—

“(i) the use or employment of, or an
attempt to use or employ, in connection
with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010; or

“(ii) a manipulation of the price of any such contract or swap or the price of the commodity underlying such contract or swap.”.

(d) EFFECTIVE DATE.—

(1) The amendments made by this section shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to this Act takes effect.

(2) Paragraph (1) shall not preclude the Commission from undertaking prior to the effective date any rulemaking necessary to implement the amendments contained in this section.
SEC. 754. EFFECTIVE DATE.

Unless otherwise provided in this title, this subtitle shall take effect on the date that is 180 days after the date of enactment of this Act.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 761. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) Definitions.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in subparagraphs (A) and (B) of paragraph (5), by inserting ``(not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)'' after ``securities'' each place that term appears;

(2) in paragraph (10), by inserting ``security-based swap,'' after ``security future,'';

(3) in paragraph (13), by adding at the end the following: ``For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(4) in paragraph (14), by adding at the end the following: ``For security-based swaps, such terms in-
clude the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(5) in paragraph (39)—

(A) in subparagraph (B)(i)—

(i) in subclause (I), by striking “or government securities dealer” and inserting “government securities dealer, security-based swap dealer, or major security-based swap participant”; and

(ii) in subclause (II), by inserting “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”;

(B) in subparagraph (C), by striking “or government securities dealer” and inserting “government securities dealer, security-based swap dealer, or major security-based swap participant”; and

(C) in subparagraph (D), by inserting “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”; and
(6) by adding at the end the following:

“(65) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(66) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major security-based swap participant’ means any person—

“(i) who is not a security-based swap dealer; and

“(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding—

“(aa) positions held for hedging or mitigating commercial risk; and

“(bb) positions maintained by any employee benefit plan (or any
contract held by such a plan), as that term is defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

“(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

“(III) that is a financial entity that—

“(aa) is highly leveraged relative to the amount of capital such entity holds; and

“(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

“(B) Definition of substantial position.—For purposes of subparagraph (A), the
Commission shall define, by rule or regulation, the term ‘substantial position’ at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.

“(C) Scope of designation.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

“(68) Security-based swap.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that—

“(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act; and

“(ii) is based on—
“(I) an index that is a narrow-based security index, including any interest therein or on the value thereof; 
“(II) a single security or loan, including any interest therein or on the value thereof; or 
“(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

“(B) Rule of construction regarding master agreements.—The term ‘security-based swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based
swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

“(C) EXCLUSIONS.—The term ‘security-based swap’ does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in paragraph (29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

“(D) MIXED SWAP.—The term ‘security-based swap’ includes any agreement, contract, or transaction that is as described in subpara-
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graph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

“(69) SWAP.—The term ‘swap’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ means—

“(i) any partner, officer, director, or branch manager of such security-based
swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

“(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

“(iii) any employee of such security-based swap dealer or major security-based swap participant.

“(B) EXCLUSION.—Other than for purposes of section 15F(l)(2), the term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

“(71) SECURITY-BASED SWAP DEALER.—

“(A) IN GENERAL.—The term ‘security-based swap dealer’ means any person who—
“(i) holds themself out as a dealer in security-based swaps;
“(ii) makes a market in security-based swaps;
“(iii) regularly engages in the purchase and sale of security-based swaps in the ordinary course of a business; or
“(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

“(B) Designation by type or class.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

“(C) Capital.—In setting capital requirements for a person that is designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps.
swaps or classes of security-based swaps or cate-
egories of security-based swaps engaged in and
the other activities conducted by that person
that are not otherwise subject to regulation ap-
plicable to that person by virtue of the status
of the person as a security-based swap dealer.

“(72) Appropriate Federal banking agen-
cy.—The term ‘appropriate Federal banking agency’
has the same meaning as in section 3(q) of the Fed-
eral Deposit Insurance Act (12 U.S.C. 1813(q)).

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

“(74) Prudential regulator.—The term
‘prudential regulator’ has the same meaning as in
section 1a of the Commodity Exchange Act (7

“(75) Security-based swap data reposi-
tory.—The term ‘security-based swap data reposi-
tory’ means any person that collects, calculates, pre-
pares, or maintains information or records with re-
spect to transactions or positions in, or the terms
and conditions of, security-based swaps entered into
by third parties.
“(76) SWAP DEALER.—The term ‘swap dealer’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(77) SWAP EXECUTION FACILITY.—The term ‘swap execution facility’ means a facility in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, or confirmation facility, that—

“(A) facilitates the execution of security-based swaps between persons; and

“(B) is not a designated contract market.

“(78) SECURITY-BASED SWAP AGREEMENT.—

“(A) IN GENERAL.—For purposes of sections 9, 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term ‘security-based swap agreement’ means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.
“(B) Exclusions.—The term ‘security-based swap agreement’ does not include any security-based swap.”.

(b) Authority To Further Define Terms.—The Securities and Exchange Commission may, by rule, further define the terms “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, and “eligible contract participant” with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been structured to evade this subtitle or the amendments made by this subtitle.

(e) Other Incorporated Definitions.—Except as the context otherwise requires, in this subtitle, the terms “prudential regulator”, “swap”, “swap dealer”, “major swap participant”, “swap data repository”, “associated person of a swap dealer or major swap participant”, “eligible contract participant”, “swap execution facility”, “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, “security-based swap data repository”, and “associated person of a security-based swap dealer or major security-based swap participant” have the same meanings as in section 1a of the
Commodity Exchange Act (7 U.S.C. 1a), as amended by this Act.

SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAP AGREEMENTS.


(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A of the Securities Act of 1933 (15 U.S.C. 77b–1) is amended—

(A) by striking subsection (a) and reserving that subsection; and

(B) by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that such term appears and inserting “(as defined in section 3(a)(78) of the Securities Exchange Act of 1934)”.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting “(including security-based swaps)” after “securities”; and

(ii) by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”
and inserting “(as defined in section 3(a)(78) of the Securities Exchange Act)”;
and
(B) in subsection (d), by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(78) of the Securities Exchange Act of 1934”.

(c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3A (15 U.S.C. 78c–1)—

(A) by striking subsection (a) and reserving that subsection; and

(B) by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

(2) in section 9 (15 U.S.C. 78i)—

(A) in subsection (a), by striking paragraphs (2) through (5) and inserting the following:

“(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security cre-
ating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

“(3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or a security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.

“(4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange, any security not so registered, any secu-
rity-based swap, or any security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security, such security-based swap, or such security-based swap agreement any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which that person knew or had reasonable ground to believe was so false or misleading.

“(5) For a consideration, received directly or indirectly from a broker, dealer, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.”; and
(B) in subsection (i), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(3) in section 10 (15 U.S.C. 78j)—

(A) in subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act),” each place that term appears; and

(B) in the matter following subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(4) in section 15 (15 U.S.C. 78o)—

(A) in subsection (e)(1)(A), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act),”;

(B) in subparagraphs (B) and (C) of subsection (e)(1), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that term appears;

(C) by redesignating subsection (i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455)), as subsection (j); and
(D) in subsection (j), as redesignated by
subsection (C), by striking ``(as defined in
section 206B of the Gramm-Leach-Bliley Act)'';
(5) in section 16 (15 U.S.C. 78p)—
(A) in subsection (a)(2)(C), by striking
 ``(as defined in section 206(b) of the Gramm-
Leach-Bliley Act (15 U.S.C. 78c note))'';
(B) in subsection (a)(3)(B), by inserting
``or security-based swaps'' after ``security-based
swap agreement'';
(C) in the first sentence of subsection (b),
by striking ``(as defined in section 206B of the
Gramm-Leach-Bliley Act)'';
(D) in the third sentence of subsection (b),
by striking ``(as defined in section 206B of the
Gramm-Leach Bliley Act)'' and inserting ``or a
security-based swap''; and
(E) in subsection (g), by striking ``(as de-
defined in section 206B of the Gramm-Leach-Bli-
ley Act)'';
(6) in section 20 (15 U.S.C. 78t),
(A) in subsection (d), by striking ``(as de-
defined in section 206B of the Gramm-Leach-Bli-
ley Act)''; and
(B) in subsection (f), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(7) in section 21A (15 U.S.C. 78u–1)—

(A) in subsection (a)(1), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

and

(B) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

SEC. 763. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.


“SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.

“(a) Clearing Requirement.—

“(1) Submission.—

“(A) In general.—Except as provided in paragraphs (9) and (10), any person who is a party to a security-based swap shall submit such security-based swap for clearing to a clearing agency registered under section 17A of this title.
“(B) OPEN ACCESS.—The rules of a registered clearing agency shall—

“(i) prescribe that all security-based swaps with the same terms and conditions are economically equivalent and may be offset with each other within the clearing agency; and

“(ii) provide for nondiscriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or swap execution facility, subject to the requirements of section 5(b).

“(2) COMMISSION APPROVAL.—

“(A) IN GENERAL.—A clearing agency shall submit to the Commission for prior approval any group, category, type, or class of security-based swaps that the clearing agency seeks to accept for clearing, which submission the Commission shall make available to the public.

“(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the
clearing agency submitting the request agrees to an extension of the time limitation established under this subparagraph.

“(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commission finds that the request is consistent with the requirements of section 17A. The Commission shall not approve any such request if the Commission does not make such finding.

“(D) RULES.—The Commission shall adopt rules for a clearing agency’s submission for approval, pursuant to this paragraph, of any group, category, type, or class of security-based swaps that the clearing agency seeks to accept for clearing.

“(3) STAY OF CLEARING REQUIREMENT.—At any time after issuance of an approval pursuant to paragraph (2):

“(A) REVIEW PROCESS.—The Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of paragraph (1) until
the Commission completes a review of the terms of the security-based swap, or the group, category, type, or class of security-based swaps, and the clearing arrangement.

“(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or the group, category, type, or class of security-based swaps, agrees to an extension of the time limitation established under this subparagraph.

“(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A)—

“(i) the Commission may determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or the group, category, type, or class of security-based swaps, must be cleared pursuant to this subsection if the Commission finds that such clearing—

“(I) is consistent with the requirements of section 17A; and
“(II) is otherwise in the public interest, for the protection of investors, and consistent with the purposes of this title;

“(ii) the Commission may determine that the clearing requirement of paragraph (1) shall not apply to the security-based swap, or the group, category, type, or class of security-based swaps; or

“(iii) if a determination is made that the clearing requirement of paragraph (1) shall no longer apply, then the Commission may still permit such security-based swap, or the group, category, type, or class of security-based swaps to be cleared.

“(D) RULES.—The Commission shall adopt rules for reviewing, pursuant to this paragraph, a clearing agency’s clearing of a security-based swap, or a group, category, type, or class of security-based swaps that the Commission has accepted for clearing.

“(4) SECURITY-BASED SWAPS REQUIRED TO BE ACCEPTED FOR CLEARING.—

“(A) RULEMAKING.—The Commission shall adopt rules to further identify any group,
category, type, or class of security-based swaps not submitted for approval under paragraph (2) that the Commission deems should be accepted for clearing. In adopting such rules, the Commission shall take into account the following factors:

“(i) The extent to which any of the terms of the group, category, type, or class of security-based swaps, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions.

“(ii) The volume of transactions in the group, category, type, or class of security-based swaps.

“(iii) The extent to which the terms of the group, category, type, or class of security-based swaps are similar to the terms of other agreements, contracts, or transactions that are cleared.

“(iv) Whether any differences in the terms of the group, category, type, or class of security-based swaps, compared to other agreements, contracts, or transactions that are cleared, are of economic significance.
“(v) Whether a clearing agency is prepared to clear the group, category, type, or class of security-based swaps and such clearing agency has in place effective risk management systems.

“(vi) Any other factor the Commission determines to be appropriate.

“(B) OTHER DESIGNATIONS.—At any time after the adoption of the rules required under subparagraph (A), the Commission may separately designate a particular security-based swap or class of security-based swaps as subject to the clearing requirement of paragraph (1), taking into account the factors established in clauses (i) through (vi) of subparagraph (A) and the rules adopted in such subparagraph.

“(C) IN GENERAL.—In accordance with subparagraph (A), the Commission shall, consistent with the public interest, adopt rules under the expedited process described in subparagraph (D) to establish criteria for determining that a swap, or any group, category, type, or class of swap is required to be cleared.

“(D) EXPEDITED RULEMAKING AUTHORITY.—
“(i) PROCEDURE.—The promulgation of regulations under subparagraph (A) may be made without regard to—

“(I) the notice and comment provisions of section 553 of title 5, United States Code; and

“(II) chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’).

“(ii) AGENCY RULEMAKING.—In carrying out subparagraph (A), the Commission shall use the authority provided under section 808 of title 5, United States Code.

“(5) PREVENTION OF EVASION.—

“(A) IN GENERAL.—The Commission shall have authority to prescribe rules under this section, or issue interpretations of such rules, as necessary to prevent evasions of this section.

“(B) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular security-based swap or any group, category, type, or class of security-based swaps that would otherwise be subject to mandatory clearing but no clearing agency has listed the secu-
rity-based swap or the group, category, type, or
class of security-based swaps for clearing, the
Commission shall—

“(i) investigate the relevant facts and
circumstances;

“(ii) within 30 days issue a public re-
port containing the results of the investiga-
tion; and

“(iii) take such actions as the Com-
munity determines to be necessary and in
the public interest, which may include re-
quiring the retaining of adequate margin
or capital by parties to the security-based
swap or the group, category, type, or class
of security-based swaps.

“(C) EFFECT ON AUTHORITY.—Nothing in
this paragraph—

“(i) authorize the Commission to re-
quire a clearing agency to list for clearing
a security-based swap or any group, cat-
egory, type, or class of security-based
swaps if the clearing of the security-based
swap or the group, category, type, or class
of security-based swaps would adversely af-
flect the business operations of the clearing
agency, threaten the financial integrity of
the clearing agency, or pose a systemic risk
to the clearing agency; and

“(ii) affect the authority of the Com-
mission to enforce the open access provi-
sions of paragraph (1) with respect to a se-
curity-based swap or the group, category,
type, or class of security-based swaps that
is listed for clearing by a clearing agency.

“(6) REQUIRED REPORTING.—

“(A) BOTH COUNTERPARTIES.—Both
counterparties to a security-based swap that is
not cleared by any clearing agency shall report
such a security-based swap either to a reg-
istered security-based swap repository described
in section 13(n) or, if there is no repository
that would accept the security-based swap, to
the Commission pursuant to section 13A.

“(B) TIMING.—Counterparties to a secu-
ry-based swap shall submit the reports re-
quired under subparagraph (A) not later than
such time period as the Commission may by
rule or regulation prescribe.

“(7) TRANSITION RULES.—
“(A) REPORTING TRANSITION RULES.—

Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(i) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission not later than 180 days after the effective date of this section.

“(ii) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission not later than the later of—

“(I) 90 days after such effective date; or

“(II) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

“(B) CLEARING TRANSITION RULES.—

“(i) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing re-
requirements of this subsection if reported pursuant to subparagraph (A)(i).

“(ii) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subparagraph (A)(ii).

“(8) TRADE EXECUTION.—

“(A) IN GENERAL.—With respect to transactions involving security-based swaps subject to the clearing requirement of paragraph (1), counterparties shall—

“(i) execute the transaction on an exchange; or

“(ii) execute the transaction on a swap execution facility registered under section 3D or a swap execution facility that is exempt from registration under section 3D(e).

“(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply—

“(i) if no national securities exchange or security-based swap execution facility
makes the security-based swap available to
trade; or

“(ii) to swap transactions where a
commercial end user opts to use the clear-
ing exemption under paragraph (10).

“(9) REQUIRED EXEMPTION.—Subject to para-
graph (4), the Commission shall exempt a security-
based swap from the requirements of paragraphs (1)
and (8) and any rules issued under this subsection,
if no clearing agency registered under this Act will
accept the security-based swap from clearing.

“(10) END USER CLEARING EXEMPTION.—

“(A) DEFINITION OF COMMERCIAL END
USER.—

“(i) IN GENERAL.—In this paragraph,
the term ‘commercial end user’ means any
person other than a financial entity de-
scribed in clause (ii) who, as its primary
business activity, owns, uses, produces,
processes, manufactures, distributes, mer-
chandises, or markets goods, services, or
commodities (which shall include coal, nat-
ural gas, electricity, ethanol, crude oil, dis-
tillates, and other hydrocarbons) either in-
dividually or in a fiduciary capacity.
“(ii) **FINANCIAL ENTITY.**—The term ‘financial entity’ means—

“(I) a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant;

“(II) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956;

“(III) a person predominantly engaged in activities that are financial in nature;

“(IV) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) or a commodity pool as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or

“(V) a person that is registered or required to be registered with the Commission, but does not include a public company solely because it reg-
isters its securities with the Commission.

“(B) END USER CLEARING EXEMPTION.—

“(i) IN GENERAL.—Subject to clause (ii), in the event that a security-based swap is subject to the mandatory clearing requirement under paragraph (1), and 1 of the counterparties to the security-based swap is a commercial end user that counterparty—

“(I)(aa) may elect not to clear the security-based swap, as required under paragraph (1); or

“(bb) may elect to require clearing of the security-based swap; and

“(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

“(ii) LIMITATION.—A commercial end user may only make an election under clause (i) if the end user is using the security-based swap to hedge its own commercial risk.
“(C) TREATMENT OF AFFILIATES.—

“(i) IN GENERAL.—An affiliate of a commercial end user (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the commercial end user) may make an election under subparagraph (B)(i) only if the affiliate, acting on behalf of the commercial end user and as an agent, uses the security-based swap to hedge or mitigate the commercial risk of the commercial end user parent or other affiliates of the commercial end user that is not a financial entity.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a commercial end user shall not use the exemption under subparagraph (B) if the affiliate is—

“(I) a security-based swap dealer;

“(II) a security-based security-based swap dealer;

“(III) a major security-based swap participant;
“(IV) a major security-based security-based swap participant;

“(V) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for paragraph (1) or (7) of subsection (c) of that section 3 (15 U.S.C. 80a–3(e));

“(VI) a commodity pool;

“(VII) a bank holding company with over $50,000,000,000 in consolidated assets; or

“(VIII) an affiliate of any entity described in subclauses (I) through (VII).

“(iii) Abuse of Exemption.—The Commission may prescribe such rules, or issue interpretations of the rules, as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B).

“(D) Option to Clear.—

“(i) Security-based swaps required to be cleared entered into
WITH A FINANCIAL ENTITY.—With respect to any security-based swap that is subject to the mandatory clearing requirement under this subsection and entered into by a security-based swap dealer or a major security-based swap participant with a financial entity, the financial entity shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

“(ii) SECURITY-BASED SWAPS NOT REQUIRED TO BE CLEARED ENTERED INTO WITH A FINANCIAL ENTITY OR COMMERCIAL END USER.—With respect to any security-based swap that is not subject to the mandatory clearing requirement under this subsection and entered into by a security-based swap dealer or a major security-based swap participant with a financial entity or commercial end user, the financial entity or commercial end user—

“(I) may elect to require clearing of the security-based swap; and
“(II) shall have the sole right to
select the clearing agency at which the
security-based swap will be cleared.

“(b) Audit Committee Approval.—Exemptions
from the requirements of this section to clear or trade a
security-based swap through a national securities ex-
change or security-based swap execution facility shall be
available to a counterparty that is an issuer of securities
that are registered under section 12 or that is required
to file reports pursuant to section 15(d), only if the
issuer’s audit committee has reviewed and approved the
issuer’s decision to enter into security-based swaps that
are subject to such exemptions.

“(c) Public Availability of Security-based
Swap Transaction Data.—

“(1) In general.—

“(A) Definition of real-time public
reporting.—In this paragraph, the term ‘real-
time public reporting’ means to report data re-
lating to a security-based swap transaction as
soon as technologically practicable after the
time at which the security-based swap trans-
action has been executed.

“(B) Purpose.—The purpose of this sub-
section is to authorize the Commission to make
security-based swap transaction and pricing
data available to the public in such form and at
such times as the Commission determines ap-
propriate to enhance price discovery.

“(C) GENERAL RULE.—The Commission is
authorized to provide by rule for the public
availability of security-based swap transaction
and pricing data as follows:

“(i) With respect to those security-
based swaps that are subject to the man-
datory clearing requirement described in
subsection (a)(1) (including those security-
based swaps that are exempted from those
requirements), the Commission shall re-
quire real-time public reporting for such
transactions.

“(ii) With respect to those security-
based swaps that are not subject to the
mandatory clearing requirement described
in subsection (a)(1), but are cleared at a
registered clearing agency, the Commission
shall require real-time public reporting for
such transactions.

“(iii) With respect to security-based
swaps that are not cleared at a registered
clearing agency and which are reported to
a security-based swap data repository or
the Commission under subsection (a), the
Commission shall make available to the
public, in a manner that does not disclose
the business transactions and market posi-
tions of any person, aggregate data on
such security-based swap trading volumes
and positions.

“(iv) With respect to security-based
swaps that are exempt from the require-
ments of subsection (a)(1), but are subject
to the requirements of subsection (a)(8),
the Commission shall require real-time
public reporting for such transactions.

“(D) REGISTERED ENTITIES AND PUBLIC
REPORTING.—The Commission may require
registered entities to publicly disseminate the
security-based swap transaction and pricing
data required to be reported under this para-
graph.

“(E) RULEMAKING REQUIRED.—With re-
spect to the rule providing for the public avail-
ability of transaction and pricing data for secu-
rity-based swaps described in clauses (i) and (ii)
of subparagraph (C), the rule promulgated by
the Commission shall contain provisions—

“(i) to ensure such information does
not identify the participants;

“(ii) to specify the criteria for deter-
mining what constitutes a large notional
security-based swap transaction (block
trade) for particular markets and con-
tracts;

“(iii) to specify the appropriate time
delay for reporting large notional security-
based swap transactions (block trades) to
the public; and

“(iv) that take into account whether
the public disclosure will materially reduce
market liquidity.

“(F) TIMELINESS OF REPORTING.—Par-
ties to a security-based swap (including agents
of the parties to a security-based swap) shall be
responsible for reporting security-based swap
transaction information to the appropriate reg-
istered entity in a timely manner as may be
prescribed by the Commission.
“(2) Semiannual and annual public reporting of aggregate security-based swap data.—

“(A) In general.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

“(i) the trading and clearing in the major security-based swap categories; and

“(ii) the market participants and developments in new products.

“(B) Use; consultation.—In preparing a report under subparagraph (A), the Commission shall—

“(i) use information from security-based swap data repositories and clearing agencies; and

“(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

“(C) Transition rule for preenactment security-based swaps.—
“(i) **Security-based swaps entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010.**—Each security-based swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered security-based swap data repository or the Commission by a date that is not later than—

“(I) 30 days after the date of issuance of the interim final rule; or

“(II) such other period as the Commission determines to be appropriate.

“(ii) **Commission rulemaking.**—The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each security-based swap entered into before the date of enactment as referenced in clause (i).
“(D) Effective date.—The reporting provisions described in this paragraph shall be effective upon the date of enactment of this section.

“(d) Designation of Chief Compliance Officer.—

“(1) in general.—Each registered clearing agency shall designate an individual to serve as a chief compliance officer.

“(2) Duties.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the clearing agency;

“(B) in consultation with its board, a body performing a function similar thereto, or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise;

“(C) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(D) ensure compliance with this title (including regulations issued under this title) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;
“(E) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(F) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the registered clearing agency or security-based swap execution facility of the compliance officer with respect to this title (including regulations under this title); and

“(ii) each policy and procedure of the registered clearing agency of the compli-
ANCE OFFICER (INCLUDING THE CODE OF ETHICS AND CONFLICT OF INTEREST POLICIES OF THE REGISTERED CLEARING AGENCY).

"(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

"(i) accompany each appropriate financial report of the registered clearing agency that is required to be furnished to the Commission pursuant to this section; and

"(ii) include a certification that, under penalty of law, the compliance report is accurate and complete."

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) is amended by adding at the end the following:

"(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a security-based swap.

"(h) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not
required to be cleared under this title may register with
the Commission as a clearing agency.

“(i) Standards for Clearing Agencies Clearing Security-based Swap Transactions.—To be reg-
istered and to maintain registration as a clearing agency
that clears security-based swap transactions, a clearing
agency shall comply with such standards as the Commis-
sion may establish by rule. In establishing any such stand-
ards, and in the exercise of its oversight of such a clearing
agency pursuant to this title, the Commission may con-
form such standards or oversight to reflect evolving
United States and international standards. Except where
the Commission determines otherwise by rule or regula-
tion, a clearing agency shall have reasonable discretion in
establishing the manner in which it complies with any such
standards.

“(j) Rules.—The Commission shall adopt rules gov-
erning persons that are registered as clearing agencies for
security-based swaps under this title.

“(k) Exemptions.—

“(1) In general.—The Commission may ex-
empt, conditionally or unconditionally, a clearing
agency from registration under this section for the
clearing of security-based swaps if the Commission
determines that the clearing agency is subject to
comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission or the appropriate government authorities in the home country of the agency. Such conditions may include, but are not limited to, requiring that the clearing agency be available for inspection by the Commission and make available all information requested by the Commission.

“(2) DERIVATIVES CLEARING ORGANIZATIONS.—A person that is required to be registered as a derivatives clearing organization under the Commodity Exchange Act, whose principal business is clearing commodity futures and options on commodity futures transactions and swaps and which is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing security-based swaps, unless the Commission finds that such derivatives clearing organization is not subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission.
“(l) MODIFICATION OF CORE PRINCIPLES.—The Commission may conform the core principles established in this section to reflect evolving United States and international standards.”.

(c) SECURITY-BASED SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C (as added by subsection (a) of this section) the following:

“SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.

“(a) REGISTRATION.—

“(1) IN GENERAL.—No person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.

“(2) DUAL REGISTRATION.—Any person that is registered as a security-based swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap execution facility.

“(b) TRADING AND TRADE PROCESSING.—A security-based swap execution facility that is registered under subsection (a) may—
“(1) make available for trading any security-based swap; and
“(2) facilitate trade processing of any security-based swap.
“(c) IDENTIFICATION OF FACILITY USED TO TRADE SECURITY-BASED SWAPS BY NATIONAL SECURITIES EXCHANGES.—A national securities exchange shall, to the extent that the exchange also operates a security-based swap execution facility and uses the same electronic trade execution system for listing and executing trades of security-based swaps on or through the exchange and the facility, identify whether electronic trading of such security-based swaps is taking place on or through the national securities exchange or the security-based swap execution facility.
“(d) CORE PRINCIPLES FOR SECURITY-BASED SWAP EXECUTION FACILITIES.—
“(1) COMPLIANCE WITH CORE PRINCIPLES.—
“(A) IN GENERAL.—To be registered, and maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall comply with—
“(i) the core principles described in this subsection; and
“(ii) any requirement that the Commission may impose by rule or regulation.
“(B) Reasonable discretion of security-based swap execution facility.—Unless otherwise determined by the Commission, by rule or regulation, a security-based swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which it complies with the core principles described in this subsection.

“(2) Compliance with rules.—A security-based swap execution facility shall—

“(A) establish and enforce compliance with any rule established by such security-based swap execution facility, including—

“(i) the terms and conditions of the security-based swaps traded or processed on or through the facility; and

“(ii) any limitation on access to the facility;

“(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

“(i) to provide market participants with impartial access to the market; and
“(ii) to capture information that may be used in establishing whether rule violations have occurred; and

“(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.

“(3) Security-based swaps not readily susceptible to manipulation.—The security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

“(4) Monitoring of trading and trade processing.—The security-based swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

“(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and

“(ii) procedures for trade processing of security-based swaps on or through the
facilities of the security-based swap execution facility; and

“(B) monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The security-based swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

“(B) provide the information to the Commission on request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) POSITION LIMITS OR ACCOUNTABILITY.—

“(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery
month, a security-based swap execution facility that is a trading facility shall adopt for each of the contracts listed on or traded through the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

“(B) POSITION LIMITS.—For any contract or agreement that is subject to a position limitation established by the Commission pursuant to section 10B, the security-based swap execution facility shall set its position limitation at a level no higher than the limitation established by the Commission.

“(C) POSITION ENFORCEMENT.—For any contract or agreement that is subject to a position limitation established by the Commission pursuant to section 10B, a security-based swap execution facility shall reject any proposed security-based swap transaction if, based on information readily available to a security-based swap execution facility, any proposed security-based swap transaction would cause a security-based swap execution facility customer that would be a party to such swap transaction to exceed such position limitation.
“(7) Financial Integrity of Transactions.—The security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 3C(a)(1).

“(8) Emergency Authority.—The security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any security-based swap or to suspend or curtail trading in a security-based swap.

“(9) Timely Publication of Trading Information.—

“(A) In General.—The security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on security-based swaps to the extent prescribed by the Commission.

“(B) Capacity of Security-Based Swap Execution Facility.—The security-based
swap execution facility shall be required to have
the capacity to electronically capture and dis-
seminate trade information with respect to
transactions executed on or through the facility.
“(10) RECORDKEEPING AND REPORTING.—
“(A) IN GENERAL.—A security-based swap
execution facility shall—
“(i) maintain records of all activities
relating to the business of the facility, in-
cluding a complete audit trail, in a form
and manner acceptable to the Commission
for a period of 5 years; and
“(ii) report to the Commission, in a
form and manner acceptable to the Com-
mission, such information as the Commis-
sion determines to be necessary or appro-
priate for the Commission to perform the
duties of the Commission under this title.
“(B) REQUIREMENTS.—The Commission
shall adopt data collection and reporting re-
quirements for security-based swap execution
facilities that are comparable to corresponding
requirements for clearing agencies and security-
based swap data repositories.
“(11) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the security-based swap execution facility shall not—

“(A) adopt any rules or taking any actions that result in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading or clearing.

“(12) CONFLICTS OF INTEREST.—The security-based swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

“(B) establish a process for resolving the conflicts of interest.

“(13) FINANCIAL RESOURCES.—

“(A) IN GENERAL.—The security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.

“(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a security-
based swap execution facility shall be consid-
ered to be adequate if the value of the financial
resources—

“(i) enables the organization to meet
its financial obligations to its members and
participants notwithstanding a default by
the member or participant creating the
largest financial exposure for that organi-
ization in extreme but plausible market
conditions; and

“(ii) exceeds the total amount that
would enable the security-based swap exe-
cution facility to cover the operating costs
of the security-based swap execution facil-
ity for a 1-year period, as calculated on a
rolling basis.

“(14) System safeguards.—The security-
based swap execution facility shall—

“(A) establish and maintain a program of
risk analysis and oversight to identify and mini-
mize sources of operational risk, through the
development of appropriate controls and proce-
dures, and automated systems, that—

“(i) are reliable and secure; and

“(ii) have adequate scalable capacity;
“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

“(i) the timely recovery and resumption of operations; and

“(ii) the fulfillment of the responsibilities and obligations of the security-based swap execution facility; and

“(C) periodically conduct tests to verify that the backup resources of the security-based swap execution facility are sufficient to ensure continued—

“(i) order processing and trade matching;

“(ii) price reporting;

“(iii) market surveillance; and

“(iv) maintenance of a comprehensive and accurate audit trail.

“(15) Designation of Chief Compliance Officer.—

“(A) In general.—Each security-based swap execution facility shall designate an individual to serve as a chief compliance officer.

“(B) Duties.—The chief compliance officer shall—
“(i) report directly to the board or to the senior officer of the facility;

“(ii) review compliance with the core principles in this subsection;

“(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

“(v) ensure compliance with this title and the rules and regulations issued under this title, including rules prescribed by the Commission pursuant to this section;

“(vi) establish procedures for the remediation of noncompliance issues found during—

“(I) compliance office reviews;

“(II) look backs;

“(III) internal or external audit findings;

“(IV) self-reported errors; or
“(V) through validated complaints; and

“(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(C) ANNUAL REPORTS.—

“(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(I) the compliance of the security-based swap execution facility with this title; and

“(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the security-based security-based swap execution facility.

“(ii) REQUIREMENTS.—The chief compliance officer shall—

“(I) submit each report described in clause (i) with the appropriate financial report of the security-based
swap execution facility that is required to be submitted to the Commission pursuant to this section; and

“(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

“(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission.

“(f) RULES.—The Commission shall prescribe rules governing the regulation of security-based swap execution facilities under this section.”.

(d) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3D (as added by subsection (b)) the following:

“SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

“(a) REGISTRATION REQUIREMENT.—It shall be unlawful for any person to accept any money, securities, or
property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a security-based swaps customer to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the customer as the result of such a security-based swap), unless the person shall have registered under this title with the Commission as a broker, dealer, or security-based swap dealer, and the registration shall not have expired nor been suspended nor revoked.

“(b) CLEARED SECURITY-BASED SWAPS.—

“(1) SEGREGATION REQUIRED.—A broker, dealer, or security-based swap dealer shall treat and deal with all money, securities, and property of any security-based swaps customer received to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the security-based swaps customer as the result of such a security-based swap) as belonging to the security-based swaps customer.

“(2) COMMINGLING PROHIBITED.—Money, securities, and property of a security-based swaps customer described in paragraph (1) shall be separately accounted for and shall not be commingled with the
funds of the broker, dealer, or security-based swap
dealer or be used to margin, secure, or guarantee
any trades or contracts of any security-based swaps
customer or person other than the person for whom
the same are held.

“(c) EXCEPTIONS.—

“(1) USE OF FUNDS.—

“(A) IN GENERAL.—Notwithstanding sub-
section (b), money, securities, and property of a
security-based swaps customer of a broker,
dealer, or security-based swap dealer described
in subsection (b) may, for convenience, be com-
mingled and deposited in the same 1 or more
accounts with any bank or trust company or
with a clearing agency.

“(B) WITHDRAWAL.—Notwithstanding
subsection (b), such share of the money, securi-
ties, and property described in subparagraph
(A) as in the normal course of business shall be
necessary to margin, guarantee, secure, trans-
fer, adjust, or settle a cleared security-based
swap with a clearing agency, or with any mem-
ber of the clearing agency, may be withdrawn
and applied to such purposes, including the
payment of commissions, brokerage, interest,
taxes, storage, and other charges, lawfully accruing in connection with the cleared security-based swap.

“(2) COMMISSION ACTION.—Notwithstanding subsection (b), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may be commingled and deposited as provided in this section with any other money, securities, or property received by the broker, dealer, or security-based swap dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the security-based swaps customer of the broker, dealer, or security-based swap dealer.

“(d) PERMITTED INVESTMENTS.—Money described in subsection (b) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regula-
tions and subject to such conditions as the Commission may prescribe.

“(e) PROHIBITION.—It shall be unlawful for any person, including any clearing agency and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in subsection (b) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing broker, dealer, or security-based swap dealer or any person other than the swaps customer of the broker, dealer, or security-based swap dealer.”.

(e) TRADING IN SECURITY-BASED SWAPS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(l) SECURITY-BASED SWAPS.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).”.

(f) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended by striking paragraphs (1) through (3) and inserting the following:
“(1) any transaction in connection with any security whereby any party to such transaction acquires—

“(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

“(B) any security futures product on the security; or

“(C) any security-based swap involving the security or the issuer of the security;

“(2) any transaction in connection with any security with relation to which such person has, directly or indirectly, any interest in any—

“(A) such put, call, straddle, option, or privilege;

“(B) such security futures product; or

“(C) such security-based swap; or

“(3) any transaction in any security for the account of any person who such person has reason to believe has, and who actually has, directly or indirectly, any interest in any—

“(A) such put, call, straddle, option, or privilege;
“(B) such security futures product with relation to such security; or

“(C) any security-based swap involving such security or the issuer of such security.”.

(g) Rulemaking Authority To Prevent Fraud, Manipulation and Deceptive Conduct in Security-based Swaps.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

“(j) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.”.
(h) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following:

"SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

"(a) POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission shall, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

"(1) any security-based swap and any security or loan or group of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in paragraph (68) of section 3(a), and any other instrument relating to such security or loan or group or index of securities or loans; or

"(2) any security-based swap and—"
“(A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in paragraph (68) of section 3(a); and

“(B) any other instrument relating to the same security or group or index of securities described under subparagraph (A).

“(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement the Commission may establish under this section with respect to position limits.

“(c) SRO RULES.—

“(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—
“(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

“(i) any member of such self-regulatory organization; or

“(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

“(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under this subsection.

“(2) REQUIREMENT TO AGGREGATE POSITIONS.—In establishing the limits under paragraph (1), the self-regulatory organization may require such member or person to aggregate positions in—

“(A) any security-based swap and any security or loan or group or narrow-based security narrow-based security index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security
or loan or group or narrow-based security index of securities or loans; or

“(B)(i) any security-based swap; and

“(ii) any security-based swap and any other instrument relating to the same security or group or narrow-based security index of securities.

“(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person’s own account or the account of others in any securities-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.”.

(i) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAPS.—Section 13 of the Securities Ex-
change Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(m) Public Availability of Security-based Swap Transaction Data.—

“(1) In general.—

“(A) Definition of real-time public reporting.—In this paragraph, the term ‘real-time public reporting’ means to report data relating to a security-based swap transaction as soon as technologically practicable after the time at which the security-based swap transaction has been executed.

“(B) Purpose.—The purpose of this section is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

“(C) General rule.—The Commission is authorized to provide by rule for the public availability of security-based swap transaction and pricing data as follows:

“(i) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in
section 3C(a)(1) (including those security-based swaps that are exempted from the requirement pursuant to section 3C(a)(10)), the Commission shall require real-time public reporting for such transactions.

“(ii) With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in subsection section 3C(a)(1), but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.

“(iii) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository or the Commission under section 3C(a)(6), the Commission shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on such security-based swap trading volumes and positions.
“(iv) With respect to security-based swaps that are exempt from the requirements of section 3C(a)(1), the Commission shall require real-time public reporting for such transactions.

“(D) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.

“(E) RULEMAKING REQUIRED.—With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

“(i) to ensure such information does not identify the participants;

“(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;
“(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and

“(iv) that take into account whether the public disclosure will materially reduce market liquidity.

“(F) Timeliness of reporting.—Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

“(2) Semiannual and annual public reporting of aggregate security-based swap data.—

“(A) In general.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

“(i) the trading and clearing in the major security-based swap categories; and
“(ii) the market participants and developments in new products.

“(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

“(i) use information from security-based swap data repositories and derivatives clearing organizations; and

“(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

“(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

“(1) REGISTRATION REQUIREMENT.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap data repository.

“(2) INSPECTION AND EXAMINATION.—Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

“(3) COMPLIANCE WITH CORE PRINCIPLES.—
“(A) IN GENERAL.—To be registered, and maintain registration, as a security-based swap data repository, the security-based swap data repository shall comply with—

“(i) the core principles described in this subsection; and

“(ii) any requirement that the Commission may impose by rule or regulation.

“(B) REASONABLE DISCRETION OF SECURITY-BASED SWAP DATA REPOSITORY.—Unless otherwise determined by the Commission, by rule or regulation, a security-based swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the security-based swap data repository complies with the core principles described in this subsection.

“(4) STANDARD SETTING.—

“(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each registered security-based swap data repository.

“(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data
collection and data maintenance standards for
collection and data maintenance standards for
security-based swap data repositories.
"(C) COMPARABILITY.—The standards
prescribed by the Commission under this sub-
section shall be comparable to the data stand-
ards imposed by the Commission on clearing
agencies in connection with their clearing of se-
curity-based swaps.
"(5) DUTIES.—A security-based swap data re-
pository shall—

"(A) accept data prescribed by the Com-
misson for each security-based swap under sub-
section (b);

"(B) confirm with both counterparties to
the security-based swap the accuracy of the
data that was submitted;

"(C) maintain the data described in sub-
paragraph (A) in such form, in such manner,
and for such period as may be required by the
Commission;

"(D)(i) provide direct electronic access to
the Commission (or any designee of the Com-
mission, including another registered entity);
and
“(ii) provide the information described in subparagraph (A) in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m);

“(E) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;

“(F) maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any other registered entity; and

“(G) on a confidential basis pursuant to section 24, upon request, and after notifying the Commission of the request, make available all data obtained by the security-based swap data repository, including individual counterparty trade and position data, to—

“(i) each appropriate prudential regulator;

“(ii) the Financial Stability Oversight Council;
“(iii) the Commodity Futures Trading Commission;

“(iv) the Department of Justice; and

“(v) any other person that the Commission determines to be appropriate, including—

“(I) foreign financial supervisors (including foreign futures authorities);

“(II) foreign central banks; and

“(III) foreign ministries.

“(H) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the security-based swap data repository may share information with any entity described in subparagraph (G)—

“(i) the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 24 relating to the information on security-based swap transactions that is provided; and

“(ii) each entity shall agree to indemnify the security-based swap data repository and the Commission for any expenses
arising from litigation relating to the information provided under section 24.

“(6) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each security-based swap data repository shall designate an individual to serve as a chief compliance officer.

“(B) DUTIES.—The chief compliance officer shall—

“(i) report directly to the board or to the senior officer of the security-based swap data repository;

“(ii) review the compliance of the security-based swap data repository with respect to the core principles described in paragraph (7);

“(iii) in consultation with the board of the security-based swap data repository, a body performing a function similar to the board of the security-based swap data repository, or the senior officer of the security-based swap data repository, resolve any conflicts of interest that may arise;
“(iv) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(v) ensure compliance with this title (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

“(vi) establish procedures for the mediation of noncompliance issues identified by the chief compliance officer through any—

“(I) compliance office review;

“(II) look-back;

“(III) internal or external audit finding;

“(IV) self-reported error; or

“(V) validated complaint; and

“(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(C) ANNUAL REPORTS.—

“(i) IN GENERAL.—In accordance with rules prescribed by the Commission,
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the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(I) the compliance of the security-based swap data repository of the chief compliance officer with respect to this title (including regulations); and

“(II) each policy and procedure of the security-based swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the security-based swap data repository).

“(ii) REQUIREMENTS.—A compliance report under clause (i) shall—

“(I) accompany each appropriate financial report of the security-based swap data repository that is required to be furnished to the Commission pursuant to this section; and

“(II) include a certification that, under penalty of law, the compliance report is accurate and complete.
“(7) Core principles applicable to security-based swap data repositories.—

“(A) Antitrust considerations.—Unless necessary or appropriate to achieve the purposes of this title, the swap data repository shall not—

“(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

“(ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

“(B) Governance arrangements.—Each security-based swap data repository shall establish governance arrangements that are transparent—

“(i) to fulfill public interest requirements; and

“(ii) to support the objectives of the Federal Government, owners, and participants.

“(C) Conflicts of interest.—Each security-based swap data repository shall—

“(i) establish and enforce rules to minimize conflicts of interest in the deci-
sion-making process of the security-based
swap data repository; and
“(ii) establish a process for resolving
any conflicts of interest described in clause
(i).
“(8) REQUIRED REGISTRATION FOR SECURITY-
BASED SWAP DATA REPOSITORIES.—Any person that
is required to be registered as a security-based swap
data repository under this subsection shall register
with the Commission, regardless of whether that
person is also licensed under the Commodity Ex-
change Act as a swap data repository.
“(9) RULES.—The Commission shall adopt
rules governing persons that are registered under
this subsection.”.

SEC. 764. REGISTRATION AND REGULATION OF SECURITY-
BASED SWAP DEALERS AND MAJOR SECU-
RITY-BASED SWAP PARTICIPANTS.
et seq.) is amended by inserting after section 15E (15
U.S.C. 78o–7) the following:

“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-
BASED SWAP DEALERS AND MAJOR SECU-
RITY-BASED SWAP PARTICIPANTS.
“(a) REGISTRATION.—
“(1) Security-based swap dealers.—It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

“(2) Major security-based swap participants.—It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

“(b) Requirements.—

“(1) In general.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

“(2) Contents.—

“(A) In general.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

“(B) Continual reporting.—A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission re-
ports that contain such information pertaining

to the business of the person as the Commission
may require.

“(3) EXPIRATION.—Each registration under
this section shall expire at such time as the Commis-
sion may prescribe by rule or regulation.

“(4) RULES.—Except as provided in sub-
sections (c), (e), and (f), the Commission may pre-
scribe rules applicable to security-based swap dealers
and major security-based swap participants, includ-
ing rules that limit the activities of non-bank secu-

rity-based swap dealers and non-bank major secu-

rity-based swap participants.

“(5) TRANSITION.—Not later than 1 year after
the date of enactment of the Wall Street Trans-
parency and Accountability Act of 2010, the Com-
mission shall issue rules under this section to pro-
vide for the registration of security-based swap deal-

ers and major security-based swap participants.

“(6) STATUTORY DISQUALIFICATION.—Except
to the extent otherwise specifically provided by rule,
regulation, or order of the Commission, it shall be
unlawful for a security-based swap dealer or a major
security-based swap participant to permit any person
associated with a security-based swap dealer or a
major security-based swap participant who is subject
to a statutory disqualification to effect or be involved
in effecting security-based swaps on behalf of the se-
curity-based swap dealer or major security-based
swap participant, if the security-based swap dealer
or major security-based swap participant knew, or in
the exercise of reasonable care should have known,
of the statutory disqualification.

“(c) DUAL REGISTRATION.—

“(1) SECURITY-BASED SWAP DEALER.—Any
person that is required to be registered as a secu-
ry-based swap dealer under this section shall reg-
ister with the Commission, regardless of whether the
person also is registered with the Commodity Fu-
tures Trading Commission as a swap dealer.

“(2) MAJOR SECURITY-BASED SWAP PARTICI-
PANT.—Any person that is required to be registered
as a major security-based swap participant under
this section shall register with the Commission, re-
gardless of whether the person also is registered
with the Commodity Futures Trading Commission
as a major swap participant.

“(d) RULEMAKING.—

“(1) IN GENERAL.—The Commission shall
adopt rules for persons that are registered as secu-
rity-based swap dealers or major security-based swap
participants under this section.

“(2) Exception for prudential requirements.—

“(A) In general.—The Commission may
not prescribe rules imposing prudential require-
ments on security-based swap dealers or major
security-based swap participants that are depository
institutions, as that term is defined in sec-
tion 3 of the Federal Deposit Insurance Act (12

“(B) Applicability.—Subparagraph (A)
does not limit the authority of the Commission
to prescribe appropriate business conduct, re-
porting, and recordkeeping requirements on se-
curity-based swap dealers or major security-
based swap participants that are depository in-
stitutions to protect investors.

“(e) Capital and margin requirements.—

“(1) In general.—

“(A) Security-based swap dealers
and major security-based swap partici-
pants that are depository institu-
tions.—Each registered security-based swap
dealer and major security-based swap partici-
pant that is a depository institution, as that
term is defined in section 3 of the Federal De-
posit Insurance Act (12 U.S.C. 1813), shall
meet such minimum capital requirements and
minimum initial and variation margin require-
ments as the appropriate Federal banking agen-
cy shall by rule or regulation prescribe under
paragraph (2)(A) to help ensure the safety and
soundness of the security-based swap dealer or
major security-based swap participant.

“(B) Security-based swap dealers
and major security-based swap partici-
pants that are not depository institu-
tions.—Each registered security-based swap
dealer and major security-based swap partici-
pant that is not a depository institution, as that
term is defined in section 3 of the Federal De-
posit Insurance Act (12 U.S.C. 1813), shall
meet such minimum capital requirements and
minimum initial and variation margin require-
ments as the Commission shall by rule or regu-
lation prescribe under paragraph (2)(B) to help
ensure the safety and soundness of the security-
based swap dealer or major security-based swap
participant.
“(2) Rules.—

“(A) Security-based swap dealers and major security-based swap participants that are depository institutions.—The appropriate Federal banking agencies, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants that are depository institutions, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

“(B) Security-based swap dealers and major security-based swap participants that are not depository institutions.—The Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants that are not depository institutions, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

“(3) Capital.—
“(A) Security-based swap dealers and major security-based swap participants that are depository institutions.—The capital requirements prescribed under paragraph (2)(A) for security-based swap dealers and major security-based swap participants that are depository institutions shall contain—

“(i) a capital requirement that is greater than zero for security-based swaps that are cleared by a clearing agency; and

“(ii) to offset the greater risk to the security-based swap dealer or major security-based swap participant and to the financial system arising from the use of security-based swaps that are not cleared, substantially higher capital requirements for security-based swaps that are not cleared by a clearing agency than for security-based swaps that are cleared.

“(B) Security-based swap dealers and major security-based swap participants that are not depository institutions.—The capital requirements prescribed under paragraph (2)(B) for security-based swap
dealers and major security-based swap participants that are not depository institutions shall be as strict as or stricter than the capital requirements prescribed for security-based swap dealers and major security-based swap participants that are depository institutions under paragraph (2)(A).

“(C) CAPITAL.—In setting capital requirements for a person that is designated as a security-based swap dealer or a major security-based swap participant for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a security-based swap dealer or major security-based swap participant.

“(D) RULE OF CONSTRUCTION.—
“(i) In general.—Nothing in this section shall limit, or be construed to limit, the authority—

“(I) of the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) (except for section 15(b)(11) thereof) in accordance with section 15(e)(3); or

“(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act (except for section 4f(a)(3) thereof) in accordance with section 4f(b) of the Commodity Exchange Act.

“(ii) Futures commission merchants and other dealers.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, intro-
ducing broker, broker, or dealer is subject to under this title or the Commodity Exchange Act.

“(4) MARGIN.—

“(A) Security-based swap dealers and major security-based swap participants that are depository institutions.—The appropriate Federal banking agency for security-based swap dealers and major security-based swap participants that are depository institutions shall impose both initial and variation margin requirements in accordance with paragraph (2)(A) on all security-based swaps that are not cleared by a clearing agency.

“(B) Security-based swap dealers and major security-based swap participants that are not depository institutions.—The Commission shall impose both initial and variation margin requirements in accordance with paragraph (2)(B) for security-based swap dealers and major security-based swap participants that are not depository institutions on all security-based swaps that are not cleared by a clearing agency. Any such initial
and variation margin requirements shall be as strict as or stricter than the margin requirements prescribed under paragraph (4)(A).

“(5) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the appropriate Federal banking agency with respect to security-based swap dealers and major security-based swap participants that are depository institutions, and the Commission with respect to security-based swap dealers and major security-based swap participants that are not depository institutions may permit the use of noncash collateral, as the agency or the Commission determines to be consistent with—

“(A) preserving the financial integrity of markets trading security-based swaps; and

“(B) preserving the stability of the United States financial system.

“(6) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

“(A) IN GENERAL.—The appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and
minimum initial and variation margin requirements.

“(B) COMPARABILITY.—The entities described in subparagraph (A) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, for—

“(i) security-based swap dealers; and

“(ii) major security-based swap participants.

“(7) REQUESTED MARGIN.—If any party to a security-based swap that is exempt from the margin requirements of paragraph (4)(A) or paragraph (4)(B) requests that such security-based swap be margined, then—

“(A) the exemption shall not apply; and

“(B) the counterparty to such security-based swap shall provide the requested margin.

“(8) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—Paragraphs (4) and (5) shall not apply to initial and variation margin for security-based swaps in which 1 of the counterparties is not—
“(A) a security-based swap dealer;

“(B) a major security-based swap participant; or

“(C) a financial entity as described in section 3C(a)(10)(A)(ii), and such counterparty is eligible for and utilizing the commercial end user clearing exemption under section 3C(a)(10).

“(f) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

“(A) shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant;

“(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and
“(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

“(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

“(g) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.
“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

“(3) COUNTERPARTY RECORDS.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.

“(4) AUDIT TRAIL.—Each registered security-based swap dealer and major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

“(h) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as may be prescribed by the Commission, by rule or regulation, that relate to—
“(A) fraud, manipulation, and other abusive practices involving security-based swaps
(including security-based swaps that are offered but not entered into);

“(B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;

“(C) adherence to all applicable position limits; and

“(D) such other matters as the Commission determines to be appropriate.

“(2) Special rule; fiduciary duties to certain entities.—

“(A) Governmental entities.—A security-based swap dealer that provides advice regarding, or offers to enter into, or enters into a security-based swap with a State, State agency, city, county, municipality, or other political subdivision of a State, or a Federal agency shall have a fiduciary duty to the State, State agency, city, county, municipality, or other political subdivision of the State, or the Federal agency, as appropriate.

“(B) Pension plans; endowments; retirement plans.—A security-based swap deal-
er that provides advice regarding, or offers to enter into, or enters into a security-based swap with a pension plan, endowment, or retirement plan shall have a fiduciary duty to the pension plan, endowment, or retirement plan, as appropriate.

“(3) BUSINESS CONDUCT REQUIREMENTS.—

Business conduct requirements adopted by the Commission under this subsection shall—

“(A) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the transaction (other than a security-based swap dealer or a major security-based swap participant) of—

“(i) information about the material risks and characteristics of the security-based swap;

“(ii) the source and amount of any fees or other material remuneration that
the security-based swap dealer or major se-
curity-based swap participant would di-
rectly or indirectly expect to receive in con-
nection with the security-based swap;

“(iii) any other material incentives or
conflicts of interest that the security-based
swap dealer or major security-based swap
participant may have in connection with
the security-based swap; and

“(iv)(I) for cleared security-based
swaps, upon the request of the
counterparty, the daily mark from the ap-
propriate clearing agency; and

“(II) for uncleared security-based
swaps, the daily mark of the security-based
swap dealer or the major security-based
swap participant;

“(C) establish a standard of conduct for a
security-based swap dealer or major security-
based swap participant to communicate in a
fair and balanced manner based on principles of
fair dealing and good faith;

“(D) establish a standard of conduct for a
security-based swap dealer or major security-
based swap participant, with respect to a
counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of the Commodity Exchange Act, to have a reasonable basis to believe that the counterparty has an independent representative that—

“(i) has sufficient knowledge to evaluate the transaction and risks;

“(ii) is not subject to a statutory disqualification;

“(iii) is independent of the security-based swap dealer or major security-based swap participant;

“(iv) undertakes a duty to act in the best interests of the counterparty it represents;

“(v) makes appropriate disclosures; and

“(vi) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction; and

“(E) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the
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protection of investors, or otherwise in further-
ance of the purposes of this title.

“(4) RULES.—The Commission shall prescribe
rules under this subsection governing business con-
duct standards for security-based swap dealers and
major security-based swap participants.

“(i) DOCUMENTATION AND BACK OFFICE STAND-
ARDS.—

“(1) IN GENERAL.—Each registered security-
based swap dealer and major security-based swap
participant shall conform with such standards as
may be prescried by the Commission, by rule or
regulation, that relate to timely and accurate con-
firmation, processing, netting, documentation, and
valuation of all security-based swaps.

“(2) RULES.—The Commission shall adopt
rules governing documentation and back office
standards for security-based swap dealers and major
security-based swap participants.

“(j) DUTIES.—Each registered security-based swap
dealer and major security-based swap participant shall, at
all times, comply with the following requirements:

“(1) MONITORING OF TRADING.—The security-
based swap dealer or major security-based swap par-
ticipant shall monitor its trading in security-based
swaps to prevent violations of applicable position
limits.

“(2) RISK MANAGEMENT PROCEDURES.—The
security-based swap dealer or major security-based
swap participant shall establish robust and profes-
sional risk management systems adequate for man-
aging the day-to-day business of the security-based
swap dealer or major security-based swap partici-

“(3) DISCLOSURE OF GENERAL INFORMA-
tion.—The security-based swap dealer or major se-
curity-based swap participant shall disclose to the
Commission and to the prudential regulator for the
security-based swap dealer or major security-based
swap participant, as applicable, information con-
cerning—

“(A) terms and conditions of its security-
based swaps;

“(B) security-based swap trading oper-
ations, mechanisms, and practices;

“(C) financial integrity protections relating
to security-based swaps; and

“(D) other information relevant to its trad-
ing in security-based swaps.
“(4) Ability to obtain information.—The security-based swap dealer or major security-based swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.

“(5) Conflicts of interest.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight
of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this title; and

“(B) address such other issues as the Commission determines to be appropriate.

“(6) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the security-based swap dealer or major security-based swap participant shall not—

“(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading or clearing.

“(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each security-based swap dealer and major security-based swap participant shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—
“(A) report directly to the board or to the senior officer of the security-based swap dealer or major security-based swap participant;

“(B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant requirements described in this section;

“(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this title (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;
“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of non-compliance issues.

“(3) Annual Reports.—

“(A) In General.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the security-based swap dealer or major swap participant with respect to this title (including regulations); and

“(ii) each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

“(B) Requirements.—A compliance report under subparagraph (A) shall—
“(i) accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

“(l) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

“(1) PRIMARY ENFORCEMENT AUTHORITY.—

“(A) SECURITIES AND EXCHANGE COMMISSION.—Except as provided in subparagraph (B), the Commission shall have primary authority to enforce subtitle B, and the amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to any person.

“(B) APPROPRIATE FEDERAL BANKING AGENCIES.—The appropriate Federal banking agency for security-based swap dealers or major security-based swap participants that are depository institutions, as that term is defined under section 3 of the Federal Deposit Insurance Act
(12 U.S.C. 1813), shall have exclusive authority
to enforce the provisions of subsection (e) and
other prudential requirements of this title, with
respect to depository institutions that are secu-

rity-based swap dealers or major security-based
swap participants.

“(C) REFERRAL.—

“(i) VIOLATIONS OF NONPRUDENTIAL
requirements.—If the appropriate Fed-
eral banking agency for security-based
swap dealers or major security-based swap
participants that are depository institu-
tions has cause to believe that such secu-
rity-based swap dealer or major security-
based swap participant may have engaged
in conduct that constitutes a violation of
the nonprudential requirements of this sec-
tion or rules adopted by the Commission
thereunder, the agency may recommend in
writing to the Commission that the Com-
mission initiate an enforcement proceeding
as authorized under this title. The rec-
ommendation shall be accompanied by a
written explanation of the concerns giving
rise to the recommendation.
“(ii) Violations of prudential requirements.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator may have engaged in conduct that constitute a violation of the prudential requirements of subsection (e) or rules adopted thereunder, the Commission may recommend in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(2) Censure, denial, suspension; notice and hearing.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of lim-
itations, or revocation is in the public interest and
that such security-based swap dealer or major secu-
rity-based swap participant, or any person associated
with such security-based swap dealer or major secu-
rity-based swap participant effecting or involved in
effecting transactions in security-based swaps on be-
half of such security-based swap dealer or major se-
curity-based swap participant, whether prior or sub-
sequent to becoming so associated—

“(A) has committed or omitted any act, or
is subject to an order or finding, enumerated in
subparagraph (A), (D), or (E) of paragraph (4)
of section 15(b);

“(B) has been convicted of any offense
specified in subparagraph (B) of such para-
graph (4) within 10 years of the commencement
of the proceedings under this subsection;

“(C) is enjoined from any action, conduct,
or practice specified in subparagraph (C) of
such paragraph (4);

“(D) is subject to an order or a final order
specified in subparagraph (F) or (H), respec-
tively, of such paragraph (4); or

“(E) has been found by a foreign financial
regulatory authority to have committed or omit-
ted any act, or violated any foreign statute or
regulation, enumerated in subparagraph (G) of
such paragraph (4).

“(3) ASSOCIATED PERSONS.—With respect to
any person who is associated, who is seeking to be-
come associated, or, at the time of the alleged mis-
conduct, who was associated or was seeking to be-
come associated with a security-based swap dealer or
major security-based swap participant for the pur-
pose of effecting or being involved in effecting secu-

rity-based swaps on behalf of such security-based
swap dealer or major security-based swap partici-
pant, the Commission, by order, shall censure, place
limitations on the activities or functions of such per-
son, or suspend for a period not exceeding 12
months, or bar such person from being associated
with a security-based swap dealer or major security-
based swap participant, if the Commission finds, on
the record after notice and opportunity for a hear-
ing, that such censure, placing of limitations, sus-
pension, or bar is in the public interest and that
such person—

“(A) has committed or omitted any act, or
is subject to an order or finding, enumerated in
subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

“(4) UNLAWFUL CONDUCT.—It shall be unlawful—

“(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or
“(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.”

SEC. 765. RULEMAKING ON CONFLICT OF INTEREST.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Securities and Exchange Commission shall determine whether to adopt rules to establish limits on the control of any clearing agency that clears security-based swaps, or on the control of any security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps, by a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in section 102) supervised by the Board of Governors of the Federal Reserve System, affiliate of such
the Commission determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a security-based swap dealer or major security-based swap participant’s conduct of business with, a clearing agency, national securities exchange, or security-based swap execution facility that clears, posts, or makes available for trading security-based swaps and in which such security-based swap dealer or major security-based swap participant has a material debt or equity investment.

SEC. 766. REPORTING AND RECORDKEEPING.

(a) In General.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 13 the following:
"SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

"(a) Required Reporting of Security-Based Swaps Not Accepted by Any Clearing Agency or Derivatives Clearing Organization.—

"(1) In general.—Each security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to—

"(A) a security-based swap data repository described in section 10B(n); or

"(B) in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

"(2) Transition rule for preenactment security-based swaps.—

"(A) Security-based swaps entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010.—Each security-based swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which
have not expired as of the date of enactment of that Act, shall be reported to a registered security-based swap data repository or the Commission by a date that is not later than—

“(i) 30 days after issuance of the interim final rule; or

“(ii) such other period as the Commission determines to be appropriate.

“(B) Commission Rulemaking.—The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each security-based swap entered into before the date of enactment as referenced in subparagraph (A).

“(C) Effective Date.—The reporting provisions described in this section shall be effective upon the date of the enactment of this section.

“(3) Reporting Obligations.—

“(A) Security-based Swaps in which Only 1 Counterparty is a Security-based Swap Dealer or Major Security-based Swap Participant.—With respect to a security-based swap in which only 1 counterparty is
a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the security-based swap as required under paragraphs (1) and (2).

“(B) Security-based swaps in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant.—With respect to a security-based swap in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant, the security-based swap dealer shall report the security-based swap as required under paragraphs (1) and (2).

“(C) Other security-based swaps.—With respect to any other security-based swap not described in subparagraph (A) or (B), the counterparties to the security-based swap shall select a counterparty to report the security-based swap as required under paragraphs (1) and (2).

“(b) Duties of certain individuals.—Any individual or entity that enters into a security-based swap
shall meet each requirement described in subsection (c) if the individual or entity did not—

“(1) clear the security-based swap in accordance with section 3C(a)(1); or

“(2) have the data regarding the security-based swap accepted by a security-based swap data repository in accordance with rules (including timeframes) adopted by the Commission under this title.

“(c) REQUIREMENTS.—An individual or entity described in subsection (b) shall—

“(1) upon written request from the Commission, provide reports regarding the security-based swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and

“(2) maintain books and records pertaining to the security-based swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—

“(A) any representative of the Commission;

“(B) an appropriate prudential regulator;

“(C) the Commodity Futures Trading Commission;
“(D) the Financial Stability Oversight Council; and

“(E) the Department of Justice.

“(d) IDENTICAL DATA.—In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by security-based swap data repositories under this title.”.

(b) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1), by inserting “or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and” after “Alaska Native Claims Settlement Act,”; and

(2) in subsection (g)(1), by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule” after “subsection (d)(1) of this section”.

(c) Reports by Institutional Investment Managers.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule," after "subsection (d)(1) of this section".

(d) Administrative Proceeding Authority.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by inserting "security-based swap dealer, major security-based swap participant," after "government securities dealer,"; and

(2) in subparagraph (F), by striking "broker or dealer" and inserting "broker, dealer, security-based swap dealer, or a major security-based swap participant".

(e) Security-based Swap Beneficial Ownership.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(o) Beneficial Ownership.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the
purchase or sale of a security-based swap, only to the ex-
tent that the Commission, by rule, determines after con-
sultation with the prudential regulators and the Secretary
of the Treasury, that the purchase or sale of the security-
based swap, or class of security-based swap, provides inci-
dents of ownership comparable to direct ownership of the
equity security, and that it is necessary to achieve the pur-
poses of this section that the purchase or sale of the secu-
rity-based swaps, or class of security-based swap, be
deemed the acquisition of beneficial ownership of the eq-
ui ty security.”.

SEC. 767. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934
(15 U.S.C. 78bb(a)) is amended to read as follows:

“(a) LIMITATION ON JUDGMENTS.—

“(1) IN GENERAL.—No person permitted to
maintain a suit for damages under the provisions of
this title shall recover, through satisfaction of judg-
ment in 1 or more actions, a total amount in excess
of the actual damages to that person on account of
the act complained of. Except as otherwise specifi-
cally provided in this title, nothing in this title shall
affect the jurisdiction of the securities commission
(or any agency or officer performing like functions)
of any State over any security or any person insofar
as it does not conflict with the provisions of this title
or the rules and regulations under this title.

“(2) Rule of construction.—Except as pro-
vided in subsection (f), the rights and remedies pro-
vided by this title shall be in addition to any and all
other rights and remedies that may exist at law or
in equity.

“(3) State bucket shop laws.—No State
law which prohibits or regulates the making or pro-
moting of wagering or gaming contracts, or the op-
eration of ‘bucket shops’ or other similar or related
activities, shall invalidate—

“(A) any put, call, straddle, option, privi-
lege, or other security subject to this title (ex-
cept any security that has a pari-mutuel payout
or otherwise is determined by the Commission,
acting by rule, regulation, or order, to be appro-
priately subject to such laws), or apply to any
activity which is incidental or related to the
offer, purchase, sale, exercise, settlement, or
closeout of any such security;

“(B) any security-based swap between eli-
gible contract participants; or
“(C) any security-based swap effected on a national securities exchange registered pursuant to section 6(b).

“(4) OTHER STATE PROVISIONS.—No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under any provision of State law.”.

SEC. 768. AMENDMENTS TO THE SECURITIES ACT OF 1933;
TREATMENT OF SECURITY-BASED SWAPS.
(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

(2) in paragraph (3), by adding at the end the following: “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.”; and
(3) by adding at the end the following:

“(17) The terms ‘swap’ and ‘security-based swap’ have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(18) The terms ‘purchase’ or ‘sale’ of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”.

(b) REGISTRATION OF SECURITY-BASED SWAPS.—

Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

“(d) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))).”.

SEC. 769. DEFINITIONS UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended by adding at the end the following:


SEC. 770. DEFINITIONS UNDER THE INVESTMENT ADVISORS ACT OF 1940.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following:


SEC. 771. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity
Futures Trading Commission, or any other Federal or State agency, of any authority derived from any other provision of applicable law.

SEC. 772. JURISDICTION.

(a) In General.—Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following:

“(c) DERIVATIVES.—The Commission shall not grant exemptions from the security-based swap provisions of the Wall Street Transparency and Accountability Act of 2010 or the amendments made by that Act, except as expressly authorized under the provisions of that Act.”.

(b) Rule of Construction.—Section 30 of the Securities Exchange Act of 1934 (15 U.S.C. 78dd) is amended by adding at the end the following:

“(c) Rule of Construction.—No provision of this title that was added by the Wall Street Transparency and Accountability Act of 2010, or any rule or regulation thereunder, shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this title that was added by the Wall Street Transparency
and Accountability Act of 2010. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this title, as in effect prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.’’.

SEC. 773. EFFECTIVE DATE.

Unless otherwise specifically provided in this subtitle, this subtitle, the provisions of this subtitle, and the amendments made by this subtitle shall become effective 180 days after the date of enactment of this Act.

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of 2010”.

SEC. 802. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and
the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

(A) to provide consistency;

(B) to promote robust risk management and safety and soundness;

(C) to reduce systemic risks; and

(D) to support the stability of the broader financial system.

(b) PURPOSE.—The purpose of this title is to mitigate systemic risk in the financial system and promote financial stability by—

(1) authorizing the Board of Governors to prescribe uniform standards for the—
management of risks by systemically important financial market utilities; and

(B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;

(2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;

(3) strengthening the liquidity of systemically important financial market utilities; and

(4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

SEC. 803. DEFINITIONS.

In this title, the following definitions shall apply:

(1) APPROPRIATE FINANCIAL REGULATOR.—

The term "appropriate financial regulator" means—

(A) the primary financial regulatory agency, as defined in section 2 of this Act;

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

(C) the Board of Governors, with respect to organizations operating under section 25A of the Federal Reserve Act (12 U.S.C. 611), and any other financial institution engaged in a designated activity.

(2) DESIGNATED ACTIVITY.—The term “designated activity” means a payment, clearing, or settlement activity that the Council has designated as systemically important under section 804.

(3) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial market utility” means a financial market utility that the Council has designated as systemically important under section 804.

(4) FINANCIAL INSTITUTION.—The term “financial institution” means—

(A) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);
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(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(D) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(E) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(F) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(G) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2);

(H) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(I) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(J) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the
Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(5) **FINANCIAL MARKET UTILITY.**—The term “financial market utility” means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(6) **PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.**—

(A) **IN GENERAL.**—The term “payment, clearing, or settlement activity” means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions.

(B) **FINANCIAL TRANSACTION.**—For the purposes of subparagraph (A), the term “financial transaction” includes—

(i) funds transfers;

(ii) securities contracts;

(iii) contracts of sale of a commodity for future delivery;

(iv) forward contracts;

(v) repurchase agreements;
(vi) swaps;
(vii) security-based swaps;
(viii) swap agreements;
(ix) security-based swap agreements;
(x) foreign exchange contracts;
(xi) financial derivatives contracts;

and

(xii) any similar transaction that the Council determines to be a financial transaction for purposes of this title.

(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

(i) the calculation and communication of unsettled financial transactions between counterparties;
(ii) the netting of transactions;
(iii) provision and maintenance of trade, contract, or instrument information;
(iv) the management of risks and activities associated with continuing financial transactions;
(v) transmittal and storage of payment instructions;
(vi) the movement of funds;

(vii) the final settlement of financial transactions; and

(viii) other similar functions that the Council may determine.

(7) SUPERVISORY AGENCY.—

(A) IN GENERAL.—The term “Supervisory Agency” means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, as follows:

(i) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission.

(ii) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission.

(iii) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution de-
scribed in section 3(q) of the Federal Deposit Insurance Act.

(iv) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

(B) MULTIPLE AGENCY JURISDICTION.—If a designated financial market utility is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this title.

(8) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms “systemically important” and “systemic importance” mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or
markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) Designation.—

(1) Financial stability oversight council.—The Council, on a nondelegable basis and by a vote of not fewer than 2/3 of members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) Considerations.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.
(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system.

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

(b) RESCISSION OF DESIGNATION.—

(1) IN GENERAL.—The Council, on a nondelegable basis and by a vote of not fewer than 2/3 of members then serving, including an affirmative vote by the Chairperson of the Council, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to
the provisions of this title or any rules or orders pre-
scribed by the Council under this title.

(c) Consultation and Notice and Opportunity
for Hearing.—

(1) Consultation.—Before making any deter-
mination under subsection (a) or (b), the Council
shall consult with the relevant Supervisory Agency
and the Board of Governors.

(2) Advance Notice and Opportunity for
Hearing.—

(A) In General.—Before making any de-
termination under subsection (a) or (b), the
Council shall provide the financial market util-
ity or, in the case of a payment, clearing, or
settlement activity, financial institutions with
advance notice of the proposed determination of
the Council.

(B) Notice in Federal Register.—The
Council shall provide such advance notice to fi-
nancial institutions by publishing a notice in
the Federal Register.

(C) Requests for Hearing.—Within 30
days from the date of any notice of the pro-
posed determination of the Council, the finan-
cial market utility or, in the case of a payment,
clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) Written submissions.—Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

(3) Emergency exception.—

(A) Waiver or modification by vote of the Council.—The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not less than 2/3 of all members then serving, including an affirmative vote by the Chairperson of the Council, that the waiver or modi-
reservation is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) Notice of Waiver or Modification.—The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

(d) Notification of Final Determination.—

(1) After hearing.—Within 60 days of any hearing under subsection (c)(3), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.
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(2) WHEN NO HEARING REQUESTED.—If the Council does not receive a timely request for a hearing under subsection (c)(3), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

(e) EXTENSION OF TIME PERIODS.—The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The Board, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—
(1) the operations related to the payment, clearing, and settlement activities of designated financial market utilities; and

(2) the conduct of designated activities by financial institutions.

(b) Objectives and Principles.—The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(c) Scope.—The standards prescribed under subsection (a) may address areas such as—

(1) risk management policies and procedures;

(2) margin and collateral requirements;

(3) participant or counterparty default policies and procedures;

(4) the ability to complete timely clearing and settlement of financial transactions;

(5) capital and financial resource requirements for designated financial market utilities; and
(6) other areas that the Board determines are necessary to achieve the objectives and principles in subsection (b).

(d) **Threshold Level.**—The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(e) **Compliance Required.**—Designated financial market utilities and financial institutions subject to the standards prescribed by the Board of Governors for a designated activity shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board of Governors.

**SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.**

(a) **Federal Reserve Account and Services.**—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide services to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any appli-
cable rules, orders, standards, or guidelines prescribed by
the Board of Governors.

(b) ADVANCES.—The Board of Governors may au-
thorize a Federal Reserve Bank to provide to a designated
financial market utility the same discount and borrowing
privileges as the Federal Reserve Bank may provide to a
depository institution under the Federal Reserve Act, sub-
ject to any applicable rules, orders, standards, or guide-
lines prescribed by the Board of Governors.

(c) EARNINGS ON FEDERAL RESERVE BALANCES.—
A Federal Reserve Bank may pay earnings on balances
maintained by or on behalf of a designated financial mar-
ket utility in the same manner and to the same extent
as the Federal Reserve Bank may pay earnings to a depos-
itory institution under the Federal Reserve Act, subject
to any applicable rules, orders, standards, or guidelines
prescribed by the Board of Governors.

(d) RESERVE REQUIREMENTS.—The Board of Gov-
ernors may exempt a designated financial market utility
from, or modify any, reserve requirements under section
19 of the Federal Reserve Act (12 U.S.C. 461) applicable
to a designated financial market utility.

(e) CHANGES TO RULES, PROCEDURES, OR OPER-
ATIONS.—

(1) ADVANCE NOTICE.—
(A) ADVANCE NOTICE OF PROPOSED
CHANGES REQUIRED.—A designated financial
market utility shall provide notice 60 days in
advance notice to its Supervisory Agency and
the Board of Governors of any proposed change
to its rules, procedures, or operations that
could, as defined in rules of the Board of Gov-
ernors, materially affect, the nature or level of
risks presented by the designated financial mar-
et utility.

(B) TERMS AND STANDARDS PRESCRIBED
BY THE BOARD OF GOVERNORS.—The Board of
Governors shall prescribe regulations that de-
fine and describe the standards for determining
when notice is required to be provided under
subparagraph (A).

(C) CONTENTS OF NOTICE.—The notice of
a proposed change shall describe—

(i) the nature of the change and ex-
pected effects on risks to the designated fi-
nancial market utility, its participants, or
the market; and

(ii) how the designated financial mar-
ket utility plans to manage any identified
risks.
(D) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board of Governors may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility’s payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) NOTICE OF OBJECTION.—The Supervisory Agency or the Board of Governors shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Board of Governors or the Supervisory Agency has an objection.
(G) Change allowed if no objection within 60 days.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency or the Board of Governors receives the notice of proposed change; or

(ii) the date the Supervisory Agency or the Board of Governors receives any further information it requests for consideration of the notice.

(H) Review extension for novel or complex issues.—The Supervisory Agency or the Board of Governors may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency or the Board of Governors providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (D) and (F).
(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency or the Board of Governors, or the date the Supervisory Agency or the Board of Governors receives any further information it requested, if the Supervisory Agency or the Board of Governors notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency or the Board of Governors.

(2) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to pro-
vide its services in a safe and sound manner.

(B) Notice required within 24 hours.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency and the Board of Governors, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) Contents of emergency notice.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) Modification or rescission of change may be required.—The Supervisory Agency or the Board of Governors may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any rules, orders, or
standards prescribed by the Board of Governors hereunder.

(3) COPYING THE BOARD OF GOVERNORS.—The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(4) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) Examination.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

(2) The financial and operational risks presented by the designated financial market utility to
financial institutions, critical markets, or the broader financial system.

(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

(4) The safety and soundness of the designated financial market utility.

(5) The designated financial market utility’s compliance with—

(A) this title; and

(B) the rules and orders prescribed by the Board of Governors under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(e) ENFORCEMENT.—For purposes of enforcing the provisions of this section, a designated financial market utility shall be subject to, and the appropriate Supervisory
Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) Board of Governors Involvement in Examinations.—

(1) Board of governors consultation on examination planning.—The Supervisory Agency shall consult with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b).

(2) Board of governors participation in examination.—The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) Board of Governors Enforcement Recommendations.—

(1) Recommendation.—The Board of Governors may at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility.
Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may dispute the matter by referring the recommendation to the Council, which shall attempt to resolve the dispute.

(4) ENFORCEMENT ACTION.—If the Council is unable to resolve the dispute under paragraph (3) within 30 days from the date of referral, the Board of Governors may, upon a vote of its members—

(A) exercise the enforcement authority referenced in subsection (c) as if it were the Supervisory Agency; and

(B) take enforcement action against the designated financial market utility.

(f) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—
(1) IMMINENT RISK OF SUBSTANTIAL HARM.—

The Board of Governors may, after consulting with the Council and the Supervisory Agency, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to believe that—

(A) either—

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; or

(ii) the condition of a designated financial market utility poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors’ use of the procedures in subsection (e).
(2) Enforcement Authority.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(3) Prompt Notice to Supervisory Agency of Enforcement Action.—Within 24 hours of taking an enforcement action under this subsection, the Board of Governors shall provide written notice to the designated financial market utility’s Supervisory Agency containing a detailed analysis of the action of the Board of Governors, with supporting documentation included.
SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The appropriate financial regulator is authorized to examine a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to determine the following:

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

(5) The financial institution’s compliance with this title and the rules and orders prescribed by the Board of Governors under this title.
(b) ENFORCEMENT.—For purposes of enforcing the provisions of this section, and the rules and orders prescribed by the Board of Governors under this section, a financial institution subject to the standards prescribed by the Board of Governors for a designated activity shall be subject to, and the appropriate financial regulator shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the appropriate financial regulator was the appropriate Federal banking agency for such insured depository institution.

(e) TECHNICAL ASSISTANCE.—The Board of Governors shall consult with and provide such technical assistance as may be required by the appropriate financial regulators to ensure that the rules and orders prescribed by the Board of Governors under this title are interpreted and applied in as consistent and uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD OF GOVERNORS.—The appropriate financial regulator may request the Board of Governors to conduct
or participate in an examination of a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to assess the compliance of such financial institution with—

(i) this title; or

(ii) the rules or orders prescribed by the Board of Governors under this title.

(B) Examination by Board of Governors.—Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the appropriate financial regulator mutually agree.

(2) Enforcement.—

(A) Request to Board of Governors.—The appropriate financial regulator may request the Board of Governors to enforce this title or the rules or orders prescribed by the Board of Governors under this title against a financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.
(B) **Enforcement by Board of Governors.**—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed by the Board of Governors under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(e) **Back-up Authority of the Board of Governors.**—

(1) **Examination and Enforcement.**—Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards pre-
scribed by the Board of Governors for a designated activity; and

(B) enforce the provisions of this title or any rules or orders prescribed by the Board of Governors under this title against any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included;
(iii) requested the appropriate financial regulator to conduct a prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the appropriate financial regulator within 30 days after the date of the Board’s notification under clause (ii); or

(II) reasonable cause to believe that the financial institution’s non-compliance with this title or the rules or orders prescribed by the Board of Governors under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the appropriate financial regulator a reasonable opportunity to participate in the examination.

(B) ENFORCEMENT.—The Board of Governors may exercise the authority described in
paragraph (1)(B) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the appropriate financial regulator take 1 or more specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the appropriate financial regulator of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or
(II) reasonable cause to believe that the financial institution’s non-compliance with this title or the rules or orders prescribed by the Board of Governors under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors notifying the appropriate financial regulator of the Board’s enforcement action.

(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.
SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Council is authorized to require any financial institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set forth in section 804.

(b) REPORTING AFTER DESIGNATION.—
(1) **Designated financial market utilities.**—The Board of Governors and the Council may require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors and the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility’s operations pose to the financial system.

(2) **Financial institutions subject to standards for designated activities.**—The Board of Governors and the Council may require one or more financial institutions subject to the standards prescribed by the Board of Governors for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors and the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed by the Board of Governors with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and
(B) the financial institutions are in compliance with this title and the rules and orders prescribed by the Board of Governors under this title with respect to the designated activity.

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board of Governors and the Council shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors and the Council.

(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agency, the appropriate financial regulator, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility
or any financial institution engaged in payment, clearing, or settlement activities.

(d) **Timing of Response From Appropriate Federal Supervisory Agency.**—If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose record-keeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(e) **Sharing of Information.**—

(1) **Material Concerns.**—Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information, or data relating to such concerns.
(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to other persons it deems appropriate, including the Secretary, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality.

(f) PRIVILEGE MAINTAINED.—The Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data to the other party or by permitting the reports or data, or any copies thereof, to be used by the other party.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors or the Council under this section and any materials prepared by the Board of Governors or the Council regarding its assessment of the systemic importance of financial market utilities or any pay-
ment, clearing, or settlement activities engaged in by financial institutions, and in connection with its supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

SEC. 810. RULEMAKING.

The Board of Governors and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out the authorities and duties granted to the Board of Governors or the Council, respectively, and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate financial regulator, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.
SEC. 812. EFFECTIVE DATE.

This title is effective as of the date of enactment of this Act.

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

SEC. 901. SHORT TITLE.

This title may be cited as the “Investor Protection and Securities Reform Act of 2010”.

Subtitle A—Increasing Investor Protection

SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

“SEC. 39. INVESTOR ADVISORY COMMITTEE.

“(a) Establishment and Purpose.—

“(1) Establishment.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the ‘Committee’).

“(2) Purpose.—The Committee shall—

“(A) advise and consult with the Commission on—
“(i) regulatory priorities of the Commission;

“(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

“(iii) initiatives to protect investor interest; and

“(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

“(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The members of the Committee shall be—

“(A) the Investor Advocate;

“(B) a representative of State securities commissions;

“(C) a representative of the interests of senior citizens; and
“(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

“(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

“(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

“(iii) are knowledgeable about investment issues and decisions; and

“(iv) have reputations of integrity.

“(2) Term.—Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

“(3) Members not Commission employees.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

“(c) Chairman; Vice Chairman; Secretary; Assistant Secretary.—
“(1) In general.—The members of the Committee shall elect, from among the members of the Committee—

“(A) a chairman, who may not be employed by an issuer;

“(B) a vice chairman, who may not be employed by an issuer;

“(C) a secretary; and

“(D) an assistant secretary.

“(2) Term.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

“(d) Meetings.—

“(1) Frequency of meetings.—The Committee shall meet—

“(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

“(B) from time to time, at the call of the Commission.

“(2) Notice.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.
“(e) COMPENSATION AND TRAVEL EXPENSES.—

Each member of the Committee who is not a full-time employe

of the United States shall—

“(1) be entitled to receive compensation at a
rate not to exceed the daily equivalent of the annual
rate of basic pay in effect for a position at level V
of the Executive Schedule under section 5316 of title
5, United States Code, for each day during which
the member is engaged in the actual performance of
the duties of the Committee; and

“(2) while away from the home or regular place
of business of the member in the performance of
services for the Committee, be allowed travel ex-
penses, including per diem in lieu of subsistence, in
the same manner as persons employed intermittently
in the Government service are allowed expenses
under section 5703(b) of title 5, United States Code.

“(f) STAFF.—The Commission shall make available
to the Committee such staff as the chairman of the Com-
mittee determines are necessary to carry out this section.

“(g) REVIEW BY COMMISSION.—The Commission
shall—

“(1) review the findings and recommendations
of the Committee; and
“(2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—

“(A) assessing the finding or recommendation of the Committee; and

“(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

“(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

“(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

“(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.”.

SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMISSION TO ENGAGE IN INVESTOR TESTING.

Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following:

“(e) EVALUATION OF RULES OR PROGRAMS.—For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities
Exchange Act of 1934 (15 U.S.C. 78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

“(1) gather information from and communicate with investors or other members of the public;

“(2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and

“(3) consult with academics and consultants, as necessary to carry out this subsection.

“(f) Rule of Construction.—For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any action taken under subsection (e) shall not be construed to be a collection of information.”.

SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGATIONS OF BROKERS, DEALERS, AND INVESTMENT ADVISERS.

(a) Definitions.—In this section—

(1) the term “FINRA” means the Financial Industry Regulatory Authority; and

(2) the term “retail customer” means an individual customer of a broker, dealer, investment adviser, person associated with a broker or dealer, or a person associated with an investment adviser.
(b) IN GENERAL.—The Commission shall conduct a study to evaluate—

(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and FINRA, and other Federal and State legal or regulatory standards; and

(2) whether there are legal or regulatory gaps or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

(c) CONSIDERATIONS.—In conducting the study required under subsection (b), the Commission shall consider—

(1) the regulatory, examination, and enforcement resources devoted to, and activities of, the
Commission and FINRA to enforce the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers when providing personalized investment advice and recommendations about securities to retail customers, including—

(A) the frequency of examinations of brokers, dealers, and investment advisers; and

(B) the length of time of the examinations;

(2) the substantive differences, compared and contrasted in detail, in the regulation of brokers, dealers, and investment advisers, when providing personalized investment advice and recommendations about securities to retail customers, including the differences in the amount of resources devoted to the regulation and examination of brokers, dealers, and investment advisers, by the Commission and FINRA;

(3) the specific instances in which—

(A) the regulation and oversight of investment advisers provide greater protection to retail customers than the regulation and oversight of brokers and dealers; and

(B) the regulation and oversight of brokers and dealers provide greater protection to retail
customers than the regulation and oversight of investment advisers;

(4) the existing legal or regulatory standards of State securities regulators and other regulators intended to protect retail customers;

(5) the potential impact on retail customers, including the potential impact on access of retail customers to the range of products and services offered by brokers and dealers, of imposing upon brokers, dealers, and persons associated with brokers or dealers—

(A) the standard of care applied under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) for providing personalized investment advice about securities to retail customers of investment advisers; and

(B) other requirements of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

(6) the potential impact of—

(A) imposing on investment advisers the standard of care applied by the Commission and FINRA under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for providing recommendations about securities to retail cus-
tomers of brokers and dealers and other Com-
mmission and FINRA requirements applicable to
brokers and dealers; and

(B) authorizing the Commission to des-
ignate 1 or more self-regulatory organizations
to augment the efforts of the Commission to
oversee investment advisers;

(7) the potential impact of eliminating the
broker and dealer exclusion from the definition of
"investment adviser" under section 202(a)(11)(C) of
the Investment Advisers Act of 1940 (15 U.S.C.
80b–2(a)(11)(C)), in terms of—

(A) the potential benefits or harm to retail
customers that could result from such a change,
including any potential impact on access to per-
sonalized investment advice and recommenda-
tions about securities to retail customers or the
availability of such advice and recommenda-
tions;

(B) the number of additional entities and
individuals that would be required to register
under, or become subject to, the Investment
Advisers Act of 1940 (15 U.S.C. 80b–1 et
seq.), and the additional requirements to which
brokers, dealers, and persons associated with
brokers and dealers would become subject, including—

(i) any potential additional associated person licensing, registration, and examination requirements; and

(ii) the additional costs, if any, to the additional entities and individuals; and

(C) the impact on Commission resources to—

(i) conduct examinations of registered investment advisers and the representatives of registered investment advisers, including the impact on the examination cycle; and

(ii) enforce the standard of care and other applicable requirements imposed under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

(8) the ability of investors to understand the differences in terms of regulatory oversight and examinations between brokers, dealers, and investment advisers;

(9) the varying level of services provided by brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers to retail customers and the vary-
ing scope and terms of retail customer relationships of brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers with such retail customers;

(10) any potential benefits or harm to retail customers that could result from any potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations to retail customers, including any potential impact on—

(A) protection from fraud;

(B) access to personalized investment advice, and recommendations about securities to retail customers; or

(C) the availability of such advice and recommendations;

(11) the additional costs and expenses to retail customers and to brokers, dealers, and investment advisers resulting from potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated
with investment advisers relating to their obligations
to retail customers; and

(12) any other consideration that the Commis-
sion deems necessary and appropriate to effectively
execute the study required under subsection (b).

(d) REPORT.—

(1) IN GENERAL.—Not later than 1 year after
the date of enactment of this Act, the Commission
shall submit a report on the study required under
subsection (b) to—

(A) the Committee on Banking, Housing,
and Urban Affairs of the Senate; and

(B) the Committee on Financial Services
of the House of Representatives.

(2) CONTENT REQUIREMENTS.—The report re-
quired under paragraph (1) shall describe the find-
ings, conclusions, and recommendations of the Com-
mission from the study required under subsection
(b), including—

(A) a description of the considerations,
analysis, and public and industry input that the
Commission considered, as required under sub-
section (e), to make such findings, conclusions,
and policy recommendations; and

(B) an analysis of—
(i) whether any identified legal or regulatory gaps or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers can be addressed by rule; and

(ii) whether, and the extent to which, the Commission would require additional statutory authority to address such gaps or overlap.

(e) PUBLIC COMMENT.—The Commission shall seek and consider public input, comments, and data in order to prepare the report required under subsection (d).

(f) RULEMAKING.—

(1) IN GENERAL.—If the study required under subsection (b) identifies any gaps or overlap in the legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized
investment advice about securities to such retail cus-
tomers, the Commission, not later than 2 years after
the date of enactment of this Act, shall—

(A) commence a rulemaking, as necessary
or appropriate in the public interest and for the
protection of retail customers, to address such
regulatory gaps and overlap that can be ad-
dressed by rule, using its authority under the
78a et seq.) and the Investment Advisers Act of
1940 (15 U.S.C. 80b–1 et seq.); and

(B) consider and take into account the
findings, conclusions, and recommendations of
the study required under this section.

(2) RULE OF CONSTRUCTION.—Nothing in this
section shall be construed to limit the rulemaking
authority of the Commission under any other provi-
sion of Federal law.

SEC. 914. OFFICE OF THE INVESTOR ADVOCATE.

Section 4 of the Securities Exchange Act of 1934 (15
U.S.C. 78d) is amended by adding at the end the fol-
lowing:

“(g) OFFICE OF THE INVESTOR ADVOCATE.—

“(1) OFFICE ESTABLISHED.—There is estab-
lished within the Commission the Office of the In-
(2) INVESTOR ADVOCATE.—

(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

(i) report directly to the Chairman;

and

(ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for a Senior Executive Service position within the Commission.

(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

(i) during the 2-year period ending on the date of appointment as Investor Advocate; or
“(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

“(3) Staff of Office.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

“(4) Functions of the Investor Advocate.—The Investor Advocate shall—

“(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

“(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

“(C) identify problems that investors have with financial service providers and investment products;

“(D) analyze the potential impact on investors of—
“(i) proposed regulations of the Commission; and

“(ii) proposed rules of self-regulatory organizations registered under this title; and

“(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

“(5) Access to Documents.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

“(6) Annual Reports.—

“(A) Report on Objectives.—

“(i) In General.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Rep-
resentatives a report on the objectives of
the Investor Advocate for the following fis-
cal year.

“(ii) CONTENTS.—Each report re-
quired under clause (i) shall contain full
and substantive analysis and explanation.

“(B) REPORT ON ACTIVITIES.—

“(i) IN GENERAL.—Not later than
December 31 of each year after 2010, the
Investor Advocate shall submit to the Com-
mittee on Banking, Housing, and Urban
Affairs of the Senate and the Committee
on Financial Services of the House of Rep-
resentatives a report on the activities of
the Investor Advocate during the imme-
diately preceding fiscal year.

“(ii) CONTENTS.—Each report re-
quired under clause (i) shall include—

“(I) appropriate statistical infor-
mentation and full and substantive anal-
ysis;

“(II) information on steps that
the Investor Advocate has taken dur-
ing the reporting period to improve in-
vestor services and the responsiveness
of the Commission and self-regulatory organizations to investor concerns;

“(III) a summary of the most serious problems encountered by investors during the reporting period;

“(IV) an inventory of the items described in subclauses (III) that includes—

“(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

“(bb) the length of time that each item has remained on such inventory; and

“(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

“(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and
“(VI) any other information, as determined appropriate by the Investor Advocate.

“(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

“(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

“(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.”.

SEC. 915. STREAMLINING OF FILING PROCEDURES FOR SELF-REGULATORY ORGANIZATIONS.

(a) FILING PROCEDURES.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by striking paragraph (2) (including the undesig-
nated matter immediately following subparagraph (B))

and inserting the following:

“(2) APPROVAL PROCESS.—

“(A) APPROVAL PROCESS ESTABLISHED.—

“(i) IN GENERAL.—Except as pro-

vided in clause (ii), not later than 45 days

after the date of publication of a proposed

rule change under paragraph (1), the Com-

mission shall—

“(I) by order, approve the pro-

posed rule change; or

“(II) institute proceedings under

subparagraph (B) to determine wheth-

er the proposed rule change should be

disapproved.

“(ii) EXTENSION OF TIME PERIOD.—

The Commission may extend the period es-

established under clause (i) by not more than

an additional 45 days, if—

“(I) the Commission determines

that a longer period is appropriate

and publishes the reasons for such de-

termination; or
“(II) the self-regulatory organization that filed the proposed rule change consents to the longer period.

“(B) PROCEEDINGS.—

“(i) NOTICE AND HEARING.—If the Commission does not approve a proposed rule change under subparagraph (A), the Commission shall provide to the self-regulatory organization that filed the proposed rule change—

“(I) notice of the grounds for disapproval under consideration; and

“(II) opportunity for hearing, to be concluded not later than 180 days after the date of publication of notice of the filing of the proposed rule change.

“(ii) ORDER OF APPROVAL OR DISAPPROVAL.—

“(I) IN GENERAL.—Except as provided in subclause (II), not later than 180 days after the date of publication under paragraph (1), the Commission shall issue an order approving
or disapproving the proposed rule change.

“(II) Extension of time period.—The Commission may extend the period for issuance under clause (I) by not more than 60 days, if—

“(aa) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

“(bb) the self-regulatory organization that filed the proposed rule change consents to the longer period.

“(C) Standards for approval and disapproval.—

“(i) Approval.—The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations issued under this title that are applicable to such organization.
“(ii) DISAPPROVAL.—The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make a finding described in clause (i).

“(iii) TIME FOR APPROVAL.—The Commission may not approve a proposed rule change earlier than 30 days after the date of publication under paragraph (1), unless the Commission finds good cause for so doing and publishes the reason for the finding.

“(D) RESULT OF FAILURE TO INSTITUTE OR CONCLUDE PROCEEDINGS.—A proposed rule change shall be deemed to have been approved by the Commission, if—

“(i) the Commission does not approve the proposed rule change or begin proceedings under subparagraph (B) within the period described in subparagraph (A); or

“(ii) the Commission does not issue an order approving or disapproving the proposed rule change under subparagraph (B) within the period described in subparagraph (B)(ii).
“(E) Publication date based on Federal Register publishing.—For purposes of this paragraph, if, after filing a proposed rule change with the Commission pursuant to paragraph (1), a self-regulatory organization publishes a notice of the filing of such proposed rule change, together with the substantive terms of such proposed rule change, on a publicly accessible website, the Commission shall thereafter send the notice to the Federal Register for publication thereof under paragraph (1) within 15 days of the date on which such website publication is made. If the Commission fails to send the notice for publication thereof within such 15 day period, then the date of publication shall be deemed to be the date on which such website publication was made.

“(F) Rulemaking.—

“(i) In general.—Not later than 180 days after the date of enactment of the Restoring American Financial Stability Act of 2010, after consultation with other regulatory agencies, the Commission shall promulgate rules setting forth the proce-
dural requirements of the proceedings required under this paragraph.

“(ii) NOTICE AND COMMENT NOT REQUIRED.—The rules promulgated by the Commission under clause (i) are not required to include republication of proposed rule changes or solicitation of public comment.”.

(b) CLARIFICATION OF FILING DATE.—

(1) RULE OF CONSTRUCTION.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

“(10) RULE OF CONSTRUCTION RELATING TO FILING DATE OF PROPOSED RULE CHANGES.—

“(A) IN GENERAL.—For purposes of this subsection, the date of filing of a proposed rule change shall be deemed to be the date on which the Commission receives the proposed rule change.

“(B) EXCEPTION.—A proposed rule change has not been received by the Commission for purposes of subparagraph (A) if, not later than 7 business days after the date of receipt by the Commission, the Commission noti-
ifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change, except that if the Commission determines that the proposed rule change is unusually lengthy and is complex or raises novel regulatory issues, the Commission shall inform the self-regulatory organization of such determination not later than 7 business days after the date of receipt by the Commission and, for the purposes of subparagraph (A), a proposed rule change has not been received by the Commission, if, not later than 21 days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change.”.

(2) Publication.—Section 19(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(1)) is amended by striking “upon” and inserting “as soon as practicable after the date of”.


(1) in subparagraph (A)—

(A) by striking “may take effect” and inserting “shall take effect”; and

(B) by inserting “on any person, whether or not the person is a member of the self-regulatory organization” after “charge imposed by the self-regulatory organization”; and

(2) in subparagraph (C)—

(A) by amending the second sentence to read as follows: “At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1), the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.”;

(B) by inserting after the second sentence the following: “If the Commission takes such
action, the Commission shall institute pro-
ceedings under paragraph (2)(B) to determine
whether the proposed rule should be approved
or disapproved.”; and

(C) in the third sentence, by striking “the
preceding sentence” and inserting “this sub-
paragraph”.

(d) CONFORMING CHANGE.—Section 19(b)(4)(D) of
78s(b)(4)(D)) is amended to read as follows:

“(D)(i) The Commission shall order the
temporary suspension of any change in the
rules of a clearing agency made by a proposed
rule change that has taken effect under para-
graph (3), if the appropriate regulatory agency
for the clearing agency notifies the Commission
not later than 30 days after the date on which
the proposed rule change was filed of—

“(I) the determination by the appro-
priate regulatory agency that the rules of
such clearing agency, as so changed, may
be inconsistent with the safeguarding of
securities or funds in the custody or con-
trol of such clearing agency or for which it
is responsible; and
“(II) the reasons for the determination described in subclause (I).

“(ii) If the Commission takes action under clause (i), the Commission shall institute proceedings under paragraph (2)(B) to determine if the proposed rule change should be approved or disapproved.”.

SEC. 916. STUDY REGARDING FINANCIAL LITERACY AMONG INVESTORS.

(a) IN GENERAL.—The Commission shall conduct a study to identify—

(1) the existing level of financial literacy among retail investors, including subgroups of investors identified by the Commission;

(2) methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment services;

(3) the most useful and understandable relevant information that retail investors need to make informed financial decisions before engaging a financial intermediary or purchasing an investment product or service that is typically sold to retail investors, including shares of open-end companies, as that term is defined in section 5 of the Investment
Company Act of 1940 (15 U.S.C. 80a–5) that are registered under section 8 of that Act;

(4) methods to increase the transparency of expenses and conflicts of interests in transactions involving investment services and products, including shares of open-end companies described in paragraph (3);

(5) the most effective existing private and public efforts to educate investors; and

(6) in consultation with the Financial Literacy and Education Commission, a strategy (including, to the extent practicable, measurable goals and objectives) to increase the financial literacy of investors in order to bring about a positive change in investor behavior.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.
SEC. 917. STUDY REGARDING MUTUAL FUND ADVERTISING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

(1) existing and proposed regulatory requirements for open-end investment company advertisements;

(2) current marketing practices for the sale of open-end investment company shares, including the use of past performance data, funds that have merged, and incubator funds;

(3) the impact of such advertising on consumers; and

(4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and

(2) the Committee on Financial Services of the House of Representatives.
SEC. 918. CLARIFICATION OF COMMISSION AUTHORITY TO REQUIRE INVESTOR DISCLOSURES BEFORE PURCHASE OF INVESTMENT PRODUCTS AND SERVICES.

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

“(k) DISCLOSURES TO RETAIL INVESTORS.—

“(1) IN GENERAL.—Notwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

“(2) CONSIDERATIONS.—In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.

“(3) FORM AND CONTENTS OF DOCUMENTS AND INFORMATION.—Any documents or information designated under a rule promulgated under paragraph (1) shall—

“(A) be in a summary format; and

“(B) contain clear and concise information about—
“(i) investment objectives, strategies, costs, and risks; and
“(ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.”.

SEC. 919. STUDY ON CONFLICTS OF INTEREST.

(a) In General.—The Comptroller General of the United States shall conduct a study—

(1) to identify and examine potential conflicts of interest that exist between the staffs of the investment banking and equity and fixed income securities analyst functions within the same firm; and

(2) to make recommendations to Congress designed to protect investors in light of such conflicts.

(b) Considerations.—In conducting the study under subsection (a), the Comptroller General shall—

(1) consider—

(A) the potential for investor harm resulting from conflicts, including consideration of the forms of misconduct engaged in by the several securities firms and individuals that entered into the Global Analyst Research Settle-
ments in 2003 (also known as the “Global Settlement’’);

(B) the nature and benefits of the undertakings to which those firms agreed in enforcement proceedings, including firewalls between research and investment banking, separate reporting lines, dedicated legal and compliance staffs, allocation of budget, physical separation, compensation, employee performance evaluations, coverage decisions, limitations on soliciting investment banking business, disclosures, transparency, and other measures;

(C) whether any such undertakings should be codified and applied permanently to securities firms, or whether the Commission should adopt rules applying any such undertakings to securities firms; and

(D) whether to recommend regulatory or legislative measures designed to mitigate possible adverse consequences to investors arising from the conflicts of interest or to enhance investor protection or confidence in the integrity of the securities markets; and

(2) consult with State attorneys general, State securities officials, the Commission, the Financial
Industry Regulatory Authority (“FINRA”), NYSE Regulation, investor advocates, brokers, dealers, retail investors, institutional investors, and academics.

(c) REPORT.—The Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 18 months after the date of enactment of this Act.

SEC. 919A. STUDY ON IMPROVED INVESTOR ACCESS TO INFORMATION ON INVESTMENT ADVISERS AND BROKER-DEALERS.

(a) Study.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall complete a study, including recommendations, of ways to improve the access of investors to registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information) about registered and previously registered investment advisers, associated persons of investment advisers, brokers and dealers and their associated persons on the existing Central Registration Depository and Investment Adviser Registration Depository systems, as well as
identify additional information that should be made publicly available.

(2) CONTENTS.—The study required by subsection (a) shall include an analysis of the advantages and disadvantages of further centralizing access to the information contained in the 2 systems, including—

(A) identification of those data pertinent to investors; and

(B) the identification of the method and format for displaying and publishing such data to enhance accessibility by and utility to investors.

(b) IMPLEMENTATION.—Not later than 18 months after the date of completion of the study required by subsection (a), the Commission shall implement any recommendations of the study.

SEC. 919B. STUDY ON FINANCIAL PLANNERS AND THE USE OF FINANCIAL DESIGNATIONS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to evaluate—

(1) the effectiveness of State and Federal regulations to protect consumers from individuals who hold themselves out as financial planners through the use of misleading designations;
(2) current State and Federal oversight structure and regulations for financial planners; and

(3) legal or regulatory gaps in the regulation of financial planners and other individuals who provide or offer to provide financial planning services to consumers.

(b) CONSIDERATIONS.—In conducting the study required under subsection (a), the Comptroller General shall consider—

(1) the role of financial planners in providing advice regarding the management of financial resources, including investment planning, income tax planning, education planning, retirement planning, estate planning, and risk management;

(2) whether current regulations at the State and Federal level provide adequate ethical and professional standards for financial planners;

(3) the use of the title “financial planner” and misleading designations in connection with sale of financial products, including insurance and securities;

(4) the possible risk posed to consumers by individuals who hold themselves out as financial planners through the use of misleading designations, including “financial advisor” and “financial consultant”;
(5) the ability of consumers to understand licensing requirements and standards of care that apply to individuals who provide financial advice;

(6) the possible benefits to consumers of regulation and professional oversight of financial planners; and

(7) any other consideration that the Comptroller General deems necessary or appropriate to effectively execute the study required under subsection (a).

(c) RECOMMENDATIONS.—In providing recommendations for the appropriate regulation of financial planners and other individuals who provide or offer to provide financial planning services, in order to protect consumers of financial planning services, the Comptroller General shall consider—

(1) the appropriate structure for regulation of financial planners and individuals providing financial planning services; and

(2) the appropriate scope of the regulations needed to protect consumers, including but not limited to the need to establish competency standards, practice standards, ethical guidelines, disciplinary authority, and transparency to consumers.

(d) REPORT.—
(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit a report on the study required under subsection (a) to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) the Special Committee on Aging of the Senate; and

(C) the Committee on Financial Services of the House of Representatives.

(2) **CONTENT REQUIREMENTS.**—The report required under paragraph (1) shall describe the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a), including a description of the considerations, analysis, and government, public, industry, nonprofit and consumer input that the Comptroller General considered to make such findings, conclusions, and legislative, regulatory, or other recommendations.
Subtitle B—Increasing Regulatory Enforcement and Remedies

SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.

(a) Amendment to Securities Exchange Act of 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 918, is amended by adding at the end the following:

“(l) Authority To Restrict Mandatory Predispute Arbitration.—The Commission may reaffirm or prohibit, or impose or not impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any dispute between them and such broker, dealer, or municipal securities dealer that arises under the securities laws or the rules of a self-regulatory organization, if the Commission finds that such reaffirmation, prohibition, imposition of conditions or limitations, or other action is in the public interest and for the protection of investors pursuant to a public rulemaking.”.

(b) Amendment to Investment Advisers Act of 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following:
 ``(f) Authority To Issue Rules Related To Mandatory Predispute Arbitration.—The Commission may reaffirm or prohibit, or impose or not impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any dispute between them and such investment adviser that arises under the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or the rules of a self-regulatory organization, if the Commission finds that such reaffirmation, prohibition, imposition of conditions or limitations, or other action is in the public interest and for the protection of investors pursuant to a public rulemaking.''.

**SEC. 922. WHISTLEBLOWER PROTECTION.**

(a) In General.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 21E the following:

``SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

 ``(a) Definitions.—In this section the following definitions shall apply:

 ``(1) Covered Judicial or Administrative Action.—The term ‘covered judicial or administrative action’ means any judicial or administrative action brought by the Commission under the securities laws.''


laws that results in monetary sanctions exceeding $1,000,000.

“(2) Fund.—The term 'Fund' means the Securities and Exchange Commission Investor Protection Fund.

“(3) Original information.—The term 'original information' means information that—

“(A) is derived from the independent knowledge or analysis of a whistleblower;

“(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

“(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

“(4) Monetary sanctions.—The term 'monetary sanctions', when used with respect to any judicial or administrative action, means—

“(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and
“(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

“(5) RELATED ACTION.—The term ‘related action’, when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

“(6) WHISTLEBLOWER.—The term ‘whistleblower’ means any individual, or 2 or more individuals acting jointly, who provides information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.

“(b) AWARDS.—

“(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commis-
sion and subject to subsection (c), shall pay an
award or awards to 1 or more whistleblowers who
voluntarily provided original information to the
Commission that led to the successful enforcement
of the covered judicial or administrative action, or
related action, in an aggregate amount equal to—

“(A) not less than 10 percent, in total, of
what has been collected of the monetary sanc-
tions imposed in the action or related actions;
and

“(B) not more than 30 percent, in total, of
what has been collected of the monetary sanc-
tions imposed in the action or related actions.

“(2) Payment of Awards.—Any amount paid
under paragraph (1) shall be paid from the Fund.

“(c) Determination of Amount of Award; De-
nial of Award.—

“(1) Determination of Amount of
Award.—

“(A) Discretion.—The determination of
the amount of an award made under subsection
(b) shall be in the discretion of the Commission.

“(B) Criteria.—In determining the
amount of an award made under subsection (b),
the Commission—
“(i) shall take into consideration—

“(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

“(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

“(III) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

“(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

“(ii) shall not take into consideration the balance of the Fund.

“(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

“(A) to any whistleblower who is, or was at the time the whistleblower acquired the original
information submitted to the Commission, a
member, officer, or employee of—

“(i) an appropriate regulatory agency;
“(ii) the Department of Justice;
“(iii) a self-regulatory organization;
“(iv) the Public Company Accounting
Oversight Board; or
“(v) a law enforcement organization;
“(B) to any whistleblower who is convicted
of a criminal violation related to the judicial or
administrative action for which the whistle-
blower otherwise could receive an award under
this section;
“(C) to any whistleblower who gains the
information through the performance of an audit of financial statements required under the securities laws and for whom such submission would be contrary to the requirements of sec-
tion 101A of the Securities Exchange Act of
1934 (15 U.S.C. 78j–1); or
“(D) to any whistleblower who fails to sub-
mit information to the Commission in such
form as the Commission may, by rule, require.
“(d) REPRESENTATION.—
“(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

“(2) REQUIRED REPRESENTATION.—

“(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

“(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.

“(e) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission by rule or regulation.

“(f) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission. Any such determination may be appealed to the appropriate court of appeals of the United States not more
than 30 days after the determination is issued by the Commission. The court shall review the determination made by the Commission in accordance with section 706 of title 5, United States Code.

“(g) INVESTOR PROTECTION FUND.—

“(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the ‘Securities and Exchange Commission Investor Protection Fund’.

“(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

“(A) paying awards to whistleblowers as provided in subsection (b); and

“(B) funding the activities of the Inspector General of the Commission under section 4(i).

“(3) DEPOSITS AND CREDITS.—

“(A) IN GENERAL.—There shall be deposited into or credited to the Fund an amount equal to—

“(i) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other
fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds $300,000,000;

“(ii) any monetary sanction added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the Fund was established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds $200,000,000; and

“(iii) all income from investments made under paragraph (4).

“(B) ADDITIONAL AMOUNTS.—If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the
Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in the covered judicial or administrative action on which the award is based.

“(4) INVESTMENTS.—

“(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Fund.

“(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission on the record.

“(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to the Fund.

“(5) REPORTS TO CONGRESS.—Not later than October 30 of each fiscal year beginning after the
date of enactment of this subsection, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

“(A) the whistleblower award program, established under this section, including—

“(i) a description of the number of awards granted; and

“(ii) the types of cases in which awards were granted during the preceding fiscal year;

“(B) the balance of the Fund at the beginning of the preceding fiscal year;

“(C) the amounts deposited into or credited to the Fund during the preceding fiscal year;

“(D) the amount of earnings on investments made under paragraph (4) during the preceding fiscal year;

“(E) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

“(F) the balance of the Fund at the end of the preceding fiscal year; and
“(G) a complete set of audited financial statements, including—
“(i) a balance sheet;
“(ii) income statement; and
“(iii) cash flow analysis.

“(h) PROTECTION OF WHISTLEBLOWERS.—
“(1) PROHIBITION AGAINST RETALIATION.—
“(A) IN GENERAL.—No employer may dis-charge, demote, suspend, threaten, harass, di-
rectly or indirectly, or in any other manner dis-
criminate against, a whistleblower in the terms
and conditions of employment because of any
lawful act done by the whistleblower—
“(i) in providing information to the
Commission in accordance with subsection
(a);
“(ii) in initiating, testifying in, or as-
sisting in any investigation or judicial or
administrative action of the Commission
based upon or related to such information;
or
“(iii) in making disclosures that are
required or protected under the Sarbanes-
seq.), the Securities Exchange Act of 1934
(15 U.S.C. 78a et seq.), including section 10A(m) of such Act (15 U.S.C. 78f(m)), section 1513(e) of title 18, United States Code, and any other law, rule, or regulation subject to the jurisdiction of the Commission.

“(B) ENFORCEMENT.—

“(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

“(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

“(iii) STATUTE OF LIMITATIONS.—

“(I) IN GENERAL.—An action under this subsection may not be brought—

“(aa) more than 6 years after the date on which the viola-
tion of subparagraph (A) occurred; or

“(bb) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).

“(II) Required action within 10 years.—Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

“(C) Relief.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

“(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

“(ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and
“(iii) compensation for litigation costs, expert witness fees, and reasonable attorneys’ fees.

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Unless and until required to be disclosed to a defendant or respondent in connection with a proceeding instituted by the Commission or any entity described in subparagraph (D), all information provided to the Commission by a whistle-blower—

“(i) in any proceeding in any Federal or State court or administrative agency—

“(I) shall be confidential and privileged as an evidentiary matter; and

“(II) shall not be subject to civil discovery or other legal process; and

“(ii) shall not be subject to disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) or under any proceeding under that section.

“(B) EXEMPTED STATUTE.—For purposes of section 552 of title 5, United States Code,
this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

“(C) Rule of Construction.—Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

“(D) Availability to Government Agencies.—

“(i) In General.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and to protect investors, be made available to—

“(I) the Attorney General of the United States;

“(II) an appropriate regulatory authority;
“(III) a self-regulatory organization;

“(IV) a State attorney general in connection with any criminal investigation;

“(V) any appropriate State regulatory authority;

“(VI) the Public Company Accounting Oversight Board;

“(VII) a foreign securities authority; and

“(VIII) a foreign law enforcement authority.

“(ii) CONFIDENTIALITY.—

“(I) IN GENERAL.—Each of the entities described in subclauses (I) through (VI) of clause (i) shall maintain such information as confidential and privileged, in accordance with the requirements established under subparagraph (A).

“(II) FOREIGN AUTHORITIES.—

Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in ac-
cordance with such assurances of confidentiality as the Commission determines appropriate.

“(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

“(i) PROVISION OF FALSE INFORMATION.—A whistleblower shall not be entitled to an award under this section if the whistleblower—

“(1) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation;

or

“(2) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

“(j) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.”.

(b) PROTECTION FOR EMPLOYEES OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—
Section 1514A(a) of title 18, United States Code, is amended—

(1) by inserting “or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c),” after “78o(d)),”; and

(2) by inserting “or nationally recognized statistical rating organization” after “such company”.

(c) Section 1514A of Title 18, United States Code.—

(1) Statute of limitations; jury trial.—

Section 1514A(b)(2) of title 18, United States Code, is amended—

(A) in subparagraph (D)—

(i) by striking “90” and inserting “180”; and

(ii) by striking the period at the end and inserting “, or after the date on which the employee became aware of the violation.”; and

(B) by adding at the end the following:

“(E) JURY TRIAL.—A party to an action brought under paragraph (1)(B) shall be entitled to trial by jury.”.
(2) Private securities litigation witnesses; nonenforceability; information.—Sec-

tion 1514A of title 18, United States Code, is amended by adding at the end the following:

“(e) Nonenforceability of certain provisions waiving rights and remedies or requiring arbi-

tration of disputes.—

“(1) Waiver of rights and remedies.—The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

“(2) Predispute arbitration agreements.—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.”.

(d) Study of whistleblower protection program.—

(1) Study.—The Inspector General of the Commission shall conduct a study of the whistleblower protections established under the amendments made by this section, including—

(A) whether the final rules and regulation issued under the amendments made by this sec-

tion have made the whistleblower protection
program (referred to in this subsection as the
“program”) clearly defined and user-friendly;

(B) whether the program is promoted on
the website of the Commission and has been
widely publicized;

(C) whether the Commission is prompt
in—

(i) its responses to—

(I) information provided by whis-
tleblowers; and

(II) applications for awards filed
by whistleblowers;

(ii) updating whistleblowers about the
status of their applications; and

(iii) other communications with the
interested parties;

(D) whether the minimum and maximum
reward levels are adequate to entice whistle-
blowers to come forward with information and
whether the reward levels are so high as to en-
courage illegitimate whistleblower claims;

(E) whether the appeals process has been
unduly burdensome for the Commission;

(F) whether the funding mechanism for
the Investor Protection Fund is adequate;
(G) whether, in the interest of protecting investors and identifying and preventing fraud, it would be useful for Congress to consider empowering whistleblowers or other individuals, who have already attempted to pursue the case through the Commission, to have a private right of action to bring suit based on the facts of the same case, on behalf of the Government and themselves, against persons who have committee securities fraud; and

(H) such other matters as the Inspector General deems appropriate.

(2) REPORT.—Not later than 30 months after the date of enactment of this Act, the Inspector General shall—

(A) submit a report on the findings of the study required under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House; and

(B) make the report described in subparagraph (A) available to the public through publication of the report on the website of the Commission.
SEC. 923. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—


(b) Securities Exchange Act.—


(A) in subsection (d)(1) by—

(i) striking “(subject to subsection (e))”; and

(ii) inserting “and section 21F of this title” after “the Sarbanes-Oxley Act of 2002”;

(B) by striking subsection (e); and

(C) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTION.

(a) Implementing Rules.—The Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this subtitle, not later than 270 days after the date of enactment of this Act.

(b) Original Information.—Information provided to the Commission by a whistleblower in accordance with the regulations referenced in subsection (a) shall not lose the status of original information (as defined in section 21F(i)(1) of the Securities Exchange Act of 1934, as added by this subtitle) solely because the whistleblower
provided the information prior to the effective date of the regulations, provided that the information is—

(1) provided by the whistleblower after the date of enactment of this subtitle, or monetary sanctions are collected after the date of enactment of this subtitle; or

(2) related to a violation for which an award under section 21F of the Securities Exchange Act of 1934, as added by this subtitle, could have been paid at the time the information was provided by the whistleblower.

(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this subtitle, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to the date of enactment of this subtitle.

SEC. 925. COLLATERAL BARS.

(a) Securities Exchange Act of 1934.—

(1) Section 15.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking “12 months, or bar such person from being associated with a broker or dealer,” and inserting “12 months, or bar
any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,”.

(2) SECTION 15B.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking “twelve months or bar any such person from being associated with a municipal securities dealer,” and inserting “12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,”.

(3) SECTION 17A.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking “twelve months or bar any such person from being associated with the transfer agent,” and inserting “12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization,”.

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C.
80b–3(f)) is amended by striking “twelve months or bar any such person from being associated with an investment adviser,” and inserting “12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,”.

SEC. 926. DISQUALIFYING FELONS AND OTHER “BAD ACTORS” FROM REGULATION D OFFERINGS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer
of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
required thereby” and inserting “a self-regulatory organization,”.

SEC. 928. CLARIFICATION THAT SECTION 205 OF THE INVESTMENT ADVISERS ACT OF 1940 DOES NOT APPLY TO STATE-REGISTERED ADVISERS.

Section 205(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(a)) is amended, in the matter preceding paragraph (1)—

(1) by striking “, unless exempt from registration pursuant to section 203(b),” and inserting “registered or required to be registered with the Commission”;

(2) by striking “make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to”; and

(3) by striking “to” after “in any way”.

SEC. 929. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “; and” and inserting “; or”.

SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDIARIES AND AFFILIATES OF PUBLICLY TRADED COMPANIES.

Section 1514A of title 18, United States Code, is amended by inserting “including any subsidiary or affil-
iater whose financial information is included in the consolidated financial statements of such company” after “the Securities Exchange Act of 1934 (15 U.S.C. 78o(d))”.

SEC. 929B. FAIR FUND AMENDMENTS.

Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended—

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

“(a) Civil Penalties To Be Used for the Relief of Victims.—If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.”;

(2) in subsection (b)—

(A) by striking “for a disgorgement fund described in subsection (a)” and inserting “for a disgorgement fund or other fund described in subsection (a)”;

and

(B) by striking “in the disgorgement fund” and inserting “in such fund”; and
SEC. 929C. INCREASING THE BORROWING LIMIT ON TREASURY LOANS.

Section 4(h) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(h)) is amended in the first sentence, by striking “$1,000,000,000” and inserting “$2,500,000,000”.

SEC. 929D. LOST AND STOLEN SECURITIES.


(1) in subparagraph (A), by striking “missing, lost, counterfeit, or stolen securities” and inserting “securities that are missing, lost, counterfeit, stolen, or cancelled”; and

(2) in subparagraph (B), by striking “or stolen” and inserting “stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe”.

SEC. 929E. NATIONWIDE SERVICE OF SUBPOENAS.

(a)Securities Act of 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of
a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.”.

(b) Securities Exchange Act of 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.”.

c) Investment Company Act of 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial
may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.”.

SEC. 929F. FORMERLY ASSOCIATED PERSONS.

(a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(8)) is amended by striking “any member or employee” and inserting “any person who is, or at the time of the alleged violation or abuse was, a member or employee”.
(b) Person Associated With a Government Securities Broker or Dealer.—Section 15C(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(c)) is amended—

(1) in paragraph (1)(C), by striking “any person associated, or seeking to become associated,” and inserting “any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated”; and

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”; and

(B) in subparagraph (B), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”.

c) Person Associated With a Member of a National Securities Exchange or Registered Securities Association.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting “, or, as to any act or
practice, or omission to act, while associated with a member, formerly associated” after “member or a person associated’’.

(d) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting “or, as to any act or practice, or omission to act, while a participant, was a participant,” after “in which such person is a participant,”.


(1) by striking “any officer or director” and inserting “any person who is, or at the time of the alleged misconduct was, an officer or director”; and

(2) by striking “such officer or director” and inserting “such person”.

(f) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking “a person serving or acting” and inserting “a person who is, or at the time of the alleged misconduct was, serving or acting”; and

(2) by striking “such person so serves or acts” and inserting “such person so serves or acts, or at
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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
“(ii) the authority to commence a disciplinary proceeding under section 105(c)(1), or impose sanctions under section 105(c)(4), against such person shall apply only with respect to—

“(I) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

“(II) non-cooperation, as described in section 105(b)(3), with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.”.

(2) Securities Exchange Act of 1934 Amendment.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking “or a person associated with such a firm” and inserting “, a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm”.
(h) Supervisory Personnel of an Audit Firm.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking “the supervisory personnel” and inserting “any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person”; and

(2) in subparagraph (B)—

(A) by striking “No associated person” and inserting “No current or former supervisory person”; and

(B) by striking “any other person” and inserting “any associated person”.

(i) Member of the Public Company Accounting Oversight Board.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking “any member” and inserting “any person who is, or at the time of the alleged misconduct was, a member”.

SEC. 929G. STREAMLINED HIRING AUTHORITY FOR MARKET SPECIALISTS.

(a) Appointment Authority.—Section 3114 of title 5, United States Code, is amended by striking the section heading and all that follows through the end of subsection (a) and inserting the following:
§ 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

(a) Applicability.—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.”.

(b) Clerical Amendment.—The table of sections for chapter 31 of title 5, United States Code, is amended by striking the item relating to section 3114 and inserting the following:

“3114. Appointment of candidates to positions in the competitive service by the Securities and Exchange Commission.”.

(e) Pay Authority.—The Commission may set the rate of pay for experts and consultants appointed under the authority of section 3109 of title 5, United States Code, in the same manner in which it sets the rate of pay for employees of the Commission.

SEC. 929H. SIPC REFORMS.

(1) in subsection (a)(1), by striking "$100,000 for each such customer" and inserting "the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)"; and

(2) by adding the following new subsections:

"(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT DEFINED.—For purposes of this section, the term 'standard maximum cash advance amount' means $250,000, as such amount may be adjusted after December 31, 2010, as provided under subsection (e).

"(e) INFLATION ADJUSTMENT.—

“(1) In general.—Not later than January 1, 2011, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 3(e)(2), the Board of Directors of SIPC shall determine whether an inflation adjustment to the standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

“(A) $250,000 multiplied by

“(B) the ratio of the annual value of the Personal Consumption Expenditures Chain-
Type Price Index (or any successor index there-to), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

“(2) Rounding.—If the standard maximum cash advance amount determined under paragraph (1) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

“(3) Publication and report to the Congress.—Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

“(A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and
“(B) the Board of Directors of SIPC shall submit a report to the Congress stating the standard maximum cash advance amount.

“(4) IMPLEMENTATION PERIOD.—Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

“(5) INFLATION ADJUSTMENT CONSIDERATIONS.—In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

“(A) the overall state of the fund and the economic conditions affecting members of SIPC;

“(B) the potential problems affecting members of SIPC; and

“(C) such other factors as the Board of Directors of SIPC may determine appropriate.”.

(1) by striking the undesignated matter immediately following subparagraph (B);

(2) in subparagraph (A), by striking “any member of SIPC” and inserting “the member”;

(3) in subparagraph (B), by striking the comma at the end and inserting a period;

(4) by striking “If SIPC” and inserting the following:

“(A) IN GENERAL.—SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 21(e) or 27 of the Securities Exchange Act of 1934, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 9, if SIPC”; and

(5) by adding at the end the following:

“(B) CONSENT REQUIRED.—No member of SIPC that has a customer may enter into an insolvency, receivership, or bankruptcy proceeding, under Federal or State law, without the specific consent of SIPC, except as provided
in title II of the Restoring American Financial
Stability Act of 2010.”.

SEC. 929I. PROTECTING CONFIDENTIALITY OF MATERIALS
SUBMITTED TO THE COMMISSION.

(a) Securities Exchange Act of 1934.—Section
78x) is amended—

(1) in subsection (d), by striking “subsection (e)” and inserting “subsection (f)”;

(2) by redesignating subsection (e) as subsection (f); and

(3) by inserting after subsection (d) the following:

“(e) Records Obtained from Registered Persons.—

“(1) In general.—Except as provided in subsection (f), the Commission shall not be compelled to
disclose records or information obtained pursuant to
section 17(b), or records or information based upon
or derived from such records or information, if such
records or information have been obtained by the
Commission for use in furtherance of the purposes
of this title, including surveillance, risk assessments,
or other regulatory and oversight activities.
“(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 17 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.”.

(b) INVESTMENT COMPANY ACT OF 1940.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended—

(1) by striking subsection (c) and inserting the following:

“(c) LIMITATIONS ON DISCLOSURE BY COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for inform-
tion from any other Federal department or agency request-questing the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.”;

(2) by striking subsection (d); and

(3) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(e) INVESTMENT ADVISERS ACT OF 1940.—Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by adding at the end the following:

“(d) LIMITATIONS ON DISCLOSURE BY THE COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in further-
ance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.”.

SEC. 929J. EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED.

Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by striking subsection (b) and inserting the following:

“(b) PRODUCTION OF DOCUMENTS.—
“(1) Production by Foreign Firms.—If a foreign public accounting firm issues an audit report, performs audit work, conducts interim reviews, or performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, the foreign public accounting firm shall—

“(A) produce its audit work papers and all other documents related to any such audit work or interim review to the Commission or the Board; and

“(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

“(2) Other Production.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

“(A) produce the audit work papers of the foreign public accounting firm and all other documents related to any such work in response to a request for production by the Commission or the Board; and
“(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the registered public accounting firm on the work of that foreign public accounting firm.”;

(2) by redesignating subsection (d) as subsection (g); and

(3) by inserting after subsection (c) the following:

“(d) SERVICE OF REQUESTS OR PROCESS.—

“(1) IN GENERAL.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section.

“(2) SPECIFIC AUDIT WORK.—Any foreign public accounting firm that issues an audit report, performs audit work, performs interim reviews, or performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, shall designate to the Commission
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or the Board an agent in the United States upon

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whom may be served any process, pleading, or other

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papers in any action brought to enforce this section

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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 viola9 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 sec15 tion through alternate means, such as through foreign
16 counterparts of the Commission or the Board.’’.
17
18
19

SEC. 929K. SHARING PRIVILEGED INFORMATION WITH
OTHER AUTHORITIES.

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)’’;


(2) in subsection (e), as added by subsection (d)(1)(C), by striking “subsection (f)” and inserting “subsection (g)”;

(3) by redesignating subsection (f) as subsection (g); and

(4) by inserting after subsection (e) the following:

“(f) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—

“(1) PRIVILEGED INFORMATION PROVIDED BY THE COMMISSION.—The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

“(A) any agency (as defined in section 6 of title 18, United States Code);

“(B) the Public Company Accounting Oversight Board;

“(C) any self-regulatory organization;

“(D) any foreign securities authority;

“(E) any foreign law enforcement authority; or

“(F) any State securities or law enforcement authority.
“(2) Nondisclosure of privileged information provided to the Commission.—The Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

“(3) Nonwaiver of privileged information provided to the Commission.—

“(A) In general.—Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

“(B) Exception.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.
“(4) DEFINITIONS.—For purposes of this sub-
section—

“(A) the term ‘privilege’ includes any
work-product privilege, attorney-client privilege,
governmental privilege, or other privilege recog-
nized under Federal, State, or foreign law;

“(B) the term ‘foreign law enforcement au-
thority’ means any foreign authority that is em-
powered under foreign law to detect, investigate
or prosecute potential violations of law; and

“(C) the term ‘State securities or law en-
forcement authority’ means the authority of any
State or territory that is empowered under
State or territory law to detect, investigate, or
prosecute potential violations of law.”.

SEC. 929L. ENHANCED APPLICATION OF ANTIFRAUD PRO-
VISIONS.

et seq.) is amended—

(1) in section 9—

(A) by striking “registered on a national
securities exchange” each place that term ap-
pears and inserting “other than a government
security”;
(B) in subsection (b), by striking “by use of any facility of a national securities exchange,”; and

(C) in subsection (c), by inserting after “unlawful for any” the following: “broker, dealer, or”;

(2) in section 10(a)(1), by striking “registered on a national securities exchange” and inserting “other than a government security”; and

(3) in section 15(c)(1)(A), by striking “otherwise than on a national securities exchange of which it is a member”.

SEC. 929M. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT AND THE INVESTMENT COMPANY ACT.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(1) by striking “Every person who” and inserting “(a) CONTROLLING PERSONS.—Every person who”; and

(2) by adding at the end the following:

“(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subparagraph (b) or (d) of sec—
tion 20, any person that knowingly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.”.

(b) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a–48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

“(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.”.

SEC. 929N. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF THE INVESTMENT ADVISERS ACT.

Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9) is amended by inserting at the end the following new subsection:
“(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.”

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

SEC. 931. FINDINGS.

Congress finds the following:

(1) Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.

(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a
critical “gatekeeper” role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

(3) Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial “gatekeepers” do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.

(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions
and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.

SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND TRANSPARENCY OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.


(1) in subsection (e)—

(A) in paragraph (2)—

(i) in the second sentence, by inserting “any other provision of this section, or” after “Notwithstanding”; and

(ii) by inserting after the period at the end the following: “Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws.”; and

(B) by adding at the end the following:
“(3) INTERNAL CONTROLS OVER PROCESSES
FOR DETERMINING CREDIT RATINGS.—

“(A) IN GENERAL.—Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

“(B) ATTESTATION REQUIREMENT.—The Commission shall prescribe rules requiring each nationally recognized statistical rating organization to submit to the Commission an annual internal controls report, which shall contain—

“(i) a description of the responsibility of the management of the nationally recognized statistical rating organization in establishing and maintaining an effective internal control structure under subparagraph (A);

“(ii) an assessment of the effectiveness of the internal control structure of the
nationally recognized statistical rating organization; and

“(iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.”;

(2) in subsection (d)—

(A) by inserting after “or revoke the registration of any nationally recognized statistical rating organization” the following: “, or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization,”;

(B) by inserting “bar” after “placing of limitations, suspension,”;

(C) in paragraph (2), by redesignating subparagraphs (A) and (B) as clauses (i) and
(ii), respectively, and adjusting the clause margins accordingly;

(D) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and adjusting the subparagraph margins accordingly;

(E) in the matter preceding subparagraph (A), as so redesignated, by striking “The Commission” and inserting the following:

“(1) IN GENERAL.—The Commission”;

(F) in subparagraph (D), as so redesignated, by striking “or” at the end;

(G) in subparagraph (E), as so redesignated, by striking the period at the end and inserting a semicolon; and

(H) by adding at the end the following:

“(F) has failed reasonably to supervise, with a view to preventing a violation of the securities laws, an individual who commits such a violation, if the individual is subject to the supervision of that person.

“(2) SUSPENSION OR REVOCATION FOR PARTICULAR CLASS OF SECURITIES.—

“(A) IN GENERAL.—The Commission may temporarily suspend or permanently revoke the
registration of a nationally recognized statistical  
 rating organization with respect to a particular  
 class or subclass of securities, if the Commis-  
 sion finds, on the record after notice and oppor-  
tunity for hearing, that the nationally recog-  
nized statistical rating organization does not  
have adequate financial and managerial re-  
sources to consistently produce credit ratings  
with integrity.  

“(B) CONSIDERATIONS.—In making any  
determination under subparagraph (A), the  
Commission shall consider—  

“(i) whether the nationally recognized  
statistical rating organization has failed  
over a sustained period of time, as deter-  
mined by the Commission, to produce rat-  
ings that are accurate for that class or  
subclass of securities; and  

“(ii) such other factors as the Com-  
mmission may determine.”;

(3) in subsection (h), by adding at the end the  
following:

“(3) SEPARATION OF RATINGS FROM SALES  
AND MARKETING.—
“(A) RULES REQUIRED.—The Commission shall issue rules to prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing the production of ratings by the nationally recognized statistical rating organization.

“(B) CONTENTS OF RULES.—The rules issued under subparagraph (A) shall provide for—

“(i) exceptions for small nationally recognized statistical rating organizations with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate; and

“(ii) suspension or revocation of the registration of a nationally recognized statistical rating organization, if the Commission finds, on the record, after notice and opportunity for a hearing, that—

“(I) the nationally recognized statistical rating organization has committed a violation of a rule issued under this subsection; and
“(II) the violation of a rule issued under this subsection affected a rating.”;

(4) in subsection (j)—

(A) by striking “Each” and inserting the following:

“(1) IN GENERAL.—Each”; and

(B) by adding at the end the following:

“(2) LIMITATIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an individual designated under paragraph (1) may not, while serving in the designated capacity—

“(i) perform credit ratings;

“(ii) participate in the development of ratings methodologies or models;

“(iii) perform marketing or sales functions; or

“(iv) participate in establishing compensation levels, other than for employees working for that individual.

“(B) EXCEPTION.—The Commission may exempt a small nationally recognized statistical rating organization from the limitations under this paragraph, if the Commission finds that
compliance with such limitations would impose an unreasonable burden on the nationally recognized statistical rating organization.

“(3) OTHER DUTIES.—Each individual designated under paragraph (1) shall establish procedures for the receipt, retention, and treatment of—

“(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures developed under this section; and

“(B) confidential, anonymous complaints by employees or users of credit ratings.

“(4) ANNUAL REPORTS REQUIRED.—

“(A) ANNUAL REPORTS REQUIRED.—Each individual designated under paragraph (1) shall submit to the nationally recognized statistical rating organization an annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization that includes—

“(i) a description of any material changes to the code of ethics and conflict
of interest policies of the nationally recognized statistical rating organization; and

“(ii) a certification that the report is accurate and complete.

“(B) Submission of reports to the Commission.—Each nationally recognized statistical rating organization shall file the reports required under subparagraph (A) together with the financial report that is required to be submitted to the Commission under this section.”;

and

(5) by striking subsection (p) and inserting the following:

“(p) Regulation of Nationally Recognized Statistical Rating Organizations.—

“(1) Establishment of office of credit ratings.—

“(A) Office established.—The Commission shall establish within the Commission an Office of Credit Ratings (referred to in this subsection as the ‘Office’) to administer the rules of the Commission—

“(i) with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the
protection of users of credit ratings and in
the public interest;

“(ii) to promote accuracy in credit
ratings issued by nationally recognized sta-
tistical rating organizations; and

“(iii) to ensure that such ratings are
not unduly influenced by conflicts of inter-
est.

“(B) DIRECTOR OF THE OFFICE.—The
head of the Office shall be the Director, who
shall report to the Chairman.

“(2) STAFFING.—The Office established under
this subsection shall be staffed sufficiently to carry
out fully the requirements of this section. The staff
shall include persons with knowledge of and exper-
tise in corporate, municipal, and structured debt fi-
nance.

“(3) COMMISSION EXAMINATIONS.—

“(A) ANNUAL EXAMINATIONS RE-
QUIRED.—The Office shall conduct an examina-
tion of each nationally recognized statistical
rating organization at least annually.

“(B) CONDUCT OF EXAMINATIONS.—Each
examination under subparagraph (A) shall in-
clude a review of—
“(i) whether the nationally recognized statistical rating organization conducts business in accordance with the policies, procedures, and rating methodologies of the nationally recognized statistical rating organization;

“(ii) the management of conflicts of interest by the nationally recognized statistical rating organization;

“(iii) implementation of ethics policies by the nationally recognized statistical rating organization;

“(iv) the internal supervisory controls of the nationally recognized statistical rating organization;

“(v) the governance of the nationally recognized statistical rating organization;

“(vi) the activities of the individual designated by the nationally recognized statistical rating organization under subsection (j)(1);

“(vii) the processing of complaints by the nationally recognized statistical rating organization; and
“(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization.

“(C) Inspection reports.—The Commission shall make available to the public, in an easily understandable format, an annual report summarizing—

“(i) the essential findings of all examinations conducted under subparagraph (A), as deemed appropriate by the Commission;

“(ii) the responses by the nationally recognized statistical rating organizations to any material regulatory deficiencies identified by the Commission under clause (i); and

“(iii) whether the nationally recognized statistical rating organizations have appropriately addressed the recommendations of the Commission contained in previous reports under this subparagraph.

“(4) Rulemaking authority.—The Commission shall—
“(A) establish, by rule, fines, and other penalties applicable to any nationally recognized statistical rating organization that violates the requirements of this subsection and the rules thereunder; and

“(B) issue such rules as may be necessary to carry out this subsection.

“(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

“(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each nationally recognized statistical rating organization publicly disclose information on the initial credit ratings determined by the nationally recognized statistical rating organization for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different nationally recognized statistical rating organizations.

“(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

“(A) are comparable among nationally recognized statistical rating organizations, to allow
users of credit ratings to compare the performance of credit ratings across nationally recognized statistical rating organizations;

“(B) are clear and informative for investors having a wide range of sophistication who use or might use credit ratings;

“(C) include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the nationally recognized statistical rating organization;

“(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website, and in writing, when requested; and

“(E) are appropriate to the business model of a nationally recognized statistical rating organization.

“(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized
statistical rating organizations that require each nationally recognized statistical rating organization—

“(1) to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are—

“(A) approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board, or the senior credit officer of the nationally recognized statistical rating organization; and

“(B) in accordance with the policies and procedures of the nationally recognized statistical rating organization for the development and modification of credit rating procedures and methodologies;

“(2) to ensure that when material changes to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models) are made, that—

“(A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;
“(B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the nationally recognized statistical rating organization within a reasonable time period determined by the Commission, by rule; and

“(C) the nationally recognized statistical rating organization publicly discloses the reason for the change; and

“(3) to notify users of credit ratings—

“(A) of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating;

“(B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;

“(C) when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; and

“(D) of the likelihood of a material change described in subparagraph (B) resulting in a change in current credit ratings.
“(s) Transparency of Credit Rating Methodologies and Information Reviewed.—

“(1) Form for Disclosures.—The Commission shall require, by rule, each nationally recognized statistical rating organization to prescribe a form to accompany the publication of each credit rating that discloses—

“(A) information relating to—

“(i) the assumptions underlying the credit rating procedures and methodologies;

“(ii) the data that was relied on to determine the credit rating; and

“(iii) if applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

“(B) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the nationally recognized statistical rating organization.

“(2) Format.—The form developed under paragraph (1) shall—

""
“(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report;

“(B) require the nationally recognized statistical rating organization to provide the content described in paragraph (3)(B) in a manner that is directly comparable across types of securities; and

“(C) be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.

“(3) CONTENT OF FORM.—

“(A) QUALITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under paragraph (1)—

“(i) the credit ratings produced by the nationally recognized statistical rating organization;

“(ii) the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults
across underlying assets used in rating
structured products;

“(iii) the potential limitations of the
credit ratings, and the types of risks ex-
cluded from the credit ratings that the na-
tionally recognized statistical rating orga-
nization does not comment on, including li-
quidity, market, and other risks;

“(iv) information on the uncertainty
of the credit rating, including—

“(I) information on the reli-
ability, accuracy, and quality of the
data relied on in determining the
credit rating; and

“(II) a statement relating to the
extent to which data essential to the
determination of the credit rating
were reliable or limited, including—

“(aa) any limits on the
scope of historical data; and

“(bb) any limits in accessi-
bility to certain documents or
other types of information that
would have better informed the
credit rating;
“(v) whether and to what extent third party due diligence services have been used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

“(vi) a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

“(vii) a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar issuances;

“(viii) information relating to conflicts of interest of the nationally recognized statistical rating organization; and
“(ix) such additional information as
the Commission may require.

“(B) QUANTITATIVE CONTENT.—Each na-
tionally recognized statistical rating organiza-
tion shall disclose on the form developed under
this subsection—

“(i) an explanation or measure of the
potential volatility of the credit rating, in-
cluding—

“(I) any factors that might lead
to a change in the credit ratings; and

“(II) the magnitude of the
change that a user can expect under
different market conditions;

“(ii) information on the content of the
rating, including—

“(I) the historical performance of
the rating; and

“(II) the expected probability of
default and the expected loss in the
event of default;

“(iii) information on the sensitivity of
the rating to assumptions made by the na-
tionally recognized statistical rating orga-
nization, including—
“(I) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and

“(II) an analysis, using specific examples, of how each of the 5 assumptions identified under subclause (I) impacts a rating;

“(iv) such additional information as may be required by the Commission.

“(4) DUE DILIGENCE SERVICES FOR ASSET-BACKED SECURITIES.—

“(A) FINDINGS.—The issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

“(B) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization, an issuer, or an underwriter, the person providing the due diligence services shall provide to any nationally
recognized statistical rating organization that
produces a rating to which such services relate,
written certification, as provided in subpara-
graph (C).

“(C) FORMAT AND CONTENT.—The Com-
mission shall establish the appropriate format
and content for the written certifications re-
quired under subparagraph (B), to ensure that
providers of due diligence services have con-
ducted a thorough review of data, documenta-
tion, and other relevant information necessary
for a nationally recognized statistical rating or-
ganization to provide an accurate rating.

“(D) DISCLOSURE OF CERTIFICATION.—
The Commission shall adopt rules requiring a
nationally recognized statistical rating organiza-
tion, at the time at which the nationally recog-
nized statistical rating organization produces a
rating, to disclose the certification described in
subparagraph (B) to the public in a manner
that allows the public to determine the ade-
quacy and level of due diligence services pro-
vided by a third party.

“(t) CORPORATE GOVERNANCE, ORGANIZATION, AND
MANAGEMENT OF CONFLICTS OF INTEREST.—
"(1) BOARD OF DIRECTORS.—Each nationally recognized statistical rating organization shall have a board of directors.

"(2) INDEPENDENT DIRECTORS.—

"(A) IN GENERAL.—At least 1⁄2 of the board of directors, but not fewer than 2 of the members thereof, shall be independent of the nationally recognized statistical rating agency. A portion of the independent directors shall include users of ratings from a nationally recognized statistical rating organization.

"(B) INDEPENDENCE DETERMINATION.—

In order to be considered independent for purposes of this subsection, a member of the board of directors of a nationally recognized statistical rating organization—

"(i) may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

"(I) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

"(II) be a person associated with the nationally recognized statistical
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rating organization or with any affiliated company thereof; and

“(ii) shall be disqualified from any deliberation involving a specific rating in which the independent board member has a financial interest in the outcome of the rating.

“(C) COMPENSATION AND TERM.—The compensation of the independent members of the board of directors of a nationally recognized statistical rating organization shall not be linked to the business performance of the nationally recognized statistical rating organization, and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period, not to exceed 5 years, and shall not be renewable.

“(3) DUTIES OF BOARD OF DIRECTORS.—In addition to the overall responsibilities of the board of directors, the board shall oversee—

“(A) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;
“(B) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

“(C) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

“(D) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

“(4) Treatment of NRSRO Subsidiaries.—If a nationally recognized statistical rating organization is a subsidiary of a parent entity, the board of the directors of the parent entity may satisfy the requirements of this subsection by assigning to a committee of such board of directors the duties under paragraph (3), if—

“(A) at least ½ of the members of the committee (including the chairperson of the committee) are independent, as defined in this section; and

“(B) at least 1 member of the committee is a user of ratings from a nationally recognized statistical rating organization.
“(5) Exception Authority.—If the Commission finds that compliance with the provisions of this subsection present an unreasonable burden on a small nationally recognized statistical rating organization, the Commission may permit the nationally recognized statistical rating organization to delegate such responsibilities to a committee that includes at least one individual who is a user of ratings of a nationally recognized statistical rating organization.”.

SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.

(a) Accountability.—Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) is amended to read as follows:

“(m) Accountability.—

“(1) In General.—The enforcement and penalty provisions of this title shall apply to statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities laws, and such statements shall not be deemed forward-looking statements for the purposes of section 21E.

“(2) Rulemaking.—The Commission shall issue such rules as may be necessary to carry out this subsection.”.

(1) by striking “In any” and inserting the following:

“(A) IN GENERAL.—Except as provided in subparagraph (B), in any”;

(2) by adding at the end the following:

“(B) EXCEPTION.—In the case of an action for money damages brought against a credit rating agency or a controlling person under this title, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed—

“(i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or

“(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other
sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.”.

SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR REGULATORY AUTHORITIES.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

“(u) Duty To Report Tips Alleging Material Violations of Law.—

“(1) Duty to report.—Each nationally recognized statistical rating organization shall refer to the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives from a third party and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a material violation of law that has not been adjudicated by a Federal or State court.

“(2) Rule of construction.—Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to
verify the accuracy of the information described in paragraph (1).”.

SEC. 935. CONSIDERATION OF INFORMATION FROM SOURCES OTHER THAN THE ISSUER IN RAT-ING DECISIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-
ed by adding at the end the following:

“(v) INFORMATION FROM SOURCES OTHER THAN THE ISSUER.—In producing a credit rating, a nationally recognized statistical rating organization shall consider in-
formation about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer or underwriter, that the na-
tionally recognized statistical rating organization finds credible and potentially significant to a rating decision.”.

SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RAT-ING ANALYSTS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules that are rea-
sonably designed to ensure that any person employed by a nationally recognized statistical rating organization to perform credit ratings—

(1) meets standards of training, experience, and competence necessary to produce accurate ratings
for the categories of issuers whose securities the person rates; and

(2) is tested for knowledge of the credit rating process.

SEC. 937. TIMING OF REGULATIONS.

Unless otherwise specifically provided in this subtitle, the Commission shall issue final regulations, as required by this subtitle and the amendments made by this subtitle, not later than 1 year after the date of enactment of this Act.

SEC. 938. UNIVERSAL RATINGS SYMBOLS.

(a) RULEMAKING.—The Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures that—

(1) assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;

(2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and
(3) apply any symbol described in paragraph
(2) in a manner that is consistent for all types of
securities and money market instruments for which
the symbol is used.

(b) Rule of Construction.—Nothing in this sec-
tion shall prohibit a nationally recognized statistical rating
organization from using distinct sets of symbols to denote
credit ratings for different types of securities or money
market instruments.

SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CRED-
IT RATINGS.

(a) Federal Deposit Insurance Act.—The Fed-
eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is
amended—

(1) in section 7(b)(1)(E)(i), by striking “credit
rating entities, and other private economic” and in-
sert “private economic, credit,”;

(2) in section 28(d)—

(A) in the subsection heading, by striking
“Not of Investment Grade”;

(B) in paragraph (1), by striking “not of
investment grade” and inserting “that does not
meet standards of credit-worthiness as estab-
lished by the Corporation”;
(C) in paragraph (2), by striking “not of investment grade”; 

(D) by striking paragraph (3);

(E) by redesignating paragraph (4) as paragraph (3); and

(F) in paragraph (3), as so redesignated—

   (i) by striking subparagraph (A);

   (ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

   (iii) in subparagraph (B), as so redesignated, by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”; and

(3) in section 28(e)—

   (A) in the subsection heading, by striking “NOT OF INVESTMENT GRADE”; 

   (B) in paragraph (1), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”; and

   (C) in paragraphs (2) and (3), by striking “not of investment grade” each place that it appears and inserting “that does not meet stand-
(b) Federal Housing Enterprises Financial Safety and Soundness Act of 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended by striking “that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,”.

(c) Investment Company Act of 1940.—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)) is amended by striking “is rated investment grade by not less than 1 nationally recognized statistical rating organization” and inserting “meets such standards of credit-worthiness as the Commission shall adopt”.

(d) Revised Statutes.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking “any applicable rating” and inserting “standards of credit-worthiness established by the Comptroller of the Currency”;
(2) in the heading for subsection (a)(3) by striking “Rating or Comparable Requirement” and inserting “Requirement”;

(3) subsection (a)(3), by amending subparagraph (A) to read as follows:

“(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.”.

(4) in the heading for subsection (f), by striking “Maintain Public Rating or” and inserting “Meet Standards of Credit-worthiness”; and

(5) in subsection (f)(1), by striking “any applicable rating” and inserting “standards of credit-worthiness established by the Comptroller of the Currency”.


(1) in paragraph (41), by striking “is rated in one of the two highest rating categories by at least
(2) in paragraph (53)(A), by striking “is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization” and inserting “meets standards of credit-worthiness as established by the Commission”.

(f) World Bank Discussions.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking “credit rating” and inserting “credit-worthiness”.

(g) Effective Date.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

(h) Study and Report.—

(1) In General.—Commission shall undertake a study on the feasibility and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;
(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report containing the findings of the study under paragraph (1) and the recommendations, if any, of the Commission with respect to the study.

SEC. 939A. SECURITIES AND EXCHANGE COMMISSION

STUDY ON STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.

(a) Study.—The Commission shall conduct a study of—

(1) the independence of nationally recognized statistical rating organizations; and
(2) how the independence of nationally recognized statistical rating organizations affects the ratings issued by the nationally recognized statistical rating organizations.

(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Commission shall evaluate—

(1) the management of conflicts of interest raised by a nationally recognized statistical rating organization providing other services, including risk management advisory services, ancillary assistance, or consulting services;

(2) the potential impact of rules prohibiting a nationally recognized statistical rating organization that provides a rating to an issuer from providing other services to the issuer; and

(3) any other issue relating to nationally recognized statistical rating organizations, as the Chairman of the Commission determines is appropriate.

(c) REPORT.—Not later than 3 years after the date of enactment of this Act, the Chairman of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a),
including recommendations, if any, for improving the integrity of ratings issued by nationally recognized statistical rating organizations.

SEC. 939B. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process.
SEC. 939C. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE CREATION OF AN INDEPENDENT PROFESSIONAL ANALYST ORGANIZATION.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the feasibility and merits of creating an independent professional organization for rating analysts employed by nationally recognized statistical rating organizations that would be responsible for—

(1) establishing independent standards for governing the profession of rating analysts;

(2) establishing a code of ethical conduct; and

(3) overseeing the profession of rating analysts.

(b) REPORT.—Not later than 1 year after the date of publication of the rules issued by the Commission pursuant to section 936, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a).

SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this Act, is amended by adding at the end the following:

“(w) INITIAL CREDIT RATING ASSIGNMENTS.—

“(1) DEFINITIONS.—In this subsection the following definitions shall apply:
“(A) BOARD.—The term ‘Board’ means the Credit Rating Agency Board established under paragraph (2).

“(B) QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term ‘qualified nationally recognized statistical rating organization’, with respect to a category of structured finance products, means a nationally recognized statistical rating organization that the Board determines, under paragraph (3)(B), to be qualified to issue initial credit ratings with respect to such category.

“(C) REGULATIONS.—

“(i) CATEGORY OF STRUCTURED FINANCE PRODUCTS.—

“(I) IN GENERAL.—The term ‘category of structured finance products’—

“(aa) shall include any asset backed security and any structured product based on an asset-backed security; and

“(bb) shall be further defined and expanded by the Commission, by rule, as necessary.
“(II) CONSIDERATIONS.—In issuing the regulations required under subclause (I), the Commission shall consider—

“(aa) the types of issuers that issue structured finance products;

“(bb) the types of investors who purchase structured finance products;

“(cc) the different categories of structured finance products according to—

“(AA) the types of capital flow and legal structure used;

“(BB) the types of underlying products used; and

“(CC) the types of terms used in debt securities;

“(dd) the different values of debt securities; and
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“(ee) the different numbers
of units of debt securities that
are issued together.

“(ii) REASONABLE FEE.—The Board
shall issue regulations to define the term
‘reasonable fee’.

“(2) CREDIT RATING AGENCY BOARD.—

“(A) IN GENERAL.—Not later than 180
days after the date of enactment of the Restor-
ing American Financial Stability Act of 2010,
the Commission shall—

“(i) establish the Credit Rating Agen-
cy Board, which shall be a self-regulatory
organization;

“(ii) subject to subparagraph (C), se-
lect the initial members of the Board; and

“(iii) establish a schedule to ensure
that the Board begins assigning qualified
nationally recognized statistical rating or-
ganizations to provide initial ratings not
later than 1 year after the selection of the
members of the Board.

“(B) SCHEDULE.—The schedule estab-
lished under subparagraph (A)(iii) shall pre-
scribe when—
“(i) the Board will conduct a study of the securitization and ratings process and provide recommendations to the Commission;

“(ii) the Commission will issue rules and regulations under this section;

“(iii) the Board may issue rules under this subsection; and

“(iv) the Board will—

“(I) begin accepting applications to select qualified national recognized statistical rating organizations; and

“(II) begin assigning qualified national recognized statistical rating organizations to provide initial ratings.

“(C) MEMBERSHIP.—

“(i) IN GENERAL.—The Board shall initially be composed of an odd number of members selected from the industry, with the total numerical membership of the Board to be determined by the Commission.
“(ii) Specifications.—Of the members initially selected to serve on the Board—

“(I) not less than a majority of the members shall be representatives of the investor industry who do not represent issuers;

“(II) not less than 1 member should be a representative of the issuer industry;

“(III) not less than 1 member should be a representative of the credit rating agency industry; and

“(IV) not less than 1 member should be an independent member.

“(iii) Terms.—Initial members shall be appointed by the Commission for a term of 4 years.

“(iv) Nomination and Election of Members.—

“(I) In general.—Prior to the expiration of the terms of office of the initial members, the Commission shall establish fair procedures for the nomi-
nation and election of future members of the Board.

"(II) Modifications of the Board.—Prior to the expiration of the terms of office of the initial members, the Commission—

"(aa) may increase the size of the board to a larger odd number and adjust the length of future terms; and

"(bb) shall retain the composition of members described in clause (ii).

"(v) Responsibilities of Members.—Members shall perform, at a minimum, the duties described in this subsection.

"(vi) Rulemaking Authority.—The Commission shall, if it determines necessary and appropriate, issue further rules and regulations on the composition of the membership of the Board and the responsibilities of the members.

"(D) Other Authorities of the Board.—The Board shall have the authority to
levy fees from qualified nationally recognized statistical rating organization applicants, and periodically from qualified nationally recognized statistical rating organizations as necessary to fund expenses of the Board.

“(E) REGULATION.—The Commission has the authority to regulate the activities of the Board, and issue any further regulations of the Board it deems necessary, not in contravention with the intent of this section.

“(3) BOARD SELECTION OF QUALIFIED NATIONALY RECOGNIZED STATISTICAL RATING ORGANIZATION.—

“(A) APPLICATION.—

“(i) IN GENERAL.—A nationally recognized statistical rating organization may submit an application to the Board, in such form and manner as the Board may require, to become a qualified nationally recognized statistical rating organization with respect to a category of structured finance products.

“(ii) CONTENTS.—An application submitted under clause (i) shall contain—
“(I) information regarding the institutional and technical capacity of the nationally recognized statistical rating organization to issue credit ratings;

“(II) information on whether the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section; and

“(III) any additional information the Board may require.

“(iii) REJECTION OF APPLICATIONS.—The Board may reject an application submitted under this paragraph if the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section.

“(B) SELECTION.—The Board shall select qualified national recognized statistical rating organizations with respect to each category of structured finance products from among nationally recognized statistical rating organizations
that submit applications under subparagraph (A).

“(C) RETENTION OF STATUS AND OBLIGATIONS AFTER SELECTION.—An entity selected as a qualified nationally recognized statistical rating organization shall retain its status and obligations under the law as a nationally recognized statistical rating organization, and nothing in this subsection grants authority to the Commission or the Board to exempt qualified nationally recognized statistical rating organizations from obligations or requirements otherwise imposed by Federal law on nationally recognized statistical rating organizations.

“(4) REQUESTING AN INITIAL CREDIT RATING.—An issuer that seeks an initial credit rating for a structured finance product—

“(A) may not request an initial credit rating from a nationally recognized statistical rating organization; and

“(B) shall submit a request for an initial credit rating to the Board, in such form and manner as the Board may prescribe.

“(5) ASSIGNMENT OF RATING DUTIES.—
“(A) IN GENERAL.—For each request received by the Board under paragraph (4)(B), the Board shall select a qualified nationally recognized statistical rating organization to provide the initial credit rating to the issuer.

“(B) METHOD OF SELECTION.—

“(i) IN GENERAL.—The Board shall—

“(I) evaluate a number of selection methods, including a lottery or rotating assignment system, incorporating the factors described in clause (ii), to reduce the conflicts of interest that exist under the issuer-pays model; and

“(II) prescribe and publish the selection method to be used under subparagraph (A).

“(ii) CONSIDERATION.—In evaluating a selection method described in clause (i)(I), the Board shall consider—

“(I) the information submitted by the qualified nationally recognized statistical rating organization under paragraph (3)(A)(ii) regarding the institutional and technical capacity of
the qualified nationally recognized statistical rating organization to issue credit ratings;

“(II) evaluations conducted under paragraph (7);

“(III) formal feedback from institutional investors; and

“(IV) information from sub-clauses (I) and (II) to implement a mechanism which increases or decreases assignments based on past performance.

“(iii) PROHIBITION.—The Board, in choosing a selection method, may not use a method that would allow for the solicitation or consideration of the preferred national recognized statistical rating organizations of the issuer.

“(iv) ADJUSTMENT OF PROCESS.— The Board shall issue rules describing the process by which it can modify the assignment process described in clause (i).

“(C) RIGHT OF REFUSAL.—

“(i) REFUSAL.—A qualified nationally recognized statistical rating organization
selected under subparagraph (A) may refuse to accept a selection for a particular request by—

“(I) notifying the Board of such refusal; and

“(II) submitting to the Board a written explanation of the refusal.

“(ii) Selection.—Upon receipt of a notification under clause (i), the Board shall make an additional selection under subparagraph (A).

“(iii) Inspection reports.—The Board shall annually submit any explanations of refusals received under clause (i)(II) to the Commission, and such explanatory submissions shall be published in the annual inspection reports required under subsection (p)(3)(C).

“(6) Disclaimer required.—Each initial credit rating issued under this subsection shall include, in writing, the following disclaimer: ‘This initial rating has not been evaluated, approved, or certified by the Government of the United States or by a Federal agency.’.

“(7) Evaluation of performance.—
“(A) IN GENERAL.—The Board shall prescribe rules by which the Board will evaluate the performance of each qualified nationally recognized statistical rating organization, including rules that require, at a minimum, an annual evaluation of each qualified nationally recognized statistical rating organization.

“(B) CONSIDERATIONS.—The Board, in conducting an evaluation under subparagraph (A), shall consider—

“(i) the results of the annual examination conducted under subsection (p)(3);

“(ii) surveillance of credit ratings conducted by the qualified nationally recognized statistical rating organization after the credit ratings are issued, including—

“(I) how the rated instruments perform;

“(II) the accuracy of the ratings provided by the qualified nationally recognized statistical rating organization as compared to the other nationally recognized statistical rating organizations; and
“(III) the effectiveness of the methodologies used by the qualified nationally recognized statistical rating organization; and

“(iii) any additional factors the Board determines to be relevant.

“(C) Request for reevaluation.—Subject to rules prescribed by the Board, and not less frequently than once a year, a qualified nationally recognized statistical rating organization may request that the Board conduct an evaluation under this paragraph.

“(D) Disclosure.—The Board shall make the evaluations conducted under this paragraph available to Congress.

“(8) Rating fees charged to issuers.—

“(A) Limited to reasonable fees.—A qualified nationally recognized statistical rating organization shall charge an issuer a reasonable fee, as determined by the Commission, for an initial credit rating provided under this section.

“(B) Fees.—Fees may be determined by the qualified national recognized statistical rating organizations unless the Board determines it is necessary to issue rules on fees.
“(9) No prohibition on additional ratings.—Nothing in this section shall prohibit an issuer from requesting or receiving additional credit ratings with respect to a debt security, if the initial credit rating is provided in accordance with this section.

“(10) No prohibition on independent ratings offered by nationally recognized statistical rating organizations.—

“(A) In general.—Nothing in this section shall prohibit a nationally recognized statistical rating organization from independently providing a credit rating with respect to a debt security, if—

“(i) the nationally recognized statistical rating organization does not enter into a contract with the issuer of the debt security to provide the initial credit rating; and

“(ii) the nationally recognized statistical rating organization is not paid by the issuer of the debt security to provide the initial credit rating.

“(B) Rule of construction.—For purposes of this section, a credit rating described
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in subparagraph (A) may not be construed to
be an initial credit rating.

“(11) Public Communications.—Any commu-
nications made with the public by an issuer with re-
spect to the credit rating of a debt security shall
clearly specify whether the credit rating was made
by—

“(A) a qualified nationally recognized sta-
tistical rating organization selected under para-
graph (5)(A) to provide the initial credit rating
for such debt security; or

“(B) a nationally recognized statistical rat-
ing organization not selected under paragraph
(5)(A).

“(12) Prohibition on Misrepresentation.—With respect to a debt security, it shall be
unlawful for any person to misrepresent any subse-
quent credit rating provided for such debt security
as an initial credit rating provided for such debt se-
curity by a qualified nationally recognized statistical
rating organization selected under paragraph (5)(A).

“(13) Initial Credit Rating Revision After
Material Change in Circumstance.—If the
Board determines that it is necessary or appropriate
in the public interest or for the protection of inves-
tors, the Board may issue regulations requiring that an issuer that has received an initial credit rating under this subsection request a revised initial credit rating, using the same method as provided under paragraph (4), each time the issuer experiences a material change in circumstances, as defined by the Board.

“(14) Conflicts.—

“(A) Members or employees of the Board.—

“(i) Loan of money or securities prohibited.—

“(I) In general.—A member or employee of the Board shall not accept any loan of money or securities, or anything above nominal value, from any nationally recognized statistical rating organization, issuer, or investor.

“(II) Exception.—The prohibition in subclause (I) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly
motivated by a personal or family relationship.

“(ii) Employment negotiations prohibition.—A member or employee of the Board shall not engage in employment negotiations with any nationally recognized statistical rating organization, issuer, or investor, unless the member or employee—

“(I) discloses the negotiations immediately upon initiation of the negotiations; and

“(II) recuses himself from all proceedings concerning the entity involved in the negotiations until termination of negotiations or until termination of his employment by the Board, if an offer of employment is accepted.

“(B) Credit analysts.—

“(i) In general.—A credit analyst of a qualified nationally recognized statistical rating organization shall not accept any loan of money or securities, or anything above nominal value, from any issuer or investor.
“(ii) Exception.—The prohibition described in clause (i) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

“(15) Evaluation of Credit Rating Agency Board.—Not later than 5 years after the date that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings, the Commission shall submit to Congress a report that provides recommendations of—

“(A) the continuation of the Board;

“(B) any modification to the procedures of the Board; and

“(C) modifications to the provisions in this subsection.”.

Subtitle D—Improvements to the Asset-Backed Securitization Process

SEC. 941. REGULATION OF CREDIT RISK RETENTION.

(a) Definition of Asset-Backed Security.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:
‘asset-backed security’—

“(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

“(i) a collateralized mortgage obligation;

“(ii) a collateralized debt obligation;

“(iii) a collateralized bond obligation;

“(iv) a collateralized debt obligation of asset-backed securities;

“(v) a collateralized debt obligation of collateralized debt obligations; and

“(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

“(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the
finance subsidiary are held by an entity that is not controlled by the parent company.”.

(b) CREDIT RISK RETENTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15F, as added by this Act, the following:

“SEC. 15G. CREDIT RISK RETENTION.

“(a) DEFINITIONS.—In this section—

“(1) the term ‘Federal banking agencies’ means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

“(2) the term ‘insured depository institution’ has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

“(3) the term ‘securitizer’ means—

“(A) an issuer of an asset-backed security;

or

“(B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and

“(4) the term ‘originator’ means a person who—
“(A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and

“(B) sells an asset to a securitizer.

“(b) IN GENERAL.—Not later than 270 days after the date of enactment of this section, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

“(c) STANDARDS FOR REGULATIONS.—

“(1) STANDARDS.—The regulations prescribed under subsection (b) shall—

“(A) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset;

“(B) require a securitizer to retain—

“(i) not less than 5 percent of the credit risk for any asset—

“(I) that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance
of an asset-backed security by the
securitizer; or

“(II) that is a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if 1 or more of the assets that collateralize the asset-backed security are not qualified residential mortgages; or

“(ii) less than 5 percent of the credit risk for an asset that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B);

“(C) specify—

“(i) the permissible forms of risk retention for purposes of this section;

“(ii) the minimum duration of the risk retention required under this section; and
“(iii) that a securitizer is not required to retain any part of the credit risk for an asset that is transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer, if all of the assets that collateralize the asset-backed security are qualified residential mortgages;

“(D) apply, regardless of whether the securitizer is an insured depository institution; and

“(E) with respect to a commercial mortgage, specify the permissible types, forms, and amounts of risk retention that would meet the requirements of subparagraph (B), such as—

“(i) retention of a specified amount or percentage of the total credit risk of the asset;

“(ii) retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first-loss position and provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities;

“(iii) a determination by a Federal banking agency or the Commission that
the underwriting standards and controls for the asset are adequate; and

“(iv) provision of adequate representations and warranties and related enforcement mechanisms; and

“(F) provide for—

“(i) a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors;

“(ii) a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, or an agency of the United States, as the Federal banking agencies and the Commission jointly determine appropriate in the public interest and for the protection of investors, except that, for purposes of this clause, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not agencies of the United States;

“(iii) a total or partial exemption for any asset-backed security that is a security issued or guaranteed by any State of the
United States, or by any political subdivision of a State or territory, or by any public instrumentality of a State or territory that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)), or a security defined as a qualified scholarship funding bond in section 150(d)(2) of the Internal Revenue Code of 1986, as may be appropriate in the public interest and for the protection of investors; and

“(iv) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

“(2) ASSET CLASSES.—

“(A) ASSET CLASSES.—The regulations prescribed under subsection (b) shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of as-
sets that the Federal banking agencies and the Commission deem appropriate.

“(B) CONTENTS.—For each asset class established under subparagraph (A), the regulations prescribed under subsection (b) shall include underwriting standards established by the Federal banking agencies that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan.

“(d) ORIGINATORS.—In determining how to allocate risk retention obligations between a securitizer and an originator under subsection (c)(1)(E)(iv), the Federal banking agencies and the Commission shall—

“(1) reduce the percentage of risk retention obligations required of the securitizer by the percentage of risk retention obligations required of the originator; and

“(2) consider—

“(A) whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk;

“(B) whether the form or volume of transactions in securitization markets creates incen-
tives for imprudent origination of the type of loan or asset to be sold to the securitizer; and

“(C) the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

“(e) Exemptions, Exceptions, and Adjustments.—

“(1) IN GENERAL.—The Federal banking agencies and the Commission may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and the prohibition on hedging under subsection (c)(1).

“(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

“(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and
“(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

“(3) FARM CREDIT SYSTEM INSTITUTIONS.—A Farm Credit System institution, including the Federal Agricultural Mortgage Corporation, that is chartered and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), shall be exempt from the risk retention provisions of this subsection.

“(4) EXEMPTION FOR QUALIFIED RESIDENTIAL MORTGAGES.—

“(A) IN GENERAL.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly issue regulations to exempt qualified residential mortgages from the risk retention requirements of this subsection.

“(B) QUALIFIED RESIDENTIAL MORTGAGE.—The Federal banking agencies, the Commission, the Secretary of Housing and
Urban Development, and the Director of the Federal Housing Finance Agency shall jointly define the term ‘qualified residential mortgage’ for purposes of this subsection, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—

“(i) documentation and verification of the financial resources relied upon to qualify the mortgagor;

“(ii) standards with respect to—

“(I) the residual income of the mortgagor after all monthly obligations;

“(II) the ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;

“(III) the ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;

“(iii) mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;
“(iv) mortgage guarantee insurance obtained at the time of origination for loans with combined loan-to-value ratios of greater than 80 percent; and

“(v) prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other features that have been demonstrated to exhibit a higher risk of borrower default.

“(5) Condition for Qualified Residential Mortgage Exemption.—The regulations issued under paragraph (4) shall provide that an asset-backed security that is collateralized by tranches of other asset-backed securities shall not be exempt from the risk retention requirements of this subsection.

“(6) Certification.—The Commission shall require an issuer to certify, for each issuance of an asset-backed security collateralized exclusively by qualified residential mortgages, that the issuer has evaluated the effectiveness of the internal supervisory controls of the issuer with respect to the process for ensuring that all assets that collateralize the
asset-backed security are qualified residential mort-
gages.

“(f) ENFORCEMENT.—The regulations issued under
this section shall be enforced by—

“(1) the appropriate Federal banking agency,
with respect to any securitizer that is an insured de-
pository institution; and

“(2) the Commission, with respect to any
securitizer that is not an insured depository institu-
tion.

“(g) AUTHORITY OF COMMISSION.—The authority of
the Commission under this section shall be in addition to
the authority of the Commission to otherwise enforce the
securities laws.

“(h) EFFECTIVE DATE OF REGULATIONS.—The reg-
ulations issued under this section shall become effective—

“(1) with respect to securitizers and originators
of asset-backed securities backed by residential
mortgages, 1 year after the date on which final rules
under this section are published in the Federal Reg-
ister; and

“(2) with respect to securitizers and originators
of all other classes of asset-backed securities, 2 years
after the date on which final rules under this section
are published in the Federal Register.”.
SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-BACKED SECURITIES.


(1) by striking “(d) Each” and inserting the following:

“(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

“(1) IN GENERAL.—Each”;

(2) in the third sentence, by inserting after “securities of each class” the following: “, other than any class of asset-backed securities,”; and

(3) by adding at the end the following:

“(2) ASSET-BACKED SECURITIES.—

“(A) SUSPENSION OF DUTY TO FILE.—The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(B) CLASSIFICATION OF ISSUERS.—The Commission may, for purposes of this subsection, classify issuers and prescribe require-
ments appropriate for each class of issuers of asset-backed securities.”.

(b) Securities Act of 1933.—Section 7 of the Securities Act of 1933 (15 U.S.C. 77g) is amended by adding at the end the following:

“(c) Disclosure Requirements.—

“(1) In general.—The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

“(2) Content of regulations.—In adopting regulations under this subsection, the Commission shall—

“(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

“(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including—
“(i) data having unique identifiers relating to loan brokers or originators;
“(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and
“(iii) the amount of risk retention by the originator and the securitizer of such assets.”.

SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(77) of the Securities Exchange Act of 1934, as added by this subtitle) that—

(1) require each national recognized statistical rating organization to include in any report accompanying a credit rating a description of—

(A) the representations, warranties, and enforcement mechanisms available to investors; and

(B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and
(2) require any securitizer (as that term is defined in section 15G(a) of the Securities Exchange Act of 1934, as added by this subtitle) to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies.

SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.

(a) Exemption Eliminated.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking paragraph (5); and
(2) by striking ``(6) transactions'' and inserting the following:

``(5) transactions''.


SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN ASSET-BACKED SECURITIES ISSUES.

Section 7 of the Securities Act of 1933 (15 U.S.C. 77g), as amended by this subtitle, is amended by adding at the end the following:
“(d) Registration Statement for Asset-Backed Securities.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 3(a)(77) of the Securities Exchange Act of 1934) that require any issuer of an asset-backed security—

“(1) to perform a review of the assets underlying the asset-backed security; and

“(2) to disclose the nature of the review under paragraph (1).”.

Subtitle E—Accountability and Executive Compensation

SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.


“SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

“(a) Separate Resolution Required.—Any proxy or consent or authorization for an annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this
section, for which the proxy solicitation rules of the Commission require compensation disclosure, shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

“(b) Rule of Construction.—The shareholder vote referred to in subsection (a) shall not be binding on the issuer or the board of directors of an issuer, and may not be construed—

“(1) as overruling a decision by such issuer or board of directors;

“(2) to create or imply any change to the fiduciary duties of such issuer or board of directors;

“(3) to create or imply any additional fiduciary duties for such issuer or board of directors; or

“(4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.”.

SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.

The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 10B, as added by section 753, the following:
“SEC. 10C. COMPENSATION COMMITTEES.

“(a) INDEPENDENCE OF COMPENSATION COMMITTEES.—

“(1) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer, other than an issuer that is a controlled company, limited partnership, company in bankruptcy proceedings, open-ended management investment company that is registered under the Investment Company Act of 1940, or a foreign private issuer that provides annual disclosures to shareholders of the reasons that the foreign private issuer does not have an independent compensation committee, that does not comply with the requirements of this subsection.

“(2) INDEPENDENCE OF COMPENSATION COMMITTEES.—The rules of the Commission under paragraph (1) shall require that each member of the compensation committee of the board of directors of an issuer be—

“(A) a member of the board of directors of the issuer; and

“(B) independent.

“(3) INDEPENDENCE.—The rules of the Commission under paragraph (1) shall require that, in
1224 determining the definition of the term ‘independence’ for purposes of paragraph (2), the national securities exchanges and the national securities associations shall consider relevant factors, including—

“(A) the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and

“(B) whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

“(4) EXEMPTION AUTHORITY.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a particular relationship from the requirements of paragraph (2), with respect to the members of a compensation committee, as the national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.
“(b) INDEPENDENCE OF COMPENSATION CONSULTANTS AND OTHER COMPENSATION COMMITTEE ADVISERS.—

“(1) IN GENERAL.—The compensation committee of an issuer may only select a compensation consultant, legal counsel, or other adviser to the compensation committee after taking into consideration the factors identified by the Commission under paragraph (2).

“(2) RULES.—The Commission shall identify factors that affect the independence of a compensation consultant, legal counsel, or other adviser to a compensation committee of an issuer, including—

“(A) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel, or other adviser;

“(B) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel, or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;

“(C) the policies and procedures of the person that employs the compensation consult-
ant, legal counsel, or other adviser that are de-
signed to prevent conflicts of interest;

“(D) any business or personal relationship
of the compensation consultant, legal counsel,
or other adviser with a member of the com-
pensation committee; and

“(E) any stock of the issuer owned by the
compensation consultant, legal counsel, or other
adviser.

“(c) Compensation Committee Authority Re-
lating to Compensation Consultants.—

“(1) Authority to retain compensation
consultant.—

“(A) In general.—The compensation
committee of an issuer, in its capacity as a
committee of the board of directors, may, in its
sole discretion, retain or obtain the advice of a
compensation consultant.

“(B) Direct responsibility of com-
pensation committee.—The compensation
committee of an issuer shall be directly respon-
sible for the appointment, compensation, and
oversight of the work of a compensation con-
sultant.
“(C) RULE OF CONSTRUCTION.—This paragraph may not be construed—

“(i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant; or

“(ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

“(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of this section, each issuer shall disclose in the proxy or consent material, in accordance with regulations of the Commission, whether—

“(A) the compensation committee of the issuer retained or obtained the advice of a compensation consultant; and

“(B) the work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.
“(d) Authority To Engage Independent Legal Counsel and Other Advisers.—

“(1) In general.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain and obtain the advice of independent legal counsel and other advisers.

“(2) Direct responsibility of compensation committee.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers.

“(3) Rule of construction.—This subsection may not be construed—

“(A) to require a compensation committee to implement or act consistently with the advice or recommendations of independent legal counsel or other advisers under this subsection; or

“(B) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

“(e) Compensation of Compensation Consultants, Independent Legal Counsel, and Other Advisers.—Each issuer shall provide for appropriate fund-
ing, as determined by the compensation committee in its capacity as a committee of the board of directors, for payment of reasonable compensation—

“(1) to a compensation consultant; and

“(2) to independent legal counsel or any other adviser to the compensation committee.

“(f) COMMISSION RULES.—

“(1) IN GENERAL.—Not later than 360 days after the date of enactment of this section, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section.

“(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition.

“(3) EXEMPTION AUTHORITY.—

“(A) IN GENERAL.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securi-
ties association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

“(B) CONSIDERATIONS.—In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.

“(g) CONTROLLED COMPANY EXEMPTION.—

“(1) IN GENERAL.—This section shall not apply to any controlled company.

“(2) DEFINITION.—For purposes of this section, the term ‘controlled company’ means an issuer—

“(A) that is listed on a national securities exchange or by a national securities association; and

“(B) that holds an election for the board of directors of the issuer in which more than 50 percent of the voting power is held by an individual, a group, or another issuer.”.
SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.

(a) Disclosure of Pay Versus Performance.—

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

“(i) Disclosure of Pay Versus Performance.—

The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.”.

(b) Additional Disclosure Requirements.—

(1) In general.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto) —
(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;

(B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and

(C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

(2) Total Compensation.—For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.

SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION.

The Securities Exchange Act of 1934 is amended by inserting after section 10C, as added by section 952, the following:

“SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION POLICY.

“(a) Listing Standards.—The Commission shall, by rule, direct the national securities exchanges and na-
tional securities associations to prohibit the listing of any
security of an issuer that does not comply with the re-
quirements of this section.

“(b) RECOVERY OF FUNDS.—The rules of the Com-
mission under subsection (a) shall require each issuer to
develop and implement a policy providing—

“(1) for disclosure of the policy of the issuer on
incentive-based compensation that is based on finan-
cial information required to be reported under the
securities laws; and

“(2) that, in the event that the issuer is re-
quired to prepare an accounting restatement due to
the material noncompliance of the issuer with any fi-
nancial reporting requirement under the securities
laws, the issuer will recover from any current or
former executive officer of the issuer who received
incentive-based compensation (including stock op-
tions awarded as compensation) during the 3-year
period preceding the date on which the issuer is re-
quired to prepare an accounting restatement, based
on the erroneous data, in excess of what would have
been paid to the executive officer under the account-
ing restatement.”.
SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIRECTOR HEDGING.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

“(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

“(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

“(2) held, directly or indirectly, by the employee or member of the board of directors.”.

SEC. 956. EXCESSIVE COMPENSATION BY HOLDING COMPANIES OF DEPOSITORY INSTITUTIONS.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following:
“(i) Excessive Compensation.—

“(1) In general.—Not later than 180 days after the transfer date established under section 311 of the Restoring American Financial Stability Act of 2010, the Board of Governors, in consultation with the Comptroller of the Currency and the Federal Deposit Insurance Corporation, shall, by rule or guideline, establish standards for bank holding companies and savings and loan holding companies prohibiting as an unsafe and unsound practice any compensation plan of a bank holding company or savings and loan holding company that—

“(A) provides an executive officer, employee, director, or principal shareholder of the bank holding company or savings and loan holding company with excessive compensation, fees, or benefits; or

“(B) could lead to material financial loss to the bank holding company or savings and loan holding company.

“(2) Standards.—The Board of Governors shall—

“(A) ensure that the standards established under paragraph (1) are comparable to the standards established under section 39 of the
Federal Deposit Insurance Act (12 U.S.C. 1831p–1) for insured depository institutions; and

“(B) in establishing the standards under paragraph (1), take into consideration—

“(i) the compensation standards described in section 39(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1(c)); and

“(ii) the views and recommendations of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.”.

SEC. 957. VOTING BY BROKERS.

Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended—

(1) in paragraph (9)—

(A) in subparagraph (A), by redesignating clauses (i) through (v) as subclauses (I) through (V), respectively, and adjusting the margins accordingly;

(B) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(C) by inserting “(A)” after “(9)”; and
(D) in the matter immediately following clause (iv), as so redesignated, by striking “As used” and inserting the following:

“(B) As used”.

(2) by adding at the end the following:

“(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

“(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule.

“(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection
with a shareholder vote not described in subpara-
graph (A).”.

Subtitle F—Improvements to the
Management of the Securities
and Exchange Commission

SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SU-
PERVISORY CONTROLS.

(a) Annual Reports and Certification.—Not
later than 90 days after the end of each fiscal year, the
Commission shall submit a report to the Committee on
Banking, Housing, and Urban Affairs of the Senate and
the Committee on Financial Services of the House of Rep-
resentatives on the conduct by the Commission of exami-
nations of registered entities, enforcement investigations,
and review of corporate financial securities filings.

(b) Contents of Reports.—Each report under
subsection (a) shall contain—

(1) an assessment, as of the end of the most re-
cent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the
Commission; and

(B) the procedures of the Commission ap-
plicable to the staff of the Commission who per-
form examinations of registered entities, en-
forfeiture investigations, and reviews of corporate financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the review carried out under subsection (d).

(c) Certification.—

(1) Signature.—The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

(2) Content of Certification.—Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which the individual is the head;
(B) is knowledgeable about the internal supervisory controls of the Division or Office of which the individual is the head;

(C) has evaluated the effectiveness of the internal supervisory controls during the 90-day period ending on the final day of the fiscal year to which the report relates; and

(D) has disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the Division or Office to consistently conduct inspections, or investigations, or reviews of filings with professional competence and integrity.

(d) NEW DIRECTOR OR ACTING DIRECTOR.—Notwithstanding subsection (a), if the Director of the Division of Enforcement, the Director of the Division of Corporate Finance, or the Director of the Office of Compliance Inspections and Examinations has served as Director of the Division or Office for less than 90 days on the date on which a report is required to be submitted under subsection (a), the Commission may submit the report on the date on which the Director has served as Director for 90 days. If there is no Director of the Division of Enforcement, the Division of Corporate Finance, or the Office of
Compliance Inspections and Examinations, on the date on which a report is required to be submitted under subsection (a), the Acting Director of the Division or Office may make the certification required under subsection (c).

(e) REVIEW BY THE COMPTROLLER GENERAL.—

(1) REPORT.—The Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains a review of the adequacy and effectiveness of the internal supervisory control structure and procedures described in subsection (b)(1), not less frequently than once every 3 years, at a time to coincide with the publication of the reports of the Commission under this section.

(2) AUTHORITY TO HIRE EXPERTS.—The Comptroller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller General described in this section, in order to assist the Comptroller General in carrying out such duties.
SEC. 962. TRIENNIAL REPORT ON PERSONNEL MANAGEMENT.

(a) Triennial Report Required.—Once every 3 years, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the quality of personnel management by the Commission.

(b) Contents of Report.—Each report under subsection (a) shall include—

(1) an evaluation of—

(A) the effectiveness of supervisors in using the skills, talents, and motivation of the employees of the Commission to achieve the goals of the Commission;

(B) the criteria for promoting employees of the Commission to supervisory positions;

(C) the fairness of the application of the promotion criteria to the decisions of the Commission;

(D) the competence of the professional staff of the Commission;

(E) the efficiency of communication between the units of the Commission regarding the work of the Commission (including communication between divisions and between subunits
of a division) and the efforts by the Commission to promote such communication;

(F) the turnover within subunits of the Commission, including the consideration of supervisors whose subordinates have an unusually high rate of turnover;

(G) whether there are excessive numbers of low-level, mid-level, or senior-level managers;

(H) any initiatives of the Commission that increase the competence of the staff of the Commission;

(I) the actions taken by the Commission regarding employees of the Commission who have failed to perform their duties and circumstances under which the Commission has issued to employees a notice of termination; and

(J) such other factors relating to the management of the Commission as the Comptroller General determines are appropriate;

(2) an evaluation of any improvements made with respect to the areas described in paragraph (1) since the date of submission of the previous report; and

(3) recommendations for how the Commission can use the human resources of the Commission
more effectively and efficiently to carry out the mission of the Commission.

(c) CONSULTATION.—In preparing the report under subsection (a), the Comptroller General shall consult with current employees of the Commission, retired employees and other former employees of the Commission, the Inspector General of the Commission, persons that have business before the Commission, any union representing the employees of the Commission, private management consultants, academics, and any other source that the Comptroller General deems appropriate.

(d) REPORT BY COMMISSION.—Not later than 90 days after the date on which the Comptroller General submits each report under subsection (a), the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report describing the actions taken by the Commission in response to the recommendations contained in the report under subsection (a).

(e) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports
under this section, as billed therefor by the Controller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account “Salaries and Expenses, Government Accountability Office” current when the payment is received; and

(B) remain available until expended.

(f) AUTHORITY TO HIRE EXPERTS.—The Controller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller General described in this section, in order to assist the Comptroller General in carrying out such duties.

SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.

(a) REPORTS OF COMMISSION.—

(1) ANNUAL REPORTS REQUIRED.—Not later than 6 months after the end of each fiscal year, the Commission shall publish and submit to Congress a report that—

(A) describes the responsibility of the management of the Commission for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and
(B) contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year.

(2) ATTESTATION.—The reports required under paragraph (1) shall be attested to by the Chairman and chief financial officer of the Commission.

(b) REPORT BY COMPTROLLER GENERAL.—

(1) REPORT REQUIRED.—Not later than 6 months after the end of the first fiscal year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress that assesses—

(A) the effectiveness of the internal control structure and procedures of the Commission for financial reporting; and

(B) the assessment of the Commission under subsection (a)(1)(B).

(2) ATTESTATION.—The Comptroller General shall attest to, and report on, the assessment made by the Commission under subsection (a).

(c) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports
under subsection (b), as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account “Salaries and Expenses, Government Accountability Office” current when the payment is received; and

(B) remain available until expended.

SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURITIES ASSOCIATIONS.

(a) REPORT REQUIRED.—Not later than 2 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes an evaluation of the oversight by the Commission of national securities associations registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) with respect to—

(1) the governance of such national securities associations, including the identification and management of conflicts of interest by such national securities associations, together with an analysis of the
impact of any conflicts of interest on the regulatory enforcement or rulemaking by such national securities associations;

(2) the examinations carried out by the national securities associations, including the expertise of the examiners;

(3) the executive compensation practices of such national securities associations;

(4) the arbitration services provided by the national securities associations;

(5) the review performed by national securities associations of advertising by the members of the national securities associations;

(6) the cooperation with and assistance to State securities administrators by the national securities associations to promote investor protection;

(7) how the funding of national securities associations is used to support the mission of the national securities associations, including—

(A) the methods of funding;

(B) the sufficiency of funds;

(C) how funds are invested by the national securities association pending use; and
(D) the impact of the methods, sufficiency, and investment of funds on regulatory enforcement by the national securities associations;

(8) the policies regarding the employment of former employees of national securities associations by regulated entities;

(9) the ongoing effectiveness of the rules of the national securities associations in achieving the goals of the rules;

(10) the transparency of governance and activities of the national securities associations; and

(11) any other issue that has an impact, as determined by the Comptroller General, on the effectiveness of such national securities associations in performing their mission and in dealing fairly with investors and members;

(b) **Reimbursements for Cost of Reports.**—

(1) **Reimbursements Required.**—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (a), as billed therefor by the Comptroller General.

(2) **Crediting and Use of Reimbursements.**—Such reimbursements shall—
(A) be credited to the appropriation account “Salaries and Expenses, Government Accountability Office” current when the payment is received; and

(B) remain available until expended.

SEC. 965. COMPLIANCE EXAMINERS.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

“(h) EXAMINERS.—

“(1) DIVISION OF TRADING AND MARKETS.—

The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

“(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

“(B) report to the Director of that Division.

“(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—
“(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

“(B) report to the Director of that Division.”.

SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE COMMISSION.


“SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.

“(a) SUGGESTION SUBMISSIONS BY COMMISSION EMPLOYEES.—

“(1) HOTLINE ESTABLISHED.—The Inspector General of the Commission shall establish and maintain a telephone hotline or other electronic means for the receipt of—

“(A) suggestions by employees of the Commission for improvements in the work efficiency, effectiveness, and productivity, and the use of the resources, of the Commission; and

“(B) allegations by employees of the Commission of waste, abuse, misconduct, or mismanagement within the Commission.
“(2) CONFIDENTIALITY.—The Inspector General shall maintain as confidential—

“(A) the identity of any individual who provides information by the means established under paragraph (1), unless the individual requests otherwise, in writing; and

“(B) at the request of any such individual, any specific information provided by the individual.

“(b) CONSIDERATION OF REPORTS.—The Inspector General shall consider any suggestions or allegations received by the means established under subsection (a)(1), and shall recommend appropriate action in relation to such suggestions or allegations.

“(c) RECOGNITION.—The Inspector General may recognize any employee who makes a suggestion under subsection (a)(1) (or by other means) that would or does—

“(1) increase the work efficiency, effectiveness, or productivity of the Commission; or

“(2) reduce waste, abuse, misconduct, or mismanagement within the Commission.

“(d) REPORT.—The Inspector General of the Commission shall submit to Congress an annual report containing a description of—
“(1) the nature, number, and potential benefits of any suggestions received under subsection (a);

“(2) the nature, number, and seriousness of any allegations received under subsection (a);

“(3) any recommendations made or actions taken by the Inspector General in response to substantiated allegations received under subsection (a); and

“(4) any action the Commission has taken in response to suggestions or allegations received under subsection (a).

“(e) FUNDING.—The activities of the Inspector General under this subsection shall be funded by the Securities and Exchange Commission Investor Protection Fund established under section 21F.”.

Subtitle G—Strengthening Corporate Governance

SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN UNCONTESTED ELECTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14A, as added by this title, the following:

“SEC. 14B. CORPORATE GOVERNANCE.

“(a) CORPORATE GOVERNANCE STANDARDS.—

“(1) LISTING STANDARDS.—
“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with any of the requirements of this subsection.

“(B) OPPORTUNITY TO COMPLY AND CURE.—The rules established under this paragraph shall allow an issuer to have an opportunity to come into compliance with the requirements of this subsection, and to cure any defect that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

“(C) AUTHORITY TO EXEMPT.—The Commission may, by rule or order, exempt an issuer from any or all of the requirements of this subsection and the rules issued under this subsection, based on the size of the issuer, the market capitalization of the issuer, the number of shareholders of record of the issuer, or any other criteria, as the Commission deems necessary and appropriate in the public interest or for the protection of investors.
“(2) COMMISSION RULES ON ELECTIONS.—In an election for membership on the board of directors of an issuer—

“(A) that is uncontested, each director who receives a majority of the votes cast shall be deemed to be elected;

“(B) that is contested, if the number of nominees exceeds the number of directors to be elected, each director shall be elected by the vote of a plurality of the shares represented at a meeting and entitled to vote; and

“(C) if a director of an issuer receives less than a majority of the votes cast in an uncontested election—

“(i) the director shall tender the resignation of the director to the board of directors; and

“(ii) the board of directors—

“(I) shall—

“(aa) accept the resignation of the director;

“(bb) determine a date on which the resignation will take effect, within a reasonable period
of time, as established by the
Commission; and

“(cc) make the date under
item (bb) public within a reason-
able period of time, as estab-
lished by the Commission; or

“(II) shall, upon a unanimous
vote of the board, decline to accept
the resignation and, not later than 30
days after the date of the vote (or
within such shorter period as the
Commission may establish), make
public, together with a discussion of
the analysis used in reaching the con-
cclusion, the specific reasons that—

“(aa) the board chose not to
accept the resignation; and

“(bb) the decision was in the
best interests of the issuer and
the shareholders of the issuer.”.

SEC. 972. PROXY ACCESS.

(a) Proxy Access.—Section 14(a) of the Securities
Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting “(1)” after “(a)”; and

(2) by adding at the end the following:
“(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

“(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

“(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).”.

(b) REGULATIONS.—The Commission may issue rules permitting the use by shareholders of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

SEC. 973. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.

Section 14B of the Securities Exchange Act of 1934, as added by section 971, is amended by adding at the end the following:

““(b) DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue
rules that require an issuer to disclose in the annual proxy
sent to investors the reasons why the issuer has chosen—
“(1) the same person to serve as chairman of
the board of directors and chief executive officer (or
in equivalent positions); or
“(2) different individuals to serve as chairman
of the board of directors and chief executive officer
(or in equivalent positions of the issuer).”.

Subtitle H—Municipal Securities

SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND
CHANGES TO THE BOARD OF THE MSRB.

(a) REGISTRATION OF MUNICIPAL SECURITIES
DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of
is amended—

(1) in paragraph (1)—

(A) by inserting “(A)” after “(1)”; and

(B) by adding at the end the following:

“(B) It shall be unlawful for a municipal
advisor to provide advice to or on behalf of a
municipal entity or obligated person with re-
spect to municipal financial products or the
issuance of municipal securities, or to under-
take a solicitation of a municipal entity or obli-
gated person, unless the municipal advisor is registered in accordance with this subsection.”;

(2) in paragraph (2), by inserting “or municipal advisor” after “municipal securities dealer” each place that term appears;

(3) in paragraph (3), by inserting “or municipal advisor” after “municipal securities dealer” each place that term appears;

(4) in paragraph (4), by striking “dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers” and inserting “dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors”; and

(5) by adding at the end the following:

“(5) No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice.”.
Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(b)) is amended—

1. (b) MUNICIPAL SECURITIES RULEMAKING BOARD.—

2. (1) in paragraph (1)—

3. (A) in the first sentence, by striking “Not later than” and all that follows through “appointed by the Commission” and inserting “The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B),”; 

4. (B) by striking the second sentence and inserting the following: “The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are not associated with any broker, dealer, municipal securities dealer, or municipal advisor (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer), at least 1 of whom shall be representative of institutional or retail investors in municipal securi-
ties, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as ‘public representatives’); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘broker-dealer representatives’), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘bank representatives’), and at least 1 individual who is associated with a municipal advisor (which member is hereinafter referred to as the ‘advisor representative’).”; and (C) in the third sentence, by striking “initial”; (2) in paragraph (2)—
(A) in the matter preceding subparagraph (A)—

(i) by inserting before the period at the end of the first sentence the following: “and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors”; and

(ii) by striking the second sentence;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting “, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities,”
after “sale of, any municipal security”; and

(II) by inserting “and municipal entities or obligated persons” after “protection of investors”;  
(ii) in clause (i), by striking “municipal securities brokers and municipal securities dealers” each place that term appears and inserting “municipal securities brokers, municipal securities dealers, and municipal advisors”;  
(iii) in clause (ii), by adding “and” at the end;  
(iv) in clause (iii), by striking “; and” and inserting a period; and  
(v) by striking clause (iv);  
(C) in subparagraph (B), by striking “nominations and elections” and all that follows through “specify” and inserting “nominations and elections of public representatives, broker-dealer representatives, bank representatives, and advisor representatives. Such rules shall provide that the membership of the Board shall at all times be as evenly divided in number as possible between entities or individuals who are
subject to regulation by the Board and entities or individuals not subject to regulation by the Board, provided, however, that a majority of the members of the Board shall at all times be public representatives. Such rules shall also specify”;

(D) in subparagraph (C)—

(i) by inserting “and municipal financial products” after “municipal securities” the first two times that term appears;

(ii) by inserting “, municipal entities, obligated persons,” before “and the public interest”;

(iii) by striking “between” and inserting “among”;

(iv) by striking “issuers, municipal securities brokers, or municipal securities dealers, to fix” and inserting “municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors, to fix”; and

(v) by striking “brokers or municipal securities dealers, to regulate” and inserting “brokers, municipal securities dealers, or municipal advisors, to regulate”;
(E) in subparagraph (D)—

(i) by inserting “and advice concerning municipal financial products” after “transactions in municipal securities”; 

(ii) by striking “That no” and inserting “that no”;

(iii) by inserting “municipal advisor,” before “or person associated”; and 

(iv) by striking “a municipal securities broker or municipal securities dealer may be compelled” and inserting “a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled”; 

(F) in subparagraph (E)—

(i) by striking “municipal securities brokers and municipal securities dealers” and inserting “municipal securities brokers, municipal securities dealers, and municipal advisors”; and 

(ii) by striking “municipal securities broker or municipal securities dealer” and inserting “municipal securities broker, municipal securities dealer, or municipal advisor”;
(G) in subparagraph (G), by striking “mun-
icipal securities brokers and municipal securi-
ties dealers” and inserting “municipal securities
brokers, municipal securities dealers, and mu-
nicipal advisors”;

(H) in subparagraph (J)—

(i) by striking “municipal securities
broker and each municipal securities deal-
er” and inserting “municipal securities
broker, municipal securities dealer, and
municipal advisor”; and

(ii) by striking the period at the end
of the second sentence and inserting “,
which may include charges for failure to
submit to the Board, or to any information
system operated by the Board, within the
prescribed timeframes, any items of infor-
mation or documents required to be sub-
mitted under any rule issued by the
Board.”;

(I) in subparagraph (K)—

(i) by inserting “broker, dealer, or”
before “municipal securities dealer” each
place that term appears; and
(ii) by striking “municipal securities investment portfolio” and inserting “related account of a broker, dealer, or municipal securities dealer”; and

(J) by adding at the end the following:

“(L) provide continuing education requirements for municipal advisors.

“(M) provide professional standards.

“(N) not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.”;

(3) by redesignating paragraph (3) as paragraph (7); and

(4) by inserting after paragraph (2) the following:

“(3) The Board, in conjunction with or on behalf of any Federal financial regulator or self-regulatory organization, may—

“(A) establish information systems; and

“(B) assess such reasonable fees and charges for the submission of information to, or the receipt of information from, such systems
from any persons which systems may be developed for the purposes of serving as a repository of information from municipal market participants or otherwise in furtherance of the purposes of the Board, a Federal financial regulator, or a self-regulatory organization, except that the Board—

“(i) may not charge a fee to municipal entities or obligated persons to submit documents or other information to the Board or charge a fee to any person to obtain, directly from the Internet site of the Board, documents or information submitted by municipal entities, obligated persons, brokers, dealers, municipal securities dealers, or municipal advisors, including documents submitted under the rules of the Board or the Commission; and

“(ii) shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, munici-
ipal securities market professionals, or the
general public, whether delivered through
the Internet or any other means, that con-
tain all or part of the documents or infor-
mination, subject to approval of the fees by
the Commission under section 19(b).

“(4) The Board may provide guidance and as-
*istance in the enforcement of, and examination for,
compliance with the rules of the Board to the Com-
mission, a registered securities association under
section 15A, or any other appropriate regulatory
agency, as applicable.

“(5) The Board, the Commission, and a reg-
istered securities association under section 15A, or
the designees of the Board, the Commission, or such
association, shall meet not less frequently than 2
times a year—

“(A) to describe the work of the Board,
the Commission, and the registered securities
association involving the regulation of municipal
securities; and

“(B) to share information about—

“(i) the interpretation of the Board,
the Commission, and the registered securi-
ties association of Board rules; and
“(ii) examination and enforcement of compliance with Board rules.”.

(c) Discipline of Dealers and Municipal Advisors and Other Matters.—Section 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)) is amended—

(1) in paragraph (1), by inserting “, and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person,” after “any municipal security”;

(2) in paragraph (2), by inserting “or municipal advisor” after “municipal securities dealer” each place that term appears;

(3) in paragraph (3)—

(A) by inserting “or municipal entities or obligated person” after “protection of investors” each place that term appears; and

(B) by inserting “or municipal advisor” after “municipal securities dealer” each place that term appears;
(4) in paragraph (4), by inserting “or municipal advisor” after “municipal securities dealer or obligated person” each place that term appears;

(5) in paragraph (6)(B), by inserting “or municipal entities or obligated person” after “protection of investors”;

(6) in paragraph (7)—

(A) in subparagraph (A)—

(i) in clause (i), by striking “; and” and inserting a semicolon;

(ii) in clause (ii), by striking the period and inserting “; and”; and

(iii) by adding at the end the following:

“(iii) the Commission, or its designee, in the case of municipal advisors.”.

(B) in subparagraph (B), by inserting “or municipal entities or obligated person” after “protection of investors”; and

(7) by adding at the end the following:

“(9)(A) Fines collected by the Commission for violations of the rules of the Board shall be equally divided between the Commission and the Board.

“(B) Fines collected by a registered securities association under section 15A(7) with respect to vio-
lations of the rules of the Board shall be accounted
for by such registered securities association sepa-
3  
raly 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 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,
or such other portion of such fines as may be di-
10  
rected by the Commission upon agreement between
11  
the registered securities association and the Board.”.
12  
(d) ISSUANCE OF MUNICIPAL SECURITIES.—Section
13  
15B(d)(2) of the Securities Exchange Act of 1934 (15
14  
U.S.C. 78o–4(d)) is amended—
15  
(1) by striking “through a municipal securities
16  
broker or municipal securities dealer or otherwise”
17  
and inserting “through a municipal securities
18  
broker, municipal securities dealer, municipal advi-
19  
sor, or otherwise”; and
20  (2) by inserting “or municipal advisors” before “to furnish”.
21  (e) DEFINITIONS.—Section 15B of the Securities Ex-
22  
change Act of 1934 (15 U.S.C. 78o–4) is amended by add-
23  
ing at the end the following:
“(e) DEFINITIONS.—For purposes of this section—

“(1) the term ‘Board’ means the Municipal Securities Rulemaking Board established under subsection (b)(1);

“(2) the term ‘guaranteed investment contract’ includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract;

“(3) the term ‘investment strategies’ includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments;

“(4) the term ‘municipal advisor’—

“(A) means a person (who is not a municipal entity or an employee of a municipal entity) that—

“(i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, in-
ture, timing, terms, and other similar matters concerning such financial products or issues; or

“(ii) undertakes a solicitation of a municipal entity;

“(B) includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, if such persons are described in any of clauses (i) through (iii) of subparagraph (A); and

“(C) does not include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)), any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice, any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps, attorneys offering legal advice or providing services that are of a traditional
legal nature, or engineers providing engineering
advice;

“(5) the term ‘municipal financial product’
means municipal derivatives, guaranteed investment
contracts, and investment strategies;

“(6) the term ‘rules of the Board’ means the
rules proposed and adopted by the Board under sub-
section (b)(2);

“(7) the term ‘person associated with a munic-
ipal advisor’ or ‘associated person of an advisor’
means—

“(A) any partner, officer, director, or
branch manager of such municipal advisor (or
any person occupying a similar status or per-
forming similar functions);

“(B) any other employee of such municipal
advisor who is engaged in the management, di-
rection, supervision, or performance of any ac-
tivities relating to the provision of advice to or
on behalf of a municipal entity or obligated per-
son with respect to municipal financial products
or the issuance of municipal securities; and

“(C) any person directly or indirectly con-
trolling, controlled by, or under common control
with such municipal advisor;
“(8) the term ‘municipal entity’ means any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—

“(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

“(B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and

“(C) any other issuer of municipal securities;

“(9) the term ‘solicitation of a municipal entity or obligated person’ means a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker,
dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; and

“(10) the term ‘obligated person’ means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.”.

(f) Registered Securities Association.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(b)) is amended by adding at the end the following:

“(15) The rules of the association provide that the association shall—

“(A) request guidance from the Municipal Securities Rulemaking Board in interpretation of the rules of the Municipal Securities Rulemaking Board; and

“(B) provide information to the Municipal Securities Rulemaking Board about the enforcement actions and examinations of the associa-
tion under section 15B(b)(2)(E), so that the Municipal Securities Rulemaking Board may—

“(i) assist in such enforcement actions and examinations; and

“(ii) evaluate the ongoing effectiveness of the rules of the Board.”.

(g) Registration and Regulation of Brokers and Dealers.—Section 15 of the Securities Exchange Act of 1934 is amended—

(1) in subsection (b)(4), by inserting “municipal advisor,” after “municipal securities dealer” each place that term appears; and

(2) in subsection (c), by inserting “broker, dealer, or” before “municipal securities dealer” each place that term appears.

(h) Accounts and Records, Reports, Examinations of Exchanges, Members, and Others.—Section 17(a)(1) of the Securities Exchange Act of 1934 is amended by inserting “municipal advisor,” after “municipal securities dealer”.

(i) Effective Date.—This section, and the amendments made by this section, shall take effect on October 1, 2010.
SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY

OF INCREASED DISCLOSURE TO INVESTORS.

(a) Study.—The Comptroller General of the United States shall conduct a study and review of the disclosure required to be made by issuers of municipal securities.

(b) Subjects for Evaluation.—In conducting the study under subsection (a), the Comptroller General of the United States shall—

(1) broadly describe—

(A) the size of the municipal securities markets and the issuers and investors; and

(B) the disclosures provided by issuers to investors;

(2) compare the amount, frequency, and quality of disclosures that issuers of municipal securities are required by law to provide for the benefit of municipal securities holders, including the amount of and frequency of disclosures actually provided by issuers of municipal securities, with the amount of and frequency of disclosures that issuers of corporate securities provide for the benefit of corporate securities holders, taking into account the differences between issuers of municipal securities and issuers of corporate securities;

(3) evaluate the costs and benefits to various types of issuers of municipal securities of requiring
issuers of municipal bonds to provide additional financial disclosures for the benefit of investors;

(4) evaluate the potential benefit to investors from additional financial disclosures by issuers of municipal bonds; and

(5) make recommendations relating to disclosure requirements for municipal issuers, including the advisability of the repeal or retention of section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(d)) (commonly known as the “Tower Amendment”).

(c) Report.—Not later than 24 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the results of the study conducted under subsection (a), including recommendations for how to improve disclosure by issuers of municipal securities.

SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE MUNICIPAL SECURITIES MARKETS.

(a) Study.—The Comptroller General of the United States shall conduct a study of the municipal securities markets.

(b) Report.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Com-
mittee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, with copies to the Special Committee on Aging of the Senate and the Commission, on the results of the study conducted under subsection (a), including—

(1) an analysis of the mechanisms for trading, quality of trade executions, market transparency, trade reporting, price discovery, settlement clearing, and credit enhancements;

(2) the needs of the markets and investors and the impact of recent innovations;

(3) recommendations for how to improve the transparency, efficiency, fairness, and liquidity of trading in the municipal securities markets, including with reference to items listed in paragraph (1); and

(4) potential uses of derivatives in the municipal securities markets.

(c) RESPONSES.—Not later than 180 days after receipt of the report required under subsection (b), the Commission shall submit a response to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, with a copy to the Special Committee on
Aging of the Senate, stating the actions the Commission has taken in response to the recommendations contained in such report.

SEC. 978. STUDY OF FUNDING FOR GOVERNMENT ACCOUNTING STANDARDS BOARD.

(a) STUDY.—The Commission shall conduct a study that evaluates—

(1) the role and importance of the Government Accounting Standards Board in the municipal securities markets;

(2) the manner in which the Government Accounting Standards Board is funded, and how such manner of funding affects the financial information available to securities investors;

(3) the advisability of changes to the manner in which the Government Accounting Standards Board is funded; and

(4) whether legislative changes to the manner in which the Government Accounting Standards Board is funded are necessary for the benefit of investors and in the public interest.

(b) CONSULTATION.—In conducting the study required under subsection (a), the Commission shall consult with State and local government financial officers.
(c) REPORT.—Not later than 270 days after the date of enactment of this Act, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under subsection (a).

SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.

(a) IN GENERAL.—There shall be in the Commission an Office of Municipal Securities, which shall—

(1) administer the rules of the Commission with respect to the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and

(2) coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions as required by law.

(b) DIRECTOR OF THE OFFICE.—The head of the Office of Municipal Securities shall be the Director, who shall report to the Chairman.

(c) STAFFING.—

(1) IN GENERAL.—The Office of Municipal Securities shall be staffed sufficiently to carry out the requirements of this section.
(2) Requirement.—The staff of the Office of Municipal Securities shall include individuals with knowledge of and expertise in municipal finance.

Subtitle I—Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters

SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION WITH FOREIGN AUTHORITIES.

(a) Definition.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by adding at the end the following:

“(17) Foreign auditor oversight authority.—The term ‘foreign auditor oversight authority’ means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.”.

(b) Availability To Share Information.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:

“(C) Availability to foreign oversight authorities.—Without the loss of its
status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm that a foreign government has empowered a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

“(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

“(ii) the foreign auditor oversight authority provides—

“(I) such assurances of confidentiality as the Board may request;

“(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

“(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and
“(iii) the Board determines that it is appropriate to share such information.”.

(c) CONFORMING AMENDMENT.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(A)) is amended by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”.

SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.

(a) DEFINITIONS.—

(1) DEFINITIONS AMENDED.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.) is amended by adding at the end the following new section:

“SEC. 110. DEFINITIONS.

“For the purposes of this title, the following definitions shall apply:

“(1) AUDIT.—The term ‘audit’ means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

“(2) AUDIT REPORT.—The term ‘audit report’ means a document, report, notice, or other record—
“(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

“(B) in which a public accounting firm either—

“(i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

“(ii) asserts that no such opinion can be expressed.

“(3) BROKER.—The term ‘broker’ means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78e(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

“(4) DEALER.—The term ‘dealer’ means a dealer (as such term is defined in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78e(a)(5))) that is required to file a balance sheet,
income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

“(5) PROFESSIONAL STANDARDS.—The term ‘professional standards’ means—

“(A) accounting principles that are—

“(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

“(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

“(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including
rules implementing title II) that the Board or
the Commission determines—

“(i) relate to the preparation or
issuance of audit reports for issuers, bro-
kers, or dealers; and

“(ii) are established or adopted by the
Board under section 103(a), or are pro-
mulgated as rules of the Commission.

“(6) SELF-REGULATORY ORGANIZATION.—The
term ‘self-regulatory organization’ has the same
meaning as in section 3(a) of the Securities Ex-
change Act of 1934 (15 U.S.C. 78c(a)).”.

(2) CONFORMING AMENDMENT.—Section 2(a)
7201(a)) is amended in the matter preceeding para-
graph (1), by striking “In this” and inserting “Ex-
cept as otherwise specifically provided in this Act, in
this”.

(b) ESTABLISHMENT AND ADMINISTRATION OF THE
PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
7211) is amended—

(1) by striking “issuers” each place that term
appears and inserting “issuers, brokers, and deal-
ers”; and
(2) in subsection (a)—

(A) by striking “public companies” and inserting “companies”; and

(B) by striking “for companies the securities of which are sold to, and held by and for, public investors”.

c) Registration With the Board.—Section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is amended—

(1) in subsection (a)—

(A) by striking “Beginning 180” and all that follows through “101(d), it” and inserting “It”; and

(B) by striking “issuer” and inserting “issuer, broker, or dealer”; 

(2) in subsection (b)—

(A) in paragraph (2)(A), by striking “issuers” and inserting “issuers, brokers, and dealers”; and

(B) by striking “issuer” each place that term appears and inserting “issuer, broker, or dealer”.

d) Auditing and Independence.—Section 103(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)) is amended—
(1) in paragraph (1), by striking “and such ethics standards” and inserting “such ethics standards, and such independence standards”;

(2) in paragraph (2)(A)(iii), by striking “describe in each audit report” and inserting “in each audit report for an issuer, describe”; and

(3) in paragraph (2)(B)(v), by striking “issuers” and inserting “issuers, brokers, and dealers”.

(e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.—Section 104 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214) is amended—

(1) in subsection (a), by striking “issuers” and inserting “issuers, brokers, and dealers”; and

(2) in subsection (b)(1)—

(A) by striking “audit reports for” each place that term appears and inserting “audit reports on annual financial statements for”;

(B) in subparagraph (A), by striking “and” at the end;

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

(D) by adding at the end the following:

“(C) with respect to each registered public accounting firm that regularly provides audit
reports and that is not described in subpara-
graph (A) or (B), on a basis determined by the
Board, by rule, that is consistent with the pub-
lic interest and protection of investors.”.

(f) INVESTIGATIONS AND DISCIPLINARY PRO-
CEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley

(1) in the subparagraph heading, by inserting
“, BROKER, OR DEALER” after “ISSUER”; 

(2) by striking “any issuer” each place that
term appears and inserting “any issuer, broker, or
dealer”; and

(3) by striking “an issuer under this sub-
section” and inserting “a registered public account-
ing firm under this subsection”.

(g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
7216(a)) is amended—

(1) in paragraph (1), by striking “issuer” and
inserting “issuer, broker, or dealer”; and

(2) in paragraph (2), by striking “issuers” and
inserting “issuers, brokers, or dealers”.

(h) FUNDING.—Section 109 of the Sarbanes-Oxley
(1) in subsection (c)(2), by striking “subsection (i)” and inserting “subsection (j)”; (2) in subsection (d)—

(A) in paragraph (2), by striking “allowing for differentiation among classes of issuers, as appropriate” and inserting “and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate”;

and

(B) by adding at the end the following:

“(3) BROKERS AND DEALERS.—The Board shall begin the allocation, assessment, and collection of fees under paragraph (2) with respect to brokers and dealers with the payment of support fees to fund the first full fiscal year beginning after the effective date of this paragraph.”;

(3) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(4) by inserting after subsection (g) the following:

“(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

“(1) OBLIGATION TO PAY.—Each broker or dealer shall pay to the Board the annual accounting
support fee allocated to such broker or dealer under this section.

“(2) ALLOCATION.—Any amount due from a broker or dealer (or from a particular class of brokers and dealers) under this section shall be allocated among brokers and dealers and payable by the broker or dealer (or the brokers and dealers in the particular class, as applicable).

“(3) PROPORTIONALITY.—The amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer, compared to the total net capital of all brokers and dealers, in accordance with rules issued by the Board.”.


(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following:

“(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization;”.


(1) in subclause (III), by striking “and” at the end;

(2) in subclause (IV), by striking the comma and inserting “; and”; and

(3) by inserting after subclause (IV) the following:

“(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization,”.

(k) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 983. PORTFOLIO MARGINING.

(a) ADVANCES.—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff3(a)(1)) is amended by inserting “or options on commodity futures contracts” after “claim for securities”.
(b) Definitions.—Section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll) is amended—

(1) by striking paragraph (2) and inserting the following:

“(2) Customer.—

“(A) In General.—The term ‘customer’ of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

“(B) Included Persons.—The term ‘customer’ includes—

“(i) any person who has deposited cash with the debtor for the purpose of purchasing securities;

“(ii) any person who has a claim against the debtor for cash, securities, futures contracts, or options on futures con-
tracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; and

“(iii) any person who has a claim against the debtor arising out of sales or conversions of such securities.

“(C) EXCLUDED PERSONS.—The term ‘customer’ does not include any person, to the extent that—

“(i) the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

“(ii) such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.”;

(2) in paragraph (4)—
(A) in subparagraph (C), by striking “and” at the end;

(B) by redesignating subparagraph (D) as subparagraph (E); and

(C) by inserting after subparagraph (C) the following:

“(D) in the case of a portfolio margining account of a customer that is carried as a securities account pursuant to a portfolio margining program approved by the Commission, a futures contract or an option on a futures contract received, acquired, or held by or for the account of a debtor from or for such portfolio margining account, and the proceeds thereof; and”;

(3) in paragraph (9), in the matter following subparagraph (L), by inserting after “Such term” the following: “includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term”; and

(4) in paragraph (11)—

(A) in subparagraph (A)—
(i) by striking “filing date, all” and all that follows through the end of the sub-
paragraph and inserting the following: “filing date—

“(i) all securities positions of such customer (other than customer name secu-
rities reclaimed by such customer); and

“(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Com-
mission, including all property collateralizing such positions, to the extent that such property is not otherwise in-
cluded herein; minus”; and

(B) in the matter following subparagraph (C), by striking “In determining” and inserting the following: “A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commiss-
ion or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such
claim shall be treated as a claim for cash. In determining’.

SEC. 984. LOAN OR BORROWING OF SECURITIES.

(a) RULEMAKING AUTHORITY.—Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following:

“(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.”.
(b) Rulemaking Required.—Not later than 2 years after the date of enactment of this Act, the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities.

SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURITIES LAWS.

(a) Securities Act of 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by striking “individual;” and inserting “individual,”;

(2) in section 18 (15 U.S.C. 77r)—

(A) in subsection (b)(1)(C), by striking “is a security” and inserting “a security”; and

(B) in subsection (c)(2)(B)(i), by striking “State, or” and inserting “State or”;

(3) in section 19(d)(6)(A) (15 U.S.C. 77s(d)(6)(A)), by striking “in paragraph (1) of (3)” and inserting “in paragraph (1) or (3)”; and

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 2 (15 U.S.C. 78b), by striking “affected” and inserting “effected”;

(2) in section 3 (15 U.S.C. 78c)—

(A) in subsection (a)(55)(A), by striking “section 3(a)(12) of the Securities Exchange Act of 1934” and inserting “section 3(a)(12) of this title”; and

(B) in subsection (g), by striking “company, account person, or entity” and inserting “company, account, person, or entity”;


(A) in the subparagraph heading, by striking “MINIMUS” and inserting “MINIMIS”; and

(B) in clause (i), by striking “nonaudit” and inserting “non-audit”;

(4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking “earning statement” and inserting “earnings statement”;

(5) in section 15 (15 U.S.C. 78o)—

(A) in subsection (b)(1)—
in subparagraph (B), by striking “The order granting” and all that follows through “from such membership.”; and

(ii) in the undesignated matter immediately following subparagraph (B), by inserting after the first sentence the following: “The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.”;


(A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(B) in subparagraph (B), as so redesignated, by striking “The order granting” and all
that follows through “from such membership.”;
and

(C) in the matter following subparagraph (B), as so redesignated, by inserting after the first sentence the following: “The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 6 of this title, or a securities association registered under section 15A of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership.”;

(7) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking “15A(k) gives” and inserting “15A(k), give”; and

(8) in section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)), by striking “paragraph (1) subsection” and inserting “Paragraph (1)”.

(c) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—
(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking “section 2 of such Act” and inserting “section 2(a) of such Act”; and

(2) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking “, in the” and inserting “in the”.

(d) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)), in the matter following subparagraph (B)(vii)—

(A) by striking “clause (vi)” each place that term appears and inserting “clause (vii)”;

and

(B) in each of subparagraphs (A)(vi) and (B)(vi), by adding “and” at the end of subclause (III);

(2) in section 9(b)(4)(B) (15 U.S.C. 80a–9(b)(4)(B)), by adding “or” after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a–12(d)(1)(J)), by striking “any provision of this subsection” and inserting “any provision of this paragraph”;
(4) in section 17(f) (15 U.S.C. 80a–17(f))—

(A) in paragraph (4), by striking “No such member” and inserting “No member of a national securities exchange”; and

(B) in paragraph (6), by striking “company may serve” and inserting “company, may serve”; and


(A) by striking “paragraph (1) of section 205” and inserting “section 205(a)(1)”; and

(B) by striking “clause (A) or (B) of that section” and inserting “paragraph (1) or (2) of section 205(b)”.

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

(1) in section 203 (15 U.S.C. 80b–3)—

(A) in subsection (c)(1)(A), by striking “principal business office and” and inserting “principal office, principal place of business, and”; and

(B) in subsection (k)(4)(B), in the matter following clause (ii), by striking “principal place
of business” and inserting “principal office or place of business”;

(2) in section 206(3) (15 U.S.C. 80b–6(3)), by adding “or” after the semicolon at the end;

(3) in section 213(a) (15 U.S.C. 80b–13(a)), by striking “principal place of business” and inserting “principal office or place of business”; and

(4) in section 222 (15 U.S.C. 80b–18a), by striking “principal place of business” each place that term appears and inserting “principal office and place of business”.


(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

“(7) Definition.—For purposes of this subsection, the term ‘emergency’ means—
“(A) a major market disturbance characterized by or constituting—

“(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

“(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

“(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

“(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

“(ii) the transmission or processing of securities transactions.”; and

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking “section 18(c) of the Public Utility Holding Company Act of 1935,“.
(b) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by striking paragraph (17) and inserting the following:

“(17) The terms ‘Securities Act of 1933’ and ‘Securities Exchange Act of 1934’ shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this title.”;


(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c);

(4) in section 311 (15 U.S.C. 77kkk), by striking subsection (c);

(5) in section 323(b) (15 U.S.C. 77www(b)), by striking “Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935” and inserting “Securities Act
of 1933 or the Securities Exchange Act of 1934’’;
and
(6) in section 326 (15 U.S.C. 77zzz), by strik-
ing “Securities Act of 1933, or the Securities Ex-
change Act of 1934, or the Public Utility Holding
Company Act of 1935,” and inserting “Securities
Act of 1933 or the Securities Exchange Act of
1934”.

(e) INVESTMENT COMPANY ACT OF 1940.—The In-
vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
is amended—

(1) in section 2(a)(44) (15 U.S.C. 80a–
2(a)(44)), by striking “‘Public Utility Holding Com-
pany Act of 1935’,”;

(2) in section 3(c) (15 U.S.C. 80a–3(c)), by
striking paragraph (8) and inserting the following:

“(8) [Repealed]’’;

(3) in section 38(b) (15 U.S.C. 80a–37(b)), by
striking “the Public Utility Holding Company Act of
1935,”; and

(4) in section 50 (15 U.S.C. 80a–49), by strik-
ing “the Public Utility Holding Company Act of
1935,”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section
202(a)(21) of the Investment Advisers Act of 1940 (15
SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS AND NONMATERIAL LOSSES TO THE DEPOSIT INSURANCE FUND FOR PURPOSES OF INSPECTOR GENERAL REVIEWS.

(a) IN GENERAL.—Section 38(k) of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended—

(1) in paragraph (2), by striking subparagraph (B) and inserting the following:

“(B) MATERIAL LOSS DEFINED.—The term ‘material loss’ means any estimated loss in excess of—

“(i) $100,000,000, if the loss occurs during the period beginning on January 1, 2010, and ending on December 31, 2011;

“(ii) $75,000,000, if the loss occurs during the period beginning on January 1, 2012, and ending on December 31, 2013;

and

“(iii) $50,000,000, if the loss occurs on or after January 1, 2014.”;

(2) in paragraph (4)(A) by striking “the report” and inserting “any report on losses required under this subsection,”;
(3) by striking paragraph (6);

(4) by redesignating paragraph (5) as paragraph (6); and

(5) by inserting after paragraph (4) the following:

“(5) LOSSES THAT ARE NOT MATERIAL.—

“(A) SEMIANNUAL REPORT.—For the 6-
month period ending on March 31, 2010, and
each 6-month period thereafter, the Inspector
General of each Federal banking agency shall—

“(i) identify losses that the Inspector
General estimates have been incurred by
the Deposit Insurance Fund during that 6-
month period, with respect to the insured
depository institutions supervised by the
Federal banking agency;

“(ii) for each loss incurred by the De-
posit Insurance Fund that is not a mate-
rual loss, determine—

“(I) the grounds identified by the
Federal banking agency or State bank
supervisor for appointing the Corpora-
tion as receiver under section

11(c)(5); and
“(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

“(iii) prepare and submit a written report to the appropriate Federal banking agency and to Congress on the results of any determination by the Inspector General, including—

“(I) an identification of any loss that warrants an in-depth review, together with the reasons why such review is warranted, or, if the Inspector General determines that no review is warranted, an explanation of such determination; and

“(II) for each loss identified under subclause (I) that warrants an in-depth review, the date by which such review, and a report on such review prepared in a manner consistent with reports under paragraph (1)(A), will be completed and submitted to the Federal banking agency and Congress.
“(B) Deadline for semiannual report.—The Inspector General of each Federal banking agency shall—

“(i) submit each report required under paragraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

“(ii) provide a copy of the report required under paragraph (A) to any Member of Congress, upon request.”.

(b) Technical and Conforming Amendment.—
The heading for subsection (k) of section 38 of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended to read as follows:

“(k) Reviews Required When Deposit Insurance Fund Incurs Losses.—”.

SEC. 988. Amendment to Definition of Material Loss and Nonmaterial Losses to the National Credit Union Share Insurance Fund for Purposes of Inspector General Reviews.

(a) In General.—Section 216(j) of the Federal Credit Union Act (12 U.S.C. 1790d(j)) is amended to read as follows:
(j) Reviews Required When Share Insurance Fund Experiences Losses.—

“(1) In General.—If the Fund incurs a material loss with respect to an insured credit union, the Inspector General of the Board shall—

“(A) submit to the Board a written report reviewing the supervision of the credit union by the Administration (including the implementation of this section by the Administration), which shall include—

“(i) a description of the reasons why the problems of the credit union resulted in a material loss to the Fund; and

“(ii) recommendations for preventing any such loss in the future; and

“(B) submit a copy of the report under subparagraph (A) to—

“(i) the Comptroller General of the United States;

“(ii) the Corporation;

“(iii) in the case of a report relating to a State credit union, the appropriate State supervisor; and

“(iv) to any Member of Congress, upon request.
“(2) MATERIAL LOSS DEFINED.—For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union, a loss is material if it exceeds the sum of—

“(A) $25,000,000; and

“(B) an amount equal to 10 percent of the total assets of the credit union on the date on which the Board initiated assistance under section 208 or was appointed liquidating agent.

“(3) PUBLIC DISCLOSURE REQUIRED.—

“(A) IN GENERAL.—The Board shall disclose a report under this subsection, upon request under section 552 of title 5, United States Code, without excising—

“(i) any portion under section 552(b)(5) of title 5, United States Code; or

“(ii) any information about the insured credit union (other than trade secrets) under section 552(b)(8) of title 5, United States Code.

“(B) RULE OF CONSTRUCTION.—Subparagraph (A) may not be construed as requiring the agency to disclose the name of any customer of the insured credit union (other than an institution-affiliated party), or information
from which the identity of such customer could reasonably be ascertained.

“(4) Losses that are not material.—

“(A) Semiannual report.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of the Board shall—

“(i) identify any losses that the Inspector General estimates were incurred by the Fund during such 6-month period, with respect to insured credit unions;

“(ii) for each loss to the Fund that is not a material loss, determine—

“(I) the grounds identified by the Board or the State official having jurisdiction over a State credit union for appointing the Board as the liquidating agent for any Federal or State credit union; and

“(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

“(iii) prepare and submit a written report to the Board and to Congress on the
results of the determinations of the Inspector General that includes—

“(I) an identification of any loss that warrants an in-depth review, and the reasons such review is warranted, or if the Inspector General determines that no review is warranted, an explanation of such determination; and

“(II) for each loss identified in subclause (I) that warrants an in-depth review, the date by which such review, and a report on the review prepared in a manner consistent with reports under paragraph (1)(A), will be completed.

“(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of the Board shall—

“(i) submit each report required under subparagraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

“(ii) provide a copy of the report required under subparagraph (A) to any Member of Congress, upon request.
“(5) GAO REVIEW.—The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate—

“(A) review each report made under paragraph (1), including the extent to which the Inspector General of the Board complied with the requirements under section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) with respect to each such report; and

“(B) recommend improvements to the supervision of insured credit unions (including improvements relating to the implementation of this section).”.

SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON PROPRIETARY TRADING.

(a) DEFINITIONS.—In this section—

(1) the term “covered entity” means—

(A) an insured depository institution, an affiliate of an insured depository institution, a bank holding company, a financial holding company, or a subsidiary of a bank holding company or a financial holding company, as those terms are defined in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.); and
(B) any other entity, as the Comptroller General of the United States may determine; and

(2) the term “proprietary trading” means the act of a covered entity investing as a principal in securities, commodities, derivatives, hedge funds, private equity firms, or such other financial products or entities as the Comptroller General may determine.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding the risks and conflicts associated with proprietary trading by and within covered entities, including an evaluation of—

(A) whether proprietary trading presents a material systemic risk to the stability of the United States financial system, and if so, the costs and benefits of options for mitigating such systemic risk;

(B) whether proprietary trading presents material risks to the safety and soundness of the covered entities that engage in such activities, and if so, the costs and benefits of options for mitigating such risks;
(C) whether proprietary trading presents material conflicts of interest between covered entities that engage in proprietary trading and the clients of the institutions who use the firm to execute trades or who rely on the firm to manage assets, and if so, the costs and benefits of options for mitigating such conflicts of interest;

(D) whether adequate disclosure regarding the risks and conflicts of proprietary trading is provided to the depositors, trading and asset management clients, and investors of covered entities that engage in proprietary trading, and if not, the costs and benefits of options for the improvement of such disclosure; and

(E) whether the banking, securities, and commodities regulators of institutions that engage in proprietary trading have in place adequate systems and controls to monitor and contain any risks and conflicts of interest related to proprietary trading, and if not, the costs and benefits of options for the improvement of such systems and controls.
(2) Considerations.—In carrying out the study required under paragraph (1), the Comptroller General shall consider—

(A) current practice relating to proprietary trading;

(B) the advisability of a complete ban on proprietary trading;

(C) limitations on the scope of activities that covered entities may engage in with respect to proprietary trading;

(D) the advisability of additional capital requirements for covered entities that engage in proprietary trading;

(E) enhanced restrictions on transactions between affiliates related to proprietary trading;

(F) enhanced accounting disclosures relating to proprietary trading;

(G) enhanced public disclosure relating to proprietary trading; and

(H) any other options the Comptroller General deems appropriate.

(c) Report to Congress.—Not later than 15 months after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study conducted under subsection (b).
(d) ACCESS BY COMPTROLLER GENERAL.—For purposes of conducting the study required under subsection (b), the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by a covered entity that engages in proprietary trading, and to the officers, directors, employees, independent public accountants, financial advisors, staff, and agents and representatives of a covered entity (as related to the activities of the agent or representative on behalf of the covered entity), at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records, as the Comptroller General deems appropriate.

(e) CONFIDENTIALITY OF REPORTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Comptroller General may not disclose information regarding—

(A) any proprietary trading activity of a covered entity, unless such information is disclosed at a level of generality that does not reveal the investment or trading position or strategy of the covered entity for any specific secu-
rity, commodity, derivative, or other investment
or financial product; or

(B) any individual interviewed by the
Comptroller General for purposes of the study
under subsection (b), unless such information is
disclosed at a level of generality that does not
reveal—

(i) the name of or identifying details
relating to such individual; or

(ii) in the case of an individual who is
an employee of a third party that provides
professional services to a covered entity be-
lieved to be engaged in proprietary trading,
the name of or any identifying details re-
lating to such third party.

(2) EXCEPTIONS.—The Comptroller General
may disclose the information described in paragraph
(1)—

(A) to a department, agency, or official of
the Federal Government, for official use, upon
request;

(B) to a committee of Congress, upon re-
quest; and

(C) to a court, upon an order of such
court.
(a) Definitions.—As used in this section—

(1) the term “eligible entity” means—

(A) a securities commission (or any agency or office performing like functions) of a State that the Office determines has adopted rules on the appropriate use of designations in the offer or sale of securities or the provision of investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) the insurance commission (or any agency or office performing like functions) of any State that the Office determines has—

(i) adopted rules on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and
(ii) adopted rules with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); or

(C) a consumer protection agency of any State, if—

(i) the securities commission (or any agency or office performing like functions) of the State is eligible under subparagraph (A); or

(ii) the insurance commission (or any agency or office performing like functions) of the State is eligible under subparagraph (B);

(2) the term “financial product” means a security, an insurance product (including an insurance product that pays a return, whether fixed or variable), a bank product, and a loan product;

(3) the term “misleading designation”—

(A) means a certification, professional designation, or other purported credential that in-
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dicates or implies that a salesperson or adviser
has special certification or training in advising
or servicing seniors; and

(B) does not include a certification, profes-
sional designation, license, or other credential
that—

(i) was issued by or obtained from an
academic institution having regional ac-
creditation;

(ii) meets the standards for certify-
cations and professional designations out-
lined by the NASAA Model Rule on the
Use of Senior-Specific Certifications and
Professional Designations (or any suc-
cessor thereto) or by the Model Regula-
tions on the Use of Senior-Specific Certifi-
cations and Professional Designations in
the Sale of Life Insurance and Annuities,
adopted by the National Association of In-
surance Commissioners (or any successor
thereto); or

(iii) was issued by or obtained from a
State;

(4) the term “misleading or fraudulent mar-
keting” means the use of a misleading designation
by a person that sells to or advises a senior in connection with the sale of a financial product;

(5) the term “NASAA” means the North American Securities Administrators Association;

(6) the term “Office” means the Office of Financial Literacy of the Bureau;

(7) the term “senior” means any individual who has attained the age of 62 years or older; and

(8) the term “State” has the same meaning as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(b) Grants to States for Enhanced Protection of Seniors from Being Misled by False Designations.—The Office shall establish a program under which the Office may make grants to States or eligible entities—

(1) to hire staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement officers, in order to identify salespersons and advisers who target seniors through the use of misleading designations;
(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of salespersons and advisers who target seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers in connection with the sale and marketing of financial products;

(5) to provide educational materials and training to seniors to increase awareness and understanding of misleading or fraudulent marketing;

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

(7) to enhance provisions of State law to provide protection for seniors against misleading or fraudulent marketing.

(c) APPLICATIONS.—A State or eligible entity desiring a grant under this section shall submit an application to the Office, in such form and in such a manner as the Office may determine, that includes—

(1) a proposal for activities to protect seniors from misleading or fraudulent marketing that are
proposed to be funded using a grant under this section, including—

(A) an identification of the scope of the problem of misleading or fraudulent marketing in the State;

(B) a description of how the proposed activities would—

(i) protect seniors from misleading or fraudulent marketing in the sale of financial products, including by proactively identifying victims of misleading and fraudulent marketing who are seniors;

(ii) assist in the investigation and prosecution of those using misleading or fraudulent marketing; and

(iii) discourage and reduce cases of misleading or fraudulent marketing; and

(C) a description of how the proposed activities would be coordinated with other State efforts; and

(2) any other information, as the Office determines is appropriate.

(d) PERFORMANCE OBJECTIVES AND REPORTING REQUIREMENTS.—The Office may establish such performance objectives and reporting requirements for States and
eligible entities receiving a grant under this section as the
Office determines are necessary to carry out and assess
the effectiveness of the program under this section.

(e) MAXIMUM AMOUNT.—The amount of a grant
under this section may not exceed—

(1) $500,000 for each of 3 consecutive fiscal
years, if the recipient is a State, or an eligible entity
of a State, that has adopted rules—

(A) on the appropriate use of designations
in the offer or sale of securities or investment
advice that meet or exceed the minimum re-
quirements of the NASAA Model Rule on the
Use of Senior-Specific Certifications and Pro-
fessional Designations (or any successor there-
to);

(B) on the appropriate use of designations
in the sale of insurance products that, to the
extent practicable, conform to the minimum re-
quirements of the National Association of In-
surance Commissioners Model Regulation on
the Use of Senior-Specific Certifications and
Professional Designations in the Sale of Life
Insurance and Annuities (or any successor
thereeto); and
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(C) with respect to fiduciary or suitability
requirements in the sale of annuities that meet
or exceed the minimum requirements estab-
lished by the Suitability in Annuity Trans-
actions Model Regulation of the National Asso-
ciation of Insurance Commissioners (or any
successor thereto); and

(2) $100,000 for each of 3 consecutive fiscal
years, if the recipient is a State, or an eligible entity
of a State, that has adopted—

(A) rules on the appropriate use of des-
ignations in the offer or sale of securities or in-
vestment advice that meet or exceed the min-
imum requirements of the NASAA Model Rule
on the Use of Senior-Specific Certifications and
Professional Designations (or any successor
thereto); or

(B) rules—

(i) on the appropriate use of designa-
tions in the sale of insurance products
that, to the extent practicable, conform to
the minimum requirements of the National
Association of Insurance Commissioners
Model Regulation on the Use of Senior-
Specific Certifications and Professional
Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto).

(f) SUBGRANTS.—A State or eligible entity that receives a grant under this section may make a subgrant, as the State or eligible entity determines is necessary to carry out the activities funded using a grant under this section.

(g) REAPPLICATION.—A State or eligible entity that receives a grant under this section may reapply for a grant under this section, notwithstanding the limitations on grant amounts under subsection (e).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $8,000,000 for each of fiscal years 2011 through 2015.
SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS

GENERAL INDEPENDENCE.


(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting “the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,” after “means”; 

(B) in subparagraph (A), by striking “and” after the semicolon; and

(C) by adding after subparagraph (B) the following:

“(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code); 

“(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States; 

“(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a));
“(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

“(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

“(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;”;

and

(2) in subsection (h), by inserting “if the designated Federal entity is not a board or commission, include” after “designated Federal entities and”.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking “and” after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

“(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or
“(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

“(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

“(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.”.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following “(e)” as paragraph (2); and
(2) by striking “(e)” and inserting the following:

“(e)(1) In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a 2/3 majority of the board or commission.”.

SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—

There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the “Council of Inspectors General”) chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.
(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.
(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general’s ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General
Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SEC. 989F. GAO STUDY OF PERSON TO PERSON LENDING.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of person to person lending to determine the optimal Federal regulatory structure.

(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller Gen-
eral shall consult with Federal banking agencies, the
Commission, consumer groups, outside experts, and
the person to person lending industry.

(3) CONTENT OF STUDY.—The study required
under paragraph (1) shall include an examination
of—

(A) the regulatory structure as it exists on
the date of enactment of this Act, as deter-
mined by the Commission, with particular at-
tention to—

(i) the application of the Securities
Act of 1933 to person to person lending
platforms;

(ii) the posting of consumer loan in-
formation on the EDGAR database of the
Commission; and

(iii) the treatment of privately held
person to person lending platforms as pub-
lic companies;

(B) the State and other Federal regulators
responsible for the oversight and regulation of
person to person lending markets;

(C) any Federal, State, or local govern-
ment or private studies of person to person
lending completed or in progress on the date of enactment of this Act;

(D) consumer privacy and data protections, minimum credit standards, anti-money laundering and risk management in the regulatory structure as it exists on the date of enactment of this Act, and whether additional or alternative safeguards are needed; and

(E) the uses of person to person lending.

(b) Report.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the study required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) Content of report.—The report required under paragraph (1) shall include alternative regulatory options, including—

(A) the involvement of other Federal agencies; and

(B) alternative approaches by the Commission and recommendations on whether the alternative approaches are effective.
Subtitle J—Self-funding of the Securities and Exchange Commission

SEC. 991. SECURITIES AND EXCHANGE COMMISSION SELF-FUNDING.

(a) SELF-FUNDING AUTHORITY.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended—

(1) in subsection (c), in the second sentence, by striking “credited to the appropriated funds of the Commission” and inserting “deposited in the account described in subsection (i)(4)”;

(2) in subsection (f), in the second sentence, by striking “considered a reimbursement to the appropriated funds of the Commission” and inserting “deposited in the account described in subsection (i)(4)”; and

(3) by adding at the end the following:

“(i) FUNDING OF THE COMMISSION.—

“(1) BUDGET.—For each fiscal year, the Chairman of the Commission shall prepare and submit to Congress a budget to Congress. Such budget shall be submitted at the same time the President submits a budget of the United States to Congress for such fiscal year. The budget submitted by the Chairman
of the Commission pursuant to this paragraph shall not be considered a request for appropriations.

“(2) TREASURY PAYMENT.—

“(A) On the first day of each fiscal year, the Treasury shall pay into the account described in paragraph (4) an amount equal to the budget submitted by the Chairman of the Commission pursuant to paragraph (1) for such fiscal year.

“(B) At or prior to the end of each fiscal year, the Commission shall pay to the Treasury from fees and assessments deposited in the account described in paragraph (4) an amount equal to the amount paid by the Treasury pursuant to subparagraph (A) for such fiscal year, unless there are not sufficient fees and assessments deposited in such account at or prior to the end of the fiscal year to make such payment, in which case the Commission shall make such payment in a subsequent fiscal year.

“(3) OBLIGATIONS AND EXPENSES.—

“(A) IN GENERAL.—The Commission shall determine and prescribe the manner in which—

“(i) the obligations of the Commission shall be incurred; and
“(ii) the disbursements and expenses of the Commission allowed and paid.

“(B) INSUFFICIENT FUNDS.—If, in the course of any fiscal year, the Chairman of the Commission determines that, due to unforeseen circumstances, the obligations of the Commission will exceed those provided for in the budget submitted under paragraph (1), the Chairman of the Commission may notify Congress of the amount and expected uses of the additional obligations.

“(C) AUTHORITY TO INCUR EXCESS OBLIGATIONS.—The Commission may incur obligations in excess of the budget submitted under paragraph (1) from amounts available in the account described in paragraph (4).

“(D) RULE OF CONSTRUCTION.—Any notification to Congress under this paragraph shall not be considered a request for appropriations.

“(4) ACCOUNT.—

“(A) ESTABLISHMENT.—Fees and assessments collected under this title, section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), and section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f)) and pay-
ments made by the Treasury pursuant to para-
        graph (2)(A) for any fiscal year shall be depos-
        ited into an account established at any regular
Government depositary or any State or national
bank.

“(B) Rule of construction.—Any
amounts deposited into the account established
under subparagraph (A) shall not be construed
to be Government funds or appropriated mon-
ies.

“(C) No apportionment.—Any amounts
deposited into the account established under
subparagraph (A) shall not be subject to appor-
tionment for the purpose of chapter 15 of title
31, United States Code, or under any other au-
thority.

“(5) Use of account funds.—

“(A) Permissible uses.—Amounts avail-
able in the account described in paragraph (4)
may be withdrawn by the Commission and used
for the purposes described in paragraphs (2)
and (3).

“(B) Impermissible use.—Except as
provided in paragraph (6), no amounts available
in the account described in paragraph (4) shall
be deposited and credited as general revenue of the Treasury.

“(6) EXCESS FUNDS.—If, at the end of any fiscal year and after all payments have been made to the Treasury pursuant to paragraph (2)(B) for such fiscal year and all prior fiscal years, the balance of the account described in paragraph (4) exceeds 25 percent of the budget of the Commission for the following fiscal year, the amount by which the balance exceeds 25 percent of such budget shall be credited as general revenue of the Treasury.”.

(b) CONFORMING AMENDMENTS TO TRANSACTION FEE PROVISIONS.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(1) by amending subsection (a) to read as follows:

“(a) RECOVERY OF COSTS AND EXPENSES.—

“(1) IN GENERAL.—The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed—

“(A) to recover the reasonable costs and expenses of the Commission, as set forth in the annual budget of the Commission; and

“(B) to provide funds necessary to maintain a reserve.
“(2) OVERPAYMENTS.—The authority to collect transaction fees and assessments in accordance with this section shall include the authority to offset from such collection any overpayment of transaction fees or assessments, regardless of the fiscal year in which such overpayment is made.”;

(2) in subsection (e)(2), by striking “September 30” and inserting “September 25”;

(3) in subsection (g), by striking “April 30” and inserting “August 31”;

(4) by amending subsection (i) to read as follows:

“(i) FEE COLLECTIONS.—Fees and assessments collected pursuant to this section shall be deposited and credited in accordance with section 4(g) of this title.”;

(5) by amending subsection (j) to read as follows:

“(j) ADJUSTMENTS TO TRANSACTION FEE RATES.—

“(1) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections
under this section (including assessments collected under subsection (d)) that are equal to the budget of the Commission for such fiscal year, plus amounts necessary to maintain a reserve.

“(2) MID-YEAR ADJUSTMENT.—For each fiscal year, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first 4 months of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, not later than March 1, adjust each of the rates applicable under subsections (b) and (e) for such fiscal year to a uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including fees estimated to be collected under subsections (b) and (e) during such fiscal year prior to the effective date of the new uniform adjusted rate and assessments collected under subsection (d)) that are equal
to the budget of the Commission for such fiscal year, plus amounts necessary to maintain a reserve. In making such revised estimate, the Commission shall, after consultation with the Congressional Budget Office and the Office of Management and Budget, use the same methodology required by paragraph (4).

“(3) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5 United States Code. An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (1) shall take effect on the first day of the fiscal year to which such rate applies. An adjusted rate prescribed under paragraph (2) shall take effect on April 1 of the fiscal year to which such rate applies.

“(4) BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES.—For purposes of this subsection, the baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures
products, and options on securities indexes excluding
a narrow-based security index) to be transacted on
each national securities exchange and by or through
any member of each national securities association
(otherwise than on a national securities exchange)
during such fiscal year as determined by the Com-
mission, after consultation with the Congressional
Budget Office and the Office of Management and
Budget, using the methodology required for making
projections pursuant to section 907 of title 2.”; and
(6) by striking subsections (k) and (l).
(c) CONFORMING AMENDMENTS TO REGISTRATION
FEE PROVISIONS.—
(1) SECTION 6(B) OF THE SECURITIES ACT OF
1933.—Section 6(b) of the Securities Act of 1933
(15 U.S.C. 77f(b)) is amended—
(A) by striking “offsetting” each place that
term appears and inserting “fee”; 
(B) in paragraph (3), in the paragraph
heading, by striking “OFFSETTING” and insert-
ing “FEE”; 
(C) in paragraph (11)(A), in the subpara-
graph heading, by striking “OFFSETTING” and
inserting “FEE”;
(D) by striking paragraphs (1), (3), (4), (6), (8), and (9);

(E) by redesignating paragraph (2) as paragraph (1);

(F) in paragraph (1), as so redesignated, by striking “(5) or (6)” and inserting “(3)”;  

(G) by inserting after paragraph (1), as so redesignated, the following:

“(2) FEE COLLECTIONS.—Fees collected pursuant to this subsection shall be deposited and credited in accordance with section 4(i) of the Securities Exchange Act of 1934.”;

(H) by redesignating paragraph (5) as paragraph (3);

(I) in paragraph (3), as redesignated—

(i) by striking “of the fiscal years 2003 through 2011” and inserting “fiscal year”; and

(ii) by striking “paragraph (2)” and inserting “paragraph (1)”;

(J) by redesignating paragraph (7) as paragraph (4);

(K) by inserting after paragraph (4), as so redesignated, the following:
“(5) Review and effective date.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code.

An adjusted rate prescribed under paragraph (3) and published under paragraph (6) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (3) shall take effect on the first day of the fiscal year to which such rate applies.”;

(L) by redesignating paragraphs (10) and (11), as paragraphs (6) and (7);

(M) in paragraph (6), as redesignated, by striking “April 30” and inserting “August 31”;

and

(N) in paragraph (7), as redesignated—

(i) by striking “of the fiscal years 2002 through 2011” and inserting “fiscal year”; and

(ii) by inserting at the end of the table in subparagraph (A) the following:

<table>
<thead>
<tr>
<th>2012 and each succeeding fiscal year</th>
<th>An amount that is equal to the target fee collection amount for the prior fiscal year adjusted by the rate of inflation.</th>
</tr>
</thead>
</table>
(2) Section 13(e) of the Securities Exchange Act of 1934.—Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended—

(A) by striking “offsetting” each place that term appears and inserting “fee”;

(B) in paragraph (3) by striking “paragraphs (5) and (6)” and inserting “paragraph (5)”;

(C) by amending paragraph (4) to read as follows:

“(4) Fee Collections.—Fees collected pursuant to this subsection shall be deposited and credited in accordance with section 4(g) of this title.”;

(D) in paragraph (5), by striking “of the fiscal years 2003 through 2011” and inserting “fiscal year”;  

(E) by striking paragraphs (6), (7), and (8);

(F) by redesignating paragraph (7) as paragraph (6);

(G) by inserting after paragraph (6), as so redesignated, the following:

“(7) Review and Effective Date.—In exercising its authority under this subsection, the Com-
mission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (5) and published under paragraph (8) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (5) shall take effect on the first day of the fiscal year to which such rate applies.”;

(H) by striking paragraph (9);

(I) by redesignating paragraph (10) as paragraph (8); and

(J) in paragraph (8), as so redesignated, by striking “6(b)(10)” and inserting “6(b)(6)”.

(3) SECTION 14 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(g)) is amended—

(A) by striking the word “offsetting” each time that it appears and inserting in its place the word “fee”;

(B) in paragraph (1)(A), by striking “paragraphs (5) and (6)” each time it appears and inserting “paragraph (5)”;

(C) in paragraph (3), by striking “paragraphs (5) and (6)” and inserting “paragraph (5)”;}
(D) by amending paragraph (4) to read as follows:

“(4) FEE COLLECTIONS.—Fees collected pursuant to this subsection shall be deposited and credited in accordance with section 4(g) of this title.”;

(E) in paragraph (5), by striking “of the fiscal years 2003 through 2011” and inserting “fiscal year”;

(F) by striking paragraphs (6), (8), and (9);

(G) by redesignating paragraph (7) as paragraph (6);

(H) by inserting after paragraph (6), as so redesignated, the following:

“(7) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (5) and published under paragraph (8) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (5) shall take effect on the first day of the fiscal year to which such rate applies.”;
(I) by redesignating paragraphs (10) and
(11) as paragraphs (8) and (9), respectively;
and
(J) in paragraph (9), as so redesignated,
by striking “6(b)(10)” and inserting “6(b)(7)”.


(e) EFFECTIVE DATE AND TRANSITION PROVISIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall be effective on the first day of the fiscal year following the fiscal year in which this Act is enacted.

(2) TRANSITION PERIOD.—For the fiscal year following the fiscal year in which this Act is enacted, the budget of the Commission shall be deemed to be the budget submitted by the Chairman of the Commission to the President for such fiscal year in accordance with the provisions of section 1108 of title 31, United States Code.

(3) OTHER PROVISIONS.—The amendments made by this section to subsections (g) and (j)(1) of section 31 of the Securities Exchange Act of 1934
(15 U.S.C. 78ee) shall be effective on the date of enactment of this Act, and shall require the Commission to make and publish an annual adjustment to the fee rates applicable under subsections (b) and (c) of section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) for the fiscal year following the fiscal year in which this Act is enacted. The adjusted rate described in the preceding sentence shall supersede any previously published adjusted rate applicable under subsections (b) and (c) of section 31 of the Securities Exchange Act of 1934 for the fiscal year following the fiscal year in which this Act is enacted and shall take effect on the first day of the fiscal year following the fiscal year in which this Act is enacted, except that, if this Act is enacted on or after August 31 and on or prior to September 30, the adjusted rate described in the first sentence shall be published not later than 15 days after the date of enactment of this Act and take effect 30 days thereafter, and the Commission shall continue to collect fees under subsections (b) and (c) of section 31 of the Securities Exchange Act of 1934 at the rate in effect during the preceding fiscal year until the adjusted rate is effective.
TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the “Consumer Financial Protection Act of 2010”.

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

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

(2) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection.

(3) BUSINESS OF INSURANCE.—The term “business of insurance” means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.
(4) CONSUMER.—The term “consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term “consumer financial product or service” means any financial product or service that is described in one or more categories under—

(A) paragraph (13) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (13)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) COVERED PERSON.—The term “covered person” means—

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) CREDIT.—The term “credit” means the right granted by a person to a consumer to defer
payment of a debt, incur debt and defer its payment,
or purchase property or services and defer payment
for such purchase.

(8) DEPOSIT-TAKING ACTIVITY.—The term “de-
posit-taking activity” means—

(A) the acceptance of deposits, mainte-
nance of deposit accounts, or the provision of
services related to the acceptance of deposits or
the maintenance of deposit accounts;

(B) the acceptance of funds, the provision
of other services related to the acceptance of
funds, or the maintenance of member share ac-
counts by a credit union; or

(C) the receipt of funds or the equivalent
thereof, as the Bureau may determine by rule
or order, received or held by a covered person
(or an agent for a covered person) for the pur-
pose of facilitating a payment or transferring
funds or value of funds between a consumer
and a third party.

(9) DESIGNATED TRANSFER DATE.—The term
“designated transfer date” means the date estab-
lished under section 1062.

(10) DIRECTOR.—The term “Director” means
the Director of the Bureau.
(11) ELECTRONIC CONDUIT SERVICES.—The term “electronic conduit services”—

(A) means the provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network; and

(B) does not include a person that provides electronic conduit services if, when providing such services, the person—

(i) selects or modifies the content of the electronic data;

(ii) transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such financial data is differentiated from other types of data of the same form that such person transmits, routes, or stores, or with respect to which, provides connections; or

(iii) is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.

(12) ENUMERATED CONSUMER LAWS.—The term “enumerated consumer laws” means—
(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);
(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);
(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.);
(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);
(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);
(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);
(G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);
(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);
(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f));
(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809) except for section 505 as it applies to section 501(b);
(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.); and

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(13) **Fair Lending.**—Term “fair lending” means fair, equitable, and nondiscriminatory access to credit for consumers.

(14) **Federal Consumer Financial Law.**—The term “Federal consumer financial law” means the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities
transferred under subtitles F and H. The term does not include the Federal Trade Commission Act.

(15) **FINANCIAL PRODUCT OR SERVICE.**—The term “financial product or service”—

(A) means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to
the lessee, subject to standards pre-
scribed by the Bureau;

(iii) providing real estate settlement
services, except such services excluded
under subparagraph (B), or performing
appraisals of real estate or personal prop-
erty;

(iv) engaging in deposit-taking activi-
ties, transmitting or exchanging funds, or
otherwise acting as a custodian of funds or
any financial instrument for use by or on
behalf of a consumer;

(v) selling, providing, or issuing stored
value or payment instruments, except that,
in the case of a sale of, or transaction to
reload, stored value, only if the seller exer-
cises substantial control over the terms or
conditions of the stored value provided to
the consumer where, for purposes of this
clause—

(I) a seller shall not be found to
exercise substantial control over the
terms or conditions of the stored value
if the seller is not a party to the con-
tract with the consumer for the stored
value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—
(I) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(II) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services (other than services relating to securities provided by a person regulated by the Commission or a person regulated by a State securities Commission, but only to the extent that such person acts in a regulated capacity) to consumers on individual financial matters or relating to proprietary financial products or services (other than
by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—
(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person;

(bb) provides the information described in item (aa) to an affiliate of such person; or

(cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer,
other than credit described in section 1027(a)(2)(A);

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title, if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers; and

(B) does not include—

(i) the business of insurance; or

(ii) electronic conduit services.

(16) FOREIGN EXCHANGE.—The term “foreign exchange” means the exchange, for compensation, of
currency of the United States or of a foreign government for currency of another government.

(17) INSURED CREDIT UNION.—The term “insured credit union” has the same meaning as in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(18) PAYMENT INSTRUMENT.—The term “payment instrument” means a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(19) PERSON.—The term “person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(20) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term “person regulated by the Commodity Futures Trading Commission” means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.
(21) PERSON REGULATED BY THE COMMISSION.—The term “person regulated by the Commission” means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;
(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(22) Person regulated by a State insurance regulator.—The term “person regulated by a State insurance regulator” means any person that is engaged in the business of insurance and subject to regulation by any State insurance regulator, but
only to the extent that such person acts in such capacity.

(23) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term “person that performs income tax preparation activities for consumers” means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(24) PRUDENTIAL REGULATOR.—The term “prudential regulator” means—

(A) in the case of an insured depository institution, the appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act; and
(B) in the case of an insured credit union, the National Credit Union Administration.

(25) RELATED PERSON.—The term “related person”—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 2 of the Bank Holding Company Act of 1956), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or ac-
countant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(26) Service provider.—

(A) In general.—The term “service provider” means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) Exceptions.—The term “service provider” does not include a person solely by virtue
of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) RULE OF CONSTRUCTION.—A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(27) STATE.—The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).
(28) STORED VALUE.—The term “stored value” means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(29) TRANSMITTING OR EXCHANGING FUNDS.— The term “transmitting or exchanging funds” means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

Subtitle A—Bureau of Consumer Financial Protection

SEC. 1011. ESTABLISHMENT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.

(a) BUREAU ESTABLISHED.—There is established in the Federal Reserve System, an independent bureau to be
known as the “Bureau of Consumer Financial Protection”, which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.

(b) **Director and Deputy Director.**—

(1) **In general.**—There is established the position of the Director, who shall serve as the head of the Bureau.

(2) **Appointment.**—Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) **Qualification.**—The President shall nominate the Director from among individuals who are citizens of the United States.

(4) **Compensation.**—The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(5) **Deputy Director.**—There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) **Term.**—
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(1) IN GENERAL.—The Director shall serve for a term of 5 years.

(2) EXPIRATION OF TERM.—An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

(3) REMOVAL FOR CAUSE.—The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) SERVICE RESTRICTION.—No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) OFFICES.—The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.

(a) POWERS OF THE BUREAU.—The Bureau is authorized to establish the general policies of the Bureau
with respect to all executive and administrative functions,

including—

(1) the establishment of rules for conducting
the general business of the Bureau, in a manner not
inconsistent with this title;

(2) to bind the Bureau and enter into con-
tracts;

(3) directing the establishment and mainte-
nance of divisions or other offices within the Bureau,
in order to carry out the responsibilities under the
Federal consumer financial laws, and to satisfy the
requirements of other applicable law;

(4) to coordinate and oversee the operation of
all administrative, enforcement, and research activi-
ties of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the neces-
sity for the obligations and expenditures of the Bu-
reau;

(7) the appointment and supervision of per-
sonnel employed by the Bureau;

(8) the distribution of business among per-
sonnel appointed and supervised by the Director and
among administrative units of the Bureau;

(9) the use and expenditure of funds;
implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) DELEGATION OF AUTHORITY.—The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) AUTONOMY OF THE BUREAU.—

(1) COORDINATION WITH THE BOARD OF GOVERNORS.—Notwithstanding section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) and any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

(2) AUTONOMY.—Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act, the Board of Governors may not—
(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

(B) appoint, direct, or remove any officer or employee of the Bureau; or

(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

(3) RULES AND ORDERS.—No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

(4) RECOMMENDATIONS AND TESTIMONY.—No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement in-
indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

SEC. 1013. ADMINISTRATION.

(a) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Bureau.

(B) EMPLOYEES OF THE BUREAU.—The Director is authorized to employ attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Notwithstanding any other provision of law, all such employees shall be appointed and compensated on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)).

(2) COMPENSATION.—The Director shall at all times provide compensation and benefits to each class of employees that, at a minimum, are equiva-
lent to the compensation and benefits then being
provided by the Board of Governors for the cor-
responding class of employees, and without regard to
the provisions of other laws applicable to officers or
employees of the United States.

(3) LABOR-MANAGEMENT RELATIONS.—

(A) IN GENERAL.—Except as provided in
subparagraph (B), chapter 71 of title 5, United
States Code, shall apply to the Bureau and the
employees of the Bureau.

(B) RULE OF CONSTRUCTION.—Nothing in
subparagraph (A) shall be construed to modify,
limit, or supersede the authority granted to the
Director under paragraph (1)(B) or the re-
quirements set forth in paragraph (2).

(b) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director shall establish a
unit whose functions shall include researching, ana-
lyzing, and reporting on—

(A) developments in markets for consumer
financial products or services, including market
areas of alternative consumer financial products
or services with high growth rates and areas of
risk to consumers;
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(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(E) consumer behavior with respect to consumer financial products or services, including performance on mortgage loans; and

(F) experiences of traditionally underserved consumers, including un-banked and under-banked consumers.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a
website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with the Federal Trade Commission or other Federal agencies to route complaints to such agencies, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems; and

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources.

(C) REPORTS TO THE CONGRESS.—The Director shall present an annual report to Con-
gress not later than March 31 of each year on
the complaints received by the Bureau in the
prior year regarding consumer financial prod-
ucts and services. Such report shall include in-
formation and analysis about complaint num-
bers, complaint types, and, where applicable, in-
formation about resolution of complaints.

(D) DATA SHARING REQUIRED.—To facili-
tate preparation of the reports required under
subparagraph (C), supervision and enforcement
activities, and monitoring of the market for
consumer financial products and services, the
Bureau shall share consumer complaint infor-
mation with prudential regulators, the Federal
Trade Commission, other Federal agencies, and
State agencies, consistent with Federal law ap-
licable to personally identifiable information.
The prudential regulators, the Federal Trade
Commission, and other Federal agencies shall
share data relating to consumer complaints re-
arding consumer financial products and serv-
ices with the Bureau, consistent with Federal
law applicable to personally identifiable infor-
mation.
(c) Office of Fair Lending and Equal Opportunity.—

(1) Establishment.—The Director shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) Functions.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and
(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—There is established the position of Assistant Director of the Bureau for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(d) OFFICE OF FINANCIAL LITERACY.—

(1) ESTABLISHMENT.—The Director shall establish an Office of Financial Literacy, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(2) OTHER DUTIES.—The Office of Financial Literacy shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Education, through activities including providing opportunities for consumers to access—

(A) financial counseling;
(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(C) savings, borrowing, and other services found at mainstream financial institutions;

(D) activities intended to—

(i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;

(ii) reduce debt; and

(iii) improve the financial situation of the consumer;

(E) assistance in developing long-term savings strategies; and

(F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.

(3) COORDINATION.—The Office of Financial Literacy shall coordinate with other units within the Bureau in carrying out its functions, including—

(A) working with the Community Affairs Office to implement the strategy to improve financial literacy of consumers; and
(B) working with the research unit established by the Director to conduct research related to consumer financial education and counseling.

(4) REPORT.—Not later than 24 months after the designated transfer date, and annually thereafter, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(5) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(A) in subparagraph (B), by striking “and” at the end;

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following new subparagraph:

“(C) the Director of the Bureau of Consumer Financial Protection; and”.
(6) CONFORMING AMENDMENT.—Section 513(d) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(d)) is amended by adding at the end the following: “The Director of the Bureau of Consumer Financial Protection shall serve as the Vice Chairman.”.

(e) OFFICE OF SERVICE MEMBER AFFAIRS.—

(1) IN GENERAL.—The Director shall establish an Office of Service Member Affairs, which shall be responsible for developing and implementing initiatives for service members and their families intended to—

(A) educate and empower service members and their families to make better informed decisions regarding consumer financial products and services;

(B) coordinate with the unit of the Bureau established under subsection (b)(3), in order to monitor complaints by service members and their families and responses to those complaints by the Bureau or other appropriate Federal or State agency; and

(C) coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer
financial products and services offered to, or
used by, service members and their families.

(2) COORDINATION.—

(A) REGIONAL SERVICES.—The Director is
authorized to assign employees of the Bureau
as may be deemed necessary to conduct the
business of the Office of Service Member Af-
fairs, including by establishing and maintaining
the functions of the Office in regional offices of
the Bureau located near military bases, military
treatment facilities, or other similar military fa-
cilities.

(B) AGREEMENTS.—The Director is au-
thorized to enter into memoranda of under-
standing and similar agreements with the De-
partment of Defense, including any branch or
agency as authorized by the department, in
order to carry out the business of the Office of
Service Member Affairs.

(3) DEFINITION.—As used in this subsection,
the term “service member” means any member of
the United States Armed Forces and any member of
the National Guard or Reserves.

(f) TIMING.—The Office of Fair Lending, the Office
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
4 SEC. 1014. CONSUMER ADVISORY BOARD.
5 (a) Establishment Required.—The Director shall
6 establish a Consumer Advisory Board to advise and con-
7 sult with the Bureau in the exercise of its functions under
8 the Federal consumer financial laws, and to provide infor-
9 mation on emerging practices in the consumer financial
10 products or services industry, including regional trends,
11 concerns, and other relevant information.
12 (b) Membership.—In appointing the members of
13 the Consumer Advisory Board, the Director shall seek to
14 assemble experts in consumer protection, financial serv-
15 ices, community development, fair lending, and consumer
16 financial products or services and representatives of depos-
17 itory institutions that primarily serve underserved commu-
18 nities, and representatives of communities that have been
19 significantly impacted by higher-priced mortgage loans,
20 and seek representation of the interests of covered persons
21 and consumers, without regard to party affiliation. Not
22 fewer than 6 members shall be appointed upon the rec-
23 ommendation of the regional Federal Reserve Bank Presi-
24 dents, on a rotating basis.
(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 1015. COORDINATION.

The Bureau shall coordinate with the Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and
the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) REPORTS REQUIRED.—The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a report, beginning with the session following the designated transfer date.

(c) CONTENTS.—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has
received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law;

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau; and

(9) an analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion.

SEC. 1017. FUNDING; PENALTIES AND FINES.

(a) Transfer of Funds From Board of Governors.—

(1) In general.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Gov-
ernors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

(2) FUNDING CAP.—

(A) IN GENERAL.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

(i) 10 percent of such expenses in fiscal year 2011;

(ii) 11 percent of such expenses in fiscal year 2012; and

(iii) 12 percent of such expenses in fiscal year 2013, and in each year thereafter.
(B) Amount adjusted for inflation.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted annually, using the percent by which the average urban consumer price index for the quarter preceding the date of the payment differs from the average of that index for the same quarter in the prior year.

(3) Transition period.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date.

(4) Budget and financial management.—

(A) Financial operating plans and forecasts.—The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and re-
sults of operations of the Bureau, as prepared
by the Director in the ordinary course of the
operations of the Bureau.

(B) Financial statements.—The Bureau shall prepare annually a statement of—

(i) assets and liabilities and surplus or deficit;

(ii) income and expenses; and

(iii) sources and application of funds.

(C) Financial management systems.—The Bureau shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements and applicable Federal accounting standards.

(D) Assertion of internal controls.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established in section 3512(c) of title 31, United States Code.

(E) Rule of construction.—This subsection may not be construed as implying any obligation on the part of the Director to consult
with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in subparagraph (A) or any jurisdiction or oversight over the affairs or operations of the Bureau.

(5) AUDIT OF THE BUREAU.—

(A) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full
facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General, and the right of access of the Comptroller General to such information shall be enforceable pursuant to section 716(e) of title 31, United States Code.

(B) REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of
the financial operations and condition of the
Bureau, together with such recommendations
with respect thereto as the Comptroller General
may deem advisable. A copy of each report shall
be furnished to the President and to the Bu-
reau at the time submitted to the Congress.

(C) ASSISTANCE AND COSTS.—For the
purpose of conducting an audit under this sub-
section, the Comptroller General may, in the
discretion of the Comptroller General, employ
by contract, without regard to section 3709 of
the Revised Statutes of the United States (41
U.S.C. 5), professional services of firms and or-
izations of certified public accountants for
temporary periods or for special purposes. Upon
the request of the Comptroller General, the Di-
rector of the Bureau shall transfer to the Gov-
ernment Accountability Office from funds avail-
able, the amount requested by the Comptroller
General to cover the full costs of any audit and
report conducted by the Comptroller General.
The Comptroller General shall credit funds
transferred to the account established for sala-
ries and expenses of the Government Account-
ability Office, and such amount shall be avail-
able upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(b) **Consumer Financial Protection Fund.**—

(1) **Separate fund in federal reserve board established.**—There is established in the Federal Reserve Board a separate fund, to be known as the “Consumer Financial Protection Fund” (referred to in this section as the “Bureau Fund”).

(2) **Fund receipts.**—All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

(3) **Investment authority.**—

(A) **Amounts in Bureau Fund may be invested.**—The Bureau may request the Board of Governors to invest the portion of the Bureau Fund that is not, in the judgment of the Bureau, required to meet the current needs of the Bureau.

(B) **Eligible investments.**—Investments authorized by this paragraph shall be made by the Board of Governors in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the...
needs of the Bureau Fund, as determined by the Bureau.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Bureau Fund shall be credited to the Bureau Fund.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Bureau Fund shall be immediately available to the Bureau and under the control of the Director, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities. The compensation of the Director and other employees of the Bureau and all other expenses thereof may be paid from, obtained by, transferred to, or credited to the Bureau Fund under this section.

(2) FUNDS THAT ARE NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Bureau Fund and in the Civil Pen-
ally Fund established under subsection (d) shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.

(d) Penalties and Fines.—

(1) Establishment of Victims Relief Fund.—There is established in the Federal Reserve Board a fund to be known as the “Consumer Financial Protection Civil Penalty Fund” (referred to in this subsection as the “Civil Penalty Fund”). If the Bureau obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws, the Bureau shall deposit into the Civil Penalty Fund, the amount of the penalty collected.

(2) Payment to Victims.—Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.
SEC. 1018. EFFECTIVE DATE.
This subtitle shall become effective on the date of enactment of this Act.

Subtitle B—General Powers of the Bureau

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

(a) PURPOSE.—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

(b) OBJECTIVES.—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and ad-
dressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) FUNCTIONS.—The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

(4) subject to sections 1024 through 1026, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;
(5) issuing rules, orders, and guidance implementing Federal consumer financial law; and
(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

SEC. 1022. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) GENERAL AUTHORITY.—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule;
(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau deter-
mines necessary or appropriate to carry out the
purposes and objectives of this title, taking into
consideration the factors in subparagraph (B).

(B) Factors.—In issuing an exemption,
as permitted under subparagraph (A), the Bu-
reau shall, as appropriate, take into consider-
ation—

(i) the total assets of the class of cov-
ered persons;

(ii) the volume of transactions involv-
ing consumer financial products or services
in which the class of covered persons en-
gages; and

(iii) existing provisions of law which
are applicable to the consumer financial
product or service and the extent to which
such provisions provide consumers with
adequate protections.

(4) Exclusive Rulemaking Authority.—
Notwithstanding any other provisions of Federal law
and except as provided in section 1061(b)(5), to the
extent that a provision of Federal consumer finan-
cial law authorizes the Bureau and another Federal
agency to issue regulations under that provision of
law for purposes of assuring compliance with Fed-
eral consumer financial law and any regulations thereunder, the Bureau shall have the exclusive au-
thority to prescribe rules subject to those provisions of law.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rule-
making and other functions, the Bureau shall mon-
itor for risks to consumers in the offering or provi-
sion of consumer financial products or services, in-
cluding developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its re-
sources to perform the monitoring required by this section, the Bureau may consider, among other fac-
tors—

(A) likely risks and costs to consumers asso-
ciated with buying or using a type of con-
sumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which
the law is likely to adequately protect con-
sumers;

(D) rates of growth in the offering or pro-
vision of a consumer financial product or serv-

ice;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally under-
served consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or serv-

ice.

(3) REPORTS.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each cal-
endar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(4) COLLECTION OF INFORMATION.—In con-
ducting research on the offering and provision of consumer financial products or services, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of persons operating
in consumer financial services markets. In order to
gather such information, the Bureau may—

(A) gather and compile information from
examination reports concerning covered persons
or service providers, assessment of consumer
complaints, surveys, and interviews of covered
persons and consumers, and review of available
databases;

(B) require persons to file with the Bu-
reau, under oath or otherwise, in such form and
within such reasonable period of time as the
Bureau may prescribe, by rule or order, annual
or special reports, or answers in writing to spe-
cific questions, furnishing such information as
the Bureau may require; and

(C) make public such information obtained
by the Bureau under this section, as is in the
public interest in reports or otherwise in the
manner best suited for public information and
use.

(5) CONFIDENTIALITY RULES.—The Bureau
shall prescribe rules regarding the confidential treat-
ment of information obtained from persons in con-
nection with the exercise of its authorities under
Federal consumer financial law.
(A) Access by the Bureau to reports of other regulators.—

(i) Examination and financial condition reports.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) Provision of other reports to the Bureau.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(B) Access by other regulators to reports of the Bureau.—
(i) Examination reports.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) Provision of other reports to other regulators.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(6) Privacy considerations.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal,
or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) REPORTS.—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

(e) INFORMATION GATHERING.—In conducting any monitoring or assessment required by this section, the Bu-
reau may gather information through a variety of methods, including by conducting surveys or interviews of consumers.

SEC. 1023. REVIEW OF BUREAU REGULATIONS.

(a) Review of Bureau Regulations.—On the petition of a member agency of the Council, the Council may set aside a final regulation prescribed by the Bureau, or any provision thereof, if the Council decides, in accordance with subsection (c), that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(b) Petition.—

(1) Procedure.—An agency represented by a member of the Council may petition the Council, in writing, and in accordance with rules prescribed pursuant to subsection (f), to stay the effectiveness of, or set aside, a regulation if the member agency filing the petition—

(A) has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States; and
(B) files the petition with the Council not later than 10 days after the date on which the regulation has been published in the Federal Register.

(2) PUBLICATION.—Any petition filed with the Council under this section shall be published in the Federal Register and transmitted contemporaneously with filing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) STAYS AND SET ASIDES.—

(1) STAY.—

(A) IN GENERAL.—Upon the request of any member agency, the Chairperson of the Council may stay the effectiveness of a regulation for the purpose of allowing appropriate consideration of the petition by the Council.

(B) EXPIRATION.—A stay issued under this paragraph shall expire on the earlier of—

(i) 90 days after the date of filing of the petition under subsection (b); or

(ii) the date on which the Council makes a decision under paragraph (3).
(2) NO ADVERSE INFERENCE.—After the expiration of any stay imposed under this section, no inference shall be drawn regarding the validity or enforceability of a regulation which was the subject of the petition.

(3) VOTE.—

(A) IN GENERAL.—The decision to issue a stay of, or set aside, any regulation under this section shall be made only with the affirmative vote in accordance with subparagraph (B) of 2/3 of the members of the Council then serving.

(B) AUTHORIZATION TO VOTE.—A member of the Council may vote to stay the effectiveness of, or set aside, a final regulation prescribed by the Bureau only if the agency or department represented by that member has—

(i) considered any relevant information provided by the agency submitting the petition and by the Bureau; and

(ii) made an official determination, at a public meeting where applicable, that the regulation which is the subject of the petition would put the safety and soundness of the United States banking system or the
stability of the financial system of the
United States at risk.

(4) DECISIONS TO SET ASIDE.—

(A) EFFECT OF DECISION.—A decision by
the Council to set aside a regulation prescribed
by the Bureau, or provision thereof, shall
render such regulation, or provision thereof, un-

(B) TIMELY ACTION REQUIRED.—The
Council may not issue a decision to set aside a
regulation, or provision thereof, which is the
subject of a petition under this section after the
expiration of the later of—

(i) 45 days following the date of filing
of the petition, unless a stay is issued
under paragraph (1); or

(ii) the expiration of a stay issued by
the Council under this section.

(C) SEPARATE AUTHORITY.—The issuance
of a stay under this section does not affect the
authority of the Council to set aside a regu-

(5) DISMISSAL DUE TO INACTION.—A petition
under this section shall be deemed dismissed if the
Council has not issued a decision to set aside a regu-
lation, or provision thereof, within the period for
timely action under paragraph (4)(B).

(6) PUBLICATION OF DECISION.—Any decision
under this subsection to issue a stay of, or set aside,
a regulation or provision thereof shall be published
by the Council in the Federal Register as soon as
practicable after the decision is made, with an expla-
nation of the reasons for the decision.

(7) RULEMAKING PROCEDURES INAPPLI-
CABLE.—The notice and comment procedures under
section 553 of title 5, United States Code, shall not
apply to any decision under this section of the Coun-
cil to issue a stay of, or set aside, a regulation.

(8) JUDICIAL REVIEW OF DECISIONS BY THE
COUNCIL.—A decision by the Council to set aside a
regulation prescribed by the Bureau, or provision
thereof, shall be subject to review under chapter 7
of title 5, United States Code.

(d) APPLICATION OF OTHER LAW.—Nothing in this
section shall be construed as altering, limiting, or restrict-
ing the application of any other provision of law, except
as otherwise specifically provided in this section, including
chapter 5 and chapter 7 of title 5, United States Code,
to a regulation which is the subject of a petition filed
under this section.
(c) SAVINGS CLAUSE.—Nothing in this section shall be construed as limiting or restricting the Bureau from engaging in a rulemaking in accordance with applicable law.

(f) IMPLEMENTING RULES.—The Council shall prescribe procedural rules to implement this section.

SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

(a) SCOPE OF COVERAGE.—

(1) APPLICABILITY.—Notwithstanding any other provision of this title, and except as provided in paragraph (3), this section shall apply to any covered person who—

(A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans;

(B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2); or

(C) the Bureau has reasonable cause to determine, by order, after notice to the covered
person and a reasonable opportunity for such
covered person to respond, based on complaints
collected through the system under section
1013(b)(3) or information from other sources,
is engaging, or has engaged, in a pattern of
conduct that poses undue risks to consumers
with regard to the offering or provision of con-
sumer financial products or services.

(2) Rulemaking to define covered per-
sons subject to this section.—The Bureau
shall consult with the Federal Trade Commission
prior to issuing a rule, in accordance with paragraph
(1)(B), to define covered persons subject to this sec-
tion. The Bureau shall issue its initial rule not later
than 1 year after the designated transfer date.

(3) Rules of construction.—

(A) Certain persons excluded.—This
section shall not apply to persons described in
section 1025(a) or 1026(a).

(B) Activity levels.—For purposes of
computing activity levels under paragraph (1)
or rules issued thereunder, activities of affili-
atated companies (other than insured depository
institutions or insured credit unions) shall be
aggregated.
(b) **SUPERVISION.**—

(1) **IN GENERAL.**—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial law;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) **RISK-BASED SUPERVISION PROGRAM.**—The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a)(1), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

(A) the asset size of the covered person;

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;
(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

(3) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a)(1) and requirements regarding reports to be submitted by such persons.

(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to persons described in subsection (a)(1) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.
(5) **Preservation of Authority.**—Nothing in this title may be construed as limiting the authority of the Director to require reports from persons described in subsection (a)(1), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) **Reports of Tax Law Noncompliance.**—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) **Registration, Recordkeeping, and Other Requirements for Certain Persons.**—

(A) **In General.**—The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.

(B) **Registration.**—

(i) **In General.**—The Bureau shall prescribe rules regarding registration requirements for persons described in subsection (a)(1).
(ii) Exception for related persons.—The Bureau may not impose requirements under this section regarding the registration of a related person.

(iii) Registration information.—Subject to rules prescribed by the Bureau, the Bureau shall publicly disclose the registration information about persons described in subsection (a)(1) to facilitate the ability of consumers to identify persons described in subsection (a)(1) registered with the Bureau.

(C) Recordkeeping.—The Bureau may require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(D) Requirements concerning obligations.—The Bureau may prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, di-
rectors, or key personnel and bonding or other appropriate financial requirements.

(E) Consultation with state agencies.—In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) Enforcement Authority.—

(1) The bureau to have enforcement authority.—Except as provided in paragraph (3) and section 1061(b)(5), with respect to any person described in subsection (a)(1), to the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law.

(2) Referral.—Any Federal agency authorized to enforce a Federal consumer financial law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforcement proceeding, as the Bureau is authorized by that Federal law or by this title.
(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Bureau and the Federal Trade Commission shall negotiate an agreement for coordinating with respect to enforcement actions by each agency regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1), or service providers thereto. The agreement shall include procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce any Federal law regarding the offering or provision of consumer financial products or services.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the com-
plaint in such pending action for any viola-
tion alleged in the complaint; and

(ii) the Bureau or the Federal Trade
Commission may intervene as a party in
any such action brought by the other agen-
cy, and, upon intervening—

(I) be heard on all matters aris-
ing in such enforcement action; and

(II) file petitions for appeal in
such actions.

(C) AGREEMENT TERMS.—The terms of
any agreement negotiated under subparagraph
(A) may modify or supersede the provisions of
subparagraph (B).

(D) DEADLINE.—The agencies shall reach
the agreement required under subparagraph (A)
not later than 6 months after the designated
transfer date.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION
AUTHORITY.—Notwithstanding any other provision of
Federal law and except as provided in section 1061(b)(5),
to the extent that Federal law authorizes the Bureau and
another Federal agency to issue regulations or guidance,
conduct examinations, or require reports from a person
described in subsection (a)(1) under such law for purposes
of assuring compliance with Federal consumer financial
law and any regulations thereunder, the Bureau shall have
the exclusive authority to prescribe rules, issue guidance,
conduct examinations, require reports, or issue exemptions
with regard to a person described in subsection (a)(1),
subject to those provisions of law.

(e) Service Providers.—A service provider to a
person described in subsection (a)(1) shall be subject to
the authority of the Bureau under this section, to the
same extent as if such service provider were engaged in
a service relationship with a bank, and the Bureau were
an appropriate Federal banking agency under section 7(c)
of the Bank Service Company Act (12 U.S.C. 1867(c)).
In conducting any examination or requiring any report
from a service provider subject to this subsection, the Bu-
reau shall coordinate with the appropriate prudential reg-
ulator, as applicable.

(f) Preservation of Farm Credit Administra-
tion Authority.—No provision of this title may be con-
strued as modifying, limiting, or otherwise affecting the
authority of the Farm Credit Administration.

SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS
ASSOCIATIONS, AND CREDIT UNIONS.

(a) Scope of Coverage.—
(1) APPLICABILITY.—This section shall apply to any covered person that is—

(A) an insured depository institution with total assets of more than $10,000,000,000 and any affiliate thereof; or

(B) an insured credit union with total assets of more than $10,000,000,000 and any affiliate thereof.

(2) RULE OF CONSTRUCTION.—For purposes of determining total assets under this section and section 1026, the Bureau shall rely on the same regulations and interim methodologies specified in section 605.

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial laws;

(B) obtaining information about the activities and compliance systems or procedures of such persons; and
(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(3) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(4) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such
information is maintained, stored, or processed by another person.

(5) **Reports of Tax Law Noncompliance.**—

The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) **Primary Enforcement Authority.**—

(1) **The Bureau to Have Primary Enforcement Authority.**—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) **Referral.**—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) **Backup Enforcement Authority of Other Federal Agency.**—If the Bureau does not,
before the end of the 120-day period beginning on
the date on which the Bureau receives a rec-
ommendation under paragraph (2), initiate an en-
forcement proceeding, the other agency referred to
in paragraph (2) may initiate an enforcement pro-
ceeding.

(d) Service Providers.—A service provider to a
person described in subsection (a) shall be subject to the
authority of the Bureau under this section, to the same
extent as if the Bureau were an appropriate Federal bank-
ing agency under section 7(c) of the Bank Service Com-
pany Act 12 U.S.C. 1867(c). In conducting any examina-
tion or requiring any report from a service provider sub-
ject to this subsection, the Bureau shall coordinate with
the appropriate prudential regulator.

(e) Simultaneous and Coordinated Supervisory Action.—

(1) Examinations.—A prudential regulator
and the Bureau shall, with respect to each insured
depository institution, insured credit union, or other
covered person described in subsection (a) that is su-
ervised by the prudential regulator and the Bureau,
respectively—

(A) coordinate the scheduling of examina-
tions of the insured depository institution, in-
sured credit union, or other covered person described in subsection (a);

(B) conduct simultaneous examinations of each insured depository institution, insured credit union, or other covered person described in subsection (a), unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) Coordination with state bank supervisors.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) Avoidance of conflict in supervision.—
(A) REQUEST.—If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the “agencies”) are conflicting, an insured depository institution, insured credit union, or other covered person described in subsection (a) may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) JOINT STATEMENT.—The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person described in subsection (a).

(4) APPEALS TO GOVERNING PANEL.—

(A) IN GENERAL.—If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person described in subsection (a) may institute an ap-
peal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

(B) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this paragraph shall be composed of—

(i) a representative from the Bureau and a representative of the prudential regulator, both of whom—

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.
(C) CONDUCT OF APPEAL.—In an appeal under this paragraph—

(i) the insured depository institution, 
insured credit union, or other covered person described in subsection (a)—

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear before the governing panel in person or by telephone; and

(ii) the governing panel—

(I) may request the insured depository institution, insured credit union, or other covered person described in subsection (a), the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or
such longer period as the panel and
the insured depository institution, in-
sured credit union, or other covered
person described in subsection (a)
may jointly agree.

(D) Public availability of determina-
tions.—A governing panel shall publish all in-
formation contained in a determination by the
governing panel, with appropriate redactions of
information that would be subject to an exemp-
tion from disclosure under section 552 of title
5, United States Code.

(E) Prohibition Against Retali-
tion.—The Bureau and the prudential regu-
lators shall prescribe rules to provide safe-
guards from retaliation against the insured de-
pository institution, insured credit union, or
other covered person described in subsection (a)
instituting an appeal under this paragraph, as
well as their officers and employees.

(F) Limitation.—The process provided in
this paragraph shall not apply to a determina-
tion by a prudential regulator to appoint a con-
servator or receiver for an insured depository
institutions or a liquidating agent for an insured
credit union, as the case may be, or a decision
to take action pursuant to section 38 of the
Federal Deposit Insurance Act (12 U.S.C.
1831o) or section 212 of the Federal Credit
Union Act (112 U.S.C. 1790a), as applicable.

(G) Effect on Other Authority.—
Nothing in this section shall modify or limit the
authority of the Bureau to interpret, or take
enforcement action under, any Federal con-
sumer financial law.

SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND
CREDIT UNIONS.

(a) Scope of Coverage.—This section shall apply
to any covered person that is—

(1) an insured depository institution with total
assets of $10,000,000,000 or less; or

(2) an insured credit union with total assets of
$10,000,000,000 or less.

(b) Reports.—The Director may require reports
from a person described in subsection (a), as necessary
to support the role of the Bureau in implementing Federal
consumer financial law, to support its examination activi-
ties under subsection (e), and to assess and detect risks
to consumers and consumer financial markets.
USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

PRESERVATION OF AUTHORITY.—Nothing in this subsection may be construed as limiting the authority of the Director from requiring from a person described in subsection (a), as permitted under paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

EXAMINATIONS.—

(1) IN GENERAL.—The Bureau may, at its discretion, include examiners on a sampling basis of the
examinations performed by the prudential regulator of persons described in subsection (a).

(2) AGENCY COORDINATION.—The prudential regulator shall—

(A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;

(B) involve such Bureau examiner in the entire examination process for such person; and

(C) consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.

(d) ENFORCEMENT.—

(1) IN GENERAL.—Except for requiring reports under subsection (b), the prudential regulator is authorized to enforce the requirements of Federal consumer financial laws and, with respect to a covered person described in subsection (a), shall have exclusive authority to enforce such laws.

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—
(A) Referral.—When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in writing and recommend appropriate action to respond.

(B) Response.—Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

(e) Service Providers.—A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under section 1025 to the same extent as if the Bureau were an appropriate Federal bank agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). When conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.
SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU;

PRESERVATION OF AUTHORITIES.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND OTHER SELLERS OF NONFINANCIAL GOODS OR SERVICES.—

(1) SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this title with respect to a person who is a merchant, retailer, or seller of any non-financial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(2) OFFERING OR PROVISION OF CERTAIN CONSUMER FINANCIAL PRODUCTS OR SERVICES IN CONNECTION WITH THE SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a mer-
chant, retailer, or seller of nonfinancial goods or services, but only to the extent that such person—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) APPLICABILITY.—Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C)(i), arising from a transaction described in subparagraph (A)—
(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(iii));

(ii) in which the credit extended exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title; or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is subject to a finance charge.

(C) LIMITATIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (B), subparagraph (A) shall apply with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering
or providing consumer financial products
or services.

(ii) EXCEPTION.—Subparagraph (A) and clause (i) of this subparagraph do not apply to any merchant, retailer, or seller of nonfinancial goods or services, to the extent that such person is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(D) RULES.—

(i) AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency (other than the Bureau) with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.
(ii) SMALL BUSINESSES.—A merchant, retailer, or seller of nonfinancial goods or services that would otherwise be subject to the authority of the Bureau solely by virtue of the application of subparagraph (B)(iii) shall be deemed not to be engaged significantly in offering or providing consumer financial products or services under subparagraph (C)(i), if such person—

(I) only extends credit for the sale of nonfinancial goods or services, as described in subparagraph (A)(i);

(II) retains such credit on its own accounts (except to sell or convey such debt that is delinquent or otherwise in default); and

(III) meets the relevant industry size threshold to be a small business concern, based on annual receipts, pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder.

(iii) INITIAL YEAR.—A merchant, retailer, or seller of nonfinancial goods or
services shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) during the first year of operations of that business concern if, during that year, the receipts of that business concern reasonably are expected to meet that size threshold.

(E) Exception from state enforcement.—To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this title may be brought under subsection 1042(a), with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of nonfinancial goods or services.

(b) Exclusion for Real Estate Brokerage Activities.—

(1) Real estate brokerage activities excluded.—Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforce-
ment, or other authority under this title with respect to a person that is licensed or registered as a real estate broker or real estate agent, in accordance with State law, to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) DESCRIPTION OF ACTIVITIES.—The Bureau may exercise rulemaking, supervisory, enforcement, or other authority under this title with respect to a person described in paragraph (1) when such person is—
(A) engaged in an activity of offering or providing any consumer financial product or service, except that the Bureau may exercise such authority only with respect to that activity; or

(B) otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, except that the Bureau may exercise such authority only with respect to that law.

(c) Exclusion for Manufactured Home Retailers and Modular Home Retailers.—

(1) In general.—The Director may not exercise any rulemaking, supervisory, enforcement, or other authority over a person to the extent that—

(A) such person is not described in paragraph (2); and

(B) such person—

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than
providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) DESCRIPTION OF ACTIVITIES.—A person is described in this paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

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

(A) MANUFACTURED HOME.—The term “manufactured home” has the same meaning as in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term “modular home” means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.
(d) **Exclusion for Accountants and Tax Preparers.**—

(1) **In General.**—Except as permitted in paragraph (2), the Bureau may not exercise any rule-making, supervisory, enforcement, or other authority over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided—
(I) by the person separate and
apart from such customary and usual
accounting activities; or

(II) to consumers who are not re-
ceiving such customary and usual ac-
counting activities; or

(B) any person, other than a person de-
scribed in subparagraph (A) that performs in-
come tax preparation activities for consumers.

(2) DESCRIPTION OF ACTIVITIES.—

(A) IN GENERAL.—Paragraph (1) shall not
apply to any person described in paragraph
(1)(A) or (1)(B) to the extent that such person
is engaged in any activity which is not a cus-
tomary and usual accounting activity described
in paragraph (1)(A) or incidental thereto but
which is the offering or provision of any con-
sumer financial product or service, except to the
extent that a person described in paragraph
(1)(A) is engaged in an activity which is a cus-
tomary and usual accounting activity described
in paragraph (1)(A), or incidental thereto.

(B) NOT A CUSTOMARY AND USUAL AC-
COUNTING ACTIVITY.—For purposes of this
subsection, extending or brokering credit is not
a customary and usual accounting activity, or
incidental thereto.

(C) RULE OF CONSTRUCTION.—For pur-
poses of subparagraphs (A) and (B), a person
described in paragraph (1)(A) shall not be
deemed to be extending credit, if such person is
only extending credit directly to a consumer, ex-
clusively for the purpose of enabling such con-
sumer to purchase services described in clause
(i) or (ii) of paragraph (1)(A) directly from
such person, and such credit is—

(i) not subject to a finance charge;
and

(ii) not payable by written agreement
in more than 4 installments.

(D) OTHER LIMITATIONS.—Paragraph (1)
does not apply to any person described in para-
graph (1)(A) or (1)(B) that is otherwise subject
to any enumerated consumer law or any law for
which authorities are transferred under subtitle
F or H.

(e) EXCLUSION FOR ATTORNEYS.—

(1) IN GENERAL.—The Bureau may not exer-
cise any authority to conduct examinations of an at-
torney licensed by a State, to the extent that the at-
Attorney is engaged in the practice of law under the laws of such State.

(2) Exception for enumerated consumer laws and transferred authorities.—Paragraph (1) shall not apply to an attorney who is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(f) Exclusion for persons regulated by a state insurance regulator.—

(1) In general.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by a State insurance regulator.

(2) Description of activities.—Paragraph (1) does not apply to any person described in such paragraph to the extent that such person is engaged
in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(g) EXCLUSION FOR EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.—

(1) PRESERVATION OF AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) ACTIVITIES NOT CONSTITUTING THE OFFERING OR PROVISION OF ANY CONSUMER FINANCIAL PRODUCT OR SERVICE.—For purposes of this title, a person shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is—

(A) a specified plan or arrangement;

(B) engaged in the activity of establishing or maintaining, for the benefit of employees of
such person (or for members of an employee organization), any specified plan or arrangement; or

(C) engaged in the activity of establishing or maintaining a qualified tuition program under section 529(b)(1) of the Internal Revenue Code of 1986, offered by a State.

(3) LIMITATION ON BUREAU AUTHORITY.—

(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the Bureau may not exercise any rulemaking or enforcement authority with respect to products or services that relate to any specified plan or arrangement.

(B) BUREAU ACTION ONLY PURSUANT TO AGENCY REQUEST.—The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement. Subject to a request made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request, in ac-
cordance with the provisions of this title. A request made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this title with respect to the provision of services relating to any specified plan or arrangement.

(C) Description of products or services.—To the extent that a person engaged in providing products or services relating to any specified plan or arrangement is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, subparagraph (A) shall not apply with respect to that law.

(4) Specified plan or arrangement.—For purposes of this subsection, the term “specified plan or arrangement” means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974.
(h) **Persons Regulated by a State Securities Commission.**—

(1) **In General.**—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) **Description of Activities.**—Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.
(i) Exclusion for Persons Regulated by the Commission.—

(1) In general.—No provision of this title may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission.

(2) Consultation and coordination.—Notwithstanding paragraph (1), the Commission shall consult and coordinate, where feasible, with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law. In carrying out this paragraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for providing advance notice to the Bureau when the Commission is initiating a rulemaking.
(j) Exclusion for Persons Regulated by the Commodity Futures Trading Commission.—

(1) In general.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) Consultation and coordination.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law.

(k) Exclusion for Persons Regulated by the Farm Credit Administration.—
(1) In general.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Farm Credit Administration.

(2) Definition.—For purposes of this subsection, the term “person regulated by the Farm Credit Administration” means any Farm Credit System institution that is chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(l) Exclusion for activities relating to charitable contributions.—

(1) In general.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent
the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information, education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) LIMITATION.—The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(m) INSURANCE.—The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(n) LIMITED AUTHORITY OF THE BUREAU.—Notwithstanding subsections (a) through (h) and (l), a person subject to or described in one or more of such subsections—

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 1022, 1052, or 1053.
(o) No Authority To Imose Usury Limit.—No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(p) Attorney General.—No provision of this title, including section 1024(c)(1), shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(q) Secretary of the Treasury.—No provision of this title shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

(r) Deposit Insurance and Share Insurance.—Nothing in this title shall affect the authority of the Corporation under the Federal Deposit Insurance Act or the National Credit Union Administration Board under the Federal Credit Union Act as to matters related to deposit insurance and share insurance, respectively.

(s) Fair Housing Act.—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.
SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) Study and Report.—The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) Further Authority.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The findings in such rule shall be consistent with the study conducted under subsection (a).

(c) Limitation.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) Effective Date.—Notwithstanding any other provision of law, any regulation prescribed by the Bureau under subsection (b) shall apply, consistent with the terms
of the regulation, to any agreement between a consumer
and a covered person entered into after the end of the
180-day period beginning on the effective date of the regu-
lation, as established by the Bureau.

SEC. 1029. EFFECTIVE DATE.
This subtitle shall become effective on the designated
transfer date.

Subtitle C—Specific Bureau
Authorities

SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE
ACTS OR PRACTICES.

(a) IN GENERAL.—The Bureau may take any action
authorized under subtitle E to prevent a covered person
or service provider from committing or engaging in an un-
fair, deceptive, or abusive act or practice under Federal
law in connection with any transaction with a consumer
for a consumer financial product or service, or the offering
of a consumer financial product or service.

(b) RULEMAKING.—The Bureau may prescribe rules
applicable to a covered person or service provider identi-
fying as unlawful unfair, deceptive, or abusive acts or
practices in connection with any transaction with a con-
sumer for a consumer financial product or service, or the
offering of a consumer financial product or service. Rules
under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIRNESS.—

(1) IN GENERAL.—The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) CONSIDERATION OF PUBLIC POLICIES.—In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(d) ABUSIVE.—The Bureau shall have no authority under this section to declare an act or practice abusive
in connection with the provision of a consumer financial
product or service, unless the act or practice—

(1) materially interferes with the ability of a
consumer to understand a term or condition of a
consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of
the consumer of the material risks, costs, or
conditions of the product or service;

(B) the inability of the consumer to protect
the interests of the consumer in selecting or
using a consumer financial product or service;

or

(C) the reasonable reliance by the con-
sumer on a covered person to act in the inter-
ests of the consumer.

(e) CONSULTATION.—In prescribing rules under this
section, the Bureau shall consult with the Federal banking
agencies, or other Federal agencies, as appropriate, con-
cerning the consistency of the proposed rule with pruden-
tial, market, or systemic objectives administered by such
agencies.

(f) CONSIDERATION OF SEASONAL INCOME.—The
rules of the Bureau under this section shall provide, with
respect to an extension of credit secured by residential real
estate or a dwelling, if documented income of the bor-
rower, including income from a small business, is a repay-
ment source for an extension of credit secured by residen-
tial real estate or a dwelling, the creditor may consider
the seasonality and irregularity of such income in the un-
derwriting of and scheduling of payments for such credit.

SEC. 1032. DISCLOSURES.

(a) IN GENERAL.—The Bureau may prescribe rules
to ensure that the features of any consumer financial
product or service, both initially and over the term of the
product or service, are fully, accurately, and effectively
disclosed to consumers in a manner that permits con-
sumers to understand the costs, benefits, and risks associ-
ated with the product or service, in light of the facts and
circumstances.

(b) MODEL DISCLOSURES.—

(1) IN GENERAL.—Any final rule prescribed by
the Bureau under this section requiring disclosures
may include a model form that may be used at the
option of the covered person for provision of the re-
quired disclosures.

(2) FORMAT.—A model form issued pursuant to
paragraph (1) shall contain a clear and conspicuous
disclosure that, at a minimum—
(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) CONSUMER TESTING.—Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) BASIS FOR RULEMAKING.—In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) SAFE HARBOR.—Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) TRIAL DISCLOSURE PROGRAMS.—

(1) IN GENERAL.—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing
trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) Safe Harbor.—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) Public Disclosure.—The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) Combined Mortgage Loan Disclosure.—Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws,
unless the Bureau determines that any proposal issued by
the Board of Governors and the Secretary of Housing and
Urban Development carries out the same purpose.

SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) IN GENERAL.—Subject to rules prescribed by the
Bureau, a covered person shall make available to a con-
sumer, upon request, information in the control or posses-
sion of the covered person concerning the consumer finan-
cial product or service that the consumer obtained from
such covered person, including information relating to any
transaction, series of transactions, or to the account in-
cluding costs, charges and usage data. The information
shall be made available in an electronic form usable by
consumers.

(b) EXCEPTIONS.—A covered person may not be re-
quired by this section to make available to the consumer—

(1) any confidential commercial information, in-
cluding an algorithm used to derive credit scores or
other risk scores or predictors;

(2) any information collected by the covered
person for the purpose of preventing fraud or money
laundering, or detecting, or making any report re-
garding other unlawful or potentially unlawful con-
(3) any information required to be kept confidential by any other provision of law; or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) NO DUTY TO MAINTAIN RECORDS.—Nothing in this section shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The Bureau, by rule, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

(e) CONSULTATION.—The Bureau shall, when prescribing any rule under this section, consult with the Federal banking agencies and the Federal Trade Commission to ensure, to the extent appropriate, that the rules—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and
(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND INQUIRIES.

(a) Timely Regulator Response to Consumers.—The Bureau shall establish, in consultation with the appropriate Federal regulatory agencies, reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person, including—

(1) steps that have been taken by the regulator in response to the complaint or inquiry of the consumer;

(2) any responses received by the regulator from the covered person; and

(3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer.

(b) Timely Response to Regulator by Covered Person.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered
person concerning a consumer complaint or inquiry, in-
cluding—

(1) steps that have been taken by the covered
person to respond to the complaint or inquiry of the
consumer;

(2) responses received by the covered person
from the consumer; and

(3) follow-up actions or planned follow-up ac-
tions by the covered person to respond to the com-
plaint or inquiry of the consumer.

(c) Provision of Information to Consumers.—

(1) In general.—A covered person subject to
supervision and primary enforcement by the Bureau
pursuant to section 1025 shall, in a timely manner,
comply with a consumer request for information in
the control or possession of such covered person con-
cerning the consumer financial product or service
that the consumer obtained from such covered per-
son, including supporting written documentation,
concerning the account of the consumer.

(2) Exceptions.—A covered person subject to
supervision and primary enforcement by the Bureau
pursuant to section 1025, a prudential regulator,
and any other agency having jurisdiction over a cov-
ered person subject to supervision and primary en-
enforcement by the Bureau pursuant to section 1025 may not be required by this section to make available to the consumer—

(A) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(B) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting or making any report regarding other unlawful or potentially unlawful conduct;

(C) any information required to be kept confidential by any other provision of law; or

(D) any nonpublic or confidential information, including confidential supervisory information.

(d) AGREEMENTS WITH OTHER AGENCIES.—The Bureau shall enter into a memorandum of understanding with any affected Federal regulatory agency regarding procedures by which any covered person, and the prudential regulators, and any other agency having jurisdiction over a covered person, including the Secretary of the Department of Housing and Urban Development and the Secretary of Education, shall comply with this section.
SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.

(a) Establishment.—The Secretary, in consultation with the Director, shall designate a Private Education Loan Ombudsman (in this section referred to as the “Ombudsman”) within the Bureau, to provide timely assistance to borrowers of private education loans.

(b) Public Information.—The Secretary and the Director shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.

(c) Functions of Ombudsman.—The Ombudsman designated under this subsection shall—

(1) in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of under-
standing with the student loan ombudsman established under section 141(f) of the Higher Education Act of 1965 (20 U.S.C. 1018(f)), to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the Director, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) **ANNUAL REPORTS.**—

(1) **IN GENERAL.**—The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) **SUBMISSION.**—The report required by paragraph (1) shall be submitted on the same date annually to the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Af-
fairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) Definitions.—For purposes of this section, the terms “private education loan” and “institution of higher education” have the same meanings as in section 140 of the Truth in Lending Act (15 U.S.C. 1650).

SEC. 1036. PROHIBITED ACTS.

(a) In General.—It shall be unlawful for—

(1) any covered person or service provider—

(A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or

(B) to engage in any unfair, deceptive, or abusive act or practice;

(2) any covered person or service provider to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;
(B) to establish or maintain records; or

(C) to make reports or provide information
to the Bureau; or

(3) any person to knowingly or recklessly pro-
vide substantial assistance to a covered person or
service provider in violation of the provisions of sec-
tion 1031, or any rule or order issued thereunder,
and notwithstanding any provision of this title, the
provider of such substantial assistance shall be
deemed to be in violation of that section to the same
extent as the person to whom such assistance is pro-
vided.

(b) EXCEPTION.—No person shall be held to have
violated subsection (a)(1) solely by virtue of providing or
selling time or space to a covered person or service pro-
vider placing an advertisement.

SEC. 1037. EFFECTIVE DATE.

This subtitle shall take effect on the designated
transfer date.

Subtitle D—Preservation of State
Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title, other
strued as annuling, altering, or affecting, or ex-
empting any person subject to the provisions of this
title from complying with, the statutes, regulations,
orders, or interpretations in effect in any State, ex-
cept to the extent that any such provision of law is
inconsistent with the provisions of this title, and
then only to the extent of the inconsistency.

(2) **Greater Protection Under State**

**Law.**—For purposes of this subsection, a statute,
regulation, order, or interpretation in effect in any
State is not inconsistent with the provisions of this
title if the protection that such statute, regulation,
order, or interpretation affords to consumers is
greater than the protection provided under this title.

A determination regarding whether a statute, regu-
lation, order, or interpretation in effect in any State
is inconsistent with the provisions of this title may
be made by the Bureau on its own motion or in re-
response to a nonfrivolous petition initiated by any in-
terested person.

(b) **Relation to Other Provisions of Enumer-
ated Consumer Laws That Relate to State Law.**—

No provision of this title, except as provided in section
1083, shall be construed as modifying, limiting, or super-
seding the operation of any provision of an enumerated
consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—

The Bureau shall issue a notice of proposed rule-making whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

(2) BUREAU CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present
an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Bureau—

(A) shall include a discussion of the considerations required in paragraph (2) in the Federal Register notice of a final regulation prescribed pursuant to this subsection; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(4) RESERVATION OF AUTHORITY.—No provision of this subsection shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting the
Bureau from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this subsection, the term “consumer protection regulation” means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Except as provided in paragraph (2), the attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in para-
graph (2)), and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity.

(2) Action by state against national bank or federal savings association to enforce rules.—

(A) In general.—Except as permitted under subparagraph (B), the attorney general (or equivalent thereof) of any State may not bring a civil action in the name of such State against a national bank or Federal savings association with respect to an act or omission that would be a violation of a provision of this title.

(B) Enforcement of rules permitted.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State against a national bank or Federal savings association in any district court of the United States in the State or in State court that is located in that State and that has jurisdiction over the defendant to enforce a regulation prescribed by the Bureau under a provision of this title and to se-
cure remedies under provisions of this title or remedies otherwise provided under other law.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) Notice.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person as authorized by subsection (a) to enforce any provision of this title, including any regulation prescribed by the Bureau under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the com-
plete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) BUREAU RESPONSE.—In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and
(ii) be heard on all matters arising in
the action; and

(C) appeal any order or judgment, to the
same extent as any other party in the pro-
ceeding may.

(c) REGULATIONS.—The Bureau shall prescribe reg-
ulations to implement the requirements of this section
and, from time to time, provide guidance in order to fur-
ther coordinate actions with the State attorneys general
and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this sec-
tion shall be construed as altering, limiting, or af-
flecting the authority of a State attorney general or
any other regulatory or enforcement agency or au-
thority to bring an action or other regulatory pro-
ceeding arising solely under the law in effect in that
State.

(2) STATE SECURITIES REGULATORS.—No pro-
vision of this title shall be construed as altering, lim-
it, or affecting the authority of a State securities
commission (or any agency or office performing like
functions) under State law to adopt rules, initiate
enforcement proceedings, or take any other action
with respect to a person regulated by such commis-

sion or authority.

(3) **STATE INSURANCE REGULATORS.**—No pro-

vision of this title shall be construed as altering, lim-

iting, or affecting the authority of a State insurance

commission or State insurance regulator under State

law to adopt rules, initiate enforcement proceedings,

or take any other action with respect to a person

regulated by such commission or regulator.

**SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.**

This title, and regulations, orders, guidance, and in-

terpretations prescribed, issued, or established by the Bu-

reau, shall not be construed to alter or affect the applica-

bility of any regulation, order, guidance, or interpretation

prescribed, issued, and established by the Comptroller of

the Currency or the Director of the Office of Thrift Sup-

ervision regarding the applicability of State law under Fed-

eral banking law to any contract entered into on or before

the date of enactment of this Act, by national banks, Fed-

eral savings associations, or subsidiaries thereof that are

regulated and supervised by the Comptroller of the Cur-

rency or the Director of the Office of Thrift Supervision,

respectively.
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SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NA-
TIONAL BANKS AND SUBSIDIARIES CLAR-
IFIED.

(a) IN GENERAL.—Chapter one of title LXII of the
Revised Statutes of the United States (12 U.S.C. 21 et
seq.) is amended by inserting after section 5136B the fol-
lowing new section:

“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-
TIONAL BANKS AND SUBSIDIARIES CLAR-
IFIED.

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

“(1) NATIONAL BANK.—The term ‘national
bank’ includes—

“(A) any bank organized under the laws of
the United States; and

“(B) any Federal branch established in ac-
cordance with the International Banking Act of
1978.

“(2) STATE CONSUMER FINANCIAL LAWS.—The
term ‘State consumer financial law’ means a State
law that does not directly or indirectly discriminate
against national banks and that directly and specifi-
cally regulates the manner, content, or terms and
conditions of any financial transaction (as may be
authorized for national banks to engage in), or any
account related thereto, with respect to a consumer.

“(3) OTHER DEFINITIONS.—The terms ‘affil-
iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the
same meanings as in section 3 of the Federal De-
posit Insurance Act.

“(b) PREEMPTION STANDARD.—

“(1) IN GENERAL.—State consumer financial
laws are preempted, only if—

“(A) application of a State consumer fi-
nancial law would have a discriminatory effect
on national banks, in comparison with the effect
of the law on a bank chartered by that State;

“(B) the State consumer financial law is
preempted in accordance with the legal stand-
ard of the decision of the Supreme Court of the
United States in Barnett Bank of Marion
County, N.A. v. Nelson, Florida Insurance
Commissioner, et al., 517 U.S. 25 (1996), and
any preemption determination under this sub-
paragraph may be made by a court, or by regu-
lation or order of the Comptroller of the Cur-
rency on a case-by-case basis, in accordance
with applicable law; or
“(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

“(2) SAVINGS CLAUSE.—This title and section 24 of the Federal Reserve Act (12 U.S.C. 371) do not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

“(3) CASE-BY-CASE BASIS.—

“(A) DEFINITION.—As used in this section the term ‘case-by-case basis’ refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

“(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of
the Bureau into account when making the determination.

“(4) Rule of Construction.—This title does not occupy the field in any area of State law.

“(5) Standards of review.—

“(A) Preemption.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

“(B) Savings clause.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.
“(6) Comptroller determination not delegable.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

“(c) Substantial evidence.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

“(d) Periodic review of preemption determinations.—

“(1) In general.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall con-
duct such review within the 5-year period after pre-
scribing or otherwise issuing such determination, 
and at least once during each 5-year period there-
after. After conducting the review of, and inspecting 
the comments made on, the determination, the agen-
cy shall publish a notice in the Federal Register an-
nouncing the decision to continue or rescind the de-
termination or a proposal to amend the determina-
tion. Any such notice of a proposal to amend a de-
termination and the subsequent resolution of such 
proposal shall comply with the procedures set forth 
in subsections (a) and (b) of section 5244 of the Re-
vised Statutes of the United States (12 U.S.C. 43 
(a), (b)).

“(2) Reports to Congress.—At the time of 
issuing a review conducted under paragraph (1), the 
Comptroller of the Currency shall submit a report 
regarding such review to the Committee on Finan-
cial Services of the House of Representatives and 
the Committee on Banking, Housing, and Urban Af-
fairs of the Senate. The report submitted to the re-
pective committees shall address whether the agen-
cy intends to continue, rescind, or propose to amend 
any determination that a provision of Federal law
preempts a State consumer financial law, and the
reasons therefor.

“(e) Application of State Consumer Financial
Law to Subsidiaries and Affiliates.—Notwith-
standing any provision of this title or section 24 of Federal
Reserve Act (12 U.S.C. 371), a State consumer financial
law shall apply to a subsidiary or affiliate of a national
bank (other than a subsidiary or affiliate that is chartered
as a national bank) to the same extent that the State con-
sumer financial law applies to any person, corporation, or
other entity subject to such State law.

“(f) Preservation of Powers Related to
Charging Interest.—No provision of this title shall be
construed as altering or otherwise affecting the authority
conferred by section 5197 of the Revised Statutes of the
United States (12 U.S.C. 85) for the charging of interest
by a national bank at the rate allowed by the laws of the
State, territory, or district where the bank is located, in-
cluding with respect to the meaning of ‘interest’ under
such provision.

“(g) Transparency of OCC Preemption Deter-
minations.—The Comptroller of the Currency shall pub-
lish and update no less frequently than quarterly, a list
of preemption determinations by the Comptroller of the
Currency then in effect that identifies the activities and
practices covered by each determination and the requirements and constraints determined to be preempted.”.

(b) Clerical Amendment.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

“Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.”.

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NON-DEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

“(h) Clarification of Law Applicable to Non-Depository Institution Subsidiaries and Affiliates of National Banks.—

“(1) Definitions.—For purposes of this subsection, the terms ‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.

“(2) Rule of Construction.—No provision of this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national
SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

“(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

“(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.”.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:
"Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified."

1 SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

"(i) VISITORIAL POWERS.—

"(1) IN GENERAL.—In accordance with the decision of the Supreme Court of the United States in Cuomo v. Clearing House Assn., L. L. C. (129 S. Ct. 2710 (2009)), no provision of this title which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.

"(j) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts."
(b) Savings Associations.—Section 6 of the Home Owners’ Loan Act (as added by this title) is amended by adding at the end the following:

“(c) Visitorial Powers.—The provisions of sections 5136C(i) of the Revised Statutes of the United States shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively.”

“(d) Enforcement Actions.—The ability of the Comptroller of the Currency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.”.

SEC. 1048. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 1051. DEFINITIONS.

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

(1) Bureau Investigation.—The term “Bureau investigation” means any inquiry conducted by
a Bureau investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation, as defined in this section.

(2) BUREAU INVESTIGATOR.—The term “Bureau investigator” means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

(3) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms “civil investigative demand” and “demand” mean any demand issued by the Bureau.

(4) CUSTODIAN.—The term “custodian” means the custodian or any deputy custodian designated by the Bureau.

(5) DOCUMENTARY MATERIAL.—The term “documentary material” includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(6) VIOLATION.—The term “violation” means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.
SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) SUBPOENAS.—

(1) IN GENERAL.—The Bureau or a Bureau investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In the case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Bureau or a Bureau investigator and after notice to such person,
may issue an order requiring such person to appear
and give testimony or to appear and produce docu-
ments or other material.

(3) CONTEMPT.—Any failure to obey an order
of the court under this subsection may be punished
by the court as a contempt thereof.

(e) DEMANDS.—

(1) IN GENERAL.—Whenever the Bureau has
reason to believe that any person may be in posses-
sion, custody, or control of any documentary mate-
rial or tangible things, or may have any information,
relevant to a violation, the Bureau may, before the
institution of any proceedings under the Federal
consumer financial law, issue in writing, and cause
to be served upon such person, a civil investigative
demand requiring such person to—

(A) produce such documentary material for
inspection and copying or reproduction in the
form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to ques-
tions;

(D) give oral testimony concerning docu-
mentary material, tangible things, or other in-
formation; or
(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—
(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) Demand for written reports or answers.—Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) Oral testimony.—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and
(B) identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—Any civil investigative demand and any enforcement petition filed under this section may be served—

(A) by any Bureau investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

(ii) to the extent that the courts of the United States have authority to assert jurisdiction over such person, consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were per-
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sonally within the jurisdiction of such dis-


trict court.

(8) METHOD OF SERVICE.—Service of any civil

investigative demand or any enforcement petition

filed under this section may be made upon a person,

including any legal entity, by—

(A) delivering a duly executed copy of such
demand or petition to the individual or to any
partner, executive officer, managing agent, or
general agent of such person, or to any agent
of such person authorized by appointment or by
law to receive service of process on behalf of
such person;

(B) delivering a duly executed copy of such
demand or petition to the principal office or
place of business of the person to be served; or

(C) depositing a duly executed copy in the
United States mails, by registered or certified
mail, return receipt requested, duly addressed
to such person at the principal office or place
of business of such person.

(9) PROOF OF SERVICE.—

(A) IN GENERAL.—A verified return by the
individual serving any civil investigative demand
or any enforcement petition filed under this sec-
tion setting forth the manner of such service shall be proof of such service.

(B) RETURN RECEIPTS.—In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or,
if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) TESTIMONY.—

(A) IN GENERAL.—

(i) OATH OR AFFIRMATION.—Any Bureau investigator before whom oral testi-
mony is to be taken shall put the witness under oath or affirmation, and shall person-
ally, or by any individual acting under the direction of and in the presence of the Bureau investigator, record the testimony of the witness.

(ii) TRANSCRIPTION.—The testimony shall be taken stenographically and trans-
scribed.

(iii) TRANSMISSION TO CUSTODIAN.—After the testimony is fully transcribed, the Bureau investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Bureau investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons, except the person giving the testimony, the attorney of that person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Bureau is engaged in a joint investigation, and any stenographer taking such testimony.
(C) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Bureau investigator before whom the oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) IN GENERAL.—Any person compelled to appear under a civil Investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) AUTHORITY.—The attorney may advise a person described in clause (i), in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—A person described in clause (i), or the attorney for that person, may object on the record to any question, in whole or in part, and such person shall briefly state for the record the
reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and such person or attorney shall not otherwise interrupt the oral examination.

(iv) REFUSAL TO ANSWER.—If a person described in clause (i) refuses to answer any question—

(I) the Bureau may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question; and

(II) on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.
(E) TRANSCRIPTS.—For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the Bureau investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator, with a statement of the reasons given by the witness for making such changes;

(iv) the transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the Bureau investi-
gator shall sign the transcript and state on
the record the fact of the waiver, illness,
absence of the witness, or the refusal to
sign, together with any reasons given for
the failure to sign.

(F) Certification by Investigator.—
The Bureau investigator shall certify on the
transcript that the witness was duly sworn by
him or her and that the transcript is a true
record of the testimony given by the witness,
and the Bureau investigator shall promptly de-
deliver the transcript or send it by registered or
certified mail to the custodian.

(G) Copy of Transcript.—The Bureau
investigator shall furnish a copy of the tran-
script (upon payment of reasonable charges for
the transcript) to the witness only, except that
the Bureau may for good cause limit such wit-
ness to inspection of the official transcript of
his testimony.

(H) Witness Fees.—Any witness appear-
ing for the taking of oral testimony pursuant to
a civil investigative demand shall be entitled to
the same fees and mileage which are paid to
witnesses in the district courts of the United States.

(d) Confidential Treatment of Demand Material.—

(1) In General.—Documentary materials and tangible things received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with rules established by the Bureau.

(2) Disclosure to Congress.—No rule established by the Bureau regarding the confidentiality of materials submitted to, or otherwise obtained by, the Bureau shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the Bureau is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.

(e) Petition for Enforcement.—

(1) In General.—Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accom-
plished and such person refuses to surrender such
material, the Bureau, through such officers or attor-
neys as it may designate, may file, in the district
court of the United States for any judicial district
in which such person resides, is found, or transacts
business, and serve upon such person, a petition for
an order of such court for the enforcement of this
section.

(2) Service of Process.—All process of any
court to which application may be made as provided
in this subsection may be served in any judicial dis-
trict.

(f) Petition for Order Modifying or Setting
Aside Demand.—

(1) In General.—Not later than 20 days after
the service of any civil investigative demand upon
any person under subsection (b), or at any time be-
fore the return date specified in the demand, which-
ever period is shorter, or within such period exceed-
ing 20 days after service or in excess of such return
date as may be prescribed in writing, subsequent to
service, by any Bureau investigator named in the de-
mand, such person may file with the Bureau a peti-
tion for an order by the Bureau modifying or setting
aside the demand.
(2) Compliance during pendency.—The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the Bureau, shall not run during the pendency of a petition under paragraph (1) at the Bureau, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) Specific grounds.—A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) Custodial control.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the per-
formance by such custodian of any duty imposed upon him
by this section or rule promulgated by the Bureau.

(h) JURISDICTION OF COURT.—

(1) IN GENERAL.—Whenever any petition is
filed in any district court of the United States under
this section, such court shall have jurisdiction to
hear and determine the matter so presented, and to
enter such order or orders as may be required to
carry out the provisions of this section.

(2) APPEAL.—Any final order entered as de-
scribed in paragraph (1) shall be subject to appeal
pursuant to section 1291 of title 28, United States
Code.

SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Bureau is authorized to con-
duct hearings and adjudication proceedings with respect
to any person in the manner prescribed by chapter 5 of
title 5, United States Code in order to ensure or enforce
compliance with—

(1) the provisions of this title, including any
rules prescribed by the Bureau under this title; and

(2) any other Federal law that the Bureau is
authorized to enforce, including an enumerated con-
sumer law, and any regulations or order prescribed
thereunder, unless such Federal law specifically lim-
its the Bureau from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) Special Rules for Cease-and-Desist Proceedings.—

(1) Orders Authorized.—

(A) In General.—If, in the opinion of the Bureau, any covered person or service provider is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Bureau, the Bureau may, subject to sections 1024, 1025, and 1026, issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) Content of Notice.—The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a
later date is set by the Bureau, at the request of any party so served.

(C) CONSENT.—Unless the party or parties served under subparagraph (B) appear at the hearing personally or by a duly authorized representative, such person shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) PROCEDURE.—In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the Bureau finds that any violation specified in the notice of charges has been established, the Bureau may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or
service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Bureau or a reviewing court.

(3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within 90 days after the Bureau has notified the parties that the case has been submitted to the Bureau for final decision, the Bureau shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the
United States, as provided in paragraph (4), and thereafter until the record in the proceeding has been filed as provided in paragraph (4), the Bureau may at any time, upon such notice and in such manner as the Bureau shall determine proper, modify, terminate, or set aside any such order. Upon filing of the record as provided, the Bureau may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Bureau be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Bureau, and thereupon the Bureau shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United
States Code. Upon the filing of such petition, such
court shall have jurisdiction, which upon the filing of
the record shall except as provided in the last sen-
tence of paragraph (3) be exclusive, to affirm, mod-
ify, terminate, or set aside, in whole or in part, the
order of the Bureau. Review of such proceedings
shall be had as provided in chapter 7 of title 5 of
the United States Code. The judgment and decree of
the court shall be final, except that the same shall
be subject to review by the Supreme Court of the
United States, upon certiorari, as provided in section
1254 of title 28 of the United States Code.

(5) No stay.—The commencement of pro-
cedings for judicial review under paragraph (4)
shall not, unless specifically ordered by the court,
operate as a stay of any order issued by the Bureau.

(c) Special Rules for Temporary Cease-and-
desist Proceedings.—

(1) In general.—Whenever the Bureau deter-
mines that the violation specified in the notice of
charges served upon a person, including a service
provider, pursuant to subsection (b), or the continu-
ation thereof, is likely to cause the person to be in-
solvent or otherwise prejudice the interests of con-
sumers before the completion of the proceedings con-
ducted pursuant to subsection (b), the Bureau may
issue a temporary order requiring the person to
cease and desist from any such violation or practice
and to take affirmative action to prevent or remedy
such insolvency or other condition pending comple-
tion of such proceedings. Such order may include
any requirement authorized under this subtitle. Such
order shall become effective upon service upon the
person and, unless set aside, limited, or suspended
by a court in proceedings authorized by paragraph
(2), shall remain effective and enforceable pending
the completion of the administrative proceedings
pursuant to such notice and until such time as the
Bureau shall dismiss the charges specified in such
notice, or if a cease-and-desist order is issued
against the person, until the effective date of such
order.

(2) APPEAL.—Not later than 10 days after the
covered person or service provider concerned has
been served with a temporary cease-and-desist order,
the person may apply to the United States district
court for the judicial district in which the residence
or principal office or place of business of the person
is located, or the United States District Court for
the District of Columbia, for an injunction setting
aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) **Incomplete or Inaccurate Records.**—

(A) **Temporary Order.**—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that the books and records of a covered person or service provider are so incomplete or inaccurate that the Bureau is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Bureau may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accu-
rate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service;

and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Bureau determines, by examination or otherwise, that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Bureau may in its discretion apply to the United States district court within the jurisdiction of which the principal office
or place of business of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) RULES.—The Bureau shall prescribe rules establishing such procedures as may be necessary to carry out this section.

SEC. 1054. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a Federal consumer financial law, the Bureau may, subject to sections 1024, 1025, and 1026, commence a civil action against such person to impose a civil penalty or to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Bureau may act in its own name and through its own attorneys in enforcing any provision of this title, rules thereunder, or any other law.
or regulation, or in any action, suit, or proceeding to which
the Bureau is a party.

(c) COMPROMISE OF ACTIONS.—The Bureau may
compromise or settle any action if such compromise is ap-
proved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—When
commencing a civil action under Federal consumer finan-
cial law, or any rule thereunder, the Bureau shall notify
the Attorney General and, with respect to a civil action
against an insured depository institution or insured credit
union, the appropriate prudential regulator.

(c) APPEARANCE BEFORE THE SUPREME COURT.—
The Bureau may represent itself in its own name before
the Supreme Court of the United States, provided that
the Bureau makes a written request to the Attorney Gen-
eral within the 10-day period which begins on the date
of entry of the judgment which would permit any party
to file a petition for writ of certiorari, and the Attorney
General concurs with such request or fails to take action
within 60 days of the request of the Bureau.

(f) FORUM.—Any civil action brought under this title
may be brought in a United States district court or in
any court of competent jurisdiction of a state in a district
in which the defendant is located or resides or is doing
business, and such court shall have jurisdiction to enjoin
such person and to require compliance with any Federal consumer financial law.

(g) **Time for Bringing Action.**—

(1) **In general.**—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of discovery of the violation to which an action relates.

(2) **Limitations under other federal laws.**—

(A) **In general.**—For purposes of this subsection, an action arising under this title does not include claims arising solely under enumerated consumer laws.

(B) **Bureau authority.**—In any action arising solely under an enumerated consumer law, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

(C) **Transferred authority.**—In any action arising solely under laws for which authorities were transferred under subtitles F and H, the Bureau may commence, defend, or intervene in the action in accordance with the re-
requirements of that provision of law, as applicable.

SEC. 1055. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or the Bureau, as the case may be) in an action or adjudication proceeding brought under Federal consumer financial law, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law.

(2) RELIEF.—Relief under this section may include, without limitation—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages or other monetary relief;

(F) public notification regarding the violation, including the costs of notification;
(G) limits on the activities or functions of the person; and

(H) civil money penalties, as set forth more fully in subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Bureau, a State attorney general, or any State regulator to enforce any Federal consumer financial law, the Bureau, the State attorney general, or the State regulator may recover its costs in connection with prosecuting such action if the Bureau, the State attorney general, or the State regulator is the prevailing party in the action.

(e) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Any person that violates, through any act or omission, any provision of Federal consumer financial law shall forfeit and pay a civil penalty pursuant to this subsection.

(2) PENALTY AMOUNTS.—

(A) FIRST TIER.—For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not
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exceed $5,000 for each day during which such
violation or failure to pay continues.

(B) SECOND TIER.—Notwithstanding
paragraph (A), for any person that recklessly
engages in a violation of a Federal consumer fi-
nancial law, a civil penalty may not exceed
$25,000 for each day during which such viola-
tion continues.

(C) THIRD TIER.—Notwithstanding sub-
paragraphs (A) and (B), for any person that
knowingly violates a Federal consumer financial
law, a civil penalty may not exceed $1,000,000
for each day during which such violation con-
tinues.

(3) MITIGATING FACTORS.—In determining the
amount of any penalty assessed under paragraph
(2), the Bureau or the court shall take into account
the appropriateness of the penalty with respect to—

(A) the size of financial resources and good
faith of the person charged;

(B) the gravity of the violation or failure
to pay;

(C) the severity of the risks to or losses of
the consumer, which may take into account the
number of products or services sold or provided;
(D) the history of previous violations; and

(E) such other matters as justice may re-

quire.

(4) AUTHORITY TO MODIFY OR REMIT PEN-

ALTY.—The Bureau may compromise, modify, or

remit any penalty which may be assessed or had al-

ready been assessed under paragraph (2). The

amount of such penalty, when finally determined,

shall be exclusive of any sums owed by the person

to the United States in connection with the costs of

the proceeding, and may be deducted from any sums

owing by the United States to the person charged.

(5) NOTICE AND HEARING.—No civil penalty

may be assessed under this subsection with respect

to a violation of any Federal consumer financial law,

unless—

(A) the Bureau gives notice and an oppor-

tunity for a hearing to the person accused of

the violation; or

(B) the appropriate court has ordered such

assessment and entered judgment in favor of

the Bureau.

SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.

If the Bureau obtains evidence that any person, do-

mestic or foreign, has engaged in conduct that may con-
stitute a violation of Federal criminal law, the Bureau shall have the power to transmit such evidence to the Attorney General of the United States, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the Bureau to disclose information.

SEC. 1057. EMPLOYEE PROTECTION.

(a) In General.—No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

(1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title or any other provision of law that is subject to the jurisdic-
tion of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(3) filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

(b) Definition of Covered Employee.—For the purposes of this section, the term “covered employee” means any individual performing tasks related to the offering or provision of a consumer financial product or service.

(e) Procedures and Timetables.—

(1) Complaint.—
(A) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

(B) ACTIONS OF SECRETARY OF LABOR.—

Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of—

(i) the filing of the complaint;

(ii) the allegations contained in the complaint;

(iii) the substance of evidence supporting the complaint; and

(iv) opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION BY SECRETARY OF LABOR.—
(A) In general.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

(B) Notice of relief available.—If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order
providing the relief prescribed by paragraph (4)(B).

(C) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(3) GROUNDS FOR DETERMINATION OF COMPLAINTS.—

(A) IN GENERAL.—The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1)
through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) REBUTTAL EVIDENCE.—Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (2) shall be conducted, if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) EVIDENTIARY STANDARDS.—The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.
(4) Issuance of Final Orders; Review Procedures.—

(A) Timing.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) Penalties.—

(i) Order of Secretary of Labor.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

(I) to take affirmative action to abate the violation;

(II) to reinstate the complainant to his or her former position, together
with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(III) to provide compensatory damages to the complainant.

(ii) PENALTY.—If an order is issued under clause (i), the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued, a sum equal to the aggregate amount of all costs and expenses (including attorney fees and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) PENALTY FOR FRIVOLOUS CLAIMS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.
(D) De novo review.—

(i) Failure of the Secretary to act.—If the Secretary of Labor has not issued a final order within 210 days after the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(ii) Procedures.—A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—
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(I) reinstatement with the same
seniority status that the employee
would have had, but for the discharge
or discrimination;

(II) the amount of back pay, with
interest; and

(III) compensation for any spe-
cial damages sustained as a result of
the discharge or discrimination, in-
cluding litigation costs, expert witness
fees, and reasonable attorney fees.

(E) OTHER APPEALS.—Unless the com-
plainant brings an action under subparagraph
(D), any person adversely affected or aggrieved
by a final order issued under subparagraph (A)
may file a petition for review of the order in the
United States Court of Appeals for the circuit
in which the violation with respect to which the
order was issued, allegedly occurred or the cir-
cuit in which the complainant resided on the
date of such violation, not later than 60 days
after the date of the issuance of the final order
of the Secretary of Labor under subparagraph
(A). Review shall conform to chapter 7 of title
5, United States Code. The commencement of
proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

(5) FAILURE TO COMPLY WITH ORDER.—

(A) Actions by the Secretary.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(B) Civil actions to compel compliance.—A person on whose behalf an order was issued under paragraph (4) may commence a civil action against the person to whom such order was issued to require compliance with
such order. The appropriate United States dis-

circuit court shall have jurisdiction, without re-
gard to the amount in controversy or the citi-
zenship of the parties, to enforce such order.

(C) AWARD OF COSTS AUTHORIZED.—The
court, in issuing any final order under this
paragraph, may award costs of litigation (in-
cluding reasonable attorney and expert witness
fees) to any party, whenever the court deter-
mines such award is appropriate.

(D) MANDAMUS PROCEEDINGS.—Any non-
discretionary duty imposed by this section shall
be enforceable in a mandamus proceeding
brought under section 1361 of title 28, United
States Code.

(d) UNENFORCEABILITY OF CERTAIN AGRE-
MENTS.—

(1) NO WAIVER OF RIGHTS AND REMEDIES.—
Except as provided under paragraph (3), and not-
withstanding any other provision of law, the rights
and remedies provided for in this section may not be
waived by any agreement, policy, form, or condition
of employment, including by any predispute arbitra-
tion agreement.
(2) NO PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph (3), and notwithstanding any other provision of law, no predispute arbitration agreement shall be valid or enforceable to the extent that it requires arbitration of a dispute arising under this section.

(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(4), unless the Bureau determines, by rule, that such provision is inconsistent with the purposes of this title.

SEC. 1058. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.

(a) DEFINED TERMS.—For purposes of this subtitle—

(1) the term “consumer financial protection functions” means research, rulemaking, issuance of orders or guidance, supervision, examination, and
enforcement activities, powers, and duties relating to
the offering or provision of consumer financial prod-
ucts or services; and

(2) the terms “transferor agency” and “transferor agencies” mean, respectively—

(A) the Board of Governors (and any Federal reserve bank, as the context requires), the
Federal Deposit Insurance Corporation, the
Federal Trade Commission, the National Credit
Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and
Urban Development, and the heads of those
agencies; and

(B) the agencies listed in subparagraph (A), collectively.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Bu-

(B) Board of Governors authority.—

The Bureau shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) Comptroller of the Currency.—

(A) Transfer of functions.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Bureau.

(B) Comptroller authority.—The Bureau shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) Director of the Office of Thrift Supervision.—

(A) Transfer of functions.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Bureau.

(B) Director authority.—The Bureau shall have all powers and duties that were vest-
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ed in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) Federal Deposit Insurance Corporation.—

(A) Transfer of Functions.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Bureau.

(B) Corporation Authority.—The Bureau shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) Federal Trade Commission.—

(A) Transfer of Functions.—The authority of the Federal Trade Commission under an enumerated consumer law to prescribe rules, issue guidelines, or conduct a study or issue a report mandated under such law shall be transferred to the Bureau on the designated transfer date. Nothing in this title shall be construed to
require a mandatory transfer of any employee of the Federal Trade Commission.

(B) Bureau authority.—

(i) In general.—The Bureau shall have all powers and duties under the enumerated consumer laws to prescribe rules, issue guidelines, or to conduct studies or issue reports mandated by such laws, that were vested in the Federal Trade Commission on the day before the designated transfer date.

(ii) Federal trade commission act.—Subject to subtitle B, the Bureau may enforce a rule prescribed under the Federal Trade Commission Act by the Federal Trade Commission with respect to an unfair or deceptive act or practice to the extent that such rule applies to a covered person or service provider with respect to the offering or provision of a consumer financial product or service as if it were a rule prescribed under section 1031 of this title.

(C) Authority of the Federal Trade Commission.—
(i) IN GENERAL.—No provision of this
title shall be construed as modifying, lim-
iting, or otherwise affecting the authority
of the Federal Trade Commission under
the Federal Trade Commission Act or any
other law, other than the authority under
an enumerated consumer law to prescribe
rules, issue official guidelines, or conduct a
study or issue a report mandated under
such law.

(ii) COMMISSION AUTHORITY RELAT-
ing to Rules Prescribed by the Bu-
reau.—Subject to subtitle B, the Federal
Trade Commission shall have authority to
enforce under the Federal Trade Commiss-
ion Act (15 U.S.C. 41 et seq.) a rule pre-
scribed by the Bureau under this title with
respect to a covered person subject to the
jurisdiction of the Federal Trade Commiss-
ion under that Act, and a violation of
such a rule by such a person shall be treat-
ed as a violation of a rule issued under sec-
tion 18 of that Act (15 U.S.C. 57a) with
respect to unfair or deceptive acts or prac-
tices.
(D) COORDINATION.—To avoid duplication of or conflict between rules prescribed by the Bureau under section 1031 of this title and the Federal Trade Commission under section 18(a)(1)(B) of the Federal Trade Commission Act that apply to a covered person or service provider with respect to the offering or provision of consumer financial products or services, the agencies shall negotiate an agreement with respect to rulemaking by each agency, including consultation with the other agency prior to proposing a rule and during the comment period.

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

(i) Federal Trade Commission in making determinations regarding the meaning or interpretation of any provision of the Federal Trade Commission Act, or of any other Federal law for which the Commission has authority to prescribe rules; or

(ii) Bureau in making determinations regarding the meaning or interpretation of
any provision of a Federal consumer financial law (other than any law described in clause (i)).

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Bureau.

(B) NATIONAL CREDIT UNION ADMINISTRATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(B) Authority of the Department of Housing and Urban Development.—The Bureau shall have all powers and duties that were vested in the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.), on the day before the designated transfer date.

(c) Transfers of Functions Subject to Examination and Enforcement Authority Remaining with Transferor Agencies.—The transfers of functions in subsection (b) do not affect the authority of the agencies identified in subsection (b) from conducting examinations or initiating and maintaining enforcement proceedings, including performing appropriate supervisory and support functions relating thereto, in accordance with sections 1024, 1025, and 1026.

(d) Effective Date.—Subsections (b) and (c) shall become effective on the designated transfer date.

SEC. 1062. DESIGNATED TRANSFER DATE.

(a) In General.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—
(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Bureau under section 1061; and

(2) publish notice of that designated date in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and
(2) shall publish notice of any changed designated date in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 12 months after the date of enactment of this Act if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 12 months after the date of enactment of this Act;

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

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case may any date designated under this section be later than 18 months after the date of enactment of this Act.
SEC. 1063. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.
(b) **Federal Deposit Insurance Corporation.**—

(1) **Existing rights, duties, and obligations not affected.**—Section 1061(b)(4) does not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) **Continuation of suits.**—No provision of this Act shall abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.
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1 (c) Federal Trade Commission.—Section 1061(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(1) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title; and

(2) existed on the day before the designated transfer date.

(d) National Credit Union Administration.—

(1) Existing rights, duties, and obligations not affected.—Section 1061(b)(6) does not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) Continuation of suits.—No provision of this Act shall abate any proceeding commenced by
or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) Office of the Comptroller of the Currency.—

(1) Existing rights, duties, and obligations not affected.—Section 1061(b)(2) does not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.
(2) **CONTINUATION OF SUITS.**—No provision of this Act shall abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) **OFFICE OF THRIFT SUPERVISION.**—

(1) **EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.**—Section 1061(b)(3) does not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title; and
(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development), or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of the De-
department of Housing and Urban Development
with respect to the Real Estate Settlement Pro-
or the Secure and Fair Enforcement for Mort-
gage Licensing Act of 2008 (12 U.S.C. 5102 et
seq.) transferred to the Bureau by this title;
and
(B) existed on the day before the des-
ignated transfer date.

(2) **CONTINUATION OF SUITS.**—This title shall
not abate any proceeding commenced by or against
the Secretary of the Department of Housing and
Urban Development (or the Department of Housing
and Urban Development) with respect to any con-
sumer financial protection function of the Secretary
of the Department of Housing and Urban Develop-
ment transferred to the Bureau by this title before
the designated transfer date, except that the Bu-
reau, subject to sections 1024, 1025, and 1026,
shall be substituted for the Secretary of the Depart-
ment of Housing and Urban Development (or the
Department of Housing and Urban Development) as
a party to any such proceeding as of the designated
transfer date.
(h) Continuation of Existing Orders, Rules, Determinations, Agreements, and Resolutions.— All orders, resolutions, determinations, agreements, and rules that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and rules, and shall not be enforceable by or against the Bureau.

(i) Identification of Rules Continued.—Not later than the designated transfer date, the Bureau—

(1) shall, after consultation with the head of each transferor agency, identify the rules continued under subsection (h) that will be enforced by the Bureau; and

(2) shall publish a list of such rules in the Federal Register.

(j) Status of Rules Proposed or Not Yet Effective.—

(1) Proposed rules.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred
by this title, has proposed before the designated
transfer date, but has not been published as a final
rule before that date, shall be deemed to be a pro-
posed rule of the Bureau.

(2) RULES NOT YET EFFECTIVE.—Any interim
or final rule of a transferor agency which that agen-
ky, in performing consumer financial protection
functions transferred by this title, has published be-
fore the designated transfer date, but which has not
become effective before that date, shall become effec-
tive as a rule of the Bureau according to its terms.

SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EM-
PLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANS-
FER.—The Bureau and the Board of Governors
shall—

(i) jointly determine the number of
employees of the Board of Governors nec-
essary to perform or support the consumer
financial protection functions of the Board
of Governors that are transferred to the
Bureau by this title; and
(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Bureau, in a manner that the Bureau and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Directors of the Federal Deposit Insurance Corporation shall—
(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Bureau, in a manner that the Bureau and the Board of Directors of the Corporation, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or
support the consumer financial protection
functions of the National Credit Union Ad-
ministration that are transferred to the
Bureau by this title; and

(ii) consistent with the number deter-
mined under clause (i), jointly identify em-
ployees of the National Credit Union Ad-
ministration for transfer to the Bureau, in
a manner that the Bureau and the Na-
tional Credit Union Administration Board,
in their sole discretion, determine equi-
table.

(B) IDENTIFIED EMPLOYEES TRANS-
FERRED.—All employees of the National Credit
Union Administration identified under subpara-
graph (A)(ii) shall be transferred to the Bureau
for employment.

(4) CERTAIN OFFICE OF THE COMPTROLLER OF
THE CURRENCY EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANS-
FER.—The Bureau and the Comptroller of the
Currency shall—

(i) jointly determine the number of
employees of the Office of the Comptroller
of the Currency necessary to perform or
support the consumer financial protection
functions of the Office of the Comptroller
of the Currency that are transferred to the
Bureau by this title; and

(ii) consistent with the number deter-
mined under clause (i), jointly identify em-
ployees of the Office of the Comptroller of
the Currency for transfer to the Bureau, in
a manner that the Bureau and the Office
of the Comptroller of the Currency, in
their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANS-
FERRED.—All employees of the Office of the
Comptroller of the Currency identified under
subparagraph (A)(ii) shall be transferred to the
Bureau for employment.

(5) CERTAIN OFFICE OF THRIFT SUPERVISION
EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANS-
FER.—The Bureau and the Director of the Of-
lice of Thrift Supervision shall—

(i) jointly determine the number of
employees of the Office of Thrift Super-
vision necessary to perform or support the
consumer financial protection functions of
the Office of Thrift Supervision that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Bureau, in a manner that the Bureau and the Office of Thrift Supervision, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of Thrift Supervision identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(6) CERTAIN EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Secretary of the Department of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer protection
functions of the Department that are transferred to the Bureau by this title; and (ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Bureau in a manner that the Bureau and the Secretary of the Department of Housing and Urban Development, in their sole discretion, deem equitable.  

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.  

(7) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—  

(A) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).
(B) DECLINING TRANSFERS ALLOWED.—
An agency or entity may decline to make a
transfer of authority under subparagraph (A)
(and the employees appointed pursuant thereto)
to the extent that such authority relates to posi-
tions excepted from the competitive service be-
cause of their confidential, policy-making, pol-
icy-determining, or policy-advocating character,
and non-career positions in the Senior Execu-
tive Service (within the meaning of section
3132(a)(7) of title 5, United States Code).
(b) TIMING OF TRANSFERS AND POSITION ASSIGN-
MENTS.—Each employee to be transferred under this sec-
tion shall—
(1) be transferred not later than 90 days after
the designated transfer date; and
(2) receive notice of a position assignment not
later than 120 days after the effective date of his or
her transfer.
(c) TRANSFER OF FUNCTION.—
(1) IN GENERAL.—Notwithstanding any other
provision of law, the transfer of employees shall be
deemed a transfer of functions for the purpose of
section 3503 of title 5, United States Code.
(2) Priority of this title.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) Equal Status and Tenure Positions.—

(1) Employees transferred from FDIC, HUD, NCUA, OCC, and OTS.—Each employee transferred from the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Department of Housing and Urban Development shall be placed in a position at the Bureau with the same status and tenure as that employee held on the day before the designated transfer date.

(2) Employees transferred from the Federal Reserve System.—

(A) Comparability.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of an employee transferring to the Bureau from the Office of the Comptroller of the Cur-
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rency who perform similar functions and have
similar periods of service.

(B) SERVICE PERIODS CREDITED.—For
purposes of this paragraph, periods of service
with the Board of Governors or a Federal re-
serve bank shall be credited as periods of serv-
ice with a Federal agency.

(c) ADDITIONAL CERTIFICATION REQUIREMENTS
LIMITED.—Examiners transferred to the Bureau are not
subject to any additional certification requirements before
being placed in a comparable examiner position at the Bu-
reau examining the same types of institutions as they ex-
amined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided
in paragraph (2), each transferred employee holding
a permanent position on the day before the des-
ignated transfer date may not, during the 2-year pe-
period beginning on the designated transfer date, be
involuntarily separated, or involuntarily reassigned
outside his or her locality pay area, as defined by
the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) does not
limit the right of the Bureau—
(A) to separate an employee for cause or for unacceptable performance;

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

(C) to reassign a supervisory employee outside his or her locality pay area, as defined by the Office of Personnel Management, when the Bureau determines that the reassignment is necessary for the efficient operation of the Bureau.

(g) Pay.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received during the pay period immediately preceding the date of transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau to reduce the rate of basic pay of a transferred employee—

(A) for cause;
(B) for unacceptable performance; or
(C) with the consent of the employee.

(3) **PROTECTION ONLY WHILE EMPLOYED.**—
Paragraph (1) applies to a transferred employee only while that employee remains employed by the Bureau.

(4) **PAY INCREASES PERMITTED.**—Paragraph (1) does not limit the authority of the Bureau to increase the pay of a transferred employee.

(h) **REORGANIZATION.**—

(1) **BETWEEN 1ST AND 3RD YEAR.**—

(A) **IN GENERAL.**—If the Bureau determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Bureau is required—

(i) that reorganization shall be deemed a “major reorganization” for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Man-
agreement shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because
of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Bureau as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Bureau is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall establish competitive levels (as that term is defined in regulations issued by the Office of
Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) Service credit for reductions in force.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) Benefits.—

(1) Retirement benefits for transferred employees.—

(A) In general.—

(i) Continuation of existing retirement plan.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in his or her existing retirement plan, through any period of continuous employment with the Bureau.

(ii) Employer contribution.—The Bureau shall pay any employer contribu-
tions to the existing retirement plan of each transferred employee, as required under that plan.

(B) Option for employees transferred from Federal Reserve System to be subject to Federal employee retirement program.—

(i) Election.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before his or her transfer to the Bureau may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) Effective date of coverage.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) Bureau participation in Federal Reserve System retirement plan.—

(i) Separate account in Federal Reserve System retirement plan es-
Tabled.—Notwithstanding any other provision of law, and subject to the terms and conditions of this section, a separate account in the Federal Reserve System retirement plan shall be established for Bureau employees who do not make the election under subparagraph (B).

(ii) Funds attributable to transferred employees remaining in Federal Reserve System retirement plan transferred.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) Employer contributions deposited.—The Bureau shall deposit into the account established under clause (i) the employer contributions that the Bureau makes on behalf of employees who do
not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Bureau shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term “existing retirement plan” means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, in which the employee was enrolled on the day before the designated transfer date; and

(ii) the term “Federal employee retirement program” means the retirement program for Federal employees established by chapter 84 of title 5, United States Code.
(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—
Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Bureau decides not to continue participation in
any dental, vision, or life insurance program of
an agency or bank from which an employee
transferred, a transferred employee who is a
member of such a program may, before the de-
cision of the Bureau takes effect, elect to enroll,
without regard to any regularly scheduled open
season, in—

(i) the enhanced dental benefits estab-
lished by chapter 89A of title 5, United
States Code;

(ii) the enhanced vision benefits estab-
lished by chapter 89B of title 5, United
States Code; or

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

(C) LONG TERM CARE INSURANCE AFTER
1ST YEAR.—If, after the 1-year period begin-
ning on the designated transfer date, the Bu-
reau decides not to continue participation in
any long term care insurance program of an
agency or bank from which an employee trans-
ferred, a transferred employee who is a member
of such a program may, before the decision of
the Bureau takes effect, elect to apply for cov-
erage under the Federal Long Term Care In-
surance Program established by chapter 90 of
title 5, United States Code, under the under-
writing requirements applicable to a new active
workforce member (as defined in part 875, title

(D) EMPLOYEE CONTRIBUTION.—An indi-
vidual enrolled in the Federal Employees
Health Benefits program shall pay any em-
ployee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Bureau
shall transfer to the Federal Employees Health
Benefits Fund established under section 8909
of title 5, United States Code, an amount deter-
mined by the Director of the Office of Per-
sonnel Management, after consultation with the
Bureau and the Office of Management and
Budget, to be necessary to reimburse the Fund
for the cost to the Fund of providing benefits
under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN
OTHER PLANS.—For employees transferred
under this title, enrollment in a health benefits
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plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

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

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan
under this subparagraph shall pay any em-
ployee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Bu-
reau shall transfer to the Employees’ Life
Insurance Fund established under section
8714 of title 5, United States Code, an
amount determined by the Director of the
Office of Personnel Management, after
consultation with the Bureau and the Of-

office of Management and Budget, to be nec-

essary to reimburse the Fund for the cost
to the Fund of providing benefits under
this subparagraph not otherwise paid for
by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN

OTHER PLANS.—For employees transferred
under this title, enrollment in a life insur-
ance plan administered by a transferor
agency immediately before enrollment in a
life insurance plan under chapter 87 of

title 5, United States Code, shall be con-
sidered as enrollment in a life insurance

plan under that chapter for purposes of

section 8706(b)(1)(A) of title 5, United

States Code.
(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Bureau shall implement a uniform pay and classification system for all employees transferred under this title.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Bureau—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of
Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency, including the Board of Governors, the Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Bureau shall coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 1065. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director may determine necessary to accomplish the purposes of this title.
1595

(b) **SUNSET.**—The authority provided in this section shall terminate 5 years after the date of enactment of this Act.

**SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.**

(a) **IN GENERAL.**—The Secretary is authorized to perform the functions of the Bureau under this subtitle until the Director of the Bureau is confirmed by the Senate in accordance with section 1011.

(b) **INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.**—The Department of the Treasury may provide administrative services necessary to support the Bureau before the designated transfer date.

**SEC. 1067. TRANSITION OVERSIGHT.**

(a) **PURPOSE.**—The purpose of this section is to ensure that the Bureau—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce;

and

(3) establishes comprehensive employee training and benefits programs.

(b) **REPORTING REQUIREMENT.**—

(1) **IN GENERAL.**—The Bureau shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Com-
mittee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Bureau shall submit a training and workforce development plan that includes, to the extent practicable—

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

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) WORKPLACE FLEXIBILITIES PLAN.—The Bureau shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;
(v) part-time work;
(vi) job sharing;
(vii) parental leave benefits and childcare assistance;
(viii) domestic partner benefits;
(ix) other workplace flexibilities; or
(x) any combination of the items described in clauses (i) through (ix).

(C) Recruitment and Retention Plan.—The Bureau shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;
(ii) streamlined employment application processes;
(iii) the provision of timely notification of the status of employment applications to applicants; and
(iv) the collection of information to measure indicators of hiring effectiveness.

(e) Expiration.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.
1598

(d) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to affect—

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

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

**Subtitle G—Regulatory Improvements**

**SEC. 1071. SMALL BUSINESS DATA COLLECTION.**

(a) **IN GENERAL.**—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following:

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“SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.

“(a) PURPOSE.—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

“(b) INFORMATION GATHERING.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for a small business, the financial institution shall—
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“(1) inquire whether the small business is a women- or minority-owned small business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means, and whether or not such application is in response to a solicitation by the financial institution; and

“(2) maintain a record of the responses to such inquiry, separate from the application and accompanying information.

“(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

“(d) NO ACCESS BY UNDERWRITERS.—

“(1) LIMITATION.—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.
“(2) LIMITED ACCESS.—If a financial institution determines that a loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution shall provide notice to the applicant of the access of the underwriter to such information, along with notice that the financial institution may not discriminate on the basis of such information.

“(e) FORM AND MANNER OF INFORMATION.—

“(1) IN GENERAL.—Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

“(2) ITEMIZATION.—Information compiled and maintained under paragraph (1) shall be itemized in order to clearly and conspicuously disclose—

“(A) the number of the application and the date on which the application was received;

“(B) the type and purpose of the loan or other credit being applied for;
“(C) the amount of the credit or credit limit applied for, and the amount of the credit transaction or the credit limit approved for such applicant;

“(D) the type of action taken with respect to such application, and the date of such action;

“(E) the census tract in which is located the principal place of business of the small business loan applicant;

“(F) the gross annual revenue of the business in the last fiscal year of the small business loan applicant preceding the date of the application;

“(G) the race, sex, and ethnicity of the principal owners of the business; and

“(H) any additional data that the Bureau determines would aid in fulfilling the purposes of this section.

“(3) No personally identifiable information.—In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, or any other personally identifiable in-
formation concerning any individual who is, or is connected with, the small business loan applicant.

“(4) DISCRETION TO DELETE OR MODIFY PUBLICLY AVAILABLE DATA.—The Bureau may, at its discretion, delete or modify data collected under this section which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a compelling privacy interest.

“(f) AVAILABILITY OF INFORMATION.—

“(1) SUBMISSION TO BUREAU.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Bureau.

“(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be—

“(A) retained for not less than 3 years after the date of preparation;

“(B) made available to any member of the public, upon request, in the form required under regulations prescribed by the Bureau;

“(C) annually made available to the public generally by the Bureau, in such form and in
such manner as is determined by the Bureau, by regulation.

“(3) COMPILATION OF AGGREGATE DATA.—The Bureau may, at its discretion—

“(A) compile and aggregate data collected under this section for its own use; and

“(B) make public such compilations of aggregate data.

“(g) BUREAU ACTION.—

“(1) IN GENERAL.—The Bureau shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

“(2) EXCEPTIONS.—The Bureau, by rule or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section.

“(3) GUIDANCE.—The Bureau shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to deter-
mine whether the applicants are women- or minority-owned for purposes of this section.

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

“(1) FINANCIAL INSTITUTION.—The term ‘financial institution’ means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

“(2) MINORITY.—The term ‘minority’ has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

“(3) MINORITY-OWNED BUSINESS.—The term ‘minority-owned business’ means a business—

“(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

“(4) SMALL BUSINESS LOAN.—The term ‘small business loan’ shall be defined by the Bureau, which may take into account—

“(A) the gross revenues of the borrower;
“(B) the total number of employees of the borrower;
“(C) the industry in which the borrower has its primary operations; and
“(D) the size of the loan.
“(5) WOMEN-OWNED BUSINESS.—The term ‘women-owned business’ means a business—
“(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and
“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—
Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—
(1) in paragraph (3), by striking “or” at the end;
(2) in paragraph (4), by striking the period at the end and inserting “; or”; and
(3) by inserting after paragraph (4), the following:
“(5) to make an inquiry under section 704B, in accordance with the requirements of that section.”.
1606

(c) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is amended by inserting after the item relating to section 704A the following new item:

“704B. Small business loan data collection.”.

(d) EFFECTIVE DATE.—This section shall become effective on the designated transfer date.

SEC. 1072. GAO STUDY ON THE EFFECTIVENESS AND IMPACT OF VARIOUS APPRAISAL METHODS.

(a) IN GENERAL.—The Government Accountability Office shall conduct a study on the effectiveness and impact of—

(1) various appraisal methods, including the cost approach, the comparative sales approach, the income approach, and other methods that may be available; and

(2) the Home Valuation Code of Conduct (referred to in this section as the “HVCC”).

(b) STUDY.—Not later than—

(1) 1 year after the date of enactment of this Act, the Government Accountability Office shall submit a study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives;
(2) 90 days after the date of enactment of this Act, the Government Accountability Office shall provide a report on the status of the study and any preliminary findings to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) CONTENT OF STUDY.—The study required by this section shall include an examination of—

(1) the prevalence, alone or in combination, of such appraisal approaches in purchase-money and refinance mortgage transactions;

(2) the accuracy of the various approaches in assessing the property as collateral;

(3) whether and how the approaches contributed to price speculation in the previous cycle;

(4) the costs to consumers of these approaches;

(5) the disclosure of fees to consumers in the appraisal process;

(6) to what extent such approaches may be influenced by a conflict of interest between the mortgage lender and the appraiser and the mechanism by which the lender selects and compensates the appraiser;
(7) the suitability of appraisal approaches in rural versus urban areas;
(8) how the HVCC affects the selection of appraisers by mortgage lenders; and
(9) how the HVCC affects the performance of appraisers.

(d) CONFORMING AMENDMENTS.—Section 129(c) of the Truth in Lending Act (15 U.S.C. 1639(c)) is amended—
(1) by striking paragraph (2);
(2) by striking “(1) IN GENERAL.—”; and
(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

SEC. 1073. ASSISTANCE FOR ECONOMICALLY VULNERABLE INDIVIDUALS AND FAMILIES.

(a) HERA AMENDMENTS.—Section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) is amended—
(1) in subsection (a), by inserting in each of paragraphs (1), (2), (3), and (4) “or economically vulnerable individuals and families” after “homebuyers” each place that term appears;
(2) in subsection (b)(1), by inserting “or economically vulnerable individuals and families” after “homebuyers”;
(3) in subsection (c)(1)—

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

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

(C) by adding at the end the following:

“(C) a nonprofit corporation that—

“(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

“(ii) specializes or has expertise in working with economically vulnerable individuals and families, but whose primary purpose is not provision of credit counseling services.”; and

(4) in subsection (d)(1), by striking “not more than 5”.

(b) APPLICABILITY.—Amendments made by subsection (a) shall not apply to programs authorized by section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) that are funded with appropriations prior to fiscal year 2011.
SEC. 1074. REMITTANCE TRANSFERS.

(a) Treatment of Remittance Transfers.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) in section 902(b) (15 U.S.C. 1693(b)), by inserting “and remittance” after “electronic fund”;  
(2) in section 904(c) (15 U.S.C. 1693b(c)), in the first sentence, by inserting “or remittance transfers” after “electronic fund transfers”;  
(3) by redesignating sections 919, 920, 921, and 922 as sections 920, 921, 922, and 923, respectively; and  
(4) by inserting after section 918 the following:

“SEC. 919. REMITTANCE TRANSFERS.

“(a) Disclosures Required for Remittance Transfers.—

“(1) In General.—Each remittance transfer provider shall make disclosures as required under this section and in accordance with rules prescribed by the Board. Disclosures required under this section shall be in addition to any other disclosures applicable under this title.

“(2) Disclosures.—Subject to rules prescribed by the Board, each a remittance transfer provider shall provide, in writing and in a form that
the sender may keep, to each sender requesting a remittance transfer, as applicable to the transaction—

“(A) at the time at which the sender requests a remittance transfer to be initiated, and prior to the sender making any payment in connection with the remittance transfer, a disclosure describing the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged; and

“(B) at the time at which the sender makes payment in connection with the remittance transfer—

“(i) a receipt showing—

“(I) the information described in subparagraph (A);

“(II) the promised date of delivery to the designated recipient; and

“(III) the name and either the telephone number or the address of the designated recipient; and

“(ii) a statement containing—

“(I) information about the rights of the sender under this section regarding the resolution of errors; and
“(II) appropriate contact information for—

“(aa) the remittance transfer provider; and

“(bb) the State agency that regulates the remittance transfer provider and the Board, including the toll-free telephone number established under section 1013 of the Consumer Financial Protection Act of 2010.

“(3) REQUIREMENTS RELATING TO DISCLOSURES.—With respect to each disclosure required to be provided under paragraph (2) a remittance transfer provider shall—

“(A) provide an initial notice and receipt, as required by subparagraphs (A) and (B) of paragraph (2), and an error resolution statement, as required by subsection (d), that clearly and conspicuously describe the information required to be disclosed therein; and

“(B) with respect to any transaction that a sender conducts electronically, comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).
“(4) Exception for disclosures of amount received.—

“(A) In general.—Subject to the rules prescribed by the Board, and except as provided under subparagraph (B), the disclosures required regarding the amount of currency that will be received by the designated recipient shall be deemed to be accurate, so long as the disclosures provide a reasonably accurate estimate of the foreign currency to be received. This paragraph shall apply only to a remittance transfer provider who is an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or an insured credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), and if—

“(i) a remittance transfer is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with such remittance transfer provider; and

“(ii) at the time at which the sender requests the transaction, the remittance transfer provider is unable to know, for
reasons beyond its control, the amount of
currency that will be made available to the
designated recipient.

“(B) DEADLINE.—The application of sub-
paragraph (A) shall terminate 5 years after the
date of enactment of the Consumer Financial
Protection Act of 2010, unless the Board deter-
mines that termination of such provision would
negatively affect the ability of remittance trans-
fer providers described in subparagraph (A)(i)
to send remittances to locations in foreign coun-
tries, in which case, the Board may, by rule, ex-
tend the application of subparagraph (A) to not
longer than 10 years after the date of enact-
ment of the Consumer Financial Protection Act
of 2010.

“(5) EXEMPTION AUTHORITY.—The Board
may, by rule, permit a remittance transfer provider
to satisfy the requirements of—

“(A) paragraph (2)(A) orally, if the trans-
action is conducted entirely by telephone;

“(B) paragraph (2)(B), in the case of a
transaction conducted entirely by telephone, by
mailing the disclosures required under such
subparagraph to the sender, not later than 1
business day after the date on which the trans-
action is conducted, or by including such docu-
ments in the next periodic statement, if the
telephone transaction is conducted through a
demand deposit, savings deposit, or other asset
account that the sender holds with the remit-
tance transfer provider;

“(C) subparagraphs (A) and (B) of para-
graph (2) together in one written disclosure,
but only to the extent that the information pro-
vided in accordance with paragraph (3)(A) is
accurate at the time at which payment is made
in connection with the subject remittance trans-
fer; and

“(D) paragraph (2)(A), without compliance
with section 101(c) of the Electronic Signatures
in Global Commerce Act, if a sender initiates
the transaction electronically and the informa-
tion is displayed electronically in a manner that
the sender can keep.

“(6) STOREFRONT AND INTERNET NOTICES.—

“(A) IN GENERAL.—

“(i) PROMINENT POSTING.—Subject
to subparagraph (B), the Board may pre-
scribe rules to require a remittance trans-
fer provider to prominently post, and time-
ly update, a notice describing a model re-
mittance transfer for one or more amounts, as the Board may determine, which notice shall show the amount of cur-
rency that will be received by the des-
ignated recipient, using the values of the currency into which the funds will be ex-
changed.

“(ii) ONSITE DISPLAYS.—The Board may require the notice prescribed under this subparagraph to be displayed in every physical storefront location owned or con-
trolled by the remittance transfer provider.

“(iii) INTERNET NOTICES.—Subject to paragraph (3), the Board may prescribe rules to require a remittance transfer pro-
vider that providers remittance transfers via the Internet to provide a notice, com-
parable to a storefront notice described in this subparagraph, located on the home page or landing page (with respect to such remittance transfer services) owned or con-
trolled by the remittance transfer provider.
“(iv) RULEMAKING AUTHORITY.—In prescribing rules under this subparagraph, the Board may impose standards or requirements regarding the provision of the storefront and Internet notices required under this subparagraph and the provision of the disclosures required under paragraphs (2) and (3).

“(B) STUDY AND ANALYSIS.—Prior to proposing rules under subparagraph (A), the Board shall undertake appropriate studies and analyses, which shall be consistent with section 904(a)(2), and may include an advanced notice of proposed rulemaking, to determine whether a storefront notice or Internet notice facilitates the ability of a consumer—

“(i) to compare prices for remittance transfers; and

“(ii) to understand the types and amounts of any fees or costs imposed on remittance transfers.

“(b) FOREIGN LANGUAGE DISCLOSURES.—The disclosures required under this section shall be made in English and in each of the same foreign languages principally used by the remittance transfer provider, or any
of its agents, to advertise, solicit, or market, either orally
or in writing, at that office.

“(c) Regulations Regarding Transfers to Certain Nations.—If the Board determines that a recipient
nation does not legally allow a remittance transfer pro-
vider to know the amount of currency that will be received
by the designated recipient, the Board may prescribe rules
(not later than 18 months after the date of enactment of
the Consumer Financial Protection Act of 2010) to ad-
dress the issue, which rules shall include standards for a
remittance transfer provider to provide—

“(1) a receipt that is consistent with sub-
sections (a) and (b); and

“(2) a reasonably accurate estimate of the for-
egn currency to be received, based on the rate pro-
vided to the sender by the remittance transfer pro-
vider at the time at which the transaction was initi-
ated by the sender.

“(d) Remittance Transfer Errors.—

“(1) Error Resolution.—

“(A) In general.—If a remittance trans-
fer provider receives oral or written notice from
the sender within 180 days of the promised
date of delivery that an error occurred with re-
spect to a remittance transfer, including the
amount of currency designated in subsection (a)(3)(A) that was to be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

“(B) REMEDIES.—Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

“(i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;

“(ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;

“(iii) provide such other remedy, as determined appropriate by rule of the Board for the protection of senders; or
“(iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

“(2) RULES.—The Board shall establish, by rule issued not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding record keeping, as required, including documentation—

“(A) of the complaint of the sender;

“(B) that the sender provides the remittance transfer provider with respect to the alleged error; and

“(C) of the findings of the remittance transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

“(3) CANCELLATION AND REFUND POLICY RULES.—Not later than 18 months after the date of enactment of the Consumer Financial Protection Act
of 2010, the Board shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers.

“(e) APPLICABILITY OF THIS TITLE.—

“(1) IN GENERAL.—A remittance transfer that is not an electronic fund transfer, as defined in section 903, shall not be subject to any of the provisions of sections 905 through 913. A remittance transfer that is an electronic fund transfer, as defined in section 903, shall be subject to all provisions of this title, except for section 908, that are otherwise applicable to electronic fund transfers under this title.

“(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

“(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), or any regulations promulgated thereunder; or
“(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

“(f) ACTS OF AGENTS.—

“(1) IN GENERAL.—A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

“(2) OBLIGATIONS OF REMITTANCE TRANSFER PROVIDERS.—The Bureau may prescribe rules to implement appropriate standards or conditions of, liability of a remittance transfer provider, including a provider who acts through an agent or authorized delegate. An agency charged with enforcing the requirements of this section, or rules prescribed by the Bureau under this section, may consider, in any action or other proceeding against a remittance transfer provider, the extent to which the provider had established and maintained policies or procedures for
compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider.

“(g) DEFINITIONS.—As used in this section—

“(1) the term ‘designated recipient’ means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of this Act;

“(2) the term ‘remittance transfer’—

“(A) means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903; and
“(B) does not include a transfer described in subparagraph (A) in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 906(a);

“(3) the term ‘remittance transfer provider’ means any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; and

“(4) the term ‘sender’ means a consumer who requests a remittance provider to send a remittance transfer for the consumer to a designated recipient.”.

(b) Automated Clearinghouse System.—

(1) Expansion of system.—The Board of Governors shall work with the Federal reserve banks and the Department of the Treasury to expand the use of the automated clearinghouse system and other payment mechanisms for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—
(A) the number, volume, and size of such transfers;

(B) the significance of the volume of such transfers relative to the external financial flows of the receiving country, including—

(i) the total amount transferred; and

(ii) the total volume of payments made by United States Government agencies to beneficiaries and retirees living abroad;

(C) the feasibility of such an expansion;

and

(D) the ability of the Federal Reserve System to establish payment gateways in different geographic regions and currency zones to receive remittance transfers and route them through the payments systems in the destination countries.

(2) REPORT TO CONGRESS.—Not later than one calendar year after the date of enactment of this Act, and on April 30 biennially thereafter during the 10-year period beginning on that date of enactment, the Board of Governors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Serv-
ices of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this subsection. The report shall include an analysis of adoption rates of International ACH Transactions rules and formats, the efficacy of increasing adoption rates, and potential recommendations to increase adoption.

(c) Expansion of Financial Institution Provision of Remittance Transfers.—

(1) Provision of guidelines to institutions.—Each of the Federal banking agencies and the National Credit Union Administration shall provide guidelines to financial institutions under the jurisdiction of the agency regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts, as well as agency services to remittance transfer providers.

(2) Assistance to financial literacy commission.—As part of its duties as members of the Financial Literacy and Education Commission, the Bureau, the Federal banking agencies, and the National Credit Union Administration shall assist the Financial Literacy and Education Commission in executing the Strategy for Assuring Financial Em-
powerment (or the “SAFE Strategy”), as it relates to remittances.

(d) FEDERAL CREDIT UNION ACT CONFORMING AMENDMENT.—Paragraph (12) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended to read as follows:

“(12) in accordance with regulations prescribed by the Board—

“(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act); and

“(B) to cash checks and money orders for persons in the field of membership for a fee;”.

(e) REPORT ON FEASIBILITY OF AND IMPEDIMENTS TO USE OF REMITTANCE HISTORY IN CALCULATION OF CREDIT SCORE.—Before the end of the 365-day period beginning on the date of enactment of this Act, the Director shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives regarding—
(1) the manner in which the remittance history
of a consumer could be used to enhance the credit
score of the consumer;

(2) the current legal and business model bar-
riers and impediments that impede the use of the re-
nittance history of the consumer to enhance the
credit score of the consumer; and

(3) recommendations on the manner in which
maximum transparency and disclosure to consumers
of exchange rates for remittance transfers subject to
this title and the amendments made by this title
may be accomplished, whether or not such exchange
rates are known at the time of origination or pay-
ment by the consumer for the remittance transfer,
including disclosure to the sender of the actual ex-
change rate used and the amount of currency that
the recipient of the remittance transfer received,
using the values of the currency into which the
funds were exchanged, as contained in sections
919(a)(2)(D) and 919(a)(3) of the Electronic Fund
Transfer Act (as amended by this section).
SEC. 1075. DEPARTMENT OF THE TREASURY STUDY ON ENDING THE CONSERVATORSHIP OF FANNIE MAE, FREDDIE MAC, AND REFORMING THE HOUSING FINANCE SYSTEM.

(a) Study Required.—

(1) In general.—The Secretary of the Treasury shall conduct a study of and develop recommendations regarding the options for ending the conservatorship of the Federal National Mortgage Association (in this section referred to as “Fannie Mae”) and the Federal Home Loan Mortgage Corporation (in this section referred to as “Freddie Mac”), while minimizing the cost to taxpayers, including such options as—

(A) the gradual wind-down and liquidation of such entities;

(B) the privatization of such entities;

(C) the incorporation of the functions of such entities into a Federal agency;

(D) the dissolution of Fannie Mae and Freddie Mac into smaller companies; or

(E) any other measures the Secretary determines appropriate.

(2) Analyses.—The study required under paragraph (1) shall include an analysis of—
(A) the role of the Federal Government in supporting a stable, well-functioning housing finance system, and whether and to what extent the Federal Government should bear risks in meeting Federal housing finance objectives;

(B) how the current structure of the housing finance system can be improved;

(C) how the housing finance system should support the continued availability of mortgage credit to all segments of the market;

(D) how the housing finance system should be structured to ensure that consumers continue to have access to 30-year, fixed rate, prepayable mortgages and other mortgage products that have simple terms that can be easily understood;

(E) the role of the Federal Housing Administration and the Department of Veterans Affairs in a future housing system;

(F) the impact of reforms of the housing finance system on the financing of rental housing;

(G) the impact of reforms of the housing finance system on secondary market liquidity;
the role of standardization in the housing finance system;

how housing finance systems in other countries offer insights that can help inform options for reform in the United States; and

the options for transition to a reformed housing finance system.

(b) Report and Recommendations.—Not later than January 31, 2011, the Secretary of the Treasury shall submit the report and recommendations required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 1076. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

"SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS."

"(a) Reasonable Interchange Transaction Fees for Electronic Debit Transactions."
“(1) Regulatory Authority.—The Board shall have authority to establish rules, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction.

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

“(3) Rulemaking Required.—The Board shall issue final rules, not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

“(4) Considerations.—In issuing rules required by this section, the Board shall—
“(A) consider the functional similarity between—

“(i) electronic debit transactions; and

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

“(B) distinguish between—

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

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

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

“(5) EXEMPTION FOR SMALL ISSUERS.—This subsection shall not apply to issuers that, together with affiliates, have assets of less than $10,000,000,000, and the Board shall exempt such issuers from rules issued under paragraph (3).

“(6) EFFECTIVE DATE.—Paragraph (2) shall become effective 12 months after the date of enactment of the Consumer Financial Protection Act of 2010.

“(b) LIMITATION ON ANTI-COMPETITIVE PAYMENT CARD NETWORK RESTRICTIONS.—

“(1) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A COMPETING PAYMENT CARD NETWORK.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment through the use of a card or device of another payment card network, provided that the discount or in-kind incentive only differentiates be-
tween payment card networks and not between other issuers.

“(2) No restrictions on offering discounts for use of a form of payment. — A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, check, debit card, or credit card.

“(3) No restrictions on setting transaction minimums or maximums. — A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to set a minimum or maximum dollar value for the acceptance by that person of credit cards, provided that such minimum or maximum dollar value does not differentiate between issuers or between payment card networks.

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

“(1) Debit card. — The term ‘debit card’ —
“(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services, whether authorization is based on signature, PIN, or other means;

“(B) includes general use prepaid cards, as that term is defined in section 915(a)(2)(A) (15 U.S.C. 1693l–1(a)(2)(A)); and

“(C) does not include paper checks.

“(2) CREDIT CARD.—The term ‘credit card’ has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

“(3) DISCOUNT.—The term ‘discount’—

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

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

“(4) ELECTRONIC DEBIT TRANSACTION.—The term ‘electronic debit transaction’ means a transaction in which a person uses a debit card to debit an asset account.
"(5) Interchange transaction fee.—The term ‘interchange transaction fee’ means any fee established by a payment card network that has been established for the purpose of compensating an issuer or payment card network for its involvement in an electronic debit transaction.

"(6) Issuer.—The term ‘issuer’ means any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

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

SEC. 1077. USE OF CONSUMER REPORTS.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;
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(B) by inserting after paragraph (1) the following:

“(2) provide to the consumer written or electronic disclosure—

“(A) of a numerical credit score as defined in section 609(f)(2)(A) used by such person in taking any adverse action based in whole or in part on any information in a consumer report; and

“(B) of the information set forth in subparagraphs (B) through (E) of section 609(f)(1);”;

and

“(C) in paragraph (4) (as so redesignated), by striking “paragraph (2)” and inserting “paragraph (3)”;

and

(2) in subsection (h)(5)—

(A) in subparagraph (C), by striking “; and” and inserting a semicolon;

(B) in subparagraph (D), by striking the period and inserting “; and”;

(C) by inserting at the end the following:

“(E) include a statement informing the consumer of—

“(i) a numerical credit score as defined in section 609(f)(2)(A), used by such
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person in making the credit decision described in paragraph (1) based in whole or in part on any information in a consumer report; and

“(ii) the information set forth in subparagraphs (B) through (E) of section 609(f)(1).”.

SEC. 1078. REPORT ON PRIVATE EDUCATION LOANS AND PRIVATE EDUCATIONAL LENDERS.

(a) Report.—Not later than 2 years after the date of enactment of this Act, the Director and the Secretary of Education, in consultation with the Commissioners of the Federal Trade Commission, and the Attorney General of the United States, shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives, on private education loans (as that term is defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650)) and private educational lenders (as that term is defined in such section).

(b) Content.—The report required by this section shall examine, at a minimum—
(1) the growth and changes of the private education loan market in the United States;

(2) factors influencing such growth and changes;

(3) the extent to which students and parents of students rely on private education loans to finance postsecondary education and the private education loan indebtedness of borrowers;

(4) the characteristics of private education loan borrowers, including—

(A) the types of institutions of higher education that they attend;

(B) socioeconomic characteristics (including income and education levels, racial characteristics, geographical background, age, and gender);

(C) what other forms of financing borrowers use to pay for education;

(D) whether they exhaust their Federal loan options before taking out a private loan;

(E) whether such borrowers are dependent or independent students (as determined under part F of title IV of the Higher Education Act of 1965) or parents of such students;
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(F) whether such borrowers are students enrolled in a program leading to a certificate, license, or credential other than a degree, an associates degree, a baccalaureate degree, or a graduate or professional degree; and

(G) if practicable, employment and repayment behaviors;

(5) the characteristics of private educational lenders, including whether such creditors are for-profit, non-profit, or institutions of higher education;

(6) the underwriting criteria used by private educational lenders, including the use of cohort default rate (as such term is defined in section 435(m) of the Higher Education Act of 1965);

(7) the terms, conditions, and pricing of private education loans;

(8) the consumer protections available to private education loan borrowers, including the effectiveness of existing disclosures and requirements and borrowers’ awareness and understanding about terms and conditions of various financial products;

(9) whether Federal regulators and the public have access to information sufficient to provide them with assurances that private education loans are provided in accord with the Nation’s fair lending
laws and that allows public officials to determine
lender compliance with fair lending laws; and

(10) any statutory or legislative recommenda-
tions necessary to improve consumer protections for
private education loan borrowers and to better en-
able Federal regulators and the public to ascertain
private educational lender compliance with fair lend-
ing laws.

SEC. 1079. STUDY AND REPORT ON CREDIT SCORES.

(a) Study.—The Bureau shall conduct a study on
the nature, range, and size of variations between the credit
scores sold to creditors and those sold to consumers by
consumer reporting agencies that compile and maintain
files on consumers on a nationwide basis (as defined in
section 603(p) of the Fair Credit Reporting Act; 15
U.S.C. 1681a(p)), and whether such variations disadvan-
tage consumers.

(b) Report to Congress.—The Bureau shall sub-
mitt a report to Congress on the results of the study con-
ducted under subsection (a) not later than 1 year after
the date of enactment of this Act.
Subtitle H—Conforming

Amendments

SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL ACT.

Effective on the date of enactment of this Act, the Inspector General Act of 1978 (5 U.S.C. App. 3) is amended—

(1) in section 8G(a)(2), by inserting “and the Bureau of Consumer Financial Protection” after “Board of Governors of the Federal Reserve System”; and

(2) in section 8G(c), by adding at the end the following: “For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System.”; and
SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.

Effective on the date of enactment of this Act, section 552a of title 5, United States Code, is amended by adding at the end the following:

“(w) APPLICABILITY TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.”.

SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) IN GENERAL.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(1) in section 803 (12 U.S.C. 3802(1)), by striking “1974” and all that follows through “described and defined” and inserting the following: “1974), in which the interest rate or finance charge may be adjusted or renegotiated, described and def-
(A) in subsection (a)—

(i) in each of paragraphs (1), (2), and (3), by inserting after “transactions made” each place that term appears “on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010,”;

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

(iii) in paragraph (3), by striking the period at the end and inserting “; and”;

and

(iv) by adding at the end the following new paragraph:

“(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.”;
(B) by striking subsection (c) and inserting the following:

“(c) PREEMPTION OF STATE LAW.—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.”; and

(C) by adding at the end the following:

“(d) BUREAU ACTIONS.—The Bureau of Consumer Financial Protection shall—

“(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration, (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

“(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and
“(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

“(e) Designated Transfer Date.—As used in this section, the term ‘designated transfer date’ means the date determined under section 1062 of the Consumer Financial Protection Act of 2010.”.

(b) Effective Date.—This section and the amendments made by this section shall become effective on the designated transfer date.

(c) Rule of Construction.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.

SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by striking “Board” each place that term appears and inserting “Bureau”, except in section 918 (as so designated by the Credit Card Act of 2009) (15 U.S.C. 1693o);

(2) in section 903 (15 U.S.C. 1693a)—
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(A) by redesignating paragraphs (3) through (11) as paragraphs (4) through (12), respectively; and

(B) by inserting after paragraph (3) the following:

“(4) the term ‘Bureau’ means the Bureau of Consumer Financial Protection;”;

(3) in section 904(a) (15 U.S.C. 1693b(a)), in subsection (a), by striking “(a) PRESCRIPTION BY BOARD.—The Board shall prescribe regulations to carry out the purposes of this title.” and inserting the following:

“(a) PRESCRIPTION BY THE BUREAU.—The Bureau shall prescribe regulations to carry out the purposes of this title.”;

(4) in section 916(d) (as so designated by the Credit CARD Act of 2009) (15 U.S.C. 1693m)—

(A) in the subsection heading, by striking “OF BOARD OR APPROVAL OF DULY AUTHORIZED OFFICIAL OR EMPLOYEE OF FEDERAL RESERVE SYSTEM”;

(B) by inserting “Bureau or the” before “Board” each place that term appears; and
(C) by inserting “Bureau of Consumer Financial Protection or the” before “Federal Reserve System”; and

(5) in section 918 (as so designated by the Credit CARD Act of 2009) (15 U.S.C. 1693o)—

(A) in subsection (a)—

(i) by striking “Compliance” and inserting “Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance”;

(ii) by striking paragraphs (1) and (2), and inserting the following:

“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by for-
eign banks, and organizations operating under
section 25 or 25A of the Federal Reserve Act;
and

“(C) banks and State savings associations
insured by the Federal Deposit Insurance Cor-
poration (other than members of the Federal
Reserve System), and insured State branches of
foreign banks;”;

(iii) by redesignating paragraphs (3)
through (5) as paragraphs (2) through (4),
respectively;

(iv) in paragraph (2) (as so redesig-
nated), by striking the period at the end
and inserting a semicolon;

(v) in paragraph (3) (as so redesig-
nated), by striking “and” at the end;

(vi) in paragraph (4) (as so redesig-
nated), by striking the period at the end
and inserting “and”; and

(vii) by adding at the end the fol-
lowing:

“(5) subtitle E of the Consumer Financial Pro-
tection Act of 2010, by the Bureau, with respect to
any person subject to that subtitle E.”;
(B) in subsection (b), by inserting “any of paragraphs (1) through (5) of” before “subsection (a)” each place that term appears; and

(C) by striking subsection (c) and inserting the following:

“(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (5) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this title, irrespective of whether that person is engaged in com-
The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(1) by striking “Board” each place that term appears, other than in section 704(a)(4) (15 U.S.C. 1691c(a)(4)), and inserting “Bureau”;

(2) in section 702 (15 U.S.C. 1691a), by striking subsection (c) and inserting the following:

“(c) The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”;

(3) in section 703 (15 U.S.C. 1691b)—

(A) by striking the section heading and inserting the following:

“SEC. 703. PROMULGATION OF REGULATIONS BY THE BUREAU.”;

(B) by striking “(a) REGULATIONS.—”;

(C) by striking subsection (b);

(D) by redesignating paragraphs (1) through (5) as subsections (a) through (e), respectively; and
(E) in subsection (c), as so redesignated, by striking “paragraph (2)” and inserting “subsection (b)”; 

(4) in section 704 (15 U.S.C. 1691c)—

(A) in subsection (a)—

(i) by striking “Compliance” and inserting “Subject to subtitle B of the Consumer Protection Financial Protection Act of 2010”;

(ii) by striking paragraphs (1) and (2) and inserting the following:

“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under
section 25 or 25A of the Federal Reserve Act;

and

“(C) banks and State savings associations

insured by the Federal Deposit Insurance Cor-

poration (other than members of the Federal

Reserve System), and insured State branches of

foreign banks;”;

(iii) by redesignating paragraphs (3)

through (9) as paragraphs (2) through (8),

respectively;

(iv) in paragraph (7) (as so redesign-

nated), by striking “and” at the end;

(v) in paragraph (8) (as so redesign-

nated), by striking the period at the end,

and inserting “; and”; and

(vi) by adding at the end the fol-

lowing:

“(9) Subtitle E of the Consumer Financial Pro-
tection Act of 2010, by the Bureau.”;

(B) by striking subsection (e) and insert-

ing the following:

“(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
ERAL TRADE COMMISSION.—Except to the extent that en-
forcement of the requirements imposed under this title is

specifically committed to some other Government agency
under any of paragraphs (1) through (9) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce any rule prescribed by the Bureau under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”; and

(C) in subsection (d), by striking “Board” and inserting “Bureau”; (5) in section 706(e) (15 U.S.C. 1691e(e))— (A) in the subsection heading—
(i) by striking “BOARD” each place that term appears and inserting “BUREAU”; and

(ii) by striking “FEDERAL RESERVE SYSTEM” and inserting “BUREAU OF CONSUMER FINANCIAL PROTECTION”; and

(B) by striking “Federal Reserve System” and inserting “Bureau of Consumer Financial Protection”;

(6) in section 706(g) (15 U.S.C. 1691e(g)), by striking “(3)” and inserting “(9)”; and

(7) in section 706(f) (15 U.S.C. 1691e(f)), by striking “two years from” each place that term appears and inserting “5 years after”.

SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) Amendment to Section 603.—Section 603(d)(1) of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended by inserting after “Board” the following “, jointly with the Director of the Bureau of Consumer Financial Protection,”.

(b) Amendments to Section 604.—Section 604 of the Expedited Funds Availability Act (12 U.S.C. 4003) is amended—
(1) by inserting after “Board” each place that term appears, other than in subsection (f), the following: “, jointly with the Director of the Bureau of Consumer Financial Protection,”; and

(2) in subsection (f), by striking “Board.” each place that term appears and inserting the following: “Board, jointly with the Director of the Bureau of Consumer Financial Protection.”.

(e) AMENDMENTS TO SECTION 605.—Section 605 of the Expedited Funds Availability Act (12 U.S.C. 4004) is amended—

(1) by inserting after “Board” each place that term appears, other than in the heading for section 605(f)(1), the following: “, jointly with the Director of the Bureau of Consumer Financial Protection,”; and

(2) in subsection (f)(1), in the paragraph heading, by inserting “AND BUREAU” after “BOARD”.

(d) AMENDMENTS TO SECTION 609.—Section 609 of the Expedited Funds Availability Act (12 U.S.C. 4008) is amended:

(1) in subsection (a), by inserting after “Board” the following “, jointly with the Director of the Bureau of Consumer Financial Protection,”; and
(2) by striking subsection (c) and inserting the following:

“(e) CONSULTATIONS.—In prescribing regulations under subsections (a) and (b), the Board and the Director of the Bureau of Consumer Financial Protection, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.”.

(e) EXPEDITED FUNDS AVAILABILITY IMPROVEMENTS.—Section 603 of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended—

(1) in subsection (a)(2)(D), by striking “$100” and inserting “$200”; and

(2) in subsection (b)(3)(C), in the subparagraph heading, by striking “$100” and inserting “$200”; and

(3) in subsection (c)(1)(B)(iii), in the clause heading, by striking “$100” and inserting “$200”.

(f) REGULAR ADJUSTMENTS FOR INFLATION.—Section 607 of the Expedited Funds Availability Act (12 U.S.C. 4006) is amended by adding at the end the following:
“(f) Adjustments to Dollar Amounts for Inflation.—The dollar amounts under this title shall be adjusted every 5 years after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $25.”.

SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING ACT.

The Fair Credit Billing Act (15 U.S.C. 1666–1666j) is amended by striking “Board” each place that term appears and inserting “Bureau”.


(a) Fair Credit Reporting Act.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following:

“(w) The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”; and
(2) except as otherwise specifically provided in this subsection—

(A) by striking “Federal Trade Commission” each place that term appears and inserting “Bureau”;

(B) by striking “FTC” each place that term appears and inserting “Bureau”;

(C) by striking “the Commission” each place that term appears, other than sections 615(e) (15 U.S.C. 1681m(e)) and 628(a)(1) (15 U.S.C. 1681w(a)(1)), and inserting “the Bureau”; and

(D) by striking “The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly” each place that term appears, other than section 615(e)(1) (15 U.S.C. 1681m(e)) and section 628(a)(1) (15 U.S.C. 1681w(a)(1)), and inserting “The Bureau shall”;

(3) in section 603(k)(2) (15 U.S.C. 1681a(k)(2)), by striking “Board of Governors of the Federal Reserve System” and inserting “Bureau”;

(4) in section 604(g) (15 U.S.C. 1681b(g))—
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(A) in paragraph (3), by striking subpara-

graph (C) and inserting the following:

“(C) as otherwise determined to be nec-

essary and appropriate, by regulation or order,

by the Bureau (consistent with the enforcement

authorities prescribed under section 621(b)), or

the applicable State insurance authority (with

respect to any person engaged in providing in-
surance or annuities).”; and

(B) by striking paragraph (5) and insert-
ing the following:

“(5) REGULATIONS AND EFFECTIVE DATE FOR

PARAGRAPH (2).—

“(A) REGULATIONS REQUIRED.—The Bu-

reau may, after notice and opportunity for com-

ment, prescribe regulations that permit trans-

actions under paragraph (2) that are deter-

mined to be necessary and appropriate to pro-

tect legitimate operational, transactional, risk,

consumer, and other needs (and which shall in-

clude permitting actions necessary for adminis-

trative verification purposes), consistent with

the intent of paragraph (2) to restrict the use

of medical information for inappropriate pur-

poses.”;
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(5) in section 605(h)(2)(A) (15 U.S.C. 1681c(h)(2)(A)), by striking “with respect to the entities that are subject to their respective enforcement authority under section 621” and inserting “, in consultation with the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission,.”

(6) in section 611(e)(2) (15 U.S.C. 1681i(e)), by striking paragraph (2) and inserting the following:

“(2) EXCLUSION.—Complaints received or obtained by the Bureau pursuant to its investigative authority under the Consumer Financial Protection Act of 2010 shall not be subject to paragraph (1).”;

(7) in section 615(d)(2)(B) (15 U.S.C. 1681m(d)(2)(B)), by striking “the Federal banking agencies” and inserting “the Federal Trade Commission, the Federal banking agencies,”;

(8) in section 615(e)(1) (15 U.S.C. 1681m(e)(1)), by striking “and the Commission” and inserting “the Federal Trade Commission, the Commodity Futures Trading Commission, and the Securities and Exchange Commission”;
(9) in section 615(h)(6) (15 U.S.C. 1681m(h)(6)), by striking subparagraph (A) and inserting the following:

“(A) RULES REQUIRED.—The Bureau shall prescribe rules to carry out this subsection.”;

(10) in section 621 (15 U.S.C. 1681s)—

(A) by striking subsection (a) and inserting the following:

“(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

“(1) IN GENERAL.—The Federal Trade Commission shall be authorized to enforce compliance with the requirements imposed by this title under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of subparagraphs (A) through (G) of subsection (b)(1), and subject to subtitle B of the Consumer Financial Protection Act of 2010, subsection (b). For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade
Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable
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terms and provisions of such Act are part of this
title.

“(2) Penalties.—

“(A) Knowing violations.—Except as
otherwise provided by subtitle B of the Con-
sumer Financial Protection Act of 2010, in the
event of a knowing violation, which constitutes
a pattern or practice of violations of this title,
the Federal Trade Commission may commence
a civil action to recover a civil penalty in a dis-
trict court of the United States against any
person that violates this title. In such action,
such person shall be liable for a civil penalty of
not more than $2,500 per violation.

“(B) Determining penalty amount.—

In determining the amount of a civil penalty
under subparagraph (A), the court shall take
into account the degree of culpability, any his-
tory of such prior conduct, ability to pay, effect
on ability to continue to do business, and such
other matters as justice may require.

“(C) Limitation.—Notwithstanding para-
graph (2), a court may not impose any civil
penalty on a person for a violation of section
623(a)(1), unless the person has been enjoined
from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.’’;

(B) by striking subsection (b) and inserting the following:

‘‘(b) ENFORCEMENT BY OTHER AGENCIES.—

‘‘(1) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to section 615(d) shall be enforced under—

‘‘(A) section 8 of the Federal Deposit Ins-

surance Act (12 U.S.C. 1818), by the appro-
priate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—
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“(i) any national bank or State savings association, and any Federal branch or Federal agency of a foreign bank;

“(ii) any member bank of the Federal Reserve System (other than a national bank), a branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), a commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act; and

“(iii) any bank or Federal savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and any insured State branch of a foreign bank;

“(B) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

“(C) subtitle IV of title 49, United States Code, by the Secretary of Transportation, with
respect to all carriers subject to the jurisdiction
of the Surface Transportation Board;

“(D) the Federal Aviation Act of 1958 (49
U.S.C. App. 1301 et seq.), by the Secretary of
Transportation, with respect to any air carrier
or foreign air carrier subject to that Act;

“(E) the Packers and Stockyards Act,
1921 (7 U.S.C. 181 et seq.) (except as provided
in section 406 of that Act), by the Secretary of
Agriculture, with respect to any activities sub-
ject to that Act;

“(F) the Commodity Exchange Act, with
respect to a person subject to the jurisdiction of
the Commodity Futures Trading Commission;

“(G) the Federal securities laws, and any
other laws that are subject to the jurisdiction of
the Securities and Exchange Commission, with
respect to a person that is subject to the juris-
diction of the Securities and Exchange Com-
mission; and

“(H) subtitle E of the Consumer Financial
Protection Act of 2010, by the Bureau.

“(2) INCORPORATED DEFINITIONS.—The terms
used in paragraph (1) that are not defined in this
title or otherwise defined in section 3(s) of the Fed-
eral Deposit Insurance Act (12 U.S.C. 1813(s)) have
the same meanings as in section 1(b) of the Inter-

(C) in subsection (e)(2)—

(i) by inserting "and the Federal
Trade Commission" before "or the appro-
priate"; and

(ii) by inserting "and the Federal
Trade Commission" before "or appro-
priate" each place that term appears;

(D) by inserting "the Federal Trade
Commission," before "or the appropriate" each
place that term appears;

(E) by striking subsection (e) and insert-
ing the following:

"(e) REGULATORY AUTHORITY.—The Bureau shall
prescribe such regulations as are necessary to carry out
the purposes of this title, except with respect to sections
615(e) and 628. The regulations prescribed by the Bureau
under this title shall apply to any person that is subject
to this title, notwithstanding the enforcement authorities
granted to other agencies under this section."; and

(F) in subsection (f)(2), by striking "the
Federal banking agencies" and insert "the Fed-
eral Trade Commission, the Federal banking agencies,”;

(11) in section 623 (15 U.S.C. 1681s–2)—

(A) in subsection (a)(7), by striking sub-
paragraph (D) and inserting the following:

“(D) MODEL DISCLOSURE.—

“(i) DUTY OF BUREAU.—The Bureau
shall prescribe a brief model disclosure
that a financial institution may use to
comply with subparagraph (A), which shall
not exceed 30 words.

“(ii) USE OF MODEL NOT RE-
quired.—No provision of this paragraph
may be construed to require a financial in-
stitution to use any such model form pre-
scribed by the Bureau.

“(iii) COMPLIANCE USING MODEL.—A
financial institution shall be deemed to be
in compliance with subparagraph (A) if the
financial institution uses any model form
prescribed by the Bureau under this sub-
paragraph, or the financial institution uses
any such model form and rearranges its
format.”;
(B) in subsection (a)(8), by inserting “, in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration,” before “shall jointly”; and

(C) by striking subsection (e) and inserting the following:

“(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

“(1) GUIDELINES.—The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621—

“(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

“(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the
guidelines established pursuant to subpara-
graph (A).

“(2) CRITERIA.—In developing the guidelines
required by paragraph (1)(A), the Bureau shall—

“(A) identify patterns, practices, and spe-
cific forms of activity that can compromise the
accuracy and integrity of information furnished
to consumer reporting agencies;

“(B) review the methods (including techno-
logical means) used to furnish information re-
lating to consumers to consumer reporting
agencies;

“(C) determine whether persons that fur-
nish information to consumer reporting agen-
cies maintain and enforce policies to ensure the
accuracy and integrity of information furnished
to consumer reporting agencies; and

“(D) examine the policies and processes
that persons that furnish information to con-
sumer reporting agencies employ to conduct re-
investigations and correct inaccurate informa-
tion relating to consumers that has been fur-
nished to consumer reporting agencies.”;

(12) in section 628(a)(1) (15 U.S.C.
1681w(a)(1)), by striking “Not later than” and all
that follows through “Exchange Commission,” and
inserting “The Federal Trade Commission, the Se-
curities and Exchange Commission, the Commodity
Futures Trading Commission, the Federal banking
agencies, and the National Credit Union Administra-
tion, with respect to the entities that are subject to
their respective enforcement authority under section
621,”; and

(13) in section 628(a)(3) (15 U.S.C.
1681w(a)(3)), by striking “the Federal banking
agencies, the National Credit Union Administration,
the Commission, and the Securities and Exchange
Commission” and inserting “the agencies identified
in paragraph (1)”.

(b) FAIR AND ACCURATE CREDIT TRANSACTIONS
ACT OF 2003.—Section 214(b)(1) of the Fair and Accu-
3 note) is amended by striking paragraph (1) and insert-
ing the following:

“(1) IN GENERAL.—Regulations to carry out
section 624 of the Fair Credit Reporting Act (15
U.S.C. 1681s–3), shall be prescribed, as described in
paragraph (2), by—
“(A) the Commodity Futures Trading Commission, with respect to entities subject to its enforcement authorities;

“(B) the Securities and Exchange Commission, with respect to entities subject to its enforcement authorities; and

“(C) the Bureau, with respect to other entities subject to this Act.”.

SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.


(1) by striking “Commission” each place that term appears and inserting “Bureau”;

(2) in section 803 (15 U.S.C. 1692a)—

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

“(1) The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”;

(3) in section 814 (15 U.S.C. 1692l)—

(A) by striking subsection (a) and inserting the following:

“(a) FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall be authorized to enforce compliance with this title, except to the extent that enforcement
of the requirements imposed under this title is specifically committed to another Government agency under any of paragraphs (1) through (6) of subsection (b). For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”; and

(B) in subsection (b)—

(i) by striking “Compliance” and inserting “Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance”;

(ii) by striking paragraphs (1) and (2) and inserting the following:
“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

“(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;”;

(iii) by redesignating paragraphs (3) through (6), as paragraphs (2) through (5), respectively;
(iv) in paragraph (4) (as so redesignated), by striking “and” at the end;

(v) in paragraph (5) (as so redesignated), by striking the period at the end
and inserting “; and”; and

(vi) by inserting before the undesigned matter at the end the following:

“(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to
any person subject to that subtitle E.”.

(4) in subsection (d), by striking “Neither the
Commission” and all that follows through the end of
the subsection and inserting the following: “The Bu-
reau may prescribe rules with respect to the collec-
tion of debts by debt collectors, as defined in this
Act.”.

SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT IN-
SURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811
et seq.) is amended—

(1) in section 8(t) (12 U.S.C. 1818(t)), by add-
ing at the end the following:

“(6) Referral to Bureau of Consumer Fin-
nancial Protection.—Subject to subtitle B of the
Consumer Financial Protection Act of 2010, each
appropriate Federal banking agency shall make a referral to the Bureau of Consumer Financial Protection when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.”; and

(2) in section 43 (12 U.S.C. 1831t)—

(A) in subsection (c), by striking “Federal Trade Commission” and inserting “Bureau”;

(B) in subsection (d), by striking “Federal Trade Commission” and inserting “Bureau”;

(C) in subsection (e)—

(i) in paragraph (2), by striking “Federal Trade Commission” and inserting “Bureau”; and

(ii) by adding at the end the following new paragraph:

“(5) BUREAU.—The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”; and

(D) in subsection (f)—

(i) by striking paragraph (1) and inserting the following:
“(1) LIMITED ENFORCEMENT AUTHORITY.—

Compliance with the requirements of subsections (b),
(c), and (e), and any regulation prescribed or order
issued under such subsection, shall be enforced
under the Consumer Financial Protection Act of
2010, by the Bureau, subject to subtitle B of the
Consumer Financial Protection Act of 2010, and
under the Federal Trade Commission Act (15
U.S.C. 41 et seq.) by the Federal Trade Commiss-
ion.”; and

(ii) in paragraph (2), by striking sub-
paragraph (C) and inserting the following:

“(C) LIMITATION ON STATE ACTION
WHILE FEDERAL ACTION PENDING.—If the Bu-
reau or Federal Trade Commission has insti-
tuted an enforcement action for a violation of
this section, no appropriate State supervisory
agency may, during the pendency of such ac-
tion, bring an action under this section against
any defendant named in the complaint of the
Bureau or Federal Trade Commission for any
violation of this section that is alleged in that
complaint.”.
SEC. 1091. AMENDMENT TO FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.


SEC. 1092. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(1) in section 501(b) (15 U.S.C. 6801(b)), by inserting “, other than the Bureau of Consumer Financial Protection,” after “505(a)”;

(2) in section 502(e)(5) (15 U.S.C. 6802(e)(5)), by inserting “the Bureau of Consumer Financial Protection” after “(including”;

(3) in section 504(a) (15 U.S.C. 6804(a))—

(A) by striking paragraphs (1) and (2) and inserting the following:

“(1) RULEMAKING.—

“(A) IN GENERAL.—The Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle
with respect to financial institutions and other persons subject to their respective jurisdiction under section 505 (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 501.

“(B) CFTC.—The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 5g of the Commodity Exchange Act.

“(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subtitle.

“(2) COORDINATION, CONSISTENCY, AND COMPARABILITY.—Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies
and, as appropriate, and with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.’’; and

(B) in paragraph (3), by striking ‘‘, and shall be issued in final form not later than 6 months after the date of enactment of this Act’’;

(4) in section 505(a) (15 U.S.C. 6805(a))—

(A) by striking ‘‘This subtitle’’ and all that follows through ‘‘as follows:’’ and inserting ‘‘Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subtitle and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:’’;

(B) in paragraph (1)—
(i) in the matter preceding subparagraph (A), by inserting “by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act,” after “Act,”;

(ii) in subparagraph (A), by striking “, by the Office of the Comptroller of the Currency”;

(iii) in subparagraph (B), by striking “, by the Board of Governors of the Federal Reserve System”;  

(iv) in subparagraph (C), by striking “, by the Board of Directors of the Federal Deposit Insurance Corporation”; and

(v) in subparagraph (D), by striking “, by the Director of the Office of Thrift Supervision”; and

(C) by adding at the end the following: “(8) Under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau under that Act, but not with respect to the standards under section 501.”;
in section 505(b)(1) (15 U.S.C. 6805(b)(1)), by inserting “, other than the Bureau of Consumer Financial Protection,” after “subsection (a)”;


SEC. 1093. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.


(1) by striking “Board” each place that term appears, other than in sections 303, 304(h), 305(b) (as amended by this section), and 307(a) (as amended by this section) and inserting “Bureau”.

(2) in section 303 (12 U.S.C. 2802)—

(A) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively; and

(B) by inserting before paragraph (2) the following:

“(1) the term ‘Bureau’ means the Bureau of Consumer Financial Protection;”;

(3) in section 304 (12 U.S.C. 2803)—

(A) in subsection (b)—
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(i) in paragraph (4), by inserting “age,” before “and gender”; 

(ii) in paragraph (3), by striking “and” at the end; 

(iii) in paragraph (4), by striking the period at the end and inserting a semi-colon; and 

(iv) by adding at the end the following:

“(5) the number and dollar amount of mortgage loans grouped according to measurements of—

“(A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);

“(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

“(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

“(D) such other information as the Bureau may require; and
“(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—

“(A) the value of the real property pledged or proposed to be pledged as collateral;

“(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

“(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;

“(D) the actual or proposed term in months of the mortgage loan;

“(E) the channel through which application was made, including retail, broker, and other relevant categories;

“(F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008;

“(G) as the Bureau may determine to be appropriate, a universal loan identifier;
“(H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

“(I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe; and

“(J) such other information as the Bureau may require.”;

(B) by striking subsection (h) and inserting the following:

“(h) Submission to Agencies.—

“(1) In general.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for the institution reporting under this title, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in consultation with other appropriate agencies described in paragraph (2), shall develop regulations that—

“(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public;
“(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title;

“(C) require disclosure of the class of the purchaser of such loans; and

“(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.

“(2) OTHER APPROPRIATE AGENCIES.—The appropriate agencies described in this paragraph are—

“(A) the appropriate Federal banking agencies, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to the entities that are subject to the jurisdiction of each such agency, respectively;

“(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution
described in section 303(2)(A) which is not otherwise referred to in this paragraph;

“(C) the National Credit Union Administration Board with respect to credit unions; and

“(D) the Secretary of Housing and Urban Development with respect to other lending institutions not regulated by the agencies referred to in subparagraph (A) or (B).”; and

(C) in subsection (i), by striking “subsection (b)(4)” and inserting “subsections (b)(4), (b)(5), and (b)(6)”;

(D) in subsection (j)—

(i) in paragraph (1), by striking “(as” and inserting “(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise”;

(ii) by striking paragraph (3) and inserting the following:

“(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Bureau may require”; and
(iii) in paragraph (2)(A), by striking "in the format in which such information is maintained by the institution" and inserting "in such formats as the Bureau may require";

(E) in subsection (m), by striking paragraph (2) and inserting the following:

"(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Bureau may require."

(F) by adding at the end the following:

"(n) TIMING OF CERTAIN DISCLOSURES.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Bureau. Institutions shall not be required to report new data under paragraph (5) or (6) of subsection (b) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures."

(4) in section 305 (12 U.S.C. 2804)—
(A) by striking subsection (b) and inserting the following:

“(b) Powers of Certain Other Agencies.—

“(1) In general.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements of this title shall be enforced—

“(A) under section 8 of the Federal Deposit Insurance Act, the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(i) any national bank or Federal savings association, and any Federal branch or Federal agency of a foreign bank;

“(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act; and
“(iii) any bank or State savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as, defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or (C);

“(B) under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to a covered person or service provider subject to that subtitle;

“(C) under the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any insured credit union; and

“(D) with respect to other lending institutions, by the Secretary of Housing and Urban Development.

“(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Fed-
eral Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).”; and

(B) by adding at the end the following:

“(d) OVERALL ENFORCEMENT AUTHORITY OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). The Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to exercise principal authority to examine and enforce compliance by any person with the requirements of this title.”;

(5) in section 306 (12 U.S.C. 2805(b)), by striking subsection (b) and inserting the following:

“(b) EXEMPTION AUTHORITY.—The Bureau may, by regulation, exempt from the requirements of this title any State-chartered depository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the re-
requirements imposed under this subsection shall be enforced by the Office of the Comptroller of the Currency under section 8 of the Federal Deposit Insurance Act, in the case of national banks and Federal savings associations, the deposits of which are insured by the Federal Deposit Insurance Corporation.”; and

(6) by striking section 307 (12 U.S.C. 2806) and inserting the following:

“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.

“(a) IN GENERAL.—

“(1) CONSULTATION REQUIRED.—The Director of the Bureau of Consumer Financial Protection, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

“(2) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.
“(3) Contracting Authority.—The Director of the Bureau of Consumer Financial Protection is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

“(b) Recommendations to Congress.—The Director of the Bureau of Consumer Financial Protection shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the Bureau of Consumer Financial Protection deems appropriate to carry out the purpose of this title.”.

SEC. 1094. AMENDMENTS TO THE HOMEOWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in subsection (a)—

(A) by striking “Compliance” and all that follows through the end of paragraph (1) and inserting the following: “Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this Act shall be enforced under—
“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

“(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

“(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);

and

“(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);”;

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

(C) in paragraph (3), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following:
“(4) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection.”; and

(2) in subsection (b)(2), by inserting before the period at the end the following: “, subject to subtitle B of the Consumer Financial Protection Act of 2010”.

SEC. 1095. AMENDMENTS TO THE HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994.


(1) in section 158(a), by striking “Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board” and inserting “Bureau, in consultation with the Advisory Board to the Bureau”; and

(2) in section 158(b), by striking “Board of Governors of the Federal Reserve System” and inserting “Bureau”.

SEC. 1096. AMENDMENTS TO THE OMNIBUS APPROPRIATIONS ACT, 2009.

Section 626 of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note) is amended—

(1) by striking subsection (a) and inserting the following:
“(a)(1) The Bureau of Consumer Financial Protection shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010 and a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

“(2) The Bureau of Consumer Financial Protection shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer Financial Protection Act of 2010 were incorporated into and made part of this subsection.

“(3) Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce the rules issued under paragraph (1), in the same manner, by the same means, and with the same jur-
risdiction, as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this section.”; and

(2) in subsection (b)—

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

“(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in practices that violate such rule, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States or other court of competent jurisdiction—

“(A) to enjoin that practice;

“(B) to enforce compliance with the rule;

“(C) to obtain damages, restitution, or other compensation on behalf of the residents of the State; or

“(D) to obtain penalties and relief provided under the Consumer Financial Protection Act of 2010, the Federal Trade Commission Act,
and such other relief as the court deems appropriate.”;

(B) in paragraphs (2) and (3), by striking “the primary Federal regulator” each time the term appears and inserting “the Bureau of Consumer Financial Protection or the Commission, as appropriate”;

(C) in paragraph (3), by inserting “and subject to subtitle B of the Consumer Financial Protection Act of 2010,” after “paragraph (2),”; and

(D) in paragraph (6), by striking “the primary Federal regulator” each place that term appears and inserting “the Bureau of Consumer Financial Protection or the Commission”.

SEC. 1097. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3 (12 U.S.C. 2602)—

(A) in paragraph (7), by striking “and” at the end;

(B) in paragraph (8), by striking the period at the end and inserting “; and”; and
(C) by adding at the end the following:

“(9) the term ‘Bureau’ means the Bureau of Consumer Financial Protection.”;

(2) in section 4 (12 U.S.C. 2603)—

(A) in subsection (a), by striking the first sentence and inserting the following: “The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.”;

(B) by striking “Secretary” each place that term appears and inserting “Bureau”; and

(C) by striking “form” each place that term appears and inserting “forms”;
(3) in section 5 (12 U.S.C. 2604)—
   (A) by striking “Secretary” each place that term appears and inserting “Bureau”; and
   (B) in subsection (a), by striking the first sentence and inserting the following: “The Bureau shall prepare and distribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.”;
(4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—
   (A) by striking “Secretary” and inserting “Bureau”; and
   (B) by striking “, by regulations that shall take effect not later than April 20, 1991,”;
(5) in section 7(b) (12 U.S.C. 2606(b)) by striking “Secretary” and inserting “Bureau”;
(6) in section 8(d) (12 U.S.C. 2607(d))—
   (A) in the subsection heading, by inserting “BUREAU AND” before “SECRETARY”; and
   (B) by striking paragraph (4), and inserting the following:
“(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010.”

(7) in section 10(c) (12 U.S.C. 2609(c) and (d)), by striking “Secretary” and inserting “Bureau”;

(8) in section 16 (12 U.S.C. 2614), by inserting “the Bureau,” before “the Secretary”;

(9) in section 18 (12 U.S.C. 2616), by striking “Secretary” each place that term appears and inserting “Bureau”; and

(10) in section 19 (12 U.S.C. 2617)—

(A) in the section heading by striking “SECRETARY” and inserting “BUREAU”;

(B) in subsection (a), by striking “Secretary” each place that term appears and inserting “Bureau”;
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(C) in subsection (b), by inserting “the Bureau” before “the Secretary”; and

(D) in subsection (c), by inserting “or the Bureau” after “the Secretary” each time that term appears.

SEC. 1098. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.


(1) in section 1101—

(A) in paragraph (6)—

(i) in subparagraph (A), by inserting “and” after the semicolon;

(ii) in subparagraph (B), by striking “and” at the end; and

(iii) by striking subparagraph (C);

and

(B) in paragraph (7), by striking subparagraph (B), and inserting the following:

“(B) the Bureau of Consumer Financial Protection;”;

(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking “and the Commodity Futures Trading Commission is permitted” and inserting “the Commodity
Futures Trading Commission, and the Bureau of Consumer Financial Protection is permitted”; and

(3) in section 1113 (12 U.S.C. 3413), by adding at the end the following new subsection:

“(r) Disclosure to the Bureau of Consumer Financial Protection.—Nothing in this title shall apply to the examination by or disclosure to the Bureau of Consumer Financial Protection of financial records or information in the exercise of its authority with respect to a financial institution.”.

SEC. 1099. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking “a Federal banking agency” each place that term appears, other than in paragraphs (7) and (11) of section 1503 and section 1507(a)(1), and inserting “the Bureau”;

(2) by striking “Federal banking agencies” each place that term appears and inserting “Bureau”; and

(3) by striking “Secretary” each place that term appears and inserting “Director”;

(4) in section 1503 (12 U.S.C. 5102)—
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(A) by redesignating paragraphs (2) through (12) as (3) through (13), respectively;

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

“(1) BUREAU.—The term ‘Bureau’ means the Bureau of Consumer Financial Protection.

“(2) FEDERAL BANKING AGENCY.—The term ‘Federal banking agency’ means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.”; and

(C) by striking paragraph (10), as so designated by this section, and inserting the following:

“(10) DIRECTOR.—The term ‘Director’ means the Director of the Bureau of Consumer Financial Protection.”; and

(5) in section 1507 (12 U.S.C. 5106)—

(A) in subsection (a)—

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

“(1) IN GENERAL.—The Bureau shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary
that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of the Consumer Financial Protection Act of 2010.”; and

(ii) in paragraph (2)—

(I) by striking “appropriate Federal banking agency and the Farm Credit Administration” and inserting “Bureau”; and

(II) by striking “employees’s identity” and inserting “identity of the employee”; and

(B) in subsection (b), by striking “through the Financial Institutions Examination Council, and the Farm Credit Administration”, and inserting “and the Bureau of Consumer Financial Protection”;

(6) in section 1508 (12 U.S.C. 5107)—

(A) by striking the section heading and inserting the following: “SEC. 1508. BUREAU OF
CONSUMER FINANCIAL PROTECTION

BACKUP AUTHORITY TO ESTABLISH LOAN ORIGINATOR LICENSING SYSTEM.”; and

(B) by adding at the end the following:

“(f) REGULATION AUTHORITY.—

“(1) IN GENERAL.—The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

“(2) CONSIDERATIONS.—In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.”;

(7) by striking section 1510 (12 U.S.C. 5109) and inserting the following:

“SEC. 1510. FEES.

“The Bureau, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintain-
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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. 
6. (8) by striking section 1513 (12 U.S.C. 5112)
7. and inserting the following:
8.
9. “SEC. 1513. LIABILITY PROVISIONS.
10. “The Bureau, any State official or agency, or any or-
11. ganization serving as the administrator of the Nationwide
12. Mortgage Licensing System and Registry or a system es-
13. tablished by the Director under section 1509, or any offi-
14. cer or employee of any such entity, shall not be subject
15. to any civil action or proceeding for monetary damages
16. by reason of the good faith action or omission of any offi-
17. cer or employee of any such entity, while acting within
18. the scope of office or employment, relating to the collec-
19. tion, furnishing, or dissemination of information con-
20. cerning persons who are loan originators or are applying
21. for licensing or registration as loan originators.”; and
22. (9) in section 1514 (12 U.S.C. 5113) in the
23. section heading, by striking “UNDER HUD BACKUP
24. LICENSING SYSTEM” and inserting “BY THE BU-
25. REAU”.


SEC. 1099A. AMENDMENTS TO THE TRUTH IN LENDING ACT.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

(1) in section 103 (5 U.S.C. 1602)—

(A) by redesignating subsections (b) through (bb) as subsections (c) through (cc), respectively; and

(B) by inserting after subsection (a) the following:

“(b) BUREAU.—The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”;

(2) by striking “Board” each place that term appears, other than in section 140(d) and section 108(a), as amended by this section, and inserting “Bureau”;

(3) by striking “Federal Trade Commission” each place that term appears, other than in section 108(c) and section 129(m), as amended by this Act, and other than in the context of a reference to the Federal Trade Commission Act, and inserting “Bureau”;

(4) in section 105(a) (15 U.S.C. 1604(a)), in the second sentence—

(A) by striking “Except in the case of a mortgage referred to in section 103(aa), these regulations may contain such” and inserting
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“Except with respect to the provisions of section 129 that apply to a mortgage referred to in section 103(aa), such regulations may contain such additional requirements,”; and

(B) by inserting “all or” after “exceptions for”; (5) in section 105(b) (15 U.S.C. 1604(b)), by striking the first sentence and inserting the following: “The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.”;
(6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)), by inserting “all or” after “from all or part of this title”; 

(7) in section 108 (15 U.S.C. 1607)—

(A) by striking subsection (a) and inserting the following:

“(a) ENFORCING AGENCIES.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

“(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under
section 25 or 25A of the Federal Reserve Act;

and

“(C) banks and State savings associations
insured by the Federal Deposit Insurance Cor-
poration (other than members of the Federal
Reserve System), and insured State branches of
foreign banks;

“(2) the Federal Credit Union Act, by the Di-
rector of the National Credit Union Administration,
with respect to any Federal credit union;

“(3) the Federal Aviation Act of 1958, by the
Secretary of Transportation, with respect to any air
carrier or foreign air carrier subject to that Act;

“(4) the Packers and Stockyards Act, 1921 (ex-
cept as provided in section 406 of that Act), by the
Secretary of Agriculture, with respect to any activi-
ties subject to that Act;

“(5) the Farm Credit Act of 1971, by the Farm
Credit Administration with respect to any Federal
land bank, Federal land bank association, Federal
intermediate credit bank, or production credit asso-
ciation; and

“(6) subtitle E of the Consumer Financial Pro-
tection Act of 2010, by the Bureau.”; and
(B) by striking subsection (c) and inserting the following:

“(c) **OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.**—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (6) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements.

For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.”;

(8) in section 129 (15 U.S.C. 1639), by striking subsection (m) and inserting the following:
“(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Bureau pursuant to subsection (l)(2) shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.”; and

(9) in chapter 5 (15 U.S.C. 1667 et seq.)—

(A) by striking “the Board” each place that term appears and inserting “the Bureau”; and

(B) by striking “The Board” each place that term appears and inserting “The Bureau”.

SEC. 1099B. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

The Truth in Savings Act (12 U.S.C. 4301 et seq.) is amended—

(1) by striking “Board” each place that term appears, other than in section 272(b) (12 U.S.C. 4311), and inserting “Bureau”; and

(2) in section 270(a) (12 U.S.C. 4309)—

(A) by striking “Compliance” and all that follows through the end of paragraph (1) and inserting: “Subject to subtitle B of the Consumer Financial Protection Act of 2010, com-
pliance with the requirements imposed under this subtitle shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

“(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

“(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);

and

“(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);”;

(B) in paragraph (2), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(3) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau.”;
(3) in section 272(b) (12 U.S.C. 4311(b)), by striking “regulation prescribed by the Board” each place that term appears and inserting “regulation prescribed by the Bureau”; and

(4) in section 274 (12 U.S.C. 4313), by striking paragraph (4) and inserting the following:

“(4) BUREAU.—The term ‘Bureau’ means the Bureau of Consumer Financial Protection.”.

SEC. 1099C. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.

(a) Amendments to Section 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended by striking subsections (b) and (c) and inserting the following:

“(b) Rulemaking Authority.—The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5, United States Code. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the Bureau of Consumer Financial Protection regarding the consistency of a proposed rule with standards, purposes, or
objectives administered by the Bureau of Consumer Financial Protection.

“(c) Violations.—Any violation of any rule prescribed under subsection (a)—

“(1) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices; and

“(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act regarding unfair, deceptive, or abusive acts or practices.”.

(b) Amendments to Section 4.—Section 4(d) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6103(d)) is amended by inserting after “Commission” each place that term appears the following: “or the Bureau of Consumer Financial Protection”.

(c) Amendments to Section 5.—Section 5(c) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6104(c)) is amended by inserting after “Commission” each place that term appears the following: “or the Bureau of Consumer Financial Protection”.
(d) Amendment to Section 6.—Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6105) is amended by adding at the end the following:

“(d) Enforcement by Bureau of Consumer Financial Protection.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, and subject to subtitle B of the Consumer Financial Protection Act of 2010, this Act shall be enforced by the Bureau of Consumer Financial Protection under subtitle E of the Consumer Financial Protection Act of 2010, with respect to the offering or provision of a consumer financial product or service subject to that Act.”.

SEC. 1099D. Amendments to the Paperwork Reduction Act.

(a) Designation as an Independent Agency.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) is amended by inserting “the Bureau of Consumer Financial Protection, the Office of Financial Research,” after “the Securities and Exchange Commission,”.

(b) Comparable Treatment.—Section 3513 of title 44, United States Code, is amended by adding at the end the following:
“(c) COMPAREABLE TREATMENT.—Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the Director of the Bureau of Consumer Financial Protection on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.”.

SEC. 1099E. ADJUSTMENTS FOR INFLATION IN THE TRUTH IN LENDING ACT.

(a) CAPS.—

(1) CREDIT TRANSACTIONS.—Section 104(3) of the Truth in Lending Act (15 U.S.C. 1603(3)) is amended by striking “$25,000” and inserting “$50,000”.

(2) CONSUMER LEASES.—Section 181(1) of the Truth in Lending Act (15 U.S.C. 1667(1)) is amended by striking “$25,000” and inserting “$50,000”.

(b) ADJUSTMENTS FOR INFLATION.—On and after December 31, 2011, the Bureau shall adjust annually the dollar amounts described in sections 104(3) and 181(1) of the Truth in Lending Act (as amended by this section), by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as
published by the Bureau of Labor Statistics, rounded to
the nearest multiple of $100, or $1,000, as applicable.

SEC. 1099F. SMALL BUSINESS FAIRNESS AND REGULATORY
TRANSPARENCY.

(a) PANEL REQUIREMENT.—Section 609(d) of title
5, United States Code, is amended by striking “means
the” and all that follows and inserting the following:
“means—
“(1) the Environmental Protection Agency;
“(2) the Consumer Financial Protection Bureau
of the Federal Reserve System; and
“(3) the Occupational Safety and Health Ad-
ministration of the Department of Labor.”.

(b) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
Section 603 of title 5, United States Code, is amended
by adding at the end the following:
“(d)(1) For a covered agency, as defined in section
609(d)(2), each initial regulatory flexibility analysis shall
include a description of—
“(A) any projected increase in the cost of credit
for small entities;
“(B) any significant alternatives to the pro-
posed rule which accomplish the stated objectives of
applicable statutes and which minimize any increase
in the cost of credit for small entities; and
“(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

“(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

“(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

“(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).”.

(e) Final Regulatory Flexibility Analysis.—

Section 604(a) of title 5, United States Code, is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) in paragraph (5), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(6) for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.”.
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SEC. 1099G. EFFECTIVE DATE.

Except as otherwise provided in this subtitle and the amendments made by this subtitle, this subtitle and the amendments made by this subtitle, other than sections 1081 and 1082, shall become effective on the designated transfer date.

TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

SEC. 1101. FEDERAL RESERVE ACT AMENDMENTS ON EMERGENCY LENDING AUTHORITY.

(a) Federal Reserve Act.—The third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) (relating to emergency lending authority) is amended—

(1) by inserting ``(3)(A)'' before ``In unusual'';

(2) by striking ``individual, partnership, or corporation'' the first place that term appears and inserting the following: ``participant in any program or facility with broad-based eligibility'';

(3) by striking ``exchange for an individual or a partnership or corporation'' and inserting ``exchange,'';

(4) by striking ``such individual, partnership, or corporation'' and inserting the following: ``such participant in any program or facility with broad-based eligibility'';
(5) by striking “for individuals, partnerships, corporations” and inserting “for any participant in any program or facility with broad-based eligibility”;

(6) by striking “may prescribe.” and inserting the following: “may prescribe.

“(B)(i) As soon as is practicable after the date of enactment of this subparagraph, the Board shall establish, by regulation, in consultation with the Secretary of the Treasury, the policies and procedures governing emergency lending under this paragraph. Such policies and procedures shall be designed to ensure that any emergency lending program or facility is for the purpose of providing liquidity to the financial system, and not to aid a failing financial company, and that the security for emergency loans is sufficient to protect taxpayers from losses and that any such program is terminated in a timely and orderly fashion. The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under
this paragraph in determining whether the loan
is secured satisfactorily for purposes of this
paragraph.

“(ii) The Board shall establish procedures
to prohibit borrowing from programs and facili-
ties by borrowers that are insolvent. Such pro-
cedures may include a certification from the
chief executive officer (or other authorized offi-
cer) of the borrower, at the time the borrower
initially borrows under the program or facility
(with a duty by the borrower to update the cer-
tification if the information in the certification
materially changes), that the borrower is not in-
solvent. A borrower shall be considered insol-
vent for purposes of this subparagraph, if the
borrower is in bankruptcy, resolution under title
II of the Restoring American Financial Sta-
bility Act of 2010, or any other Federal or
State insolvency proceeding.

“(iii) A program or facility that is struc-
tured to remove assets from the balance sheet
of a single and specific company, or that is es-
established for the purpose of assisting a single
and specific company avoid bankruptcy, resolu-
tion under title II of the Restoring American
Financial Stability Act of 2010, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

“(iv) The Board may not establish any program or facility under this paragraph without the prior approval of the Secretary of the Treasury.

“(C) The Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

“(i) not later than 7 days after the Board authorizes any loan or other financial assistance under this paragraph, a report that includes—

“(I) the justification for the exercise of authority to provide such assistance;

“(II) the identity of the recipients of such assistance;

“(III) the date and amount of the assistance, and form in which the assistance was provided; and
“(IV) the material terms of the assistance, including—

“(aa) duration;

“(bb) collateral pledged and the value thereof;

“(cc) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

“(dd) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

“(ee) the expected costs to the taxpayers of such assistance;

and

“(ii) once every 30 days, with respect to any outstanding loan or other financial assistance under this paragraph, written updates on—

“(I) the value of collateral;

“(II) the amount of interest, fees, and other revenue or items of
value received in exchange for the assistance; and

“(III) the expected or final cost to the taxpayers of such assistance.

“(D) The information required to be submitted to Congress under subparagraph (C) related to—

“(i) the identity of the participants in an emergency lending program or facility commenced under this paragraph;

“(ii) the amounts borrowed by each participant in any such program or facility;

“(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,

shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons or Ranking Members of the Committees described in subparagraph (C).

“(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as
defined in section 203 of the Restoring American Financial Stability Act of 2010, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under sections 210(n) and 210(o) of the Restoring American Financial Stability Act of 2010.”.

(b) CONFORMING AMENDMENT.—Section 507(a)(2) of title 11, United States Code, is amended by inserting “unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343),” after “this title,”.

(c) REFERENCES.—On and after the date of enactment of this Act, any reference in any provision of Federal law to the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) shall be deemed to be a reference to section 13(3) of the Federal Reserve Act, as so designated by this section.
SEC. 1102. REVIEWS OF SPECIAL FEDERAL RESERVE CREDIT FACILITIES.

(a) Reviews.—Section 714 of title 31, United States Code, is amended by adding at the end the following:

“(f) REVIEWS OF CREDIT FACILITIES OF THE FEDERAL RESERVE SYSTEM.—

“(1) DEFINITION.—In this subsection, the term ‘credit facility’ means a program or facility, including any special purpose vehicle or other entity established by or on behalf of the Board of Governors of the Federal Reserve System or a Federal reserve bank, authorized by the Board of Governors under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), that is not subject to audit under subsection (e).

“(2) AUTHORITY FOR REVIEWS AND EXAMINATIONS.—Subject to paragraph (3), and notwithstanding any limitation in subsection (b) on the auditing and oversight of certain functions of the Board of Governors of the Federal Reserve System or any Federal reserve bank, the Comptroller General of the United States may conduct reviews, including onsite examinations, of the Board of Governors, a Federal reserve bank, or a credit facility, if the Comptroller General determines that such re-
views are appropriate, solely for the purposes of assessing, with respect to a credit facility—

“(A) the operational integrity, accounting, financial reporting, and internal controls of the credit facility;

“(B) the effectiveness of the security and collateral policies established for the facility in mitigating risk to the relevant Federal reserve bank and taxpayers;

“(C) whether the credit facility inappropriately favors one or more specific participants over other institutions eligible to utilize the facility; and

“(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility.

“(3) REPORTS AND DELAYED DISCLOSURE.—

“(A) REPORTS REQUIRED.—A report on each review conducted under paragraph (2) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such review is completed.

“(B) CONTENTS.—The report under subparagraph (A) shall include a detailed descrip-
tion of the findings and conclusions of the
Comptroller General with respect to the matters
described in paragraph (2) that were reviewed
and are the subject of the report, together with
such recommendations for legislative or admin-
istrative action relating to such matters as the
Comptroller General may determine to be ap-
propriate.

“(C) Delayed release of certain in-
formation.—

“(i) In general.—The Comptroller
General shall not disclose to any person or
entity, including to Congress, the names or
identifying details of specific participants
in any credit facility, the amounts bor-
rowed by specific participants in any credit
facility, or identifying details regarding as-
sets or collateral held by, under, or in con-
nection with any credit facility, and any re-
port provided under subparagraph (A)
shall be redacted to ensure that such
names and details are not disclosed.

“(ii) Delayed release.—The non-
disclosure obligation under clause (i) shall
expire with respect to any participant on
the date on which the Board of Governors,
directly or through a Federal reserve bank,
publicly discloses the identity of the subject
participant or the identifying details of the
subject assets or collateral.

“(iii) General Release.—The
Comptroller General shall release a non-
redacted version of any report on a credit
facility 1 year after the effective date of
the termination by the Board of Governors
of the authorization for the credit facility.
For purposes of this clause, a credit facil-
ity shall be deemed to have terminated 24
months after the date on which the credit
facility ceases to make extensions of credit
and loans, unless the credit facility is oth-
erwise terminated by the Board of Gov-
ernors.

“(iv) Exceptions.—The nondisclo-
sure obligation under clause (i) shall not
apply to the credit facilities Maiden Lane,
Maiden Lane II, and Maiden Lane III.”.

(b) Access to Records.—Section 714(d) of title
31, United States Code, is amended—
(1) in paragraph (2), by inserting “or any person or entity described in paragraph (3)(A)” after “used by an agency”; 

(2) in paragraph (3), by inserting “or (f)” after “subsection (e)” each place that term appears; and 

(3) in paragraph (3)(B), by adding at the end the following: “The Comptroller General may make and retain copies of books, accounts, and other records provided under subparagraph (A) as the Comptroller General deems appropriate. The Comptroller General shall provide to any person or entity described in subparagraph (A) a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out a review or examination under this subsection.”.

SEC. 1103. PUBLIC ACCESS TO INFORMATION.

Section 2B of the Federal Reserve Act (12 U.S.C. 225b) is amended by adding at the end the following:

“(c) PUBLIC ACCESS TO INFORMATION.—The Board shall place on its home Internet website, a link entitled ‘Audit’, which shall link to a webpage that shall serve as a repository of information made available to the public for a reasonable period of time, not less than 6 months
following the date of release of the relevant information, including—

“(1) the reports prepared by the Comptroller General under section 714 of title 31, United States Code;

“(2) the annual financial statements prepared by an independent auditor for the Board in accordance with section 11B;

“(3) the reports to the Committee on Banking, Housing, and Urban Affairs of the Senate required under section 13(3) (relating to emergency lending authority); and

“(4) such other information as the Board reasonably believes is necessary or helpful to the public in understanding the accounting, financial reporting, and internal controls of the Board and the Federal reserve banks.”.

SEC. 1104. LIQUIDITY EVENT DETERMINATION.

(a) Determination and Written Recommendation.—

(1) Determination request.—The Secretary may request the Corporation and the Board of Governors to determine whether a liquidity event exists that warrants use of the guarantee program authorized under section 1105.
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(2) REQUIREMENTS OF DETERMINATION.—Any determination pursuant to paragraph (1) shall—
(A) be written; and
(B) contain an evaluation of the evidence that—
(i) a liquidity event exists;
(ii) failure to take action would have serious adverse effects on financial stability or economic conditions in the United States; and
(iii) actions authorized under section 1105 are needed to avoid or mitigate potential adverse effects on the United States financial system or economic conditions.

(b) PROCEDURES.—Notwithstanding any other provision of Federal or State law, upon the determination of both the Corporation (upon a vote of not fewer than 2/3 of the members of the Corporation then serving) and the Board of Governors (upon a vote of not fewer than 2/3 of the members of the Board of Governors then serving) under subsection (a) that a liquidity event exists that warrants use of the guarantee program authorized under section 1105, and with the written consent of the Secretary—
(1) the Corporation shall take action in accordance with section 1105(a); and
(2) the Secretary (in consultation with the President) shall take action in accordance with section 1105(c).

(c) DOCUMENTATION AND REVIEW.—

(1) DOCUMENTATION.—The Secretary shall—

(A) maintain the written documentation of each determination of the Corporation and the Board of Governors under this section; and

(B) provide the documentation for review under paragraph (2).

(2) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination of the Corporation and the Board of Governors under subsection (a), including—

(A) the basis for the determination; and

(B) the likely effect of the actions taken.

(d) REPORT TO CONGRESS.—On the earlier of the date of a submission made to Congress under section 1105(c), or within 30 days of the date of a determination under subsection (a), the Secretary shall provide written notice of the determination of the Corporation and the Board of Governors to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee
on Financial Services of the House of Representatives, including a description of the basis for the determination.

SEC. 1105. EMERGENCY FINANCIAL STABILIZATION.

(a) In General.—Upon the written determination of the Corporation and the Board of Governors under section 1104, the Corporation shall create a widely available program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof) during times of severe economic distress, except that a guarantee of obligations under this section may not include the provision of equity in any form.

(b) Rulemaking and Terms and Conditions.—

(1) Policies and Procedures.—As soon as is practicable after the date of enactment of this Act, the Corporation shall establish, by regulation, and in consultation with the Secretary, policies and procedures governing the issuance of guarantees authorized by this section. Such policies and procedures may include a requirement of collateral as a condition of any such guarantee.

(2) Terms and Conditions.—The terms and conditions of any guarantee program shall be established by the Corporation, with the concurrence of the Secretary.
(c) Determination of Guaranteed Amount.—

(1) In General.—In connection with any program established pursuant to subsection (a) and subject to paragraph (2) of this subsection, the Secretary (in consultation with the President) shall determine the maximum amount of debt outstanding that the Corporation may guarantee under this section, and the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees up to that maximum amount and a request for approval of such plan. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

(2) Additional Debt Guarantee Authority.—If the Secretary (in consultation with the President) determines, after a submission to Congress under paragraph (1), that the maximum guarantee amount should be raised, and the Council concurs with that determination, the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this
section to issue guarantees up to the increased maximum debt guarantee amount. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

(d) Resolution of Approval.—

(1) Additional debt guarantee authority.—A request by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

(2) Fast track consideration in Senate.—

(A) Reconvening.—Upon receipt of a request under subsection (c), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.
(B) Placement on Calendar.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(C) Floor Consideration.—

(i) In general.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a request under subsection (c), and ending on the 7th day after that date (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall re-
main the unfinished business until disposed of.

(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to
the procedure relating to a joint resolution shall be decided without debate.

(3) Rules.—

(A) Coordination with action by House of Representatives.—If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply:

(i) The joint resolution of the House of Representatives shall not be referred to a committee.

(ii) With respect to a joint resolution of the Senate—

(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

(II) the vote on passage shall be on the joint resolution of the House of Representatives.

(B) Treatment of joint resolution of House of Representatives.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of
the House of Representatives shall be entitled
to expedited floor procedures under this sub-
section.

(C) Treatment of companion measures.—If, following passage of the joint resolu-
tion in the Senate, the Senate then receives the
companion measure from the House of Rep-
resentatives, the companion measure shall not
be debatable.

(D) Rules of the Senate.—This sub-
section is enacted by Congress—

(i) as an exercise of the rulemaking
power of the Senate, and as such it is
deemed a part of the rules of the Senate,
but applicable only with respect to the pro-
cedure to be followed in the Senate in the
case of a joint resolution, and it supersedes
other rules, only to the extent that it is in-
consistent with such rules; and

(ii) with full recognition of the con-
stitutional right of the Senate to change
the rules (so far as relating to the proce-
dure of the Senate) at any time, in the
same manner, and to the same extent as in
the case of any other rule of the Senate.
(4) DEFINITION.—As used in this subsection, the term “joint resolution” means only a joint resolution:

(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress;

(B) that does not have a preamble;

(C) the title of which is as follows: “Joint resolution relating to the approval of a plan to guarantee obligations under section 1105 of the
Restoring American Financial Stability Act of 2010”; and

(D) the matter after the resolving clause of which is as follows: “That Congress approves the obligation of any amount described in section 1105(e) of the Restoring American Financial Stability Act of 2010.”.

(e) FUNDING.—

(1) FEES AND OTHER CHARGES.—The Corporation shall charge fees and other assessments to all participants in the program established pursuant to this section, in such amounts as are necessary to offset projected losses and administrative expenses, including amounts borrowed pursuant to paragraph
(3), and such amounts shall be available to the Corporation.

(2) Excess Funds.—If, at the conclusion of the program established under this section, there are any excess funds collected from the fees associated with such program, the funds shall be deposited in the General Fund of the Treasury.

(3) Authority of Corporation.—The Corporation—

(A) may borrow funds from the Secretary of the Treasury and issue obligations of the Corporation to the Secretary for amounts borrowed, and the amounts borrowed shall be available to the Corporation for purposes of carrying out a program established pursuant to this section, including the payment of reasonable costs of administering the program, and the obligations issued shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraphs (1) and (4), as applicable; and

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act.
(4) Backup special assessments.—To the extent that the funds collected pursuant to paragraph (1) are insufficient to cover any losses or expenses, including amounts borrowed pursuant to paragraph (3), arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in the program, in amounts necessary to address such insufficiency, and which shall be available to the Corporation to cover such losses or expenses.

(5) Authority of the secretary.—The Secretary may purchase any obligations issued under paragraph (3)(A). For such purpose, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under that chapter 31 are extended to include such purchases, and the amount of any securities issued under that chapter 31 for such purpose shall be treated in the same manner as securities issued under section 208(n)(3)(B).

(f) Rule of construction.—For purposes of this section, a guarantee of deposits held by insured depository institutions shall not be treated as a debt guarantee program.
(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) COMPANY.—The term “company” means any entity other than a natural person that is incorporated or organized under Federal law or the laws of any State.

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

(3) LIQUIDITY EVENT.—The term “liquidity event” means—

(A) an exceptional and broad reduction in the general ability of financial market participants—

(i) to sell financial assets without an unusual and significant discount; or

(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

(B) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.
(4) SOLVENT.—The term “solvent” means that the value of the assets of an entity exceed its obligations to creditors.

SEC. 1106. ADDITIONAL RELATED AMENDMENTS.

(a) SUSPENSION OF PARALLEL FEDERAL DEPOSIT INSURANCE ACT AUTHORITY.—Effective upon the date of enactment of this section, the Corporation may not exercise its authority under section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to establish any widely available debt guarantee program for which section 1105 would provide authority.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by inserting “for which the Corporation has been appointed receiver” before “would have serious”; and

(B) in the undesignated matter following subclause (II), by inserting “for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver” after “provide assistance under this section”; and
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(2) in clause (v)(I), by striking "The" and inserting "Not later than 3 days after making a determination under clause (i), the".

(c) Effect of Default on an FDIC Guarantee.—If an insured depository institution or depository institution holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) participating in a program under section 1105, or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation shall—

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

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

(A) require—

(i) consideration of whether a determination shall be made, as provided in section 202 to resolve the company under section 203; and

(ii) the company to file a petition for bankruptcy under section 301 of title 11,
United States Code, if the Corporation is not appointed receiver pursuant to section 203 within 30 days of the date of default; or

(B) file a petition for involuntary bankruptcy on behalf of the company under section 303 of title 11, United States Code.

SEC. 1107. FEDERAL RESERVE ACT AMENDMENTS ON FEDERAL RESERVE BANK GOVERNANCE.

The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended in section 4 by adding at the end the following:

“(25) SELECTION OF THE PRESIDENT OF THE FEDERAL RESERVE BANK OF NEW YORK.—Notwithstanding any other provision of this section, after the date of enactment of the Restoring American Financial Stability Act of 2010, the president of the Federal Reserve Bank of New York shall be appointed by the President, by and with the advice and consent of the Senate, for terms of 5 years.

“(26) LIMITATION ON ELIGIBILITY TO VOTE FOR OR SERVE AS A FEDERAL RESERVE BANK DIRECTOR.—Notwithstanding any other provision of this section, after the date of enactment of the Restoring American Financial Stability Act of 2010, no company, or subsidiary or affiliate of a company
that is supervised by the Board, may vote for mem-
bers of the board of directors of a Federal reserve
bank, and no past or current officer, director, or em-
ployee of such company, or subsidiary or affiliate of
such company, may serve as a member of the board
of directors of a Federal reserve bank.”.

SEC. 1108. FEDERAL RESERVE ACT AMENDMENTS ON SU-
PERVISION AND REGULATION POLICY.

(a) Establishment of the Position of Vice
Chairman for Supervision.—

(1) Position established.—The second undesignated paragraph of section 10 of the Federal Reserve Act (12 U.S.C. 242) (relating to the Chairman and Vice Chairman of the Board) is amended by striking the third sentence and inserting the follow-
ing: “Of the persons thus appointed, 1 shall be des-
ignated by the President, by and with the advice
and consent of the Senate, to serve as Chairman of
the Board for a term of 4 years, and 2 shall be des-
ignated by the President, by and with the advice and
consent of the Senate, to serve as Vice Chairmen of
the Board, each for a term of 4 years, 1 of whom
shall serve in the absence of the Chairman, as pro-
vided in the fourth undesignated paragraph of this
section, and 1 of whom shall be designated Vice
Chairman for Supervision. The Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms.”.

(2) Effective Date.—The amendment made by subsection (a) takes effect on the date of enactment of this title and applies to individuals who are designated by the President on or after that date to serve as Vice Chairman of Supervision.

(b) Financial Stability as Board Function.—Section 10 of the Federal Reserve Act (12 U.S.C. 241) is amended by adding at the end the following:

“(11) Financial stability function.—The Board of Governors shall identify, measure, monitor, and mitigate risks to the financial stability of the United States.”.

(c) Appearances Before Congress.—Section 10 of the Federal Reserve Act (12 U.S.C. 241) is amended by adding at the end the following:

“(12) Appearances before Congress.—The Vice Chairman for Supervision shall appear before the Committee on Banking, Housing, and Urban Af-
fairs of the Senate and the Committee on Financial Services of the House of Representatives and at semi-annual hearings regarding the efforts, activities, objectives, and plans of the Board with respect to the conduct of supervision and regulation of depository institution holding companies and other financial firms supervised by the Board.”.

(d) Board Responsibility To Set Supervision and Regulatory Policy.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) (relating to enumerated powers of the Board) is amended by adding at the end of subsection (k) (relating to delegation) the following: “The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.”.

SEC. 1109. GAO AUDIT OF THE FEDERAL RESERVE FACILITIES; PUBLICATION OF BOARD ACTIONS.

(a) GAO Audit.—

(1) In general.—Notwithstanding section 714(b) of title 31, United States Code, or any other provision of law, the Comptroller General of the United States (in this subsection referred to as the “Comptroller General”) shall conduct a one-time
audit of all loans and other financial assistance provided during the period beginning on December 1, 2007 and ending on the date of enactment of this Act by the Board of Governors or a Federal reserve bank under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, Maiden Lane, Maiden Lane II, Maiden Lane III, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and any other program created as a result of section 13(3) of the Federal Reserve Act (as so designated by this title).

(2) Assessments.—In conducting the audit under paragraph (1), the Comptroller General shall assess—

(A) the operational integrity, accounting, financial reporting, and internal controls of the credit facility;

(B) the effectiveness of the security and collateral policies established for the facility in mitigating risk to the relevant Federal reserve bank and taxpayers;
(C) whether the credit facility inappropriately favors one or more specific participants over other institutions eligible to utilize the facility;

(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility; and

(E) whether there were conflicts of interest with respect to the manner in which such facility was established or operated.

(3) Timing.—The audit required by this subsection shall be commenced not later than 30 days after the date of enactment of this Act, and shall be completed not later than 12 months after that date of enactment.

(4) Report required.—The Comptroller General shall submit a report on the audit conducted under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act, and such report shall be made available to—

(A) the Speaker of the House of Representatives;

(B) the majority and minority leaders of the House of Representatives;
(C) the majority and minority leaders of
the Senate;

(D) the Chairman and Ranking Member of
the Committee on Banking, Housing, and
Urban Affairs of the Senate and of the Com-
mittee on Financial Services of the House of
Representatives; and

(E) any member of Congress who requests
it.

(b) Audit of Federal Reserve Bank Govern-
ance.—

(1) Audit.—

(A) In general.—Not later than 1 year
after the date of enactment of this Act, the
Comptroller General shall complete an audit of
the governance of the Federal reserve bank sys-
tem.

(B) Required examinations.—The audit
required under subparagraph (A) shall—

(i) examine the extent to which the
current system of appointing Federal re-
serve bank directors effectively represents
“the public, without discrimination on the
basis of race, creed, color, sex or national
origin, and with due but not exclusive con-
consideration to the interests of agriculture, commerce, industry, services, labor, and consumers’ in the selection of bank directors, as such requirement is set forth under section 4 of the Federal Reserve Act;

(ii) examine whether there are actual or potential conflicts of interest created when the directors of Federal reserve banks, which execute the supervisory functions of the Board of Governors of the Federal Reserve System, are elected by member banks;

(iii) examine the establishment and operations of each facility described in subsection (a)(1) and each Federal reserve bank involved in the establishment and operations thereof; and

(iv) identify changes to selection procedures for Federal reserve bank directors, or to other aspects of Federal reserve bank governance, that would—

(I) improve how the public is represented;
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(II) eliminate actual or potential
conflicts of interest in bank supervi-
sion;

(III) increase the availability of
information useful for the formation
and execution of monetary policy; or

(IV) in other ways increase the
effectiveness or efficiency of reserve
banks.

(2) REPORT REQUIRED.—A report on the audit
conducted under paragraph (1) shall be submitted
by the Comptroller General to the Congress before
the end of the 90-day period beginning on the date
on which such audit is completed, and such report
shall be made available to—

(A) the Speaker of the House of Rep-
resentatives;

(B) the majority and minority leaders of
the House of Representatives;

(C) the majority and minority leaders of
the Senate;

(D) the Chairman and Ranking Member of
the Committee on Banking, Housing, and
Urban Affairs of the Senate and of the Com-
mittee on Financial Services of the House of Representatives; and

(E) any member of Congress who requests it.

(c) PUBLICATION OF BOARD ACTIONS.—Notwithstanding any other provision of law, the Board of Governors shall publish on its website, not later than December 1, 2010, with respect to all loans and other financial assistance it has provided during the period beginning on December 1, 2007 and ending on the date of enactment of this Act under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, Maiden Lane, Maiden Lane II, Maiden Lane III, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and any other program created as a result of section 13(3) of the Federal Reserve Act (as so designated by this title)—

(1) the identity of each business, individual, entity, or foreign central bank to which the Board of Governors has provided such assistance;
(2) the type of financial assistance provided to that business, individual, entity, or foreign central bank;

(3) the value or amount of that financial assistance;

(4) the date on which the financial assistance was provided;

(5) the specific terms of any repayment expected, including the repayment time period, interest charges, collateral, limitations on executive compensation or dividends, and other material terms; and

(6) the specific rationale for each such facility or program.

TITLE XII—IMPROVING ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS

SEC. 1201. SHORT TITLE.

This title may be cited as the “Improving Access to Mainstream Financial Institutions Act of 2010”.

SEC. 1202. PURPOSE.

The purpose of this title is to encourage initiatives for financial products and services that are appropriate and accessible for millions of Americans who are not fully incorporated into the financial mainstream.
SEC. 1203. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ACCOUNT.—The term “account” means an agreement between an individual and an eligible entity under which the individual obtains from or through the entity 1 or more banking products and services, and includes a deposit account, a savings account (including a money market savings account), an account for a closed-end loan, and other products or services, as the Secretary deems appropriate.

(2) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term “community development financial institution” has the same meaning as in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)).

(3) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, and exempt from tax under section 501(a) of such Code;

(B) a federally insured depository institution;
(C) a community development financial institution;

(D) a State, local, or tribal government entity; or

(E) a partnership or other joint venture comprised of 1 or more of the entities described in subparagraphs (A) through (D), in accordance with regulations prescribed by the Secretary under this title.

(4) Federally insured depository institution.—The term “federally insured depository institution” means any insured depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as that term is defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(5) Payday loan.—The term “payday loan” means any transaction in which a small cash advance is made to a consumer in exchange for—

(A) the personal check or share draft of the consumer, in the amount of the advance plus a fee, where presentment or negotiation of such check or share draft is deferred by agree-
ment of the parties until a designated future date; or

(B) the authorization of the consumer to debit the transaction account or share draft account of the consumer, in the amount of the advance plus a fee, where such account will be debited on or after a designated future date.

SEC. 1204. EXPANDED ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—The Secretary is authorized to establish a multiyear program of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings to promote initiatives designed—

(1) to enable low- and moderate-income individuals to establish one or more accounts in a federally insured depository institution that are appropriate to meet the financial needs of such individuals; and

(2) to improve access to the provision of accounts, on reasonable terms, for low- and moderate-income individuals.

(b) PROGRAM ELIGIBILITY AND ACTIVITIES.—

(1) IN GENERAL.—The Secretary shall restrict participation in any program established under subsection (a) to an eligible entity. Subject to regulations prescribed by the Secretary under this title, 1
or more eligible entities may participate in 1 or several programs established under subsection (a).

(2) ACCOUNT ACTIVITIES.—Subject to regulations prescribed by the Secretary, an eligible entity may, in participating in a program established under subsection (a), offer or provide to low- and moderate-income individuals products and services relating to accounts, including—

(A) small-dollar value loans; and

(B) financial education and counseling relating to conducting transactions in and managing accounts.

SEC. 1205. LOW-COST ALTERNATIVES TO PAYDAY LOANS.

(a) GRANTS AUTHORIZED.—The Secretary is authorized to establish multiyear demonstration programs by means of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings, with eligible entities to provide low-cost, small loans to consumers that will provide alternatives to more costly payday loans.

(b) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Loans under this section shall be made on terms and conditions, and pursuant to lending practices, that are reasonable for consumers.
(2) **Financial literacy and education opportunities.**—

(A) In general.—Each eligible entity awarded a grant under this section shall promote and take appropriate steps to ensure the provision of financial literacy and education opportunities, such as relevant counseling services, educational courses, or wealth building programs, to each consumer provided with a loan pursuant to this section.

(B) Authority to expand access.—As part of the grants, agreements, and undertakings established under this section, the Secretary may implement reasonable measures or programs designed to expand access to financial literacy and education opportunities, including relevant counseling services, educational courses, or wealth building programs to be provided to individuals who obtain loans from eligible entities under this section.

**SEC. 1206. GRANTS TO ESTABLISH LOAN-LOSS RESERVE FUNDS.**

The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) is amended by adding at the end the following:
SEC. 122. GRANTS TO ESTABLISH LOAN-LOSS RESERVE FUNDS.

“(a) PURPOSES.—The purposes of this section are—

“(1) to make financial assistance available from the Fund in order to help community development financial institutions defray the costs of operating small dollar loan programs, by providing the amounts necessary for such institutions to establish their own loan loss reserve funds to mitigate some of the losses on such small dollar loan programs; and

“(2) to encourage community development financial institutions to establish and maintain small dollar loan programs that would help give consumers access to mainstream financial institutions and combat payday lending.

“(b) GRANTS.—

“(1) LOAN-LOSS RESERVE FUND GRANTS.—The Fund shall make grants to community development financial institutions or to any partnership between such community development financial institutions and any other federally insured depository institution with a primary mission to serve targeted investment areas, as such areas are defined under section 103(16), to enable such institutions or any partnership of such institutions to establish a loan-loss re-
serve fund in order to defray the costs of a small
dollar loan program established or maintained by
such institution.

“(2) Matching Requirement.—A community
development financial institution or any partnership
of institutions established pursuant to paragraph (1)
shall provide non-Federal matching funds in an
amount equal to 50 percent of the amount of any
grant received under this section.

“(3) Use of Funds.—Any grant amounts re-
ceived by a community development financial institu-
tion or any partnership between or among such in-
stitutions under paragraph (1)—

“(A) may not be used by such institution
to provide direct loans to consumers;

“(B) may be used by such institution to
help recapture a portion or all of a defaulted
loan made under the small dollar loan program
of such institution; and

“(C) may be used to designate and utilize
a fiscal agent for services normally provided by
such an agent.

“(4) Technical Assistance Grants.—The
Fund shall make technical assistance grants to com-

munity development financial institutions or any
partnership between or among such institutions to support and maintain a small dollar loan program. Any grant amounts received under this paragraph may be used for technology, staff support, and other costs associated with establishing a small dollar loan program.

“(c) DEFINITIONS.—For purposes of this section—

“(1) the term ‘consumer reporting agency that compiles and maintains files on consumers on a nationwide basis’ has the same meaning given such term in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)); and

“(2) the term ‘small dollar loan program’ means a loan program wherein a community development financial institution or any partnership between or among such institutions offers loans to consumers that—

“(A) are made in amounts not exceeding $2,500;

“(B) must be repaid in installments;

“(C) have no pre-payment penalty;

“(D) the institution has to report payments regarding the loan to at least 1 of the consumer reporting agencies that compiles and
maintains files on consumers on a nationwide basis; and

“(E) meet any other affordability requirements as may be established by the Administrator.”.

SEC. 1207. PROCEDURAL PROVISIONS.

An eligible entity desiring to participate in a program or obtain a grant under this title shall submit an application to the Secretary, in such form and containing such information as the Secretary may require.

SEC. 1208. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization to the Secretary.—There are authorized to be appropriated to the Secretary, such sums as are necessary to both administer and fund the programs and projects authorized by this title, to remain available until expended.

(b) Authorization to the Fund.—There is authorized to be appropriated to the Fund for each fiscal year beginning in fiscal year 2010, an amount equal to the amount of the administrative costs of the Fund for the operation of the grant program established under this title.
SEC. 1209. REGULATIONS.

(a) IN GENERAL.—The Secretary is authorized to promulgate regulations to implement and administer the grant programs and undertakings authorized by this title.

(b) REGULATORY AUTHORITY.—Regulations prescribed under this section may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of grant programs, undertakings, or eligible entities, as, in the judgment of the Secretary, are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion of this title, or to facilitate compliance with this title.

SEC. 1210. EVALUATION AND REPORTS TO CONGRESS.

For each fiscal year in which a program or project is carried out under this title, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a description of the activities funded, amounts distributed, and measurable results, as appropriate and available.

TITLE XIII—PAY IT BACK ACT

SEC. 1301. SHORT TITLE.

This title may be cited as the “Pay It Back Act”.
SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZATION.

Section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225(a)) is amended—

(1) in paragraph (3)—

(A) by striking “If” and inserting “Except as provided in paragraph (4), if”;

(B) by striking “, $700,000,000,000, as such amount is reduced by $1,259,000,000, as such amount is reduced by $1,244,000,000” and inserting “$550,000,000,000”; and

(C) by striking “outstanding at any one time”; and

(2) by adding at the end the following:

“(4) If the Secretary, with the concurrence of the Chairman of the Board of Governors of the Federal Reserve System, determines that there is an immediate and substantial threat to the economy arising from financial instability, the Secretary is authorized to purchase troubled assets under this Act in an amount equal to amounts received by the Secretary before, on, or after the date of enactment of the Pay It Back Act for repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any other program enacted by the Secretary under the authori-
ties granted to the Secretary under this Act, but
only—
“(A) to the extent necessary to address the
threat; and
“(B) upon transmittal of such determina-
tion, in writing, to the appropriate committees
of Congress.”.

SEC. 1303. REPORT.
Section 106 of the Emergency Economic Stabilization
Act of 2008 (12 U.S.C. 5216) is amended by inserting
at the end the following:
“(f) REPORT.—The Secretary of the Treasury shall
report to Congress every 6 months on amounts received
and transferred to the general fund under subsection
(d).”.

SEC. 1304. AMENDMENTS TO HOUSING AND ECONOMIC RE-
COVERY ACT OF 2008.
(a) SALE OF FANNIE MAE OBLIGATIONS AND SECU-
RITIES BY THE TREASURY; DEFICIT REDUCTION.—Sec-
tion 304(g)(2) of the Federal National Mortgage Associa-
tion Charter Act (12 U.S.C. 1719(g)(2)) is amended—
(1) by redesignating subparagraph (C) as sub-
paragraph (D); and
(2) by inserting after subparagraph (B) the fol-
lowing:
“(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

“(i) dedicated for the sole purpose of deficit reduction; and

“(ii) prohibited from use as an offset for other spending increases or revenue reductions.”.

(b) SALE OF FREDDIE MAC OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Section 306(l)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

“(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—
“(i) dedicated for the sole purpose of deficit reduction; and
“(ii) prohibited from use as an offset for other spending increases or revenue reductions.”.

(c) Sale of Federal Home Loan Banks Obligations by the Treasury; Deficit Reduction.—Section 11(l)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1431(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

“(C) Deficit Reduction.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

“(i) dedicated for the sole purpose of deficit reduction; and
“(ii) prohibited from use as an offset for other spending increases or revenue reductions.”.
(d) Repayment of Fees.—Any periodic commitment fee or any other fee or assessment paid by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation to the Secretary of the Treasury as a result of any preferred stock purchase agreement, mortgage-backed security purchase program, or any other program or activity authorized or carried out pursuant to the authorities granted to the Secretary of the Treasury under section 1117 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289; 122 Stat. 2683), including any fee agreed to by contract between the Secretary and the Association or Corporation, shall be deposited in the General Fund of the Treasury where such amounts shall be—

(1) dedicated for the sole purpose of deficit reduction; and

(2) prohibited from use as an offset for other spending increases or revenue reductions.

SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.

The Director of the Federal Housing Finance Agency shall submit to Congress a report on the plans of the Agency to continue to support and maintain the Nation’s vital housing industry, while at the same time guaranteeing that the American taxpayer will not suffer unnecessary losses.
SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.

(a) Rejection of ARRA Funds by State.—Section 1607 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 305) is amended by adding at the end the following:

“(d) Statewide Rejection of Funds.—If funds provided to any State in any division of this Act are not accepted for use by the Governor of the State pursuant to subsection (a) or by the State legislature pursuant to subsection (b), then all such funds shall be—

“(1) rescinded; and

“(2) deposited in the General Fund of the Treasury where such amounts shall be—

“(A) dedicated for the sole purpose of deficit reduction; and

“(B) prohibited from use as an offset for other spending increases or revenue reductions.”.

(b) Withdrawal or Recapture of Unobligated Funds.—Title XVI of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by adding at the end the following:

“SEC. 1613. WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.

“Notwithstanding any other provision of this Act, if the head of any executive agency withdraws or recaptures
for any reason funds appropriated or otherwise made available under this division, and such funds have not been obligated by a State to a local government or for a specific project, such recaptured funds shall be—

“(1) rescinded; and
“(2) deposited in the General Fund of the Treasury where such amounts shall be—

“(A) dedicated for the sole purpose of deficit reduction; and
“(B) prohibited from use as an offset for other spending increases or revenue reductions.”.

(e) Return of Unobligated Funds by End of 2012.—Section 1603 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by—

(1) striking “All funds” and inserting “(a) In General.—All funds”; and

(2) adding at the end the following:

“(b) Repayment of Unobligated Funds.—Any discretionary appropriations made available in this division that have not been obligated as of December 31, 2012, are hereby rescinded, and such amounts shall be deposited in the General Fund of the Treasury where such amounts shall be—
“(1) dedicated for the sole purpose of deficit re-
duction; and
“(2) prohibited from use as an offset for other
spending increases or revenue reductions.
“(c) PRESIDENTIAL WAIVER AUTHORITY.—
“(1) In general.—The President may waive
the requirements under subsection (b), if the Presi-
dent determines that it is not in the best interest of
the Nation to rescind a specific unobligated amount
after December 31, 2012.
“(2) Requests.—The head of an executive
agency may also apply to the President for a waiver
from the requirements under subsection (b).”.

TITLE XIV—MORTGAGE REFORM
AND ANTI-PREDATORY LENDING ACT

SEC. 1400. SHORT TITLE; DESIGNATION AS ENUMERATED
CONSUMER LAW.

(a) Short Title.—This title may be cited as the
“Mortgage Reform and Anti-Predatory Lending Act”.

(b) Designation as Enumerated Consumer Law
Under the Purview of the Bureau of Consumer
Financial Protection.—Subtitles A, B, C, and E and
sections 1471, 1472, 1475, and 1476, and the amend-
ments made by such subtitles and sections, shall be enu-
merated consumer laws, as defined in section 1002, and
come under the purview of the Bureau of Consumer Fi-
nancial Protection for purposes of title X, including the
transfer of functions and personnel under subtitle F of
title X and the savings provisions of such subtitle.

Subtitle A—Residential Mortgage
Loan Origination Standards

SEC. 1401. DEFINITIONS.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new
subsection:

“(cc) DEFINITIONS RELATING TO MORTGAGE ORIGI-
NATION AND RESIDENTIAL MORTGAGE LOANS.—

“(1) COMMISSION.—Unless otherwise specified,
the term ‘Commission’ means the Federal Trade
Commission.

“(2) FEDERAL BANKING AGENCIES.—The term
‘Federal banking agencies’ means the Board of Gov-
ernors of the Federal Reserve System, the Com-
troller of the Currency, the Director of the Office of
Thrift Supervision, the Federal Deposit Insurance
Corporation, and the National Credit Union Admin-
istration Board. All rule writing by the ‘Federal
banking agencies’ as designated by the Mortgage
Reform and Anti-Predatory Lending Act will be co-
ordained through the Financial Institutions Examination Council in consultation with the Chairman of the State Liaison Committee.

“(3) MORTGAGE ORIGINATOR.—The term ‘mortgage originator’—

“(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

“(i) takes a residential mortgage loan application;

“(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

“(iii) offers or negotiates terms of a residential mortgage loan;

“(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);
“(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs);

“(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated for performing such brokerage activities by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

“(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 1 property in any 36-month period, provided that such loan—

“(i) is fully amortizing;
“(ii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

“(iii) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

“(iv) meets any other criteria the Board may prescribe;

“(F) does not include the creditor under paragraph (1), (2), or (4) of section 129B(c); and

“(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

“(4) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term ‘Nationwide Mort-
gage Licensing System and Registry’ has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

“(5) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.—For purposes of this subsection, a person ‘assists a consumer in obtaining or applying to obtain a residential mortgage loan’ by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

“(6) RESIDENTIAL MORTGAGE LOAN.—The term ‘residential mortgage loan’ means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), and (18), and 128(f) and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.
“(7) SECRETARY.—The term ‘Secretary’, when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

“(8) SECURITIZATION VEHICLE.—The term ‘securitization vehicle’ means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

“(A) is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans; and

“(B) holds such loans.

“(9) SECURITIZER.—The term ‘securitizer’ means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, residential mortgage loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans solely for the benefit of the securitization vehicle.

“(10) SERVICER.—The term ‘servicer’ has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.”
SEC. 1402. RESIDENTIAL MORTGAGE LOAN ORIGINATION.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended—

(1) by redesignating the 2nd of the 2 sections designated as section 129 (15 U.S.C. 1639a) (relating to duty of servicers of residential mortgages) as section 129A; and

(2) by inserting after section 129A (as so redesignated) the following new section:

“§ 129B. Residential mortgage loan origination

“(a) FINDING AND PURPOSE.—

“(1) FINDING.—The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

“(2) PURPOSE.—It is the purpose of this section and section 129C to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

“(b) DUTY OF CARE.—

“(1) STANDARD.—Subject to regulations prescribed under this subsection, each mortgage origi-
nator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

“(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008; and

“(B) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

“(2) COMPLIANCE PROCEDURES REQUIRED.— The Board shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended
by inserting after the item relating to section 129 the fol-
lowing new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.
“129B. Residential mortgage loan origination.”.

3 SEC. 1403. PROHIBITION ON STEERING INCENTIVES.

Section 129B of the Truth in Lending Act (as added
by section 1402(a)) is amended by inserting after sub-
section (b) the following new subsection:

“(c) Prohibition on Steering Incentives.—

“(1) In general.—For any mortgage loan, no
mortgage originator shall receive from any person
and no person shall pay to a mortgage originator,
directly or indirectly, compensation that varies based
on the terms of the loan (other than the amount of
the principal).

“(2) Restructuring of Financing Origina-
tion Fee.—

“(A) In general.—For any mortgage
loan, a mortgage originator may not receive
from any person other than the consumer and
no person, other than the consumer, who knows
or has reason to know that a consumer has di-
rectly compensated or will directly compensate
a mortgage originator may pay a mortgage
originator any origination fee or charge except
bona fide third party charges not retained by
the creditor, mortgage originator, or an affiliate
of the creditor or mortgage originator.

“(B) EXCEPTION.—Notwithstanding sub-
paragraph (A), a mortgage originator may re-
ceive from a person other than the consumer an
origination fee or charge, and a person other
than the consumer may pay a mortgage origi-
nator an origination fee or charge, if—

“(i) the mortgage originator does not
receive any compensation directly from the
consumer; and

“(ii) the consumer does not make an
upfront payment of discount points, origi-
nation points, or fees, however denomi-
nated (other than bona fide third party
charges not retained by the mortgage origi-
nator, creditor, or an affiliate of the cred-
itator or originator), except that the Board
may, by rule, waive or provide exemptions
to this clause if the Board determines that
such waiver or exemption is in the interest
of consumers and in the public interest.

“(3) REGULATIONS.—The Board shall prescribe
regulations to prohibit—
“(A) mortgage originators from steering any consumer to a residential mortgage loan that—

“(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 129C(a));

“(ii) in the case of a refinancing of a residential mortgage loan, does not provide the consumer with a net tangible benefit (in accordance with regulations prescribed under section 129C(b)); or

“(iii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

“(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 129C(c)(3)) to a residential mortgage loan that is not a qualified mortgage;

“(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age; and

“(D) mortgage originators from—
“(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

“(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

“(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discouraging a consumer from seeking a home mortgage loan secured by a consumer’s principal dwelling from another mortgage originator.

“(4) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

“(A) permitting any yield spread premium or other similar compensation that would, for any mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal);

“(B) limiting or affecting the amount of compensation received by a creditor upon the
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sale of a consummated loan to a subsequent purchaser;

“(C) restricting a consumer’s ability to finance, at the option of the consumer, including through principal or rate, any origination fees or costs permitted under this subsection, or the mortgage originator’s right to receive such fees or costs (including compensation) from any person, subject to paragraph (2)(B), so long as such fees or costs do not vary based on the terms of the loan (other than the amount of the principal) or the consumer’s decision about whether to finance such fees or costs; or

“(D) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.”.

SEC. 1404. LIABILITY.

Section 129B of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 1403) the following new subsection:

“(d) LIABILITY FOR VIOLATIONS.—

“(1) IN GENERAL.—For purposes of providing a cause of action for any failure by a mortgage originator, other than a creditor, to comply with any re-
requirement imposed under this section and any regu-
lation prescribed under this section, section 130
shall be applied with respect to any such failure by
substituting ‘mortgage originator’ for ‘creditor’ each
place such term appears in each such subsection.

“(2) MAXIMUM.—The maximum amount of any
liability of a mortgage originator under paragraph
(1) to a consumer for any violation of this section
shall not exceed the greater of actual damages or an
amount equal to 3 times the total amount of direct
and indirect compensation or gain accruing to the
mortgage originator in connection with the residen-
tial mortgage loan involved in the violation, plus the
costs to the consumer of the action, including a rea-
sonable attorney’s fee.”.

SEC. 1405. REGULATIONS.

(a) DISCRETIONARY REGULATORY AUTHORITY.—
Section 129B of the Truth in Lending Act is amended
by inserting after subsection (d) (as added by section
1404) the following new subsection:

“(e) DISCRETIONARY REGULATORY AUTHORITY.—
“(1) IN GENERAL.—The Board shall, by regula-
tions, prohibit or condition terms, acts or practices
relating to residential mortgage loans that the Board
finds to be abusive, unfair, deceptive, predatory, nee-
necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 129C, necessary or proper to effectuate the purposes of this section and section 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

“(2) APPLICATION.—The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 105.

“(f) Section 129B and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.”.

(b) EFFECTIVE DATE.—The regulations required or authorized to be prescribed under this subtitle or the amendments made by this subtitle—

(1) shall be prescribed in final form before the end of the 12-month period beginning on the designated transfer date; and

(2) shall take effect not later than 18 months after the designated transfer date.
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(c) TECHNICAL AND CONFORMING AMENDMENTS.—
Section 129(l)(2) of the Truth in Lending Act (15 U.S.C. 1639(l)(2)) is amended by inserting “referred to in section 103(aa)” after “loans” each place such term appears.

(d) DISCLOSURES.—Notwithstanding any other provision of this title, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Bureau may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest.

SEC. 1406. STUDY OF SHARED APPRECIATION MORTGAGES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury and other relevant agencies, shall conduct a comprehensive study to determine prudent statutory and regulatory requirements sufficient to provide for the widespread use of shared appreciation mortgages to strengthen local housing markets, provide new opportunities for affordable homeownership, and enable homeowners at risk of foreclosure to refinance or modify their mortgages.

(b) REPORT.—Not later than the expiration of the 6-month period beginning on the date of the enactment
of this Act, the Secretary of Housing and Urban Develop-
ment shall submit a report to the Congress on the results
of the study, which shall include recommendations for the
regulatory and legislative requirements referred to in sub-
section (a).

Subtitle B—Minimum Standards
For Mortgages

SEC. 1411. ABILITY TO REPAY.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—No regulation,
order, or guidance issued by the Bureau under this
title shall be construed as requiring a depository in-
stitution to apply mortgage underwriting standards
that do not meet the minimum underwriting stand-
ards required by the appropriate prudential regu-
lator of the depository institution.

(2) AMENDMENT TO TRUTH IN LENDING
ACT.—Chapter 2 of the Truth in Lending Act (15
U.S.C. 1631 et seq.) is amended by inserting after
section 129B (as added by section 1402(a)) the fol-
lowing new section:

§ 129C. Minimum standards for residential mortgage
loans

“(a) ABILITY TO REPAY.—
“(1) In general.—In accordance with regulations prescribed by the Board, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

“(2) Multiple loans.—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

“(3) Basis for determination.—A determination under this subsection of a consumer’s ability to repay a residential mortgage loan shall include consideration of the consumer’s credit history, cur-
rent income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer’s equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

“(4) INCOME VERIFICATION.—A creditor shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer’s Internal Revenue Service Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer’s income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer’s income history in making a determination under this subsection shall include the verification of such income by the use of—
“(A) Internal Revenue Service transcripts of tax returns; or

“(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Board.

“(5) NONSTANDARD LOANS.—

“(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer’s ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

“(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer’s ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

“(C) CALCULATION FOR NEGATIVE AMORTIZATION.—In making any determination under this subsection, a creditor shall also take into
consideration any balance increase that may accrue from any negative amortization provision.

“(D) CALCULATION PROCESS.—For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

“(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

“(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Board, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and
by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract’s repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and "(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

“(E) Refinance of hybrid loans with current lender.—In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which the sole net-tangible benefit to the mortgagor would be a reduction in monthly payment and the mortgagor has not been delinquent on any pay-
ment on the existing hybrid loan, the creditor may—

“(i) consider the mortgagor’s good standing on the existing mortgage;

“(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

“(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

“(6) FULLY-INDEXED RATE DEFINED.—For purposes of this subsection, the term ‘fully indexed rate’ means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

“(7) REVERSE MORTGAGES.—This subsection shall not apply with respect to any reverse mortgage.

“(8) SEASONAL INCOME.—If documented income, including income from a small business, is a repayment source for an extension of credit secured
by residential real estate or a dwelling, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B (as added by section 1402(b)) the following new item:

“129C. Minimum standards for residential mortgage loans.”.

SEC. 1412. NET TANGIBLE BENEFIT FOR REFINANCING OF RESIDENTIAL MORTGAGE LOANS.

Section 129C of the Truth in Lending Act (as added by section 1411) is amended by inserting after subsection (a) the following new subsection:

“(b) NET TANGIBLE BENEFIT FOR REFINANCING OF RESIDENTIAL MORTGAGE LOANS.—

“(1) IN GENERAL.—In accordance with regulations prescribed under paragraph (3), no creditor may extend credit in connection with any residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan unless the creditor reasonably and in good faith determines, at the time the loan is consummated and on the basis of information known by or obtained in good faith by the creditor, that the refinanced loan will provide a net tangible benefit to the consumer, considering all of
the circumstances, including the terms of both the
new and the refinanced loans or credit, the cost of
the new loan or credit, and the consumer’s cir-
cumstances.

“(2) CERTAIN LOANS PROVIDING NO NET TAN-
gible benefit.—A residential mortgage loan that
involves a refinancing of a prior existing residential
mortgage loan shall not be considered to provide a
net tangible benefit to the consumer if the costs of
the refinanced loan, including points, fees and other
charges, exceed the amount of any newly advanced
principal without any corresponding changes in the
terms of the refinanced loan that are advantageous
to the consumer.

“(3) NET TANGIBLE BENEFIT.—The Board
shall prescribe regulations defining the term ‘net
tangible benefit’ for purposes of this subsection.”.

SEC. 1413. SAFE HARBOR AND REBUTTABLE PRESUMPTION.

Section 129C of the Truth in Lending Act is amend-
ed by inserting after subsection (b) (as added by section
1411) the following new subsection:

“(c) PRESUMPTION OF ABILITY TO REPAY AND NET
TANGIBLE BENEFIT.—

“(1) IN GENERAL.—Any creditor with respect
to any residential mortgage loan, and any assignee
or securitizer of such loan, may presume that the loan has met the requirements of subsections (a) and (b), if the loan is a qualified mortgage.

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

“(A) QUALIFIED MORTGAGE.—The term ‘qualified mortgage’ means any residential mortgage loan—

“(i) for which the regular periodic payments for the loan may not—

“(I) result in an increase of the principal balance; or

“(II) allow the consumer to defer repayment of principal;

“(ii) the terms of which do not result in a balloon payment, where a ‘balloon payment’ is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

“(iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

“(iv) in the case of a fixed rate loan,
on a payment schedule that fully amortizes
the loan over the loan term and takes into
account all applicable taxes, insurance, and
assessments;

“(v) in the case of an adjustable rate
loan, for which the underwriting is based
on the maximum rate permitted under the
loan during the first 5 years, and a pay-
ment schedule that fully amortizes the loan
over the loan term and takes into account
all applicable taxes, insurance, and assess-
ments;

“(vi) that does not cause the con-
sumer’s total monthly debts, including
amounts under the loan, to exceed a per-
centage established by regulation of the
consumer’s monthly gross income or such
other maximum percentage of such income,
or does not exceed a threshold that permits
the consumer to pay regular expenses after
payment of all installment and revolving
debt, as such percentage or threshold may
be prescribed by regulation under para-
graph (4);
“(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount; and

“(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (4), such as in high-cost areas.

“(B) AVERAGE PRIME OFFER RATE.—The term ‘average prime offer rate’ means the Freddie Mac Weekly Primary Mortgage Market Survey Rate or the equivalent for 30-year fixed rate conforming loans.

“(C) POINTS AND FEES.—

“(i) IN GENERAL.—For purposes of subparagraph (A), the term ‘points and fees’—

“(I) means points and fees as defined by section 103(aa)(4) (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator), subject to clause (ii); and
“(II) includes any premium for mortgage guarantee insurance that is not provided by an agency of the Federal Government or an agency of a State and is paid by the consumer at or before closing.

“(ii) COMPUTATION.—For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

“(I) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point the average prime offer rate.

“(II) Unless 2 bona fide discount points have been excluded under subclause (I), up to and including 1 bona fide discount point payable by the consumer in connection with the mort-
gage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points the average prime offer rate.

“(iii) **BONA FIDE DISCOUNT POINTS DEFINED.**—For purposes of clause (ii), the term ‘bona fide discount points’ means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

“(iv) **INTEREST RATE REDUCTION.**—Subclauses (I) and (II) of clause (ii) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

“(D) **REVERSE MORTGAGES.**—For purposes of this subsection, the term ‘qualified mortgage’ includes any reverse mortgage that—
“(i) is insured by the Federal Housing Administration; or

“(ii) which has an annual percentage rate that does not exceed the Freddie Mac Weekly Primary Mortgage Market Survey Rate or the equivalent for 30-year fixed rate conforming loans, as of the date the interest rate is set—

“(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is
more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

“(3) REGULATIONS.—

“(A) IN GENERAL.—The Board shall prescribe regulations to carry out the purposes of this subsection.

“(B) REVISION OF SAFE HARBOR CRITERIA.—

“(i) IN GENERAL.—The Board may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers
in a manner consistent with the purposes
of this section, necessary and appropriate
to effectuate the purposes of this section
and section 129B, to prevent circumven-
tion or evasion thereof, or to facilitate
compliance with such sections.

“(ii) Loan Definition.—The Board
shall, in consultation with the following
agencies, prescribe regulations defining the
types of loans such agencies insure, guar-
antee or administer, as the case may be,
that are qualified mortgages for purposes
of subsection (c)(1)(A) upon a finding that
such rules are consistent with the purposes
of this section and section 129B, to pre-
vent circumvention or evasion thereof, or
to facilitate compliance with such sec-
tions—

“(I) The Secretary of Housing
and Urban Development, with regard
to mortgages insured under title II of
the National Housing Act (12 U.S.C.
1707 et seq.);

“(II) The Secretary of Veterans
Affairs, with regard to a loan made or
guaranteed by the Secretary of Veterans Affairs;

“(III) The Secretary of Agriculture, with regard loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h); and

“(IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.”.

SEC. 1414. DEFENSE TO FORECLOSURE.

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding at the end the following new subsection:

“(k) DEFENSE TO FORECLOSURE.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential mortgage loan or anyone acting on behalf of such creditor, assignee, or holder, initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert a violation by a creditor of paragraph (1) or (2) of section 129B(c), or of section 129C(a), as a matter of defense by recoupment or
set off without regard for the time limit on a private action for damages under subsection (e).

“(2) AMOUNT OF RECoupMENT OR SETOFF.—

“(A) IN GENERAL.—The amount of recoupment or set-off under paragraph (1) shall equal the amount to which the consumer would be entitled under subsection (a) for damages for a valid claim brought in an original action against the creditor, plus the costs to the consumer of the action, including a reasonable attorney’s fee.

“(B) SPECIAL RULE.—Where such judgment is rendered after the expiration of the applicable time limit on a private action for damages under subsection (e), the amount of recoupment or set-off under paragraph (1) derived from damages under subsection (a)(4) shall not exceed the amount to which the consumer would have been entitled under subsection (a)(4) for damages computed up to the day preceding the expiration of the applicable time limit.”.
SEC. 1415. ADDITIONAL STANDARDS AND REQUIREMENTS.

(a) In General.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (c) (as added by this title) the following new subsections:

“(d) Prohibition on Certain Prepayment Penalties.—

“(1) Prohibited on Certain Loans.—

“(A) In General.—A residential mortgage loan that is not a ‘qualified mortgage’ may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

“(B) Exclusions.—For purposes of this subsection, a ‘qualified mortgage’ may not include a residential mortgage loan that—

“(i) has an adjustable rate; or

“(ii) has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

“(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of
the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.
“(2) Publication of average prime offer rate and APR thresholds.—The Board—

“(A) shall publish, and update at least weekly, average prime offer rates;

“(B) may publish multiple rates based on varying types of mortgage transactions; and

“(C) shall adjust the thresholds established under subclause (I), (II), and (III) as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

“(3) Phased-out penalties on qualified mortgages.—A qualified mortgage (as defined in subsection (c)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

“(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

“(B) During the 1-year period beginning after the period described in subparagraph (A),
the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

“(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

“(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

“(4) Option for no prepayment penalty required.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

“(e) Single premium credit insurance prohibited.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer,
any credit life, credit disability, credit unemployment or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

“(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

“(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

“(f) ARBITRATION.—

“(1) IN GENERAL.—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.
“(2) Post-controversy agreements.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor, any assignee, or any securitizer to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

“(3) No waiver of statutory cause of action.—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

“(g) Mortgages with negative amortization.—No creditor may extend credit to a borrower in
connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

“(1) the creditor provides the consumer with a statement that—

“(A) the pending transaction will or may, as the case may be, result in negative amortization;

“(B) describes negative amortization in such manner as the Board shall prescribe;

“(C) negative amortization increases the outstanding principal balance of the account; and

“(D) negative amortization reduces the consumer’s equity in the dwelling or real property; and

“(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership
counseling from organizations or counselors certified
by the Secretary of Housing and Urban Develop-
ment as competent to provide such counseling.”.
(b) CONFORMING AMENDMENT RELATING TO EN-
FORCEMENT.—Section 108(a) of the Truth in Lending
Act (15 U.S.C. 1607(a)) is amended by inserting after
paragraph (6) the following new paragraph:
“(7) sections 21B and 21C of the Securities
Exchange Act of 1934, in the case of a broker or
dealer, other than a depository institution, by the
Securities and Exchange Commission.”.
(c) PROTECTION AGAINST LOSS OF ANTI-DEFI-
CIENCY PROTECTION.—Section 129C of the Truth in
Lending Act is amended by inserting after subsection (g)
(as added by subsection (a)) the following new subsection:
“(h) PROTECTION AGAINST LOSS OF ANTI-DEFI-
CIENCY PROTECTION.—
“(1) DEFINITION.—For purposes of this sub-
section, the term ‘anti-deficiency law’ means the law
of any State which provides that, in the event of
foreclosure on the residential property of a consumer
securing a mortgage, the consumer is not liable, in
accordance with the terms and limitations of such
State law, for any deficiency between the sale price
obtained on such property through foreclosure and the outstanding balance of the mortgage.

“(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

“(3) NOTICE BEFORE REFINANCING THAT WOULD CAUSE LOSS OF PROTECTION.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.”.
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(d) Policy Regarding Acceptance of Partial Payment.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (h) (as added by subsection (c)) the following new subsection:

“(i) Policy Regarding Acceptance of Partial Payment.—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

“(1) the creditor’s policy regarding the acceptance of partial payments; and

“(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.”.

SEC. 1416. RULE OF CONSTRUCTION.

Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act (as added by this title), no provision of such section 129B or 129C shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act or any other provision of Federal or State law.
SEC. 1417. REGULATIONS.

Regulations required or authorized to be prescribed under this subtitle or the amendments made by this subtitle—

(1) shall be prescribed in final form before the end of the 12-month period beginning on the date of the enactment of this Act; and

(2) shall take effect not later than 18 months after the date of the enactment of this Act.

SEC. 1418. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.

(a) INCREASE IN AMOUNT OF CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended—

(1) in paragraph (2)—

(A) by striking “$100” and inserting “$200”; 
(B) by striking “$1,000” and inserting “$2,000”; and

(C) by striking “$500,000” and inserting “$1,000,000”; and

(2) in paragraph (4), by inserting “, paragraph (1) or (2) of section 129B(c), or section 129C(a)” after “section 129”.

(b) **Statute of Limitations Extended for Section 129 Violations.**—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended—

(1) in the first sentence, by striking “Any action” and inserting “Except as provided in the subsequent sentence, any action”; and

(2) by inserting after the first sentence the following new sentence: “Any action under this section with respect to any violation of section 129, 129B, or 129C may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation.”.

SEC. 1419. **LENDER RIGHTS IN THE CONTEXT OF BORROWER DECEPTION.**

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding after subsection (k) (as added by this title) the following new subsection:

“(l) **Exemption From Liability and Rescission in Case of Borrower Fraud or Deception.**—In addition to any other remedy available by law or contract, no creditor, assignee, or securitizer shall be liable to an obligor under this section, if such obligor, or co-obligor has been convicted of obtaining by actual fraud such residential mortgage loan.”.
SEC. 1420. SIX-MONTH NOTICE REQUIRED BEFORE RESET
OF HYBRID ADJUSTABLE RATE MORTGAGES.

(a) In General.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 128 the following new section:

"§ 128A. Reset of hybrid adjustable rate mortgages

"(a) Hybrid Adjustable Rate Mortgages Defined.—For purposes of this section, the term ‘hybrid adjustable rate mortgage’ means a consumer credit transaction secured by the consumer’s principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

"(b) Notice of Reset and Alternatives.—During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:

"(1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula."
“(2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin.

“(3) A good faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.

“(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

“(A) refinancing;

“(B) renegotiation of loan terms;

“(C) payment forbearances; and

“(D) pre-foreclosure sales.

“(5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institu-
tions Reform, Recovery, and Enforcement Act of 1989).

“(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 128 the following new item:

“128A. Reset of hybrid adjustable rate mortgages.”.

SEC. 1421. REQUIRED DISCLOSURES.

Section 128(a) of Truth in Lending Act (15 U.S.C. 1638(a)) is amended by adding at the end the following new paragraphs:

“(16) In the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments—

“(A) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and
“(B) the amount of the fully indexed monthly payment due under the loan for the payment of principal and interest, and the amount of such fully indexed monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments.

“(17) In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

“(18) In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.

“(19) In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of
the principal of the loan. Such amount shall be com-
puted assuming the consumer makes each monthly
payment in full and on-time, and does not make any
over-payments.”.

SEC. 1422. DISCLOSURES REQUIRED IN MONTHLY STATE-
MENTS FOR RESIDENTIAL MORTGAGE
LOANS.

Section 128 of the Truth in Lending Act (15 U.S.C.
1638) is amended by adding at the end the following new
subsection:

“(f) Periodic Statements for Residential
Mortgage Loans.—

“(1) In general.—The creditor, assignee, or
servicer with respect to any residential mortgage
loan shall transmit to the obligor, for each billing
cycle, a statement setting forth each of the following
items, to the extent applicable, in a conspicuous and
prominent manner:

“(A) The amount of the principal obliga-
tion under the mortgage.

“(B) The current interest rate in effect for
the loan.

“(C) The date on which the interest rate
may next reset or adjust.
“(D) The amount of any prepayment fee to be charged, if any.

“(E) A description of any late payment fees.

“(F) A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage.

“(G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

“(H) Such other information as the Board may prescribe in regulations.

“(2) DEVELOPMENT AND USE OF STANDARD FORM.—The Federal banking agencies shall jointly develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or electronically.”
SEC. 1423. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to transactions consummated on or after the effective date of the regulations specified in section 1417.

SEC. 1424. REPORT BY THE GAO.

(a) Report Required.—The Comptroller General shall conduct a study to determine the effects the enactment of this Act will have on the availability and affordability of credit for consumers, small businesses, homebuyers, and mortgage lending, including the effect—

(1) on the mortgage market for mortgages that are not within the safe harbor provided in the amendments made by this subtitle;

(2) on the ability of prospective homebuyers to obtain financing;

(3) on the ability of homeowners facing resets or adjustments to refinance—for example, do they have fewer refinancing options due to the unavailability of certain loan products that were available before the enactment of this Act;

(4) on minorities’ ability to access affordable credit compared with other prospective borrowers;

(5) on home sales and construction;

(6) of extending the reseission right, if any, on adjustable rate loans and its impact on litigation;
(7) of State foreclosure laws and, if any, an investor’s ability to transfer a property after foreclosure;

(8) of expanding the existing provisions of the Home Ownership and Equity Protection Act of 1994;

(9) of prohibiting prepayment penalties on high-cost mortgages; and

(10) of establishing counseling services under the Department of Housing and Urban Development and offered through the Office of Housing Counseling.

(b) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (a).

(c) EXAMINATION RELATED TO CERTAIN CREDIT RISK RETENTION PROVISIONS.—The report required by subsection (b) shall also include an analysis by the Comptroller General of the effect on the capital reserves and funding of lenders of credit risk retention provisions for non-qualified mortgages, including an analysis of the exceptions and adjustments authorized in section
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1 129C(l)(3)(A) of the Truth in Lending Act and a rec-
2 ommendation on whether a uniform standard is needed.
3
4 (d) Analysis of Credit Risk Retention Provi-
5 sions.—The report required by subsection (b) shall also
6 include—
7
8 (1) an analysis by the Comptroller General of
9 whether the credit risk retention provisions have sig-
10 nificantly reduced risks to the larger credit market
11 of the repackaging and selling of securitized loans on
12 a secondary market; and
13
14 (2) recommendations to the Congress on adjust-
15 ments that should be made, or additional measures
16 that should be undertaken.
17
18 SEC. 1425. State Attorney General Enforcement Au-
19 thority.
20
21 Section 130(e) of the Truth in Lending Act (15
22 U.S.C. 1640(e)) is amended by striking “section 129 may
23 also” and inserting “section 129, 129B, or 129C of this
24 Act may also”.
25
26 Subtitle C—High-Cost Mortgages
27
28 SEC. 1431. Definitions relating to High-Cost Mort-
29 gages.
30
31 (a) High-cost mortgage defined.—Section
32 103(aa) of the Truth in Lending Act (15 U.S.C.
1602(aa)) is amended by striking all that precedes para-
graph (2) and inserting the following:

“(aa) HIGH-COST MORTGAGE.—

“(1) DEFINITION.—

“(A) IN GENERAL.—The term ‘high-cost mortgage’, and a mortgage referred to in this subsection, means a consumer credit trans-
action that is secured by the consumer’s prin-
cipal dwelling, other than a reverse mortgage transaction, if—

“(i) in the case of a credit transaction

secured—

“(I) by a first mortgage on the consumer’s principal dwelling, the an-
nual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 per-
centage points, if the dwelling is per-
sonal property and the transaction is for less than $50,000) the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction; or

“(II) by a subordinate or junior mortgage on the consumer’s principal
dwelling, the annual percentage rate
at consummation of the transaction
will exceed by more than 8.5 percent-
age points the average prime offer rate, as defined in section
129C(e)(2)(B), for a comparable transaction;

“(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not re-
tained by the mortgage originator, cred-
itor, or an affiliate of the creditor or mort-
gage originator, exceed—

“(I) in the case of a transaction
for $20,000 or more, 5 percent of the total transaction amount; or

“(II) in the case of a transaction
for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (or such other dol-
lar amount as the Board shall pre-
scribe by regulation); or

“(iii) the credit transaction documents permit the creditor to charge or collect pre-
payment fees or penalties more than 36
months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

“(B) Introductory Rates Taken Into Account.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

“(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

“(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

“(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any
reason, the interest charged on the trans-
action at the maximum rate that may be
charged during the term of the loan.

“(C) PRIVATE MORTGAGE INSURANCE.—
For the purposes of computing the total points
and fees under this paragraph, the total points
and fees shall include any premium for mort-
gage guarantee insurance that is not provided
by an agency of the Federal Government or an
agency of a State and that is paid by the con-
sumer at or before closing.”.

(b) ADJUSTMENT OF PERCENTAGE POINTS.—Section
103(aa)(2) of the Truth in Lending Act (15 U.S.C.
1602(aa)(2)) is amended by striking subparagraph (B)
and inserting the following new subparagraph:

“(B) An increase or decrease under sub-
paragraph (A)—

“(i) may not result in the number of
percentage points referred to in paragraph
(1)(A)(i)(I) being less than 6 percentage
points or greater than 10 percentage
points; and

“(ii) may not result in the number of
percentage points referred to in paragraph
(1)(A)(i)(II) being less than 8 percentage
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points or greater than 12 percentage points.”.

(c) POINTS AND FEES DEFINED.—

(1) IN GENERAL.—Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is amended—

(A) by striking subparagraph (B) and inserting the following:

“(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that originates a loan in the name of the creditor in a table-funded transaction;”;

(B) in subparagraph (C)(ii), by inserting “except where applied to the charges set forth in section 106(e)(1) where a creditor may receive indirect compensation solely as a result of obtaining distributions of profits from an affiliated entity based on its ownership interest in compliance with section 8(c)(4) of the Real Estate Settlement Procedures Act of 1974” before the semicolon at the end;
(C) in subparagraph (C)(iii), by striking “; and” and inserting “, except as provided for in clause (ii);”;

(D) by redesignating subparagraph (D) as subparagraph (G); and

(E) by inserting after subparagraph (C) the following new subparagraphs:

“(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

“(E) except as provided in subsection (cc), the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

“(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held
by the same creditor or an affiliate of the cred-
itor; and”.

(2) CALCULATION OF POINTS AND FEES FOR
OPEN-END CONSUMER CREDIT PLANS.—Section
103(aa) of the Truth in Lending Act (15 U.S.C.
1602(aa)) is amended—

(A) by redesignating paragraph (5) as
paragraph (6); and

(B) by inserting after paragraph (4) the
following new paragraph:

“(5) CALCULATION OF POINTS AND FEES FOR
OPEN-END CONSUMER CREDIT PLANS.—In the case
of open-end consumer credit plans, points and fees
shall be calculated, for purposes of this section and
section 129, by adding the total points and fees
known at or before closing, including the maximum
prepayment penalties which may be charged or col-
lected under the terms of the credit transaction, plus
the minimum additional fees the consumer would be
required to pay to draw down an amount equal to
the total credit line.”.

(d) BONA FIDE DISCOUNT LOAN DISCOUNT
POINTS.—Section 103 of the Truth in Lending Act (15
U.S.C. 1602) is amended by inserting after subsection (cc)
(as added by section 1401) the following new subsection:
“(dd) BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

“(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point—

“(A) the average prime offer rate, as defined in section 129C; or

“(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points—
“(A) the average prime offer rate, as defined in section 129C; or

“(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(3) For purposes of paragraph (1), the term ‘bona fide discount points’ means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

“(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.”.

SEC. 1432. AMENDMENTS TO EXISTING REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) PREPAYMENT PENALTY PROVISIONS.—Section 129(c)(2) of the Truth in Lending Act (15 U.S.C. 1639(c)(2)) is hereby repealed.
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(b) No Balloon Payments.—Section 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e)) is amended to read as follows:

“(e) No Balloon Payments.—No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer or in the case of a balance due under the customary terms of a reverse mortgage.”

SEC. 1433. ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) Additional Requirements for Certain Mortgages.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by redesignating subsections (j), (k), (l) and (m) as subsections (n), (o), (p), and (q) respectively;

and

(2) by inserting after subsection (i) the following new subsections:

“(j) Recommended Default.—No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.
“(k) Late Fees.—

“(1) In general.—No creditor may impose a late payment charge or fee in connection with a high-cost mortgage—

“(A) in an amount in excess of 4 percent of the amount of the payment past due;

“(B) unless the loan documents specifically authorize the charge or fee;

“(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

“(D) more than once with respect to a single late payment.

“(2) Coordination with subsequent late fees.—If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.
“(3) Failure to make installment payment.—If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

“(l) Acceleration of Debt.—No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

“(m) Restriction on Financing Points and Fees.—No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

“(1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the
creditor or an affiliate of the creditor is the noteholder of the note being refinanced.

“(2) Any points or fees.”.

(b) Prohibitions on Evasions.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (q) (as so redesignated by subsection (a)(1)) the following new subsection:

“(r) Prohibitions on Evasions, Structuring of Transactions, and Reciprocal Arrangements.—A creditor may not take any action in connection with a high-cost mortgage—

“(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title; or

“(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this title.”.

(c) Modification or Deferral Fees.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (r) (as added by subsection (b) of this section) the following new subsection:

“(s) Modification and Deferral Fees Prohibited.—A creditor, successor in interest, assignee, or any
agent of any of the above, may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.”.

(d) PAYOFF STATEMENT.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (s) (as added by subsection (c) of this section) the following new subsection:

“(t) PAYOFF STATEMENT.—

“(1) FEES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

“(B) TRANSACTION FEE.—When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured
by the consumer’s principal dwelling and are
not high-cost mortgages.

“(C) Fee disclosure.—Prior to charging
a transaction fee as provided in subparagraph
(B), a creditor or servicer shall disclose that
payoff balances are available for free pursuant
to subparagraph (A).

“(D) Multiple requests.—If a creditor
or servicer has provided payoff information re-
ferred to in subparagraph (A) without charge,
other than the transaction fee allowed by sub-
paragraph (B), on 4 occasions during a cal-
endar year, the creditor or servicer may there-
after charge a reasonable fee for providing such
information during the remainder of the cal-
endar year.

“(2) Prompt delivery.—Payoff balances shall
be provided within 5 business days after receiving a
request by a consumer or a person authorized by the
consumer to obtain such information.”.

(e) Pre-Loan Counseling Required.—Section
129 of the Truth in Lending Act (15 U.S.C. 1639) is
amended by inserting after subsection t) (as added by sub-
section (d) of this section) the following new subsection:

“(u) Pre-Loan Counseling.—
“(1) IN GENERAL.—A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

“(2) DISCLOSURES REQUIRED PRIOR TO COUNSELING.—No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 with respect to the transaction.

“(3) REGULATIONS.—The Board may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).”.

(f) FLIPPING PROHIBITED.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by
inserting after subsection (u) (as added by subsection (e))

the following new subsections:

“(v) Flipping.—

“(1) In general.—No creditor may knowingly or intentionally engage in the unfair act or practice of flipping in connection with a high-cost mortgage.

“(2) Flipping defined.—For purposes of this subsection, the term ‘flipping’ means the making of a loan or extension of credit in the form a high-cost mortgage to a consumer which refines an existing mortgage when the creditor does not reasonably and in good faith determine that, at the time the loan is consummated and on the basis of information known or obtained in good faith by the creditor, the new loan or extension of credit has a reasonable, net tangible benefit (as determined in accordance with regulations prescribed under section 129C(b)) to the consumer considering all of the circumstances, including the terms of both the new and the refinanced loans or credit, the cost of the new loan or credit, and the consumer’s circumstances.

“(w) Corrections and unintentional violations.—A creditor or assignee in a high cost loan who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have
violated such requirement if the creditor or assignee establishes that either—

“(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

“(A) make the loan satisfy the requirements of this chapter; or

“(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or

“(2) within 60 days of the creditor’s discovery or receipt of notification of an unintentional violation or bona fide error as described in subsection (c) and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

“(A) make the loan satisfy the requirements of this chapter; or
“(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.”.

SEC. 1434. REGULATIONS.

The Board of Governors of the Federal Reserve System shall publish regulations implementing this subtitle, and the amendments made by this subtitle, in final form before the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 1435. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect at the end of the 6-month period beginning on the date of the enactment of this Act and shall apply to mortgages referred to in section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) for which an application is received by the creditor after the end of such period.

Subtitle D—Office of Housing Counseling

SEC. 1441. SHORT TITLE.

This subtitle may be cited as the “Expand and Preserve Home Ownership Through Counseling Act”.
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1 SEC. 1442. ESTABLISHMENT OF OFFICE OF HOUSING COUNSELING.

Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding at the end the following new subsection:

“(g) OFFICE OF HOUSING COUNSELING.—

“(1) ESTABLISHMENT.—There is established, in the Department, the Office of Housing Counseling.

“(2) DIRECTOR.—There is established the position of Director of Housing Counseling. The Director shall be the head of the Office of Housing Counseling and shall be appointed by, and shall report to, the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.

“(3) FUNCTIONS.—

“(A) IN GENERAL.—The Director shall have primary responsibility within the Department for all activities and matters relating to homeownership counseling and rental housing counseling, including—

“(i) research, grant administration, public outreach, and policy development relating to such counseling; and

“(ii) establishment, coordination, and administration of all regulations, require-
ments, standards, and performance meas-
ures under programs and laws adminis-
tered by the Department that relate to
housing counseling, homeownership coun-
seling (including maintenance of homes),
mortgage-related counseling (including
home equity conversion mortgages and
credit protection options to avoid fore-
closure), and rental housing counseling, in-
cluding the requirements, standards, and
performance measures relating to housing
counseling.

“(B) SPECIFIC FUNCTIONS.—The Director
shall carry out the functions assigned to the Di-
rector and the Office under this section and any
other provisions of law. Such functions shall in-
clude establishing rules necessary for—

“(i) the counseling procedures under
section 106(g)(1) of the Housing and
Urban Development Act of 1968 (12
U.S.C. 1701x(h)(1));

“(ii) carrying out all other functions
of the Secretary under section 106(g) of
the Housing and Urban Development Act
of 1968, including the establishment, oper-
ation, and publication of the availability of
the toll-free telephone number under para-
graph (2) of such section;

“(iii) contributing to the preparation
and distribution of home buying informa-
tion booklets pursuant to section 5 of the
Real Estate Settlement Procedures Act of
1974 (12 U.S.C. 2604);

“(iv) carrying out the certification
program under section 106(e) of the Hous-
ing and Urban Development Act of 1968
(12 U.S.C. 1701x(e));

“(v) carrying out the assistance pro-
gram under section 106(a)(4) of the Hous-
ing and Urban Development Act of 1968,
including criteria for selection of applica-
tions to receive assistance;

“(vi) carrying out any functions re-
arding abusive, deceptive, or unscrupulous
lending practices relating to residential
mortgage loans that the Secretary con-
siders appropriate, which shall include con-
ducting the study under section 6 of the
Expand and Preserve Home Ownership
Through Counseling Act;
“(vii) providing for operation of the advisory committee established under paragraph (4) of this subsection;

“(viii) collaborating with community-based organizations with expertise in the field of housing counseling; and

“(ix) providing for the building of capacity to provide housing counseling services in areas that lack sufficient services, including underdeveloped areas that lack basic water and sewer systems, electricity services, and safe, sanitary housing.

“(4) ADVISORY COMMITTEE.—

“(A) IN GENERAL.—The Secretary shall appoint an advisory committee to provide advice regarding the carrying out of the functions of the Director.

“(B) MEMBERS.—Such advisory committee shall consist of not more than 12 individuals, and the membership of the committee shall equally represent the mortgage and real estate industry, including consumers and housing counseling agencies certified by the Secretary.

“(C) TERMS.—Except as provided in subparagraph (D), each member of the advisory
committee shall be appointed for a term of 3 years. Members may be reappointed at the discretion of the Secretary.

“(D) TERMS OF INITIAL APPOINTEES.—As designated by the Secretary at the time of appointment, of the members first appointed to the advisory committee, 4 shall be appointed for a term of 1 year and 4 shall be appointed for a term of 2 years.

“(E) PROHIBITION OF PAY; TRAVEL EXPENSES.—Members of the advisory committee shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

“(F) ADVISORY ROLE ONLY.—The advisory committee shall have no role in reviewing or awarding housing counseling grants.

“(5) SCOPE OF HOMEOWNERSHIP COUNSELING.—In carrying out the responsibilities of the Director, the Director shall ensure that homeownership counseling provided by, in connection with, or pursuant to any function, activity, or program of the Department addresses the entire process of home-
ownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default and foreclosure, and other financial decisions), and the sale or other disposition of a home.”.

SEC. 1443. COUNSELING PROCEDURES.

(a) IN GENERAL.—Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following new subsection:

“(g) PROCEDURES AND ACTIVITIES.—

“(1) COUNSELING PROCEDURES.—

“(A) IN GENERAL.—The Secretary shall establish, coordinate, and monitor the administration by the Department of Housing and Urban Development of the counseling procedures for homeownership counseling and rental housing counseling provided in connection with any program of the Department, including all requirements, standards, and performance measures that relate to homeownership and rental housing counseling.

“(B) HOMEOWNERSHIP COUNSELING.—

For purposes of this subsection and as used in
the provisions referred to in this subparagraph, the term ‘homeownership counseling’ means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

“(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

“(ii) in the United States Housing Act of 1937—

“(I) section 9(e) (42 U.S.C. 1437g(e));

“(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));


“(IV) section 23(e)(4) (42 U.S.C. 1437u(e)(4));

“(V) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

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“(VII) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and

“(VIII) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4));

“(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);

“(iv) sections 233(b)(2) and 258(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2), 12808(b));

“(v) this section and section 101(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x, 1701w(e));


“(vii) sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6));
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“(ix) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

“(x) in the National Housing Act—

“(I) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2) of sub-section (b), subsection (c)(2)(A), and subsection (r)(4);

“(II) subsections (a) and (c)(3) of section 237 (12 U.S.C. 1715z–2);

and

“(III) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z–20);


“(xii) section 508 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–7); and

“(C) RENTAL HOUSING COUNSELING.—

For purposes of this subsection, the term ‘rental housing counseling’ means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling and shall include counseling related to such topics that is provided pursuant to—

“(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

“(ii) in the United States Housing Act of 1937—

“(I) section 9(e) (42 U.S.C. 1437g(e));


“(III) section 23(e)(4) (42 U.S.C. 1437u(e)(4));

“(IV) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));
“(V) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B)); and

“(VI) section 302(b)(6) (42 U.S.C. 1437aaa–1(b)(6));

“(iii) section 233(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2));

“(iv) section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

“(v) section 422(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6));


“(vii) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)); and

“(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
“(2) STANDARDS FOR MATERIALS.—The Secretary, in consultation with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

“(3) MORTGAGE SOFTWARE SYSTEMS.—

“(A) CERTIFICATION.—The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

“(i) the consumer’s financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

“(ii) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan; and

“(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating whether to pay
points, to lock in an interest rate, to select
an adjustable or fixed rate loan, to select
a conventional or government-insured or
guaranteed loan and to make other choices
during the loan application process.

If the Secretary determines that available exist-
ing software is inadequate to assist consumers
during the residential mortgage loan application
process, the Secretary shall arrange for the de-
development by private sector software companies
of new mortgage software systems that meet
the Secretary’s specifications.

“(B) USE AND INITIAL AVAILABILITY.—
Such certified computer software programs
shall be used to supplement, not replace, hous-
ing counseling. The Secretary shall provide that
such programs are initially used only in connec-
tion with the assistance of housing counselors
certified pursuant to subsection (e).

“(C) AVAILABILITY.—After a period of ini-
tial availability under subparagraph (B) as the
Secretary considers appropriate, the Secretary
shall take reasonable steps to make mortgage
software systems certified pursuant to this
paragraph widely available through the Internet
and at public locations, including public libraries, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

“(D) Budget Compliance.—This paragraph shall be effective only to the extent that amounts to carry out this paragraph are made available in advance in appropriations Acts.

“(4) National Public Service Multimedia Campaigns to Promote Housing Counseling.—

“(A) In General.—The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, minorities, and other potentially vulnerable consumers aware that it is advisable, before seeking or maintaining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable sources and that such homeownership counseling is available, including through programs
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sponsored by the Secretary of Housing and Urban Development.

“(B) CONTACT INFORMATION.—Each segment of the multimedia campaign under sub-paragraph (A) shall publicize the toll-free telephone number and website of the Department of Housing and Urban Development through which persons seeking housing counseling can locate a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, defaults, foreclosures, credit issues, and reverse mortgages.

“(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed $3,000,000 for fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this paragraph.

“(D) FORECLOSURE RESCUE EDUCATION PROGRAMS.—

“(i) IN GENERAL.—Ten percent of any funds appropriated pursuant to the
authorization under subparagraph (C) shall be used by the Director of Housing Counseling to conduct an education program in areas that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

“(I) tips on avoiding foreclosure rescue scams; 

“(II) tips on avoiding predatory lending mortgage agreements; 

“(III) tips on avoiding for-profit foreclosure counseling services; and 

“(IV) local counseling resources that are approved by the Department of Housing and Urban Development.

“(ii) PROGRAM EMPHASIS.—In conducting the education program described under clause (i), the Director of Housing Counseling shall also place an emphasis on serving communities that have a high percentage of retirement communities or a high percentage of low-income minority communities.
(iii) Terms defined.—For purposes of this subparagraph:

"(I) High density of foreclosures.—An area has a ‘high density of foreclosures’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

“(II) High percentage of retirement communities.—An area has a ‘high percentage of retirement communities’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest percentage of residents aged 65 or older.

“(III) High percentage of low-income minority communities.—An area has a ‘high percentage of low-income minority communities’ if such area contains a higher-than-normal percentage of residents
who are both minorities and low-income, as defined by the Director of Housing Counseling.

“(5) Education Programs.—The Secretary shall provide advice and technical assistance to States, units of general local government, and non-profit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, minorities, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, home repair loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage.”.

(b) Conforming Amendments to Grant Program for Homeownership Counseling Organizations.—Section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) is amended—
(1) in subclause (III), by striking “and” at the end;

(2) in subclause (IV) by striking the period at the end and inserting “; and”; and

(3) by inserting after subclause (IV) the following new subclause:

“(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).”.

SEC. 1444. GRANTS FOR HOUSING COUNSELING ASSISTANCE.

Section 106(a) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended by adding at the end the following new paragraph:

“(4) Homeownership and Rental Counseling Assistance.—

“(A) IN GENERAL.—The Secretary shall make financial assistance available under this paragraph to HUD-approved housing counseling agencies and State housing finance agencies.

“(B) QUALIFIED ENTITIES.—The Secretary shall establish standards and guidelines for eligibility of organizations (including governmental and non-
profit organizations) to receive assistance under this paragraph, in accordance with subparagraph (D).

“(C) DISTRIBUTION.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs and that ensures adequate distribution of amounts for rural areas having traditionally low levels of access to such counseling services, including areas with insufficient access to the Internet. In distributing such assistance, the Secretary may give priority consideration to entities serving areas with the highest home foreclosure rates.

“(D) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

“(i) IN GENERAL.—None of the amounts made available under this paragraph shall be distributed to—

“(I) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

“(II) any organization which employs applicable individuals.
“(ii) Definition of applicable individuals.—In this subparagraph, the term ‘applicable individual’ means an individual who—

“(I) is—

“(aa) employed by the organization in a permanent or temporary capacity;

“(bb) contracted or retained by the organization; or

“(cc) acting on behalf of, or with the express or apparent authority of, the organization; and

“(II) has been convicted for a violation under Federal law relating to an election for Federal office.

“(E) Grantmaking process.—In making assistance available under this paragraph, the Secretary shall consider appropriate ways of streamlining and improving the processes for grant application, review, approval, and award.

“(F) Authorization of appropriations.—There are authorized to be appropriated $45,000,000 for each of fiscal years 2009 through 2012 for—
“(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;

“(ii) the responsibilities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and

“(iii) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.”

Sec. 1445. Requirements to Use HUD-Certified Counselors Under HUD Programs.

Section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) is amended—

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

“(1) Requirement for Assistance.—An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (a)(4), (c), or (d) of this section, or under section 101(e), unless the organization, or the individuals through which the organization provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling.”;

(2) in paragraph (2)—
(A) by inserting “and for certifying organizations” before the period at the end of the first sentence; and

(B) in the second sentence by striking “for certification” and inserting “, for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual,”;

(3) in paragraph (3), by inserting “organizations and” before “individuals”;

(4) by redesignating paragraph (3) as paragraph (5); and

(5) by inserting after paragraph (2) the following new paragraphs:

“(3) REQUIREMENT UNDER HUD PROGRAMS.—Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or counselors certified by the Secretary under this subsection as competent to provide such counseling.
“(4) OUTREACH.—The Secretary shall take such actions as the Secretary considers appropriate to ensure that individuals and organizations providing homeownership or rental housing counseling are aware of the certification requirements and standards of this subsection and of the training and certification programs under subsection (f).”.

SEC. 1446. STUDY OF DEFAULTS AND FORECLOSURES.

The Secretary of Housing and Urban Development shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as are available. The study shall also examine the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures, and the role of computer registries of mortgages, including those used for trading mortgage loans. Not later than 12 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a preliminary report regarding the study. Not later than 24 months after such date of enactment, the Secretary shall submit a final report regarding the results of the study, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to identify populations that need counseling the most.
SEC. 1447. DEFAULT AND FORECLOSURE DATABASE.

(a) Establishment.—The Secretary of Housing and Urban Development, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available.

(b) Census Tract Data.—Information in the database shall be collected, aggregated, and made available on a census tract basis.

(c) Requirements.—Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obli-
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gation amount that is greater than the value of the
property for which the loan was made; and

(6) such other information as the Secretary
considers appropriate.

SEC. 1448. DEFINITIONS FOR COUNSELING-RELATED PRO-
GRAMS.

Section 106 of the Housing and Urban Development
Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
ceding provisions of this subtitle, is amended by adding
at the end the following new subsection:

“(h) DEFINITIONS.—For purposes of this section:

“(1) NONPROFIT ORGANIZATION.—The term
‘nonprofit organization’ has the meaning given such
term in section 104(5) of the Cranston-Gonzalez Na-
tional Affordable Housing Act (42 U.S.C.
12704(5)), except that subparagraph (D) of such
section shall not apply for purposes of this section.

“(2) STATE.—The term ‘State’ means each of
the several States, the Commonwealth of Puerto
Rico, the District of Columbia, the Commonwealth
of the Northern Mariana Islands, Guam, the Virgin
Islands, American Samoa, the Trust Territories of
the Pacific, or any other possession of the United
States.
“(3) Unit of General Local Government.—The term ‘unit of general local government’ means any city, county, parish, town, township, borough, village, or other general purpose political subdivision of a State.

“(4) HUD-Approved Counseling Agency.—The term ‘HUD-approved counseling agency’ means a private or public nonprofit organization that is—

“(A) exempt from taxation under section 501(c) of the Internal Revenue Code of 1986; and

“(B) certified by the Secretary to provide housing counseling services.

“(5) State Housing Finance Agency.—The term ‘State housing finance agency’ means any public body, agency, or instrumentality specifically created under State statute that is authorized to finance activities designed to provide housing and related facilities throughout an entire State through land acquisition, construction, or rehabilitation.”.

SEC. 1449. ACCOUNTABILITY AND TRANSPARENCY FOR GRANT RECIPIENTS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
ceding provisions of this subtitle, is amended by adding at the end the following:

“(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED ASSISTANCE.—

“(1) TRACKING OF FUNDS.—The Secretary shall—

“(A) develop and maintain a system to ensure that any organization or entity that receives any covered assistance uses all amounts of covered assistance in accordance with this section or section 1415 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations issued under this section or such section 1415, as applicable, and any requirements or conditions under which such amounts were provided; and

“(B) require any organization or entity, as a condition of receipt of any covered assistance, to agree to comply with such requirements regarding covered assistance as the Secretary shall establish, which shall include—

“(i) appropriate periodic financial and grant activity reporting, record retention, and audit requirements for the duration of the covered assistance to the organization
or entity to ensure compliance with the limitations and requirements of this section or section 1415 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations under this section or such section 1415, as applicable, and any requirements or conditions under which such amounts were provided; and

“(ii) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

“(2) MISUSE OF FUNDS.—If any organization or entity that receives any covered assistance is determined by the Secretary to have used any covered assistance in a manner that is materially in violation of this section or section 1415 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations issued under this section or such section 1415, as applicable, or any requirements or conditions under which such assistance was provided—

“(A) the Secretary shall require that, within 12 months after the determination of such misuse, the organization or entity shall reimburse the Secretary for such misused amounts
and return to the Secretary any such amounts
that remain unused or uncommitted for use;
and
“(B) such organization or entity shall be
ineligible, at any time after such determination,
to apply for or receive any further covered as-
sistance.
The remedies under this paragraph are in addition
to any other remedies that may be available under
law.
“(3) COVERED ASSISTANCE.—For purposes of
this subsection, the term ‘covered assistance’ means
any grant or other financial assistance provided
under—
“(A) this section; or
“(B) section 1415 of the Mortgage Reform
and Anti-Predatory Lending Act.”.

SEC. 1450. UPDATING AND SIMPLIFICATION OF MORTGAGE
INFORMATION BOOKLET.
Section 5 of the Real Estate Settlement Procedures
Act of 1974 (12 U.S.C. 2604) is amended—
(1) in the section heading, by striking “SPE-
CIAL” and inserting “HOME BUYING”; (2) by striking subsections (a) and (b) and in-
serting the following new subsections:
“(a) Preparation and Distribution.—The Director of the Consumer Financial Protection Agency (hereafter in this section referred to as the ‘Director’) shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

“(b) Contents.—Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable language the following information:

“(1) A description and explanation of the nature and purpose of the costs incident to a real es-
tate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

“(A) balloon payments;
“(B) prepayment penalties;
“(C) the advantages of prepayment; and
“(D) the trade-off between closing costs and the interest rate over the life of the loan.

“(2) An explanation and sample of the uniform settlement statement required by section 4.

“(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

“(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.
“(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

“(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled ‘Consumer Handbook on Adjustable Rate Mortgages’, published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

“(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

“(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

“(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the re-
requirements under section 10 of this Act regarding such accounts.

“(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

“(11) An explanation of a consumer’s responsibilities, liabilities, and obligations in a mortgage transaction.

“(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

“(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.”;

(3) in subsection (e), by inserting at the end the following new sentence: “Each lender shall also include with the booklet a reasonably complete or
updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender.”; and

(4) in subsection (d), by inserting after the period at the end of the first sentence the following: “The lender shall provide the HUD-issued booklet in the version that is most appropriate for the person receiving it.”.

SEC. 1451. HOME INSPECTION COUNSELING.

(a) Public Outreach.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the “Secretary”) shall take such actions as may be necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. Such actions shall include—

(A) publication of the HUD/FHA form HUD 92564–CN entitled “For Your Protection: Get a Home Inspection”, in both English and Spanish languages;

(B) publication of the HUD/FHA booklet entitled “For Your Protection: Get a Home In-
(C) development and publication of a HUD booklet entitled “For Your Protection—Get a Home Inspection” that does not reference FHA-insured homes, in both English and Spanish languages; and

(D) publication of the HUD document entitled “Ten Important Questions To Ask Your Home Inspector”, in both English and Spanish languages.

(2) AVAILABILITY.—The Secretary shall make the materials specified in paragraph (1) available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development. The Secretary shall give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts.

(3) UPDATING.—The Secretary may periodically update and revise such materials, as the Secretary determines to be appropriate.
(b) REQUIREMENT FOR FHA-APPROVED LENDERS.—Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act shall provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval, or initial application, the materials specified in subparagraphs (A), (B), and (D) of subsection (a)(1).

(c) REQUIREMENTS FOR HUD-APPROVED COUNSELING AGENCIES.—Each counseling agency certified pursuant by the Secretary to provide housing counseling services shall provide each of their clients, as part of the home purchase counseling process, the materials specified in subparagraphs (C) and (D) of subsection (a)(1).

(d) TRAINING.—Training provided the Department of Housing and Urban Development for housing counseling agencies, whether such training is provided directly by the Department or otherwise, shall include—

(1) providing information on counseling potential homebuyers of the availability and importance of getting an independent home inspection;

(2) providing information about the home inspection process, including the reasons for specific inspections such as radon and lead-based paint testing;
(3) providing information about advising potential homebuyers on how to locate and select a qualified home inspector; and

(4) review of home inspection public outreach materials of the Department.

SEC. 1452. WARNINGS TO HOMEOWNERS OF FORECLOSURE RESCUE SCAMS.

(a) Assistance to NRC.—Notwithstanding any other provision of law, of any amounts made available for any fiscal year pursuant to section 106(a)(4)(F) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)(F)) (as added by section 1444), 10 percent shall be used only for assistance to the Neighborhood Reinvestment Corporation for activities, in consultation with servicers of residential mortgage loans, to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes such borrowers aware of the dangers of fraudulent activities associated with foreclosure.

(b) Notice.—The Neighborhood Reinvestment Corporation, in consultation with servicers of residential mortgage loans, shall use the amounts provided pursuant to subsection (a) to carry out activities to inform borrowers under residential mortgage loans—
(1) that the foreclosure process is complex and can be confusing;

(2) that the borrower may be approached during the foreclosure process by persons regarding saving their home and they should use caution in any such dealings;

(3) that there are Federal Government and nonprofit agencies that may provide information about the foreclosure process, including the Department of Housing and Urban Development;

(4) that they should contact their lender immediately, contact the Department of Housing and Urban Development to find a housing counseling agency certified by the Department to assist in avoiding foreclosure, or visit the Department’s website regarding tips for avoiding foreclosure; and

(5) of the telephone number of the loan servicer or successor, the telephone number of the Department of Housing and Urban Development housing counseling line, and the Uniform Resource Locators (URLs) for the Department of Housing and Urban Development Web sites for housing counseling and for tips for avoiding foreclosure.
Subtitle E—Mortgage Servicing

SEC. 1461. ESCROW AND IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) In General.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129C (as added by section 1411) the following new section:

"SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

“(a) In General.—Except as provided in subsection (b), (c), or (d), a creditor, in connection with the formation or consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section."
“(b) WHEN REQUIRED.—No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

“(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

“(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

“(3) the transaction is secured by a first mortgage or lien on the consumer’s principal dwelling having an original principal obligation amount that—

“(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C.
1896

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
as borrower delinquency, unless the underlying mortgage establishing the account is terminated.

“(d) **Limited Exemptions for Loans Secured by Shares in a Cooperative and for Certain Condominium Units.**—Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

“(e) **Clarification on Escrow Accounts for Loans Not Meeting Statutory Test.**—For mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property—

“(1) on terms mutually agreeable to the parties to the loan;

“(2) at the discretion of the lender or servicer, as provided by the contract between the lender or servicer and the borrower; or
“(3) pursuant to the requirements for the escrowing of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973.

“(f) Administration of Mandatory Escrow or Impound Accounts.—

“(1) In general.—Except as may otherwise be provided for in this title or in regulations prescribed by the Board, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution.

“(2) Administration.—Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with—

“(A) the Real Estate Settlement Procedures Act of 1974 and regulations prescribed under such Act;

“(B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and

“(C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.
(3) Applicability of payment of interest.—If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

(4) Penalty coordination with RESPA.—Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

(g) Disclosures relating to mandatory escrow or impound account.—In the case of any impound, trust, or escrow account that is subject to this section, the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:
“(1) The fact that an escrow or impound account will be established at consummation of the transaction.

“(2) The amount required at closing to initially fund the escrow or impound account.

“(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

“(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if applicable) and any other required periodic payments or premiums.

“(5) The fact that, if the consumer chooses to terminate the account at the appropriate time in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required
periodic payments or premiums on the property unless a new escrow or impound account is established.

“(6) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer.

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

“(1) FLOOD INSURANCE.—The term ‘flood insurance’ means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968.

“(2) HAZARD INSURANCE.—The term ‘hazard insurance’ shall have the same meaning as provided for ‘hazard insurance’, ‘casualty insurance’, ‘home-owner’s insurance’, or other similar term under the law of the State where the real property securing the consumer credit transaction is located.”.

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, (hereafter in this title referred to as the “Federal banking agencies”) and the Federal Trade Commis-
sion shall prescribe, in final form, such regulations as determined to be necessary to implement the amendments made by subsection (a) before the end of the 180-day period beginning on the date of the enactment of this Act.

(2) EFFECTIVE DATE.—The amendments made by subsection (a) shall only apply to covered mortgage loans consummated after the end of the 1-year period beginning on the date of the publication of final regulations in the Federal Register.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129C (as added by section 1411) the following new item:

“129D. Escrow or impound accounts relating to certain consumer credit transactions.”.

SEC. 1462. DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.

(a) IN GENERAL.—Section 129D of the Truth in Lending Act (as added by section 1461) is amended by adding at the end the following new subsection:

“(i) Disclosure Notice Required for Consumers Who Waive Escrow Services.—

“(1) In general.—If—

“(A) an impound, trust, or other type of account for the payment of property taxes,
surance premiums, or other purposes relating to
real property securing a consumer credit trans-
action is not established in connection with the
transaction; or

“(B) a consumer chooses, and provides
written notice to the creditor or servicer of such
choice, at any time after such an account is es-
tablished in connection with any such trans-
action and in accordance with any statute, reg-
ulation, or contractual agreement, to close such
account,

the creditor or servicer shall provide a timely and
clearly written disclosure to the consumer that ad-
vises the consumer of the responsibilities of the con-
sumer and implications for the consumer in the ab-
sence of any such account.

“(2) DISCLOSURE REQUIREMENTS.—Any dis-
closure provided to a consumer under paragraph (1)
shall include the following:

“(A) Information concerning any applica-
ble fees or costs associated with either the non-
establishment of any such account at the time
of the transaction, or any subsequent closure of
any such account.
"(B) A clear and prominent notice that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

"(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

"(D) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer."

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Federal banking agencies and the Federal Trade Commission shall prescribe, in final form, such regulations as such agencies determine to be necessary to implement the amendments made by subsection (a) before the end
of the 180-day period beginning on the date of the enactment of this Act.

(2) EFFECTIVE DATE.—The amendments made by subsection (a) shall only apply in accordance with the regulations established in paragraph (1) and beginning on the date occurring 180-days after the date of the publication of final regulations in the Federal Register.

SEC. 1463. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENTS.

(a) SERVICER PROHIBITIONS.—Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by adding at the end the following new subsections:

“(k) SERVICER PROHIBITIONS.—

“(1) IN GENERAL.—A servicer of a federally related mortgage shall not—

“(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract’s requirements to maintain property insurance;

“(B) charge fees for responding to valid qualified written requests (as defined in regula-
tions which the Secretary shall prescribe) under
this section;

“(C) fail to take timely action to respond
to a borrower’s requests to correct errors relat-
ing to allocation of payments, final balances for
purposes of paying off the loan, or avoiding
foreclosure, or other standard servicer’s duties;

“(D) fail to respond within 10 business
days to a request from a borrower to provide
the identity, address, and other relevant contact
information about the owner assignee of the
loan; or

“(E) fail to comply with any other obliga-
tion found by the Secretary, by regulation, to
be appropriate to carry out the consumer pro-
tection purposes of this Act.

“(2) FORCE-PLACED INSURANCE DEFINED.—
For purposes of this subsection and subsections (l)
and (m), the term ‘force-placed insurance’ means
hazard insurance coverage obtained by a servicer of
a federally related mortgage when the borrower has
failed to maintain or renew hazard insurance on
such property as required of the borrower under the
terms of the mortgage.
(l) REQUIREMENTS FOR FORCE-PLACED INSURANCE.—A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

“(1) WRITTEN NOTICES TO BORROWER.—A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

“(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

“(i) a reminder of the borrower’s obligation to maintain hazard insurance on the property securing the federally related mortgage;

“(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

“(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

“(iv) a statement that the servicer may obtain such coverage at the borrower’s
expense if the borrower does not provide such demonstration of the borrower’s existing coverage in a timely manner;

“(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

“(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

“(2) SUFFICIENCY OF DEMONSTRATION.—A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent.

“(3) TERMINATION OF FORCE-PLACED INSURANCE.—Within 15 days of the receipt by a servicer
of confirmation of a borrower’s existing insurance
coverage, the servicer shall—

“(A) terminate the force-placed insurance;

and

“(B) refund to the consumer all force-
placed insurance premiums paid by the bor-
rower during any period during which the bor-
rower’s insurance coverage and the force-placed
insurance coverage were each in effect, and any
related fees charged to the consumer’s account
with respect to the force-placed insurance dur-
ing such period.

“(4) CLARIFICATION WITH RESPECT TO FLOOD
DISASTER PROTECTION ACT.—No provision of this
section shall be construed as prohibiting a servicer
from providing simultaneous or concurrent notice of
a lack of flood insurance pursuant to section 102(e)

“(m) LIMITATIONS ON FORCE-PLACED INSURANCE
CHARGES.—All charges for force-placed insurance pre-
miums shall be bona fide and reasonable in amount.”.

(b) INCREASE IN PENALTY AMOUNTS.—Section 6(f)
of the Real Estate Settlement Procedures Act of 1974 (12
U.S.C. 2605(f)) is amended—
(1) in paragraphs (1)(B) and (2)(B), by striking “$1,000” each place such term appears and inserting “$2,000”; and

(2) in paragraph (2)(B)(i), by striking “$500,000” and inserting “$1,000,000”.

(c) DECREASE IN RESPONSE TIMES.—Section 6(e) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(e)) is amended—

(1) in paragraph (1)(A), by striking “20 days” and inserting “5 days”;

(2) in paragraph (2), by striking “60 days” and inserting “30 days”; and

(3) by adding at the end the following new paragraph:

“(4) LIMITED EXTENSION OF RESPONSE TIME.—The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.”.

(d) PROMPT REFUND OF ESCROW ACCOUNTS UPON PAYOFF.—Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended by adding at the end the following new sentence: “Any balance in any such account that is within the servicer’s
control at the time the loan is paid off shall be promptly
returned to the borrower within 20 business days or cred-
ited to a similar account for a new mortgage loan to the
borrower with the same lender.”.

SEC. 1464. TRUTH IN LENDING ACT AMENDMENTS.

(a) Requirements for Prompt Crediting of
Home Loan Payments.—Chapter 2 of the Truth in
Lending Act (15 U.S.C. 1631 et seq.) is amended by in-
serting after section 129E (as added by section 1462) the
following new section:

“SEC. 129F. REQUIREMENTS FOR PROMPT CREDITING OF
HOME LOAN PAYMENTS.

“(a) In General.—In connection with a consumer
credit transaction secured by a consumer’s principal dwell-
ing, no servicer shall fail to credit a payment to the con-
sumer’s loan account as of the date of receipt, except when
a delay in crediting does not result in any charge to the
consumer or in the reporting of negative information to
a consumer reporting agency, except as required in sub-
section (b).

“(b) Exception.—If a servicer specifies in writing
requirements for the consumer to follow in making pay-
ments, but accepts a payment that does not conform to
the requirements, the servicer shall credit the payment as
of 5 days after receipt.”.
(b) **REQUESTS FOR PAYOFF AMOUNTS.**—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.), as amended by this title, is amended by inserting after section 129F (as added by subsection (a)) the following new section:

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"SEC. 129G. REQUESTS FOR PAYOFF AMOUNTS OF HOME LOAN.

"A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.".
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**SEC. 1465. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.**

Section 128(b) of the Truth in Lending Act (15 U.S.C. 1638(b)) is amended by adding at the end the following new paragraph:

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"(4) Repayment analysis required to include escrow payments.—

"(A) In general.—In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust, or other type of account has been or will be es-
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established in connection with the transaction for
the payment of property taxes, hazard and flood
(if any) insurance premiums, or other periodic
payments or premiums with respect to the
property, the information required to be pro-
vided under subsection (a) with respect to the
number, amount, and due dates or period of
payments scheduled to repay the total of pay-
ments shall take into account the amount of
any monthly payment to such account for each
such repayment in accordance with section
10(a)(2) of the Real Estate Settlement Proce-

“(B) ASSESSMENT VALUE.—The amount
taken into account under subparagraph (A) for
the payment of property taxes, hazard and flood
(if any) insurance premiums, or other periodic
payments or premiums with respect to the
property shall reflect the taxable assessed value
of the real property securing the transaction
after the consummation of the transaction, in-
cluding the value of any improvements on the
property or to be constructed on the property
(whether or not such construction will be fi-
nanced from the proceeds of the transaction), if
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known, and the replacement costs of the prop-
erty for hazard insurance, in the initial year
after the transaction.”.

Subtitle F—Appraisal Activities

SEC. 1471. PROPERTY APPRAISAL REQUIREMENTS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lend-
ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
after 129G (as added by section 1464(b)) the following
new section:

“SEC. 129H PROPERTY APPRAISAL REQUIREMENTS.

“(a) IN GENERAL.—A creditor may not extend credit
in the form of a subprime mortgage to any consumer with-
out first obtaining a written appraisal of the property to
be mortgaged prepared in accordance with the require-
ments of this section.

“(b) APPRAISAL REQUIREMENTS.—

“(1) PHYSICAL PROPERTY VISIT.—An appraisal
of property to be secured by a subprime mortgage
does not meet the requirement of this section unless
it is performed by a qualified appraiser who con-
ducts a physical property visit of the interior of the
mortgaged property.

“(2) SECOND APPRAISAL UNDER CERTAIN CIR-
CUMSTANCES.—
“(A) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

“(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

“(3) QUALIFIED APPRAISER DEFINED.—For purposes of this section, the term ‘qualified appraiser’ means a person who—

“(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

“(B) performs each appraisal in conformity with the Uniform Standards of Profes-
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sional Appraisal Practice and title XI of the Fi-

cancial Institutions Reform, Recovery, and En-

forcement Act of 1989, and the regulations pre-

scribed under such title, as in effect on the date

of the appraisal.

“(c) FREE COPY OF APPRAISAL.—A creditor shall

provide 1 copy of each appraisal conducted in accordance

with this section in connection with a subprime mortgage

to the applicant without charge, and at least 3 days prior

to the transaction closing date.

“(d) CONSUMER NOTIFICATION.—At the time of the

initial mortgage application, the applicant shall be pro-

vided with a statement by the creditor that any appraisal

prepared for the mortgage is for the sole use of the cred-

itor, and that the applicant may choose to have a separate

appraisal conducted at their own expense.

“(e) VIOLATIONS.—In addition to any other liability

to any person under this title, a creditor found to have

willfully failed to obtain an appraisal as required in this

section shall be liable to the applicant or borrower for the

sum of $2,000.

“(f) SUBPRIME MORTGAGE DEFINED.—For purposes

of this section, the term ‘subprime mortgage’ means a res-

idential mortgage loan, other than a reverse mortgage loan

insured by the Federal Housing Administration, secured
by a principal dwelling with an annual percentage rate
that exceeds the average prime offer rate for a comparable
transaction, as of the date the interest rate is set—

“(1) by 1.5 or more percentage points, in the
case of a first lien residential mortgage loan having
an original principal obligation amount that does not
exceed the amount of the maximum limitation on the
original principal obligation of mortgage in effect for
a residence of the applicable size, as of the date of
such interest rate set, pursuant to the sixth sentence
of section 305(a)(2) the Federal Home Loan Mort-
gage Corporation Act (12 U.S.C. 1454(a)(2));

“(2) by 2.5 or more percentage points, in the
case of a first lien residential mortgage loan having
an original principal obligation amount that exceeds
the amount of the maximum limitation on the origi-
nal principal obligation of mortgage in effect for a
residence of the applicable size, as of the date of
such interest rate set, pursuant to the sixth sentence
of section 305(a)(2) the Federal Home Loan Mort-
gage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(3) by 3.5 or more percentage points for a
subordinate lien residential mortgage loan.”.
SEC. 1472. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129D (as added by section 1461(a)) the following new section:

“SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

“(a) IN GENERAL.—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any unfair or deceptive act or practice as described in or pursuant to regulations prescribed under this section.

“(b) APPRAISAL INDEPENDENCE.—For purposes of subsection (a), unfair and deceptive practices shall include—

“(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or
other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

“(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

“(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

“(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

“(c) EXCEPTIONS.—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:
“(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

“(2) Provide further detail, substantiation, or explanation for the appraiser’s value conclusion.

“(3) Correct errors in the appraisal report.

“(d) Prohibitions on Conflicts of Interest.—No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

“(e) Mandatory Reporting.—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to
the applicable State appraiser certifying and licensing agency.

“(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer’s principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

“(g) RULEMAKING PROCEEDINGS.—The Director of the Bureau of Consumer Financial Protection—

“(1) shall, for purposes of this section, prescribe regulations no later than 180 days after the date of the enactment of this section, and where such regulations have an effective date of no later than 1 year after the date of the enactment of this section, defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations; and
“(2) may issue interpretive guidelines and general statements of policy with respect to unfair or deceptive acts or practices in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

“(h) Penalties.—

“(1) First violation.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

“(2) Subsequent violations.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting ‘$20,000’ for ‘$10,000’ with respect to all subsequent violations.

“(3) Assessment.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.”.
(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129D (as added by section 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.”.

SEC. 1473. AMENDMENTS RELATING TO APPRAISAL SUB-COMMITTEE OF FFIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.

(a) CONSUMER PROTECTION MISSION.—

(1) PURPOSES.—Section 1101 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331) is amended by inserting “and to provide the Appraisal Subcommittee with a consumer protection mandate” before the period at the end.

(2) FUNCTIONS OF APPRAISAL SUB-COMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended—
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(A) by striking “and” at the end of paragraph (3); and

(B) by amending paragraph (4) to read as follows:

“(4) monitor the efforts of, and requirements established by, States and the Federal financial institutions regulatory agencies to protect consumers from improper appraisal practices and the predations of unlicensed appraisers in consumer credit transactions that are secured by a consumer’s principal dwelling; and”.

(3) Threshold Levels.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: “, and that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences. In determining whether a threshold level provides reasonable protection for consumers, each Federal financial institutions regulatory agency shall consult with consumer groups and convene a public hearing”.

(b) Annual Report of Appraisal Subcommittee.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12
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1 U.S.C. 3332(a)) is amended at the end by inserting the
2 following new paragraph:
3
4 “(5) transmit an annual report to the Congress
5 not later than January 31 of each year that de-
6 scribes the manner in which each function assigned
7 to the Appraisal Subcommittee has been carried out
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.”.

(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
19 (1) by inserting “in public session after notice
20 in the Federal Register, but may close certain por-
21 tions of these meetings related to personnel and re-
22 view of preliminary State audit reports,” after “shall
23 meet”; and
24
25 (2) by adding after the final period the fol-
26 lowing: “The subject matter discussed in any closed
or executive session shall be described in the Federal Register notice of the meeting.’’.

(d) REGULATIONS.—Section 1106 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3335) is amended—

(1) by inserting ‘‘prescribe regulations after notice and opportunity for comment,’’ after ‘‘hold hearings’’; and

(2) at the end by inserting ‘‘Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, real estate agents, and government agencies, and hold meetings as necessary to support the development of regulations.’’.

(e) APPRAISALS AND APPRAISAL REVIEWS.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

(1) by striking ‘‘In determining’’ and inserting ‘‘(a) IN GENERAL.—In determining’’;
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(2) in subsection (a) (as designated by paragraph (1)), by inserting before the period the following: “, where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical”; and

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

“(b) Appraisals and Appraisal Reviews.—All appraisals performed at a property within a State shall be prepared by appraisers licensed or certified in the State where the property is located. All appraisal reviews for compliance with the Uniform Standards of Professional Appraisal Practice, including appraisal reviews by a lender, appraisal management company, or other third party organization, shall be performed by an appraiser who is duly licensed or certified by a State appraisal board.”.

(f) Appraisal Management Services.—

(1) Supervision of third party providers of appraisal management services.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is amended—
(A) by amending paragraph (1) to read as follows:

“(1) monitor the requirements established by States—

“(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

“(B) for the registration and supervision of the operations and activities of an appraisal management company;”; and

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

“(7) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.”.

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by
adding at the end the following new section (and
amending the table of contents accordingly):

“SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.

“(a) In General.—The Appraiser Qualifications Board of the Appraisal Foundation shall establish min-
imum qualifications to be applied by a State in the reg-
istration of appraisal management companies. Such quali-
fications shall include a requirement that such compa-
nies—

“(1) register with and be subject to supervision
by a State appraiser certifying and licensing agency
in each State in which such company operates;

“(2) verify that only licensed or certified ap-
praisers are used for federally related transactions;

“(3) require that appraisals coordinated by an
appraisal management company comply with the
Uniform Standards of Professional Appraisal Prac-
tice; and

“(4) require that appraisals are conducted inde-
dependently and free from inappropriate influence and
coercion pursuant to the appraisal independence
standards established under section 129E of the
Truth in Lending Act.
“(b) Exception for Federally Regulated Financial Institutions.—The requirements of subsection (a) shall not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency. In such case, the appropriate federal financial institutions regulatory agency shall, at a minimum, develop regulations affecting the operations of the appraisal management company to—

“(1) verify that only licensed or certified appraisers are used for federally related transactions;

“(2) require that appraisals coordinated by an institution or subsidiary providing appraisal management services comply with the Uniform Standards of Professional Appraisal Practice; and

“(3) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

“(c) Registration Limitations.—An appraisal management company shall not be registered by a State or included on the national registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate re-
fused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

“(d) Regulations.—The Appraisal Subcommittee shall promulgate regulations to implement the minimum qualifications developed by the Appraiser Qualifications Board under this section, as such qualifications relate to the State appraiser certifying and licensing agencies. The Appraisal Subcommittee shall also promulgate regulations for the reporting of the activities of appraisal management companies in determining the payment of the annual registry fee.

“(e) Effective Date.—

“(1) In general.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.
“(2) Extension of effective date.—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.”.

(3) State appraiser certifying and licensing agency authority.—Section 1117 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following: “The duties of such agency may additionally include the registration and supervision of appraisal management companies.”.

(4) Appraisal management company definition.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350) is amended by adding at the end the following:

“(11) Appraisal management company.—The term ‘appraisal management company’ means,
in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

“(A) to recruit, select, and retain appraisers;

“(B) to contract with licensed and certified appraisers to perform appraisal assignments;

“(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

“(D) to review and verify the work of appraisers.”.
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(g) STATE AGENCY REPORTING REQUIREMENT.—

Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(1) by striking “and” after the semicolon in paragraph (1);

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

“(2) transmit reports on sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

“(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and”.

(h) REGISTRY FEES MODIFIED.—

(1) IN GENERAL.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforce—
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ment Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 1473(g)) to read as follows:

“(4) collect—

“(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than $40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

“(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

“(i) in the case of such a company that has been in existence for more than a year, $25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Sub-
committee, if necessary to carry out the Subcommittee’s functions under this title; and

“(ii) in the case of such a company that has not been in existence for more than a year, $25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee’s functions under this title.”; and

(B) by amending the matter following paragraph (4), as redesignated, to read as follows:

“Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of $80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar
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amount of the registry fees to account for inflation. In
implementing any change in registry fees, the Appraisal
Subcommittee shall provide flexibility to the States for
multi-year certifications and licenses already in place, as
well as a transition period to implement the changes in
registry fees. In establishing the amount of the annual
registry fee for an appraisal management company, the
Appraisal Subcommittee shall have the discretion to im-
pose a minimum annual registry fee for an appraisal man-
agement company to protect against the under reporting
of the number of appraisers working for or contracted by
the appraisal management company.”.

(2) INCREMENTAL REVENUES.—Incremental
revenues collected pursuant to the increases required
by this subsection shall be placed in a separate ac-
count at the United States Treasury, entitled the
“Appraisal Subcommittee Account”.

(i) GRANTS AND REPORTS.—Section 1109(b) of the
Financial Institutions Reform, Recovery, and Enforce-
ment Act of 1989 (12 U.S.C. 3348(b)) is amended—

(1) by striking “and” after the semicolon in
paragraph (3);

(2) by striking the period at the end of para-
graph (4) and inserting a semicolon;
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(3) by adding at the end the following new paragraphs:

“(5) to make grants to State appraiser certifying and licensing agencies, in accordance with policies to be developed by the Appraisal Subcommittee, to support the efforts of such agencies to comply with this title, including—

“(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

“(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

“(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.”.

Obligations authorized under this subsection may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the “Appraisal Subcommittee Account” pursuant to subsection (h).
(j) CRITERIA.—Section 1116 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3345) is amended—

(1) in subsection (c), by inserting “whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers” before the period at the end; and

(2) by striking subsection (e) and inserting the following new subsection:

“(e) MINIMUM QUALIFICATION REQUIREMENTS.—Any requirements established for individuals in the position of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’ shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.”.

(k) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

(1) by amending subsection (a) to read as follows:
“(a) IN GENERAL.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

“(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

“(2) processes complaints and completes investigations in a reasonable time period;

“(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

“(4) maintains an effective regulatory program; and

“(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States
whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analyses of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.”.

(2) in subsection (b)(2), by inserting after “authority” the following: “or sufficient funding”.

(l) RECIPROCITY.—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:
“(b) Reciprocity.—A State appraiser certifying or licensing agency shall issue a reciprocal certification or license for an individual from another State when—

“(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

“(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.”.

(m) Consideration of Professional Appraisal Designations.—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) is amended by striking “shall not exclude” and all that follows through the end of the subsection and inserting the following: “may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.”.

(n) Appraiser Independence.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforce-
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1  ment Act of 1989 (12 U.S.C. 3351) is amended by adding
2  at the end the following new subsection:
3
4  "(g) Appraiser Independence Monitoring.—
5  The Appraisal Subcommittee shall monitor each State ap-
6  praiser certifying and licensing agency for the purpose of
7  determining whether such agency’s policies, practices, and
8  procedures are consistent with the purposes of maintain-
9  ing appraiser independence and whether such State has
10  adopted and maintains effective laws, regulations, and
11  policies aimed at maintaining appraiser independence.’’.
12
13  (o) Appraiser Education.—Section 1122 of the
14  Financial Institutions Reform, Recovery, and Enforce-
15  ment Act of 1989 (12 U.S.C. 3351) is amended by insert-
16  ing after subsection (g) (as added by subsection (l) of this
17  section) the following new subsection:
18  "(h) Approved Education.—The Appraisal Sub-
19  committee shall encourage the States to accept courses ap-
20  proved by the Appraiser Qualification Board’s Course Ap-
21  proval Program.’’.
22
23  (p) Appraisal Complaint Hotline.—Section 1122
24  of the Financial Institutions Reform, Recovery, and En-
26  this section, is amended by adding at the end the following
27  new subsection:
(i) Appraisal Complaint National Hotline.—

If, 6 months after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.”.

“SEC. 1125. AUTOMATED VALUATION MODELS USED TO VALUE CERTAIN MORTGAGES.

“(a) In general.—Automated valuation models shall adhere to quality control standards designed to—

“(1) ensure a high level of confidence in the estimates produced by automated valuation models;

“(2) protect against the manipulation of data;

“(3) seek to avoid conflicts of interest; and

“(4) require random sample testing and reviews, where such testing and reviews are performed by an appraiser who is licensed or certified in the State where the testing and reviews take place.

“(b) Adoption of regulations.—The Appraisal Subcommittee and its member agencies, in consultation with the Appraisal Standards Board of the Appraisal Foundation and other interested parties, shall promulgate regulations to implement the quality control standards required under this section.

“(c) Enforcement.—Compliance with regulations issued under this subsection shall be enforced by—

“(1) with respect to a financial institution, or subsidiary owned and controlled by a financial insti-
tution and regulated by a Federal financial institu-
tion regulatory agency, the Federal financial institu-
tion regulatory agency that acts as the primary Fed-
eral supervisor of such financial institution or sub-
sidiary; and

“(2) with respect to other persons, the Ap-
praisal Subcommittee.

“(d) AUTOMATED VALUATION MODEL DEFINED.—
For purposes of this section, the term ‘automated valu-
ation model’ means any computerized model used by mort-
gage originators and secondary market issuers to deter-
mine the collateral worth of a mortgage secured by a con-
sumer’s principal dwelling.”.

(r) BROKER PRICE OPINIONS.—Title XI of the Fi-
nancial Institutions Reform, Recovery, and Enforcement
Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this
section, is amended by adding at the end the following
new section (and amending the table of contents accord-
ingly):

“SEC. 1126. BROKER PRICE OPINIONS.

“(a) GENERAL PROHIBITION.—In conjunction with
the purchase of a consumer’s principal dwelling, broker
price opinions may not be used as the primary basis to
determine the value of a piece of property for the purpose
of a loan origination of a residential mortgage loan secured by such piece of property.

“(b) Broker Price Opinion Defined.—For purposes of this section, the term ‘broker price opinion’ means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property’s condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(e).”.

(s) Amendments to Appraisal Subcommittee.—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

(1) in the first sentence, by adding before the period the following: “and the Federal Housing Finance Agency”; and

(2) by inserting at the end the following: “At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.”.

(t) Technical Corrections.—


(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking “council” and inserting “Council”.

(4) Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and

(B) in subsection (c)—

(i) by striking “Federal Financial Institutions Examination Council” and inserting “Financial Institutions Examination Council”; and
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(ii) by striking “the council’s functions” and inserting “the Council’s functions”.

SEC. 1474. STUDY REQUIRED ON IMPROVEMENTS IN APPRAISAL PROCESS AND COMPLIANCE PROGRAMS.

(a) Study.—The Comptroller General shall conduct a comprehensive study on possible improvements in the appraisal process generally, and specifically on the consistency in and the effectiveness of, and possible improvements in, State compliance efforts and programs in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, this study shall examine the existing exemptions to the use of certified appraisers issued by Federal financial institutions regulatory agencies. The study shall also review the threshold level established by Federal regulators for compliance under title XI and whether there is a need to revise them to reflect the addition of consumer protection to the purposes and functions of the Appraisal Subcommittee. The study shall additionally examine the quality of different types of mortgage collateral valuations produced by broker price opinions, automated valuation models, licensed appraisals, and certified appraisals, among others, and the quality of appraisals provided through dif-
ferent distribution channels, including appraisal management companies, independent appraisal operations within a mortgage originator, and fee-for-service appraisals. The study shall also include an analysis and statistical breakdown of enforcement actions taken during the last 10 years against different types of appraisers, including certified, licensed, supervisory, and trainee appraisers. Furthermore, the study shall examine the benefits and costs, as well as the advantages and disadvantages, of establishing a national repository to collect data related to real estate property collateral valuations performed in the United States.

(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for administrative or legislative action, at the Federal or State level, as the Comptroller General may determine to be appropriate.

(c) ADDITIONAL STUDY REQUIRED.—The Comptroller General shall conduct an additional study to determine the effects that the changes to the seller-guide appraisal requirements of Fannie Mae and Freddie Mac con-
tained in the Home Valuation Code of Conduct have on small business, like mortgage brokers and independent appraisers, and consumers, including the effect on the—

(1) quality and costs of appraisals;

(2) length of time for obtaining appraisals;

(3) impact on consumer protection, especially regarding maintaining appraisal independence, abating appraisal inflation, and mitigating acts of appraisal fraud;

(4) structure of the appraisal industry, especially regarding appraisal management companies, fee-for-service appraisers, and the regulation of appraisal management companies by the states; and

(5) impact on mortgage brokers and other small business professionals in the financial services industry.

(d) ADDITIONAL REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit an additional report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (e). Such additional report shall take into con-
consideration the Small Business Administration’s views on how small businesses are affected by the Home Valuation Code of Conduct.

SEC. 1475. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.

Subsection (e) of section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended to read as follows:

“(e) COPIES FURNISHED TO APPLICANTS.—

“(1) IN GENERAL.—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant’s application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant’s request for credit or the application is incomplete or withdrawn.

“(2) WAIVER.—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

“(3) REIMBURSEMENT.—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.
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“(4) FREE COPY.—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

“(5) NOTIFICATION TO APPLICANTS.—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

“(6) REGULATIONS.—The Board shall prescribe regulations to implement this subsection within 1 year of the date of the enactment of this subsection.

“(7) VALUATION DEFINED.—For purposes of this subsection, the term ‘valuation’ shall include any estimate of the value of a dwelling developed in connection with a creditor’s decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.”.
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SEC. 1476. REAL ESTATE SETTLEMENT PROCEDURES ACT

OF 1974 AMENDMENT RELATING TO CERTAIN

APRAISAL FEES.

Section 4 of the Real Estate Settlement Procedures
Act of 1974 is amended by adding at the end the following
new subsection:

“(c) The standard form described in subsection (a)
shall include, in the case of an appraisal coordinated by
an appraisal management company (as such term is de-
defined in section 1121(11) of the Financial Institutions Re-
3350(11))), a clear disclosure of—

“(1) the fee paid directly to the appraiser by
such company; and

“(2) the administration fee charged by such
company.”.

Subtitle G—Mortgage Resolution
and Modification

SEC. 1481. MULTIFAMILY MORTGAGE RESOLUTION PRO-
GRAM.

(a) ESTABLISHMENT.—The Secretary of Housing
and Urban Development shall develop a program under
this subsection to ensure the protection of current and fu-
ture tenants and at-risk multifamily properties, where fea-
sible, based on criteria that may include—
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(1) creating sustainable financing of such properties, that may take into consideration such factors as—

(A) the rental income generated by such properties; and

(B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and city subsidies in effect as of the date of the enactment of this Act;

(3) providing funds for rehabilitation; and

(4) facilitating the transfer of such properties, when appropriate and with the agreement of owners, to responsible new owners and ensuring affordability of such properties.

(b) COORDINATION.—The Secretary of Housing and Urban Development may, in carrying out the program developed under this section, coordinate with the Secretary of the Treasury, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.
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(c) DEFINITION.—For purposes of this section, the term “multifamily properties” means a residential structure that consists of 5 or more dwelling units.

SEC. 1482. HOME AFFORDABLE MODIFICATION PROGRAM GUIDELINES.

(a) NET PRESENT VALUE INPUT DATA.—The Secretary of the Treasury (in this section referred to as the “Secretary”) shall revise the supplemental directives and other guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to require each mortgage servicer participating in such program to provide each borrower under a mortgage whose request for a mortgage modification under the Program is denied with all borrower-related and mortgage-related input data used in any net present value (NPV) analyses performed in connection with the subject mortgage. Such input data shall be provided to the borrower at the time of such denial.

(b) WEB-BASED SITE FOR NPV CALCULATOR AND APPLICATION.—

(1) NPV CALCULATOR.—In carrying out the Home Affordable Modification Program, the Secretary shall establish and maintain a site on the
World Wide Web that provides a calculator for net present value analyses of a mortgage, based on the Secretary’s methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages and that provides a determination after entering such information regarding a mortgage of whether such mortgage would be accepted or rejected for modification under the Program, using such methodology.

(2) Disclosure.—Such Web site shall also prominently disclose that each mortgage servicer participating in such Program may use a method for calculating net present value of a mortgage that is different than the method used by such calculator.

(3) Application.—The Secretary shall make a reasonable effort to include on such World Wide Web site a method for homeowners to apply for a mortgage modification under the Home Affordable Modification Program.

(c) Public Availability of NPV Methodology, Computer Model, and Variables.—The Secretary shall make publicly available, including by posting on a World Wide Web site of the Secretary—

(1) the Secretary’s methodology and computer model, including all formulae used in such computer
model, used for calculating net present value of a mortgage that is used by the calculator established pursuant to subsection (b); and

(2) all variables used in such net present value analysis.

SEC. 1483. PUBLIC AVAILABILITY OF INFORMATION OF MAKING HOME AFFORDABLE PROGRAM.

(a) Revisions to Program Guidelines.—The Secretary of the Treasury (in this section referred to as the "Secretary") shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to provide that the data being collected by the Secretary from each mortgage servicer and lender participating in the Program is made public in accordance with subsection (b).

(b) Public Availability.—Data shall be made available according to the following guidelines:

(1) Not more than 14 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, reports shall be made publicly available by means of a World Wide Web site of the Secretary, and by sub-
mitting a report to the Congress, that shall includes
the following information:

(A) The number of requests for mortgage
modifications under the Program that the
servicer or lender has received.

(B) The number of requests for mortgage
modifications under the Program that the
servicer or lender has processed.

(C) The number of requests for mortgage
modifications under the Program that the
servicer or lender has approved.

(D) The number of requests for mortgage
modifications under the Program that the
servicer or lender has denied.

(2) Not more than 60 days after each monthly
deadline for submission of data by mortgage
servicers and lenders participating in the Program,
the Secretary shall make data tables available to the
public at the individual record level. The Secretary
shall issue regulations prescribing—

(A) the procedures for disclosing such data
to the public; and

(B) such deletions as the Secretary may
determine to be appropriate to protect any pri-

vacy interest of any mortgage modification ap-
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applicant, including the deletion or alteration of
the applicant’s name and identification number.

SEC. 1484. PROTECTING TENANTS AT FORECLOSURE EX-
TENSION.

Section 704 of the Protecting Tenants at Foreclosure
Act of 2009 (12 U.S.C. 5201 note) is amended by striking
“2012” and inserting “2014”.

Subtitle H—Miscellaneous
Provisions

SEC. 1491. SENSE OF CONGRESS REGARDING THE IMPOR-
TANCE OF GOVERNMENT-SPONSORED EN-
TERPRISES REFORM TO ENHANCE THE PRO-
TECTION, LIMITATION, AND REGULATION OF
THE TERMS OF RESIDENTIAL MORTGAGE
CREDIT.

(a) FINDINGS.—The Congress finds as follows:

(1) The Government-sponsored enterprises,
Federal National Mortgage Association (Fannie
Mae) and the Federal Home Loan Mortgage Cor-
poration (Freddie Mac), were chartered by Congress
to ensure a reliable and affordable supply of mort-
gage funding, but enjoy a dual legal status as pri-
vately owned corporations with Government man-
dated affordable housing goals.
(2) In 1996, the Department of Housing and Urban Development required that 42 percent of Fannie Mae’s and Freddie Mac’s mortgage financing should go to borrowers with income levels below the median for a given area.

(3) In 2004, the Department of Housing and Urban Development revised those goals, increasing them to 56 percent of their overall mortgage purchases by 2008, and additionally mandated that 12 percent of all mortgage purchases by Fannie Mae and Freddie Mac be “special affordable” loans made to borrowers with incomes less than 60 percent of an area’s median income, a target that ultimately increased to 28 percent for 2008.

(4) To help fulfill those mandated affordable housing goals, in 1995 the Department of Housing and Urban Development authorized Fannie Mae and Freddie Mac to purchase subprime securities that included loans made to low-income borrowers.

(5) After this authorization to purchase subprime securities, subprime and near-prime loans increased from 9 percent of securitized mortgages in 2001 to 40 percent in 2006, while the market share of conventional mortgages dropped from 78.8 percent in 2003 to 50.1 percent by 2007 with a cor-
responding increase in subprime and Alt-A loans from 10.1 percent to 32.7 percent over the same period.

(6) In 2004 alone, Fannie Mae and Freddie Mac purchased $175,000,000,000 in subprime mortgage securities, which accounted for 44 percent of the market that year, and from 2005 through 2007, Fannie Mae and Freddie Mac purchased approximately $1,000,000,000,000 in subprime and Alt-A loans, while Fannie Mae’s acquisitions of mortgages with less than 10 percent down payments almost tripled.

(7) According to data from the Federal Housing Finance Agency (FHFA) for the fourth quarter of 2008, Fannie Mae and Freddie Mac own or guarantee 75 percent of all newly originated mortgages, and Fannie Mae and Freddie Mac currently own 13.3 percent of outstanding mortgage debt in the United States and have issued mortgage-backed securities for 31.0 percent of the residential debt market, a combined total of 44.3 percent of outstanding mortgage debt in the United States.

(8) On September 7, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship, with the Treasury Department subsequently agree-
ing to purchase at least $200,000,000,000 of preferred stock from each enterprise in exchange for warrants for the purchase of 79.9 percent of each enterprise’s common stock.

(9) The conservatorship for Fannie Mae and Freddie Mac has potentially exposed taxpayers to upwards of $5,300,000,000,000 worth of risk.

(10) The hybrid public-private status of Fannie Mae and Freddie Mac is untenable and must be resolved to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.

(b) Sense of the Congress.—It is the sense of the Congress that efforts to enhance by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit would be incomplete without enactment of meaningful structural reforms of Fannie Mae and Freddie Mac.
SEC. 1492. GAO STUDY REPORT ON GOVERNMENT EffORTS TO COMBAT MORTGAGE FORECLOSURE RESCUE SCAMS AND LOAN MODIFICATION FRAUD.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the current inter-agency efforts of the Secretary of the Treasury, the Secretary of Housing and Urban Development, the Attorney General, and the Federal Trade Commission to crackdown on mortgage foreclosure rescue scams and loan modification fraud in order to advise the Congress to the risks and vulnerabilities of emerging schemes in the loan modification arena.

(b) REPORT.—

(1) IN GENERAL.—The Comptroller General shall submit a report to the Congress on the study conducted under subsection (a) containing such recommendations for legislative and administrative actions as the Comptroller General may determine to be appropriate in addition to the recommendations required under paragraph (2).

(2) SPECIFIC TOPICS.—The report made under paragraph (1) shall include—

(A) an evaluation of the effectiveness of the inter-agency task force current efforts to
combat mortgage foreclosure rescue scams and loan modification fraud scams;

(B) specific recommendations on agency or legislative action that are essential to properly protect homeowners from mortgage foreclosure rescue scams and loan modification fraud scams; and

(C) the adequacy of financial resources that the Federal Government is allocating to—

(i) crackdown on loan modification and foreclosure rescue scams; and

(ii) the education of homeowners about fraudulent scams relating to loan modification and foreclosure rescues.

SEC. 1493. REPORTING OF MORTGAGE DATA BY STATE.

(a) In General.—Section 104(a) of the Helping Families Save Their Homes Act of 2009 (division A of Public Law 111–22) is amended—

(1) in paragraph (2), by striking “resulting” and inserting “in each State that result”; 

(2) in paragraph (3), by inserting “each State for” after “modifications in”; and 

(3) in paragraph (4), by inserting “in each State” after “total number of loans”.

(b) **Conforming Amendment.**—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: “Not later than 60 days after the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.”.

**SEC. 1494. STUDY OF EFFECT OF DRYWALL PRESENCE ON FORECLOSURES.**

(a) **Study.**—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury, shall conduct a study of the effect on residential mortgage loan foreclosures of—

(1) the presence in residential structures subject to such mortgage loans of drywall that was imported from China during the period beginning with 2004 and ending at the end of 2007; and

(2) the availability of property insurance for residential structures in which such drywall is present.

(b) **Report.**—Not later than the expiration of the 120-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a report on the study
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conducted under subsection (a) containing its findings, conclusions, and recommendations.

**TITLE XV—MISCELLANEOUS PROVISIONS**

**SEC. 1501. RESTRICTIONS ON USE OF UNITED STATES FUNDS FOR FOREIGN GOVERNMENTS; PROTECTION OF AMERICAN TAXPAYERS.**

The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end the following:

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"SEC. 68. RESTRICTIONS ON USE OF UNITED STATES FUNDS FOR FOREIGN GOVERNMENTS; PROTECTION OF AMERICAN TAXPAYERS.

"(a) In General.—The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund—

"(1) to evaluate, prior to consideration by the Board of Executive Directors of the Fund, any proposal submitted to the Board for the Fund to make a loan to a country if—

"(A) the amount of the public debt of the country exceeds the gross domestic product of the country as of the most recent year for which such information is available; and
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“(B) the country is not eligible for assistance from the International Development Association.

“(2) Opposition to loans unlikely to be repaid in full.—If any such evaluation indicates that the proposed loan is not likely to be repaid in full, the Secretary of the Treasury shall instruct the United States Executive Director at the Fund to use the voice and vote of the United States to oppose the proposal.

“(b) Reports to Congress.—Within 30 days after the Board of Executive Directors of the Fund approves a proposal described in subsection (a), and annually thereafter by June 30, for the duration of any program approved under such proposals, the Secretary of the Treasury shall report in writing to the Committee on Financial Services of the House of Representatives and the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate assessing the likelihood that loans made pursuant to such proposals will be repaid in full, including—

“(1) the borrowing country’s current debt status, including, to the extent possible, its maturity structure, whether it has fixed or floating rates, whether it is indexed, and by whom it is held;
"(2) the borrowing country’s external and internal vulnerabilities that could potentially affect its ability to repay; and

“(3) the borrowing country’s debt management strategy.”.

SEC. 1502. CONGO CONFLICT MINERALS.

(a) Sense of Congress on Exploitation and Trade of Columbite-tantalite, Cassiterite, Gold, and Wolframite Originating in Democratic Republic of Congo.—It is the sense of Congress that the exploitation and trade of columbite-tantalite, cassiterite, gold, and wolframite in the eastern Democratic Republic of Congo is helping to finance extreme levels of violence in the eastern Democratic Republic of Congo, particularly sexual and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302.

(b) Disclosure to Securities and Exchange Commission Relating to Columbite-tantalite, Cassiterite, Gold, and Wolframite Originating in Democratic Republic of Congo.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by section 763 of this Act, is further amended by adding at the end the following new subsection:
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“(o) Disclosures to Commission Relating to Columbite-tantalite, Cassiterite, Gold, and Wolframite Originating in Democratic Republic of Congo.—

“(1) In general.—Not later than 180 days after the date of the enactment of this subsection, the Commission shall promulgate rules requiring any person described in paragraph (2)—

“(A) to disclose annually to the Commission in a report—

“(i) whether the columbite-tantalite, cassiterite, gold, or wolframite that was necessary as described in paragraph (2)(A)(ii) in the year for which such report is submitted originated or may have originated in the Democratic Republic of Congo or an adjoining country; and

“(ii) a description of the measures taken by the person, which may include an independent audit, to exercise due diligence on the source and chain of custody of such columbite-tantalite, cassiterite, gold, or wolframite, or derivatives of such minerals, in order to ensure that the activities of such person that involve such minerals or
derivatives did not directly or indirectly finance or benefit armed groups in the Democratic Republic of Congo or an adjoining country; and

“(B) make the information disclosed under subparagraph (A) available to the public on the Internet website of the person.

“(2) PERSON DESCRIBED.—

“(A) IN GENERAL.—A person is described in this paragraph if—

“(i) the person is required to file reports to the Commission under subsection (a)(2); and

“(ii) columbite-tantalite, cassiterite, gold, or wolframite is necessary to the functionality or production of a product manufactured by such person.

“(B) DERIVATIVES.—For purposes of this paragraph, if a derivative of a mineral is necessary to the functionality or production of a product manufactured by a person, such mineral shall also be considered necessary to the functionality or production of a product manufactured by the person.
“(3) Revisions and waivers.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President determines that such revision or waiver is in the public interest.

“(4) Termination of disclosure requirements.—

“(A) In general.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall terminate on the date that is 5 years after the date of the enactment of this subsection.

“(B) Extension by Secretary of State.—The date described in subparagraph (A) shall be extended by 1 year for each year in which the Secretary of State certifies that armed parties to the ongoing armed conflict in the Democratic Republic of Congo or adjoining countries continue to be directly involved and benefitting from commercial activity involving columbite-tantalite, cassiterite, gold, or wolframite.

“(5) Adjoining country defined.—In this subsection, the term ‘adjoining country’, with respect to the Democratic Republic of Congo, means
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a country that shares an internationally recognized border with the Democratic Republic of Congo.”

(c) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that includes the following:

(1) An assessment of the effectiveness of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302, in promoting peace and security in the eastern Democratic Republic of Congo.

(2) A description of the problems, if any, encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(o).

(3) A description of the adverse impacts of carrying out the provisions of such section 13(o), if any, on communities in the eastern Democratic Republic of Congo.

(4) Recommendations for legislative or regulatory actions that can be taken—

(A) to improve the effectiveness of the provisions of such section 13(o) to promote peace and security in the eastern Democratic Republic of Congo;
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(B) to resolve the problems described pursuant to paragraph (2), if any; and

(C) to mitigate the adverse impacts described pursuant paragraph (3), if any.