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[Report No. 111-_____]]

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

A BILL

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Severability.
- Sec. 4. Effective date.

TITLE I—FINANCIAL STABILITY

- Sec. 101. Short title.
- Sec. 102. Definitions.

Subtitle A—Financial Stability Oversight Council

- Sec. 111. Financial Stability Oversight Council established.
- Sec. 112. Council authority.
- Sec. 113. Authority to require supervision and regulation of certain nonbank financial companies.
- Sec. 114. Registration of nonbank financial companies supervised by the Board of Governors.
- Sec. 115. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies.
- Sec. 116. Reports.
- Sec. 117. Treatment of certain companies that cease to be bank holding companies.
- Sec. 118. Council funding.
- Sec. 119. Resolution of supervisory jurisdictional disputes among member agencies.
- Sec. 120. Additional standards applicable to activities or practices for financial stability purposes.
- Sec. 121. Mitigation of risks to financial stability.

Subtitle B—Office of Financial Research

- Sec. 151. Definitions.
- Sec. 152. Office of Financial Research established.
- Sec. 153. Purpose and duties of the Office.
- Sec. 154. Organizational structure; responsibilities of primary programmatic units.
- Sec. 155. Funding.
- Sec. 156. Transition oversight.

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.

- Sec. 162. Enforcement.
- Sec. 163. Acquisitions.
- Sec. 164. Prohibition against management interlocks between certain financial companies.
- Sec. 165. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies.
- Sec. 166. Early remediation requirements.
- Sec. 167. Affiliations.
- Sec. 168. Regulations.
- Sec. 169. Avoiding duplication.
- Sec. 170. Safe harbor.

TITLE II—ORDERLY LIQUIDATION AUTHORITY

- Sec. 201. Definitions.
- Sec. 202. Orderly Liquidation Authority Panel.
- Sec. 203. Systemic risk determination.
- Sec. 204. Orderly liquidation.
- Sec. 205. Orderly liquidation of covered brokers and dealers.
- Sec. 206. Mandatory terms and conditions for all orderly liquidation actions.
- Sec. 207. Directors not liable for acquiescing in appointment of receiver.
- Sec. 208. Dismissal and exclusion of other actions.
- Sec. 209. Rulemaking; non-conflicting law.
- Sec. 210. Powers and duties of the corporation.
- Sec. 211. Miscellaneous provisions.

TITLE III—TRANSFER OF POWERS TO THE COMPTROLLER OF THE CURRENCY, THE CORPORATION, AND THE BOARD OF GOVERNORS

- Sec. 300. Short title.
- Sec. 301. Purposes.
- Sec. 302. Definition.

Subtitle A—Transfer of Powers and Duties

- Sec. 311. Transfer date.
- Sec. 312. Powers and duties transferred.
- Sec. 313. Abolishment.
- Sec. 314. Amendments to the Revised Statutes.
- Sec. 315. Federal information policy.
- Sec. 316. Savings provisions.
- Sec. 317. References in Federal law to Federal banking agencies.
- Sec. 318. Funding.
- Sec. 319. Contracting and leasing authority.

Subtitle B—Transitional Provisions

- Sec. 321. Interim use of funds, personnel, and property.
- Sec. 322. Transfer of employees.
- Sec. 323. Property transferred.
- Sec. 324. Funds transferred.
- Sec. 325. Disposition of affairs.
- Sec. 326. Continuation of services.

Subtitle C—Federal Deposit Insurance Corporation

4

- Sec. 331. Deposit insurance reforms.
- Sec. 332. Management of the Federal Deposit Insurance Corporation.

Subtitle D—Termination of Federal Thrift Charter

- Sec. 341. Termination of Federal savings associations.
- Sec. 342. Branching.

TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND
OTHERS

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Elimination of private adviser exemption; limited exemption for foreign private advisers; limited intrastate exemption.
- Sec. 404. Collection of systemic risk data; reports; examinations; disclosures.
- Sec. 405. Disclosure provision eliminated.
- Sec. 406. Clarification of rulemaking authority.
- Sec. 407. Exemptions of venture capital fund advisers.
- Sec. 408. Exemption of and record keeping by private equity fund advisers.
- Sec. 409. Family offices.
- Sec. 410. State and Federal responsibilities; asset threshold for Federal registration of investment advisers.
- Sec. 411. Custody of client assets.
- Sec. 412. Adjusting the accredited investor standard for inflation.
- Sec. 413. GAO study and report on accredited investors.
- Sec. 414. GAO study on self-regulatory organization for private funds.
- Sec. 415. Commission study and report on short selling.
- Sec. 416. Transition period.

TITLE V—INSURANCE

Subtitle A—Office of National Insurance

- Sec. 501. Short title.
- Sec. 502. Establishment of Office of National Insurance.

Subtitle B—State-based Insurance Reform

- Sec. 511. Short title.
- Sec. 512. Effective date.

PART I—NONADMITTED INSURANCE

- Sec. 521. Reporting, payment, and allocation of premium taxes.
- Sec. 522. Regulation of nonadmitted insurance by insured's home State.
- Sec. 523. Participation in national producer database.
- Sec. 524. Uniform standards for surplus lines eligibility.
- Sec. 525. Streamlined application for commercial purchasers.
- Sec. 526. GAO study of nonadmitted insurance market.
- Sec. 527. Definitions.

PART II—REINSURANCE

- Sec. 531. Regulation of credit for reinsurance and reinsurance agreements.
- Sec. 532. Regulation of reinsurer solvency.
- Sec. 533. Definitions.

PART III—RULE OF CONSTRUCTION

- Sec. 541. Rule of construction.
- Sec. 542. Severability.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

- Sec. 601. Short title.
- Sec. 602. Definition.
- 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.
- Sec. 604. Reports and examinations of holding companies; regulation of functionally regulated subsidiaries.
- Sec. 605. Assuring consistent oversight of permissible activities of depository institution subsidiaries of holding companies.
- Sec. 606. Requirements for financial holding companies to remain well capitalized and well managed.
- Sec. 607. Standards for interstate acquisitions.
- Sec. 608. Enhancing existing restrictions on bank transactions with affiliates.
- Sec. 609. Eliminating exceptions for transactions with financial subsidiaries.
- Sec. 610. Lending limits applicable to credit exposure on derivative transactions, repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions.
- Sec. 611. Application of national bank lending limits to insured State banks.
- Sec. 612. Restriction on conversions of troubled banks.
- Sec. 613. De novo branching into States.
- Sec. 614. Lending limits to insiders.
- Sec. 615. Limitations on purchases of assets from insiders.
- Sec. 616. Regulations regarding capital levels of holding companies.
- Sec. 617. Elimination of elective investment bank holding company framework.
- Sec. 618. Securities holding companies.
- Sec. 619. Restrictions on capital market activity by banks and bank holding companies.
- Sec. 620. Concentration limits on large financial firms.

TITLE VII—IMPROVEMENTS TO REGULATION OF OVER-THE-COUNTER DERIVATIVES MARKETS

- Sec. 701. Short title.
- Sec. 702. Findings and purposes.

Subtitle A—Regulation of Swap Markets

- Sec. 711. Definitions.
- Sec. 712. Jurisdiction.
- Sec. 713. Clearing.
- Sec. 714. Public reporting of aggregate swap data.
- Sec. 715. Swap repositories.
- Sec. 716. Reporting and recordkeeping.
- Sec. 717. Registration and regulation of swap dealers and major swap participants.
- Sec. 718. Segregation of assets held as collateral in swap transactions.
- Sec. 719. Conflicts of interest.
- Sec. 720. Alternative swap execution facilities.

6

- Sec. 721. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 722. Designated contract markets.
- Sec. 723. Margin.
- Sec. 724. Position limits.
- Sec. 725. Enhanced authority over registered entities.
- Sec. 726. Foreign boards of trade.
- Sec. 727. Legal certainty for swaps.
- Sec. 728. FDICIA amendments.
- Sec. 729. Primary enforcement authority.
- Sec. 730. Enforcement.
- Sec. 731. Retail commodity transactions.
- Sec. 732. Large swap trader reporting.
- Sec. 733. Other authority.
- Sec. 734. Antitrust.

Subtitle B—Regulation of Security-Based Swap Markets

- Sec. 751. Definitions under the Securities Exchange Act of 1934.
- Sec. 752. Repeal of prohibition on regulation of security-based swaps.
- Sec. 753. Amendments to the Securities Exchange Act of 1934.
- Sec. 754. Segregation of assets held as collateral in security-based swap transactions.
- Sec. 755. Reporting and recordkeeping.
- Sec. 756. State gaming and bucket shop laws.
- Sec. 757. Amendments to the Securities Act of 1933; treatment of security-based swaps.
- Sec. 758. Other authority.
- Sec. 759. Jurisdiction.

Subtitle C—Other Provisions

- Sec. 761. International harmonization.
- Sec. 762. Interagency cooperation.
- Sec. 763. Study and report on implementation.
- Sec. 764. Recommendations for changes to insolvency laws.
- Sec. 765. Effective date.

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT
SUPERVISION

- Sec. 801. Short title.
- Sec. 802. Findings and purposes.
- Sec. 803. Definitions.
- Sec. 804. Designation of systemic importance.
- Sec. 805. Standards for systemically important financial market utilities and payment, clearing, or settlement activities.
- Sec. 806. Operations of designated financial market utilities.
- Sec. 807. Examination of and enforcement actions against designated financial market utilities.
- Sec. 808. Examination of and enforcement actions against financial institutions subject to standards for designated activities.
- Sec. 809. Requests for information, reports, or records.
- Sec. 810. Rulemaking.
- Sec. 811. Other authority.
- Sec. 812. Effective date.

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO
THE REGULATION OF SECURITIES

Subtitle A—Increasing Investor Protection

- Sec. 911. Investor Advisory Committee established.
- Sec. 912. Clarification of authority of the Commission to engage in investor testing.
- Sec. 913. Study and rulemaking regarding obligations of brokers, dealers, and investment advisers.
- Sec. 914. Office of the Investor Advocate.
- Sec. 915. Streamlining of filing procedures for self-regulatory organizations.
- Sec. 916. Study regarding financial literacy among investors.
- Sec. 917. Study regarding mutual fund advertising.
- Sec. 918. Clarification of commission authority to require investor disclosures before purchase of investment products and services.

Subtitle B—Increasing Regulatory Enforcement and Remedies

- Sec. 921. Authority to issue rules related to mandatory predispute arbitration.
- Sec. 922. Whistleblower protection.
- Sec. 923. Conforming amendments for whistleblower protection.
- Sec. 924. Implementation and transition provisions for whistleblower protection.
- Sec. 925. Collateral bars.
- Sec. 926. Authority of State regulators over Regulation D offerings.
- Sec. 927. Equal treatment of self-regulatory organization rules.
- Sec. 928. Clarification that section 205 of the Investment Advisers Act of 1940 does not apply to State-registered advisers.
- Sec. 929. Unlawful margin lending.
- Sec. 929A. Protection for employees of subsidiaries and affiliates of publicly traded companies.

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

- Sec. 931. Findings.
- Sec. 932. Enhanced regulation, accountability, and transparency of nationally recognized statistical rating organizations.
- Sec. 933. State of mind in private actions.
- Sec. 934. Referring tips to law enforcement or regulatory authorities.
- Sec. 935. Consideration of information from sources other than the issuer in rating decisions.
- Sec. 936. Qualification standards for credit rating analysts.
- Sec. 937. Timing of regulations.
- Sec. 938. Universal ratings symbols.
- Sec. 939. Government Accountability Office study and Federal agency review of required uses of nationally recognized statistical rating organization ratings.
- Sec. 939A. Securities and Exchange Commission study on strengthening credit rating agency independence.
- Sec. 939B. Government Accountability Office study on alternative business models.
- Sec. 939C. Government Accountability Office study on the creation of an independent professional analyst organization.

Subtitle D—Improvements to the Asset-Backed Securitization Process

- Sec. 941. Regulation of credit risk retention.

8

- Sec. 942. Disclosures and reporting for asset-backed securities.
- Sec. 943. Representations and warranties in asset-backed offerings.
- Sec. 944. Exempted transactions under the Securities Act of 1933.
- Sec. 945. Due diligence analysis and disclosure in asset-backed securities issues.

Subtitle G—Strengthening Corporate Governance

- Sec. 971. Election of Directors by Majority Vote in Uncontested Elections.
- Sec. 972. Proxy access.
- Sec. 973. Disclosures regarding chairman and CEO structures.

Subtitle H—Municipal Securities

- Sec. 975. Regulation of municipal securities and changes to the board of the MSRB.
- Sec. 976. Government Accountability Office study of increased disclosure to investors.
- Sec. 977. Government Accountability Office study on the municipal securities markets.
- Sec. 978. Study of funding for Government Accounting Standards Board.
- Sec. 979. Commission Office of Municipal Securities.

Subtitle I—Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters

- Sec. 981. Authority to share certain information with foreign authorities.
- Sec. 982. Oversight of brokers and dealers.
- Sec. 983. Portfolio margining.
- Sec. 984. Loan or borrowing of securities.
- Sec. 985. Technical corrections to Federal securities laws.
- Sec. 986. Conforming amendments relating to repeal of the Public Utility Holding Company Act of 1935.
- Sec. 987. Amendment to definition of material loss and nonmaterial losses to the Deposit Insurance Fund for purposes of Inspector General reviews.
- 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.
- Sec. 989. Government Accountability Office study on proprietary trading.
- Sec. 989A. Senior investor protections.
- Sec. 989B. Changes in appointment of certain Inspectors General.

Subtitle J—Self-funding of the Securities and Exchange Commission

- Sec. 991. Securities and Exchange Commission self-funding.

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

- Sec. 1001. Short title.
- Sec. 1002. Definitions.

Subtitle A—Bureau of Consumer Financial Protection

- Sec. 1011. Establishment of the Bureau.
- Sec. 1012. Executive and administrative powers.
- Sec. 1013. Administration.
- Sec. 1014. Consumer Advisory Board.

9

- Sec. 1015. Coordination.
- Sec. 1016. Appearances before and reports to Congress.
- Sec. 1017. Funding; penalties and fines.
- Sec. 1018. Effective date.

Subtitle B—General Powers of the Bureau

- Sec. 1021. Purpose, objectives, and functions.
- Sec. 1022. Rulemaking authority.
- Sec. 1023. Review of Bureau Regulations.
- Sec. 1024. Supervision of nondepository covered persons.
- Sec. 1025. Supervision of very large banks, savings associations, and credit unions.
- Sec. 1026. Other banks, savings associations, and credit unions.
- Sec. 1027. Limitations on authorities of the Bureau; preservation of authorities.
- Sec. 1028. Authority to restrict mandatory pre-dispute arbitration.
- Sec. 1029. Effective date.

Subtitle C—Specific Bureau Authorities

- Sec. 1031. Prohibiting unfair, deceptive, or abusive acts or practices.
- Sec. 1032. Disclosures.
- Sec. 1033. Consumer rights to access information.
- Sec. 1034. Prohibited acts.

Subtitle D—Preservation of State Law

- Sec. 1041. Relation to State law.
- Sec. 1042. Preservation of enforcement powers of States.
- Sec. 1043. Preservation of existing contracts.
- Sec. 1044. State law preemption standards for national banks and subsidiaries clarified.
- Sec. 1045. Clarification of law applicable to nondepository institution subsidiaries.
- Sec. 1046. State law preemption standards for Federal savings associations and subsidiaries clarified.
- Sec. 1047. Visitorial standards for national banks and savings associations.
- Sec. 1048. Effective date.

Subtitle E—Enforcement Powers

- Sec. 1051. Definitions.
- Sec. 1052. Investigations and administrative discovery.
- Sec. 1053. Hearings and adjudication proceedings.
- Sec. 1054. Litigation authority.
- Sec. 1055. Relief available.
- Sec. 1056. Referrals for criminal proceedings.
- Sec. 1057. Employee protection.
- Sec. 1058. Effective date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

- Sec. 1061. Transfer of consumer financial protection functions.
- Sec. 1062. Designated transfer date.
- Sec. 1063. Savings provisions.
- Sec. 1064. Transfer of certain personnel.

10

- Sec. 1065. Incidental transfers.
- Sec. 1066. Interim authority of the Secretary.
- Sec. 1067. Transition oversight.

Subtitle G—Regulatory Improvements

- Sec. 1071. Collection of deposit account data.
- Sec. 1072. Small business data collection.
- Sec. 1073. GAO study on the effectiveness and impact of various appraisal methods.
- Sec. 1074. Prohibition on certain prepayment penalties.

Subtitle H—Conforming Amendments

- Sec. 1081. Amendments to the Inspector General Act.
- Sec. 1082. Amendments to the Privacy Act of 1974.
- Sec. 1083. Amendments to the Alternative Mortgage Transaction Parity Act of 1982.
- Sec. 1084. Amendments to the Electronic Fund Transfer Act.
- Sec. 1085. Amendments to the Equal Credit Opportunity Act.
- Sec. 1086. Amendments to the Expedited Funds Availability Act.
- Sec. 1087. Amendments to the Fair Credit Billing Act.
- Sec. 1088. Amendments to the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act.
- Sec. 1089. Amendments to the Fair Debt Collection Practices Act.
- Sec. 1090. Amendments to the Federal Deposit Insurance Act.
- Sec. 1091. Amendments to the Gramm-Leach-Bliley Act.
- Sec. 1092. Amendments to the Home Mortgage Disclosure Act.
- Sec. 1093. Amendments to the Home Owners Protection Act of 1998.
- Sec. 1094. Amendments to the Home Ownership and Equity Protection Act of 1994.
- Sec. 1095. Amendments to the Omnibus Appropriations Act, 2009.
- Sec. 1096. Amendments to the Real Estate Settlement Procedures Act.
- Sec. 1097. Amendments to the Right to Financial Privacy Act of 1978.
- Sec. 1098. Amendments to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.
- Sec. 1199. Amendments to the Truth in Lending Act.
- Sec. 1100. Amendments to the Truth in Savings Act.
- Sec. 1101. Amendments to the Telemarketing and Consumer Fraud and Abuse Prevention Act.
- Sec. 1102. Amendments to the Paperwork Reduction Act.
- Sec. 1103. Effective date.

TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

- Sec. 1151. Federal Reserve Act amendments on emergency lending authority.
- Sec. 1152. Reviews of special Federal reserve credit facilities.
- Sec. 1103. Public access to information.
- Sec. 1104. Liquidity event determination.
- Sec. 1105. Emergency financial stabilization.
- Sec. 1106. Additional related amendments.
- Sec. 1107. Federal Reserve Act amendments on Federal reserve bank governance.
- Sec. 1108. Amendments to the Federal Reserve Act relating to supervision and regulation policy.

1 **SEC. 2. DEFINITIONS.**

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

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

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

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

17 (4) **BUREAU.**—The term “Bureau” means the
18 Bureau of Consumer Financial Protection estab-
19 lished under title X.

20 (5) **COMMISSION.**—The term “Commission”
21 means the Securities and Exchange Commission, ex-
22 cept in the context of the Commodity Futures Trad-
23 ing Commission.

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

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

4 (8) CREDIT UNION.—The term “credit union”
5 means a Federal credit union, State credit union, or
6 State-chartered credit union, as those terms are de-
7 fined in section 101 of the Federal Credit Union Act
8 (12 U.S.C. 1752).

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

10 (A) “Federal banking agency” means, indi-
11 vidually, the Board of Governors, the Office of
12 the Comptroller of the Currency, and the Cor-
13 poration; and

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

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

22 (11) PRIMARY FINANCIAL REGULATORY AGEN-
23 CY.—The term “primary financial regulatory agen-
24 cy” means—

1 (A) the appropriate Federal banking agen-
2 cy, with respect to institutions described in sec-
3 tion 3(q) of the Federal Deposit Insurance
4 Act;

5 (B) the Securities and Exchange Commis-
6 sion, with respect to—

7 (i) any broker or dealer that is reg-
8 istered with the Commission under the Se-
9 curities Exchange Act of 1934;

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

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

19 (iv) any financial planner that is reg-
20 istered with the Commission under the Fi-
21 nancial Planners Act of 2010; and

22 (v) any clearing agency registered
23 with the Commission under the Securities
24 Exchange Act of 1934;

1 (C) the Commodity Futures Trading Com-
2 mission, with respect to any futures commission
3 merchant, any commodity trading adviser, and
4 any commodity pool operator registered with
5 the Commodity Futures Trading Commission
6 under the Commodity Exchange Act, with re-
7 spect to the commodities activities of such enti-
8 ty and activities that are incidental to such
9 commodities activities; and

10 (D) the State insurance authority of the
11 State in which an insurance company is domi-
12 ciled, with respect to the insurance activities
13 and activities that are incidental to such insur-
14 ance activities of an insurance company that is
15 subject to supervision by the State insurance
16 authority under State insurance law.

17 (12) PRUDENTIAL STANDARDS.—The term
18 “prudential standards” means enhanced supervision
19 and regulatory standards developed by the Board of
20 Governors under section 115 or 165.

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

23 (14) SECURITIES TERMS.—The—

24 (A) terms “broker”, “dealer”, “issuer”,
25 “nationally recognized statistical ratings organi-

1 zation”, “security”, and “securities laws” have
2 the same meanings as in section 3 of the Secu-
3 rities Exchange Act of 1934 (15 U.S.C. 78c);

4 (B) term “investment adviser” has the
5 same meaning as in section 202 of the Invest-
6 ment Advisers Act of 1940 (15 U.S.C. 80b-2);
7 and

8 (C) term “investment company” has the
9 same meaning as in section 3 of the Investment
10 Company Act of 1940 (15 U.S.C. 80a-3).

11 (15) STATE.—The term “State” means any
12 State, commonwealth, territory, or possession of the
13 United States, the District of Columbia, the Com-
14 monwealth of Puerto Rico, the Commonwealth of the
15 Northern Mariana Islands, American Samoa, Guam,
16 or the United States Virgin Islands.

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

19 (17) OTHER INCORPORATED DEFINITIONS.—

20 (A) FEDERAL DEPOSIT INSURANCE ACT.—
21 The terms “affiliate”, “bank”, “bank holding
22 company”, “control” (when used with respect to
23 a depository institution), “deposit”, “depository
24 institution”, “Federal depository institution”,
25 “Federal savings association”, “foreign bank”,

1 “including”, “insured branch”, “insured depository
2 institution”, “national member bank”,
3 “national nonmember bank”, “savings association”,
4 “State bank”, “State depository institution”,
5 “State member bank”, “State non-
6 member bank”, “State savings association”,
7 and “subsidiary” have the same meanings as in
8 section 3 of the Federal Deposit Insurance Act
9 (12 U.S.C. 1813).

10 (B) HOLDING COMPANIES.—The term—

11 (i) “bank holding company” has the
12 same meaning as in section 2 of the Bank
13 Holding Company Act of 1956 (12 U.S.C.
14 1841);

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

19 (iii) “savings and loan holding com-
20 pany” has the same meaning as in section
21 10 of the Home Owners’ Loan Act (12
22 U.S.C. 1467a(a)).

23 **SEC. 3. SEVERABILITY.**

24 If any provision of this Act, an amendment made by
25 this Act, or the application of such provision or amend-

1 ment to any person or circumstance is held to be unconsti-
2 tutional, the remainder of this Act, the amendments made
3 by this Act, and the application of the provisions of such
4 to any person or circumstance shall not be affected there-
5 by.

6 **SEC. 4. EFFECTIVE DATE.**

7 Except as otherwise specifically provided in this Act
8 or the amendments made by this Act, this Act and such
9 amendments shall take effect on the date of enactment
10 of this Act.

11 **TITLE I—FINANCIAL STABILITY**

12 **SEC. 101. SHORT TITLE.**

13 This title may be cited as the “Financial Stability Act
14 of 2010”.

15 **SEC. 102. DEFINITIONS.**

16 (a) IN GENERAL.—For purposes of this title, unless
17 the context otherwise requires, the following definitions
18 shall apply:

19 (1) BANK HOLDING COMPANY.—The term
20 “bank holding company” has the same meaning as
21 in section 2 of the Bank Holding Company Act of
22 1956 (12 U.S.C. 1841). A foreign bank or company
23 that is treated as a bank holding company for pur-
24 poses of the Bank Holding Company Act of 1956,
25 pursuant to section 8(a) of the International Bank-

1 ing Act of 1978 (12 U.S.C. 3106(a)), shall be treat-
2 ed as a bank holding company for purposes of this
3 title.

4 (2) MEMBER AGENCY.—The term “member
5 agency” means an agency represented by a member
6 of the Council.

7 (3) NONBANK FINANCIAL COMPANY DEFINI-
8 TIONS.—

9 (A) FOREIGN NONBANK FINANCIAL COM-
10 PANY.—The term “foreign nonbank financial
11 company” means a company (other than a com-
12 pany that is, or is treated in the United States,
13 as a bank holding company or a subsidiary
14 thereof) that is—

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

17 (ii) substantially engaged in, including
18 through a branch in the United States, ac-
19 tivities in the United States that are finan-
20 cial in nature (as defined in section 4(k) of
21 the Bank Holding Company Act of 1956).

22 (B) U.S. NONBANK FINANCIAL COM-
23 PANY.—The term “U.S. nonbank financial com-
24 pany” means a company (other than a bank

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

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

6 (ii) substantially engaged in activities
7 in the United States that are financial in
8 nature (as defined in section 4(k) of the
9 Bank Holding Company Act of 1956).

10 (C) NONBANK FINANCIAL COMPANY.—The
11 term “nonbank financial company” means a
12 U.S. nonbank financial company and a foreign
13 nonbank financial company.

14 (4) OFFICE OF FINANCIAL RESEARCH.—The
15 term “Office of Financial Research” means the of-
16 fice established under section 152.

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

21 (b) DEFINITIONAL CRITERIA.—The Board of Gov-
22 ernors shall establish, by regulation, the criteria to deter-
23 mine whether a company is substantially engaged in activi-
24 ties in the United States that are financial in nature (as
25 defined in section 4(k) of the Bank Holding Company Act

1 of 1956) for purposes of the definitions of the terms “U.S.
2 nonbank financial company” and “foreign nonbank finan-
3 cial company” under subsection (a)(4).

4 (c) FOREIGN NONBANK FINANCIAL COMPANIES.—
5 For purposes of the authority of the Board of Governors
6 under this title with respect to foreign nonbank financial
7 companies, references in this title to “company” or “sub-
8 sidiary” include only the United States activities and sub-
9 sidiaries of such foreign company.

10 **Subtitle A—Financial Stability** 11 **Oversight Council**

12 **SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ES-** 13 **TABLISHED.**

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

17 (b) MEMBERSHIP.—The Council shall consist of the
18 following:

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

21 (A) the Secretary of the Treasury, who
22 shall serve as chairperson of the Council;

23 (B) the Chairman of the Board of Gov-
24 ernors;

25 (C) the Comptroller of the Currency;

21

1 (D) the Director of the Bureau;

2 (E) the Chairman of the Commission;

3 (F) the Chairperson of the Corporation;

4 (G) the Chairperson of the Commodity Fu-
5 tures Trading Commission;

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

8 (I) an independent member appointed by
9 the President, by and with the advice and con-
10 sent of the Senate, having insurance expertise.

11 (2) NONVOTING MEMBERS.—The Director of
12 the Office of Financial Research—

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

15 (B) may not be excluded from any of the
16 proceedings, meetings, discussions, or delibera-
17 tions of the Council.

18 (c) TERMS; VACANCY.—

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

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

24 (3) ACTING OFFICIALS MAY SERVE.—In the
25 event of a vacancy in the office of the head of a

1 member agency or department, and pending the ap-
2 pointment of a successor, or during the absence or
3 disability of the head of a member agency or depart-
4 ment, the acting head of the member agency or de-
5 partment shall serve as a member of the Council in
6 the place of that agency or department head.

7 (d) TECHNICAL AND PROFESSIONAL ADVISORY COM-
8 MITTEES.—The Council may appoint such special advi-
9 sory, technical, or professional committees as may be use-
10 ful in carrying out the functions of the Council, including
11 an advisory committee consisting of State regulators, and
12 the members of such committees may be members of the
13 Council, or other persons, or both.

14 (e) MEETINGS.—

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

18 (2) RULES FOR CONDUCTING BUSINESS.—The
19 Council shall adopt such rules as may be necessary
20 for the conduct of the business of the Council. Such
21 rules shall be rules of agency organization, proce-
22 dure, or practice for purposes of section 553 of title
23 5, United States Code.

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

4 (g) NONAPPLICABILITY OF FACCA.—The Federal Ad-
5 visory Committee Act (5 U.S.C. App.) shall not apply to
6 the Council, or to any special advisory, technical, or pro-
7 fessional committee appointed by the Council, except that,
8 if an advisory, technical, or professional committee has
9 one or more members who are not employees of or affili-
10 ated with the United States Government, the Council shall
11 publish a list of the names of the members of such com-
12 mittee.

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

19 (i) COMPENSATION OF MEMBERS.—

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

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

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

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

15 **SEC. 112. COUNCIL AUTHORITY.**

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

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

19 (A) to identify risks to the financial sta-
20 bility of the United States that could arise from
21 the material financial distress or failure of
22 large, interconnected bank holding companies or
23 nonbank financial companies;

24 (B) to promote market discipline, by elimi-
25 nating expectations on the part of shareholders,

1 creditors, and counterparties of such companies
2 that the Government will shield them from
3 losses in the event of failure; and

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

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

8 (A) collect information from member agen-
9 cies and other Federal and State financial regu-
10 latory agencies and, if necessary to assess risks
11 to the United States financial system, direct the
12 Office of Financial Research to collect informa-
13 tion from bank holding companies and nonbank
14 financial companies;

15 (B) provide direction to, and request data
16 and analyses from, the Office of Financial Re-
17 search to support the work of the Council;

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

21 (D) facilitate information sharing and co-
22 ordination among the member agencies and
23 other Federal and State agencies regarding do-
24 mestic financial services policy development,

1 rulemaking, examinations, reporting require-
2 ments, and enforcement actions;

3 (E) recommend to the member agencies
4 general supervisory priorities and principles re-
5 flecting the outcome of discussions among the
6 member agencies;

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

10 (G) require supervision by the Board of
11 Governors for nonbank financial companies that
12 may pose risks to the financial stability of the
13 United States in the event of their material fi-
14 nancial distress or failure, pursuant to section
15 113;

16 (H) make recommendations to the Board
17 of Governors concerning the establishment of
18 heightened prudential standards for risk-based
19 capital, leverage, liquidity, contingent capital,
20 resolution plans and credit exposure reports,
21 concentration limits, enhanced public diselo-
22 sures, and overall risk management for
23 nonbank financial companies and large, inter-
24 connected bank holding companies supervised
25 by the Board of Governors;

1 (I) identify systemically important finan-
2 cial market utilities and payment, clearing, and
3 settlement activities (as that term is defined in
4 title VIII), and require such utilities and activi-
5 ties to be subject to standards established by
6 the Board of Governors;

7 (J) make recommendations to primary fi-
8 nancial regulatory agencies to apply new or
9 heightened standards and safeguards for finan-
10 cial activities or practices that could create or
11 increase risks of significant liquidity, credit, or
12 other problems spreading among bank holding
13 companies, nonbank financial companies, and
14 United States financial markets;

15 (K) provide a forum for—

16 (i) discussion and analysis of emerg-
17 ing market developments and financial reg-
18 ulatory issues; and

19 (ii) resolution of jurisdictional dis-
20 putes among the members of the Council;
21 and

22 (L) annually report to and testify before
23 Congress on—

24 (i) the activities of the Council;

1 (ii) significant financial market devel-
2 opments and potential emerging threats to
3 the financial stability of the United States;

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

7 (iv) recommendations—

8 (I) to enhance the integrity, effi-
9 ciency, competitiveness, and stability
10 of United States financial markets;

11 (II) to promote market discipline;
12 and

13 (III) to maintain investor con-
14 fidence.

15 (b) AUTHORITY TO OBTAIN INFORMATION.—

16 (1) IN GENERAL.—The Council may receive,
17 and may request the submission of, any data or in-
18 formation from the Office of Financial Research and
19 member agencies, as necessary—

20 (A) to monitor the financial services mar-
21 ketplace to identify potential risks to the finan-
22 cial stability of the United States; or

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

1 (2) SUBMISSIONS BY THE OFFICE AND MEMBER
2 AGENCIES.—Notwithstanding any other provision of
3 law, the Office of Financial Research and any mem-
4 ber agency are authorized to submit information to
5 the Council.

6 (3) FINANCIAL DATA COLLECTION.—

7 (A) IN GENERAL.—The Council, acting
8 through the Office of Financial Research, may
9 require the submission of periodic and other re-
10 ports from any nonbank financial company or
11 bank holding company for the purpose of as-
12 sessing the extent to which a financial activity
13 or financial market in which the nonbank finan-
14 cial company or bank holding company partici-
15 pates, or the nonbank financial company or
16 bank holding company itself, poses a threat to
17 the financial stability of the United States.

18 (B) MITIGATION OF REPORT BURDEN.—
19 Before requiring the submission of reports from
20 any nonbank financial company or bank holding
21 company that is regulated by a member agency
22 or any primary financial regulatory agency, the
23 Council, acting through the Office of Financial
24 Research, shall coordinate with such agencies
25 and shall, whenever possible, rely on informa-

1 tion available from the Office of Financial Re-
2 search or such agencies.

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

16 (5) CONFIDENTIALITY.—

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

22 (B) RETENTION OF PRIVILEGE.—The sub-
23 mission of any nonpublicly available data or in-
24 formation under this subsection and subtitle B
25 shall not constitute a waiver of, or otherwise af-

1 fect, any privilege arising under Federal or
2 State law (including the rules of any Federal or
3 State court) to which the data or information is
4 otherwise subject.

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

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

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

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

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

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

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

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

10 (D) the extent and type of the off-balance-
11 sheet exposures of the company;

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

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

20 (G) the recommendation, if any, of a mem-
21 ber of the Council;

22 (H) the operation of, or ownership interest
23 in, any clearing, settlement, or payment busi-
24 ness of the company;

25 (I) the extent to which—

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

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

5 (J) any other factors that the Council
6 deems appropriate.

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

9 (1) DETERMINATION.—The Council, on a non-
10 delegable basis and by a vote of not fewer than $\frac{2}{3}$
11 of members then serving, including an affirmative
12 vote by the Chairperson, may determine that a for-
13 eign nonbank financial company that has substantial
14 assets or operations in the United States shall be su-
15 pervised by the Board of Governors and shall be
16 subject to prudential standards in accordance with
17 this title, if the Council determines that material fi-
18 nancial distress at the foreign nonbank financial
19 company would pose a threat to the financial sta-
20 bility of the United States.

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

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

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

3 (C) the amount and types of the liabilities
4 of the company used to fund activities and op-
5 erations in the United States, including the de-
6 gree of reliance on short-term funding;

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

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

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

18 (G) the recommendation, if any, of a mem-
19 ber of the Council;

20 (H) the extent to which—

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

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

1 (I) any other factors that the Council
2 deems appropriate.

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

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

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

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

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

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

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

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

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

3 (e) EMERGENCY EXCEPTION.—

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

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

18 (3) OPPORTUNITY FOR HEARING.—The Council
19 shall allow a nonbank financial company to request,
20 in writing, an opportunity for a written or oral hear-
21 ing before the Council to contest a waiver or modi-
22 fication under this paragraph, not later than 10
23 days after the date of receipt of notice of the waiver
24 or modification by the company. Upon receipt of a
25 timely request, the Council shall fix a time (not later

1 than 15 days after the date of receipt of the request)
2 and place at which the nonbank financial company
3 may appear, personally or through counsel, to sub-
4 mit written materials (or, at the sole discretion of
5 the Council, oral testimony and oral argument).

6 (4) NOTICE OF FINAL DETERMINATION.—Not
7 later than 30 days after the date of any hearing
8 under paragraph (3), the Council shall notify the
9 subject nonbank financial company of the final de-
10 termination of the Council under this paragraph,
11 which shall contain a statement of the basis for the
12 decision of the Council.

13 (f) CONSULTATION.—The Council shall consult with
14 the primary financial regulatory agency, if any, for each
15 nonbank financial company or subsidiary of a nonbank fi-
16 nancial company that is being considered for supervision
17 by the Board of Governors under this section before the
18 Council makes any final determination with respect to
19 such nonbank financial company under subsection (a), (b),
20 or (c).

21 (g) JUDICIAL REVIEW.—If the Council makes a final
22 determination under this section with respect to a
23 nonbank financial company, such nonbank financial com-
24 pany may, not later than 30 days after the date of receipt
25 of the notice of final determination under subsection

1 (d)(3) or (e)(4), bring an action in the United States dis-
2 trict court for the judicial district in which the home office
3 of such nonbank financial company is located, or in the
4 United States District Court for the District of Columbia,
5 for an order requiring that the final determination be re-
6 scinded, and the court shall, upon review, dismiss such ac-
7 tion or direct the final determination to be rescinded. Re-
8 view of such an action shall be limited to whether the final
9 determination made under this section was arbitrary and
10 capricious.

11 **SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPA-**
12 **NIES SUPERVISED BY THE BOARD OF GOV-**
13 **ERNORS.**

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

1 **SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL**
2 **STANDARDS FOR NONBANK FINANCIAL COM-**
3 **PANIES SUPERVISED BY THE BOARD OF GOV-**
4 **ERNORS AND CERTAIN BANK HOLDING COM-**
5 **PANIES.**

6 (a) IN GENERAL.—

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

18 (A) are more stringent than those applica-
19 ble to other nonbank financial companies and
20 bank holding companies that do not present
21 similar risks to the financial stability of the
22 United States; and

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

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

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

7 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

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

10 (A) risk-based capital requirements;

11 (B) leverage limits;

12 (C) liquidity requirements;

13 (D) resolution plan and credit exposure re-
14 port requirements;

15 (E) concentration limits;

16 (F) a contingent capital requirement;

17 (G) enhanced public disclosures; and

18 (H) overall risk management requirements.

19 (2) PRUDENTIAL STANDARDS FOR FOREIGN FI-
20 NANCIAL COMPANIES.—In making recommendations
21 concerning the standards set forth in paragraph (1)
22 that would apply to foreign nonbank financial com-
23 panies supervised by the Board of Governors or for-
24 eign-based bank holding companies, the Council

1 shall give due regard to the principle of national
2 treatment and competitive equity.

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

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

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

12 (ii) whether the company owns an in-
13 sured depository institution;

14 (iii) nonfinancial activities and affili-
15 ations of the company; and

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

18 (B) to the extent possible, ensure that
19 small changes in the factors listed in sub-
20 sections (a) and (b) of section 113 would not
21 result in sharp, discontinuous changes in the
22 prudential standards established under para-
23 graph (1).

24 (c) CONTINGENT CAPITAL.—

1 (1) STUDY REQUIRED.—The Council shall con-
2 duct a study of the feasibility, benefits, costs, and
3 structure of a contingent capital requirement for
4 nonbank financial companies supervised by the
5 Board of Governors and bank holding companies de-
6 scribed in subsection (a), which study shall in-
7 clude—

8 (A) an evaluation of the degree to which
9 such requirement would enhance the safety and
10 soundness of companies subject to the require-
11 ment, promote the financial stability of the
12 United States, and reduce risks to United
13 States taxpayers;

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

17 (C) an analysis of potential prudential
18 standards that should be used to determine
19 whether the contingent capital of a company
20 would be converted to equity in times of finan-
21 cial stress;

22 (D) an evaluation of the costs to compa-
23 nies, the effects on the structure and operation
24 of credit and other financial markets, and other
25 economic effects of requiring contingent capital;

1 (E) an evaluation of the effects of such re-
2 quirement on the international competitiveness
3 of companies subject to the requirement and
4 the prospects for international coordination in
5 establishing such requirement; and

6 (F) recommendations for implementing
7 regulations.

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

12 (3) RECOMMENDATIONS TO CONGRESS.—

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

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

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

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

6 (iii) capital requirements applicable to
7 a nonbank financial company supervised by
8 the Board of Governors or a bank holding
9 company described in subsection (a), and
10 subsidiaries thereof;

11 (iv) results of the study required by
12 paragraph (1); and

13 (v) any other factor that the Council
14 deems appropriate.

15 (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-
16 PORTS.—

17 (1) RESOLUTION PLAN.—The Council may
18 make recommendations to the Board of Governors
19 concerning the requirement that each nonbank fi-
20 nancial company supervised by the Board of Gov-
21 ernors and each bank holding company described in
22 subsection (a) report periodically to the Council, the
23 Board of Governors, and the Corporation, the plan
24 of such company for rapid and orderly resolution in
25 the event of material financial distress or failure.

1 (2) CREDIT EXPOSURE REPORT.—The Council
2 may make recommendations to the Board of Gov-
3 ernors concerning the advisability of requiring each
4 nonbank financial company supervised by the Board
5 of Governors and bank holding company described in
6 subsection (a) to report periodically to the Council,
7 the Board of Governors, and the Corporation on—

8 (A) the nature and extent to which the
9 company has credit exposure to other signifi-
10 cant nonbank financial companies and signifi-
11 cant bank holding companies; and

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

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

23 (f) ENHANCED PUBLIC DISCLOSURES.—The Council
24 may make recommendations to the Board of Governors
25 to require periodic public disclosures by bank holding com-

1 panies described in subsection (a) and by nonbank finan-
2 cial companies supervised by the Board of Governors, in
3 order to support market evaluation of the risk profile, cap-
4 ital adequacy, and risk management capabilities thereof.

5 **SEC. 116. REPORTS.**

6 (a) IN GENERAL.—Subject to subsection (b), the
7 Council, acting through the Office of Financial Research,
8 may require a bank holding company with total consoli-
9 dated assets of \$50,000,000,000 or greater or a nonbank
10 financial company supervised by the Board of Governors,
11 and any subsidiary thereof, to submit certified reports to
12 keep the Council informed as to—

13 (1) the financial condition of the company;

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

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

18 (4) the extent to which the activities and oper-
19 ations of the company and any subsidiary thereof,
20 could, under adverse circumstances, have the poten-
21 tial to disrupt financial markets or affect the overall
22 financial stability of the United States.

23 (b) USE OF EXISTING REPORTS.—

24 (1) IN GENERAL.—For purposes of compliance
25 with subsection (a), the Council, acting through the

1 Office of Financial Research, shall, to the fullest ex-
2 tent possible, use—

3 (A) reports that a bank holding company,
4 nonbank financial company supervised by the
5 Board of Governors, or any functionally regu-
6 lated subsidiary of such company has been re-
7 quired to provide to other Federal or State reg-
8 ulatory agencies;

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

11 (C) externally audited financial statements.

12 (2) AVAILABILITY.—Each bank holding com-
13 pany described in subsection (a) and nonbank finan-
14 cial company supervised by the Board of Governors,
15 and any subsidiary thereof, shall provide to the
16 Council, at the request of the Council, copies of all
17 reports referred to in paragraph (1).

18 (3) CONFIDENTIALITY.—The Council shall
19 maintain the confidentiality of the reports obtained
20 under subsection (a) and paragraph (1)(A) of this
21 subsection.

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

24 (a) APPLICABILITY.—This section shall apply to any
25 entity or a successor entity that—

1 (1) was a bank holding company having total
2 consolidated assets equal to or greater than
3 \$50,000,000,000 as of January 1, 2010; and

4 (2) received financial assistance under or par-
5 ticipated in the Capital Purchase Program estab-
6 lished under the Troubled Asset Relief Program au-
7 thorized by the Emergency Economic Stabilization
8 Act of 2008.

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

15 (c) APPEAL.—

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

1 submit written materials (or, at the sole discretion
2 of the Council, oral testimony and oral argument).

3 (2) DECISION.—

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

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

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

24 (ii) if the Committee on Banking,
25 Housing, and Urban Affairs of the Senate

1 or the Committee on Financial Services of
2 the House of Representatives hold one or
3 more hearings regarding such report, the
4 date of the last such hearing.

5 (C) CONSIDERATIONS.—In making a deci-
6 sion regarding an appeal under paragraph (1),
7 the Council shall consider whether the company
8 meets the standards under section 113(a) or
9 113(b), as applicable, and the definition of the
10 term “nonbank financial company” under sec-
11 tion 102. The decision of the Council shall be
12 final, subject to the review under paragraph
13 (3).

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

18 **SEC. 118. COUNCIL FUNDING.**

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

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

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

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

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

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

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

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

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

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

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

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

6 (c) **FORM AND BINDING EFFECT.**—A Council deci-
7 sion under this section shall—

8 (1) be in writing;

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

11 (3) be binding on all Federal agencies that are
12 parties to the dispute.

13 **SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVI-**
14 **TIES OR PRACTICES FOR FINANCIAL STA-**
15 **BILITY PURPOSES.**

16 (a) **IN GENERAL.**—The Council may issue rec-
17 ommendations to the primary financial regulatory agen-
18 cies to apply new or heightened standards and safeguards,
19 including standards enumerated in section 115, for a fi-
20 nancial activity or practice conducted by bank holding
21 companies or nonbank financial companies under their re-
22 spective jurisdictions, if the Council determines that the
23 conduct of such activity or practice could create or in-
24 crease the risk of significant liquidity, credit, or other
25 problems spreading among bank holding companies and

1 nonbank financial companies or the financial markets of
2 the United States.

3 (b) PROCEDURE FOR RECOMMENDATIONS TO REGU-
4 LATORS.—

5 (1) NOTICE AND OPPORTUNITY FOR COM-
6 MENT.—

7 (A) IN GENERAL.—The Council shall con-
8 sult with the primary financial regulatory agen-
9 cies and provide notice to the public and oppor-
10 tunity for comment for any proposed rec-
11 ommendation that the primary financial regu-
12 latory agencies apply new or heightened stand-
13 ards and safeguards for a financial activity or
14 practice.

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

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

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

1 (c) IMPLEMENTATION OF RECOMMENDED STAND-
2 ARDS.—

3 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
4 AGENCY.—

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

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

22 (2) IMPOSITION OF STANDARDS.—The primary
23 financial regulatory agency shall impose the stand-
24 ards recommended by the Council in accordance
25 with subsection (a), or similar standards that the

1 Council deems acceptable, or shall explain in writing
2 to the Council, not later than 90 days after the date
3 on which the Council issues the recommendation,
4 why the agency has determined not to follow the rec-
5 ommendation of the Council.

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

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

10 (2) the implementation or failure to implement
11 such recommendation on the part of a primary fi-
12 nancial regulatory agency; and

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

20 (e) EFFECT OF RESCISSION OF IDENTIFICATION.—

21 (1) NOTICE.—The Council may recommend to
22 the relevant primary financial regulatory agency that
23 a financial activity or practice no longer requires any
24 standards or safeguards implemented under this sec-
25 tion.

1 (2) DETERMINATION OF PRIMARY FINANCIAL
2 REGULATORY AGENCY TO CONTINUE.—Upon receipt
3 of a recommendation under paragraph (1), a pri-
4 mary financial regulatory agency that has imposed
5 standards under this section shall determine whether
6 standards that it has imposed under this title should
7 remain in effect.

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

9 (a) MITIGATORY ACTIONS.—If the Board of Gov-
10 ernors determines that a bank holding company with total
11 consolidated assets of \$50,000,000,000 or more, or a
12 nonbank financial company supervised by the Board of
13 Governors, poses a grave threat to the financial stability
14 of the United States, the Board of Governors, upon an
15 affirmative vote of not fewer than $\frac{2}{3}$ of the Council mem-
16 bers then serving, shall require the subject company—

17 (1) to terminate one or more activities;

18 (2) to impose conditions on the manner in
19 which the company conducts one or more activities;
20 or

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

1 (b) NOTICE AND HEARING.—

2 (1) IN GENERAL.—The Board of Governors, in
3 consultation with the Council, shall provide to a
4 company described in subsection (a) written notice
5 that such company is being considered for mitiga-
6 tory action pursuant to this section, including an ex-
7 planation of the basis for, and description of, the
8 proposed mitigatory action.

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

22 (3) DECISION.—Not later than 60 days after
23 the date of a hearing under paragraph (2), or not
24 later than 60 days after the provision of a notice
25 under paragraph (1) if no hearing was held, the

1 Board of Governors shall notify the company of the
2 final decision of the Board of Governors, including
3 the results of the vote of the Council, as described
4 in subsection (a).

5 (c) FACTORS FOR CONSIDERATION.—The Board of
6 Governors and the Council shall take into consideration
7 the factors set forth in subsection (a) or (b) of section
8 113, as applicable, in a determination described in sub-
9 section (a) and in a decision described in subsection (b).

10 (d) APPLICATION TO FOREIGN FINANCIAL COMPA-
11 NIES.—The Board of Governors may prescribe regulations
12 regarding the application of this section to foreign
13 nonbank financial companies supervised by the Board of
14 Governors and foreign-based bank holding companies, giv-
15 ing due regard to the principle of national treatment and
16 competitive equity.

17 **Subtitle B—Office of Financial** 18 **Research**

19 **SEC. 151. DEFINITIONS.**

20 For purposes of this subtitle—

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

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

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

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

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

10 (a) ESTABLISHMENT.—There is established within
11 the Department of the Treasury the Office of Financial
12 Research.

13 (b) DIRECTOR.—

14 (1) IN GENERAL.—The Office shall be headed
15 by a Director, who shall be appointed by the Presi-
16 dent, by and with the advice and consent of the Sen-
17 ate.

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

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

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

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

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

13 (d) OFFICE PERSONNEL.—

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

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

24 (3) COMPARABILITY.—Section 1206(a) of the
25 Financial Institutions Reform, Recovery, and En-

1 enforcement Act of 1989 (12 U.S.C. 1833b(a)) is
2 amended—

3 (A) by striking “Finance Board,” and in-
4 sserting “Finance Board, the Office of Financial
5 Research, and the Bureau of Consumer Finan-
6 cial Protection”; and

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

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

18 (f) PROCUREMENT OF TEMPORARY AND INTERMIT-
19 TENT SERVICES.—The Director may procure temporary
20 and intermittent services under section 3109(b) of title 5,
21 United States Code, at rates for individuals which do not
22 exceed the daily equivalent of the annual rate of basic pay
23 prescribed for level V of the Executive Schedule under sec-
24 tion 5316 of such title.

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

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

11 (2) hold, maintain, sell, lease, or otherwise dis-
12 pose of the property (or property interest) acquired
13 under paragraph (1).

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

1 employment prohibition, provided that the shorter period
2 does not compromise business confidential information.

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

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

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

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

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

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

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

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

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

8 (4) developing tools for risk measurement and
9 monitoring;

10 (5) performing other related services; and

11 (6) making the results of the activities of the
12 Office available to financial regulatory agencies.

13 (b) ADMINISTRATIVE AUTHORITY.—The Office
14 may—

15 (1) share data and information, including soft-
16 ware developed by the Office, with the Council and
17 member agencies, which shared data, information,
18 and software—

19 (A) shall be maintained with at least the
20 same level of security as is used by the Office;
21 and

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

24 (2) sponsor and conduct research projects; and

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

4 (c) RULEMAKING AUTHORITY.—

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

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

22 (d) TESTIMONY.—

23 (1) IN GENERAL.—The Director of the Office
24 shall report to and testify before the Committee on
25 Banking, Housing, and Urban Affairs of the Senate

1 and the Committee on Financial Services of the
2 House of Representatives annually on the activities
3 of the Office, including the work of the Data Center
4 and Research and Analysis Center, and the assess-
5 ment of the Office of significant financial market de-
6 velopments and potential emerging threats to the fi-
7 nancial stability of the United States.

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

18 (e) ADDITIONAL REPORTS.—The Director may pro-
19 vide additional reports to Congress concerning the finan-
20 cial stability of the United States. The Director shall no-
21 tify the Council of any such additional reports provided
22 to Congress.

23 (f) SUBPOENA.—

24 (1) IN GENERAL.—The Director may require,
25 by subpoena, the production of the data requested

1 under subsection (a)(1) and section 154(b)(1), but
2 only upon a written finding by the Director that—

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

5 (B) that the Office has coordinated with
6 such agency, as required under section
7 154(b)(1)(B)(ii).

8 (2) **FORMAT.**—Subpoenas under paragraph (1)
9 shall bear the signature of the Director, and shall be
10 served by any person or class of persons designated
11 by the Director for that purpose.

12 (3) **ENFORCEMENT.**—In the case of contumacy
13 or failure to obey a subpoena, the subpoena shall be
14 enforceable by order of any appropriate district
15 court of the United States. Any failure to obey the
16 order of the court may be punished by the court as
17 a contempt of court.

18 **SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBIL-**
19 **ITIES OF PRIMARY PROGRAMMATIC UNITS.**

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

23 (1) the Data Center; and

24 (2) the Research and Analysis Center.

25 (b) **DATA CENTER.**—

1 (1) GENERAL DUTIES.—

2 (A) DATA COLLECTION.—The Data Cen-
3 ter, on behalf of the Council, shall collect, vali-
4 date, and maintain all data necessary to carry
5 out the duties of the Data Center, as described
6 in this subtitle. The data assembled shall be ob-
7 tained from member agencies, commercial data
8 providers, publicly available data sources, and
9 financial entities under subparagraph (B).

10 (B) AUTHORITY.—

11 (i) IN GENERAL.—The Office may, on
12 behalf of the Council, require the submis-
13 sion of periodic and other reports from any
14 financial company for the purpose of as-
15 sessing the extent to which a financial ac-
16 tivity or financial market in which the fi-
17 nancial company participates, or the finan-
18 cial company itself, poses a threat to the
19 financial stability of the United States.

20 (ii) MITIGATION OF REPORT BUR-
21 DEN.—Before requiring the submission of
22 a report from any financial company that
23 is regulated by a member agency or any
24 primary financial regulatory agency, the
25 Office shall coordinate with such agencies

1 and shall, whenever possible, rely on infor-
2 mation available from such agencies.

3 (C) RULEMAKING.—The Office shall pro-
4 mulgate regulations pursuant to sections
5 153(a)(1) and 153(c)(1) regarding the type and
6 scope of the data to be collected by the Data
7 Center under this paragraph.

8 (2) RESPONSIBILITIES.—

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

12 (i) a financial company reference
13 database;

14 (ii) a financial instrument reference
15 database; and

16 (iii) formats and standards for Office
17 data, including standards for reporting fi-
18 nancial transaction and position data to
19 the Office.

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

23 (3) INFORMATION SECURITY.—The Director
24 shall ensure that data collected and maintained by

1 the Data Center are kept secure and protected
2 against unauthorized disclosure.

3 (4) CATALOGUE OF FINANCIAL ENTITIES AND
4 INSTRUMENTS.—The Data Center shall maintain a
5 catalogue of the financial entities and instruments
6 reported to the Office.

7 (5) AVAILABILITY TO THE COUNCIL AND MEM-
8 BER AGENCIES.—The Data Center shall make data
9 collected and maintained by the Data Center avail-
10 able to the Council and member agencies, as nec-
11 essary to support their regulatory responsibilities.

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

22 (c) RESEARCH AND ANALYSIS CENTER.—

23 (1) GENERAL DUTIES.—The Research and
24 Analysis Center, on behalf of the Council, shall de-

1 develop and maintain independent analytical capabili-
2 ties and computing resources—

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

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

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

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

15 (E) to maintain expertise in such areas as
16 may be necessary to support specific requests
17 for advice and assistance from financial regu-
18 lators;

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

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

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

3 (d) REPORTING RESPONSIBILITIES.—

4 (1) REQUIRED REPORTS.—Not later than 2
5 years after the date of enactment of this Act, and
6 not later than 120 days after the end of each fiscal
7 year thereafter, the Office shall prepare and submit
8 a report to Congress.

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

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

14 (B) the status of the efforts of the Office
15 in meeting the mission of the Office; and

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

18 **SEC. 155. FUNDING.**

19 (a) FINANCIAL RESEARCH FUND.—

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

23 (2) FUND RECEIPTS.—All amounts provided to
24 the Office under subsection (c), and all assessments

1 that the Office receives under subsection (d) shall be
2 deposited into the Financial Research Fund.

3 (3) INVESTMENTS AUTHORIZED.—

4 (A) AMOUNTS IN FUND MAY BE IN-
5 VESTED.—The Director may request the Sec-
6 retary to invest the portion of the Financial Re-
7 search Fund that is not, in the judgment of the
8 Director, required to meet the needs of the Of-
9 fice.

10 (B) ELIGIBLE INVESTMENTS.—Invest-
11 ments shall be made by the Secretary in obliga-
12 tions of the United States or obligations that
13 are guaranteed as to principal and interest by
14 the United States, with maturities suitable to
15 the needs of the Financial Research Fund, as
16 determined by the Director.

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

22 (b) USE OF FUNDS.—

23 (1) IN GENERAL.—Funds obtained by, trans-
24 ferred to, or credited to the Financial Research
25 Fund shall be immediately available to the Office,

1 and shall remain available until expended, to pay the
2 expenses of the Office in carrying out the duties and
3 responsibilities of the Office.

4 (2) FEES, ASSESSMENTS, AND OTHER FUNDS
5 NOT GOVERNMENT FUNDS.—Funds obtained by,
6 transferred to, or credited to the Financial Research
7 Fund shall not be construed to be Government funds
8 or appropriated monies.

9 (3) AMOUNTS NOT SUBJECT TO APPORTION-
10 MENT.—Notwithstanding any other provision of law,
11 amounts in the Financial Research Fund shall not
12 be subject to apportionment for purposes of chapter
13 15 of title 31, United States Code, or under any
14 other authority, or for any other purpose.

15 (c) INTERIM FUNDING.—During the 2-year period
16 following the date of enactment of this Act, the Board of
17 Governors shall provide to the Office an amount sufficient
18 to cover the expenses of the Office.

19 (d) PERMANENT SELF-FUNDING.—

20 (1) IN GENERAL.—Beginning 2 years after the
21 date of enactment of this Act, the Secretary shall es-
22 tablish, by regulation, and with the approval of the
23 Council, an assessment schedule, including the as-
24 sessment base and rates, applicable to bank holding
25 companies with total consolidated assets of

1 \$50,000,000,000 or greater and nonbank financial
2 companies supervised by the Board of Governors,
3 that takes into account differences among such com-
4 panies, based on the considerations for establishing
5 the prudential standards under section 115, to col-
6 lect assessments equal to the estimated total ex-
7 penses of the Office.

8 (2) **SHORTFALL.**—To the extent that the as-
9 sessments under paragraph (1) do not fully cover
10 the total expenses of the Office, the Board of Gov-
11 ernors shall provide to the Office an amount suffi-
12 cient to cover the difference.

13 **SEC. 156. TRANSITION OVERSIGHT.**

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

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

21 (b) **REPORTING REQUIREMENT.**—

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

1 representatives that includes the plans described in
2 paragraph (2).

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

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

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

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

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

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

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

21 (i) telework;

22 (ii) flexible work schedules;

23 (iii) phased retirement;

24 (iv) reemployed annuitants;

25 (v) part-time work;

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

8 (C) RECRUITMENT AND RETENTION

9 PLAN.—The Office shall submit a recruitment

10 and retention plan that includes, to the extent

11 practicable, provisions relating to—

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

22 (c) EXPIRATION.—The reporting requirement under

23 subsection (b) shall terminate 5 years after the date of

24 enactment of this Act.

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

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

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

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

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

16 (a) REPORTS.—

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

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

1 subsidiary pose a threat to the financial stability of
2 the United States; and

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

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

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

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

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

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

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

24 (b) EXAMINATIONS.—

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

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

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

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

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

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

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

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

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

11 **SEC. 162. ENFORCEMENT.**

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

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

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

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

14 (2) NOTIFICATION OF COUNCIL.—If the pri-
15 mary financial regulatory agency does not initiate an
16 action or enforcement proceeding before the end of
17 the 30-day period beginning on the date on which
18 such agency receives a recommendation under para-
19 graph (1), the Board of Governors shall report to
20 the Council the failure of the primary financial regu-
21 latory agency to initiate an action or enforcement
22 proceeding.

23 **SEC. 163. ACQUISITIONS.**

24 (a) ACQUISITIONS OF BANKS; TREATMENT AS A
25 BANK HOLDING COMPANY.—For purposes of section 3 of

1 the Bank Holding Company Act of 1956 (12 U.S.C.
2 1842), a nonbank financial company supervised by the
3 Board of Governors shall be deemed to be, and shall be
4 treated as, a bank holding company.

5 (b) ACQUISITION OF NONBANK COMPANIES.—

6 (1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—

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

21 (2) EXEMPTIONS.—The prior notice require-
22 ment in paragraph (1) shall not apply with regard
23 to the acquisition of shares that would qualify for
24 the exemptions in section 4(c) or section 4(k)(4)(E)

1 of the Bank Holding Company Act of 1956 (12
2 U.S.C. 1843(e) and (k)(4)(E)).

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

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

1 **SEC. 164. PROHIBITION AGAINST MANAGEMENT INTER-**
2 **LOCKS BETWEEN CERTAIN FINANCIAL COM-**
3 **PANIES.**

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

18 **SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL**
19 **STANDARDS FOR NONBANK FINANCIAL COM-**
20 **PANIES SUPERVISED BY THE BOARD OF GOV-**
21 **ERNORS AND CERTAIN BANK HOLDING COM-**
22 **PANIES.**

23 (a) IN GENERAL.—

24 (1) PURPOSE.—In order to prevent or mitigate
25 risks to the financial stability of the United States
26 that could arise from the material financial distress

1 or failure of large, interconnected financial institu-
2 tions, the Board of Governors shall, on its own or
3 pursuant to recommendations by the Council under
4 section 115, establish prudential standards and re-
5 porting and disclosure requirements applicable to
6 nonbank financial companies supervised by the
7 Board of Governors and large, interconnected bank
8 holding companies that—

9 (A) are more stringent than the standards
10 and requirements applicable to nonbank finan-
11 cial companies and bank holding companies
12 that do not present similar risks to the financial
13 stability of the United States; and

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

16 (2) LIMITATION ON BANK HOLDING COMPA-
17 NIES.—Any standards established under subsections
18 (b) through (f) shall not apply to any bank holding
19 company with total consolidated assets of less than
20 \$50,000,000,000, but the Board of Governors may
21 establish an asset threshold greater than
22 \$50,000,000,000 for the applicability of any par-
23 ticular standard under subsections (b) through (f).

24 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

25 (1) IN GENERAL.—

1 (A) REQUIRED STANDARDS.—The Board
2 of Governors shall, by regulation or order, es-
3 tablish prudential standards for nonbank finan-
4 cial companies supervised by the Board of Gov-
5 ernors and bank holding companies described in
6 subsection (a), that shall include—

- 7 (i) risk-based capital requirements;
8 (ii) leverage limits;
9 (iii) liquidity requirements;
10 (iv) resolution plan and credit expo-
11 sure report requirements; and
12 (v) concentration limits.

13 (B) ADDITIONAL STANDARDS AUTHOR-
14 IZED.—The Board of Governors may, by regu-
15 lation or order, establish prudential standards
16 for nonbank financial companies supervised by
17 the Board of Governors and bank holding com-
18 panies described in subsection (a), that may in-
19 clude—

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

24 (2) PRUDENTIAL STANDARDS FOR FOREIGN FI-
25 NANCIAL COMPANIES.—In applying the standards

1 set forth in paragraph (1) to foreign nonbank finan-
2 cial companies supervised by the Board of Governors
3 and to foreign-based bank holding companies, the
4 Board of Governors shall give due regard to the
5 principle of national treatment and competitive eq-
6 uity.

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

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

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

16 (ii) whether the company owns an in-
17 sured depository institution;

18 (iii) nonfinancial activities and affili-
19 ations of the company; and

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

22 (B) to the extent possible, ensure that
23 small changes in the factors listed in sub-
24 sections (a) and (b) of section 113 would not
25 result in sharp, discontinuous changes in the

1 prudential standards established under para-
2 graph (1) of this subsection; and

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

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

11 (c) CONTINGENT CAPITAL.—

12 (1) IN GENERAL.—Subsequent to reporting to
13 Congress, as required under section 115(c), the
14 Board of Governors may promulgate regulations
15 that require each nonbank financial company super-
16 vised by the Board of Governors and bank holding
17 companies described in subsection (a) to maintain a
18 minimum amount of long-term hybrid debt that is
19 convertible to equity in times of financial stress.

20 (2) FACTORS TO CONSIDER.—In establishing
21 regulations under this subsection, the Board of Gov-
22 ernors shall consider—

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

1 (B) an appropriate transition period for
2 implementation of a conversion under this sub-
3 section;

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

6 (D) capital requirements applicable to the
7 nonbank financial company supervised by the
8 Board of Governors or a bank holding company
9 described in subsection (a), and subsidiaries
10 thereof; and

11 (E) any other factor that the Board of
12 Governors deems appropriate.

13 (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-
14 PORTS.—

15 (1) RESOLUTION PLAN.—The Board of Gov-
16 ernors shall require each nonbank financial company
17 supervised by the Board of Governors and bank
18 holding companies described in subsection (a) to re-
19 port periodically to the Board of Governors, the
20 Council, and the Corporation the plan of such com-
21 pany for rapid and orderly resolution in the event of
22 material financial distress or failure.

23 (2) CREDIT EXPOSURE REPORT.—The Board of
24 Governors shall require each nonbank financial com-
25 pany supervised by the Board of Governors and

1 bank holding companies described in subsection (a)
2 to report periodically to the Board of Governors, the
3 Council, and the Corporation on—

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

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

12 (3) REVIEW.—The Board of Governors and the
13 Corporation shall review the information provided in
14 accordance with this section by each nonbank finan-
15 cial company supervised by the Board of Governors
16 and bank holding company described in subsection
17 (a).

18 (4) NOTICE OF DEFICIENCIES.—If the Board of
19 Governors and the Corporation jointly determine,
20 based on their review under paragraph (3), that the
21 resolution plan of a nonbank financial company su-
22 pervised by the Board of Governors or a bank hold-
23 ing company described in subsection (a) is not cred-
24 ible or would not facilitate an orderly resolution of
25 the company under title 11, United States Code—

1 (A) the Board of Governors and the Cor-
2 poration shall notify the company, as applica-
3 ble, of the deficiencies in the resolution plan;
4 and

5 (B) the company shall resubmit the resolu-
6 tion plan within a time frame determined by the
7 Board of Governors and the Corporation, with
8 revisions demonstrating that the plan is credible
9 and would result in an orderly resolution under
10 title 11, United States Code, including any pro-
11 posed changes in business operations and cor-
12 porate structure to facilitate implementation of
13 the plan.

14 (5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

15 (A) IN GENERAL.—If a nonbank financial
16 company supervised by the Board of Governors
17 or a bank holding company described in sub-
18 section (a) fails to timely resubmit the resolu-
19 tion plan as required under paragraph (4), with
20 such revisions as are required under subpara-
21 graph (B), the Board of Governors and the
22 Corporation may jointly impose more stringent
23 capital, leverage, or liquidity requirements, or
24 restrictions on the growth, activities, or oper-
25 ations of the company, or any subsidiary there-

1 of, until such time as the company resubmits a
2 plan that remedies the deficiencies.

3 (B) DIVESTITURE.—The Board of Gov-
4 ernors and the Corporation, in consultation
5 with the Council, may direct a nonbank finan-
6 cial company supervised by the Board of Gov-
7 ernors or a bank holding company described in
8 subsection (a), by order, to divest certain assets
9 or operations identified by the Board of Gov-
10 ernors and the Corporation, to facilitate an or-
11 derly resolution of such company under title 11,
12 United States Code, in the event of the failure
13 of such company, in any case in which—

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

18 (ii) the company has failed, within the
19 2-year period beginning on the date of the
20 imposition of such requirements under sub-
21 paragraph (A), to resubmit the resolution
22 plan with such revisions as were required
23 under paragraph (4)(B).

24 (6) RULES.—Not later than 18 months after
25 the date of enactment of this Act, the Board of Gov-

1 errors and the Corporation shall jointly issue final
2 rules implementing this subsection.

3 (e) CONCENTRATION LIMITS.—

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

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

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

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

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

3 (C) all securities borrowing and lending
4 transactions with the company, to the extent
5 that such transactions create credit exposure
6 for the nonbank financial company supervised
7 by the Board of Governors or a bank holding
8 company described in subsection (a);

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

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

14 (F) counterparty credit exposure to the
15 company in connection with a derivative trans-
16 action between the nonbank financial company
17 supervised by the Board of Governors or a bank
18 holding company described in subsection (a)
19 and the company; and

20 (G) any other similar transactions that the
21 Board of Governors, by regulation, determines
22 to be a credit exposure for purposes of this sec-
23 tion.

24 (4) **ATTRIBUTION RULE.**—For purposes of this
25 subsection, any transaction by a nonbank financial

1 company supervised by the Board of Governors or a
2 bank holding company described in subsection (a)
3 with any person is a transaction with a company, to
4 the extent that the proceeds of the transaction are
5 used for the benefit of, or transferred to, that com-
6 pany.

7 (5) RULEMAKING.—The Board of Governors
8 may issue such regulations and orders, including
9 definitions consistent with this section, as may be
10 necessary to administer and carry out this sub-
11 section.

12 (6) EXEMPTIONS.—The Board of Governors
13 may, by regulation or order, exempt transactions, in
14 whole or in part, from the definition of “credit expo-
15 sure” for purposes of this subsection, if the Board
16 of Governors finds that the exemption is in the pub-
17 lic interest and is consistent with the purpose of this
18 subsection.

19 (7) TRANSITION PERIOD.—

20 (A) IN GENERAL.—This subsection and
21 any regulations and orders of the Board of Gov-
22 ernors under this subsection shall not be effec-
23 tive until 3 years after the date of enactment
24 of this Act.

1 (B) EXTENSION AUTHORIZED.—The
2 Board of Governors may extend the period
3 specified in subparagraph (A) for not longer
4 than an additional 2 years.

5 (f) ENHANCED PUBLIC DISCLOSURES.—The Board
6 of Governors may prescribe, by regulation, periodic public
7 disclosures by nonbank financial companies supervised by
8 the Board of Governors and bank holding companies de-
9 scribed in subsection (a) in order to support market eval-
10 uation of the risk profile, capital adequacy, and risk man-
11 agement capabilities thereof.

12 (g) RISK COMMITTEE.—

13 (1) NONBANK FINANCIAL COMPANIES SUPER-
14 VISED BY THE BOARD OF GOVERNORS.—The Board
15 of Governors shall require each nonbank financial
16 company supervised by the Board of Governors that
17 is a publicly traded company to establish a risk com-
18 mittee, as set forth in paragraph (3), not later than
19 1 year after the date of receipt of a notice of final
20 determination under section 113(d)(3) with respect
21 to such nonbank financial company supervised by
22 the Board of Governors.

23 (2) CERTAIN BANK HOLDING COMPANIES.—

24 (A) MANDATORY REGULATIONS.—The
25 Board of Governors shall issue regulations re-

1 quiring each bank holding company that is a
2 publicly traded company and that has total con-
3 solidated assets of not less than
4 \$10,000,000,000 to establish a risk committee,
5 as set forth in paragraph (3).

6 (B) PERMISSIVE REGULATIONS.—The
7 Board of Governors may require each bank
8 holding company that is a publicly traded com-
9 pany and that has total consolidated assets of
10 less than \$10,000,000,000 to establish a risk
11 committee, as set forth in paragraph (3), as de-
12 termined necessary or appropriate by the Board
13 of Governors to promote sound risk manage-
14 ment practices.

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

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

22 (B) include such number of independent
23 directors as the Board of Governors may deter-
24 mine appropriate, based on the nature of oper-
25 ations, size of assets, and other appropriate cri-

1 teria related to the nonbank financial company
2 supervised by the Board of Governors or a bank
3 holding company described in subsection (a), as
4 applicable; and

5 (C) include at least 1 risk management ex-
6 pert having experience in identifying, assessing,
7 and managing risk exposures of large, complex
8 firms.

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

14 (h) STRESS TESTS.—The Board of Governors shall
15 conduct analyses in which nonbank financial companies
16 supervised by the Board of Governors and bank holding
17 companies described in subsection (a) are subject to eval-
18 uation of whether the companies have the capital, on a
19 total consolidated basis, necessary to absorb losses as a
20 result of adverse economic conditions. The Board of Gov-
21 ernors may develop and apply such other analytic tech-
22 niques as are necessary to identify, measure, and monitor
23 risks to the financial stability of the United States.

1 **SEC. 166. EARLY REMEDIATION REQUIREMENTS.**

2 (a) IN GENERAL.—The Board of Governors, in con-
3 sultation with the Council and the Corporation, shall pre-
4 scribe regulations establishing requirements to provide for
5 the early remediation of financial distress of a nonbank
6 financial company supervised by the Board of Governors
7 or a bank holding company described in section 165(a),
8 except that nothing in this subsection authorizes the provi-
9 sion of financial assistance from the Federal Government.

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

20 (c) REMEDIATION REQUIREMENTS.—The regulations
21 prescribed by the Board of Governors under subsection (a)
22 shall—

23 (1) define measures of the financial condition of
24 the company, including regulatory capital, liquidity
25 measures, and other forward-looking indicators; and

1 (2) establish requirements that increase in
2 stringency as the financial condition of the company
3 declines, including—

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

7 (B) requirements at later stages of finan-
8 cial decline, including a capital restoration plan
9 and capital-raising requirements, limits on
10 transactions with affiliates, management
11 changes, and asset sales.

12 **SEC. 167. AFFILIATIONS.**

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

20 (b) **REQUIREMENT.**—

21 (1) **IN GENERAL.**—If a nonbank financial com-
22 pany supervised by the Board of Governors conducts
23 activities other than those that are determined to be
24 financial in nature or incidental thereto under sec-
25 tion 4(k) of the Bank Holding Company Act of

1 1956, the Board of Governors may require such
2 company to establish and conduct such activities
3 that are determined to be financial in nature or inci-
4 dental thereto in an intermediate holding company
5 established pursuant to regulation of the Board of
6 Governors, not later than 90 days after the date on
7 which the nonbank financial company supervised by
8 the Board of Governors was notified of the deter-
9 mination under section 113(a).

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

1 errors, to determine whether engaging in such activ-
2 ity presents undue risk to such company or to the
3 financial stability of the United States.

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

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

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

23 **SEC. 168. REGULATIONS.**

24 Except as otherwise specified in this subtitle, not
25 later than 18 months after the transfer date, the Board

1 of Governors shall issue final regulations to implement
2 this subtitle and the amendments made by this subtitle.

3 **SEC. 169. AVOIDING DUPLICATION.**

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

10 **SEC. 170. SAFE HARBOR.**

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

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

24 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to require supervision by the Board

1 of Governors of a U.S. nonbank financial company or for-
2 eign nonbank financial company, if such company does not
3 meet the criteria for exemption established under sub-
4 section (a).

5 (d) UPDATE.—The Board of Governors shall, in con-
6 sultation with the Council, review the regulations promul-
7 gated under subsection (a), not less frequently than every
8 5 years, and based upon the review, the Board of Gov-
9 ernors may revise such regulations on behalf of, and in
10 consultation with, the Council to update as necessary the
11 criteria set forth in such regulations.

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

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

1 ale for exemption and empirical evidence to support the
2 criteria for exemption.

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

5 **SEC. 201. DEFINITIONS.**

6 In this title, the following definitions shall apply:

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

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

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

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

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

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

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

12 (6) COVERED BROKER OR DEALER.—The term
13 “covered broker or dealer” means a covered financial
14 company that is a broker or dealer that—

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

18 (B) is a member of SIPC.

19 (7) COVERED FINANCIAL COMPANY.—The term
20 “covered financial company”—

21 (A) means a financial company for which
22 a determination has been made under section
23 203(b); and

24 (B) does not include an insured depository
25 institution.

1 (8) COVERED SUBSIDIARY.—The term “covered
2 subsidiary” means a subsidiary of a covered finan-
3 cial company, other than—

4 (A) an insured depository institution;

5 (B) an insurance company; or

6 (C) a covered broker or dealer.

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

14 (10) DETERMINATION.—The term “determina-
15 tion” means a determination by the Secretary with
16 respect to a financial company, as authorized under
17 section 203(b).

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

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

23 (B) is—

24 (i) a bank holding company, as de-
25 fined in section 2(a) of the Bank Holding

1 Company Act of 1956 (12 U.S.C.
2 1841(a)), and including any company de-
3 scribed in paragraph (5);

4 (ii) a nonbank financial company su-
5 pervised by the Board of Governors under
6 this title;

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

15 (iv) any subsidiary of any company
16 described in any of clauses (i) through (iii)
17 (other than a subsidiary that is an insured
18 depository institution or an insurance com-
19 pany).

20 (12) FUND.—The term “Fund” means the Or-
21 derly Liquidation Fund established under section
22 210(n).

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

25 (A) engaged in the business of insurance;

1 (B) subject to regulation by a State insur-
2 ance regulator; and

3 (C) covered by a State law that is designed
4 to specifically deal with the rehabilitation, liq-
5 uidation, or insolvency of an insurance com-
6 pany.

7 (14) PANEL.—The term “Panel” means the Or-
8 derly Liquidation Authority Panel established under
9 section 202.

10 (15) SIPC.—The term “SIPC” means the Se-
11 curities Investor Protection Corporation.

12 **SEC. 202. ORDERLY LIQUIDATION AUTHORITY PANEL.**

13 (a) ORDERLY LIQUIDATION AUTHORITY PANEL.—

14 (1) ESTABLISHMENT.—There is established in
15 the United States Bankruptcy Court for the District
16 of Delaware, an Orderly Liquidation Authority
17 Panel. The Chief Judge of the United States Bank-
18 ruptcy Court for the District of Delaware shall ap-
19 point judges to the Panel, consistent with paragraph
20 (2). In making such appointments, the Chief Judge
21 shall consider the expertise in financial matters of
22 each judge.

23 (2) COMPOSITION.—Each Panel shall be com-
24 posed of 3 judges from the United States Bank-
25 ruptcy Court for the District of Delaware.

1 (3) JURISDICTION.—The Panel shall have origi-
2 nal and exclusive jurisdiction of proceedings to con-
3 sider petitions by the Secretary under subsection
4 (b)(1).

5 (b) COMMENCEMENT OF ORDERLY LIQUIDATION.—

6 (1) PETITION TO A PANEL.—

7 (A) ORDERLY LIQUIDATION AUTHORITY
8 PANEL.—

9 (i) PETITION TO PANEL.—Subsequent
10 to a determination by the Secretary under
11 section 203 that a financial company meets
12 the criteria in section 203(b), the Sec-
13 retary, upon notice to the Corporation and
14 the covered financial company, shall peti-
15 tion the Panel for an order authorizing the
16 Secretary to appoint the Corporation as re-
17 ceiver.

18 (ii) FORM AND CONTENT OF
19 ORDER.—The Secretary shall present all
20 relevant findings and the recommendation
21 made pursuant to section 203(a) to the
22 Panel. The petition shall be filed under
23 seal.

24 (iii) DETERMINATION.—On a strictly
25 confidential basis, and without any prior

1 public disclosure, the Panel, after notice to
2 the covered financial company and a hear-
3 ing in which the covered financial company
4 may oppose the petition, shall determine,
5 within 24 hours of receipt of the petition
6 filed by the Secretary, whether the deter-
7 mination of the Secretary that the covered
8 financial company is in default or in dan-
9 ger of default is supported by substantial
10 evidence.

11 (iv) ISSUANCE OF ORDER.—If the
12 Panel determines that the determination of
13 the Secretary that the covered financial
14 company is in default or in danger of de-
15 fault—

16 (I) the determination of the Sec-
17 retary is supported by substantial evi-
18 dence, the Panel shall issue an order
19 immediately authorizing the Secretary
20 to appoint the Corporation as receiver
21 of the covered financial company; or

22 (II) is not supported by substan-
23 tial evidence, the Panel shall imme-
24 diately provide to the Secretary a
25 written statement of each reason sup-

1 porting its determination, and afford
2 the Secretary an immediate oppor-
3 tunity to amend and refile the petition
4 under clause (i).

5 (B) EFFECT OF DETERMINATION.—The
6 determination of the Panel under subparagraph
7 (A) shall be final, and shall be subject to appeal
8 only in accordance with paragraph (3). The de-
9 cision shall not be subject to any stay or injunc-
10 tion pending appeal. Upon conclusion of its pro-
11 ceedings under subparagraph (A), the Panel
12 shall provide immediately for the record a writ-
13 ten statement of each reason supporting the de-
14 cision of the Panel, and shall provide copies
15 thereof to the Secretary and the covered finan-
16 cial company.

17 (C) CRIMINAL PENALTIES.—A person who
18 recklessly discloses a determination of the Sec-
19 retary under section 203(b) or a petition of the
20 Secretary under subparagraph (A), or the pend-
21 ency of court proceedings as provided for under
22 subparagraph (A), shall be fined not more than
23 \$250,000, or imprisoned for not more than 5
24 years, or both.

25 (2) APPEAL OF DECISIONS OF THE PANEL.—

1 (A) APPEAL TO COURT OF APPEALS.—

2 (i) JURISDICTION.—Subject to clause
3 (ii), the United States Court of Appeals for
4 the Third Circuit shall have jurisdiction of
5 an appeal of a final decision of the Panel
6 filed by the Secretary or a covered finan-
7 cial company, through its board of direc-
8 tors, notwithstanding section
9 210(a)(1)(A)(i), not later than 30 days
10 after the date on which the decision of the
11 Panel is rendered or deemed rendered
12 under this subsection.

13 (ii) JURISDICTION.—The Court of Ap-
14 peals shall have jurisdiction of an appeal
15 by a covered financial company only if the
16 covered financial company, did not acqui-
17 esce or consent to the appointment of a re-
18 ceiver by the Secretary under paragraph
19 (1)(A).

20 (iii) EXPEDITION.—The Court of Ap-
21 peals shall consider any appeal under this
22 subparagraph on an expedited basis.

23 (iv) SCOPE OF REVIEW.—For an ap-
24 peal taken under this subparagraph, review
25 shall be limited to whether the determina-

1 tion of the Secretary that a covered finan-
2 cial company is in default or in danger of
3 default is supported by substantial evi-
4 dence.

5 (B) APPEAL TO THE SUPREME COURT.—

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

18 (ii) WRITTEN STATEMENT.—In the
19 event of a petition under clause (i), the
20 Court of Appeals shall immediately provide
21 for the record a written statement of each
22 reason for its decision.

23 (iii) EXPEDITION.—The Supreme
24 Court shall consider any petition under
25 this subparagraph on an expedited basis.

1 (iv) SCOPE OF REVIEW.—Review by
2 the Supreme Court under this subpara-
3 graph, shall be limited to whether the de-
4 termination of the Secretary that the cov-
5 ered financial company is in default or in
6 danger of default is supported by substan-
7 tial evidence.

8 (c) ESTABLISHMENT AND TRANSMITTAL OF RULES
9 AND PROCEDURES.—

10 (1) IN GENERAL.—Not later than 6 months
11 after the date of enactment of this Act, the Panel
12 shall establish such rules and procedures as may be
13 necessary to ensure the orderly conduct of pro-
14 ceedings, including rules and procedures to ensure
15 that the 24-hour deadline is met and that the Sec-
16 retary shall have an ongoing opportunity to amend
17 and refile petitions under subsection (b)(1). The
18 rules and procedures shall include provisions for the
19 appointment of judges to the Panel, such that the
20 composition of the Panel is established in advance of
21 the filing of a petition under subsection (b).

22 (2) PUBLICATION OF RULES.—The rules and
23 procedures established under paragraph (1), and any
24 modifications of such rules and procedures, shall be
25 recorded and shall be transmitted to—

1 (A) each judge of the Panel;

2 (B) the Chief Judge of the United States
3 Bankruptcy Court for the District of Delaware;

4 (C) the Committee on the Judiciary of the
5 Senate;

6 (D) the Committee on Banking, Housing,
7 and Urban Affairs of the Senate;

8 (E) the Committee on the Judiciary of the
9 House of Representatives; and

10 (F) the Committee on Financial Services
11 of the House of Representatives.

12 (d) PROVISIONS APPLICABLE TO FINANCIAL COMPA-
13 NIES.—

14 (1) BANKRUPTCY CODE.—Except as provided in
15 this subsection, the provisions of the Bankruptcy
16 Code and rules issued thereunder, and not the provi-
17 sions of this title, shall apply to financial companies
18 that are not covered financial companies for which
19 the Corporation has been appointed as receiver.

20 (2) THIS TITLE.—The provisions of this title
21 shall exclusively apply to and govern all matters re-
22 lating to covered financial companies for which the
23 Corporation is appointed as receiver, and no provi-
24 sions of the Bankruptcy Code or the rules issued
25 thereunder shall apply in such cases.

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

3 (1) STUDY.—

4 (A) IN GENERAL.—The Administrative Of-
5 fice of the United States Courts and the Comp-
6 troller General of the United States shall each
7 monitor the activities of the Panel, and each
8 such Office shall conduct separate studies re-
9 garding the bankruptcy and orderly liquidation
10 process for financial companies under the
11 Bankruptcy Code.

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

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

21 (ii) ways to maximize the efficiency
22 and effectiveness of the Panel; and

23 (iii) ways to make the orderly liquida-
24 tion process under the Bankruptcy Code
25 for financial companies more effective.

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

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

16 (1) STUDY.—

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

22 (B) ISSUES TO BE STUDIED.—In con-
23 ducting the study under subparagraph (A), the
24 Comptroller General of the United States shall

1 evaluate, with respect to the bankruptcy process
2 for financial companies—

3 (i) the extent to which international
4 coordination currently exists;

5 (ii) current mechanisms and struc-
6 tures for facilitating international coopera-
7 tion;

8 (iii) barriers to effective international
9 coordination; and

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

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

21 **SEC. 203. SYSTEMIC RISK DETERMINATION.**

22 (a) WRITTEN RECOMMENDATION AND DETERMINA-
23 TION.—

24 (1) VOTE REQUIRED.—

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

13 (B) CASES INVOLVING COVERED BROKERS
14 OR DEALERS.—In the case of a covered a
15 broker or dealer, or in which the largest United
16 States subsidiary (as measured by total assets
17 as of the end of the previous calendar quarter)
18 of a financial company is a covered broker or
19 dealer, the Commission and the Board of Gov-
20 ernors, at the request of the Secretary, or on
21 their own initiative, shall consider whether to
22 make the written recommendation described in
23 paragraph (2) with respect to the financial com-
24 pany. Subject to the requirements in paragraph
25 (2), such recommendation shall be made upon

1 a vote of not fewer than $\frac{2}{3}$ of the members of
2 the Board of Governors then serving and the
3 members of the Commission then serving, and
4 in consultation with the Corporation.

5 (2) RECOMMENDATION REQUIRED.—Any writ-
6 ten recommendation pursuant to paragraph (1) shall
7 contain—

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

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

13 (C) a recommendation regarding the na-
14 ture and the extent of actions to be taken under
15 this title regarding the financial company;

16 (D) an evaluation of the likelihood of a pri-
17 vate sector alternative to prevent the default of
18 the financial company;

19 (E) an evaluation of why a case under the
20 Bankruptcy Code is not appropriate for the fi-
21 nancial company; and

22 (F) an evaluation of the effects on credi-
23 tors, counterparties, and shareholders of the fi-
24 nancial company and other market participants.

1 (b) DETERMINATION BY THE SECRETARY.—Notwith-
2 standing any other provision of Federal or State law, the
3 Secretary shall take action in accordance with section
4 202(b)(1)(A), if, upon the written recommendation under
5 in subsection (a), the Secretary (in consultation with the
6 President) determines that—

7 (1) the financial company is in default or in
8 danger of default;

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

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

15 (4) any effect on the claims or interests of
16 creditors, counterparties and shareholders of the fi-
17 nancial company and other market participants as a
18 result of actions to be taken under this title is ap-
19 propriate, given the impact that any action or assist-
20 ance taken under this title would have on financial
21 stability in the United States;

22 (5) any action under section 204 would avoid or
23 mitigate such adverse effects, taking into consider-
24 ation the effectiveness of the action in mitigating po-
25 tential adverse effects on the financial system, the

1 cost to the general fund of the Treasury, and the po-
2 tential to increase excessive risk taking on the part
3 of creditors, counterparties, and shareholders in the
4 financial company; and

5 (6) a Federal regulatory agency has ordered the
6 financial company to convert all of its convertible
7 debt instruments that are subject to the regulator
8 order.

9 (c) DOCUMENTATION AND REVIEW.—

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

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

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

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

17 (2) REPORT TO CONGRESS.—Not later than 48
18 hours after the date of appointment of the Corpora-
19 tion as receiver for a covered financial company, the
20 Secretary shall provide written notice of the deter-
21 mination of the Secretary under subsection (a) to
22 the Majority Leader and the Minority Leader of the
23 Senate and the Speaker and the Minority Leader of
24 the House of Representatives, the Committee on
25 Banking, Housing, and Urban Affairs of the Senate,

1 and the Committee on Financial Services of the
2 House of Representatives, which shall consist of a
3 summary of the basis for the determination, includ-
4 ing, to the extent available at the time of the deter-
5 mination—

6 (A) the size and financial condition of the
7 covered financial company;

8 (B) the sources of capital and credit sup-
9 port that were available to the covered financial
10 company;

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

14 (D) identification of the banks and finan-
15 cial companies which may be able to provide the
16 services offered by the covered financial com-
17 pany;

18 (E) any potential international ramifica-
19 tions of resolution of the covered financial com-
20 pany under other applicable insolvency law;

21 (F) an estimate of the potential effect of
22 the resolution of the covered financial company
23 under other applicable insolvency law on the fi-
24 nancial stability of the United States;

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

3 (H) the potential effect of the appointment
4 of a receiver by the Secretary on the financial
5 system, financial markets, and banks and other
6 financial companies; and

7 (I) whether resolution of the covered finan-
8 cial company under other applicable insolvency
9 law would cause banks or other financial com-
10 panies to experience severe liquidity distress.

11 (3) REPORTS TO CONGRESS AND THE PUB-
12 LIC.—

13 (A) IN GENERAL.—Not later than 60 days
14 after the date of appointment of the Corpora-
15 tion as receiver for a covered financial company,
16 the Corporation, as receiver, shall—

17 (i) prepare reports setting forth infor-
18 mation on the assets and liabilities of the
19 covered financial company as of the date of
20 the appointment;

21 (ii) file such reports with the Com-
22 mittee on Banking, Housing, and Urban
23 Affairs of the Senate, and the Committee
24 on Financial Services of the House of Rep-
25 resentatives; and

1 (iii) publish such reports on an online
2 website maintained by the Corporation.

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

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

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

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

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

24 (D) the financial company is, or is likely to
25 be, unable to pay its obligations (other than

1 those subject to a bona fide dispute) in the nor-
2 mal course of business; or

3 (E) the financial company, by resolution of
4 its board of directors (or the body performing
5 similar functions) or its shareholders or mem-
6 bers, consents to the appointment.

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

12 (A) the basis for the determination;

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

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

19 (D) the likely disruptive effect of the deter-
20 mination and such action on the reasonable ex-
21 pectations of creditors, counterparties and
22 shareholders, taking into account the impact
23 any action under this title would have on finan-
24 cial stability in the United States, including

1 whether the rights of such parties will be dis-
2 rupted.

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

11 (e) TREATMENT OF INSURANCE COMPANIES AND IN-
12 SURANCE COMPANY SUBSIDIARIES.—

13 (1) IN GENERAL.—Notwithstanding subsection
14 (b), if an insurance company is a covered financial
15 company or a subsidiary or affiliate of a covered fi-
16 nancial company, the liquidation or rehabilitation of
17 such insurance company, and any subsidiary or affil-
18 iate of such company that is not excepted under
19 paragraph (2), shall be conducted as provided under
20 such State law.

21 (2) EXCEPTION FOR SUBSIDIARIES AND AFFILI-
22 ATES.—The requirement of paragraph (1) shall not
23 apply with respect to any subsidiary or affiliate of
24 an insurance company that is not itself an insurance
25 company.

1 (3) BACKUP AUTHORITY.—Notwithstanding
2 paragraph (1), with respect to a covered financial
3 company described in paragraph (1), if, after the
4 end of the 60-day period beginning on the date on
5 which a determination is made under section 202(b)
6 with respect to such company, the appropriate Fed-
7 eral regulatory agency has not filed the appropriate
8 judicial action in the appropriate State court to
9 place such company into orderly liquidation under
10 the laws and requirements of the State, the Corpora-
11 tion shall have the authority to stand in the place
12 of the appropriate regulatory agency and file the ap-
13 propriate judicial action in the appropriate State
14 court to place such company into orderly liquidation
15 under the laws and requirements of the State.

16 **SEC. 204. ORDERLY LIQUIDATION.**

17 (a) PURPOSE OF ORDERLY LIQUIDATION AUTHOR-
18 ITY.—It is the purpose of this title to provide the nec-
19 essary authority to liquidate failing financial companies
20 that pose a significant risk to the financial stability of the
21 United States in a manner that mitigates such risk and
22 minimizes moral hazard. The authority provided in this
23 title shall be exercised in the manner that best fulfills such
24 purpose, with the strong presumption that—

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

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

5 (3) the Corporation and other appropriate
6 agencies will take all steps necessary and appro-
7 priate to assure that all parties, including manage-
8 ment and third parties, having responsibility for the
9 condition of the financial company bear losses con-
10 sistent with their responsibility, including actions for
11 damages, restitution, and recoupment of compensa-
12 tion and other gains not compatible with such re-
13 sponsibility.

14 (b) CORPORATION AS RECEIVER.—Upon the appoint-
15 ment of the Corporation under section 202, the Corpora-
16 tion shall act as the receiver for the covered financial com-
17 pany, with all of the rights and obligations set forth in
18 this title.

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

20 (1) shall consult with the primary financial reg-
21 ulatory agency or agencies of the covered financial
22 company and its covered subsidiaries for purposes of
23 ensuring an orderly liquidation of the covered finan-
24 cial company;

1 (2) may consult with, or under subsection
2 (a)(1)(B)(v) or (a)(1)(K) of section 210, acquire the
3 services of, any outside experts, as appropriate to in-
4 form and aid the Corporation in the orderly liquida-
5 tion process;

6 (3) shall consult with the primary financial reg-
7 ulatory agency or agencies of any subsidiaries of the
8 covered financial company that are not covered sub-
9 sidiaries, and coordinate with such regulators re-
10 garding the treatment of such solvent subsidiaries
11 and the separate resolution of any such insolvent
12 subsidiaries under other governmental authority, as
13 appropriate; and

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

1 (d) FUNDING FOR ORDERLY LIQUIDATION.—Upon
2 its appointment as receiver for a covered financial com-
3 pany, and thereafter as the Corporation may, in its discre-
4 tion, determine to be necessary or appropriate, the Cor-
5 poration may make available to the receivership, subject
6 to the conditions set forth in section 206 and subject to
7 the plan described in section 210(n)(13), funds for the or-
8 derly liquidation of the covered financial company.

9 **SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS**
10 **AND DEALERS.**

11 (a) APPOINTMENT OF SIPC AS TRUSTEE FOR PRO-
12 TECTION OF CUSTOMER SECURITIES AND PROPERTY.—
13 Upon the appointment of the Corporation as receiver for
14 any covered broker or dealer, the Corporation shall ap-
15 point, without any need for court approval, the Securities
16 Investor Protection Corporation to act as trustee for liq-
17 uidation under the Securities Investor Protection Act of
18 1970 (15 U.S.C. 78aaa et seq.) of the covered broker or
19 dealer.

20 (b) POWERS AND DUTIES OF SIPC.—

21 (1) IN GENERAL.—Except as provided in this
22 section, upon its appointment as trustee for the liq-
23 uidation of a covered broker or dealer, SIPC shall
24 have all of the powers and duties provided by the Se-
25 curities Investor Protection Act of 1970 (15 U.S.C.

1 78aaa et. seq.), including, without limitation, all
2 rights of action against third parties, but shall have
3 no powers or duties with respect to assets and liabil-
4 ities transferred by the Corporation from the covered
5 broker or dealer to any bridge financial company es-
6 tablished in accordance with this title.

7 (2) LIMITATION OF POWERS.—The exercise by
8 SIPC of powers and functions as trustee under sub-
9 section (a) shall not impair or impede the exercise
10 of the powers and duties of the Corporation with re-
11 gard to—

12 (A) any action, except as otherwise pro-
13 vided in this title—

14 (i) to make funds available under sec-
15 tion 204(d);

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

18 (iii) to transfer assets and liabilities;

19 (iv) to enforce or repudiate contracts;

20 or

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

24 (B) determining claims under subsection

25 (d).

1 (3) QUALIFIED FINANCIAL CONTRACTS.—Not-
2 withstanding any provision of the Securities Investor
3 Protection Act of 1970 to the contrary, (including
4 15 U.S.C. 78eee(b)(2)(C)), the rights and obliga-
5 tions of any party to a qualified financial contract
6 (as that term is defined in section 210(c)(8)) to
7 which a covered broker or dealer described in sub-
8 section (a) is a party shall be governed exclusively
9 by section 210, including the limitations and restric-
10 tions contained in section 210(c)(10)(B).

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

20 (d) ACTIONS BY CORPORATION AS RECEIVER.—

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

1 (A) adversely affect the rights of a cus-
2 tomer to customer property or customer name
3 securities;

4 (B) diminish the amount or timely pay-
5 ment of net equity claims of customers; or

6 (C) otherwise impair the recoveries pro-
7 vided to a customer under the Securities Inves-
8 tor Protection Act of 1970 (15 U.S.C. 78aaa et
9 seq.).

10 (2) NET PROCEEDS.—The net proceeds from
11 any transfer, sale, or disposition of assets by the
12 Corporation as receiver of the covered broker or
13 dealer shall be for the benefit of the estate of the
14 covered broker or dealer, as provided in this title.

15 (e) CLAIMS AGAINST THE CORPORATION AS RE-
16 CEIVER.—Any claim against the Corporation as receiver
17 for a covered broker or dealer for assets transferred to
18 a bridge financial company established with respect to
19 such covered broker or dealer—

20 (1) shall be determined in accordance with sec-
21 tion 210(a)(2); and

22 (2) may be reviewed by the appropriate district
23 or territorial court of the United States in accord-
24 ance with section 210(a)(5).

25 (f) SATISFACTION OF CUSTOMER CLAIMS.—

1 (1) OBLIGATIONS TO CUSTOMERS.—Notwith-
2 standing any other provision of this title, all obliga-
3 tions of a covered broker or dealer or of any bridge
4 financial company established with respect to such
5 covered broker or dealer to a customer relating to,
6 or net equity claims based upon, customer property
7 shall be promptly discharged by the delivery of secu-
8 rities or the making of payments to or for the ac-
9 count of such customer, in a manner and in an
10 amount at least as beneficial to the customer as
11 would have been the case had the covered broker or
12 dealer been subject to a proceeding under the Secu-
13 rities Investor Protection Act of 1970 (15 U.S.C.
14 78aaa et seq.) without the appointment of the Cor-
15 poration as receiver, and with a filing date as of the
16 date on which the Corporation is appointed as re-
17 ceiver.

18 (2) SATISFACTION OF CLAIMS BY SIPC.—SIPC,
19 as trustee for a covered broker or dealer, shall sat-
20 isfy customer claims in the manner and amount pro-
21 vided under the Securities Investor Protection Act of
22 1970 (15 U.S.C. 78aaa et seq.), as if the appoint-
23 ment of the Corporation as receiver had not oc-
24 curred, and with a filing date as of the date on
25 which the Corporation is appointed as receiver. The

1 Corporation shall satisfy customer claims, to the ex-
2 tent that a customer would have received more secu-
3 rities or cash with respect to the allocation of cus-
4 tomer property had the covered financial company
5 been subject to a proceeding under the Securities In-
6 vestor Protection Act (15 U.S.C. 78aaa et seq.)
7 without the appointment of the Corporation as re-
8 ceiver, and with a filing date as of the date on which
9 the Corporation is appointed as receiver.

10 (g) PRIORITIES.—

11 (1) CUSTOMER PROPERTY.—As trustee for a
12 covered broker or dealer, SIPC shall allocate cus-
13 tomer property and deliver customer name securities
14 in accordance with section 8(c) of the Securities In-
15 vestor Protection Act of 1970 (15 U.S.C. 78fff-
16 2(c)).

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

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

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

3 In taking action under this title, the Corporation
4 shall—

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

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

12 (3) ensure that unsecured creditors bear losses
13 in accordance with the priority of claim provisions in
14 section 210; and

15 (4) ensure that management responsible for the
16 failed condition of the covered financial company is
17 removed (if such management has not already been
18 removed at the time at which the Corporation is ap-
19 pointed receiver).

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

22 The members of the board of directors (or body per-
23 forming similar functions) of a covered financial company
24 shall not be liable to the shareholders or creditors thereof
25 for acquiescing in or consenting in good faith to the ap-

1 pointment of the Corporation as receiver for the covered
2 financial company under section 203.

3 **SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.**

4 (a) IN GENERAL.—Effective as of the date of the ap-
5 pointment of the Corporation as receiver for the covered
6 financial company under section 202 or the appointment
7 of SIPC as trustee for a covered broker or dealer under
8 section 205, as applicable, any case or proceeding com-
9 menced with respect to the covered financial company
10 under the Bankruptcy Code or the Securities Investor
11 Protection Act of 1970 shall be dismissed, upon notice to
12 the Bankruptcy Court (with respect to a case commenced
13 under the Bankruptcy Code), and upon notice to SIPC
14 (with respect to a covered broker or dealer) and no such
15 case or proceeding may be commenced with respect to a
16 covered financial company at any time while the orderly
17 liquidation is pending.

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

1 insolvency law applicable to the covered financial company,
2 re-vest in the covered financial company.

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

8 **SEC. 209. RULEMAKING; NON-CONFLICTING LAW.**

9 The Corporation shall, in consultation with the Coun-
10 cil, prescribe such rules or regulations as the Corporation
11 considers necessary or appropriate to implement this title,
12 including rules and regulations with respect to the rights,
13 interests, and priorities of creditors, counterparties, secu-
14 rity entitlement holders, or other persons in respect of any
15 covered financial company or any assets or other property
16 of or held by such covered financial company. To the ex-
17 tent possible, the Corporation shall seek to harmonize ap-
18 plicable rules and regulations promulgated under this sec-
19 tion with the insolvency laws that would otherwise apply
20 to a covered financial company.

21 **SEC. 210. POWERS AND DUTIES OF THE CORPORATION.**

22 (a) POWERS AND AUTHORITIES.—

23 (1) GENERAL POWERS.—

24 (A) SUCCESSOR TO COVERED FINANCIAL
25 COMPANY.—The Corporation shall, upon ap-

1 pointment as receiver for a covered financial
2 company under this title, succeed to—

3 (i) all rights, titles, powers, and privi-
4 leges of the covered financial company and
5 its assets, and of any stockholder, member,
6 officer, or director of such company; and

7 (ii) title to the books, records, and as-
8 sets of any previous receiver or other legal
9 custodian of such covered financial com-
10 pany.

11 (B) OPERATION OF THE COVERED FINAN-
12 CIAL COMPANY DURING THE PERIOD OF OR-
13 DERLY LIQUIDATION.—The Corporation, as re-
14 ceiver for a covered financial company, may—

15 (i) take over the assets of and operate
16 the covered financial company with all of
17 the powers of the members or share-
18 holders, the directors, and the officers of
19 the covered financial company, and con-
20 duct all business of the covered financial
21 company;

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

1 (iii) perform all functions of the cov-
2 ered financial company, in the name of the
3 covered financial company;

4 (iv) manage the assets and property
5 of the covered financial company, con-
6 sistent with maximization of the value of
7 the assets in the context of the orderly liq-
8 uidation; and

9 (v) provide by contract for assistance
10 in fulfilling any function, activity, action,
11 or duty of the Corporation as receiver.

12 (C) FUNCTIONS OF COVERED FINANCIAL
13 COMPANY OFFICERS, DIRECTORS, AND SHARE-
14 HOLDERS.—

15 (i) IN GENERAL.—The Corporation
16 may provide for the exercise of any func-
17 tion by any member or stockholder, direc-
18 tor, or officer of any covered financial com-
19 pany for which the Corporation has been
20 appointed as receiver under this title.

21 (ii) PRESUMPTION.—There shall be a
22 strong presumption that the Corporation,
23 as receiver for a covered financial com-
24 pany, will remove management responsible

1 for the failed condition of the covered fi-
2 nancial company.

3 (D) ADDITIONAL POWERS AS RECEIVER.—

4 The Corporation may, as receiver for a covered
5 financial company, and subject to all legally en-
6 forceable and perfected security interests and
7 all legally enforceable security entitlements in
8 respect of assets held by the covered financial
9 company, liquidate, and wind-up the affairs of
10 a covered financial company, including taking
11 steps to realize upon the assets of the covered
12 financial company, in such manner as the Cor-
13 poration deems appropriate, including through
14 the sale of assets, the transfer of assets to a
15 bridge financial company established under sub-
16 section (h), or the exercise of any other rights
17 or privileges granted to the receiver under this
18 section.

19 (E) ADDITIONAL POWERS WITH RESPECT
20 TO FAILING SUBSIDIARIES OF A COVERED FI-
21 NANCIAL COMPANY.—

22 (i) IN GENERAL.—In any case in
23 which a receiver is appointed for a covered
24 financial company under section 202, the
25 Corporation may appoint itself as receiver

1 of any subsidiary (other than an insured
2 depository institution, any covered broker
3 or dealer or an insurance company) of the
4 covered financial company that is orga-
5 nized under Federal law or the laws of any
6 State, if the Corporation and the Secretary
7 jointly determine that—

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

10 (II) such action would avoid or
11 mitigate serious adverse effects on the
12 financial stability or economic condi-
13 tions of the United States; and

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

17 (ii) TREATMENT AS COVERED FINAN-
18 CIAL COMPANY.—If the Corporation is ap-
19 pointed as receiver of a subsidiary of a cov-
20 ered financial company under clause (i),
21 the subsidiary shall thereafter be consid-
22 ered a covered financial company under
23 this title, and the Corporation shall there-
24 after have all the powers and rights with
25 respect to that subsidiary as it has with re-

1 transaction described in clause (i)(I) that
2 requires approval by a Federal agency—

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

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

18 (III) if notification under section
19 7A of the Clayton Act is required with
20 respect to such transaction, then the
21 required waiting period shall end on
22 the 15th day after the date on which
23 the Attorney General and the Federal
24 Trade Commission receive such notifi-
25 cation, unless the waiting period is

1 terminated earlier under subsection
2 (b)(2) of such section 7A, or is ex-
3 tended pursuant to subsection (e)(2)
4 of such section 7A.

5 (iii) SET-OFF.—Subject to the other
6 provisions of this title, any transferee of
7 assets from a receiver, including a bridge
8 financial company, shall be subject to such
9 claims or rights as would prevail over the
10 rights of such transferee in such assets
11 under applicable noninsolvency law.

12 (H) PAYMENT OF VALID OBLIGATIONS.—
13 The Corporation, as receiver for a covered fi-
14 nancial company, shall, to the extent that funds
15 are available, pay all valid obligations of the
16 covered financial company that are due and
17 payable at the time of the appointment of the
18 Corporation as receiver, in accordance with the
19 prescriptions and limitations of this title.

20 (I) APPLICABLE NON-INSOLVENCY LAW.—
21 Except as may otherwise be provided in this
22 title, the applicable noninsolvency law shall be
23 determined by the noninsolvency choice of law
24 rules otherwise applicable to the claims, rights,
25 titles, persons, or entities at issue.

150

1 (J) SUBPOENA AUTHORITY.—

2 (i) IN GENERAL.—The Corporation,
3 as receiver for a covered financial com-
4 pany, may, for purposes of carrying out
5 any power, authority, or duty with respect
6 to the covered financial company (includ-
7 ing determining any claim against the cov-
8 ered financial company and determining
9 and realizing upon any asset of any person
10 in the course of collecting money due the
11 covered financial company), exercise any
12 power established under section 8(n) of the
13 Federal Deposit Insurance Act, as if the
14 Corporation were the appropriate Federal
15 banking agency for the covered financial
16 company, and the covered financial com-
17 pany were an insured depository institu-
18 tion.

19 (ii) RULE OF CONSTRUCTION.—This
20 subparagraph may not be construed as
21 limiting any rights that the Corporation, in
22 any capacity, might otherwise have to exer-
23 cise any powers described in clause (i)
24 under any other provision of law.

1 (K) INCIDENTAL POWERS.—The Corpora-
2 tion, as receiver for a covered financial com-
3 pany, may exercise all powers and authorities
4 specifically granted to receivers under this title,
5 and such incidental powers as shall be nec-
6 essary to carry out such powers under this title.

7 (L) UTILIZATION OF PRIVATE SECTOR.—
8 In carrying out its responsibilities in the man-
9 agement and disposition of assets from the cov-
10 ered financial company, the Corporation, as re-
11 ceiver for a covered financial company, may uti-
12 lize the services of private persons, including
13 real estate and loan portfolio asset manage-
14 ment, property management, auction mar-
15 keting, legal, and brokerage services, if such
16 services are available in the private sector, and
17 the Corporation determines that utilization of
18 such services is practicable, efficient, and cost
19 effective.

20 (M) SHAREHOLDERS AND CREDITORS OF
21 COVERED FINANCIAL COMPANY.—Notwith-
22 standing any other provision of law, the Cor-
23 poration, as receiver for a covered financial
24 company, shall succeed by operation of law to
25 the rights, titles, powers, and privileges de-

1 with respect to a covered broker or dealer,
2 the Corporation shall transfer to a bridge
3 financial company, all customer accounts
4 of the covered financial company unless
5 the Corporation, after consulting with the
6 Commission and SIPC, determines that—

7 (I) the customer accounts are
8 likely to be promptly transferred to
9 another covered broker or dealer; or

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

17 (ii) TRANSFER OF PROPERTY.—SIPC,
18 as trustee for the liquidation of the covered
19 broker or dealer, and the Commission,
20 shall provide any and all reasonable assist-
21 ance necessary to complete such transfers
22 by the Corporation.

23 (iii) CUSTOMER CONSENT AND COURT
24 APPROVAL NOT REQUIRED.—Neither cus-
25 tomer consent nor court approval shall be

1 required to transfer any customer accounts
2 and associated customer property to a
3 bridge financial company in accordance
4 with this section.

5 (iv) NOTIFICATION OF SIPC AND
6 SHARING OF INFORMATION.—The Corpora-
7 tion shall identify to SIPC the customer
8 accounts and associated customer property
9 transferred to the bridge financial com-
10 pany. The Corporation and SIPC shall co-
11 operate in the sharing of any information
12 necessary for each entity to discharge its
13 obligations under this title and under the
14 Securities Investor Protection Act of 1970
15 (15 U.S.C. 78aaa et seq.) including by pro-
16 viding access to the books and records of
17 the covered financial company and any
18 bridge financial company established in ac-
19 cordance with this title.

20 (2) DETERMINATION OF CLAIMS.—

21 (A) IN GENERAL.—The Corporation, as re-
22 ceiver for a covered financial company, shall re-
23 port on claims, as set forth in section 203(c)(3).
24 Subject to paragraph (4) of this subsection, the
25 Corporation, as receiver for a covered financial

1 company, may determine claims in accordance
2 with the requirements of this subsection and
3 regulations prescribed under section 209.

4 (B) NOTICE REQUIREMENTS.—The Cor-
5 poration, as receiver for a covered financial
6 company, in any case involving the liquidation
7 or winding up of the affairs of a covered finan-
8 cial company, shall—

9 (i) promptly publish a notice to the
10 creditors of the covered financial company
11 to present their claims, together with
12 proof, to the receiver by a date specified in
13 the notice, which shall be not earlier than
14 90 days after the date of publication of
15 such notice; and

16 (ii) republish such notice 1 month and
17 2 months, respectively, after the date of
18 publication under clause (i).

19 (C) MAILING REQUIRED.—The Corpora-
20 tion as receiver shall mail a notice similar to
21 the notice published under clause (i) or (ii) of
22 subparagraph (B), at the time of such publica-
23 tion, to any creditor shown on the books and
24 records of the covered financial company—

- 1 (i) at the last address of the creditor
2 appearing in such books;
3 (ii) in any claim filed by the claimant;
4 or
5 (iii) upon discovery of the name and
6 address of a claimant not appearing on the
7 books and records of the covered financial
8 company, not later than 30 days after the
9 date of the discovery of such name and ad-
10 dress.

11 (3) PROCEDURES FOR RESOLUTION OF
12 CLAIMS.—

13 (A) DECISION PERIOD.—

- 14 (i) IN GENERAL.—Prior to the 180th
15 day after a claim against a covered finan-
16 cial company is filed with the Corporation
17 as receiver, or such later date as may be
18 agreed as provided in clause (ii), the Cor-
19 poration shall notify the claimant whether
20 it accepts or objects to the claim, in ac-
21 cordance with subparagraphs (B), (C), and
22 (D).

- 23 (ii) EXTENSION OF TIME.—By written
24 agreement executed within 180 days after
25 the date on which a claim against a cov-

1 ered financial company is filed with the
2 Corporation, the period described in clause
3 (i) may be extended by written agreement
4 between the claimant and the Corporation.
5 Failure to notify the claimant of any dis-
6 allowance within the time period set forth
7 in clause (i), as it may be extended by
8 agreement under this clause, shall be
9 deemed to be a disallowance of such claim,
10 and the claimant may file or continue an
11 action in court, as provided in paragraph
12 (4).

13 (iii) MAILING OF NOTICE SUFFI-
14 CIENT.—The requirements of clause (i)
15 shall be deemed to be satisfied if the notice
16 of any decision with respect to any claim
17 is mailed to the last address of the claim-
18 ant which appears—

19 (I) on the books, records, or both
20 of the covered financial company;

21 (II) in the claim filed by the
22 claimant; or

23 (III) in documents submitted in
24 proof of the claim.

1 (iv) CONTENTS OF NOTICE OF DIS-
2 ALLOWANCE.—If the Corporation as re-
3 ceiver objects to any claim filed under
4 clause (i), the notice to the claimant shall
5 contain—

6 (I) a statement of each reason
7 for the disallowance; and

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

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

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

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

23 (ii) CERTAIN EXCEPTIONS.—Clause
24 (i) shall not apply with respect to any
25 claim filed by a claimant after the date

1 specified in the notice published under
2 paragraph (2)(B)(i), and such claim may
3 be considered by the receiver under sub-
4 paragraph (B), if—

5 (I) the claimant did not receive
6 notice of the appointment of the re-
7 ceiver in time to file such claim before
8 such date; and

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

11 (D) AUTHORITY TO DISALLOW CLAIMS.—

12 (i) IN GENERAL.—The Corporation
13 may object to any portion of any claim by
14 a creditor or claim of a security, pref-
15 erence, set-off, or priority which is not
16 proved to the satisfaction of the Corpora-
17 tion.

18 (ii) PAYMENTS TO UNDERSECURED
19 CREDITORS.—In the case of a claim
20 against a covered financial company that is
21 secured by any property or other asset of
22 such covered financial company, the re-
23 ceiver—

24 (I) may treat the portion of such
25 claim which exceeds an amount equal

1 to the fair market value of such prop-
2 erty or other asset as an unsecured
3 claim; and

4 (II) may not make any payment
5 with respect to such unsecured por-
6 tion of the claim, other than in con-
7 nection with the disposition of all
8 claims of unsecured creditors of the
9 covered financial company.

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

13 (I) any extension of credit from
14 any Federal reserve bank, or the Cor-
15 poration, to any covered financial
16 company; or

17 (II) subject to clause (ii), any le-
18 gally enforceable and perfected secu-
19 rity interest in the assets of the cov-
20 ered financial company securing any
21 such extension of credit.

22 (E) LEGAL EFFECT OF FILING.—

23 (i) STATUTE OF LIMITATION
24 TOLLED.—For purposes of any applicable
25 statute of limitations, the filing of a claim

1 with the receiver shall constitute a com-
2 mencement of an action.

3 (ii) NO PREJUDICE TO OTHER AC-
4 TIONS.—Subject to paragraph (8), the fil-
5 ing of a claim with the receiver shall not
6 prejudice any right of the claimant to con-
7 tinue any action which was filed before the
8 date of appointment of the receiver for the
9 covered financial company.

10 (4) JUDICIAL DETERMINATION OF CLAIMS.—

11 (A) IN GENERAL.—Subject to subpara-
12 graph (B), a claimant may file suit on a claim
13 (or continue an action commenced before the
14 date of appointment of the Corporation as re-
15 ceiver) in the district or territorial court of the
16 United States for the district within which the
17 principal place of business of the covered finan-
18 cial company is located (and such court shall
19 have jurisdiction to hear such claim).

20 (B) TIMING.—A claim under subparagraph
21 (A) may be filed before the end of the 60-day
22 period beginning on the earlier of—

23 (i) the end of the period described in
24 paragraph (3)(A)(i) (or, if extended by
25 agreement of the Corporation and the

1 claimant, the period described in para-
2 graph (3)(A)(ii)) with respect to any claim
3 against a covered financial company for
4 which the Corporation is receiver; or

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

8 (C) STATUTE OF LIMITATIONS.—If any
9 claimant fails to file suit on such claim (or to
10 continue an action on such claim commenced
11 before the date of appointment of the Corpora-
12 tion as receiver) prior to the end of the 60-day
13 period described in subparagraph (B), the claim
14 shall be deemed to be disallowed (other than
15 any portion of such claim which was allowed by
16 the receiver) as of the end of such period, such
17 disallowance shall be final, and the claimant
18 shall have no further rights or remedies with re-
19 spect to such claim.

20 (5) EXPEDITED DETERMINATION OF CLAIMS.—

21 (A) PROCEDURE REQUIRED.—The Cor-
22 poration shall establish a procedure for expe-
23 dited relief outside of the claims process estab-
24 lished under paragraph (3), for any claimant
25 that alleges—

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

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

13 (B) DETERMINATION PERIOD.—Prior to
14 the end of the 90-day period beginning on the
15 date on which a claim is filed in accordance
16 with the procedures established pursuant to
17 subparagraph (A), the Corporation shall—

18 (i) determine—

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

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

1 (ii) notify the claimant of the deter-
2 mination; and

3 (iii) if the claim is disallowed, provide
4 a statement of each reason for the dis-
5 allowance and the procedure for obtaining
6 a judicial determination.

7 (C) PERIOD FOR FILING OR RENEWING
8 SUIT.—Any claimant who files a request for ex-
9 pedited relief shall be permitted to file suit (or
10 continue a suit filed before the date of appoint-
11 ment of the Corporation as receiver seeking a
12 determination of the rights of the claimant with
13 respect to such security interest (or such secu-
14 rity entitlement) after the earlier of—

15 (i) the end of the 90-day period begin-
16 ning on the date of the filing of a request
17 for expedited relief; or

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

20 (D) STATUTE OF LIMITATIONS.—If an ac-
21 tion described in subparagraph (C) is not filed,
22 or the motion to renew a previously filed suit is
23 not made, before the end of the 30-day period
24 beginning on the date on which such action or
25 motion may be filed in accordance with sub-

1 paragraph (C), the claim shall be deemed to be
2 disallowed as of the end of such period (other
3 than any portion of such claim which was al-
4 lowed by the receiver), such disallowance shall
5 be final, and the claimant shall have no further
6 rights or remedies with respect to such claim.

7 (E) LEGAL EFFECT OF FILING.—

8 (i) STATUTE OF LIMITATION
9 TOLLED.—For purposes of any applicable
10 statute of limitations, the filing of a claim
11 with the receiver shall constitute a com-
12 mencement of an action.

13 (ii) NO PREJUDICE TO OTHER AC-
14 TIONS.—Subject to paragraph (8), the fil-
15 ing of a claim with the receiver shall not
16 prejudice any right of the claimant to con-
17 tinue any action which was filed before the
18 appointment of the Corporation as receiver
19 for the covered financial company.

20 (6) AGREEMENTS AGAINST INTEREST OF THE
21 RECEIVER.—No agreement that tends to diminish or
22 defeat the interest of the Corporation as receiver in
23 any asset acquired by the receiver under this section
24 shall be valid against the receiver, unless such agree-
25 ment—

1 (A) is in writing;

2 (B) was executed by an authorized officer
3 or representative of the covered financial com-
4 pany, or confirmed in the ordinary course of
5 business by the covered financial company; and

6 (C) has been, since the time of its execu-
7 tion, an official record of the company or the
8 party claiming under the agreement provides
9 documentation, acceptable to the receiver, of
10 such agreement and its authorized execution or
11 confirmation by the covered financial company.

12 (7) PAYMENT OF CLAIMS.—

13 (A) IN GENERAL.—Subject to subpara-
14 graph (B), the Corporation as receiver may, in
15 its discretion and to the extent that funds are
16 available, pay creditor claims, in such manner
17 and amounts as are authorized under this sec-
18 tion, which are—

19 (i) allowed by the receiver;

20 (ii) approved by the receiver pursuant
21 to a final determination pursuant to para-
22 graph (3) or (5), as applicable; or

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

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

5 (C) PAYMENT OF DIVIDENDS ON
6 CLAIMS.—The Corporation as receiver may, in
7 its sole discretion, and to the extent otherwise
8 permitted by this section, pay dividends on
9 proven claims at any time, and no liability shall
10 attach to the Corporation as receiver, by reason
11 of any such payment or for failure to pay divi-
12 dends to a claimant whose claim is not proved
13 at the time of any such payment.

14 (D) RULEMAKING BY THE CORPORA-
15 TION.—The Corporation may prescribe such
16 rules, including definitions of terms, as the Cor-
17 poration deems appropriate to establish an in-
18 terest rate for or to make payments of post-in-
19 solvency interest to creditors holding proven
20 claims against the receivership estate of a cov-
21 ered financial company, except that no such in-
22 terest shall be paid until the Corporation as re-
23 ceiver has satisfied the principal amount of all
24 creditor claims.

25 (8) SUSPENSION OF LEGAL ACTIONS.—

1 (A) IN GENERAL.—After the appointment
2 of the Corporation as receiver for a covered fi-
3 nancial company, the Corporation may request
4 a stay in any judicial action or proceeding in
5 which such covered financial company is or be-
6 comes a party, for a period of not to exceed 90
7 days.

8 (B) GRANT OF STAY BY ALL COURTS RE-
9 QUIRED.—Upon receipt of a request by the Cor-
10 poration pursuant to subparagraph (A), the
11 court shall grant such stay as to all parties.

12 (9) ADDITIONAL RIGHTS AND DUTIES.—

13 (A) PRIOR FINAL ADJUDICATION.—The
14 Corporation shall abide by any final, non-ap-
15 pealable judgment of any court of competent ju-
16 risdiction that was rendered before the appoint-
17 ment of the Corporation as receiver.

18 (B) RIGHTS AND REMEDIES OF RE-
19 CEIVER.—In the event of any appealable judg-
20 ment, the Corporation as receiver shall—

21 (i) have all the rights and remedies
22 available to the covered financial company
23 (before the date of appointment of the Cor-
24 poration as receiver under section 202)

1 and the Corporation, including removal to
2 Federal court and all appellate rights; and
3 (ii) not be required to post any bond
4 in order to pursue such remedies.

5 (C) NO ATTACHMENT OR EXECUTION.—No
6 attachment or execution may be issued by any
7 court upon assets in the possession of the Cor-
8 poration as receiver for a covered financial com-
9 pany.

10 (D) LIMITATION ON JUDICIAL REVIEW.—
11 Except as otherwise provided in this title, no
12 court shall have jurisdiction over—

13 (i) any claim or action for payment
14 from, or any action seeking a determina-
15 tion of rights with respect to, the assets of
16 any covered financial company for which
17 the Corporation has been appointed re-
18 ceiver, including any assets which the Cor-
19 poration may acquire from itself as such
20 receiver; or

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

24 (E) DISPOSITION OF ASSETS.—In exer-
25 cising any right, power, privilege, or authority

1 as receiver in connection with any covered fi-
2 nancial company for which the Corporation is
3 acting as receiver under this section, the Cor-
4 poration shall, to the greatest extent prac-
5 ticable, conduct its operations in a manner
6 that—

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

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

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

14 (iv) ensures timely and adequate com-
15 petition and fair and consistent treatment
16 of offerors; and

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

20 (10) STATUTE OF LIMITATIONS FOR ACTIONS
21 BROUGHT BY RECEIVER.—

22 (A) IN GENERAL.—Notwithstanding any
23 provision of any contract, the applicable statute
24 of limitations with regard to any action brought

1 by the Corporation as receiver for a covered fi-
2 nancial company shall be—

3 (i) in the case of any contract claim,
4 the longer of—

5 (I) the 6-year period beginning
6 on the date on which the claim ac-
7 crues; or

8 (II) the period applicable under
9 State law; and

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

12 (I) the 3-year period beginning
13 on the date on which the claim ac-
14 crues; or

15 (II) the period applicable under
16 State law.

17 (B) DATE ON WHICH A CLAIM ACCRUES.—

18 For purposes of subparagraph (A), the date on
19 which the statute of limitations begins to run
20 on any claim described in subparagraph (A)
21 shall be the later of—

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

24 (ii) the date on which the cause of ac-
25 tion accrues.

1 (C) REVIVAL OF EXPIRED STATE CAUSES
2 OF ACTION.—

3 (i) IN GENERAL.—In the case of any
4 tort claim described in clause (ii) for which
5 the applicable statute of limitations under
6 State law has expired not more than 5
7 years before the date of appointment of the
8 Corporation as receiver for a covered fi-
9 nancial company, the Corporation may
10 bring an action as receiver on such claim
11 without regard to the expiration of the
12 statute of limitations.

13 (ii) CLAIMS DESCRIBED.—A tort
14 claim referred to in clause (i) is a claim
15 arising from fraud, intentional misconduct
16 resulting in unjust enrichment, or inten-
17 tional misconduct resulting in substantial
18 loss to the covered financial company.

19 (11) AVOIDABLE TRANSFERS.—

20 (A) FRAUDULENT TRANSFERS.—The Cor-
21 poration, as receiver for any covered financial
22 company, may avoid a transfer of any interest
23 of the covered financial company in property, or
24 any obligation incurred by the covered financial
25 company, that was made or incurred on or

1 any property remaining with the cov-
2 ered financial company was an unrea-
3 sonably small capital;

4 (III) intended to incur, or be-
5 lieved that the covered financial com-
6 pany would incur, debts that would be
7 beyond the ability of the covered fi-
8 nancial company to pay as such debts
9 matured; or

10 (IV) made such transfer to or for
11 the benefit of an insider, or incurred
12 such obligation to or for the benefit of
13 an insider, under an employment con-
14 tract and not in the ordinary course
15 of business.

16 (B) PREFERENTIAL TRANSFERS.—The
17 Corporation as receiver for any covered finan-
18 cial company may avoid a transfer of an inter-
19 est of the covered financial company in prop-
20 erty—

21 (i) to or for the benefit of a creditor;

22 (ii) for or on account of an antecedent
23 debt that was owed by the covered finan-
24 cial company before the transfer was made;

1 (iii) that was made while the covered
2 financial company was insolvent;

3 (iv) that was made—

4 (I) 90 days or less before the
5 date on which the Corporation was
6 appointed receiver; or

7 (II) more than 90 days, but less
8 than 1 year before the date on which
9 the Corporation was appointed re-
10 ceiver, if such creditor at the time of
11 the transfer was an insider; and

12 (v) that enables the creditor to receive
13 more than the creditor would receive if—

14 (I) the covered financial company
15 had been liquidated under chapter 7
16 of the Bankruptcy Code;

17 (II) the transfer had not been
18 made; and

19 (III) the creditor received pay-
20 ment of such debt to the extent pro-
21 vided by the provisions of chapter 7 of
22 the Bankruptcy Code.

23 (C) POST-RECEIVERSHIP TRANSACTIONS.—

24 The Corporation as receiver for any covered fi-
25 nancial company may avoid a transfer of prop-

1 erty of the receivership that occurred after the
2 Corporation was appointed receiver that was
3 not authorized under this title by the Corpora-
4 tion as receiver.

5 (D) RIGHT OF RECOVERY.—To the extent
6 that a transfer is avoided under subparagraph
7 (A), (B) or (C), the Corporation may recover,
8 for the benefit of the covered financial com-
9 pany, the property transferred or, if a court so
10 orders, the value of such property (at the time
11 of such transfer) from—

12 (i) the initial transferee of such trans-
13 fer or the person for whose benefit such
14 transfer was made; or

15 (ii) any immediate or mediate trans-
16 feree of any such initial transferee.

17 (E) RIGHTS OF TRANSFEREE OR OBLI-
18 GEE.—The Corporation may not recover under
19 subparagraph (D)(ii) from—

20 (i) any transferee that takes for value,
21 including in satisfaction of or to secure a
22 present or antecedent debt, in good faith,
23 and without knowledge of the voidability of
24 the transfer avoided; or

1 (ii) any immediate or mediate good
2 faith transferee of such transferee.

3 (F) DEFENSES.—Subject to the other pro-
4 visions of this title—

5 (i) a transferee or obligee from which
6 the Corporation seeks to recover a transfer
7 or to avoid an obligation under subpara-
8 graph (A), (B), (C), or (D) shall have the
9 same defenses available to a transferee or
10 obligee from which a trustee seeks to re-
11 cover a transfer or avoid an obligation
12 under; and

13 (ii) the authority of the Corporation
14 to recover a transfer or avoid an obligation
15 shall be subject to subsections (b) and (c)
16 of section 546, section 547(c), and section
17 548(c) of the Bankruptcy Code.

18 (G) RIGHTS UNDER THIS SECTION.—The
19 rights of the Corporation as receiver under this
20 section shall be superior to any rights of a
21 trustee or any other party (other than a Fed-
22 eral agency) under the Bankruptcy Code.

23 (H) RULES OF CONSTRUCTION; DEFINI-
24 TIONS.—For purposes of—

25 (i) subparagraphs (A) and (B)—

1 (I) the term “insider” has the
2 same meaning as in section 101(31)
3 of the Bankruptcy Code;

4 (II) a transfer is made when
5 such transfer is so perfected that a
6 bona fide purchaser from the covered
7 financial company against whom ap-
8 plicable law permits such transfer to
9 be perfected cannot acquire an inter-
10 est in the property transferred that is
11 superior to the interest in such prop-
12 erty of the transferee, but if such
13 transfer is not so perfected before the
14 date on which the Corporation is ap-
15 pointed as receiver for the covered fi-
16 nancial company, such transfer is
17 made immediately before the date of
18 such appointment; and

19 (III) the term “value” means
20 property, or satisfaction or securing of
21 a present or antecedent debt of the
22 covered financial company, but does
23 not include an unperformed promise
24 to furnish support to the covered fi-
25 nancial company; and

1 (ii) subparagraph (B)—

2 (I) the covered financial company
3 is presumed to have been insolvent on
4 and during the 90-day period imme-
5 diately preceding the date of appoint-
6 ment of the Corporation as receiver;
7 and

8 (II) the term “insolvent” has the
9 same meaning as in section 101(32)
10 of the Bankruptcy Code.

11 (12) SETOFF.—

12 (A) GENERALLY.—Except as otherwise
13 provided in this title, any right of a creditor to
14 offset a mutual debt owing by the creditor to
15 any covered financial company that arose before
16 the Corporation was appointed as receiver for
17 the covered financial company against a claim
18 of such creditor may be asserted if enforceable
19 under applicable non-insolvency law, except to
20 the extent that—

21 (i) the claim of the creditor against
22 the covered financial company is dis-
23 allowed;

1 (ii) the claim was transferred, by an
2 entity other than the covered financial
3 company, to the creditor—

4 (I) after the Corporation was ap-
5 pointed as receiver of the covered fi-
6 nancial company; or

7 (II)(aa) after the 90-day period
8 preceding the date on which the Cor-
9 poration was appointed as receiver for
10 the covered financial company; and

11 (bb) while the covered financial
12 company was insolvent (except for a
13 setoff in connection with a qualified
14 financial contract); or

15 (iii) the debt owed to the covered fi-
16 nancial company was incurred by the cov-
17 ered financial company—

18 (I) after the 90-day period pre-
19 ceding the date on which the Corpora-
20 tion was appointed as receiver for the
21 covered financial company;

22 (II) while the covered financial
23 company was insolvent; and

24 (III) for the purpose of obtaining
25 a right of setoff against the covered

1 financial company (except for a setoff
2 in connection with a qualified finan-
3 cial contract).

4 (B) INSUFFICIENCY.—

5 (i) IN GENERAL.—Except with respect
6 to a setoff in connection with a qualified fi-
7 nancial contract, if a creditor offsets a mu-
8 tual debt owing to the covered financial
9 company against a claim of the covered fi-
10 nancial company on or within the 90-day
11 period preceding the date on which the
12 Corporation is appointed as receiver for
13 the covered financial company, the Cor-
14 poration may recover from the creditor the
15 amount so offset, to the extent that any in-
16 sufficiency on the date of such setoff is less
17 than the insufficiency on the later of—

18 (I) the date that is 90 days be-
19 fore the date on which the Corpora-
20 tion is appointed as receiver for the
21 covered financial company; and

22 (II) the first day on which there
23 is an insufficiency during the 90-day
24 period preceding the date on which
25 the Corporation is appointed as re-

1 ceiver for the covered financial com-
2 pany.

3 (ii) DEFINITION OF INSUFFI-
4 CIENCY.—In this subparagraph, the term
5 “insufficiency” means the amount, if any,
6 by which a claim against the covered finan-
7 cial company exceeds a mutual debt owing
8 to the covered financial company by the
9 holder of such claim.

10 (C) INSOLVENCY.—The term “insolvent”
11 has the same meaning as in section 101(32) of
12 the Bankruptcy Code.

13 (D) PRESUMPTION OF INSOLVENCY.—For
14 purposes of this paragraph, the covered finan-
15 cial company is presumed to have been insol-
16 vent on and during the 90-day period preceding
17 the date of appointment of the Corporation as
18 receiver.

19 (E) LIMITATION.—Nothing in this para-
20 graph (12) shall be the basis for any right of
21 setoff where no such right exists under applica-
22 ble non-insolvency law.

23 (F) PRIORITY CLAIM.—Except as other-
24 wise provided in this title, the Corporation as
25 receiver for the covered financial company may

1 sell or transfer any assets free and clear of the
2 setoff rights of any party, except that such
3 party shall be entitled to a claim, subordinate
4 to the claims payable under subparagraphs (A),
5 (B), and (C) of subsection (b)(1), but senior to
6 all other unsecured liabilities defined in sub-
7 section (b)(1)(D), in an amount equal to the
8 value of such setoff rights.

9 (13) ATTACHMENT OF ASSETS AND OTHER IN-
10 JUNCTIVE RELIEF.—Subject to paragraph (14), any
11 court of competent jurisdiction may, at the request
12 of the Corporation as receiver for a covered financial
13 company, issue an order in accordance with Rule 65
14 of the Federal Rules of Civil Procedure, including an
15 order placing the assets of any person designated by
16 the Corporation under the control of the court and
17 appointing a trustee to hold such assets.

18 (14) STANDARDS.—

19 (A) SHOWING.—Rule 65 of the Federal
20 Rules of Civil Procedure shall apply with re-
21 spect to any proceeding under paragraph (13),
22 without regard to the requirement that the ap-
23 plicant show that the injury, loss, or damage is
24 irreparable and immediate.

1 (B) STATE PROCEEDING.—If, in the case
2 of any proceeding in a State court, the court
3 determines that rules of civil procedure avail-
4 able under the laws of the State provide sub-
5 stantially similar protections of the right of the
6 parties to due process as provided under Rule
7 65 (as modified with respect to such proceeding
8 by subparagraph (A)), the relief sought by the
9 Corporation pursuant to paragraph (14) may be
10 requested under the laws of such State.

11 (15) TREATMENT OF CLAIMS ARISING FROM
12 BREACH OF CONTRACTS EXECUTED BY THE COR-
13 PORATION AS RECEIVER.—Notwithstanding any
14 other provision of this title, any final and non-ap-
15 pealable judgment for monetary damages entered
16 against the Corporation as receiver for a covered fi-
17 nancial company for the breach of an agreement exe-
18 cuted or approved by the Corporation after the date
19 of its appointment shall be paid as an administrative
20 expense of the receiver. Nothing in this paragraph
21 shall be construed to limit the power of a receiver
22 to exercise any rights under contract or law, includ-
23 ing to terminate, breach, cancel, or otherwise dis-
24 continue such agreement.

1 (16) ACCOUNTING AND RECORDKEEPING RE-
2 QUIREMENTS.—

3 (A) IN GENERAL.—The Corporation as re-
4 ceiver for a covered financial company shall,
5 consistent with the accounting and reporting
6 practices and procedures established by the
7 Corporation, maintain a full accounting of each
8 receivership or other disposition of any covered
9 financial company.

10 (B) ANNUAL ACCOUNTING OR REPORT.—
11 With respect to each receivership to which the
12 Corporation is appointed, the Corporation shall
13 make an annual accounting or report, as appro-
14 priate, available to the Secretary and the Comp-
15 troller General of the United States.

16 (C) AVAILABILITY OF REPORTS.—Any re-
17 port prepared pursuant to subparagraph (B)
18 and section 203(c)(3) shall be made available to
19 the public by the Corporation.

20 (D) RECORDKEEPING REQUIREMENT.—

21 (i) IN GENERAL.—The Corporation
22 shall prescribe such regulations and estab-
23 lish such retention schedules as the Cor-
24 poration determines to be appropriate re-
25 garding the management and disposition of

1 the records of a covered financial company
2 for which the Corporation is appointed as
3 receiver, with due regard for—

4 (I) the costs and other burdens
5 imposed on the receiver by the main-
6 tenance of such records;

7 (II) the avoidance of duplicative
8 record retention; and

9 (III) the expected evidentiary
10 needs of the Corporation as receiver
11 for a covered financial company and
12 the public regarding the records of
13 covered financial companies.

14 (ii) OLD RECORDS.—Notwithstanding
15 clause (i), and, unless otherwise required
16 by applicable Federal law or court order,
17 the Corporation may, at any time, destroy
18 any records of a covered financial company
19 for which the Corporation is appointed re-
20 ceiver, beginning 10 years after the record
21 was created or acquired by the covered fi-
22 nancial company.

23 (iii) RECORDS DEFINED.—As used in
24 this subparagraph, the terms “records”
25 and “records of a covered financial com-

1 pany” mean any document, book, paper,
2 map, photograph, microfiche, microfilm,
3 computer or electronically-created record
4 generated or maintained by the covered fi-
5 nancial company in the course of and nec-
6 essary to its transaction of business.

7 (b) PRIORITY OF EXPENSES AND UNSECURED
8 CLAIMS.—

9 (1) IN GENERAL.—Unsecured claims against a
10 covered financial company, or the Corporation as re-
11 ceiver for such covered financial company under this
12 section, that are proven to the satisfaction of the re-
13 ceiver shall have priority in the following order:

14 (A) Administrative expenses of the re-
15 ceiver.

16 (B) Any amounts owed to the United
17 States, unless the United States agrees or con-
18 sents otherwise.

19 (C) Any other general or senior liability of
20 the covered financial company (which is not a
21 liability described under subparagraph (D) or
22 (E)).

23 (D) Any obligation subordinated to general
24 creditors (which is not an obligation described
25 under subparagraph (E)).

1 (E) Any obligation to shareholders, mem-
2 bers, general partners, limited partners, or
3 other persons, with interests in the equity of
4 the covered financial company arising as a re-
5 sult of their status as shareholders, members,
6 general partners, limited partners, or other per-
7 sons with interests in the equity of the covered
8 financial company.

9 (2) POST-RECEIVERSHIP FINANCING PRI-
10 ORITY.—In the event that the Corporation, as re-
11 ceiver for a covered financial company, is unable to
12 obtain unsecured credit for the covered financial
13 company from commercial sources, the Corporation
14 as receiver may obtain credit or incur debt on the
15 part of the covered financial company, which shall
16 have priority over any or all administrative expenses
17 of the receiver under paragraph (1)(A).

18 (3) CLAIMS OF THE UNITED STATES.—Unse-
19 cured claims of the United States shall, at a min-
20 imum, have a higher priority than liabilities of the
21 covered financial company that count as regulatory
22 capital.

23 (4) CREDITORS SIMILARLY SITUATED.—All
24 claimants of a covered financial company that are
25 similarly situated under paragraph (1) shall be

1 treated in a similar manner, except that the Cor-
2 poration as receiver may take any action (including
3 making payments, subject to subsection (o)(1)(E)(i))
4 that does not comply with this subsection, if—

5 (A) the Corporation determines that such
6 action is necessary—

7 (i) to maximize the value of the assets
8 of the covered financial company;

9 (ii) to maximize the present value re-
10 turn from the sale or other disposition of
11 the assets of the covered financial com-
12 pany; or

13 (iii) to minimize the amount of any
14 loss realized upon the sale or other disposi-
15 tion of the assets of the covered financial
16 company.

17 (B) all claimants that are similarly situ-
18 ated under paragraph (1) receive not less than
19 the amount provided in paragraphs (2) and (3)
20 of subsection (d).

21 (5) SECURED CLAIMS UNAFFECTED.—This sec-
22 tion shall not affect secured claims or security enti-
23 tlements in respect of assets or property held by the
24 covered financial company, except to the extent that
25 the security is insufficient to satisfy the claim, and

1 then only with regard to the difference between the
2 claim and the amount realized from the security.

3 (6) PRIORITY OF EXPENSES AND UNSECURED
4 CLAIMS IN THE ORDERLY LIQUIDATION OF A SIPC
5 MEMBER.—Where the Corporation is appointed as
6 receiver for a covered broker or dealer, unsecured
7 claims against such covered broker or dealer, or the
8 Corporation as receiver for such covered broker or
9 dealer under this section, that are proven to the sat-
10 isfaction of the receiver under section 205(e), shall
11 have the priority prescribed in paragraph (1), except
12 that—

13 (A) SIPC shall be entitled to recover ad-
14 ministrative expenses incurred in performing its
15 responsibilities under section 205 on an equal
16 basis with the Corporation, in accordance with
17 paragraph (1)(A);

18 (B) the Corporation shall be entitled to re-
19 cover any amounts paid to customers or to
20 SIPC pursuant to section 205(f), in accordance
21 with paragraph (1)(B);

22 (C) SIPC shall be entitled to recover any
23 amounts paid out of the SIPC Fund to meet its
24 obligations under section 205 and under the Se-
25 curities Investor Protection Act of 1970 (15

1 U.S.C. 78aaa et seq.), which claim shall be sub-
2 ordinate to the claims payable under subpara-
3 graphs (A) and (B) of paragraph (1), but sen-
4 ior to all other claims; and

5 (D) the Corporation may, after paying any
6 proven claims to customers under section 205
7 and the Securities Investor Protection Act of
8 1970 (15 U.S.C. 78aaa et seq.), and as pro-
9 vided above, pay dividends on other proven
10 claims, in its discretion, and to the extent that
11 funds are available, in accordance with the pri-
12 orities set forth in paragraph (1).

13 (c) PROVISIONS RELATING TO CONTRACTS ENTERED
14 INTO BEFORE APPOINTMENT OF RECEIVER.—

15 (1) AUTHORITY TO REPUDIATE CONTRACTS.—

16 In addition to any other rights that a receiver may
17 have, the Corporation as receiver for any covered fi-
18 nancial company may disaffirm or repudiate any
19 contract or lease—

20 (A) to which the covered financial company
21 is a party;

22 (B) the performance of which the Corpora-
23 tion as receiver, in the discretion of the Cor-
24 poration, determines to be burdensome; and

1 (II) in the case of any contract
2 or agreement referred to in paragraph
3 (8), the date of the disaffirmance or
4 repudiation of such contract or agree-
5 ment.

6 (B) NO LIABILITY FOR OTHER DAM-
7 AGES.—For purposes of subparagraph (A), the
8 term “actual direct compensatory damages”
9 does not include—

- 10 (i) punitive or exemplary damages;
11 (ii) damages for lost profits or oppor-
12 tunity; or
13 (iii) damages for pain and suffering.

14 (C) MEASURE OF DAMAGES FOR REPUDI-
15 ATION OF QUALIFIED FINANCIAL CONTRACTS.—
16 In the case of any qualified financial contract
17 or agreement to which paragraph (8) applies,
18 compensatory damages shall be—

- 19 (i) deemed to include normal and rea-
20 sonable costs of cover or other reasonable
21 measures of damages utilized in the indus-
22 tries for such contract and agreement
23 claims; and
24 (ii) paid in accordance with this para-
25 graph and subsection (d), except as other-

1 wise specifically provided in this sub-
2 section.

3 (D) MEASURE OF DAMAGES FOR REPUDI-
4 ATION OR DISAFFIRMANCE OF DEBT OBLIGA-
5 TION.—In the case of any debt for borrowed
6 money or evidenced by a security, actual direct
7 compensatory damages shall be no less than the
8 amount lent plus accrued interest plus any
9 accreted original issue discount as of the date
10 the Corporation was appointed receiver of the
11 covered financial company and, to the extent
12 that an allowed secured claim is secured by
13 property the value of which is greater than the
14 amount of such claim and any accrued interest
15 through the date of repudiation or
16 disaffirmance, such accrued interest pursuant
17 to paragraph (1).

18 (E) MEASURE OF DAMAGES FOR REPUDI-
19 ATION OR DISAFFIRMANCE OF CONTINGENT OB-
20 LIGATION.—In the case of any contingent obli-
21 gation of a covered financial company con-
22 sisting of any obligation under a guarantee, let-
23 ter of credit, loan commitment, or similar credit
24 obligation, the Corporation may, by rule or reg-
25 ulation, prescribe that actual direct compen-

1 satory damages shall be no less than the esti-
2 mated value of the claim as of the date the Cor-
3 poration was appointed receiver of the covered
4 financial company, as such value is measured
5 based on the likelihood that such contingent
6 claim would become fixed and the probable
7 magnitude thereof.

8 (4) LEASES UNDER WHICH THE COVERED FI-
9 NANCIAL COMPANY IS THE LESSEE.—

10 (A) IN GENERAL.—If the Corporation as
11 receiver disaffirms or repudiates a lease under
12 which the covered financial company is the les-
13 see, the receiver shall not be liable for any dam-
14 ages (other than damages determined pursuant
15 to subparagraph (B)) for the disaffirmance or
16 repudiation of such lease.

17 (B) PAYMENTS OF RENT.—Notwith-
18 standing subparagraph (A), the lessor under a
19 lease to which subparagraph (A) would other-
20 wise apply shall—

21 (i) be entitled to the contractual rent
22 accruing before the later of the date on
23 which—

24 (I) the notice of disaffirmance or
25 repudiation is mailed; or

1 (II) the disaffirmance or repudi-
2 ation becomes effective, unless the les-
3 sor is in default or breach of the
4 terms of the lease;

5 (ii) have no claim for damages under
6 any acceleration clause or other penalty
7 provision in the lease; and

8 (iii) have a claim for any unpaid rent,
9 subject to all appropriate offsets and de-
10 fenses, due as of the date of the appoint-
11 ment which shall be paid in accordance
12 with this paragraph and subsection (d).

13 (5) LEASES UNDER WHICH THE COVERED FI-
14 NANCIAL COMPANY IS THE LESSOR.—

15 (A) IN GENERAL.—If the Corporation as
16 receiver for a covered financial company repudi-
17 ates an unexpired written lease of real property
18 of the covered financial company under which
19 the covered financial company is the lessor and
20 the lessee is not, as of the date of such repudi-
21 ation, in default, the lessee under such lease
22 may either—

23 (i) treat the lease as terminated by
24 such repudiation; or

1 (ii) remain in possession of the lease-
2 hold interest for the balance of the term of
3 the lease, unless the lessee defaults under
4 the terms of the lease after the date of
5 such repudiation.

6 (B) PROVISIONS APPLICABLE TO LESSEE
7 REMAINING IN POSSESSION.—If any lessee
8 under a lease described in subparagraph (A) re-
9 mains in possession of a leasehold interest pur-
10 suant to clause (ii) of subparagraph (A)—

11 (i) the lessee—

12 (I) shall continue to pay the con-
13 tractual rent pursuant to the terms of
14 the lease after the date of the repudi-
15 ation of such lease; and

16 (II) may offset against any rent
17 payment which accrues after the date
18 of the repudiation of the lease, any
19 damages which accrue after such date
20 due to the nonperformance of any ob-
21 ligation of the covered financial com-
22 pany under the lease after such date;
23 and

24 (ii) the Corporation as receiver shall
25 not be liable to the lessee for any damages

1 the date of the repudiation of the con-
2 tract; and

3 (II) may offset against any such
4 payments any damages which accrue
5 after such date due to the non-
6 performance (after such date) of any
7 obligation of the covered financial
8 company under the contract; and

9 (ii) the Corporation as receiver shall—
10 (I) not be liable to the purchaser
11 for any damages arising after such
12 date as a result of the repudiation,
13 other than the amount of any offset
14 allowed under clause (i)(II);

15 (II) deliver title to the purchaser
16 in accordance with the provisions of
17 the contract; and

18 (III) have no obligation under
19 the contract other than the perform-
20 ance required under subclause (II).

21 (C) ASSIGNMENT AND SALE ALLOWED.—

22 (i) IN GENERAL.—No provision of this
23 paragraph shall be construed as limiting
24 the right of the Corporation as receiver to
25 assign the contract described in subpara-

1 graph (A) and sell the property, subject to
2 the contract and the provisions of this
3 paragraph.

4 (ii) NO LIABILITY AFTER ASSIGNMENT
5 AND SALE.—If an assignment and sale de-
6 scribed in clause (i) is consummated, the
7 Corporation as receiver shall have no fur-
8 ther liability under the contract described
9 in subparagraph (A) or with respect to the
10 real property which was the subject of such
11 contract.

12 (7) PROVISIONS APPLICABLE TO SERVICE CON-
13 TRACTS.—

14 (A) SERVICES PERFORMED BEFORE AP-
15 POINTMENT.—In the case of any contract for
16 services between any person and any covered fi-
17 nancial company for which the Corporation has
18 been appointed receiver, any claim of such per-
19 son for services performed before the date of
20 appointment shall be—

21 (i) a claim to be paid in accordance
22 with subsections (a), (b), and (d); and

23 (ii) deemed to have arisen as of the
24 date on which the receiver was appointed.

201

1 (B) SERVICES PERFORMED AFTER AP-
2 POINTMENT AND PRIOR TO REPUDIATION.—If,
3 in the case of any contract for services de-
4 scribed in subparagraph (A), the Corporation as
5 receiver accepts performance by the other per-
6 son before making any determination to exer-
7 cise the right of repudiation of such contract
8 under this section—

9 (i) the other party shall be paid under
10 the terms of the contract for the services
11 performed; and

12 (ii) the amount of such payment shall
13 be treated as an administrative expense of
14 the receivership.

15 (C) ACCEPTANCE OF PERFORMANCE NO
16 BAR TO SUBSEQUENT REPUDIATION.—The ac-
17 ceptance by the Corporation as receiver for
18 services referred to in subparagraph (B) in con-
19 nection with a contract described in subpara-
20 graph (B) shall not affect the right of the Cor-
21 poration as receiver to repudiate such contract
22 under this section at any time after such per-
23 formance.

24 (8) CERTAIN QUALIFIED FINANCIAL CON-
25 TRACTS.—

1 (A) RIGHTS OF PARTIES TO CONTRACTS.—

2 Subject to subsection (a)(8) and paragraphs (9)
3 and (10) of this subsection, and notwith-
4 standing any other provision of this section, any
5 other provision of Federal law, or the law of
6 any State, no person shall be stayed or prohib-
7 ited from exercising—

8 (i) any right that such person has to
9 cause the termination, liquidation, or accel-
10 eration of any qualified financial contract
11 with a covered financial company which
12 arises upon the date of appointment of the
13 Corporation as receiver for such covered fi-
14 nancial company at any time after such
15 appointment;

16 (ii) any right under any security
17 agreement or arrangement or other credit
18 enhancement related to one or more quali-
19 fied financial contracts described in clause
20 (i); and

21 (iii) any right to offset or net out any
22 termination value, payment amount, or
23 other transfer obligation arising under or
24 in connection with 1 or more contracts or
25 agreements described in clause (i), includ-

1 ing any master agreement for such con-
2 tracts or agreements.

3 (B) APPLICABILITY OF OTHER PROVI-
4 SIONS.—Subsection (a)(8) shall apply in the
5 case of any judicial action or proceeding
6 brought against the Corporation as receiver re-
7 ferred to in subparagraph (A), or the subject
8 covered financial company, by any party to a
9 contract or agreement described in subpara-
10 graph (A)(i) with such covered financial com-
11 pany.

12 (C) CERTAIN TRANSFERS NOT AVOID-
13 ABLE.—

14 (i) IN GENERAL.—Notwithstanding
15 subsections (a)(11), (a)(12), or (c)(12),
16 section 5242 of the Revised Statutes of the
17 United States, or any other provision of
18 Federal or State law relating to the avoid-
19 ance of preferential or fraudulent trans-
20 fers, the Corporation, whether acting as
21 the Corporation or as receiver for a cov-
22 ered financial company, may not avoid any
23 transfer of money or other property in con-
24 nection with any qualified financial con-
25 tract with a covered financial company.

1 (ii) EXCEPTION FOR CERTAIN TRANS-
2 FERS.—Clause (i) shall not apply to any
3 transfer of money or other property in con-
4 nection with any qualified financial con-
5 tract with a covered financial company if
6 the transferee had actual intent to hinder,
7 delay, or defraud such company, the credi-
8 tors of such company, or the Corporation
9 as receiver appointed for such company.

10 (D) CERTAIN CONTRACTS AND AGREE-
11 MENTS DEFINED.—For purposes of this sub-
12 section, the following definitions shall apply:

13 (i) QUALIFIED FINANCIAL CON-
14 TRACT.—The term “qualified financial
15 contract” means any securities contract,
16 commodity contract, forward contract, re-
17 purchase agreement, swap agreement, and
18 any similar agreement that the Corpora-
19 tion determines by regulation, resolution,
20 or order to be a qualified financial contract
21 for purposes of this paragraph.

22 (ii) SECURITIES CONTRACT.—The
23 term “securities contract”—

24 (I) means a contract for the pur-
25 chase, sale, or loan of a security, a

1 certificate of deposit, a mortgage loan,
2 any interest in a mortgage loan, a
3 group or index of securities, certifi-
4 cates of deposit, or mortgage loans or
5 interests therein (including any inter-
6 est therein or based on the value
7 thereof), or any option on any of the
8 foregoing, including any option to
9 purchase or sell any such security,
10 certificate of deposit, mortgage loan,
11 interest, group or index, or option,
12 and including any repurchase or re-
13 verse repurchase transaction on any
14 such security, certificate of deposit,
15 mortgage loan, interest, group or
16 index, or option (whether or not such
17 repurchase or reverse repurchase
18 transaction is a “repurchase agree-
19 ment”, as defined in clause (v));

20 (II) does not include any pur-
21 chase, sale, or repurchase obligation
22 under a participation in a commercial
23 mortgage loan unless the Corporation
24 determines by regulation, resolution,
25 or order to include any such agree-

1 ment within the meaning of such
2 term;

3 (III) means any option entered
4 into on a national securities exchange
5 relating to foreign currencies;

6 (IV) means the guarantee (in-
7 cluding by novation) by or to any se-
8 curities clearing agency of any settle-
9 ment of cash, securities, certificates of
10 deposit, mortgage loans or interests
11 therein, group or index of securities,
12 certificates of deposit or mortgage
13 loans or interests therein (including
14 any interest therein or based on the
15 value thereof) or option on any of the
16 foregoing, including any option to
17 purchase or sell any such security,
18 certificate of deposit, mortgage loan,
19 interest, group or index, or option
20 (whether or not such settlement is in
21 connection with any agreement or
22 transaction referred to in subclauses
23 (I) through (XII) (other than sub-
24 clause (II)));

25 (V) means any margin loan;

1 (VI) means any extension of
2 credit for the clearance or settlement
3 of securities transactions;

4 (VII) means any loan transaction
5 coupled with a securities collar trans-
6 action, any prepaid securities forward
7 transaction, or any total return swap
8 transaction coupled with a securities
9 sale transaction;

10 (VIII) means any other agree-
11 ment or transaction that is similar to
12 any agreement or transaction referred
13 to in this clause;

14 (IX) means any combination of
15 the agreements or transactions re-
16 ferred to in this clause;

17 (X) means any option to enter
18 into any agreement or transaction re-
19 ferred to in this clause;

20 (XI) means a master agreement
21 that provides for an agreement or
22 transaction referred to in any of sub-
23 clauses (I) through (X), other than
24 subclause (II), together with all sup-
25 plements to any such master agree-

1 ment, without regard to whether the
2 master agreement provides for an
3 agreement or transaction that is not a
4 securities contract under this clause,
5 except that the master agreement
6 shall be considered to be a securities
7 contract under this clause only with
8 respect to each agreement or trans-
9 action under the master agreement
10 that is referred to in any of sub-
11 clauses (I) through (X), other than
12 subclause (II); and

13 (XII) means any security agree-
14 ment or arrangement or other credit
15 enhancement related to any agree-
16 ment or transaction referred to in this
17 clause, including any guarantee or re-
18 imbursement obligation in connection
19 with any agreement or transaction re-
20 ferred to in this clause.

21 (iii) COMMODITY CONTRACT.—The
22 term “commodity contract” means—

23 (I) with respect to a futures com-
24 mission merchant, a contract for the
25 purchase or sale of a commodity for

1 future delivery on, or subject to the
2 rules of, a contract market or board
3 of trade;

4 (II) with respect to a foreign fu-
5 tures commission merchant, a foreign
6 future;

7 (III) with respect to a leverage
8 transaction merchant, a leverage
9 transaction;

10 (IV) with respect to a clearing
11 organization, a contract for the pur-
12 chase or sale of a commodity for fu-
13 ture delivery on, or subject to the
14 rules of, a contract market or board
15 of trade that is cleared by such clear-
16 ing organization, or commodity option
17 traded on, or subject to the rules of,
18 a contract market or board of trade
19 that is cleared by such clearing orga-
20 nization;

21 (V) with respect to a commodity
22 options dealer, a commodity option;

23 (VI) any other agreement or
24 transaction that is similar to any

1 agreement or transaction referred to
2 in this clause;

3 (VII) any combination of the
4 agreements or transactions referred to
5 in this clause;

6 (VIII) any option to enter into
7 any agreement or transaction referred
8 to in this clause;

9 (IX) a master agreement that
10 provides for an agreement or trans-
11 action referred to in any of subclauses
12 (I) through (VIII), together with all
13 supplements to any such master
14 agreement, without regard to whether
15 the master agreement provides for an
16 agreement or transaction that is not a
17 commodity contract under this clause,
18 except that the master agreement
19 shall be considered to be a commodity
20 contract under this clause only with
21 respect to each agreement or trans-
22 action under the master agreement
23 that is referred to in any of sub-
24 clauses (I) through (VIII); or

1 (X) any security agreement or
2 arrangement or other credit enhance-
3 ment related to any agreement or
4 transaction referred to in this clause,
5 including any guarantee or reimburse-
6 ment obligation in connection with
7 any agreement or transaction referred
8 to in this clause.

9 (iv) FORWARD CONTRACT.—The term
10 “forward contract” means—

11 (I) a contract (other than a com-
12 modity contract) for the purchase,
13 sale, or transfer of a commodity or
14 any similar good, article, service,
15 right, or interest which is presently or
16 in the future becomes the subject of
17 dealing in the forward contract trade,
18 or product or byproduct thereof, with
19 a maturity date that is more than 10
20 days after the date on which the con-
21 tract is entered into, including a re-
22 purchase or reverse repurchase trans-
23 action (whether or not such repur-
24 chase or reverse repurchase trans-
25 action is a “repurchase agreement”,

1 as defined in clause (v)), consignment,
2 lease, swap, hedge transaction, de-
3 posit, loan, option, allocated trans-
4 action, unallocated transaction, or any
5 other similar agreement;

6 (II) any combination of agree-
7 ments or transactions referred to in
8 subclauses (I) and (III);

9 (III) any option to enter into any
10 agreement or transaction referred to
11 in subclause (I) or (II);

12 (IV) a master agreement that
13 provides for an agreement or trans-
14 action referred to in subclause (I),
15 (II), or (III), together with all supple-
16 ments to any such master agreement,
17 without regard to whether the master
18 agreement provides for an agreement
19 or transaction that is not a forward
20 contract under this clause, except that
21 the master agreement shall be consid-
22 ered to be a forward contract under
23 this clause only with respect to each
24 agreement or transaction under the

1 master agreement that is referred to
2 in subclause (I), (II), or (III); or

3 (V) any security agreement or ar-
4 rangement or other credit enhance-
5 ment related to any agreement or
6 transaction referred to in subclause
7 (I), (II), (III), or (IV), including any
8 guarantee or reimbursement obliga-
9 tion in connection with any agreement
10 or transaction referred to in any such
11 subclause.

12 (v) REPURCHASE AGREEMENT.—The
13 term “repurchase agreement” (which defi-
14 nition also applies to a reverse repurchase
15 agreement)—

16 (I) means an agreement, includ-
17 ing related terms, which provides for
18 the transfer of one or more certifi-
19 cates of deposit, mortgage related se-
20 curities (as such term is defined in
21 section 3 of the Securities Exchange
22 Act of 1934), mortgage loans, inter-
23 ests in mortgage-related securities or
24 mortgage loans, eligible bankers’ ac-
25 ceptances, qualified foreign govern-

1 ment securities (which, for purposes
2 of this clause, means a security that is
3 a direct obligation of, or that is fully
4 guaranteed by, the central government
5 of a member of the Organization for
6 Economic Cooperation and Develop-
7 ment, as determined by regulation or
8 order adopted by the Board of Gov-
9 ernors of the Federal Reserve System)
10 or securities that are direct obliga-
11 tions of, or that are fully guaranteed
12 by, the United States or any agency
13 of the United States against the
14 transfer of funds by the transferee of
15 such certificates of deposit, eligible
16 bankers' acceptances, securities, mort-
17 gage loans, or interests with a simul-
18 taneous agreement by such transferee
19 to transfer to the transferor thereof
20 certificates of deposit, eligible bank-
21 ers' acceptances, securities, mortgage
22 loans, or interests as described above,
23 at a date certain not later than 1 year
24 after such transfers or on demand,

1 against the transfer of funds, or any
2 other similar agreement;

3 (II) does not include any repur-
4 chase obligation under a participation
5 in a commercial mortgage loan, unless
6 the Corporation determines, by regu-
7 lation, resolution, or order to include
8 any such participation within the
9 meaning of such term;

10 (III) means any combination of
11 agreements or transactions referred to
12 in subclauses (I) and (IV);

13 (IV) means any option to enter
14 into any agreement or transaction re-
15 ferred to in subclause (I) or (III);

16 (V) means a master agreement
17 that provides for an agreement or
18 transaction referred to in subclause
19 (I), (III), or (IV), together with all
20 supplements to any such master
21 agreement, without regard to whether
22 the master agreement provides for an
23 agreement or transaction that is not a
24 repurchase agreement under this
25 clause, except that the master agree-

1 ment shall be considered to be a re-
2 purchase agreement under this sub-
3 clause only with respect to each agree-
4 ment or transaction under the master
5 agreement that is referred to in sub-
6 clause (I), (III), or (IV); and

7 (VI) means any security agree-
8 ment or arrangement or other credit
9 enhancement related to any agree-
10 ment or transaction referred to in
11 subclause (I), (III), (IV), or (V), in-
12 cluding any guarantee or reimburse-
13 ment obligation in connection with
14 any agreement or transaction referred
15 to in any such subclause.

16 (vi) SWAP AGREEMENT.—The term
17 “swap agreement” means—

18 (I) any agreement, including the
19 terms and conditions incorporated by
20 reference in any such agreement,
21 which is an interest rate swap, option,
22 future, or forward agreement, includ-
23 ing a rate floor, rate cap, rate collar,
24 cross-currency rate swap, and basis
25 swap; a spot, same day-tomorrow, to-

1 tions incorporated by reference in
2 such agreement) and that is a for-
3 ward, swap, future, option, or spot
4 transaction on one or more rates, cur-
5 rencies, commodities, equity securities
6 or other equity instruments, debt se-
7 curities or other debt instruments,
8 quantitative measures associated with
9 an occurrence, extent of an occur-
10 rence, or contingency associated with
11 a financial, commercial, or economic
12 consequence, or economic or financial
13 indices or measures of economic or fi-
14 nancial risk or value;

15 (III) any combination of agree-
16 ments or transactions referred to in
17 this clause;

18 (IV) any option to enter into any
19 agreement or transaction referred to
20 in this clause;

21 (V) a master agreement that pro-
22 vides for an agreement or transaction
23 referred to in subclause (I), (II), (III),
24 or (IV), together with all supplements
25 to any such master agreement, with-

1 out regard to whether the master
2 agreement contains an agreement or
3 transaction that is not a swap agree-
4 ment under this clause, except that
5 the master agreement shall be consid-
6 ered to be a swap agreement under
7 this clause only with respect to each
8 agreement or transaction under the
9 master agreement that is referred to
10 in subclause (I), (II), (III), or
11 (IV);and

12 (VI) any security agreement or
13 arrangement or other credit enhance-
14 ment related to any agreement or
15 transaction referred to in any of
16 clauses (I) through (V), including any
17 guarantee or reimbursement obliga-
18 tion in connection with any agreement
19 or transaction referred to in any such
20 clause.

21 (vii) DEFINITIONS RELATING TO DE-
22 FAULT.—When used in this paragraph and
23 paragraph (10)—

24 (I) the term “default” means,
25 with respect to a covered financial

1 company, any adjudication or other
2 official decision by any court of com-
3 petent jurisdiction, or other public au-
4 thority pursuant to which the Cor-
5 poration has been appointed receiver;
6 and

7 (II) the term “in danger of de-
8 fault” means a covered financial com-
9 pany with respect to which the Cor-
10 poration or appropriate State author-
11 ity has determined that—

12 (aa) in the opinion of the
13 Corporation or such authority—

14 (AA) the covered finan-
15 cial company is not likely to
16 be able to pay its obligations
17 in the normal course of busi-
18 ness; and

19 (BB) there is no rea-
20 sonable prospect that the
21 covered financial company
22 will be able to pay such obli-
23 gations without Federal as-
24 sistance; or

1 (bb) in the opinion of the
2 Corporation or such authority—

3 (AA) the covered finan-
4 cial company has incurred or
5 is likely to incur losses that
6 will deplete all or substan-
7 tially all of its capital; and

8 (BB) there is no rea-
9 sonable prospect that the
10 capital will be replenished
11 without Federal assistance.

12 (viii) TREATMENT OF MASTER AGREE-
13 MENT AS ONE AGREEMENT.—Any master
14 agreement for any contract or agreement
15 described in any of clauses (i) through (vi)
16 (or any master agreement for such master
17 agreement or agreements), together with
18 all supplements to such master agreement,
19 shall be treated as a single agreement and
20 a single qualified financial contract. If a
21 master agreement contains provisions re-
22 lating to agreements or transactions that
23 are not themselves qualified financial con-
24 tracts, the master agreement shall be
25 deemed to be a qualified financial contract

1 only with respect to those transactions that
2 are themselves qualified financial con-
3 tracts.

4 (ix) TRANSFER.—The term “transfer”
5 means every mode, direct or indirect, abso-
6 lute or conditional, voluntary or involun-
7 tary, of disposing of or parting with prop-
8 erty or with an interest in property, includ-
9 ing retention of title as a security interest
10 and foreclosure of the equity of redemption
11 of the covered financial company.

12 (x) PERSON.—The term “person” in-
13 cludes any governmental entity in addition
14 to any entity included in the definition of
15 such term in section 1, title 1, United
16 States Code.

17 (E) CLARIFICATION.—No provision of law
18 shall be construed as limiting the right or
19 power of the Corporation, or authorizing any
20 court or agency to limit or delay, in any man-
21 ner, the right or power of the Corporation to
22 transfer any qualified financial contract in ac-
23 cordance with paragraphs (9) and (10) of this
24 subsection or to disaffirm or repudiate any such
25 contract in accordance with subsection (c)(1).

1 (F) WALKAWAY CLAUSES NOT EFFEC-
2 TIVE.—

3 (i) IN GENERAL.—Notwithstanding
4 the provisions of subparagraph (A) of this
5 paragraph and sections 403 and 404 of the
6 Federal Deposit Insurance Corporation
7 Improvement Act of 1991, no walkaway
8 clause shall be enforceable in a qualified fi-
9 nancial contract of a covered financial
10 company in default.

11 (ii) LIMITED SUSPENSION OF CERTAIN
12 OBLIGATIONS.—In the case of a qualified
13 financial contract referred to in clause (i),
14 any payment or delivery obligations other-
15 wise due from a party pursuant to the
16 qualified financial contract shall be sus-
17 pended from the time at which the Cor-
18 poration is appointed as receiver until the
19 earlier of—

20 (I) the time at which such party
21 receives notice that such contract has
22 been transferred pursuant to para-
23 graph (10)(A); or

24 (II) 5:00 p.m. (eastern time) on
25 the 5th business day following the

1 date of the appointment of the Cor-
2 poration as receiver.

3 (iii) WALKAWAY CLAUSE DEFINED.—

4 For purposes of this subparagraph, the
5 term “walkaway clause” means any provi-
6 sion in a qualified financial contract that
7 suspends, conditions, or extinguishes a
8 payment obligation of a party, in whole or
9 in part, or does not create a payment obli-
10 gation of a party that would otherwise
11 exist, solely because of the status of such
12 party as a nondefaulting party in connec-
13 tion with the insolvency of a covered finan-
14 cial company that is a party to the con-
15 tract or the appointment of or the exercise
16 of rights or powers by the Corporation as
17 receiver for such covered financial com-
18 pany, and not as a result of the exercise by
19 a party of any right to offset, setoff, or net
20 obligations that exist under the contract,
21 any other contract between those parties,
22 or applicable law.

23 (iv) CERTAIN OBLIGATIONS TO CLEAR-
24 ING ORGANIZATIONS.—In the event that
25 the Corporation has been appointed as re-

1 ceiver for a covered financial company
2 which is a party to any qualified financial
3 contract cleared by or subject to the rules
4 of a clearing organization (as defined in
5 subsection (c)(9)(D)), the receiver shall use
6 its best efforts to meet all margin, collat-
7 eral, and settlement obligations of the cov-
8 ered financial company that arise under
9 qualified financial contracts (other than
10 any margin, collateral, or settlement obli-
11 gation that is not enforceable against the
12 receiver under paragraph (8)(F) or para-
13 graph 10(B)) as required by the rules of
14 the clearing organization when due, and
15 such obligations shall not be suspended
16 pursuant to paragraph (8)(F)(ii). Notwith-
17 standing paragraph (8)(F) or (10)(B), if
18 the receiver defaults on any such margin,
19 collateral, or settlement obligations under
20 the rules of the clearing organization, the
21 clearing organization shall have the imme-
22 diate right to exercise, and shall not be
23 stayed from exercising, all of its rights and
24 remedies under its rules and applicable law
25 with respect to any qualified financial con-

1 tract of the covered financial company, in-
2 cluding, without limitation, the right to liq-
3 uidate all positions and collateral of such
4 covered financial company under the com-
5 pany's qualified financial contracts, and
6 suspend or cease to act for such covered fi-
7 nancial company, all in accordance with
8 the rules of the clearing organization.

9 (G) RECORDKEEPING.—

10 (i) JOINT RULEMAKING.—The Federal
11 primary financial regulatory agencies shall
12 jointly prescribe regulations requiring that
13 financial companies maintain such records
14 with respect to qualified financial contracts
15 (including market valuations) that the
16 Federal primary financial regulatory agen-
17 cies determine to be necessary or appro-
18 priate in order to assist the Corporation as
19 receiver for a covered financial company in
20 being able to exercise its rights and fulfill
21 its obligations under this paragraph or
22 paragraphs (9) or (10).

23 (ii) TIME FRAME.—The Federal pri-
24 mary financial regulatory agencies shall
25 prescribe joint final or interim final regula-

1 tions not later than 24 months after the
2 date of enactment of this Act.

3 (iii) BACK-UP RULEMAKING AUTHOR-
4 ITY.—If the Federal primary financial reg-
5 ulatory agencies do not prescribe joint final
6 or interim final regulations within the time
7 frame in clause (ii), the Chairperson of the
8 Council shall prescribe, in consultation
9 with the Corporation, the regulations re-
10 quired by clause (i).

11 (iv) CATEGORIZATION AND
12 TIERING.—The joint regulations prescribed
13 under clause (i) shall, as appropriate, dif-
14 ferentiate among financial companies by
15 taking into consideration their size, risk,
16 complexity, leverage, frequency and dollar
17 amount of qualified financial contracts,
18 interconnectedness to the financial system,
19 and any other factors deemed appropriate.

20 (9) TRANSFER OF QUALIFIED FINANCIAL CON-
21 TRACTS.—

22 (A) IN GENERAL.—In making any transfer
23 of assets or liabilities of a covered financial
24 company in default which includes any qualified
25 financial contract, the Corporation as receiver

1 for such covered financial company shall ei-
2 ther—

3 (i) transfer to one financial institu-
4 tion, other than a financial institution for
5 which a conservator, receiver, trustee in
6 bankruptcy, or other legal custodian has
7 been appointed or which is otherwise the
8 subject of a bankruptcy or insolvency pro-
9 ceeding—

10 (I) all qualified financial con-
11 tracts between any person or any af-
12 filiate of such person and the covered
13 financial company in default;

14 (II) all claims of such person or
15 any affiliate of such person against
16 such covered financial company under
17 any such contract (other than any
18 claim which, under the terms of any
19 such contract, is subordinated to the
20 claims of general unsecured creditors
21 of such company);

22 (III) all claims of such covered fi-
23 nancial company against such person
24 or any affiliate of such person under
25 any such contract; and

1 (IV) all property securing or any
2 other credit enhancement for any con-
3 tract described in subclause (I) or any
4 claim described in subclause (II) or
5 (III) under any such contract; or

6 (ii) transfer none of the qualified fi-
7 nancial contracts, claims, property or other
8 credit enhancement referred to in clause (i)
9 (with respect to such person and any affil-
10 iate of such person).

11 (B) TRANSFER TO FOREIGN BANK, FINAN-
12 CIAL INSTITUTION, OR BRANCH OR AGENCY
13 THEREOF.—In transferring any qualified finan-
14 cial contracts and related claims and property
15 under subparagraph (A)(i), the Corporation as
16 receiver for the covered financial company shall
17 not make such transfer to a foreign bank, fi-
18 nancial institution organized under the laws of
19 a foreign country, or a branch or agency of a
20 foreign bank or financial institution unless,
21 under the law applicable to such bank, financial
22 institution, branch or agency, to the qualified
23 financial contracts, and to any netting contract,
24 any security agreement or arrangement or other
25 credit enhancement related to one or more

1 qualified financial contracts, the contractual
2 rights of the parties to such qualified financial
3 contracts, netting contracts, security agree-
4 ments or arrangements, or other credit en-
5 hancements are enforceable substantially to the
6 same extent as permitted under this section.

7 (C) TRANSFER OF CONTRACTS SUBJECT
8 TO THE RULES OF A CLEARING ORGANIZA-
9 TION.—In the event that the Corporation as re-
10 ceiver for a financial institution transfers any
11 qualified financial contract and related claims,
12 property, or credit enhancement pursuant to
13 subparagraph (A)(i) and such contract is
14 cleared by or subject to the rules of a clearing
15 organization, the clearing organization shall not
16 be required to accept the transferee as a mem-
17 ber by virtue of the transfer.

18 (D) DEFINITIONS.—For purposes of this
19 paragraph—

20 (i) the term “financial institution”
21 means a broker or dealer, a depository in-
22 stitution, a futures commission merchant,
23 a bridge financial company, or any other
24 institution determined by the Corporation,

1 by regulation, to be a financial institution;
2 and

3 (ii) the term “clearing organization”
4 has the same meaning as in section 402 of
5 the Federal Deposit Insurance Corporation
6 Improvement Act of 1991.

7 (10) NOTIFICATION OF TRANSFER.—

8 (A) IN GENERAL.—

9 (i) NOTICE.—The Corporation shall
10 provide notice in accordance with clause

11 (ii), if—

12 (I) the Corporation as receiver
13 for a covered financial company in de-
14 fault or in danger of default transfers
15 any assets or liabilities of the covered
16 financial company; and

17 (II) the transfer includes any
18 qualified financial contract.

19 (ii) TIMING.—The Corporation as re-
20 ceiver for a covered financial company
21 shall notify any person who is a party to
22 any contract described in clause (i) of such
23 transfer not later than 5:00 p.m. (eastern
24 time) on the 5th business day following the

1 date of the appointment of the Corporation
2 as receiver.

3 (B) CERTAIN RIGHTS NOT ENFORCE-
4 ABLE.—

5 (i) RECEIVERSHIP.—A person who is
6 a party to a qualified financial contract
7 with a covered financial company may not
8 exercise any right that such person has to
9 terminate, liquidate, or net such contract
10 under paragraph (8)(A) solely by reason of
11 or incidental to the appointment under this
12 section of the Corporation as receiver for
13 the covered financial company (or the in-
14 solvency or financial condition of the cov-
15 ered financial company for which the Cor-
16 poration has been appointed as receiver)—

17 (I) until 5:00 p.m. (eastern time)
18 on the 5th business day following the
19 date of the appointment; or

20 (II) after the person has received
21 notice that the contract has been
22 transferred pursuant to paragraph
23 (9)(A).

24 (ii) NOTICE.—For purposes of this
25 paragraph, the Corporation as receiver for

1 a covered financial company shall be
2 deemed to have notified a person who is a
3 party to a qualified financial contract with
4 such covered financial company, if the Cor-
5 poration has taken steps reasonably cal-
6 culated to provide notice to such person by
7 the time specified in subparagraph (A).

8 (C) TREATMENT OF BRIDGE FINANCIAL
9 COMPANY.—For purposes of paragraph (9), a
10 bridge financial company shall not be consid-
11 ered to be a covered financial company for
12 which a conservator, receiver, trustee in bank-
13 ruptcy, or other legal custodian has been ap-
14 pointed, or which is otherwise the subject of a
15 bankruptcy or insolvency proceeding.

16 (D) BUSINESS DAY DEFINED.—For pur-
17 poses of this paragraph, the term “business
18 day” means any day other than any Saturday,
19 Sunday, or any day on which either the New
20 York Stock Exchange or the Federal Reserve
21 Bank of New York is closed.

22 (11) DISAFFIRMANCE OR REPUDIATION OF
23 QUALIFIED FINANCIAL CONTRACTS.—In exercising
24 the rights of disaffirmance or repudiation of the
25 Corporation as receiver with respect to any qualified

1 financial contract to which a covered financial com-
2 pany is a party, the Corporation shall either—

3 (A) disaffirm or repudiate all qualified fi-
4 nancial contracts between—

5 (i) any person or any affiliate of such
6 person; and

7 (ii) the covered financial company in
8 default; or

9 (B) disaffirm or repudiate none of the
10 qualified financial contracts referred to in sub-
11 paragraph (A) (with respect to such person or
12 any affiliate of such person).

13 (12) CERTAIN SECURITY AND CUSTOMER IN-
14 TERESTS NOT AVOIDABLE.—No provision of this
15 subsection shall be construed as permitting the
16 avoidance of any—

17 (A) legally enforceable or perfected secu-
18 rity interest in any of the assets of any covered
19 financial company, except in accordance with
20 subsection (a)(11); or

21 (B) legally enforceable interest in customer
22 property, security entitlements in respect of as-
23 sets or property held by the covered financial
24 company for any security entitlement holder.

25 (13) AUTHORITY TO ENFORCE CONTRACTS.—

1 (A) IN GENERAL.—The Corporation as re-
2 ceiver for a covered financial company may en-
3 force any contract, other than a liability insur-
4 ance contract of a director or officer, a financial
5 institution bond entered into by the covered fi-
6 nancial company, notwithstanding any provision
7 of the contract providing for termination, de-
8 fault, acceleration, or exercise of rights upon, or
9 solely by reason of, insolvency, the appointment
10 of or the exercise of rights or powers by the
11 Corporation as receiver, the filing of the peti-
12 tion pursuant to section 202(c)(1), or the
13 issuance of the recommendations or determina-
14 tion, or any actions or events occurring in con-
15 nection therewith or as a result thereof, pursu-
16 ant to section 203.

17 (B) CERTAIN RIGHTS NOT AFFECTED.—
18 No provision of this paragraph may be con-
19 strued as impairing or affecting any right of the
20 Corporation as receiver to enforce or recover
21 under a liability insurance contract of a director
22 or officer or financial institution bond under
23 other applicable law.

24 (C) CONSENT REQUIREMENT AND IPSO
25 FACTO CLAUSES.—

1 (i) IN GENERAL.—Except as otherwise
2 provided by this section, no person may ex-
3 ercise any right or power to terminate, ac-
4 celerate, or declare a default under any
5 contract to which the covered financial
6 company is a party (and no provision in
7 any such contract providing for such de-
8 fault, termination or acceleration shall be
9 enforceable), or to obtain possession of or
10 exercise control over any property of the
11 covered financial company or affect any
12 contractual rights of the covered financial
13 company, without the consent of the Cor-
14 poration as receiver for the covered finan-
15 cial company during the 90 day period be-
16 ginning from the appointment of the Cor-
17 poration as receiver.

18 (ii) EXCEPTIONS.—No provision of
19 this subparagraph shall apply to a director
20 or officer liability insurance contract or a
21 financial institution bond, to the rights of
22 parties to certain qualified financial con-
23 tracts pursuant to paragraph (8), or to the
24 rights of parties to netting contracts pur-
25 suant to subtitle A of title IV of the Fed-

1 eral Deposit Insurance Corporation Im-
2 provement Act of 1991 (12 U.S.C. 4401 et
3 seq.), or shall be construed as permitting
4 the Corporation as receiver to fail to com-
5 ply with otherwise enforceable provisions of
6 such contract.

7 (D) CONTRACTS TO EXTEND CREDIT.—
8 Notwithstanding any other provision in this
9 title, if the Corporation as receiver enforces any
10 contract to extend credit to the covered finan-
11 cial company or bridge financial company, any
12 valid and enforceable obligation to repay such
13 debt shall be paid by the Corporation as re-
14 ceiver, as an administrative expense of the re-
15 ceivership.

16 (14) EXCEPTION FOR FEDERAL RESERVE
17 BANKS AND CORPORATION SECURITY INTEREST.—
18 No provision of this subsection shall apply with re-
19 spect to—

20 (A) any extension of credit from any Fed-
21 eral reserve bank or the Corporation to any cov-
22 ered financial company; or

23 (B) any security interest in the assets of
24 the covered financial company securing any
25 such extension of credit.

1 (15) SAVINGS CLAUSE.—The meanings of terms
2 used in this subsection are applicable for purposes of
3 this subsection only, and shall not be construed or
4 applied so as to challenge or affect the characteriza-
5 tion, definition, or treatment of any similar terms
6 under any other statute, regulation, or rule, includ-
7 ing the Gramm-Leach-Bliley Act, the Legal Cer-
8 tainty for Bank Products Act of 2000, the securities
9 laws (as that term is defined in section 3(a)(47) of
10 the Securities Exchange Act of 1934), and the Com-
11 modity Exchange Act.

12 (16) ENFORCEMENT OF CONTRACTS GUARAN-
13 TEED BY THE COVERED FINANCIAL COMPANY.—

14 (A) IN GENERAL.—The Corporation, as re-
15 ceiver for a covered financial company or as re-
16 ceiver for a subsidiary of a covered financial
17 company (including an insured depository insti-
18 tution) shall have the power to enforce con-
19 tracts of subsidiaries or affiliates of the covered
20 financial company, the obligations under which
21 are guaranteed or otherwise supported by or
22 linked to the covered financial company, not-
23 withstanding any contractual right to cause the
24 termination, liquidation, or acceleration of such
25 contracts based solely on the insolvency, finan-

1 cial condition, or receivership of the covered fi-
2 nancial company, if—

3 (i) such guaranty or other support
4 and all related assets and liabilities are
5 transferred to and assumed by a bridge fi-
6 nancial company or a third party (other
7 than a third party for which a conservator,
8 receiver, trustee in bankruptcy, or other
9 legal custodian has been appointed, or
10 which is otherwise the subject of a bank-
11 ruptcy or insolvency proceeding) within the
12 same period of time as the Corporation is
13 entitled to transfer the qualified financial
14 contracts of such covered financial com-
15 pany; or

16 (ii) the Corporation, as receiver, oth-
17 erwise provides adequate protection with
18 respect to such obligations.

19 (B) RULE OF CONSTRUCTION.—For pur-
20 poses of this paragraph, a bridge financial com-
21 pany shall not be considered to be a third party
22 for which a conservator, receiver, trustee in
23 bankruptcy, or other legal custodian has been
24 appointed, or which is otherwise the subject of
25 a bankruptcy or insolvency proceeding.

1 (d) VALUATION OF CLAIMS IN DEFAULT.—

2 (1) IN GENERAL.—Notwithstanding any other
3 provision of Federal law or the law of any State, and
4 regardless of the method utilized by the Corporation
5 for a covered financial company, including trans-
6 actions authorized under subsection (h), this sub-
7 section shall govern the rights of the creditors of any
8 such covered financial company.

9 (2) MAXIMUM LIABILITY.—The maximum li-
10 ability of the Corporation, acting as receiver for a
11 covered financial company or in any other capacity,
12 to any person having a claim against the Corpora-
13 tion as receiver or the covered financial company for
14 which the Corporation is appointed shall equal the
15 amount that such claimant would have received if—

16 (A) the Corporation had not been ap-
17 pointed receiver with respect to the covered fi-
18 nancial company; and

19 (B) the covered financial company had
20 been liquidated under chapter 7 of the Bank-
21 ruptcy Code, or any similar provision of State
22 insolvency law applicable to the covered finan-
23 cial company.

24 (3) SPECIAL PROVISION FOR ORDERLY LIQ-
25 UIDATION BY SIPC.—The maximum liability of the

1 Corporation, acting as receiver or in its corporate
2 capacity for any covered broker or dealer to any cus-
3 tomer of such covered broker or dealer, with respect
4 to customer property of such customer, shall be—

5 (A) equal to the amount that such cus-
6 tomer would have received with respect to such
7 customer property in a case initiated by SIPC
8 under the Securities Investor Protection Act of
9 1970 (15 U.S.C. 78aaa et seq.); and

10 (B) determined as of the close of business
11 on the date on which the Corporation is ap-
12 pointed as receiver.

13 (4) ADDITIONAL PAYMENTS AUTHORIZED.—

14 (A) IN GENERAL.—Subject to subsection
15 (o)(4), the Corporation, as receiver for a cov-
16 ered financial company and with the approval
17 of the Secretary, may make additional pay-
18 ments or credit additional amounts to or with
19 respect to or for the account of any claimant or
20 category of claimants of the covered financial
21 company, if the Corporation determines that
22 such payments or credits are necessary or ap-
23 propriate to minimize losses to the Corporation
24 as receiver from the orderly liquidation of the
25 covered financial company under this section.

1 (B) LIMITATION.—Notwithstanding any
2 other provision of Federal or State law, or the
3 constitution of any State, the Corporation shall
4 not be obligated, as a result of having made any
5 payment under subparagraph (A) or credited
6 any amount described in subparagraph (A) to
7 or with respect to or for the account of any
8 claimant or category of claimants, to make pay-
9 ments to any other claimant or category of
10 claimants.

11 (C) MANNER OF PAYMENT.—The Corpora-
12 tion may make payments or credit amounts
13 under subparagraph (A) directly to the claim-
14 ants or may make such payments or credit such
15 amounts to a company other than a covered fi-
16 nancial company or a bridge financial company
17 established with respect thereto in order to in-
18 duce such other company to accept liability for
19 such claims.

20 (e) LIMITATION ON COURT ACTION.—Except as pro-
21 vided in this title, no court may take any action to restrain
22 or affect the exercise of powers or functions of the receiver
23 hereunder, and any remedy against the Corporation or re-
24 ceiver shall be limited to money damages determined in
25 accordance with this title.

1 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

2 (1) IN GENERAL.—A director or officer of a
3 covered financial company may be held personally
4 liable for monetary damages in any civil action de-
5 scribed in paragraph (2) by, on behalf of, or at the
6 request or direction of the Corporation, which action
7 is prosecuted wholly or partially for the benefit of
8 the Corporation—

9 (A) acting as receiver for such covered fi-
10 nancial company;

11 (B) acting based upon a suit, claim, or
12 cause of action purchased from, assigned by, or
13 otherwise conveyed by the Corporation as re-
14 ceiver; or

15 (C) acting based upon a suit, claim, or
16 cause of action purchased from, assigned by, or
17 otherwise conveyed in whole or in part by a cov-
18 ered financial company or its affiliate in con-
19 nection with assistance provided under this
20 title.

21 (2) ACTIONS COVERED.—Paragraph (1) shall
22 apply with respect to actions for gross negligence,
23 including any similar conduct or conduct that dem-
24 onstrates a greater disregard of a duty of care (than
25 gross negligence) including intentional tortious con-

1 duct, as such terms are defined and determined
2 under applicable State law.

3 (3) SAVINGS CLAUSE.—Nothing in this sub-
4 section shall impair or affect any right of the Cor-
5 poration under other applicable law.

6 (g) DAMAGES.—In any proceeding related to any
7 claim against a director, officer, employee, agent, attorney,
8 accountant, or appraiser of a covered financial company,
9 or any other party employed by or providing services to
10 a covered financial company, recoverable damages deter-
11 mined to result from the improvident or otherwise im-
12 proper use or investment of any assets of the covered fi-
13 nancial company shall include principal losses and appro-
14 priate interest.

15 (h) BRIDGE FINANCIAL COMPANIES.—

16 (1) ORGANIZATION.—

17 (A) PURPOSE.—The Corporation, as re-
18 ceiver for one or more covered financial compa-
19 nies or in anticipation of being appointed re-
20 ceiver for one or more covered financial compa-
21 nies, may organize one or more bridge financial
22 companies in accordance with this subsection.

23 (B) AUTHORITIES.—Upon the creation of
24 a bridge financial company under subparagraph

1 (A) with respect to a covered financial com-
2 pany, such bridge financial company may—

3 (i) assume such liabilities (including
4 liabilities associated with any trust or cus-
5 tody business, but excluding any liabilities
6 that count as regulatory capital) of such
7 covered financial company as the Corpora-
8 tion may, in its discretion, determine to be
9 appropriate;

10 (ii) purchase such assets (including
11 assets associated with any trust or custody
12 business) of such covered financial com-
13 pany as the Corporation may, in its discre-
14 tion, determine to be appropriate; and

15 (iii) perform any other temporary
16 function which the Corporation may, in its
17 discretion, prescribe in accordance with
18 this section.

19 (2) CHARTER AND ESTABLISHMENT.—

20 (A) ESTABLISHMENT.—Except as provided
21 in subparagraph (H), where the covered finan-
22 cial company is a covered broker or dealer, the
23 Corporation, as receiver for a covered financial
24 company, may grant a Federal charter to and
25 approve articles of association for one or more

1 bridge financial company or companies, with re-
2 spect to such covered financial company which
3 shall, by operation of law and immediately upon
4 issuance of its charter and approval of its arti-
5 cles of association, be established and operate
6 in accordance with, and subject to, such char-
7 ter, articles, and this section.

8 (B) MANAGEMENT.—Upon its establish-
9 ment, a bridge financial company shall be under
10 the management of a board of directors ap-
11 pointed by the Corporation.

12 (C) ARTICLES OF ASSOCIATION.—The arti-
13 cles of association and organization certificate
14 of a bridge financial company shall have such
15 terms as the Corporation may provide, and
16 shall be executed by such representatives as the
17 Corporation may designate.

18 (D) TERMS OF CHARTER; RIGHTS AND
19 PRIVILEGES.—Subject to and in accordance
20 with the provisions of this subsection, the Cor-
21 poration shall—

22 (i) establish the terms of the charter
23 of a bridge financial company and the
24 rights, powers, authorities and privileges of

1 a bridge financial company granted by the
2 charter or as an incident thereto; and

3 (ii) provide for, and establish the
4 terms and conditions governing, the man-
5 agement (including the bylaws and the
6 number of directors of the board of direc-
7 tors) and operations of the bridge financial
8 company.

9 (E) TRANSFER OF RIGHTS AND PRIVI-
10 LEGES OF COVERED FINANCIAL COMPANY.—

11 (i) IN GENERAL.—Notwithstanding
12 any other provision of Federal or State
13 law, the Corporation may provide for a
14 bridge financial company to succeed to and
15 assume any rights, powers, authorities or
16 privileges of the covered financial company
17 with respect to which the bridge financial
18 company was established and, upon such
19 determination by the Corporation, the
20 bridge financial company shall immediately
21 and by operation of law succeed to and as-
22 sume such rights, powers, authorities, and
23 privileges.

24 (ii) EFFECTIVE WITHOUT AP-
25 PROVAL.—Any succession to or assumption

1 by a bridge financial company of rights,
2 powers, authorities or privileges of a cov-
3 ered financial company under clause (i) or
4 otherwise shall be effective without any
5 further approval under Federal or State
6 law, assignment, or consent with respect
7 thereto.

8 (F) CORPORATE GOVERNANCE AND ELEC-
9 TION AND DESIGNATION OF BODY OF LAW.—To
10 the extent permitted by the Corporation and
11 consistent with this section and any rules, regu-
12 lations, or directives issued by the Corporation
13 under this section, a bridge financial company
14 may elect to follow the corporate governance
15 practices and procedures as are applicable to a
16 corporation incorporated under the general cor-
17 poration law of the State of Delaware, or the
18 State of incorporation or organization of the
19 covered financial company with respect to which
20 the bridge financial company was established,
21 as such law may be amended from time to time.

22 (G) CAPITAL.—

23 (i) CAPITAL NOT REQUIRED.—Not-
24 withstanding any other provision of Fed-
25 eral or State law, a bridge financial com-

1 pany may, if permitted by the Corporation,
2 operate without any capital or surplus, or
3 with such capital or surplus as the Cor-
4 poration may in its discretion determine to
5 be appropriate.

6 (ii) NO CONTRIBUTION BY THE COR-
7 PORATION REQUIRED.—The Corporation is
8 not required to pay capital into a bridge fi-
9 nancial company or to issue any capital
10 stock on behalf of a bridge financial com-
11 pany established under this subsection.

12 (iii) AUTHORITY.—If the Corporation
13 determines that such action is advisable,
14 the Corporation may cause capital stock or
15 other securities of a bridge financial com-
16 pany established with respect to a covered
17 financial company to be issued and offered
18 for sale in such amounts and on such
19 terms and conditions as the Corporation
20 may, in its discretion, determine.

21 (iv) OPERATING FUNDS IN LIEU OF
22 CAPITAL AND IMPLEMENTATION PLAN.—
23 Upon the organization of a bridge financial
24 company, and thereafter as the Corpora-
25 tion may, in its discretion, determine to be

1 (ii) OTHER REQUIREMENTS.—Except
2 as provided in clause (i), and notwith-
3 standing any other provision of this sec-
4 tion, the bridge financial company shall be
5 subject to the Federal securities laws and
6 all requirements with respect to being a
7 member of a self-regulatory organization,
8 unless exempted from any such require-
9 ments by the Commission, as is necessary
10 or appropriate in the public interest or for
11 the protection of investors.

12 (iii) TREATMENT OF CUSTOMERS.—
13 Except as otherwise provided by this title,
14 any customer of the covered broker or
15 dealer whose account is transferred to a
16 bridge financial company shall have all the
17 rights, privileges, and protections under
18 section 205(f) and under the Securities In-
19 vestor Protection Act of 1970 (15 U.S.C.
20 78aaa et seq.), that such customer would
21 have had if the account were not trans-
22 ferred from the covered financial company
23 under this subparagraph.

24 (iv) OPERATION OF BRIDGE BROKERS
25 OR DEALERS.—Notwithstanding any other

1 provision of this title, the Corporation shall
2 not operate any bridge financial company
3 created by the Corporation under this title
4 with respect to a covered broker or dealer
5 in such a manner as to adversely affect the
6 ability of customers to promptly access
7 their customer property in accordance with
8 applicable law.

9 (3) INTERESTS IN AND ASSETS AND OBLIGA-
10 TIONS OF COVERED FINANCIAL COMPANY.—Notwith-
11 standing paragraph (1) or (2) or any other provision
12 of law—

13 (A) a bridge financial company shall as-
14 sume, acquire, or succeed to the assets or liabil-
15 ities of a covered financial company (including
16 the assets or liabilities associated with any trust
17 or custody business) only to the extent that
18 such assets or liabilities are transferred by the
19 Corporation to the bridge financial company in
20 accordance with, and subject to the restrictions
21 set forth in, paragraph (1)(B); and

22 (B) a bridge financial company shall not
23 assume, acquire, or succeed to any obligation
24 that a covered financial company for which the
25 Corporation has been appointed receiver may

1 have to any shareholder, member, general part-
2 ner, limited partner, or other person with an in-
3 terest in the equity of the covered financial
4 company that arises as a result of the status of
5 that person having an equity claim in the cov-
6 ered financial company.

7 (4) BRIDGE FINANCIAL COMPANY TREATED AS
8 BEING IN DEFAULT FOR CERTAIN PURPOSES.—A
9 bridge financial company shall be treated as a cov-
10 ered financial company in default at such times and
11 for such purposes as the Corporation may, in its dis-
12 cretion, determine.

13 (5) TRANSFER OF ASSETS AND LIABILITIES.—

14 (A) TRANSFER OF ASSETS AND LIABIL-
15 ITIES.—The Corporation, as receiver for a cov-
16 ered financial company, may transfer any assets
17 and liabilities of a covered financial company
18 (including any assets or liabilities associated
19 with any trust or custody business) to one or
20 more bridge financial companies in accordance
21 with and subject to the restrictions of para-
22 graph (1).

23 (B) SUBSEQUENT TRANSFERS.—At any
24 time after the establishment of a bridge finan-
25 cial company with respect to a covered financial

1 company, the Corporation, as receiver, may
2 transfer any assets and liabilities of such cov-
3 ered financial company as the Corporation may,
4 in its discretion, determine to be appropriate in
5 accordance with and subject to the restrictions
6 of paragraph (1).

7 (C) TREATMENT OF TRUST OR CUSTODY
8 BUSINESS.—For purposes of this paragraph,
9 the trust or custody business, including fidu-
10 ciary appointments, held by any covered finan-
11 cial company is included among its assets and
12 liabilities.

13 (D) EFFECTIVE WITHOUT APPROVAL.—
14 The transfer of any assets or liabilities, includ-
15 ing those associated with any trust or custody
16 business of a covered financial company to a
17 bridge financial company shall be effective with-
18 out any further approval under Federal or
19 State law, assignment, or consent with respect
20 thereto.

21 (E) EQUITABLE TREATMENT OF SIMI-
22 LARLY SITUATED CREDITORS.—The Corpora-
23 tion shall treat all creditors of a covered finan-
24 cial company that are similarly situated under
25 subsection (b)(1), in a similar manner in exer-

1 eising the authority of the Corporation under
2 this subsection to transfer any assets or liabil-
3 ities of the covered financial company to one or
4 more bridge financial companies established
5 with respect to such covered financial company,
6 except that the Corporation may take any ac-
7 tion (including making payments) that does not
8 comply with this subparagraph, if—

9 (i) the Corporation determines that
10 such action is necessary—

11 (I) to maximize the value of the
12 assets of the covered financial com-
13 pany;

14 (II) to maximize the present
15 value return from the sale or other
16 disposition of the assets of the covered
17 financial company;

18 (III) to minimize the amount of
19 any loss realized upon the sale or
20 other disposition of the assets of the
21 covered financial company; or

22 (IV) to contain or address serious
23 adverse effects to financial stability of
24 the United States; and

1 (ii) all creditors that are similarly sit-
2 uated under subsection (b)(1) receive not
3 less than the amount provided under para-
4 graphs (2) and (3) of subsection (d).

5 (F) LIMITATION ON TRANSFER OF LIABIL-
6 ITIES.—Notwithstanding any other provision of
7 law, the aggregate amount of liabilities of a cov-
8 ered financial company that are transferred to,
9 or assumed by, a bridge financial company from
10 a covered financial company may not exceed the
11 aggregate amount of the assets of the covered
12 financial company that are transferred to, or
13 purchased by, the bridge financial company
14 from the covered financial company.

15 (6) STAY OF JUDICIAL ACTION.—Any judicial
16 action to which a bridge financial company becomes
17 a party by virtue of its acquisition of any assets or
18 assumption of any liabilities of a covered financial
19 company shall be stayed from further proceedings
20 for a period of not longer than 45 days (or such
21 longer period as may be agreed to upon the consent
22 of all parties) at the request of the bridge financial
23 company.

24 (7) AGREEMENTS AGAINST INTEREST OF THE
25 BRIDGE FINANCIAL COMPANY.—No agreement that

1 tends to diminish or defeat the interest of the bridge
2 financial company in any asset of a covered financial
3 company acquired by the bridge financial company
4 shall be valid against the bridge financial company,
5 unless such agreement is in writing, (ii) was exe-
6 cuted by an authorized officer or representative of
7 the covered financial company or confirmed in the
8 ordinary course of business by the covered financial
9 company, and (iii) has been, since the time of its
10 execution on official record of the company or the
11 party claiming under the agreement provides docu-
12 mentation, acceptable to the receiver, of such agree-
13 ment and its authorized execution or confirmation
14 by the covered financial company.

15 (8) NO FEDERAL STATUS.—

16 (A) AGENCY STATUS.—A bridge financial
17 company is not an agency, establishment, or in-
18 strumentality of the United States.

19 (B) EMPLOYEE STATUS.—Representatives
20 for purposes of paragraph (1)(B), directors, of-
21 ficers, employees, or agents of a bridge financial
22 company are not, solely by virtue of service in
23 any such capacity, officers or employees of the
24 United States. Any employee of the Corporation
25 or of any Federal instrumentality who serves at

1 the request of the Corporation as a representa-
2 tive for purposes of paragraph (1)(B), director,
3 officer, employee, or agent of a bridge financial
4 company shall not—

5 (i) solely by virtue of service in any
6 such capacity lose any existing status as
7 an officer or employee of the United States
8 for purposes of title 5, United States Code,
9 or any other provision of law; or

10 (ii) receive any salary or benefits for
11 service in any such capacity with respect to
12 a bridge financial company in addition to
13 such salary or benefits as are obtained
14 through employment with the Corporation
15 or such Federal instrumentality.

16 (9) FUNDING AUTHORIZED.—The Corporation
17 may, subject to the plan described in subsection
18 (n)(13), provide funding to facilitate any transaction
19 described in subparagraph (A), (B), (C), or (D) of
20 paragraph (13) with respect to any bridge financial
21 company, or facilitate the acquisition by a bridge fi-
22 nancial company of any assets, or the assumption of
23 any liabilities, of a covered financial company for
24 which the Corporation has been appointed receiver.

1 (10) EXEMPT TAX STATUS.—Notwithstanding
2 any other provision of Federal or State law, a bridge
3 financial company, its franchise, property, and in-
4 come shall be exempt from all taxation now or here-
5 after imposed by the United States, by any territory,
6 dependency, or possession thereof, or by any State,
7 county, municipality, or local taxing authority.

8 (11) FEDERAL AGENCY APPROVAL; ANTITRUST
9 REVIEW.—If a transaction involving the merger or
10 sale of a bridge financial company requires approval
11 by a Federal agency, the transaction may not be
12 consummated before the 5th calendar day after the
13 date of approval by the Federal agency responsible
14 for such approval with respect thereto. If, in connec-
15 tion with any such approval a report on competitive
16 factors from the Attorney General is required, the
17 Federal agency responsible for such approval shall
18 promptly notify the Attorney General of the pro-
19 posed transaction and the Attorney General shall
20 provide the required report within 10 days of the re-
21 quest. If a notification is required under section 7A
22 of the Clayton Act with respect to such transaction,
23 the required waiting period shall end on the 15th
24 day after the date on which the Attorney General
25 and the Federal Trade Commission receive such no-

1 tification, unless the waiting period is terminated
2 earlier under section 7A(b)(2) of the Clayton Act, or
3 extended under section 7A(e)(2) of that Act.

4 (12) DURATION OF BRIDGE FINANCIAL COM-
5 PANY.—Subject to paragraphs (13) and (14), the
6 status of a bridge financial company as such shall
7 terminate at the end of the 2-year period following
8 the date on which it was granted a charter. The
9 Corporation may, in its discretion, extend the status
10 of the bridge financial company as such for no more
11 than 3 additional 1-year periods.

12 (13) TERMINATION OF BRIDGE FINANCIAL COM-
13 PANY STATUS.—The status of any bridge financial
14 company as such shall terminate upon the earliest
15 of—

16 (A) the date of the merger or consolidation
17 of the bridge financial company with a company
18 that is not a bridge financial company;

19 (B) at the election of the Corporation, the
20 sale of a majority of the capital stock of the
21 bridge financial company to a company other
22 than the Corporation and other than another
23 bridge financial company;

24 (C) the sale of 80 percent, or more, of the
25 capital stock of the bridge financial company to

1 a person other than the Corporation and other
2 than another bridge financial company;

3 (D) at the election of the Corporation, ei-
4 ther the assumption of all or substantially all of
5 the liabilities of the bridge financial company by
6 a company that is not a bridge financial com-
7 pany, or the acquisition of all or substantially
8 all of the assets of the bridge financial company
9 by a company that is not a bridge financial
10 company, or other entity as permitted under
11 applicable law; and

12 (E) the expiration of the period provided in
13 paragraph (12), or the earlier dissolution of the
14 bridge financial company, as provided in para-
15 graph (15).

16 (14) EFFECT OF TERMINATION EVENTS.—

17 (A) MERGER OR CONSOLIDATION.—A
18 merger or consolidation, described in paragraph
19 (12)(A) shall be conducted in accordance with,
20 and shall have the effect provided in, the provi-
21 sions of applicable law. For the purpose of ef-
22 fecting such a merger or consolidation, the
23 bridge financial company shall be treated as a
24 corporation organized under the laws of the
25 State of Delaware (unless the law of another

1 State has been selected by the bridge financial
2 company in accordance with paragraph (2)(F)),
3 and the Corporation shall be treated as the sole
4 shareholder thereof, notwithstanding any other
5 provision of State or Federal law.

6 (B) CHARTER CONVERSION.—Following
7 the sale of a majority of the capital stock of the
8 bridge financial company, as provided in para-
9 graph (13)(B), the Corporation may amend the
10 charter of the bridge financial company to re-
11 flect the termination of the status of the bridge
12 financial company as such, whereupon the com-
13 pany shall have all of the rights, powers, and
14 privileges under its constituent documents and
15 applicable Federal or State law. In connection
16 therewith, the Corporation may take such steps
17 as may be necessary or convenient to reincor-
18 porate the bridge financial company under the
19 laws of a State and, notwithstanding any provi-
20 sions of Federal or State law, such State-char-
21 tered corporation shall be deemed to succeed by
22 operation of law to such rights, titles, powers
23 and interests of the bridge financial company as
24 the Corporation may provide, with the same ef-
25 fect as if the bridge financial company had

1 merged with the State-chartered corporation
2 under provisions of the corporate laws of such
3 State.

4 (C) SALE OF STOCK.—Following the sale
5 of 80 percent or more of the capital stock of a
6 bridge financial company, as provided in para-
7 graph (13)(C), the company shall have all of
8 the rights, powers, and privileges under its con-
9 stituent documents and applicable Federal or
10 State law. In connection therewith, the Cor-
11 poration may take such steps as may be nec-
12 essary or convenient to reincorporate the bridge
13 financial company under the laws of a State
14 and, notwithstanding any provisions of Federal
15 or State law, the State-chartered corporation
16 shall be deemed to succeed by operation of law
17 to such rights, titles, powers and interests of
18 the bridge financial company as the Corpora-
19 tion may provide, with the same effect as if the
20 bridge financial company had merged with the
21 State-chartered corporation under provisions of
22 the corporate laws of such State.

23 (D) ASSUMPTION OF LIABILITIES AND
24 SALE OF ASSETS.—Following the assumption of
25 all or substantially all of the liabilities of the

1 bridge financial company, or the sale of all or
2 substantially all of the assets of the bridge fi-
3 nancial company, as provided in paragraph
4 (13)(D), at the election of the Corporation, the
5 bridge financial company may retain its status
6 as such for the period provided in paragraph
7 (12) or may be dissolved at the election of the
8 Corporation.

9 (E) AMENDMENTS TO CHARTER.—Fol-
10 lowing the consummation of a transaction de-
11 scribed in subparagraph (A), (B), (C), or (D)
12 of paragraph (13), the charter of the resulting
13 company shall be amended to reflect the termi-
14 nation of bridge financial company status, if ap-
15 propriate.

16 (15) DISSOLUTION OF BRIDGE FINANCIAL COM-
17 PANY.—

18 (A) IN GENERAL.—Notwithstanding any
19 other provision of Federal or State law, if the
20 status of a bridge financial company as such
21 has not previously been terminated by the oc-
22 currence of an event specified in subparagraph
23 (A), (B), (C), or (D) of paragraph (13)—

24 (i) the Corporation may, in its discre-
25 tion, dissolve the bridge financial company

1 in accordance with this paragraph at any
2 time; and

3 (ii) the Corporation shall promptly
4 commence dissolution proceedings in ac-
5 cordance with this paragraph upon the ex-
6 piration of the 2-year period following the
7 date on which the bridge financial com-
8 pany was chartered, or any extension
9 thereof, as provided in paragraph (12).

10 (B) PROCEDURES.—The Corporation shall
11 remain the receiver for a bridge financial com-
12 pany for the purpose of dissolving the bridge fi-
13 nancial company. The Corporation as receiver
14 for a bridge financial company shall wind up
15 the affairs of the bridge financial company in
16 conformity with the provisions of law relating to
17 the liquidation of covered financial companies
18 under this title. With respect to any such bridge
19 financial company, the Corporation as receiver
20 shall have all the rights, powers, and privileges
21 and shall perform the duties related to the exer-
22 cise of such rights, powers, or privileges granted
23 by law to the Corporation as receiver for a cov-
24 ered financial company under this title and,
25 notwithstanding any other provision of law, in

1 the exercise of such rights, powers, and privi-
2 leges, the Corporation shall not be subject to
3 the direction or supervision of any State agency
4 or other Federal agency.

5 (16) AUTHORITY TO OBTAIN CREDIT.—

6 (A) IN GENERAL.—A bridge financial com-
7 pany may obtain unsecured credit and issue un-
8 secured debt.

9 (B) INABILITY TO OBTAIN CREDIT.—If a
10 bridge financial company is unable to obtain
11 unsecured credit or issue unsecured debt, the
12 Corporation may authorize the obtaining of
13 credit or the issuance of debt by the bridge fi-
14 nancial company—

15 (i) with priority over any or all of the
16 obligations of the bridge financial com-
17 pany;

18 (ii) secured by a lien on property of
19 the bridge financial company that is not
20 otherwise subject to a lien; or

21 (iii) secured by a junior lien on prop-
22 erty of the bridge financial company that
23 is subject to a lien.

24 (C) LIMITATIONS.—

1 (i) IN GENERAL.—The Corporation,
2 after notice and a hearing, may authorize
3 the obtaining of credit or the issuance of
4 debt by a bridge financial company that is
5 secured by a senior or equal lien on prop-
6 erty of the bridge financial company that
7 is subject to a lien, only if—

8 (I) the bridge financial company
9 is unable to otherwise obtain such
10 credit or issue such debt; and

11 (II) there is adequate protection
12 of the interest of the holder of the lien
13 on the property with respect to which
14 such senior or equal lien is proposed
15 to be granted.

16 (ii) HEARING.—The hearing required
17 pursuant to this subparagraph shall be be-
18 fore a court of the United States, which
19 shall have jurisdiction to conduct such
20 hearing.

21 (D) BURDEN OF PROOF.—In any hearing
22 under this paragraph, the Corporation has the
23 burden of proof on the issue of adequate protec-
24 tion.

1 (E) QUALIFIED FINANCIAL CONTRACTS.—

2 No credit or debt obtained or issued by a bridge
3 financial company may contain terms that im-
4 pair the rights of a counterparty to a qualified
5 financial contract upon a default by the bridge
6 financial company, other than the priority of
7 such counterparty's unsecured claim (after the
8 exercise of rights) relative to the priority of the
9 bridge financial company's obligations in re-
10 spect of such credit or debt, unless such
11 counterparty consents in writing to any such
12 impairment.

13 (17) EFFECT ON DEBTS AND LIENS.—The re-
14 versal or modification on appeal of an authorization
15 under this subsection to obtain credit or issue debt,
16 or of a grant under this section of a priority or a
17 lien, does not affect the validity of any debt so
18 issued, or any priority or lien so granted, to an enti-
19 ty that extended such credit in good faith, whether
20 or not such entity knew of the pendency of the ap-
21 peal, unless such authorization and the issuance of
22 such debt, or the granting of such priority or lien,
23 were stayed pending appeal.

24 (i) SHARING RECORDS.—If the Corporation has been
25 appointed as receiver for a covered financial company,

1 other Federal regulators shall make all records relating
2 to the covered financial company available to the Corpora-
3 tion, which may be used by the Corporation in any manner
4 that the Corporation determines to be appropriate.

5 (j) EXPEDITED PROCEDURES FOR CERTAIN
6 CLAIMS.—

7 (1) TIME FOR FILING NOTICE OF APPEAL.—

8 The notice of appeal of any order, whether interlocu-
9 tory or final, entered in any case brought by the
10 Corporation against a director, officer, employee,
11 agent, attorney, accountant, or appraiser of the cov-
12 ered financial company or any other person em-
13 ployed by or providing services to a covered financial
14 company shall be filed not later than 30 days after
15 the date of entry of the order. The hearing of the
16 appeal shall be held not later than 120 days after
17 the date of the notice of appeal. The appeal shall be
18 decided not later than 180 days after the date of the
19 notice of appeal.

20 (2) SCHEDULING.—The court shall expedite the
21 consideration of any case brought by the Corpora-
22 tion against a director, officer, employee, agent, at-
23 torney, accountant, or appraiser of a covered finan-
24 cial company or any other person employed by or
25 providing services to a covered financial company.

1 As far as practicable, the court shall give such case
2 priority on its docket.

3 (3) JUDICIAL DISCRETION.—The court may
4 modify the schedule and limitations stated in para-
5 graphs (1) and (2) in a particular case, based on a
6 specific finding that the ends of justice that would
7 be served by making such a modification would out-
8 weigh the best interest of the public in having the
9 case resolved expeditiously.

10 (k) FOREIGN INVESTIGATIONS.—The Corporation, as
11 receiver for any covered financial company, and for pur-
12 poses of carrying out any power, authority, or duty with
13 respect to a covered financial company—

14 (1) may request the assistance of any foreign fi-
15 nancial authority and provide assistance to any for-
16 eign financial authority in accordance with section
17 8(v) of the Federal Deposit Insurance Act, as if the
18 covered financial company were an insured deposi-
19 tory institution, the Corporation were the appro-
20 priate Federal banking agency for the company, and
21 any foreign financial authority were the foreign
22 banking authority; and

23 (2) may maintain an office to coordinate for-
24 eign investigations or investigations on behalf of for-
25 eign financial authorities.

1 (l) PROHIBITION ON ENTERING SECRECY AGREE-
2 MENTS AND PROTECTIVE ORDERS.—The Corporation
3 may not enter into any agreement or approve any protec-
4 tive order which prohibits the Corporation from disclosing
5 the terms of any settlement of an administrative or other
6 action for damages or restitution brought by the Corpora-
7 tion in its capacity as receiver for a covered financial com-
8 pany.

9 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL
10 COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

11 (1) IN GENERAL.—Except as specifically pro-
12 vided in this section, and notwithstanding any other
13 provision of law, the Corporation, in connection with
14 the liquidation of any covered financial company or
15 bridge financial company with respect to which the
16 Corporation has been appointed as receiver, shall—

17 (A) in the case of any covered financial
18 company or bridge financial company that is or
19 has a subsidiary that is a stockbroker, but is
20 not a member of the Securities Investor Protec-
21 tion Corporation, apply the provisions of sub-
22 chapter III of chapter 7 of the Bankruptcy
23 Code, in respect of the distribution to any cus-
24 tomer of all customer name securities and cus-
25 tomer property, as if such covered financial

1 company or bridge financial company were a
2 debtor for purposes of such subchapter; or

3 (B) in the case of any covered financial
4 company or bridge financial company that is a
5 commodity broker, apply the provisions of sub-
6 chapter IV of chapter 7 the Bankruptcy Code,
7 in respect of the distribution to any customer of
8 all customer property, as if such covered finan-
9 cial company or bridge financial company were
10 a debtor for purposes of such subchapter.

11 (2) DEFINITIONS.—For purposes of this sub-
12 section—

13 (A) the terms “customer”, “customer
14 name securities” and “customer property” have
15 the same meanings as in section 741 of title 11,
16 United States Code; and

17 (B) the terms “commodity broker” and
18 “stockbroker” have the same meanings as in
19 section 101 of the Bankruptcy Code.

20 (n) ORDERLY LIQUIDATION FUND.—

21 (1) ESTABLISHMENT.—There is established in
22 the Treasury of the United States a separate fund
23 to be known as the “Orderly Liquidation Fund”,
24 which shall be available to the Corporation to carry
25 out the authorities contained in this title, for the

1 cost of actions authorized by this title, including the
2 orderly liquidation of covered financial companies,
3 payment of administrative expenses, the payment of
4 principal and interest by the Corporation on obliga-
5 tions issued under paragraph (9), and the exercise
6 of the authorities of the Corporation under this title.

7 (2) PROCEEDS.—Amounts received by the Cor-
8 poration, including assessments received under sub-
9 section (o), proceeds of obligations issued under
10 paragraph (9), interest and other earnings from in-
11 vestments, and repayments to the Corporation by
12 covered financial companies, shall be deposited into
13 the Fund.

14 (3) MANAGEMENT.—The Corporation shall
15 manage the Fund in accordance with this subsection
16 and the policies and procedures established under
17 section 203(d).

18 (4) INVESTMENTS.—The Corporation shall in-
19 vest amounts in the Fund in accordance with para-
20 graph (8).

21 (5) TARGET SIZE OF THE FUND.—The target
22 size of the Fund (in this section referred to as “tar-
23 get size”) shall be \$50,000,000,000, adjusted for in-
24 flation on a periodic basis by the Corporation.

1 (6) INITIAL CAPITALIZATION PERIOD.—The
2 Corporation shall impose risk-based assessments as
3 provided under subsection (o), during the period be-
4 ginning one year after the date of enactment and
5 ending on the date on which the Fund reaches the
6 target size (in this section referred to as the “initial
7 capitalization period”), provided that the initial cap-
8 italization period shall be not shorter than 5 years,
9 and not longer than 10 years from the date of enact-
10 ment of this Act. The Corporation, with the approval
11 of the Secretary, may extend the initial capitaliza-
12 tion period, for a longer period as determined nec-
13 essary by the Corporation, if the Corporation is ap-
14 pointed as receiver for a covered financial company
15 under this title and the Fund incurs a loss before
16 the expiration of such period.

17 (7) MAINTAINING THE FUND.—Upon the expi-
18 ration of the initial capitalization period, the Cor-
19 poration shall suspend assessments, except as set
20 forth in subsection (o)(1).

21 (8) INVESTMENTS.—At the request of the Cor-
22 poration, the Secretary may invest such portion of
23 amounts held in the Fund that are not, in the judg-
24 ment of the Corporation, required to meet the cur-
25 rent needs of the Corporation, in obligations of the

1 United States having suitable maturities, as deter-
2 mined by the Corporation. The interest on and the
3 proceeds from the sale or redemption of such obliga-
4 tions shall be credited to the Fund.

5 (9) AUTHORITY TO ISSUE OBLIGATIONS.—

6 (A) CORPORATION AUTHORIZED TO ISSUE
7 OBLIGATIONS.—Upon appointment by the Sec-
8 retary of the Corporation as receiver for a cov-
9 ered financial company, the Corporation is au-
10 thorized to issue obligations to the Secretary.

11 (B) SECRETARY AUTHORIZED TO PUR-
12 CHASE OBLIGATIONS.—The Secretary may,
13 under such terms and conditions as the Sec-
14 retary may require, purchase or agree to pur-
15 chase any obligations issued under subpara-
16 graph (A), and for such purpose, the Secretary
17 is authorized to use as a public debt transaction
18 the proceeds of the sale of any securities issued
19 under chapter 31 of title 31, United States
20 Code, and the purposes for which securities
21 may be issued under chapter 31 of title 31,
22 United States Code, are extended to include
23 such purchases.

24 (C) INTEREST RATE.—Each purchase of
25 obligations by the Secretary under this para-

1 graph shall be upon such terms and conditions
2 as to yield a return at a rate determined by the
3 Secretary, taking into consideration the current
4 average yield on outstanding marketable obliga-
5 tions of the United States of comparable matu-
6 rity.

7 (D) SECRETARY AUTHORIZED TO SELL OB-
8 LIGATIONS.—The Secretary may sell, upon such
9 terms and conditions as the Secretary shall de-
10 termine, any of the obligations acquired under
11 this paragraph.

12 (E) PUBLIC DEBT TRANSACTIONS.—All
13 purchases and sales by the Secretary of such
14 obligations under this paragraph shall be treat-
15 ed as public debt transactions of the United
16 States, and the proceeds from the sale of any
17 obligations acquired by the Secretary under this
18 paragraph shall be deposited into the Treasury
19 of the United States as miscellaneous receipts.

20 (10) MAXIMUM OBLIGATION LIMITATION.—The
21 Corporation may not, in connection with the orderly
22 liquidation of a covered financial company, issue or
23 incur any obligation, if, after issuing or incurring
24 the obligation, the aggregate amount of such obliga-

1 tions outstanding under this subsection would exceed
2 the sum of—

3 (A) the amount of cash or the cash equiva-
4 lents held by the Fund; and

5 (B) the amount that is equal to 90 percent
6 of the fair value of assets from each covered fi-
7 nancial company that are available to repay the
8 Corporation.

9 (C) RULEMAKING.—The Corporation and
10 the Secretary shall jointly, in consultation with
11 the Council, prescribe regulations governing the
12 calculation of the maximum obligation limita-
13 tion defined in this paragraph.

14 (11) RELIANCE ON PRIVATE SECTOR FUND-
15 ING.—The Corporation may exercise its authority
16 under paragraph (9) only after the cash and cash
17 equivalents held by the Fund have been drawn down
18 to facilitate the orderly liquidation of a covered fi-
19 nancial company.

20 (12) RULE OF CONSTRUCTION.—

21 (A) IN GENERAL.—Nothing in this section
22 shall be construed to affect the authority of the
23 Corporation under subsections (a) and (b) of
24 section 14 section and 15(c)(5) of the Federal
25 Deposit Insurance Act (12 U.S.C. 1824(a) and

1 (b); 12 U.S.C. 1825(c)(5)), the management of
2 the Deposit Insurance Fund by the Corporation
3 or the resolution of insured depository institu-
4 tions; provided that, none of the authorities
5 contained within this title shall be used to assist
6 the Deposit Insurance Fund or with any of the
7 Corporation's other responsibilities under appli-
8 cable law other than this title, and the authori-
9 ties of the Corporation relating to the Deposit
10 Insurance Fund or its other responsibilities
11 shall not be used to assist a covered financial
12 company pursuant to this title.

13 (B) VALUATION.—For purposes of deter-
14 mining the amount of obligations under this
15 subsection—

16 (i) the Corporation shall include as an
17 obligation any contingent liability of the
18 Corporation pursuant to this title; and

19 (ii) the Corporation shall value any
20 contingent liability at its expected cost to
21 the Corporation.

22 (13) ORDERLY LIQUIDATION PLAN.—Amounts
23 in the Fund shall be available to the Corporation
24 with regard to a covered financial company for
25 which the Corporation is appointed receiver after the

1 Corporation has developed an orderly liquidation
2 plan that is acceptable to the Secretary with regard
3 to such covered financial company, including the
4 provision and use of funds under section 204(d) and
5 subsection (h)(2)(G)(iv) and (h)(9) of this section.
6 The Corporation may, at any time, amend any or-
7 derly liquidation plan approved by the Secretary
8 with the concurrence of the Secretary.

9 (o) ASSESSMENTS.—

10 (1) RISK-BASED ASSESSMENTS.—

11 (A) ASSESSMENTS TO CAPITALIZE THE
12 FUND.—

13 (i) IN GENERAL.—Except as provided
14 under subparagraph (C)(ii), the Corpora-
15 tion shall impose risk-based assessments
16 on eligible financial companies to capitalize
17 the Fund during the initial capitalization
18 period, taking into account the consider-
19 ations set forth in paragraph (4).

20 (ii) SUSPENSION OF ASSESSMENTS.—

21 The Corporation shall suspend the imposi-
22 tion of assessments under clause (i) fol-
23 lowing a determination by the Corporation
24 that the Fund has reached the target size
25 described in subsection (n).

1 (B) ELIGIBLE FINANCIAL COMPANIES DE-
2 FINED.—For purposes of this subsection, the
3 term “eligible financial company” means any
4 bank holding company with total consolidated
5 assets equal to or greater than
6 \$50,000,000,000 and any nonbank financial
7 company supervised by the Board of Governors.

8 (C) ADDITIONAL ASSESSMENTS.—The Cor-
9 poration shall charge one or more risk-based as-
10 sements in accordance with the provisions of
11 subparagraph (E), if—

12 (i) the Fund falls below the target
13 size after the initial capitalization period,
14 in order to restore the Fund to the target
15 size over a period of time determined by
16 the Corporation;

17 (ii) the Corporation is appointed re-
18 ceiver for a covered financial company and
19 the Fund incurs a loss during the initial
20 capitalization period with respect to that
21 covered financial company; or

22 (iii) such assessments are necessary to
23 pay in full the obligations issued by the
24 Corporation to the Secretary within 60

1 months of the date of issuance of such ob-
2 ligations.

3 (D) EXTENSIONS AUTHORIZED.—The Cor-
4 poration may, with the approval of the Sec-
5 retary, extend the time period under subpara-
6 graph (C)(iii), if the Corporation determines
7 that an extension is necessary to avoid a serious
8 adverse effect on the financial system of the
9 United States.

10 (E) APPLICATION OF ADDITIONAL ASSESS-
11 MENTS.—To meet the requirements of subpara-
12 graph (C), the Corporation shall impose assess-
13 ments—

14 (i) on—

15 (I) eligible financial companies;

16 and

17 (II) financial companies with
18 total consolidated assets over
19 \$50,000,000,000 that are not eligible
20 financial companies, taking into ac-
21 count the considerations set forth in
22 paragraph (4); and

23 (ii) at a substantially higher rate than
24 otherwise would be assessed, taking into
25 account the considerations set forth in

1 paragraph (4), on any financial company
2 that received payments or credit pursuant
3 to subsections (b)(4) or (d)(4).

4 (F) NEW ELIGIBLE FINANCIAL COMPA-
5 NIES.—The Corporation shall impose an assess-
6 ment, in an amount determined by the Corpora-
7 tion in consultation with the Secretary and tak-
8 ing into account the considerations set forth in
9 paragraph (4), on any company that becomes
10 an eligible financial company after the initial
11 capitalization period.

12 (2) GRADUATED ASSESSMENT RATE.—The Cor-
13 poration shall impose assessments on a graduated
14 basis that assesses financial companies having great-
15 er assets at a higher rate.

16 (3) NOTIFICATION AND PAYMENT.—The Cor-
17 poration shall notify each financial company of that
18 company's assessment under this subsection. Any fi-
19 nancial company subject to assessment under this
20 subsection shall pay such assessment in accordance
21 with the regulations prescribed pursuant to para-
22 graph (6).

23 (4) RISK-BASED ASSESSMENT CONSIDER-
24 ATIONS.—In imposing assessments under this sub-
25 section, the Corporation shall—

1 (A) take into account economic conditions
2 generally affecting financial companies, so as to
3 allow assessments to be lower during less favor-
4 able economic conditions;

5 (B) take into account any assessments im-
6 posed on—

7 (i) an insured depository institution
8 subsidiary of a financial company pursuant
9 to section 7 or section 13(c)(4)(G) of the
10 Federal Deposit Insurance Act (12 U.S.C.
11 1817, 1823(c)(4)(G));

12 (ii) a financial company or subsidiary
13 of such company that is a member of the
14 Securities Investor Protection Corporation
15 pursuant to section 4 of the Securities In-
16 vestor Protection Act of 1970 (15 U.S.C.
17 78ddd); or

18 (iii) a financial company or subsidiary
19 of such company that is an insurance com-
20 pany pursuant to applicable State law to
21 cover (or reimburse payments made to
22 cover) the costs of rehabilitation, liquida-
23 tion, or other State insolvency proceeding
24 with respect to one or more insurance com-
25 panies;

1 (C) take into account the financial condi-
2 tion of the financial company, including the ex-
3 tent and type of off-balance-sheet exposures of
4 the financial company;

5 (D) take into account the risks presented
6 by the financial company to the financial sta-
7 bility of the United States economy;

8 (E) take into account the extent to which
9 the financial company or group of financial
10 companies has benefitted, or likely would ben-
11 efit, from the orderly liquidation of a covered fi-
12 nancial company and the use of the Fund under
13 this title;

14 (F) distinguish among different classes of
15 assets or different types of financial companies
16 (including distinguishing among different types
17 of financial companies, based on their levels of
18 capital and leverage) in order to establish com-
19 parable assessment bases among financial com-
20 panies subject to this subsection;

21 (G) establish the parameters for the grad-
22 uated assessment requirement in paragraph (2);
23 and

24 (H) take into account such other factors as
25 the Corporation deems appropriate.

1 (5) COLLECTION OF INFORMATION.—The Cor-
2 poration may impose on covered financial companies
3 such collection of information requirements as the
4 Corporation deems necessary to carry out this sub-
5 section after the appointment of the Corporation as
6 receiver under this title.

7 (6) RULEMAKING.—

8 (A) IN GENERAL.—The Corporation shall,
9 in consultation with the Secretary and the
10 Council, prescribe regulations to carry out this
11 subsection.

12 (B) EQUITABLE TREATMENT.—The regu-
13 lations prescribed under subparagraph (A) shall
14 take into account the differences in risks posed
15 to the financial stability of the United States by
16 financial companies, the differences in the li-
17 ability structures of financial companies, and
18 the different bases for other assessments that
19 such financial companies may be required to
20 pay, to ensure that assessed financial compa-
21 nies are treated equitably and that assessments
22 under this subsection reflect such differences.

23 (p) UNENFORCEABILITY OF CERTAIN AGREE-
24 MENTS.—

1 (1) IN GENERAL.—No provision described in
2 paragraph (2) shall be enforceable against or impose
3 any liability on any person, as such enforcement or
4 liability shall be contrary to public policy.

5 (2) PROHIBITED PROVISIONS.—A provision de-
6 scribed in this paragraph is any term contained in
7 any existing or future standstill, confidentiality, or
8 other agreement that, directly or indirectly—

9 (A) affects, restricts, or limits the ability
10 of any person to offer to acquire or acquire;

11 (B) prohibits any person from offering to
12 acquire or acquiring; or

13 (C) prohibits any person from using any
14 previously disclosed information in connection
15 with any such offer to acquire or acquisition of,
16 all or part of any covered financial company, includ-
17 ing any liabilities, assets, or interest therein, in con-
18 nection with any transaction in which the Corpora-
19 tion exercises its authority under this title.

20 (q) OTHER EXEMPTIONS.—

21 (1) TAXATION AND LEVIES.—When acting as a
22 receiver under this title, the following provisions
23 shall apply to the Corporation:

24 (A) The Corporation including its fran-
25 chise, its capital, reserves, and surplus, and its

1 income, shall be exempt from all taxation im-
2 posed by any State, county, municipality, or
3 local taxing authority, except that any real
4 property of the Corporation shall be subject to
5 State, territorial, county, municipal, or local
6 taxation to the same extent according to its
7 value as other real property is taxed, except
8 that, notwithstanding the failure of any person
9 to challenge an assessment under State law of
10 the value of such property, such value, and the
11 tax thereon, shall be determined as of the pe-
12 riod for which such tax is imposed.

13 (B) No property of the Corporation shall
14 be subject to levy, attachment, garnishment,
15 foreclosure, or sale without the consent of the
16 Corporation, nor shall any involuntary lien at-
17 tach to the property of the Corporation.

18 (C) The Corporation shall not be liable for
19 any amounts in the nature of penalties or fines,
20 including those arising from the failure of any
21 person to pay any real property, personal prop-
22 erty, probate, or recording tax or any recording
23 or filing fees when due.

24 (2) LIMITATION.—Paragraph (1) shall not
25 apply with respect to any tax imposed (or other

1 amount arising) under the Internal Revenue Code of
2 1986.

3 (3) EXEMPTION FROM CRIMINAL PROSECU-
4 TION.—The Corporation shall be exempt from all
5 prosecution by the United States or any State, coun-
6 ty, municipality, or local authority for any criminal
7 offense arising under Federal, State, county, munic-
8 ipal, or local law, which was allegedly committed by
9 the covered financial company, or persons acting on
10 behalf of the covered financial company, prior to the
11 appointment of the Corporation as receiver.

12 (F) CERTAIN SALES OF ASSETS PROHIBITED.—

13 (1) PERSONS WHO ENGAGED IN IMPROPER CON-
14 DUCT WITH, OR CAUSED LOSSES TO, COVERED FI-
15 NANCIAL COMPANIES.—The Corporation shall pre-
16 scribe regulations which, at a minimum, shall pro-
17 hibit the sale of assets of a covered financial com-
18 pany by the Corporation to—

19 (A) any person who—

20 (i) has defaulted, or was a member of
21 a partnership or an officer or director of a
22 corporation that has defaulted, on 1 or
23 more obligations, the aggregate amount of
24 which exceed \$1,000,000, to such covered
25 financial company;

1 (ii) has been found to have engaged in
2 fraudulent activity in connection with any
3 obligation referred to in clause (i); and

4 (iii) proposes to purchase any such
5 asset in whole or in part through the use
6 of the proceeds of a loan or advance of
7 credit from the Corporation or from any
8 covered financial company;

9 (B) any person who participated, as an of-
10 ficer or director of such covered financial com-
11 pany or of any affiliate of such company, in a
12 material way in any transaction that resulted in
13 a substantial loss to such covered financial com-
14 pany; or

15 (C) any person who has demonstrated a
16 pattern or practice of defalcation regarding ob-
17 ligations to such covered financial company.

18 (2) CONVICTED DEBTORS.—Except as provided
19 in paragraph (3), a person may not purchase any
20 asset of such institution from the receiver, if that
21 person—

22 (A) has been convicted of an offense under
23 section 215, 656, 657, 1005, 1006, 1007, 1008,
24 1014, 1032, 1341, 1343, or 1344 of title 18,
25 United States Code, or of conspiring to commit

1 such an offense, affecting any covered financial
2 company; and

3 (B) is in default on any loan or other ex-
4 tension of credit from such covered financial
5 company which, if not paid, will cause substan-
6 tial loss to the Fund or the Corporation.

7 (3) SETTLEMENT OF CLAIMS.—Paragraphs (1)
8 and (2) shall not apply to the sale or transfer by the
9 Corporation of any asset of any covered financial
10 company to any person, if the sale or transfer of the
11 asset resolves or settles, or is part of the resolution
12 or settlement, of 1 or more claims that have been,
13 or could have been, asserted by the Corporation
14 against the person.

15 (4) DEFINITION OF DEFAULT.—For purposes
16 of this subsection, the term “default” means a fail-
17 ure to comply with the terms of a loan or other obli-
18 gation to such an extent that the property securing
19 the obligation is foreclosed upon.

20 **SEC. 211. MISCELLANEOUS PROVISIONS.**

21 (a) CLARIFICATION OF PROHIBITION REGARDING
22 CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUI-
23 DATING AGENT.—Section 1032(1) of title 18, United
24 States Code, is amended by inserting “the Federal Deposit
25 Insurance Corporation acting as receiver for a covered fi-

1 nancial company, in accordance with title II of the Restor-
2 ing American Financial Stability Act of 2010,” before “or
3 the National Credit”.

4 (b) CONFORMING AMENDMENT.—Section 1032 of
5 title 18, United States Code, is amended in the section
6 heading, by striking “**of financial institution**”.

7 (c) FEDERAL DEPOSIT INSURANCE CORPORATION
8 IMPROVEMENT ACT OF 1991.—Section 403(a) of the Fed-
9 eral Deposit Insurance Corporation Improvement Act of
10 1991 (12 U.S.C. 4403(a)) is amended by inserting “sec-
11 tion 210(c) of the Restoring American Financial Stability
12 Act of 2010, section 1367 of the Federal Housing Enter-
13 prises Financial Safety and Soundness Act of 1992 (12
14 U.S.C. 4617(d)),” after “section 11(e) of the Federal De-
15 posit Insurance Act,”.

16 **TITLE III—TRANSFER OF POW-**
17 **ERS TO THE COMPTROLLER**
18 **OF THE CURRENCY, THE COR-**
19 **PORATION, AND THE BOARD**
20 **OF GOVERNORS**

21 **SEC. 300. SHORT TITLE.**

22 This title may be cited as the “Enhancing Financial
23 Institution Safety and Soundness Act of 2010”.

24 **SEC. 301. PURPOSES.**

25 The purposes of this title are—

1 (1) to provide for the safe and sound operation
2 of the banking system of the United States;

3 (2) to preserve and protect the dual system of
4 Federal and State-chartered depository institutions;

5 (3) to ensure the fair and appropriate super-
6 vision of each depository institution, regardless of
7 the size or type of charter of the depository institu-
8 tion; and

9 (4) to streamline and rationalize the supervision
10 of depository institutions and the holding companies
11 of depository institutions.

12 **SEC. 302. DEFINITION.**

13 In this title, the term “transferred employee” means,
14 as the context requires, an employee transferred to the
15 Office of the Comptroller of the Currency or the Corpora-
16 tion under section 322.

17 **Subtitle A—Transfer of Powers and**
18 **Duties**

19 **SEC. 311. TRANSFER DATE.**

20 (a) **TRANSFER DATE.**—Except as provided in sub-
21 section (b), the term “transfer date” means the date that
22 is 1 year after the date of enactment of this Act.

23 (b) **EXTENSION PERMITTED.**—

24 (1) **NOTICE REQUIRED.**—The Secretary, in con-
25 sultation with the Comptroller of the Currency, the

1 Director of the Office of Thrift Supervision, the
2 Board of Governors, and the Corporation, may ex-
3 tend the period under subsection (a) and designate
4 a transfer date that is not later than 18 months
5 after the date of enactment of this Act, if the Sec-
6 retary transmits to the Committee on Banking,
7 Housing, and Urban Affairs of the Senate and the
8 Committee on Financial Services of the House of
9 Representatives—

10 (A) a written determination that com-
11 mencement of the orderly process to implement
12 this title is not feasible by the date that is 1
13 year after the date of enactment of this Act;

14 (B) an explanation of why an extension is
15 necessary to commence the process of orderly
16 implementation of this title;

17 (C) the transfer date designated under this
18 subsection; and

19 (D) a description of the steps that will be
20 taken to initiate the process of an orderly and
21 timely implementation of this title within the
22 extended time period.

23 (2) PUBLICATION OF NOTICE.—Not later than
24 270 days after the date of enactment of this Act, the
25 Secretary shall publish in the Federal Register no-

1 tice of any transfer date designated under paragraph
2 (1).

3 **SEC. 312. POWERS AND DUTIES TRANSFERRED.**

4 (a) **EFFECTIVE DATE.**—This section, and the amend-
5 ments made by this section, shall take effect on the trans-
6 fer date.

7 (b) **FUNCTIONS OF THE OFFICE OF THRIFT SUPER-**
8 **VISION.**—

9 (1) **SAVINGS AND LOAN HOLDING COMPANY**
10 **FUNCTIONS TRANSFERRED.**—

11 (A) **BOARD OF GOVERNORS.**—There are
12 transferred to the Board of Governors all func-
13 tions of the Office of Thrift Supervision and the
14 Director of the Office of Thrift Supervision re-
15 lating to—

16 (i) the supervision of—

17 (I) any savings and loan holding
18 company having \$50,000,000,000 or
19 more in total consolidated assets; and

20 (II) any subsidiary (other than a
21 depository institution) of a savings
22 and loan holding company described
23 in subclause (I); and

24 (ii) all rulemaking authority of the Of-
25 fice of Thrift Supervision and the Director

1 of the Office of Thrift Supervision relating
2 to savings and loan holding companies.

3 (B) COMPTROLLER OF THE CURRENCY.—

4 Except as provided in subparagraph (A), there
5 are transferred to the Office of the Comptroller
6 of the Currency all functions of the Office of
7 Thrift Supervision and the Director of the Of-
8 fice of Thrift Supervision (including the author-
9 ity to issue orders) relating to the supervision
10 of—

11 (i) any savings and loan holding com-
12 pany—

13 (I) having less than
14 \$50,000,000,000 in total consolidated
15 assets; and

16 (II) having—

17 (aa) a subsidiary that is an
18 insured depository institution, if
19 all such insured depository insti-
20 tutions are Federal depository in-
21 stitutions; or

22 (bb) a subsidiary that is a
23 Federal depository institution
24 and a subsidiary that is a State
25 depository institution, if the total

1 consolidated assets of all subsidi-
2 aries that are Federal depository
3 institutions exceed the total con-
4 solidated assets of all subsidiaries
5 that are State depository institu-
6 tions; and

7 (ii) any subsidiary (other than a de-
8 pository institution) of a savings and loan
9 holding company described in clause (i).

10 (C) CORPORATION.—Except as provided in
11 subparagraph (A), there are transferred to the
12 Corporation all functions of the Office of Thrift
13 Supervision (including the authority to issue or-
14 ders) relating to the supervision of—

15 (i) any savings and loan holding com-
16 pany—

17 (I) having less than
18 \$50,000,000,000 in total consolidated
19 assets; and

20 (II) having—

21 (aa) a subsidiary that is an
22 insured depository institution, if
23 all such insured depository insti-
24 tutions are State depository insti-
25 tutions; or

1 (bb) a subsidiary that is a
2 Federal depository institution
3 and a subsidiary that is a State
4 depository institution, if the total
5 consolidated assets of all subsidi-
6 aries that are State depository
7 institutions exceed the total con-
8 solidated assets of all subsidiaries
9 that are Federal depository insti-
10 tutions; and

11 (ii) any subsidiary (other than a de-
12 pository institution) of a savings and loan
13 holding company described in clause (i).

14 (2) ALL OTHER FUNCTIONS TRANSFERRED.—

15 (A) BOARD OF GOVERNORS.—All rule-
16 making authority of the Office of Thrift Super-
17 vision and the Director of the Office of Thrift
18 Supervision under section 11 of the Home Own-
19 ers' Loan Act (12 U.S.C. 1468) relating to
20 transactions with affiliates and extensions of
21 credit to executive officers, directors, and prin-
22 cipal shareholders is transferred to the Board
23 of Governors.

24 (B) COMPTROLLER OF THE CURRENCY.—

25 Except as provided in paragraph (1), there are

1 transferred to the Comptroller of the Cur-
2 rency—

3 (i) all rulemaking authority (including
4 the authority to issue orders) of the Office
5 of Thrift Supervision and the Director of
6 the Office of Thrift Supervision relating to
7 savings associations; and

8 (ii) all functions of the Office of
9 Thrift Supervision and the Director of the
10 Office of Thrift Supervision relating to
11 Federal savings associations.

12 (C) CORPORATION.—Except as provided in
13 paragraph (1), and subparagraph (B)(i), all
14 functions of the Office of Thrift Supervision
15 and the Director of the Office of Thrift Super-
16 vision relating to State savings associations are
17 transferred to the Corporation.

18 (c) CERTAIN FUNCTIONS OF THE BOARD OF GOV-
19 ERNORS.—

20 (1) BANK HOLDING COMPANY FUNCTIONS
21 TRANSFERRED.—

22 (A) COMPTROLLER OF THE CURRENCY.—
23 Except as provided in subparagraph (C), there
24 are transferred to the Office of the Comptroller
25 of the Currency all functions of the Board of

1 Governors (including any Federal reserve bank)
2 relating to the supervision of—

3 (i) any bank holding company—

4 (I) having less than
5 \$50,000,000,000 in total consolidated
6 assets; and

7 (II) having—

8 (aa) a subsidiary that is an
9 insured depository institution, if
10 all such insured depository insti-
11 tutions are Federal depository in-
12 stitutions; or

13 (bb) a subsidiary that is a
14 Federal depository institution
15 and a subsidiary that is a State
16 depository institution, if the total
17 consolidated assets of all subsidi-
18 aries that are Federal depository
19 institutions exceed the total con-
20 solidated assets of all subsidiaries
21 that are State depository institu-
22 tions; and

23 (ii) any subsidiary (other than a de-
24 pository institution) of a bank holding
25 company that is described in clause (i).

1 (B) CORPORATION.—Except as provided in
2 subparagraph (C), there are transferred to the
3 Corporation all functions of the Board of Gov-
4 ernors (including any Federal reserve bank) re-
5 lating to the supervision of—

6 (i) any bank holding company—

7 (I) having less than
8 \$50,000,000,000 in total consolidated
9 assets; and

10 (II) having—

11 (aa) a subsidiary that is an
12 insured depository institution, if
13 all such insured depository insti-
14 tutions are State depository insti-
15 tutions; or

16 (bb) a subsidiary that is a
17 Federal depository institution
18 and a subsidiary that is a State
19 depository institution, if the total
20 consolidated assets of all subsidi-
21 aries that are State depository
22 institutions exceed the total con-
23 solidated assets of all subsidiaries
24 that are Federal depository insti-
25 tutions; and

1 “(i) having less than \$50,000,000,000
2 in total consolidated assets; and

3 “(ii) having—

4 “(I) a subsidiary that is an in-
5 sured depository institution, if all
6 such insured depository institutions
7 are Federal depository institutions; or

8 “(II) a subsidiary that is a Fed-
9 eral depository institution and a sub-
10 sidiary that is a State depository in-
11 stitution, if the total consolidated as-
12 sets of all subsidiaries that are Fed-
13 eral depository institutions exceed the
14 total consolidated assets of all subsidi-
15 aries that are State depository institu-
16 tions;

17 “(D) any subsidiary (other than a deposi-
18 tory institution) of a bank holding company
19 that is described in subparagraph (C);

20 “(E) any Federal savings association;

21 “(F) any savings and loan holding com-
22 pany—

23 “(i) having less than \$50,000,000,000
24 in total consolidated assets; and

25 “(ii) having—

1 “(ii) having—

2 “(I) a subsidiary that is an in-
3 sured depository institution, if all
4 such insured depository institutions
5 are State depository institutions; or

6 “(II) a subsidiary that is a Fed-
7 eral depository institution and a sub-
8 sidiary that is a State depository in-
9 stitution, if the total consolidated as-
10 sets of all subsidiaries that are State
11 depository institutions exceed the total
12 consolidated assets of all subsidiaries
13 that are Federal depository institu-
14 tions;

15 “(E) any subsidiary (other than a deposi-
16 tory institution) of a bank holding company
17 that is described in subparagraph (D);

18 “(F) any savings and loan holding com-
19 pany—

20 “(i) having less than \$50,000,000,000
21 in total consolidated assets; and

22 “(ii) having—

23 “(I) a subsidiary that is an in-
24 sured depository institution, if all

1 such insured depository institutions
2 are State depository institutions; or

3 “(II) a subsidiary that is a Fed-
4 eral depository institution and a sub-
5 sidiary that is a State depository in-
6 stitution, if the total consolidated as-
7 sets of all subsidiaries that are State
8 depository institutions exceed the total
9 consolidated assets of all subsidiaries
10 that are Federal depository institu-
11 tions; and

12 “(G) any subsidiary (other than a depository
13 institution) of a savings and loan holding
14 company that is described in subparagraph (F);

15 “(3) the Board of Governors of the Federal Re-
16 serve System, in the case of—

17 “(A) any noninsured State member bank;

18 “(B) any branch or agency of a foreign
19 bank with respect to any provision of the Fed-
20 eral Reserve Act which is made applicable
21 under the International Banking Act of 1978;

22 “(C) any foreign bank which does not op-
23 erate an insured branch;

24 “(D) any agency or commercial lending
25 company other than a Federal agency;

1 “(E) supervisory or regulatory proceedings
2 arising from the authority given to the Board
3 of Governors under section 7(c)(1) of the Inter-
4 national Banking Act of 1978, including such
5 proceedings under the Financial Institutions
6 Supervisory Act of 1966;

7 “(F) any bank holding company having
8 total consolidated assets of \$50,000,000,000 or
9 more, and any subsidiary of such a bank hold-
10 ing company (other than a depository institu-
11 tion); and

12 “(G) any savings and loan holding com-
13 pany having total consolidated assets of
14 \$50,000,000,000 or more, and any subsidiary
15 of such a savings and loan holding company
16 (other than a depository institution).”.

17 (2) CERTAIN REFERENCES IN THE BANK HOLD-
18 ING COMPANY ACT OF 1956.—

19 (A) COMPTROLLER OF THE CURRENCY.—

20 On or after the transfer date, in the case of a
21 bank holding company described in section
22 3(q)(1)(C) of the Federal Deposit Insurance
23 Act, as amended by this Act, any reference in
24 the Bank Holding Company Act of 1956 (12
25 U.S.C. 1841 et seq.) to the Board of Governors

1 shall be deemed to be a reference to the Office
2 of the Comptroller of the Currency.

3 (B) CORPORATION.—On or after the trans-
4 fer date, in the case of a bank holding company
5 described in section 3(q)(2)(D) of the Federal
6 Deposit Insurance Act, as amended by this Act,
7 any reference in the Bank Holding Company
8 Act of 1956 (12 U.S.C. 1841 et seq.) to the
9 Board of Governors shall be deemed to be a ref-
10 erence to the Corporation.

11 (C) RULE OF CONSTRUCTION.—Notwith-
12 standing subparagraph (A) or (B), the Board of
13 Governors shall retain all rulemaking authority
14 under the Bank Holding Company Act of 1956
15 (12 U.S.C. 1841 et seq.).

16 (3) CONSULTATION IN HOLDING COMPANY
17 RULEMAKING.—

18 (A) BANK HOLDING COMPANIES.—Section
19 5 of the Bank Holding Company Act of 1956
20 (12 U.S.C. 1844) is amended by adding at the
21 end the following:

22 “(h) CONSULTATION IN RULEMAKING.—Before pro-
23 posing or adopting regulations under this Act that apply
24 to bank holding companies having less than
25 \$50,000,000,000 in total consolidated assets, the Board

1 of Governors shall consult with the Comptroller of the
2 Currency and the Federal Deposit Insurance Corporation
3 as to the terms of such regulations.”.

4 (B) SAVINGS AND LOAN HOLDING COMPA-
5 NIES.—

6 (i) HOME OWNERS’ LOAN ACT.—Sec-
7 tion 10 of the Home Owners’ Loan Act
8 (12 U.S.C. 1467a) is amended by adding
9 at the end the following:

10 “(u) CONSULTATION IN RULEMAKING.—Before pro-
11 posing or adopting regulations under this section that
12 apply to savings and loan holding companies having less
13 than \$50,000,000,000 in total consolidated assets, the
14 Board of Governors shall consult with the Comptroller of
15 the Currency and the Federal Deposit Insurance Corpora-
16 tion as to the terms of such regulations.”.

17 (ii) FEDERAL DEPOSIT INSURANCE
18 ACT.—Section 19 of the Federal Deposit
19 Insurance Act (12 U.S.C. 1829) is amend-
20 ed—

21 (I) in subsection (d)(2), by in-
22 serting “, in consultation with the
23 Corporation and the Comptroller of
24 the Currency,” after “System”; and

1 (II) in subsection (e)(2), by strik-
2 ing “Director of the Office of Thrift
3 Supervision” and inserting “Board of
4 Governors of the Federal Reserve Sys-
5 tem, in consultation with the Corpora-
6 tion and the Comptroller of the Cur-
7 rency,”.

8 (4) CONSULTATION IN SAVINGS ASSOCIATION
9 RULEMAKING.—Section 3 of the Home Owners’
10 Loan Act (12 U.S.C. 1462a) is amended by adding
11 at the end the following:

12 “(k) CONSULTATION IN RULEMAKING.—Before pro-
13 posing or adopting regulations applicable to State savings
14 associations, the Comptroller of the Currency shall consult
15 with the Federal Deposit Insurance Corporation as to the
16 terms of such regulations.”.

17 (5) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
18 tion 8(b)(3) of the Federal Deposit Insurance Act
19 (12 U.S.C. 1818(b)(3)) is amended to read as fol-
20 lows:

21 “(3) APPLICATION TO BANK HOLDING COMPANIES,
22 SAVINGS AND LOAN HOLDING COMPANIES, AND EDGE
23 AND AGREEMENT CORPORATIONS.—

1 “(A) APPLICATION.—This subsection, sub-
2 sections (c) through (s) and subsection (u) of this
3 section, and section 50 shall apply to—

4 “(i) any bank holding company, and any
5 subsidiary (other than a bank) of a bank hold-
6 ing company, as those terms are defined in sec-
7 tion 2 of the Bank Holding Company Act of
8 1956 (12 U.S.C. 1841), as if such company or
9 subsidiary was an insured depository institution
10 for which the appropriate Federal banking
11 agency for the bank holding company was the
12 appropriate Federal banking agency;

13 “(ii) any savings and loan holding com-
14 pany, and any subsidiary (other than a deposi-
15 tory institution) of a savings and loan holding
16 company, as those terms are defined in section
17 10 of the Home Owners’ Loan Act (12 U.S.C.
18 1467a), as if such company or subsidiary was
19 an insured depository institution for which the
20 appropriate Federal banking agency for the sav-
21 ings and loan holding company was the appro-
22 priate Federal banking agency; and

23 “(iii) any organization organized and oper-
24 ated under section 25A of the Federal Reserve
25 Act (12 U.S.C. 611 et seq.) or operating under

1 section 25 of the Federal Reserve Act (12
2 U.S.C. 601 et seq.), as if such organization was
3 a bank holding company for which the Board of
4 Governors of the Federal Reserve System was
5 the appropriate Federal banking agency.

6 “(B) RULE OF CONSTRUCTION.—Nothing in
7 this paragraph may be construed to alter or affect
8 the authority of an appropriate Federal banking
9 agency to initiate enforcement proceedings, issue di-
10 rectives, or take other remedial action under any
11 other provision of law.”.

12 (e) DETERMINATION OF TOTAL CONSOLIDATED AS-
13 SETS.—

14 (1) REGULATIONS.—

15 (A) IN GENERAL.—Not later than 180
16 days after the date of enactment of this Act,
17 the Office of the Comptroller of the Currency,
18 the Corporation, and the Board of Governors,
19 in order to avoid disruptive transfers of regu-
20 latory responsibility, shall issue joint regula-
21 tions that specify—

22 (i) the source of data for determining
23 the total consolidated assets of a deposi-
24 tory institution, bank holding company, or
25 savings and loan holding company for pur-

1 poses this Act, and the amendments made
2 by this Act, including the amendments to
3 section 3(q) of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1813(q)); and

5 (ii) the interval and frequency at
6 which the total consolidated assets of a de-
7 pository institution, bank holding company,
8 or savings and loan holding company will
9 be determined.

10 (B) CONTENT.—The regulations issued
11 under subparagraph (A)—

12 (i) shall use information contained in
13 the reports described in paragraph (2),
14 other regulatory reports, audited financial
15 statements, or other comparable sources;

16 (ii) shall establish the frequency with
17 which the total consolidated assets of de-
18 pository institutions, bank holding compa-
19 nies, and savings and loan companies are
20 determined, at an interval that—

21 (I) avoids undue disruption in
22 regulatory oversight;

23 (II) facilitates nondisruptive
24 transfers of regulatory responsibility;
25 and

1 (III) is not shorter than 2 years;

2 and

3 (iii) may provide for more frequent
4 determinations of the total consolidated as-
5 sets of a depository institution, bank hold-
6 ing company, or savings and loan holding
7 company, to take into account a trans-
8 action outside the ordinary course of busi-
9 ness, including a merger, acquisition, or
10 other circumstance, as determined jointly
11 by the Comptroller of the Currency, the
12 Corporation, and the Board of Governors,
13 by rule.

14 (2) INTERIM PROVISIONS.—Until the date on
15 which final regulations issued under paragraph (1)
16 are effective, for purposes this Act, and the amend-
17 ments made by this Act, including the amendments
18 to section 3(q) of the Federal Deposit Insurance Act
19 (12 U.S.C. 1813(q)), the total consolidated assets
20 of—

21 (A) a depository institution shall be deter-
22 mined by reference to the total consolidated as-
23 sets reported in the most recent Consolidated
24 Report of Income and Condition or Thrift Fi-
25 nancial Report (or any successor thereto) filed

1 by the depository institution with the Corpora-
2 tion or the Office of Thrift Supervision before
3 the transfer date;

4 (B) a bank holding company shall be de-
5 termined by reference to the total consolidated
6 assets reported in the most recent Consolidated
7 Financial Statements for Bank Holding Compa-
8 nies (commonly referred to as the “FR Y-9C”,
9 or any successor thereto) filed by the bank
10 holding company with the Board of Governors
11 before the transfer date; and

12 (C) a savings and loan holding company
13 shall be determined by reference to the total
14 consolidated assets reported in the applicable
15 schedule of the most recent Thrift Financial
16 Report (or any successor thereto) filed by the
17 savings and loan holding company with the Of-
18 fice of Thrift Supervision before the transfer
19 date.

20 (f) CONSUMER PROTECTION.—Nothing in this sec-
21 tion may be construed to limit or otherwise affect the
22 transfer of powers under title X.

1 **SEC. 313. ABOLISHMENT.**

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

5 **SEC. 314. AMENDMENTS TO THE REVISED STATUTES.**

6 (a) AMENDMENT TO SECTION 324.—Section 324 of
7 the Revised Statutes of the United States (12 U.S.C. 1)
8 is amended to read as follows:

9 **“SEC. 324. COMPTROLLER OF THE CURRENCY.**

10 “(a) OFFICE OF THE COMPTROLLER OF THE CUR-
11 RENCY ESTABLISHED.—There is established in the De-
12 partment of the Treasury a bureau to be known as the
13 ‘Office of the Comptroller of the Currency’ which is
14 charged with assuring the safety and soundness of, and
15 compliance with laws and regulations, fair access to finan-
16 cial services, and fair treatment of customers, by the insti-
17 tutions and other persons subject to its jurisdiction.

18 “(b) COMPTROLLER OF THE CURRENCY.—

19 “(1) IN GENERAL.—The chief officer of the Of-
20 fice of the Comptroller of the Currency shall be
21 known as the Comptroller of the Currency. The
22 Comptroller of the Currency shall perform the duties
23 of the Comptroller of the Currency under the gen-
24 eral direction of the Secretary of the Treasury. The
25 Secretary of the Treasury may not delay or prevent
26 the issuance of any rule or the promulgation of any

1 regulation by the Comptroller of the Currency, and
2 may not intervene in any matter or proceeding be-
3 fore the Comptroller of the Currency (including
4 agency enforcement actions), unless otherwise spe-
5 cifically provided by law.

6 “(2) ADDITIONAL AUTHORITY.—The Comp-
7 troller of the Currency shall have the same authority
8 with respect to functions transferred to the Comp-
9 troller of the Currency under the Enhancing Finan-
10 cial Institution Safety and Soundness Act of 2010
11 (including matters that were within the jurisdiction
12 of the Director of the Office of Thrift Supervision or
13 the Office of Thrift Supervision on the day before
14 the transfer date under that Act) as was vested in
15 the Director of the Office of Thrift Supervision on
16 the transfer date under that Act.”.

17 (b) AMENDMENT TO SECTION 329.—Section 329 of
18 the Revised Statutes of the United States (12 U.S.C. 11)
19 is amended by inserting before the period at the end the
20 following: “or any Federal savings association”.

21 (c) EFFECTIVE DATE.—This section, and the amend-
22 ments made by this section, shall take effect on the trans-
23 fer date.

1 **SEC. 315. FEDERAL INFORMATION POLICY.**

2 Section 3502(5) of title 44, United States Code, is
3 amended by inserting “Office of the Comptroller of the
4 Currency,” after “the Securities and Exchange Commis-
5 sion,”.

6 **SEC. 316. SAVINGS PROVISIONS.**

7 (a) OFFICE OF THRIFT SUPERVISION.—

8 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
9 TIONS NOT AFFECTED.—Sections 312(b) and 313
10 shall not affect the validity of any right, duty, or ob-
11 ligation of the United States, the Director of the Of-
12 fice of Thrift Supervision, the Office of Thrift Su-
13 pervision, or any other person, that existed on the
14 day before the transfer date.

15 (2) CONTINUATION OF SUITS.—This title shall
16 not abate any action or proceeding commenced by or
17 against the Director of the Office of Thrift Super-
18 vision or the Office of Thrift Supervision before the
19 transfer date, except that, for any action or pro-
20 ceeding arising out of a function of the Director of
21 the Office of Thrift Supervision or the Office of
22 Thrift Supervision that is transferred to the Comp-
23 troller of the Currency, the Office of the Comptroller
24 of the Currency, the Chairperson of the Corporation,
25 the Corporation, the Chairman of the Board of Gov-
26 ernors, or the Board of Governors by this subtitle,

1 the Comptroller of the Currency, the Office of the
2 Comptroller of the Currency, the Chairperson of the
3 Corporation, the Corporation, the Chairman of the
4 Board of Governors, or the Board of Governors shall
5 be substituted for the Director of the Office of
6 Thrift Supervision or the Office of Thrift Super-
7 vision, as appropriate, as a party to the action or
8 proceeding as of the transfer date.

9 (b) BOARD OF GOVERNORS.—

10 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
11 TIONS NOT AFFECTED.—Section 312(c) shall not af-
12 fect the validity of any right, duty, or obligation of
13 the United States, the Board of Governors, any Fed-
14 eral reserve bank, or any other person, that existed
15 on the day before the transfer date.

16 (2) CONTINUATION OF SUITS.—This title shall
17 not abate any action or proceeding commenced by or
18 against the Board of Governors or a Federal reserve
19 bank before the transfer date, except that, for any
20 action or proceeding arising out of a function of the
21 Board of Governors or a Federal reserve bank trans-
22 ferred to the Comptroller of the Currency, the Office
23 of the Comptroller of the Currency, the Chairperson
24 of the Corporation, or the Corporation by this sub-
25 title, the Comptroller of the Currency, the Office of

1 the Comptroller of the Currency, the Chairperson of
2 the Corporation, or the Corporation shall be sub-
3 stituted for the Board of Governors or the Federal
4 reserve bank, as appropriate, as a party to the ac-
5 tion or proceeding, as of the transfer date.

6 (c) CONTINUATION OF EXISTING ORDERS, RESOLU-
7 TIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS,
8 AND OTHER MATERIALS.—

9 (1) OFFICE OF THRIFT SUPERVISION.—All or-
10 ders, resolutions, determinations, agreements, regu-
11 lations, interpretative rules, other interpretations,
12 guidelines, procedures, and other advisory materials
13 that have been issued, made, prescribed, or allowed
14 to become effective by the Office of Thrift Super-
15 vision, or by a court of competent jurisdiction, in the
16 performance of functions of the Office of Thrift Su-
17 pervision that are transferred by this subtitle and
18 that are in effect on the day before the transfer
19 date, shall continue in effect according to the terms
20 of those materials, and shall be enforceable by or
21 against the Office of the Comptroller of the Cur-
22 rency, the Corporation, or the Board of Governors,
23 as appropriate, until modified, terminated, set aside,
24 or superseded in accordance with applicable law by
25 the Office of the Comptroller of the Currency, the

1 Corporation, or the Board of Governors, as appro-
2 priate, by any court of competent jurisdiction, or by
3 operation of law.

4 (2) BOARD OF GOVERNORS.—All orders, resolu-
5 tions, determinations, agreements, regulations, inter-
6 pretative rules, other interpretations, guidelines, pro-
7 cedures, and other advisory materials, that have
8 been issued, made, prescribed, or allowed to become
9 effective by the Board of Governors, or by a court
10 of competent jurisdiction, in the performance of
11 functions of the Board of Governors that are trans-
12 ferred by this subtitle and that are in effect on the
13 day before the transfer date, shall continue in effect
14 according to the terms of those materials, and shall
15 be enforceable by or against the Office of the Comp-
16 troller of the Currency or the Corporation, as appro-
17 priate, until modified, terminated, set aside, or su-
18 perseded in accordance with applicable law by the
19 Office of the Comptroller of the Currency or the
20 Corporation, as appropriate, by any court of com-
21 petent jurisdiction, or by operation of law.

22 (d) IDENTIFICATION OF REGULATIONS CONTIN-
23 UED.—

1 (1) BY THE OFFICE OF THE COMPTROLLER OF
2 THE CURRENCY.—Not later than the transfer date,
3 the Comptroller of the Currency shall—

4 (A) in consultation with the Chairperson of
5 the Corporation, identify the regulations contin-
6 ued under subsection (c) that will be enforced
7 by the Office of the Comptroller of the Cur-
8 rency; and

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

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

13 (A) in consultation with the Comptroller of
14 the Currency, identify the regulations continued
15 under subsection (c) that will be enforced by
16 the Corporation; and

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

19 (3) BY THE BOARD OF GOVERNORS.—Not later
20 than the transfer date, the Board of Governors
21 shall—

22 (A) in consultation with the Comptroller of
23 the Currency and the Corporation, identify the
24 regulations continued under subsection (c) that
25 will be enforced by the Board of Governors; and

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

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

5 (1) PROPOSED REGULATIONS.—Any proposed
6 regulation of the Office of Thrift Supervision or the
7 Board of Governors, which that agency, in per-
8 forming functions transferred by this subtitle, has
9 proposed before the transfer date, but has not pub-
10 lished as a final regulation before that date, shall be
11 deemed to be a proposed regulation of the Office of
12 the Comptroller of the Currency, the Corporation, or
13 the Board of Governors, as appropriate, according to
14 its terms.

15 (2) REGULATIONS NOT YET EFFECTIVE.—Any
16 interim or final regulation of the Office of Thrift Su-
17 pervision or the Board of Governors, which that
18 agency, in performing functions transferred by this
19 subtitle, has published before the transfer date, but
20 which has not become effective before that date,
21 shall become effective as a regulation of the Office
22 of the Comptroller of the Currency, the Corporation,
23 or the Board of Governors, as appropriate, according
24 to its terms.

1 **SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL**
2 **BANKING AGENCIES.**

3 (a) DIRECTOR OF THE OFFICE OF THRIFT SUPER-
4 VISION AND THE OFFICE OF THRIFT SUPERVISION.—Ex-
5 cept as provided in section 312(d)(2), on and after the
6 transfer date, any reference in Federal law to the Director
7 of the Office of Thrift Supervision or the Office of Thrift
8 Supervision, in connection with any function of the Direc-
9 tor of the Office of Thrift Supervision or the Office of
10 Thrift Supervision transferred under section 312(b) or
11 any other provision of this subtitle, shall be deemed to be
12 a reference to the Comptroller of the Currency, the Office
13 of the Comptroller of the Currency, the Chairperson of
14 the Corporation, the Corporation, the Chairman of the
15 Board of Governors, or the Board of Governors, as appro-
16 priate.

17 (b) BOARD OF GOVERNORS.—Except as provided in
18 section 312(d)(2), on and after the transfer date, any ref-
19 erence in Federal law to the Board of Governors or any
20 Federal reserve bank, in connection with any function of
21 the Board of Governors or any Federal reserve bank
22 transferred under section 312(c) or any other provision
23 of this subtitle, shall be deemed to be a reference to the
24 Comptroller of the Currency, the Office of the Comptroller
25 of the Currency, the Chairperson of the Corporation, or
26 the Corporation, as appropriate.

1 **SEC. 318. FUNDING.**

2 (a) FUNDING OF OFFICE OF THE COMPTROLLER OF
3 THE CURRENCY.—

4 (1) AUTHORITY TO COLLECT ASSESSMENTS,
5 FEES, AND OTHER CHARGES, AND TO RECEIVE
6 TRANSFERRED FUNDS.—Chapter 4 of title LXII of
7 the Revised Statutes is amended by inserting after
8 section 5240 (12 U.S.C. 481, 482) the following:

9 “SEC. 5240A. The Comptroller of the Currency may
10 collect an assessment, fee, or other charge from any entity
11 described in section 3(q)(1) of the Federal Deposit Insur-
12 ance Act (12 U.S.C. 1813(q)(1)), as the Comptroller de-
13 termines is necessary or appropriate to carry out the re-
14 sponsibilities of the Office of the Comptroller of the Cur-
15 rency. The Comptroller of the Currency also may collect
16 an assessment, fee, or other charge from any entity, the
17 activities of which are supervised by the Comptroller of
18 the Currency under section 6 of the Bank Holding Com-
19 pany Act of 1956, as the Comptroller determines is nec-
20 essary or appropriate to carry out the responsibilities of
21 the Comptroller in connection with such activities. In es-
22 tablishing the amount of an assessment, fee, or charge col-
23 lected from an entity under this section, the Comptroller
24 of the Currency may take into account the funds trans-
25 ferred to the Office of the Comptroller of the Currency
26 under this section, the nature and scope of the activities

1 of the entity, the amount and type of assets that the entity
2 holds, the financial and managerial condition of the entity,
3 and any other factor, as the Comptroller of the Currency
4 determines is appropriate. Funds derived from any assess-
5 ment, fee, or charge collected or payment made pursuant
6 to this section may be deposited by the Comptroller of the
7 Currency in accordance with the provisions of section
8 5234. Such funds shall not be construed to be Government
9 funds or appropriated monies, and shall not be subject to
10 apportionment for purposes of chapter 15 of title 31,
11 United States Code, or any other provision of law. The
12 authority of the Comptroller of the Currency under this
13 section shall be in addition to the authority under section
14 5240.

15 “The Comptroller of the Currency shall have sole au-
16 thority to determine the manner in which the obligations
17 of the Office of the Comptroller of the Currency shall be
18 incurred and its disbursements and expenses allowed and
19 paid, in accordance with this section.”.

20 (2) PROMOTING PARITY IN SUPERVISION
21 FEES.—

22 (A) PROPOSAL REQUIRED.—

23 (i) IN GENERAL.—The Comptroller of
24 the Currency shall submit to the Board of
25 Directors of the Corporation a proposal to

1 promote parity in the examination fees
2 paid by State and Federal depository insti-
3 tutions having total consolidated assets of
4 less than \$50,000,000,000.

5 (ii) CONTENTS.—The proposal sub-
6 mitted under clause (i) shall recommend a
7 transfer from the Corporation to the Office
8 of the Comptroller of the Currency of a
9 percentage of the amount that the Office
10 of the Comptroller of the Currency esti-
11 mates is necessary or appropriate to carry
12 out the responsibilities of the Office of the
13 Comptroller of the Currency associated
14 with the supervision of Federal depository
15 institutions having total consolidated assets
16 of less than \$50,000,000,000.

17 (iii) DATA COLLECTION.—The Cor-
18 poration shall assist the Comptroller of the
19 Currency in collecting data relative to the
20 supervision of State depository institutions
21 to develop the proposal submitted under
22 clause (i).

23 (B) VOTE.—Not later than 60 days after
24 the date of receipt of the proposal under sub-

1 paragraph (A), the Board of Directors of the
2 Corporation shall—

3 (i) vote on the proposal; and

4 (ii) promptly implement a plan to pe-
5 riodically transfer to the Office of the
6 Comptroller of the Currency a percentage
7 of the amount that the Office of the Comp-
8 troller of the Currency estimates is nec-
9 essary or appropriate to carry out the re-
10 sponsibilities of the Office of the Comp-
11 troller of the Currency associated with the
12 supervision of Federal depository institu-
13 tions having total consolidated assets of
14 less than \$50,000,000,000, as approved by
15 the Board of Directors of the Corporation.

16 (C) REPORT TO CONGRESS.—Not later
17 than 30 days after date of the vote of the
18 Board of Directors of the Corporation under
19 subparagraph (B), the Corporation shall submit
20 to the Committee on Banking, Housing, and
21 Urban Affairs of the Senate and the Committee
22 on Financial Services of the House of Rep-
23 resentatives a report describing—

1 (i) the proposal made to the Board of
2 Directors of the Corporation by the Comp-
3 troller of the Currency; and

4 (ii) the decision resulting from the
5 vote of the Board of Directors of the Cor-
6 poration.

7 (D) FAILURE TO APPROVE PLAN.—If, on
8 the date that is 2 years after the date of enact-
9 ment of this Act, the Board of Directors of the
10 Corporation has failed to approve a plan under
11 subparagraph (B), the Council shall approve a
12 plan using the dispute resolution procedures
13 under section 119.

14 (b) FUNDING OF BOARD OF GOVERNORS.—Section
15 11 of the Federal Reserve Act (12 U.S.C. 248) is amended
16 by adding at the end the following:

17 “(s) ASSESSMENTS, FEES, AND OTHER CHARGES
18 FOR CERTAIN COMPANIES.—

19 “(1) IN GENERAL.—The Board shall collect a
20 total amount of assessments, fees, or other charges
21 from the companies described in paragraph (2) that
22 is equal to the total expenses the Board estimates
23 are necessary or appropriate to carry out the respon-
24 sibilities of the Board with respect to such compa-
25 nies.

1 “(2) COMPANIES.—The companies described in
2 this paragraph are—

3 “(A) all bank holding companies having
4 total consolidated assets of \$50,000,000,000 or
5 more;

6 “(B) all savings and loan holding compa-
7 nies having total consolidated assets of
8 \$50,000,000,000 or more; and

9 “(C) all nonbank financial companies su-
10 pervised by the Board under section 113 of the
11 Restoring American Financial Stability Act of
12 2010.”.

13 (c) EFFECTIVE DATE.—This section, and the amend-
14 ments made by this section, shall take effect on the trans-
15 fer date.

16 **SEC. 319. CONTRACTING AND LEASING AUTHORITY.**

17 Notwithstanding the Federal Property and Adminis-
18 trative Services Act of 1949 (41 U.S.C. 251 et seq.) or
19 any other provision of law, the Office of the Comptroller
20 of the Currency may—

21 (1) enter into and perform contracts, execute
22 instruments, and acquire, in any lawful manner,
23 such goods and services, or personal or real property
24 (or property interest) as the Comptroller deems nec-

1 the date of enactment of this Act and end-
2 ing on the transfer date;

3 (ii) which personnel are appropriate to
4 facilitate the orderly transfer of functions
5 by this title; and

6 (iii) what property and administrative
7 services are necessary to support the Office
8 of the Comptroller of the Currency, the
9 Corporation, and the Board of Governors
10 during the period beginning on the date of
11 enactment of this Act and ending on the
12 transfer date; and

13 (C) take such actions as may be necessary
14 to provide for the orderly implementation of
15 this title.

16 (2) AGENCY CONSULTATION.—When requested
17 jointly by the Office of the Comptroller of the Cur-
18 rency, the Corporation, and the Board of Governors
19 to do so before the transfer date, the Office of Thrift
20 Supervision shall—

21 (A) pay to the Office of the Comptroller of
22 the Currency, the Corporation, or the Board of
23 Governors, as applicable, from funds obtained
24 by the Office of Thrift Supervision through as-
25 sessments, fees, or other charges that the Office

1 of Thrift Supervision is authorized by law to
2 impose, such amounts as the Comptroller of the
3 Currency, the Corporation, and the Board of
4 Governors jointly determine to be necessary
5 under paragraph (1);

6 (B) detail to the Office of the Comptroller
7 of the Currency, the Corporation, or the Board
8 of Governors, as applicable, such personnel as
9 the Comptroller of the Currency, the Corpora-
10 tion, and the Board of Governors jointly deter-
11 mine to be appropriate under paragraph (1);
12 and

13 (C) make available to the Office of the
14 Comptroller of the Currency, the Corporation,
15 or the Board of Governors, as applicable, such
16 property and provide to the Office of the Comp-
17 troller of the Currency, the Corporation, or the
18 Board of Governors, as applicable, such admin-
19 istrative services as the Comptroller of the Cur-
20 rency, the Corporation, and the Board of Gov-
21 ernors jointly determine to be necessary under
22 paragraph (1).

23 (3) NOTICE REQUIRED.—The Office of the
24 Comptroller of the Currency, the Corporation, and
25 the Board of Governors shall jointly give the Office

1 of Thrift Supervision reasonable prior notice of any
2 request that the Office of the Comptroller of the
3 Currency, the Corporation, and the Board of Gov-
4 ernors jointly intend to make under paragraph (2).

5 (b) BOARD OF GOVERNORS.—

6 (1) IN GENERAL.—Before the transfer date, the
7 Office of the Comptroller of the Currency and the
8 Corporation shall—

9 (A) consult and cooperate with the Board
10 of Governors to facilitate the orderly transfer of
11 functions to the Office of the Comptroller of the
12 Currency and the Corporation in accordance
13 with this title;

14 (B) determine jointly, from time to time—

15 (i) the amount of funds necessary to
16 pay any expenses associated with the
17 transfer of functions (including expenses
18 for personnel, property, and administrative
19 services) during the period beginning on
20 the date of enactment of this Act and end-
21 ing on the transfer date;

22 (ii) which personnel are appropriate to
23 facilitate the orderly transfer of functions
24 by this title; and

1 (iii) what property and administrative
2 services are necessary to support the Office
3 of the Comptroller of the Currency and the
4 Corporation during the period beginning
5 on the date of enactment of this Act and
6 ending on the transfer date; and

7 (C) take such actions as may be necessary
8 to provide for the orderly implementation of
9 this title.

10 (2) AGENCY CONSULTATION.—When requested
11 jointly by the Office of the Comptroller of the Cur-
12 rency and the Corporation to do so before the trans-
13 fer date, the Board of Governors shall—

14 (A) pay to the Office of the Comptroller of
15 the Currency or the Corporation, as applicable,
16 from funds obtained by the Board of Governors
17 through assessments, fees, or other charges
18 that the Board of Governors is authorized by
19 law to impose, such amounts as the Office of
20 the Comptroller of the Currency and the Cor-
21 poration jointly determine to be necessary
22 under paragraph (1);

23 (B) detail to the Office of the Comptroller
24 of the Currency or the Corporation, as applica-
25 ble, such personnel as the Office of the Comp-

1 troller of the Currency and the Corporation
2 jointly determine to be appropriate under para-
3 graph (1); and

4 (C) make available to the Office of the
5 Comptroller of the Currency or the Corporation,
6 as applicable, such property and provide to the
7 Office of the Comptroller of the Currency or the
8 Corporation, as applicable, such administrative
9 services as the Office of the Comptroller of the
10 Currency and the Corporation jointly determine
11 to be necessary under paragraph (1).

12 (3) NOTICE REQUIRED.—The Office of the
13 Comptroller of the Currency and the Corporation
14 shall jointly give the Board of Governors reasonable
15 prior notice of any request that the Office of the
16 Comptroller of the Currency and the Corporation
17 jointly intend to make under paragraph (2).

18 **SEC. 322. TRANSFER OF EMPLOYEES.**

19 (a) IN GENERAL.—

20 (1) OFFICE OF THRIFT SUPERVISION EMPLOY-
21 EES.—

22 (A) IN GENERAL.—All employees of the
23 Office of Thrift Supervision shall be transferred
24 to the Office of the Comptroller of the Currency

1 or the Corporation for employment in accord-
2 ance with this section.

3 (B) ALLOCATING EMPLOYEES FOR TRANS-
4 FER TO RECEIVING AGENCIES.—The Director of
5 the Office of Thrift Supervision, the Comp-
6 troller of the Currency, and the Chairperson of
7 the Corporation shall—

8 (i) jointly determine the number of
9 employees of the Office of Thrift Super-
10 vision necessary to perform or support the
11 functions that are transferred to the Office
12 of the Comptroller of the Currency or the
13 Corporation by this title; and

14 (ii) consistent with the determination
15 under clause (i), jointly identify employees
16 of the Office of Thrift Supervision for
17 transfer to the Office of the Comptroller of
18 the Currency or the Corporation.

19 (2) BOARD OF GOVERNORS.—The Comptroller
20 of the Currency, the Chairperson of the Corporation,
21 and the Chairman of the Board of Governors shall—

22 (A) jointly determine the number of em-
23 ployees of the Board of Governors (including
24 employees of the Federal reserve banks who, on
25 the day before the transfer date, are performing

1 functions on behalf of the Board of Governors)
2 necessary to perform or support the functions
3 that are transferred to the Office of the Comp-
4 troller of the Currency or the Corporation
5 under this title; and

6 (B) consistent with the determination
7 under subparagraph (A), jointly identify em-
8 ployees of the Board of Governors (including
9 employees of the Federal reserve banks who, on
10 the day before the transfer date, are performing
11 functions on behalf of the Board of Governors)
12 for transfer to the Office of the Comptroller of
13 the Currency or the Corporation.

14 (3) EMPLOYEES TRANSFERRED; SERVICE PERI-
15 ODS CREDITED.—For purposes of this section, peri-
16 ods of service with a Federal home loan bank, a
17 joint office of Federal home loan banks, or a Federal
18 reserve bank shall be credited as periods of service
19 with a Federal agency.

20 (4) APPOINTMENT AUTHORITY FOR EXCEPTED
21 SERVICE TRANSFERRED.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), any appointment authority
24 of the Office of Thrift Supervision or the Board
25 of Governors under Federal law that relates to

1 the functions transferred under section 312, in-
2 cluding the regulations of the Office of Per-
3 sonnel Management, for filling the positions of
4 employees in the excepted service shall be trans-
5 ferred to the Comptroller of the Currency or
6 the Chairperson of the Corporation, as appro-
7 priate.

8 (B) DECLINING TRANSFERS ALLOWED.—
9 The Office of the Comptroller of the Currency
10 or the Chairperson of the Corporation may de-
11 cline to accept a transfer of authority under
12 subparagraph (A) (and the employees appointed
13 under that authority) to the extent that such
14 authority relates to positions excepted from the
15 competitive service because of their confidential,
16 policy-making, policy-determining, or policy-ad-
17 vocating character.

18 (5) ADDITIONAL APPOINTMENT AUTHORITY.—
19 Notwithstanding any other provision of law, the Of-
20 fice of the Comptroller of the Currency and the Cor-
21 poration may appoint transferred employees to posi-
22 tions in the Office of the Comptroller of the Cur-
23 rency or the Corporation, respectively. For purposes
24 of this paragraph, an employee transferred from any

1 Federal reserve bank shall be treated as an employee
2 of the Board of Governors.

3 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
4 MENTS.—Each employee to be transferred under sub-
5 section (a)(1) shall—

6 (1) be transferred not later than 90 days after
7 the transfer date; and

8 (2) receive notice of the position assignment of
9 the employee not later than 120 days after the effec-
10 tive date of the transfer of the employee.

11 (c) TRANSFER OF FUNCTIONS.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of law, the transfer of employees under
14 this subtitle shall be deemed a transfer of functions
15 for the purpose of section 3503 of title 5, United
16 States Code.

17 (2) PRIORITY.—If any provision of this subtitle
18 conflicts with any protection provided to a trans-
19 ferred employee under section 3503 of title 5,
20 United States Code, the provisions of this subtitle
21 shall control.

22 (d) EMPLOYEE STATUS AND ELIGIBILITY.—The
23 transfer of functions and employees under this subtitle,
24 and the abolishment of the Office of Thrift Supervision
25 under section 313, shall not affect the status of the trans-

1 ferred employees as employees of an agency of the United
2 States under any provision of law.

3 (e) EQUAL STATUS AND TENURE POSITIONS.—

4 (1) STATUS AND TENURE.—

5 (A) OFFICE OF THRIFT SUPERVISION.—

6 Each transferred employee from the Office of
7 Thrift Supervision shall be placed in a position
8 at the Office of the Comptroller of the Currency
9 or the Corporation with the same status and
10 tenure as the transferred employee held on the
11 day before the date on which the employee was
12 transferred.

13 (B) BOARD OF GOVERNORS.—Each trans-
14 ferred employee from the Board of Governors
15 or from a Federal reserve bank shall be placed
16 in a position with the same status and tenure
17 as employees of the Office of the Comptroller of
18 the Currency or the Corporation who perform
19 similar functions and have similar periods of
20 service.

21 (2) FUNCTIONS.—To the extent practicable,
22 each transferred employee shall be placed in a posi-
23 tion at the Office of the Comptroller of the Currency
24 or the Corporation, as applicable, responsible for the
25 same functions and duties as the transferred em-

1 ployee had on the day before the date on which the
2 employee was transferred, in accordance with the ex-
3 pertise and preferences of the transferred employee.

4 (f) NO ADDITIONAL CERTIFICATION REQUIRE-
5 MENTS.—An examiner who is a transferred employee shall
6 not be subject to any additional certification requirements
7 before being placed in a comparable position at the Office
8 of the Comptroller of the Currency or the Corporation,
9 if the examiner carries out examinations of the same type
10 of institutions as an employee of the Office of the Comp-
11 troller of the Currency or the Corporation as the employee
12 was responsible for carrying out before the date on which
13 the employee was transferred.

14 (g) PERSONNEL ACTIONS LIMITED.—

15 (1) 2-YEAR PROTECTION.—Except as provided
16 in paragraph (2), during the 2-year period beginning
17 on the transfer date, an employee holding a perma-
18 nent position on the day before the date on which
19 the employee was transferred shall not be involun-
20 tarily separated or involuntarily reassigned outside
21 the locality pay area (as defined by the Office of
22 Personnel Management) of the employee.

23 (2) EXCEPTIONS.—The Comptroller of the Cur-
24 rency and the Chairperson of the Corporation, as
25 applicable, may—

1 (A) separate a transferred employee for
2 cause, including for unacceptable performance;
3 or

4 (B) terminate an appointment to a position
5 excepted from the competitive service because of
6 its confidential policy-making, policy-deter-
7 mining, or policy-advocating character.

8 (h) PAY.—

9 (1) 2-YEAR PROTECTION.—Except as provided
10 in paragraph (2), during the 2-year period beginning
11 on the date on which the employee was transferred
12 under this subtitle, a transferred employee shall be
13 paid at a rate that is not less than the basic rate
14 of pay, including any geographic differential, that
15 the transferred employee received during the pay pe-
16 riod immediately preceding the date on which the
17 employee was transferred.

18 (2) EXCEPTIONS.—The Comptroller of the Cur-
19 rency, the Chairperson of the Corporation, or the
20 Chairman of the Board of Governors may reduce the
21 rate of basic pay of a transferred employee—

22 (A) for cause, including for unacceptable
23 performance; or

24 (B) with the consent of the transferred
25 employee.

1 (3) PROTECTION ONLY WHILE EMPLOYED.—

2 This subsection shall apply to a transferred em-
3 ployee only during the period that the transferred
4 employee remains employed by Office of the Comp-
5 troller of the Currency or the Corporation.

6 (4) PAY INCREASES PERMITTED.—Nothing in
7 this subsection shall limit the authority of the Comp-
8 troller of the Currency or the Chairperson of the
9 Corporation to increase the pay of a transferred em-
10 ployee.

11 (i) BENEFITS.—

12 (1) RETIREMENT BENEFITS FOR TRANSFERRED
13 EMPLOYEES.—

14 (A) IN GENERAL.—

15 (i) CONTINUATION OF EXISTING RE-
16 TIREMENT PLAN.—Each transferred em-
17 ployee shall remain enrolled in the retire-
18 ment plan of the transferred employee, for
19 as long as the transferred employee is em-
20 ployed by the Office of the Comptroller of
21 the Currency or the Corporation.

22 (ii) EMPLOYER'S CONTRIBUTION.—
23 The Comptroller of the Currency or the
24 Chairperson of the Corporation, as appro-
25 priate, shall pay any employer contribu-

1 tions to the existing retirement plan of
2 each transferred employee, as required
3 under each such existing retirement plan.

4 (B) OPTION FOR EMPLOYEES TRANS-
5 FERRED FROM FEDERAL RESERVE SYSTEM TO
6 BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-
7 MENT PROGRAM.—

8 (i) ELECTION.—Any transferred em-
9 ployee who was enrolled in a Federal Re-
10 serve System retirement plan on the day
11 before the date of the transfer of the em-
12 ployee to the Office of the Comptroller of
13 the Currency or the Corporation may, dur-
14 ing the period beginning 6 months after
15 the transfer date and ending 1 year after
16 the transfer date, elect to be subject to the
17 Federal employee retirement program.

18 (ii) EFFECTIVE DATE OF COV-
19 ERAGE.—For any employee making an
20 election under clause (i), coverage by the
21 Federal employee retirement program shall
22 begin 1 year after the transfer date.

23 (C) AGENCY PARTICIPATION IN FEDERAL
24 RESERVE SYSTEM RETIREMENT PLAN.—

1 (i) SEPARATE ACCOUNT IN FEDERAL
2 RESERVE SYSTEM RETIREMENT PLAN ES-
3 TABLISHED.—A separate account in the
4 Federal Reserve System retirement plan
5 shall be established for employees trans-
6 ferred to the Office of the Comptroller of
7 the Currency or the Corporation under this
8 title who do not make the election under
9 subparagraph (B).

10 (ii) FUNDS ATTRIBUTABLE TO TRANS-
11 FERRED EMPLOYEES REMAINING IN FED-
12 ERAL RESERVE SYSTEM RETIREMENT
13 PLAN TRANSFERRED.—The proportionate
14 share of funds in the Federal Reserve Sys-
15 tem retirement plan, including the propor-
16 tionate share of any funding surplus in
17 that plan, attributable to a transferred em-
18 ployee who does not make the election
19 under subparagraph (B), shall be trans-
20 ferred to the account established under
21 clause (i).

22 (iii) EMPLOYER CONTRIBUTIONS DE-
23 POSITED.—The Office of the Comptroller
24 of the Currency or the Corporation, as ap-
25 propriate, shall deposit into the account es-

1 tablished under clause (i) the employer
2 contributions that the Office of the Comp-
3 troller of the Currency or the Corporation,
4 respectively, makes on behalf of trans-
5 ferred employees who do not make an elec-
6 tion under subparagraph (B).

7 (iv) ACCOUNT ADMINISTRATION.—The
8 Office Comptroller of the Currency or the
9 Corporation, as appropriate, shall admin-
10 ister the account established under clause
11 (i) as a participation employer in the Fed-
12 eral Reserve System retirement plan.

13 (D) DEFINITION.—In this paragraph, the
14 term “existing retirement plan” means, with re-
15 spect to a transferred employee, the retirement
16 plan (including the Financial Institutions Re-
17 tirement Fund), and any associated thrift sav-
18 ings plan, of the agency from which the em-
19 ployee was transferred in which the employee
20 was enrolled on the day before the date on
21 which the employee was transferred.

22 (2) BENEFITS OTHER THAN RETIREMENT BEN-
23 EFITS.—

24 (A) DURING FIRST YEAR.—

1 (i) EXISTING PLANS CONTINUE.—

2 During the 1-year period following the
3 transfer date, each transferred employee
4 may retain membership in any employee
5 benefit program (other than a retirement
6 benefit program) of the agency from which
7 the employee was transferred under this
8 title, including any dental, vision, long
9 term care, or life insurance program to
10 which the employee belonged on the day
11 before the transfer date.

12 (ii) EMPLOYER'S CONTRIBUTION.—

13 The Comptroller of the Currency or the
14 Corporation, as appropriate, shall pay any
15 employer cost required to extend coverage
16 in the benefit program to the transferred
17 employee as required under that program
18 or negotiated agreements.

19 (B) DENTAL, VISION, OR LIFE INSURANCE

20 AFTER FIRST YEAR.—If, after the 1-year period
21 beginning on the transfer date, the Comptroller
22 of the Currency or the Corporation determines
23 that the Office of the Comptroller of the Cur-
24 rency or the Corporation, as the case may be,
25 will not continue to participate in any dental,

1 vision, or life insurance program of an agency
2 from which an employee was transferred, a
3 transferred employee who is a member of the
4 program may, before the decision takes effect
5 and without regard to any regularly scheduled
6 open season, elect to enroll in—

7 (i) the enhanced dental benefits pro-
8 gram established under chapter 89A of
9 title 5, United States Code;

10 (ii) the enhanced vision benefits estab-
11 lished under chapter 89B of title 5, United
12 States Code; and

13 (iii) the Federal Employees' Group
14 Life Insurance Program established under
15 chapter 87 of title 5, United States Code,
16 without regard to any requirement of in-
17 surability.

18 (C) LONG TERM CARE INSURANCE AFTER
19 1ST YEAR.—If, after the 1-year period begin-
20 ning on the transfer date, the Comptroller of
21 the Currency or the Corporation determines
22 that the Office of the Comptroller of the Cur-
23 rency or the Corporation, as appropriate, will
24 not continue to participate in any long term
25 care insurance program of an agency from

1 which an employee transferred, a transferred
2 employee who is a member of such a program
3 may, before the decision takes effect, elect to
4 apply for coverage under the Federal Long
5 Term Care Insurance Program established
6 under chapter 90 of title 5, United States Code,
7 under the underwriting requirements applicable
8 to a new active workforce member, as described
9 in part 875 of title 5, Code of Federal Regula-
10 tions (or any successor thereto).

11 (D) CONTRIBUTION OF TRANSFERRED EM-
12 PLOYEE.—

13 (i) IN GENERAL.—Subject to clause
14 (ii), a transferred employee who is enrolled
15 in a plan under the Federal Employees
16 Health Benefits Program shall pay any
17 employee contribution required under the
18 plan.

19 (ii) COST DIFFERENTIAL.—The
20 Comptroller of the Currency or the Cor-
21 poration, as applicable, shall pay any dif-
22 ference in cost between the employee con-
23 tribution required under the plan provided
24 to transferred employees by the agency
25 from which the employee transferred on

1 the date of enactment of this Act and the
2 plan provided by the Comptroller of the
3 Currency or the Corporation, as the case
4 may be, under this section.

5 (iii) FUNDS TRANSFER.—The Comp-
6 troller of the Currency or the Corporation,
7 as the case may be, shall transfer to the
8 Employees Health Benefits Fund estab-
9 lished under section 8909 of title 5, United
10 States Code, an amount determined by the
11 Director of the Office of Personnel Man-
12 agement, after consultation with the
13 Comptroller of the Currency or the Chair-
14 person of the Corporation, as the case may
15 be, and the Office of Management and
16 Budget, to be necessary to reimburse the
17 Fund for the cost to the Fund of providing
18 any benefits under this subparagraph that
19 are not otherwise paid for by a transferred
20 employee under clause (i).

21 (E) SPECIAL PROVISIONS TO ENSURE CON-
22 TINUATION OF LIFE INSURANCE BENEFITS.—

23 (i) IN GENERAL.—An annuitant, as
24 defined in section 8901 of title 5, United
25 States Code, who is enrolled in a life insur-

1 which the employee transferred on the
2 date of enactment of this Act and the
3 benefits provided under this section.

4 (III) FUNDS TRANSFER.—The
5 Comptroller of the Currency or the
6 Corporation, as the case may be, shall
7 transfer to the Federal Employees’
8 Group Life Insurance Fund estab-
9 lished under section 8714 of title 5,
10 United States Code, an amount deter-
11 mined by the Director of the Office of
12 Personnel Management, after con-
13 sultation with the Comptroller of the
14 Currency or the Chairperson of the
15 Corporation, as the case may be, and
16 the Office of Management and Budg-
17 et, to be necessary to reimburse the
18 Federal Employees’ Group Life Insur-
19 ance Fund for the cost to the Federal
20 Employees’ Group Life Insurance
21 Fund of providing benefits under this
22 subparagraph not otherwise paid for
23 by a transferred employee under sub-
24 clause (I).

1 (IV) CREDIT FOR TIME EN-
2 ROLLED IN OTHER PLANS.—For any
3 transferred employee, enrollment in a
4 life insurance plan administered by
5 the agency from which the employee
6 transferred, immediately before enroll-
7 ment in a life insurance plan under
8 chapter 87 of title 5, United States
9 Code, shall be considered as enroll-
10 ment in a life insurance plan under
11 that chapter for purposes of section
12 8706(b)(1)(A) of title 5, United
13 States Code.

14 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
15 FICATION SYSTEM.—Not later than 2 years after the
16 transfer date, the Comptroller of the Currency and the
17 Chairperson of the Corporation shall each implement a
18 uniform pay and classification system for all transferred
19 employees.

20 (k) EQUITABLE TREATMENT.—In administering the
21 provisions of this section, the Comptroller of the Currency
22 and the Chairperson of the Corporation—

23 (1) may not take any action that would unfairly
24 disadvantage a transferred employee relative to any
25 other transferred employee on the basis of prior em-

1 employment by the Office of Thrift Supervision, the
2 Board of Governors, or a Federal reserve bank; and

3 (2) may take such action as is appropriate in
4 an individual case to ensure that a transferred em-
5 ployee receives equitable treatment, with respect to
6 the status, tenure, pay, benefits (other than benefits
7 under programs administered by the Office of Per-
8 sonnel Management), and accrued leave or vacation
9 time for prior periods of service with any Federal
10 agency of the transferred employee.

11 (1) REORGANIZATION.—

12 (1) IN GENERAL.—If the Comptroller of the
13 Currency or the Chairperson of the Corporation de-
14 termines, during the 2-year period beginning 1 year
15 after the transfer date, that a reorganization of the
16 staff of the Office of the Comptroller of the Cur-
17 rency or the Corporation, respectively, is required,
18 the reorganization shall be deemed a “major reorga-
19 nization” for purposes of affording affected employ-
20 ees retirement under section 8336(d)(2) or
21 8414(b)(1)(B) of title 5, United States Code.

22 (2) SERVICE CREDIT.—For purposes of this
23 subsection, periods of service with a Federal home
24 loan bank, a joint office of Federal home loan banks

1 or a Federal reserve bank shall be credited as peri-
2 ods of service with a Federal agency.

3 **SEC. 323. PROPERTY TRANSFERRED.**

4 (a) PROPERTY DEFINED.—For purposes of this sec-
5 tion, the term “property” includes all real property (in-
6 cluding leaseholds) and all personal property, including
7 computers, furniture, fixtures, equipment, books, ac-
8 counts, records, reports, files, memoranda, paper, reports
9 of examination, work papers, and correspondence related
10 to such reports, and any other information or materials.

11 (b) PROPERTY OF THE OFFICE OF THRIFT SUPER-
12 VISION.—Not later than 90 days after the transfer date,
13 all property of the Office of Thrift Supervision that the
14 Comptroller of the Currency and the Chairperson of the
15 Corporation jointly determine is used, on the day before
16 the transfer date, to perform or support the functions of
17 the Office of Thrift Supervision transferred to the Office
18 of the Comptroller of the Currency or the Corporation
19 under this title, shall be transferred to the Office of the
20 Comptroller of the Currency or the Corporation in a man-
21 ner consistent with the transfer of employees under this
22 subtitle.

23 (c) PROPERTY OF THE BOARD OF GOVERNORS.—

24 (1) IN GENERAL.—Not later than 90 days after
25 the transfer date, all property of the Board of Gov-

1 errors that the Office of the Comptroller of the Cur-
2 rency, the Corporation, and the Board of Governors
3 jointly determine is used, on the day before the
4 transfer date, to perform or support the functions of
5 the Board of Governor transferred to the Office of
6 the Comptroller of the Currency or the Corporation
7 under this title, shall be transferred to the Office of
8 the Comptroller of the Currency or the Corporation
9 in a manner consistent with the transfer of employ-
10 ees under this subtitle.

11 (2) PROPERTY OF FEDERAL RESERVE
12 BANKS.—Any property of any Federal reserve bank
13 that, on the day before the transfer date, is used to
14 perform or support the functions of the Board of
15 Governors transferred to the Office of the Comp-
16 troller of the Currency or the Corporation by this
17 title shall be treated as property of the Board of
18 Governors for purposes of paragraph (1).

19 (d) CONTRACTS RELATED TO PROPERTY TRANS-
20 FERRED.—Each contract, agreement, lease, license, per-
21 mit, and similar arrangement relating to property trans-
22 ferred to the Office of the Comptroller of the Currency
23 or the Corporation by this section shall be transferred to
24 the Office of the Comptroller of the Currency or the Cor-

1 poration, as appropriate, together with the property to
2 which it relates.

3 (e) PRESERVATION OF PROPERTY.—Property identi-
4 fied for transfer under this section shall not be altered,
5 destroyed, or deleted before transfer under this section.

6 **SEC. 324. FUNDS TRANSFERRED.**

7 The funds that, on the day before the transfer date,
8 the Director of the Office of Thrift Supervision (in con-
9 sultation with the Comptroller of the Currency, the Chair-
10 person of the Corporation, and the Chairman of the Board
11 of Governors) determines are not necessary to dispose of
12 the affairs of the Office of Thrift Supervision under sec-
13 tion 325 and are available to the Office of Thrift Super-
14 vision to pay the expenses of the Office of Thrift Super-
15 vision—

16 (1) relating to the functions of the Office of
17 Thrift Supervision transferred under section
18 312(b)(1)(B), shall be transferred to the Office of
19 the Comptroller of the Currency on the transfer
20 date;

21 (2) relating to the functions of the Office of
22 Thrift Supervision transferred under section
23 312(b)(1)(C), shall be transferred to the Corporation
24 on the transfer date; and

1 (3) relating to the functions of the Office of
2 Thrift Supervision transferred under section
3 312(b)(1)(A), shall be transferred to the Board of
4 Governors on the transfer date.

5 **SEC. 325. DISPOSITION OF AFFAIRS.**

6 (a) **AUTHORITY OF DIRECTOR.**—During the 90-day
7 period beginning on the transfer date, the Director of the
8 Office of Thrift Supervision—

9 (1) shall, solely for the purpose of winding up
10 the affairs of the Office of Thrift Supervision relat-
11 ing to any function transferred to the Office of the
12 Comptroller of the Currency, the Corporation, or the
13 Board of Governors under this title—

14 (A) manage the employees of the Office of
15 Thrift Supervision who have not yet been trans-
16 ferred and provide for the payment of the com-
17 pensation and benefits of the employees that ac-
18 crue before the date on which the employees are
19 transferred under this title; and

20 (B) manage any property of the Office of
21 Thrift Supervision, until the date on which the
22 property is transferred under section 323; and

23 (2) may take any other action necessary to
24 wind up the affairs of the Office of Thrift Super-
25 vision.

1 (b) STATUS OF DIRECTOR.—

2 (1) IN GENERAL.—Notwithstanding the trans-
3 fer of functions under this subtitle, during the 90-
4 day period beginning on the transfer date, the Direc-
5 tor of the Office of Thrift Supervision shall retain
6 and may exercise any authority vested in the Direc-
7 tor of the Office of Thrift Supervision on the day be-
8 fore the transfer date, only to the extent necessary—

9 (A) to wind up the Office of Thrift Super-
10 vision; and

11 (B) to carry out the transfer under this
12 subtitle during such 90-day period.

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

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

19 (B) entitled to receive compensation at the
20 same annual rate of basic pay that the Director
21 of the Office of Thrift Supervision received on
22 the day before the transfer date.

23 (c) AUTHORITY OF CHAIRMAN OF THE BOARD OF
24 GOVERNORS.—During the 90-day period beginning on the

1 transfer date, the Chairman of the Board of Governors
2 shall—

3 (1) manage the employees of the Board of Gov-
4 ernors who have not yet been transferred under this
5 title and provide for the payment of the compensa-
6 tion and benefits of the employees that accrue before
7 the date on which the employees are transferred
8 under this title; and

9 (2) manage any property of the Board of Gov-
10 ernors that is transferred under this title, until the
11 date on which the property is transferred under sec-
12 tion 323.

13 **SEC. 326. CONTINUATION OF SERVICES.**

14 Any agency, department, or other instrumentality of
15 the United States, and any successor to any such agency,
16 department, or instrumentality, that was, before the trans-
17 fer date, providing support services to the Office of Thrift
18 Supervision or the Board of Governors in connection with
19 functions transferred to the Office of the Comptroller of
20 the Currency, the Corporation or the Board of Governors
21 under this title, shall—

22 (1) continue to provide such services, subject to
23 reimbursement by the Office of the Comptroller of
24 the Currency, the Corporation, or the Board of Gov-

1 errors, until the transfer of functions under this
2 title is complete; and

3 (2) consult with the Comptroller of the Cur-
4 rency, the Chairperson of the Corporation, or the
5 Chairman of the Board of Governors, as appro-
6 priate, to coordinate and facilitate a prompt and or-
7 derly transition.

8 **Subtitle C—Federal Deposit**
9 **Insurance Corporation**

10 **SEC. 331. DEPOSIT INSURANCE REFORMS.**

11 (a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Fed-
12 eral Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is
13 amended—

14 (1) by striking subparagraph (D); and

15 (2) by redesignating subparagraph (C) as sub-
16 paragraph (D).

17 (b) ASSESSMENT BASE.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the Corporation shall amend the regula-
20 tions issued by the Corporation under section
21 7(b)(2) of the Federal Deposit Insurance Act (12
22 U.S.C. 1817(b)(2)) to define the term “assessment
23 base” with respect to an insured depository institu-
24 tion for purposes of that section 7(b)(2), as an
25 amount equal to—

1 (A) the average total consolidated assets of
2 the insured depository institution during the as-
3 sessment period; minus

4 (B) the sum of—

5 (i) the average tangible equity of the
6 insured depository institution during the
7 assessment period; and

8 (ii) the average long-term unsecured
9 debt of the insured depository institution
10 during the assessment period.

11 (2) DETERMINATION.—If, not later than 1 year
12 after the date of enactment of this Act, the Corpora-
13 tion submits to the Committee on Banking, Hous-
14 ing, and Urban Affairs of the Senate and the Com-
15 mittee on Financial Services of the House of Rep-
16 resentatives, in writing, a finding that an amend-
17 ment to the rules of the Corporation regarding the
18 definition of the term “assessment base”, as pro-
19 vided in paragraph (1), would reduce the effective-
20 ness of the risk-based assessment system of the Cor-
21 poration or increase the risk of loss to the Deposit
22 Insurance Fund, the Corporation may—

23 (A) continue in effect the definition of the
24 term “assessment base”, as in effect on the day
25 before the date of enactment of this Act; or

1 (B) establish, by rule, a definition of the
2 term “assessment base” that the Corporation
3 deems appropriate.

4 **SEC. 332. MANAGEMENT OF THE FEDERAL DEPOSIT INSUR-**
5 **ANCE CORPORATION.**

6 (a) IN GENERAL.—Section 2 of the Federal Deposit
7 Insurance Act (12 U.S.C. 1812) is amended—

8 (1) in subsection (a)(1)—

9 (A) in subparagraph (B), by striking “Di-
10 rector of the Office of Thrift Supervision” and
11 inserting “Director of the Consumer Financial
12 Protection Bureau”;

13 (2) by amending subsection (d)(2) to read as
14 follows:

15 “(2) ACTING OFFICIALS MAY SERVE.—In the
16 event of a vacancy in the office of the Comptroller
17 of the Currency and pending the appointment of a
18 successor, or during the absence or disability of the
19 Comptroller of the Currency, the acting Comptroller
20 of the Currency shall be a member of the Board of
21 Directors in the place of the Comptroller of the Cur-
22 rency.”; and

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

1 (b) EFFECTIVE DATE.—This section, and the amend-
2 ments made by this section, shall take effect on the trans-
3 fer date.

4 **Subtitle D—Termination of Federal** 5 **Thrift Charter**

6 **SEC. 341. TERMINATION OF FEDERAL SAVINGS ASSOCIA-** 7 **TIONS.**

8 (a) IN GENERAL.—Beginning on the date of enact-
9 ment of this Act, the Director of the Office of Thrift Su-
10 pervision, or the Comptroller of the Currency, may not
11 issue a charter for a Federal savings association under
12 section 5 of the Home Owners' Loan Act (12 U.S.C.
13 1464).

14 (b) CONFORMING AMENDMENT.—Section 5(a) of the
15 Home Owner's Loan Act (12 U.S.C. 1464(a)) is amended
16 to read as follows:

17 “(a) IN GENERAL.—In order to provide thrift institu-
18 tions for the deposit of funds and for the extension of cred-
19 it for homes and other goods and services, the Comptroller
20 of the Currency is authorized, under such regulations as
21 the Comptroller of the Currency may prescribe, to provide
22 for the examination, operation, and regulation of associa-
23 tions to be known as ‘Federal savings associations’ (in-
24 cluding Federal savings banks), giving primary consider-
25 ation to the best practices of thrift institutions in the

1 United States. The lending and investment powers con-
2 ferred by this section are intended to encourage such insti-
3 tutions to provide credit for housing safely and soundly.”.

4 (c) PROSPECTIVE REPEAL.—Effective on the date on
5 which the Comptroller of the Currency determines that no
6 Federal savings associations exist, section 5 of the Home
7 Owner’s Loan Act (12 U.S.C. 1464) is repealed.

8 **SEC. 342. BRANCHING.**

9 Notwithstanding the Federal Deposit Insurance Act
10 (12 U.S.C. 1811 et seq.), the Bank Holding Company Act
11 of 1956 (12 U.S.C. 1841 et seq.), or any other provision
12 of Federal or State law, a savings association that be-
13 comes a bank may continue to operate any branch or
14 agency that the savings association operated immediately
15 before the savings association became a bank.

16 **TITLE IV—REGULATION OF AD-**
17 **VISERS TO HEDGE FUNDS**
18 **AND OTHERS**

19 **SEC. 401. SHORT TITLE.**

20 This title may be cited as the “Private Fund Invest-
21 ment Advisers Registration Act of 2010”.

22 **SEC. 402. DEFINITIONS.**

23 (a) INVESTMENT ADVISERS ACT OF 1940 DEFINI-
24 TIONS.—Section 202(a) of the Investment Advisers Act of

1 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the
2 end the following:

3 “(29) The term ‘private fund’ means an issuer
4 that would be an investment company, as defined in
5 section 3 of the Investment Company Act of 1940
6 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7)
7 of that Act.

8 “(30) The term ‘foreign private adviser’ means
9 any investment adviser who—

10 “(A) has no place of business in the
11 United States;

12 “(B) has fewer than 15 clients who are
13 domiciled in or residents of the United States;

14 “(C) has assets under management attrib-
15 utable to clients who are domiciled in or resi-
16 dents of the United States of less than
17 \$25,000,000, or such higher amount as the
18 Commission may, by rule, deem appropriate in
19 accordance with the purposes of this title; and

20 “(D) neither—

21 “(i) holds itself out generally to the
22 public in the United States as an invest-
23 ment adviser; nor

24 “(ii) acts as—

1 “(I) an investment adviser to any
2 investment company registered under
3 the Investment Company Act of 1940;
4 or

5 “(II) a company that has elected
6 to be a business development company
7 pursuant to section 54 of the Invest-
8 ment Company Act of 1940 (15
9 U.S.C. 80a-53), and has not with-
10 drawn its election.”.

11 (b) OTHER DEFINITIONS.—As used in this title, the
12 terms “investment adviser” and “private fund” have the
13 same meanings as in section 202 of the Investment Advis-
14 ers Act of 1940, as amended by this title.

15 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION;**
16 **LIMITED EXEMPTION FOR FOREIGN PRIVATE**
17 **ADVISERS; LIMITED INTRASTATE EXEMP-**
18 **TION.**

19 Section 203(b) of the Investment Advisers Act of
20 1940 (15 U.S.C. 80b-3(b)) is amended—

21 (1) in paragraph (1), by inserting “, other than
22 an investment adviser who acts as an investment ad-
23 viser to any private fund,” before “all of whose”;

24 (2) by striking paragraph (3) and inserting the
25 following:

1 “(3) any investment adviser that is a foreign
2 private adviser;” and

3 (3) in paragraph (5), by striking “or” at the
4 end;

5 (4) in paragraph (6), by striking the period at
6 the end and inserting “; or”; and

7 (5) by adding at the end the following:

8 “(7) any investment adviser, other than any en-
9 tity that has elected to be regulated or is regulated
10 as a business development company pursuant to sec-
11 tion 54 of the Investment Company Act of 1940 (15
12 U.S.C. 80a-54), who solely advises—

13 “(A) small business investment companies
14 that are licensees under the Small Business In-
15 vestment Act of 1958;

16 “(B) entities that have received from the
17 Small Business Administration notice to pro-
18 ceed to qualify for a license as a small business
19 investment company under the Small Business
20 Investment Act of 1958, which notice or license
21 has not been revoked; or

22 “(C) applicants that are affiliated with 1
23 or more licensed small business investment
24 companies described in subparagraph (A) and
25 that have applied for another license under the

1 Small Business Investment Act of 1958, which
2 application remains pending.”.

3 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS;**
4 **EXAMINATIONS; DISCLOSURES.**

5 Section 204 of the Investment Advisers Act of 1940
6 (15 U.S.C. 80b–4) is amended—

7 (1) by redesignating subsections (b) and (c) as
8 subsections (c) and (d), respectively; and

9 (2) by inserting after subsection (a) the fol-
10 lowing:

11 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

12 “(1) IN GENERAL.—The Commission may re-
13 quire any investment adviser registered under this
14 title—

15 “(A) to maintain such records of, and file
16 with the Commission such reports regarding,
17 private funds advised by the investment adviser,
18 as necessary and appropriate in the public in-
19 terest and for the protection of investors, or for
20 the assessment of systemic risk by the Finan-
21 cial Stability Oversight Council (in this sub-
22 section referred to as the ‘Council’); and

23 “(B) to provide or make available to the
24 Council those reports or records or the informa-
25 tion contained therein.

1 “(2) TREATMENT OF RECORDS.—The records
2 and reports of any private fund to which an invest-
3 ment adviser registered under this title provides in-
4 vestment advice to that private fund shall be deemed
5 to be the records and reports of the investment ad-
6 viser.

7 “(3) REQUIRED INFORMATION.—The records
8 and reports required to be maintained by a private
9 fund and subject to inspection by the Commission
10 under this subsection shall include, for each private
11 fund advised by the investment adviser, a description
12 of—

13 “(A) the amount of assets under manage-
14 ment and use of leverage;

15 “(B) counterparty credit risk exposure;

16 “(C) trading and investment positions;

17 “(D) valuation policies and practices of the
18 fund;

19 “(E) types of assets held;

20 “(F) side arrangements or side letters,
21 whereby certain investors in a fund obtain more
22 favorable rights or entitlements than other in-
23 vestors;

24 “(G) trading practices; and

1 “(H) such other information as the Com-
2 mission, in consultation with the Council, deter-
3 mines is necessary and appropriate in the pub-
4 lic interest and for the protection of investors
5 or for the assessment of systemic risk, which
6 may include the establishment of different re-
7 porting requirements for different classes of
8 fund advisers, based on the type or size of pri-
9 vate fund being advised.

10 “(4) MAINTENANCE OF RECORDS.—An invest-
11 ment adviser registered under this title shall main-
12 tain such records of private funds advised by the in-
13 vestment adviser for such period or periods as the
14 Commission, by rule, may prescribe as necessary and
15 appropriate in the public interest and for the protec-
16 tion of investors, or for the assessment of systemic
17 risk.

18 “(5) FILING OF RECORDS.—The Commission
19 shall issue rules requiring each investment adviser to
20 a private fund to file reports containing such infor-
21 mation as the Commission deems necessary and ap-
22 propriate in the public interest and for the protec-
23 tion of investors or for the assessment of systemic
24 risk.

25 “(6) EXAMINATION OF RECORDS.—

1 “(A) PERIODIC AND SPECIAL EXAMINA-
2 TIONS.—The Commission—

3 “(i) shall conduct periodic inspections
4 of all records of private funds maintained
5 by an investment adviser registered under
6 this title in accordance with a schedule es-
7 tablished by the Commission; and

8 “(ii) may conduct at any time and
9 from time to time such additional, special,
10 and other examinations as the Commission
11 may prescribe as necessary and appro-
12 priate in the public interest and for the
13 protection of investors, or for the assess-
14 ment of systemic risk.

15 “(B) AVAILABILITY OF RECORDS.—An in-
16 vestment adviser registered under this title shall
17 make available to the Commission any copies or
18 extracts from such records as may be prepared
19 without undue effort, expense, or delay, as the
20 Commission or its representatives may reason-
21 ably request.

22 “(7) INFORMATION SHARING.—

23 “(A) IN GENERAL.—The Commission shall
24 make available to the Council copies of all re-
25 ports, documents, records, and information filed

1 with or provided to the Commission by an in-
2 vestment adviser under this subsection as the
3 Council may consider necessary for the purpose
4 of assessing the systemic risk posed by a pri-
5 vate fund.

6 “(B) CONFIDENTIALITY.—The Council
7 shall maintain the confidentiality of information
8 received under this paragraph in all such re-
9 ports, documents, records, and information, in
10 a manner consistent with the level of confiden-
11 tiality established by the Commission pursuant
12 to paragraph (8). The Council shall be exempt
13 from section 552 of title 5, United States Code,
14 with respect to any information in any report,
15 document, record, or information made avail-
16 able, to the Council under this subsection.”.

17 “(8) COMMISSION CONFIDENTIALITY OF RE-
18 PORTS.—Notwithstanding any other provision of
19 law, the Commission may not be compelled to dis-
20 close any report or information contained therein re-
21 quired to be filed with the Commission under this
22 subsection, except that nothing in this subsection
23 authorizes the Commission—

24 “(A) to withhold information from Con-
25 gress, upon an agreement of confidentiality; or

1 “(B) prevent the Commission from com-
2 plying with—

3 “(i) a request for information from
4 any other Federal department or agency or
5 any self-regulatory organization requesting
6 the report or information for purposes
7 within the scope of its jurisdiction; or

8 “(ii) an order of a court of the United
9 States in an action brought by the United
10 States or the Commission.

11 “(9) OTHER RECIPIENTS CONFIDENTIALITY.—
12 Any department, agency, or self-regulatory organiza-
13 tion that receives reports or information from the
14 Commission under this subsection shall maintain the
15 confidentiality of such reports, documents, records,
16 and information in a manner consistent with the
17 level of confidentiality established for the Commis-
18 sion under paragraph (8).

19 “(10) PUBLIC INFORMATION EXCEPTION.—

20 “(A) IN GENERAL.—The Commission, the
21 Council, and any other department, agency, or
22 self-regulatory organization that receives infor-
23 mation, reports, documents, records, or infor-
24 mation from the Commission under this sub-
25 section, shall be exempt from the provisions of

1 section 552 of title 5, United States Code, with
2 respect to any such report, document, record, or
3 information. Any proprietary information of an
4 investment adviser ascertained by the Commis-
5 sion from any report required to be filed with
6 the Commission pursuant to this subsection
7 shall be subject to the same limitations on pub-
8 lic disclosure as any facts ascertained during an
9 examination, as provided by section 210(b) of
10 this title.

11 “(B) PROPRIETARY INFORMATION.—For
12 purposes of this paragraph, proprietary infor-
13 mation includes—

14 “(i) sensitive, non-public information
15 regarding the investment or trading strate-
16 gies of the investment adviser;

17 “(ii) analytical or research methodolo-
18 gies;

19 “(iii) trading data;

20 “(iv) computer hardware or software
21 containing intellectual property; and

22 “(v) any additional information that
23 the Commission determines to be propri-
24 etary.

1 “(11) ANNUAL REPORT TO CONGRESS.—The
2 Commission shall report annually to Congress on
3 how the Commission has used the data collected
4 pursuant to this subsection to monitor the markets
5 for the protection of investors and the integrity of
6 the markets.”.

7 **SEC. 405. DISCLOSURE PROVISION ELIMINATED.**

8 Section 210(c) of the Investment Advisers Act of
9 1940 (15 U.S.C. 80b–10(c)) is amended by inserting be-
10 fore the period at the end the following: “or for purposes
11 of assessment of potential systemic risk”.

12 **SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.**

13 Section 211 of the Investment Advisers Act of 1940
14 (15 U.S.C. 80b–11) is amended—

15 (1) in subsection (a), by inserting before the pe-
16 riod at the end of the first sentence the following:
17 “, including rules and regulations defining technical,
18 trade, and other terms used in this title”; and

19 (2) by adding at the end the following:

20 “(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The
21 Commission and the Commodity Futures Trading Com-
22 mission shall, after consultation with the Council but not
23 later than 12 months after the date of enactment of the
24 Private Fund Investment Advisers Registration Act of
25 2010, jointly promulgate rules to establish the form and

1 content of the reports required to be filed with the Com-
2 mission under subsection 204(b) and with the Commodity
3 Futures Trading Commission by investment advisers that
4 are registered both under this title and the Commodity
5 Exchange Act (7 U.S.C. 1a et seq.).”.

6 **SEC. 407. EXEMPTIONS OF VENTURE CAPITAL FUND ADVIS-**
7 **ERS.**

8 Section 203 of the Investment Advisers Act of 1940
9 (15 U.S.C. 80b–3) is amended by adding at the end the
10 following:

11 “(l) EXEMPTION OF VENTURE CAPITAL FUND AD-
12 VISERS.—No investment adviser shall be subject to the
13 registration requirements of this title with respect to the
14 provision of investment advice relating to a venture capital
15 fund. Not later than 6 months after the date of enactment
16 of this subsection, the Commission shall issue final rules
17 to define the term ‘venture capital fund’ for purposes of
18 this subsection.”.

19 **SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRI-**
20 **VATE EQUITY FUND ADVISERS.**

21 Section 203 of the Investment Advisers Act of 1940
22 (15 U.S.C. 80b–3) is amended by adding at the end the
23 following:

24 “(m) EXEMPTION OF AND REPORTING BY PRIVATE
25 EQUITY FUND ADVISERS.—

1 “(1) IN GENERAL.—Except as provided in this
2 subsection, no investment adviser shall be subject to
3 the registration or reporting requirements of this
4 title with respect to the provision of investment ad-
5 vice relating to a private equity fund or funds.

6 “(2) MAINTENANCE OF RECORDS AND ACCESS
7 BY COMMISSION.—Not later than 6 months after the
8 date of enactment of this subsection, the Commis-
9 sion shall issue final rules—

10 “(A) to require investment advisers de-
11 scribed in paragraph (1) to maintain such
12 records and provide to the Commission such an-
13 nual or other reports as the Commission taking
14 into account fund size, governance, investment
15 strategy, risk, and other factors, as the Com-
16 mission determines necessary and appropriate
17 in the public interest and for the protection of
18 investors; and

19 “(B) to define the term ‘private equity
20 fund’ for purposes of this subsection.”.

21 **SEC. 409. FAMILY OFFICES.**

22 (a) IN GENERAL.—Section 202(a)(11) of the Invest-
23 ment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is
24 amended by striking “or (G)” and inserting the following:
25 “(G) any family office, as defined by rule, regulation, or

1 order of the Commission, in accordance with the purposes
2 of this title; or (H)”.

3 (b) RULEMAKING.—The rules, regulations, or orders
4 issued by the Commission pursuant to section
5 202(a)(11)(G) of the Investment Advisers Act of 1940, as
6 added by this section, regarding the definition of the term
7 “family office” shall provide for an exemption that—

8 (1) is consistent with the previous exemptive
9 policy of the Commission, as reflected in exemptive
10 orders for family offices in effect on the date of en-
11 actment of this Act; and

12 (2) recognizes the range of organizational struc-
13 tures and management arrangements employed by
14 family offices.

15 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**
16 **THRESHOLD FOR FEDERAL REGISTRATION**
17 **OF INVESTMENT ADVISERS.**

18 Section 203A(a)(1) of the Investment Advisers Act
19 of 1940 (15 U.S.C. 80b-3a(a)(1)) is amended —

20 (1) in subparagraph (A)—

21 (A) by striking “\$25,000,000” and insert-
22 ing “\$100,000,000”; and

23 (B) by striking “or” at the end;

24 (2) in subparagraph (B), by striking the period
25 at the end and inserting “; or”; and

1 (3) by adding at the end the following:

2 “(C) is an adviser to a company that has
3 elected to be a business development company
4 pursuant to section 54 of the Investment Com-
5 pany Act of 1940, and has not withdrawn its
6 election.”.

7 **SEC. 411. CUSTODY OF CLIENT ASSETS.**

8 The Investment Advisers Act of 1940 (15 U.S.C.
9 80b-1 et seq.) is amended by adding at the end the fol-
10 lowing new section:

11 **“SEC. 223. CUSTODY OF CLIENT ACCOUNTS.**

12 “An investment adviser registered under this title
13 shall take such steps to safeguard client assets over which
14 such adviser has custody, including, without limitation,
15 verification of such assets by an independent public ac-
16 countant, as the Commission may, by rule, prescribe.”.

17 **SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STAND-**
18 **ARD FOR INFLATION.**

19 The Commission shall, by rule—

20 (1) increase the financial threshold for an ac-
21 credited investor, as set forth in the rules of the
22 Commission under the Securities Act of 1933, by
23 calculating an amount that is greater than the
24 amount in effect on the date of enactment of this
25 Act of \$200,000 income for a natural person (or

1 \$300,000 for a couple) and \$1,000,000 in assets, as
2 the Commission determines is appropriate and in the
3 public interest, in light of price inflation since those
4 figures were determined; and

5 (2) adjust that threshold not less frequently
6 than once every 5 years, to reflect the percentage in-
7 crease in the cost of living.

8 **SEC. 413. GAO STUDY AND REPORT ON ACCREDITED INVES-**
9 **TORS.**

10 The Comptroller General of the United States shall
11 conduct a study on the appropriate criteria for deter-
12 mining the financial thresholds or other criteria needed
13 to qualify for accredited investor status and eligibility to
14 invest in private funds, and shall submit a report to the
15 Committee on Banking, Housing, and Urban Affairs of
16 the Senate and the Committee on Financial Services of
17 the House of Representatives on the results of such study
18 not later than 1 year after the date of enactment of this
19 Act.

20 **SEC. 414. GAO STUDY ON SELF-REGULATORY ORGANIZA-**
21 **TION FOR PRIVATE FUNDS.**

22 The Comptroller General of the United States shall
23 conduct a study of the feasibility of forming a self-regu-
24 latory organization to oversee private funds, private equity
25 funds, and venture capital funds, and shall submit a re-

1 port to the Committee on Banking, Housing, and Urban
2 Affairs of the Senate and the Committee on Financial
3 Services of the House of Representatives on the results
4 of such study not later than 1 year after the date of enact-
5 ment of this Act.

6 **SEC. 415. COMMISSION STUDY AND REPORT ON SHORT**
7 **SELLING.**

8 (a) STUDY.—The Office of Risk, Strategy, and Fi-
9 nancial Innovation of the Commission shall conduct a
10 study, taking into account current scholarship, on the
11 state of short selling on national securities exchanges and
12 in the over-the-counter markets, with particular attention
13 to the impact of recent rule changes and the incidence
14 of—

- 15 (1) the failure to deliver shares sold short; or
16 (2) delivery of shares on the fourth day fol-
17 lowing the short sale transaction.

18 (b) REPORT.—The Office of Risk, Strategy and Fi-
19 nancial Innovation shall submit a report to the Committee
20 on Banking, Housing, and Urban Affairs of the Senate
21 and the Committee on Financial Services of the House of
22 Representatives on the results of the study conducted
23 under subsection (a), not later than 2 years after the date
24 of enactment of this Act.

1 **SEC. 416. TRANSITION PERIOD.**

2 Except as otherwise provided in this title, this title
3 and the amendments made by this title shall become effec-
4 tive 1 year after the date of enactment of this Act, except
5 that any investment adviser may, at the discretion of the
6 investment adviser, register with the Commission under
7 the Investment Advisers Act of 1940 during that 1-year
8 period, subject to the rules of the Commission.

9 **TITLE V—INSURANCE**
10 **Subtitle A—Office of National**
11 **Insurance**

12 **SEC. 501. SHORT TITLE.**

13 This subtitle may be cited as the “Office of National
14 Insurance Act of 2010”.

15 **SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL IN-**
16 **SURANCE.**

17 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
18 chapter 3 of subtitle I of title 31, United States Code,
19 is amended—

20 (1) by redesignating section 312 as section 315;

21 (2) by redesignating section 313 as section 312;

22 and

23 (3) by inserting after section 312 (as so redес-
24 igned) the following new sections:

1 **“SEC. 313. OFFICE OF NATIONAL INSURANCE.**

2 “(a) ESTABLISHMENT.—There is established within
3 the Department of the Treasury the Office of National
4 Insurance.

5 “(b) LEADERSHIP.—The Office shall be headed by a
6 Director, who shall be appointed by the Secretary of the
7 Treasury. The position of Director shall be a career re-
8 served position in the Senior Executive Service, as that
9 position is defined under section 3132 of title 5, United
10 States Code.

11 “(c) FUNCTIONS.—

12 “(1) AUTHORITY PURSUANT TO DIRECTION OF
13 SECRETARY.—The Office, pursuant to the direction
14 of the Secretary, shall have the authority—

15 “(A) to monitor all aspects of the insur-
16 ance industry, including identifying issues or
17 gaps in the regulation of insurers that could
18 contribute to a systemic crisis in the insurance
19 industry or the United States financial system;

20 “(B) to recommend to the Financial Sta-
21 bility Oversight Council that it designate an in-
22 surer, including the affiliates of such insurer, as
23 an entity subject to regulation as a nonbank fi-
24 nancial company supervised by the Board of
25 Governors pursuant to title I of the Restoring
26 American Financial Stability Act of 2010;

1 “(C) to assist the Secretary in admin-
2 istering the Terrorism Insurance Program es-
3 tablished in the Department of the Treasury
4 under the Terrorism Risk Insurance Act of
5 2002 (15 U.S.C. 6701 note);

6 “(D) to coordinate Federal efforts and de-
7 velop Federal policy on prudential aspects of
8 international insurance matters, including rep-
9 resenting the United States, as appropriate, in
10 the International Association of Insurance Su-
11 pervisors (or a successor entity) and assisting
12 the Secretary in negotiating International In-
13 surance Agreements on Prudential Measures;

14 “(E) to determine, in accordance with sub-
15 section (f), whether State insurance measures
16 are preempted by International Insurance
17 Agreements on Prudential Measures;

18 “(F) to consult with the States (including
19 State insurance regulators) regarding insurance
20 matters of national importance and prudential
21 insurance matters of international importance;
22 and

23 “(G) to perform such other related duties
24 and authorities as may be assigned to the Of-
25 fice by the Secretary.

1 “(2) ADVISORY FUNCTIONS.—The Office shall
2 advise the Secretary on major domestic and pruden-
3 tial international insurance policy issues.

4 “(d) SCOPE.—The authority of the Office shall ex-
5 tend to all lines of insurance except health insurance, as
6 such insurance is determined by the Secretary based on
7 section 2791 of the Public Health Service Act (42 U.S.C.
8 300gg–91).

9 “(e) GATHERING OF INFORMATION.—

10 “(1) IN GENERAL.—In carrying out the func-
11 tions required under subsection (c), the Office
12 may—

13 “(A) receive and collect data and informa-
14 tion on and from the insurance industry and in-
15 surers;

16 “(B) enter into information-sharing agree-
17 ments;

18 “(C) analyze and disseminate data and in-
19 formation; and

20 “(D) issue reports regarding all lines of in-
21 surance except health insurance.

22 “(2) COLLECTION OF INFORMATION FROM IN-
23 SURERS AND AFFILIATES.—Except as provided in
24 paragraph (3), the Office may require an insurer, or
25 any affiliate of an insurer, to submit such data or

1 information that the Office may reasonably require
2 in carrying out the functions described under sub-
3 section (c).

4 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
5 graph (2) shall not apply with respect to any insurer
6 or affiliate thereof that meets a minimum size
7 threshold that the Office may establish, whether by
8 order or rule.

9 “(4) ADVANCE COORDINATION.—Before col-
10 lecting any data or information under paragraph (2)
11 from an insurer, or any affiliate of an insurer, the
12 Office shall coordinate with each relevant State in-
13 surance regulator (or other relevant Federal or State
14 regulatory agency, if any, in the case of an affiliate
15 of an insurer) to determine if the information to be
16 collected is available from, or may be obtained in a
17 timely manner by, such State insurance regulator,
18 individually or collectively, another regulatory agen-
19 cy, or publicly available sources. Notwithstanding
20 any other provision of law, each such relevant State
21 insurance regulator or other Federal or State regu-
22 latory agency is authorized to provide to the Office
23 such data or information.

24 “(5) CONFIDENTIALITY.—

1 “(A) RETENTION OF PRIVILEGE.—The
2 submission of any nonpublicly available data
3 and information to the Office under this sub-
4 section shall not constitute a waiver of, or oth-
5 erwise affect, any privilege arising under Fed-
6 eral or State law (including the rules of any
7 Federal or State court) to which the data or in-
8 formation is otherwise subject.

9 “(B) CONTINUED APPLICATION OF PRIOR
10 CONFIDENTIALITY AGREEMENTS.—Any require-
11 ment under Federal or State law to the extent
12 otherwise applicable, or any requirement pursu-
13 ant to a written agreement in effect between
14 the original source of any nonpublicly available
15 data or information and the source of such data
16 or information to the Office, regarding the pri-
17 vacy or confidentiality of any data or informa-
18 tion in the possession of the source to the Of-
19 fice, shall continue to apply to such data or in-
20 formation after the data or information has
21 been provided pursuant to this subsection to the
22 Office.

23 “(C) INFORMATION SHARING AGREE-
24 MENT.—Any data or information obtained by
25 the Office may be made available to State in-

1 surance regulators, individually or collectively,
2 through an information sharing agreement
3 that—

4 “(i) shall comply with applicable Fed-
5 eral law; and

6 “(ii) shall not constitute a waiver of,
7 or otherwise affect, any privilege under
8 Federal or State law (including the rules
9 of any Federal or State Court) to which
10 the data or information is otherwise sub-
11 ject.

12 “(D) AGENCY DISCLOSURE REQUIRE-
13 MENTS.—Section 552 of title 5, United States
14 Code, shall apply to any data or information
15 submitted to the Office by an insurer or an af-
16 filiate of an insurer.

17 “(6) SUBPOENAS AND ENFORCEMENT.—The
18 Director shall have the power to require by subpoena
19 the production of the data or information requested
20 under paragraph (2), but only upon a written find-
21 ing by the Director that such data or information is
22 required to carry out the functions described under
23 subsection (c) and that the Office has coordinated
24 with such regulator or agency as required under
25 paragraph (4). Subpoenas shall bear the signature of

1 the Director and shall be served by any person or
2 class of persons designated by the Director for that
3 purpose. In the case of contumacy or failure to obey
4 a subpoena, the subpoena shall be enforceable by
5 order of any appropriate district court of the United
6 States. Any failure to obey the order of the court
7 may be punished by the court as a contempt of
8 court.

9 “(f) PREEMPTION OF STATE INSURANCE MEAS-
10 URES.—

11 “(1) STANDARD.—A State insurance measure
12 shall be preempted if, and only to the extent that the
13 Director determines, in accordance with this sub-
14 section, that the measure—

15 “(A) results in less favorable treatment of
16 a non-United States insurer domiciled in a for-
17 eign jurisdiction that is subject to an inter-
18 national insurance agreement on prudential
19 measures than a United States insurer domi-
20 ciled, licensed, or otherwise admitted in that
21 State; and

22 “(B) is inconsistent with an International
23 Insurance Agreement on Prudential Measures.

24 “(2) DETERMINATION.—

1 “(A) NOTICE OF POTENTIAL INCONSIST-
2 ENCY.—Before making any determination
3 under paragraph (1), the Director shall—

4 “(i) notify and consult with the appro-
5 priate State regarding any potential incon-
6 sistency or preemption;

7 “(ii) cause to be published in the Fed-
8 eral Register notice of the issue regarding
9 the potential inconsistency or preemption,
10 including a description of each State insur-
11 ance measure at issue and any applicable
12 International Insurance Agreement on
13 Prudential Measures;

14 “(iii) provide interested parties a rea-
15 sonable opportunity to submit written com-
16 ments to the Office; and

17 “(iv) consider any comments received.

18 “(B) SCOPE OF REVIEW.—For purposes of
19 this subsection, the determination of the Direc-
20 tor regarding State insurance measures shall be
21 limited to the subject matter contained within
22 the international insurance agreement on pru-
23 dential measure involved.

1 “(C) NOTICE OF DETERMINATION OF IN-
2 CONSISTENCY.—Upon making any determina-
3 tion under paragraph (1), the Director shall—

4 “(i) notify the appropriate State of
5 the determination and the extent of the in-
6 consistency;

7 “(ii) establish a reasonable period of
8 time, which shall not be less than 30 days,
9 before the determination shall become ef-
10 fective; and

11 “(iii) notify the Committee on Bank-
12 ing, Housing, and Urban Affairs of the
13 Senate and the Committee on Financial
14 Services of the House of Representatives of
15 the inconsistency.

16 “(3) NOTICE OF EFFECTIVENESS.—Upon the
17 conclusion of the period referred to in paragraph
18 (2)(C)(ii), if the basis for such determination still
19 exists, the determination shall become effective and
20 the Director shall—

21 “(A) cause to be published a notice in the
22 Federal Register that the preemption has be-
23 come effective, as well as the effective date; and

24 “(B) notify the appropriate State.

1 “(4) LIMITATION.—No State may enforce a
2 State insurance measure to the extent that such
3 measure has been preempted under this subsection.

4 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
5 DURES ACT.—Determinations of inconsistency made pur-
6 suant to subsection (f)(2) shall be subject to the applicable
7 provisions of subchapter II of chapter 5 of title 5, United
8 States Code (relating to administrative procedure), and
9 chapter 7 of such title (relating to judicial review).

10 “(h) REGULATIONS, POLICIES, AND PROCEDURES.—
11 The Secretary may issue orders, regulations, policies, and
12 procedures to implement this section.

13 “(i) CONSULTATION.—The Director shall consult
14 with State insurance regulators, individually or collec-
15 tively, to the extent the Director determines appropriate,
16 in carrying out the functions of the Office.

17 “(j) SAVINGS PROVISIONS.—Nothing in this section
18 shall—

19 “(1) preempt—

20 “(A) any State insurance measure that
21 governs any insurer’s rates, premiums, under-
22 writing, or sales practices;

23 “(B) any State coverage requirements for
24 insurance;

1 “(C) the application of the antitrust laws
2 of any State to the business of insurance; or

3 “(D) any State insurance measure gov-
4 erning the capital or solvency of an insurer, ex-
5 cept to the extent that such State insurance
6 measure results in less favorable treatment of a
7 non-United State insurer than a United States
8 insurer;

9 “(2) be construed to alter, amend, or limit any
10 provision of the Consumer Financial Protection
11 Agency Act of 2010; or

12 “(3) affect the preemption of any State insur-
13 ance measure otherwise inconsistent with and pre-
14 empted by Federal law.

15 “(k) RETENTION OF EXISTING STATE REGULATORY
16 AUTHORITY.—Nothing in this section or section 314 shall
17 be construed to establish or provide the Office or the De-
18 partment of the Treasury with general supervisory or reg-
19 ulatory authority over the business of insurance.

20 “(l) ANNUAL REPORT TO CONGRESS.—Beginning
21 September 30, 2011, the Director shall submit a report
22 on or before September 30 of each calendar year to the
23 President and to the Committee on Banking, Housing,
24 and Urban Affairs of the Senate and the Committee on
25 Financial Services of the House of Representatives on the

1 insurance industry, any actions taken by the Office pursu-
2 ant to subsection (f) (regarding preemption of inconsistent
3 State insurance measures), and any other information as
4 deemed relevant by the Director or as requested by such
5 Committees.

6 “(m) STUDY AND REPORT ON REGULATION OF IN-
7 SURANCE.—

8 “(1) IN GENERAL.—Not later than 18 months
9 after the date of enactment of this section, the Di-
10 rector shall conduct a study and submit a report to
11 Congress on how to modernize and improve the sys-
12 tem of insurance regulation in the United States.

13 “(2) CONSIDERATIONS.—The study and report
14 required under paragraph (1) shall be based on and
15 guided by the following considerations:

16 “(A) Systemic risk regulation with respect
17 to insurance.

18 “(B) Capital standards and the relation-
19 ship between capital allocation and liabilities,
20 including standards relating to liquidity and du-
21 ration risk.

22 “(C) Consumer protection for insurance
23 products and practices, including gaps in state
24 regulation.

1 “(D) The degree of national uniformity of
2 state insurance regulation.

3 “(E) The regulation of insurance compa-
4 nies and affiliates on a consolidated basis.

5 “(F) International coordination of insur-
6 ance regulation.

7 “(3) ADDITIONAL FACTORS.—The study and
8 report required under paragraph (1) shall also exam-
9 ine the following factors:

10 “(A) The costs and benefits of potential
11 Federal regulation of insurance across various
12 lines of insurance (except health insurance).

13 “(B) The feasibility of regulating only cer-
14 tain lines of insurance at the Federal level,
15 while leaving other lines of insurance to be reg-
16 ulated at the State level.

17 “(C) The ability of any potential Federal
18 regulation or Federal regulators to eliminate or
19 minimize regulatory arbitrage.

20 “(D) The impact that developments in the
21 regulation of insurance in foreign jurisdictions
22 might have on the potential Federal regulation
23 of insurance.

1 “(E) The ability of any potential Federal
2 regulation or Federal regulator to provide ro-
3 bust consumer protection for policyholders.

4 “(F) The potential consequences of sub-
5 jecting insurance companies to a Federal reso-
6 lution authority, including the effects of any
7 Federal resolution authority—

8 “(i) on the operation of State insur-
9 ance guaranty fund systems, including the
10 loss of guaranty fund coverage if an insur-
11 ance company is subject to a Federal reso-
12 lution authority;

13 “(ii) on policyholder protection, in-
14 cluding the loss of the priority status of
15 policyholder claims over other unsecured
16 general creditor claims;

17 “(iii) in the case of life insurance
18 companies, the loss of the special status of
19 separate account assets and separate ac-
20 count liabilities; and

21 “(iv) on the international competitive-
22 ness of insurance companies.

23 “(G) Such other factors as the Director
24 determines necessary or appropriate, consistent
25 with the principles set forth in paragraph (2).

1 “(4) REQUIRED RECOMMENDATIONS.—The
2 study and report required under paragraph (1) shall
3 also contain any legislative, administrative, or regu-
4 latory recommendations, as the Director determines
5 appropriate, to carry out or effectuate the findings
6 set forth in such report.

7 “(5) CONSULTATION.—With respect to the
8 study and report required under paragraph (1), the
9 Director shall consult with the National Association
10 of Insurance Commissioners, consumer organiza-
11 tions, representatives of the insurance industry and
12 policyholders, and other organizations and experts,
13 as appropriate.

14 “(n) USE OF EXISTING RESOURCES.—To carry out
15 this section, the Office may employ personnel, facilities,
16 and any other resource of the Department of the Treasury
17 available to the Secretary.

18 “(o) DEFINITIONS.—In this section and section 314,
19 the following definitions shall apply:

20 “(1) AFFILIATE.—The term ‘affiliate’ means,
21 with respect to an insurer, any person who controls,
22 is controlled by, or is under common control with the
23 insurer.

1 “(2) INSURER.—The term ‘insurer’ means any
2 person engaged in the business of insurance, includ-
3 ing reinsurance.

4 “(3) INTERNATIONAL INSURANCE AGREEMENT
5 ON PRUDENTIAL MEASURES.—The term ‘Inter-
6 national Insurance Agreement on Prudential Meas-
7 ures’ means a written bilateral or multilateral agree-
8 ment entered into between the United States and a
9 foreign government, authority, or regulatory entity
10 regarding prudential measures applicable to the
11 business of insurance or reinsurance.

12 “(4) NON-UNITED STATES INSURER.—The term
13 ‘non-United States insurer’ means an insurer that is
14 organized under the laws of a jurisdiction other than
15 a State, but does not include any United States
16 branch of such an insurer.

17 “(5) OFFICE.—The term ‘Office’ means the Of-
18 fice of National Insurance established by this sec-
19 tion.

20 “(6) STATE INSURANCE MEASURE.—The term
21 ‘State insurance measure’ means any State law, reg-
22 ulation, administrative ruling, bulletin, guideline, or
23 practice relating to or affecting prudential measures
24 applicable to insurance or reinsurance.

1 “(7) STATE INSURANCE REGULATOR.—The
2 term ‘State insurance regulator’ means any State
3 regulatory authority responsible for the supervision
4 of insurers.

5 “(8) UNITED STATES INSURER.—The term
6 ‘United States insurer’ means—

7 “(A) an insurer that is organized under
8 the laws of a State; or

9 “(B) a United States branch of a non-
10 United States insurer.

11 “(p) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated for the Office for each
13 fiscal year such sums as may be necessary.

14 **“SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON**
15 **PRUDENTIAL MEASURES.**

16 “(a) IN GENERAL.—The Secretary of the Treasury
17 is authorized to negotiate and enter into International In-
18 surance Agreements on Prudential Measures on behalf of
19 the United States.

20 “(b) SAVINGS PROVISION.—Nothing in this section or
21 section 313 shall be construed to affect the development
22 and coordination of United States international trade pol-
23 icy or the administration of the United States trade agree-
24 ments program. It is to be understood that the negotiation
25 of International Insurance Agreements on Prudential

1 Measures under such sections is consistent with the re-
2 quirement of this subsection.

3 “(c) CONSULTATION.—The Secretary shall consult
4 with the United States Trade Representative on the nego-
5 tiation of International Insurance Agreements on Pruden-
6 tial Measures, including prior to initiating and concluding
7 any such agreements.”.

8 (b) DUTIES OF SECRETARY.—Section 321(a) of title
9 31, United States Code, is amended—

10 (1) in paragraph (7), by striking “; and” and
11 inserting a semicolon;

12 (2) in paragraph (8)(C), by striking the period
13 at the end and inserting “; and”; and

14 (3) by adding at the end the following new
15 paragraph:

16 “(9) advise the President on major domestic
17 and international prudential policy issues in connec-
18 tion with all lines of insurance except health insur-
19 ance.”.

20 (c) CLERICAL AMENDMENT.—The table of sections
21 for subchapter I of chapter 3 of title 31, United States
22 Code, is amended by striking the item relating to section
23 312 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.”.

1 **Subtitle B—State-based Insurance**
2 **Reform**

3 **SEC. 511. SHORT TITLE.**

4 This subtitle may be cited as the “Nonadmitted and
5 Reinsurance Reform Act of 2010”.

6 **SEC. 512. EFFECTIVE DATE.**

7 Except as otherwise specifically provided in this sub-
8 title, this subtitle shall take effect upon the expiration of
9 the 12-month period beginning on the date of the enact-
10 ment of this subtitle.

11 **PART I—NONADMITTED INSURANCE**

12 **SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF**
13 **PREMIUM TAXES.**

14 (a) HOME STATE’S EXCLUSIVE AUTHORITY.—No
15 State other than the home State of an insured may require
16 any premium tax payment for nonadmitted insurance.

17 (b) ALLOCATION OF NONADMITTED PREMIUM
18 TAXES.—

19 (1) IN GENERAL.—The States may enter into a
20 compact or otherwise establish procedures to allocate
21 among the States the premium taxes paid to an in-
22 sured’s home State described in subsection (a).

23 (2) EFFECTIVE DATE.—Except as expressly
24 otherwise provided in such compact or other proce-
25 dures, any such compact or other procedures—

1 (A) if adopted on or before the expiration
2 of the 330-day period that begins on the date
3 of the enactment of this subtitle, shall apply to
4 any premium taxes that, on or after such date
5 of enactment, are required to be paid to any
6 State that is subject to such compact or proce-
7 dures; and

8 (B) if adopted after the expiration of such
9 330-day period, shall apply to any premium
10 taxes that, on or after January 1 of the first
11 calendar year that begins after the expiration of
12 such 330-day period, are required to be paid to
13 any State that is subject to such compact or
14 procedures.

15 (3) REPORT.—Upon the expiration of the 330-
16 day period referred to in paragraph (2), the NAIC
17 may submit a report to the Committee on Financial
18 Services and Committee on the Judiciary of the
19 House of Representatives and the Committee on
20 Banking, Housing, and Urban Affairs of the Senate
21 identifying and describing any compact or other pro-
22 cedures for allocation among the States of premium
23 taxes that have been adopted during such period by
24 any States.

1 (4) NATIONWIDE SYSTEM.—The Congress in-
2 tends that each State adopt nationwide uniform re-
3 quirements, forms, and procedures, such as an inter-
4 state compact, that provides for the reporting, pay-
5 ment, collection, and allocation of premium taxes for
6 nonadmitted insurance consistent with this section.

7 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
8 PORT.—To facilitate the payment of premium taxes
9 among the States, an insured’s home State may require
10 surplus lines brokers and insureds who have independently
11 procured insurance to annually file tax allocation reports
12 with the insured’s home State detailing the portion of the
13 nonadmitted insurance policy premium or premiums at-
14 tributable to properties, risks, or exposures located in each
15 State. The filing of a nonadmitted insurance tax allocation
16 report and the payment of tax may be made by a person
17 authorized by the insured to act as its agent.

18 **SEC. 522. REGULATION OF NONADMITTED INSURANCE BY**
19 **INSURED’S HOME STATE.**

20 (a) HOME STATE AUTHORITY.—Except as otherwise
21 provided in this section, the placement of nonadmitted in-
22 surance shall be subject to the statutory and regulatory
23 requirements solely of the insured’s home State.

24 (b) BROKER LICENSING.—No State other than an in-
25 sured’s home State may require a surplus lines broker to

1 be licensed in order to sell, solicit, or negotiate non-
2 admitted insurance with respect to such insured.

3 (c) ENFORCEMENT PROVISION.—With respect to sec-
4 tion 521 and subsections (a) and (b) of this section, any
5 law, regulation, provision, or action of any State that ap-
6 plies or purports to apply to nonadmitted insurance sold
7 to, solicited by, or negotiated with an insured whose home
8 State is another State shall be preempted with respect to
9 such application.

10 (d) WORKERS' COMPENSATION EXCEPTION.—This
11 section may not be construed to preempt any State law,
12 rule, or regulation that restricts the placement of workers'
13 compensation insurance or excess insurance for self-fund-
14 ed workers' compensation plans with a nonadmitted in-
15 surer.

16 **SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-**
17 **BASE.**

18 After the expiration of the 2-year period beginning
19 on the date of the enactment of this subtitle, a State may
20 not collect any fees relating to licensing of an individual
21 or entity as a surplus lines broker in the State unless the
22 State has in effect at such time laws or regulations that
23 provide for participation by the State in the national in-
24 surance producer database of the NAIC, or any other

1 equivalent uniform national database, for the licensure of
2 surplus lines brokers and the renewal of such licenses.

3 **SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
4 **GIBILITY.**

5 A State may not—

6 (1) impose eligibility requirements on, or other-
7 wise establish eligibility criteria for, nonadmitted in-
8 surers domiciled in a United States jurisdiction, ex-
9 cept in conformance with such requirements and cri-
10 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
11 mitted Insurance Model Act, unless the State has
12 adopted nationwide uniform requirements, forms,
13 and procedures developed in accordance with section
14 521(b) of this subtitle that include alternative na-
15 tionwide uniform eligibility requirements; or

16 (2) prohibit a surplus lines broker from placing
17 nonadmitted insurance with, or procuring non-
18 admitted insurance from, a nonadmitted insurer
19 domiciled outside the United States that is listed on
20 the Quarterly Listing of Alien Insurers maintained
21 by the International Insurers Department of the
22 NAIC.

1 **SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL**
2 **PURCHASERS.**

3 A surplus lines broker seeking to procure or place
4 nonadmitted insurance in a State for an exempt commer-
5 cial purchaser shall not be required to satisfy any State
6 requirement to make a due diligence search to determine
7 whether the full amount or type of insurance sought by
8 such exempt commercial purchaser can be obtained from
9 admitted insurers if—

10 (1) the broker procuring or placing the surplus
11 lines insurance has disclosed to the exempt commer-
12 cial purchaser that such insurance may or may not
13 be available from the admitted market that may pro-
14 vide greater protection with more regulatory over-
15 sight; and

16 (2) the exempt commercial purchaser has sub-
17 sequently requested in writing the broker to procure
18 or place such insurance from a nonadmitted insurer.

19 **SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MAR-**
20 **KET.**

21 (a) IN GENERAL.—The Comptroller General of the
22 United States shall conduct a study of the nonadmitted
23 insurance market to determine the effect of the enactment
24 of this part on the size and market share of the non-
25 admitted insurance market for providing coverage typi-
26 cally provided by the admitted insurance market.

1 (b) CONTENTS.—The study shall determine and ana-
2 lyze—

3 (1) the change in the size and market share of
4 the nonadmitted insurance market and in the num-
5 ber of insurance companies and insurance holding
6 companies providing such business in the 18-month
7 period that begins upon the effective date of this
8 subtitle;

9 (2) the extent to which insurance coverage typi-
10 cally provided by the admitted insurance market has
11 shifted to the nonadmitted insurance market;

12 (3) the consequences of any change in the size
13 and market share of the nonadmitted insurance
14 market, including differences in the price and avail-
15 ability of coverage available in both the admitted
16 and nonadmitted insurance markets;

17 (4) the extent to which insurance companies
18 and insurance holding companies that provide both
19 admitted and nonadmitted insurance have experi-
20 enced shifts in the volume of business between ad-
21 mitted and nonadmitted insurance; and

22 (5) the extent to which there has been a change
23 in the number of individuals who have nonadmitted
24 insurance policies, the type of coverage provided

1 under such policies, and whether such coverage is
2 available in the admitted insurance market.

3 (c) CONSULTATION WITH NAIC.—In conducting the
4 study under this section, the Comptroller General shall
5 consult with the NAIC.

6 (d) REPORT.—The Comptroller General shall com-
7 plete the study under this section and submit a report to
8 the Committee on Banking, Housing, and Urban Affairs
9 of the Senate and the Committee on Financial Services
10 of the House of Representatives regarding the findings of
11 the study not later than 30 months after the effective date
12 of this subtitle.

13 **SEC. 527. DEFINITIONS.**

14 For purposes of this part, the following definitions
15 shall apply:

16 (1) ADMITTED INSURER.—The term “admitted
17 insurer” means, with respect to a State, an insurer
18 licensed to engage in the business of insurance in
19 such State.

20 (2) AFFILIATE.—The term “affiliate” means,
21 with respect to an insured, any entity that controls,
22 is controlled by, or is under common control with the
23 insured.

1 (3) **AFFILIATED GROUP.**—The term “affiliated
2 group” means any group of entities that are all af-
3 filiated.

4 (4) **CONTROL.**—An entity has “control” over
5 another entity if—

6 (A) the entity directly or indirectly or act-
7 ing through 1 or more other persons owns, con-
8 trols, or has the power to vote 25 percent or
9 more of any class of voting securities of the
10 other entity; or

11 (B) the entity controls in any manner the
12 election of a majority of the directors or trust-
13 ees of the other entity.

14 (5) **EXEMPT COMMERCIAL PURCHASER.**—The
15 term “exempt commercial purchaser” means any
16 person purchasing commercial insurance that, at the
17 time of placement, meets the following requirements:

18 (A) The person employs or retains a quali-
19 fied risk manager to negotiate insurance cov-
20 erage.

21 (B) The person has paid aggregate nation-
22 wide commercial property and casualty insur-
23 ance premiums in excess of \$100,000 in the im-
24 mediately preceding 12 months.

1 (C)(i) The person meets at least 1 of the
2 following criteria:

3 (I) The person possesses a net worth
4 in excess of \$20,000,000, as such amount
5 is adjusted pursuant to clause (ii).

6 (II) The person generates annual rev-
7 enues in excess of \$50,000,000, as such
8 amount is adjusted pursuant to clause (ii).

9 (III) The person employs more than
10 500 full-time or full-time equivalent em-
11 ployees per individual insured or is a mem-
12 ber of an affiliated group employing more
13 than 1,000 employees in the aggregate.

14 (IV) The person is a not-for-profit or-
15 ganization or public entity generating an-
16 nual budgeted expenditures of at least
17 \$30,000,000, as such amount is adjusted
18 pursuant to clause (ii).

19 (V) The person is a municipality with
20 a population in excess of 50,000 persons.

21 (ii) Effective on the fifth January 1 occur-
22 ring after the date of the enactment of this sub-
23 title and each fifth January 1 occurring there-
24 after, the amounts in subclauses (I), (II), and
25 (IV) of clause (i) shall be adjusted to reflect the

1 percentage change for such 5-year period in the
2 Consumer Price Index for All Urban Con-
3 sumers published by the Bureau of Labor Sta-
4 tistics of the Department of Labor.

5 (6) HOME STATE.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), the term “home State”
8 means, with respect to an insured—

9 (i) the State in which an insured
10 maintains its principal place of business or,
11 in the case of an individual, the individ-
12 ual’s principal residence; or

13 (ii) if 100 percent of the insured risk
14 is located out of the State referred to in
15 subparagraph (A), the State to which the
16 greatest percentage of the insured’s tax-
17 able premium for that insurance contract
18 is allocated.

19 (B) AFFILIATED GROUPS.—If more than 1
20 insured from an affiliated group are named in-
21 sureds on a single nonadmitted insurance con-
22 tract, the term “home State” means the home
23 State, as determined pursuant to subparagraph
24 (A), of the member of the affiliated group that

1 has the largest percentage of premium attrib-
2 uted to it under such insurance contract.

3 (7) INDEPENDENTLY PROCURED INSURANCE.—

4 The term “independently procured insurance”
5 means insurance procured directly by an insured
6 from a nonadmitted insurer.

7 (8) NAIC.—The term “NAIC” means the Na-
8 tional Association of Insurance Commissioners or
9 any successor entity.

10 (9) NONADMITTED INSURANCE.—The term
11 “nonadmitted insurance” means any property and
12 casualty insurance permitted to be placed directly or
13 through a surplus lines broker with a nonadmitted
14 insurer eligible to accept such insurance.

15 (10) NON-ADMITTED INSURANCE MODEL
16 ACT.—The term “Non-Admitted Insurance Model
17 Act” means the provisions of the Non-Admitted In-
18 surance Model Act, as adopted by the NAIC on Au-
19 gust 3, 1994, and amended on September 30, 1996,
20 December 6, 1997, October 2, 1999, and June 8,
21 2002.

22 (11) NONADMITTED INSURER.—The term
23 “nonadmitted insurer”—

1 (A) means, with respect to a State, an in-
2 surer not licensed to engage in the business of
3 insurance in such State; but

4 (B) does not include a risk retention
5 group, as that term is defined in section 2(a)(4)
6 of the Liability Risk Retention Act of 1986 (15
7 U.S.C. 3901(a)(4)).

8 (12) QUALIFIED RISK MANAGER.—The term
9 “qualified risk manager” means, with respect to a
10 policyholder of commercial insurance, a person who
11 meets all of the following requirements:

12 (A) The person is an employee of, or third
13 party consultant retained by, the commercial
14 policyholder.

15 (B) The person provides skilled services in
16 loss prevention, loss reduction, or risk and in-
17 surance coverage analysis, and purchase of in-
18 surance.

19 (C) The person—

20 (i)(I) has a bachelor’s degree or high-
21 er from an accredited college or university
22 in risk management, business administra-
23 tion, finance, economics, or any other field
24 determined by a State insurance commis-
25 sioner or other State regulatory official or

1 entity to demonstrate minimum com-
2 petence in risk management; and

3 (II)(aa) has 3 years of experience in
4 risk financing, claims administration, loss
5 prevention, risk and insurance analysis, or
6 purchasing commercial lines of insurance;
7 or

8 (bb) has 1 of the following designa-
9 tions:

10 (AA) a designation as a Char-
11 tered Property and Casualty Under-
12 writer (in this subparagraph referred
13 to as “CPCU”) issued by the Amer-
14 ican Institute for CPCU/Insurance In-
15 stitute of America;

16 (BB) a designation as an Asso-
17 ciate in Risk Management (ARM)
18 issued by the American Institute for
19 CPCU/Insurance Institute of America;

20 (CC) a designation as Certified
21 Risk Manager (CRM) issued by the
22 National Alliance for Insurance Edu-
23 cation & Research;

1 (DD) a designation as a RIMS
2 Fellow (RF) issued by the Global Risk
3 Management Institute; or

4 (EE) any other designation, cer-
5 tification, or license determined by a
6 State insurance commissioner or other
7 State insurance regulatory official or
8 entity to demonstrate minimum com-
9 petency in risk management;

10 (ii)(I) has at least 7 years of experi-
11 ence in risk financing, claims administra-
12 tion, loss prevention, risk and insurance
13 coverage analysis, or purchasing commer-
14 cial lines of insurance; and

15 (II) has any 1 of the designations
16 specified in subitems (AA) through (EE)
17 of clause (i)(II)(bb);

18 (iii) has at least 10 years of experi-
19 ence in risk financing, claims administra-
20 tion, loss prevention, risk and insurance
21 coverage analysis, or purchasing commer-
22 cial lines of insurance; or

23 (iv) has a graduate degree from an
24 accredited college or university in risk
25 management, business administration, fi-

1 nance, economics, or any other field deter-
2 mined by a State insurance commissioner
3 or other State regulatory official or entity
4 to demonstrate minimum competence in
5 risk management.

6 (13) PREMIUM TAX.—The term “premium tax”
7 means, with respect to surplus lines or independently
8 procured insurance coverage, any tax, fee, assess-
9 ment, or other charge imposed by a government en-
10 tity directly or indirectly based on any payment
11 made as consideration for an insurance contract for
12 such insurance, including premium deposits, assess-
13 ments, registration fees, and any other compensation
14 given in consideration for a contract of insurance.

15 (14) SURPLUS LINES BROKER.—The term “sur-
16 plus lines broker” means an individual, firm, or cor-
17 poration which is licensed in a State to sell, solicit,
18 or negotiate insurance on properties, risks, or expo-
19 sures located or to be performed in a State with
20 nonadmitted insurers.

21 **PART II—REINSURANCE**

22 **SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND** 23 **REINSURANCE AGREEMENTS.**

24 (a) CREDIT FOR REINSURANCE.—If the State of
25 domicile of a ceding insurer is an NAIC-accredited State,

1 or has financial solvency requirements substantially simi-
2 lar to the requirements necessary for NAIC accreditation,
3 and recognizes credit for reinsurance for the insurer's
4 ceded risk, then no other State may deny such credit for
5 reinsurance.

6 (b) ADDITIONAL PREEMPTION OF
7 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
8 addition to the application of subsection (a), all laws, regu-
9 lations, provisions, or other actions of a State that is not
10 the domiciliary State of the ceding insurer, except those
11 with respect to taxes and assessments on insurance com-
12 panies or insurance income, are preempted to the extent
13 that they—

14 (1) restrict or eliminate the rights of the ceding
15 insurer or the assuming insurer to resolve disputes
16 pursuant to contractual arbitration to the extent
17 such contractual provision is not inconsistent with
18 the provisions of title 9, United States Code;

19 (2) require that a certain State's law shall gov-
20 ern the reinsurance contract, disputes arising from
21 the reinsurance contract, or requirements of the re-
22 insurance contract;

23 (3) attempt to enforce a reinsurance contract
24 on terms different than those set forth in the rein-

1 surance contract, to the extent that the terms are
2 not inconsistent with this part; or

3 (4) otherwise apply the laws of the State to re-
4 insurance agreements of ceding insurers not domi-
5 ciled in that State.

6 **SEC. 532. REGULATION OF REINSURER SOLVENCY.**

7 (a) DOMICILIARY STATE REGULATION.—If the State
8 of domicile of a reinsurer is an NAIC-accredited State or
9 has financial solvency requirements substantially similar
10 to the requirements necessary for NAIC accreditation,
11 such State shall be solely responsible for regulating the
12 financial solvency of the reinsurer.

13 (b) NONDOMICILIARY STATES.—

14 (1) LIMITATION ON FINANCIAL INFORMATION
15 REQUIREMENTS.—If the State of domicile of a rein-
16 surer is an NAIC-accredited State or has financial
17 solvency requirements substantially similar to the re-
18 quirements necessary for NAIC accreditation, no
19 other State may require the reinsurer to provide any
20 additional financial information other than the infor-
21 mation the reinsurer is required to file with its
22 domiciliary State.

23 (2) RECEIPT OF INFORMATION.—No provision
24 of this section shall be construed as preventing or
25 prohibiting a State that is not the State of domicile

1 of a reinsurer from receiving a copy of any financial
2 statement filed with its domiciliary State.

3 **SEC. 533. DEFINITIONS.**

4 For purposes of this part, the following definitions
5 shall apply:

6 (1) CEDING INSURER.—The term “ceding in-
7 surer” means an insurer that purchases reinsurance.

8 (2) DOMICILIARY STATE.—The terms “State of
9 domicile” and “domiciliary State” means, with re-
10 spect to an insurer or reinsurer, the State in which
11 the insurer or reinsurer is incorporated or entered
12 through, and licensed.

13 (3) REINSURANCE.—The term “reinsurance”
14 means the assumption by an insurer of all or part
15 of a risk undertaken originally by another insurer.

16 (4) REINSURER.—

17 (A) IN GENERAL.—The term “reinsurer”
18 means an insurer to the extent that the in-
19 surer—

20 (i) is principally engaged in the busi-
21 ness of reinsurance;

22 (ii) does not conduct significant
23 amounts of direct insurance as a percent-
24 age of its net premiums; and

1 (iii) is not engaged in an ongoing
2 basis in the business of soliciting direct in-
3 surance.

4 (B) DETERMINATION.—A determination of
5 whether an insurer is a reinsurer shall be made
6 under the laws of the State of domicile in ac-
7 cordance with this paragraph.

8 **PART III—RULE OF CONSTRUCTION**

9 **SEC. 541. RULE OF CONSTRUCTION.**

10 Nothing in this subtitle or the amendments made by
11 this subtitle shall be construed to modify, impair, or super-
12 sede the application of the antitrust laws. Any implied or
13 actual conflict between this subtitle and any amendments
14 to this subtitle and the antitrust laws shall be resolved
15 in favor of the operation of the antitrust laws.

16 **SEC. 542. SEVERABILITY.**

17 If any section or subsection of this subtitle, or any
18 application of such provision to any person or cir-
19 cumstance, is held to be unconstitutional, the remainder
20 of this subtitle, and the application of the provision to any
21 other person or circumstance, shall not be affected.

1 **TITLE VI—IMPROVEMENTS TO**
2 **REGULATION OF BANK AND**
3 **SAVINGS ASSOCIATION HOLD-**
4 **ING COMPANIES AND DEPOSI-**
5 **TORY INSTITUTIONS**

6 **SEC. 601. SHORT TITLE.**

7 This title may be cited as the “Bank and Savings
8 Association Holding Company and Depository Institution
9 Regulatory Improvements Act of 2010”.

10 **SEC. 602. DEFINITION.**

11 In this title, the term “commercial firm” means any
12 entity that derives not less than 15 percent of the consoli-
13 dated annual gross revenues of the entity, including all
14 affiliates of the entity, from engaging in activities that are
15 not financial in nature or incidental to activities that are
16 financial in nature, as provided in section 4(k) of the Bank
17 Holding Company Act of 1956 (12 U.S.C. 1843(k)).

18 **SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF**
19 **CREDIT CARD BANKS, INDUSTRIAL LOAN**
20 **COMPANIES, AND CERTAIN OTHER COMPA-**
21 **NIES UNDER THE BANK HOLDING COMPANY**
22 **ACT OF 1956.**

23 (a) MORATORIUM.—

24 (1) DEFINITIONS.—In this subsection—

1 (A) the term “credit card bank” means an
2 institution described in section 2(c)(2)(F) of the
3 Bank Holding Company Act of 1956 (12
4 U.S.C. 1841(c)(2)(F));

5 (B) the term “industrial bank” means an
6 institution described in section 2(c)(2)(H) of
7 the Bank Holding Company Act of 1956 (12
8 U.S.C. 1841(c)(2)(H)); and

9 (C) the term “trust bank” means an insti-
10 tution described in section 2(c)(2)(D) of the
11 Bank Holding Company Act of 1956 (12
12 U.S.C. 1841(c)(2)(D)).

13 (2) MORATORIUM ON PROVISION OF DEPOSIT
14 INSURANCE.—The Corporation may not approve an
15 application for deposit insurance under section 5 of
16 the Federal Deposit Insurance Act (12 U.S.C. 1815)
17 that is received after November 10, 2009, for an in-
18 dustrial bank, a credit card bank, or a trust bank
19 that is directly or indirectly owned or controlled by
20 a commercial firm.

21 (3) CHANGE IN CONTROL.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), the appropriate Federal
24 banking agency shall disapprove a change in
25 control, as provided in section 7(j) of the Fed-

1 eral Deposit Insurance Act (12 U.S.C. 1817(j)),
2 of an industrial bank, a credit card bank, or a
3 trust bank if the change in control would result
4 in direct or indirect control of the industrial
5 bank, credit card bank, or trust bank by a com-
6 mercial firm.

7 (B) EXCEPTIONS.—Subparagraph (A)
8 shall not apply to a change in control of an in-
9 dustrial bank, credit card bank, or trust bank
10 that—

11 (i) is in danger of default, as deter-
12 mined by the appropriate Federal banking
13 agency; or

14 (ii) results from the merger or whole
15 acquisition of a commercial firm that di-
16 rectly or indirectly controls the industrial
17 bank, credit card bank, or trust bank in a
18 bona fide merger with or acquisition by an-
19 other commercial firm, as determined by
20 the appropriate Federal banking agency.

21 (4) SUNSET.—This subsection shall cease to
22 have effect 3 years after the date of enactment of
23 this Act.

1 (b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
2 OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY
3 ACT OF 1956.—

4 (1) STUDY REQUIRED.—The Comptroller Gen-
5 eral of the United States shall carry out a study to
6 determine whether it is necessary, in order to
7 strengthen the safety and soundness of institutions
8 or the stability of the financial system, to eliminate
9 the exceptions under section 2 of the Bank Holding
10 Company Act of 1956 (12 U.S.C. 1841) for institu-
11 tions described in—

12 (A) section 2(a)(5)(E) of the Bank Hold-
13 ing Company Act of 1956 (12 U.S.C.
14 1841(a)(5)(E));

15 (B) section 2(a)(5)(F) of the Bank Hold-
16 ing Company Act of 1956 (12 U.S.C.
17 1841(a)(5)(F));

18 (C) section 2(c)(2)(D) of the Bank Hold-
19 ing Company Act of 1956 (12 U.S.C.
20 1841(c)(2)(D));

21 (D) section 2(c)(2)(F) of the Bank Hold-
22 ing Company Act of 1956 (12 U.S.C.
23 1841(c)(2)(F));

1 (E) section 2(c)(2)(H) of the Bank Hold-
2 ing Company Act of 1956 (12 U.S.C.
3 1841(c)(2)(H)); and

4 (F) section 2(c)(2)(B) of the Bank Hold-
5 ing Company Act of 1956 (12 U.S.C.
6 1841(c)(2)(B)).

7 (2) CONTENT OF STUDY.—

8 (A) IN GENERAL.—The study required
9 under paragraph (1), with respect to the insti-
10 tutions referenced in each of subparagraphs (A)
11 through (E) of paragraph (1), shall, to the ex-
12 tent feasible be based on information provided
13 to the Comptroller General by the appropriate
14 Federal or State regulator, and shall—

15 (i) identify the types and number of
16 institutions excepted from section 2 of the
17 Bank Holding Company Act of 1956 (12
18 U.S.C. 1841) under each of the subpara-
19 graphs described in subparagraphs (A)
20 through (E) of paragraph (1);

21 (ii) generally describe the size and ge-
22 ographic locations of the institutions de-
23 scribed in clause (i);

24 (iii) determine the extent to which the
25 institutions described in clause (i) are held

1 by holding companies that are commercial
2 firms;

3 (iv) determine whether the institutions
4 described in clause (i) have any affiliates
5 that are commercial firms;

6 (v) identify the Federal banking agen-
7 cy responsible for the supervision of the in-
8 stitutions described in clause (i) on and
9 after the transfer date;

10 (vi) determine the adequacy of the
11 Federal bank regulatory framework appli-
12 cable to each category of institution de-
13 scribed in clause (i), including any restric-
14 tions (including limitations on affiliate
15 transactions or cross-marketing) that apply
16 to transactions between an institution, the
17 holding company of the institution, and
18 any other affiliate of the institution; and

19 (vii) evaluate the potential con-
20 sequences of subjecting the institutions de-
21 scribed in clause (i) to the requirements of
22 the Bank Holding Company Act of 1956,
23 including with respect to the availability
24 and allocation of credit, the stability of the
25 financial system and the economy, the safe

1 and sound operation of each category of
2 institution, and the impact on the types of
3 activities in which such institutions, and
4 the holding companies of such institutions,
5 may engage.

6 (B) SAVINGS ASSOCIATIONS.—With respect
7 to institutions described in paragraph (1)(F),
8 the study required under paragraph (1) shall—

9 (i) determine the adequacy of the
10 Federal bank regulatory framework appli-
11 cable to such institutions, including any re-
12 strictions (including limitations on affiliate
13 transactions or cross-marketing) that apply
14 to transactions between an institution, the
15 holding company of the institution, and
16 any other affiliate of the institution; and

17 (ii) evaluate the potential con-
18 sequences of subjecting the institutions de-
19 scribed in paragraph (1)(F) to the require-
20 ments of the Bank Holding Company Act
21 of 1956, including with respect to the
22 availability and allocation of credit, the
23 stability of the financial system and the
24 economy, the safe and sound operation of
25 such institutions, and the impact on the

1 types of activities in which such institu-
2 tions, and the holding companies of such
3 institutions, may engage.

4 (3) REPORT.—Not later than 18 months after
5 the date of enactment of this Act, the Comptroller
6 General shall submit to the Committee on Banking,
7 Housing, and Urban Affairs of the Senate and the
8 Committee on Financial Services of the House of
9 Representatives a report on the study required
10 under paragraph (1).

11 **SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COM-**
12 **PANIES; REGULATION OF FUNCTIONALLY**
13 **REGULATED SUBSIDIARIES.**

14 (a) REPORTS BY BANK HOLDING COMPANIES.—Sec-
15 tions 5(c)(1) of the Bank Holding Company Act of 1956
16 (12 U.S.C. 1844(c)(1)) is amended—

17 (1) by striking subparagraph (B) and inserting
18 the following:

19 “(B) USE OF EXISTING REPORTS AND
20 OTHER SUPERVISORY INFORMATION.—The ap-
21 propriate Federal banking agency for a bank
22 holding company shall, to the fullest extent pos-
23 sible, use—

24 “(i) reports and other supervisory in-
25 formation that the bank holding company

1 or any subsidiary thereof has been required
2 to provide to other Federal or State regu-
3 latory agencies;

4 “(ii) externally audited financial state-
5 ments of the bank holding company or
6 subsidiary;

7 “(iii) information otherwise available
8 from Federal or State regulatory agencies;
9 and

10 “(iv) information that is otherwise re-
11 quired to be reported publicly.”; and

12 (2) by adding at the end the following:

13 “(C) AVAILABILITY.—Upon the request of
14 the appropriate Federal banking agency for a
15 bank holding company, the bank holding com-
16 pany or a subsidiary of the bank holding com-
17 pany shall promptly provide to the appropriate
18 Federal banking agency any information de-
19 scribed in clauses (i) through (iii) of subpara-
20 graph (B).”.

21 (b) EXAMINATIONS OF BANK HOLDING COMPA-
22 NIES.—Section 5(c)(2) of the Bank Holding Company Act
23 of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as
24 follows:

25 “(2) EXAMINATIONS.—

1 “(A) IN GENERAL.—The appropriate Fed-
2 eral banking agency for a bank holding com-
3 pany may make examinations of the bank hold-
4 ing company and each subsidiary of the bank
5 holding company in order to—

6 “(i) inform such appropriate Federal
7 banking agency of—

8 “(I) the nature of the operations
9 and financial condition of the bank
10 holding company and the subsidiary;

11 “(II) the financial, operational
12 and other risks within the bank hold-
13 ing company that may pose a threat
14 to—

15 “(aa) the safety and sound-
16 ness of any depository institution
17 subsidiary of the bank holding
18 company; or

19 “(bb) the stability of the fi-
20 nancial system of the United
21 States;

22 “(III) the systems of the bank
23 holding company for monitoring and
24 controlling the risks described in sub-
25 clause (II); and

1 “(ii) enforce the compliance of the
2 bank holding company and the subsidiary
3 with this Act and any other Federal law
4 that the appropriate Federal banking agen-
5 cy has specific jurisdiction to enforce
6 against the bank holding company or sub-
7 sidiary.

8 “(B) USE OF REPORTS TO REDUCE EXAMI-
9 NATIONS.—For purposes of this paragraph, the
10 appropriate Federal banking agency for a bank
11 holding company shall, to the fullest extent pos-
12 sible, rely on—

13 “(i) examination reports made by
14 other Federal or State regulatory agencies
15 relating to the bank holding company and
16 any subsidiary of the bank holding com-
17 pany; and

18 “(ii) the reports and other informa-
19 tion required under paragraph (1).

20 “(C) COORDINATION WITH OTHER REGU-
21 LATORS.—The appropriate Federal banking
22 agency for a bank holding company shall—

23 “(i) provide reasonable notice to, and
24 consult with, the appropriate Federal
25 banking agency or State regulatory agency

1 of a subsidiary that is a depository institu-
2 tion or a functionally regulated subsidiary
3 before requesting a report or other infor-
4 mation from, or commencing an examina-
5 tion of the subsidiary under this section;
6 and

7 “(ii) to the fullest extent possible,
8 avoid duplication of examination activities,
9 reporting requirements, and requests for
10 information.”.

11 (c) **AUTHORITY TO REGULATE FUNCTIONALLY REG-**
12 **ULATED SUBSIDIARIES OF BANK HOLDING COMPA-**
13 **NIES.**—The Bank Holding Company Act of 1956 (12
14 U.S.C. 1841 et seq.) is amended—

15 (1) in section 5(c) (12 U.S.C. 1844(c)), by
16 striking paragraphs (3) and (4) and inserting the
17 following:

18 “(3) [Reserved]

19 “(4) [Reserved]”; and

20 (2) by striking section 10A (12 U.S.C. 1848a).

21 (d) **ACQUISITIONS OF BANKS.**—Section 3(c) of the
22 Bank Holding Company Act of 1956 (12 U.S.C. 1842(c))
23 is amended by adding at the end the following:

24 “(7) **FINANCIAL STABILITY.**—In every case, the
25 appropriate Federal banking agency of a bank hold-

1 ing company shall take into consideration the extent
2 to which a proposed acquisition, merger, or consoli-
3 dation would result in greater or more concentrated
4 risks to the stability of the United States banking or
5 financial system.”.

6 (e) ACQUISITIONS OF NONBANKS.—

7 (1) NOTICE PROCEDURES.—Section 4(j)(2)(A)
8 of the Bank Holding Company Act of 1956 (12
9 U.S.C. 1843(j)(2)(A)) is amended by striking “or
10 unsound banking practices” and inserting “unsound
11 banking practices, or risk to the stability of the
12 United States banking or financial system”.

13 (2) ACTIVITIES THAT ARE FINANCIAL IN NA-
14 TURE.—Section 4(k)(6)(B) of the Bank Holding
15 Company Act of 1956 (12 U.S.C. 1843(k)(6)(B) is
16 amended to read as follows:

17 “(B) APPROVAL NOT REQUIRED FOR CER-
18 TAIN FINANCIAL ACTIVITIES.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in clause (ii), a financial holding
21 company may commence any activity or ac-
22 quire any company, pursuant to paragraph
23 (4) or any regulation prescribed or order
24 issued under paragraph (5), without prior
25 approval of the appropriate Federal bank-

1 ing agency for the financial holding com-
2 pany.

3 “(ii) EXCEPTION.—A financial hold-
4 ing company may not commence, without
5 the prior approval of the appropriate Fed-
6 eral banking agency for the financial hold-
7 ing company, a transaction in which the
8 total consolidated assets to be acquired by
9 the financial holding company exceed
10 \$25,000,000,000.”.

11 (f) BANK MERGER ACT TRANSACTIONS.—Section
12 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.
13 1828(c)(5)) is amended, in the matter immediately fol-
14 lowing subparagraph (B), by striking “and the conven-
15 ience and needs of the community to be served” and in-
16 serting “the convenience and needs of the community to
17 be served, and the risk to the stability of the United States
18 banking or financial system”.

19 (g) EXAMINATION OF SAVINGS AND LOAN HOLDING
20 COMPANIES.—

21 (1) DEFINITIONS.—Section 2 of the Home
22 Owners’ Loan Act (12 U.S.C. 1462) is amended by
23 adding at the end the following:

24 “(10) APPROPRIATE FEDERAL BANKING AGEN-
25 CY.—The term ‘appropriate Federal banking agency’

1 has the same meaning as in section 3(q) of the Fed-
2 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

3 “(11) FUNCTIONALLY REGULATED SUB-
4 SIDIARY.—The term ‘functionally regulated sub-
5 sidiary’ has the same meaning as in section 5(c)(5)
6 of the Bank Holding Company Act of 1956 (12
7 U.S.C. 1844(c)(5)).”.

8 (2) EXAMINATION.—Section 10(b) of the Home
9 Owners’ Loan Act (12 U.S.C. 1467a(b)) is amended
10 by striking paragraph (4) and inserting the fol-
11 lowing:

12 “(4) EXAMINATIONS.—

13 “(A) IN GENERAL.—The appropriate Fed-
14 eral banking agency for a savings and loan
15 holding company may make examinations of the
16 savings and loan holding company and each
17 subsidiary of the savings and loan holding com-
18 pany, in order to—

19 “(i) inform such appropriate Federal
20 banking agency of—

21 “(I) the nature of the operations
22 and financial condition of the savings
23 and loan holding company and the
24 subsidiary;

1 “(II) the financial, operational
2 and other risks within the savings and
3 loan holding company that may pose a
4 threat to—

5 “(aa) the safety and sound-
6 ness of any depository institution
7 subsidiary of the savings and
8 loan holding company; or

9 “(bb) the stability of the fi-
10 nancial system of the United
11 States; and

12 “(III) the systems of the savings
13 and loan holding company for moni-
14 toring and controlling the risks de-
15 scribed in subclause (II); and

16 “(ii) enforce the compliance of the
17 savings and loan holding company and the
18 subsidiary with this section and any other
19 Federal law that such appropriate Federal
20 banking agency has specific jurisdiction to
21 enforce against the savings and loan hold-
22 ing company or subsidiary.

23 “(B) USE OF REPORTS TO REDUCE EXAMI-
24 NATIONS.—For purposes of this subsection, the
25 appropriate Federal banking agency for a sav-

1 information with respect to a subsidiary
2 described in clause (i).”.

3 (h) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the transfer date.

5 **SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMIS-**
6 **SIBLE ACTIVITIES OF DEPOSITORY INSTITU-**
7 **TION SUBSIDIARIES OF HOLDING COMPA-**
8 **NIES.**

9 Section 6 of the Bank Holding Company Act of 1956
10 (12 U.S.C. 1845) is amended to read as follows:

11 **“SEC. 6. ASSURING CONSISTENT OVERSIGHT OF PERMIS-**
12 **SIBLE ACTIVITIES OF DEPOSITORY INSTITU-**
13 **TION SUBSIDIARIES OF HOLDING COMPA-**
14 **NIES.**

15 “(a) DEFINITIONS.—

16 “(1) DEFINITIONS.—In this section—

17 “(A) the term ‘depository institution hold-
18 ing company’ has the same meaning as in sec-
19 tion 3(w) of the Federal Deposit Insurance Act
20 (12 U.S.C. 1813(w));

21 “(B) the term ‘functionally regulated sub-
22 sidiary’ has the same meaning as in section
23 5(e)(5); and

24 “(C) the term ‘lead Federal banking agen-
25 cy’ means—

1 “(i) the Office of the Comptroller of
2 the Currency, in the case of any depository
3 institution holding company having—

4 “(I) a subsidiary that is an in-
5 sured depository institution, if all
6 such insured depository institutions
7 are Federal depository institutions; or

8 “(II) a subsidiary that is a Fed-
9 eral depository institution and a sub-
10 sidiary that is a State depository in-
11 stitution, if the total consolidated as-
12 sets of all subsidiaries that are Fed-
13 eral depository institutions exceed the
14 total consolidated assets of all subsidi-
15 aries that are State depository institu-
16 tions; and

17 “(ii) the Federal Deposit Insurance
18 Corporation, in the case of any depository
19 institution holding company having—

20 “(I) a subsidiary that is an in-
21 sured depository institution, if all
22 such insured depository institutions
23 are State depository institutions; or

24 “(II) a subsidiary that is a Fed-
25 eral depository institution and a sub-

1 subsidiary that is a State depository in-
2 stitution, if the total consolidated as-
3 sets of all subsidiaries that are State
4 depository institutions exceed the total
5 consolidated assets of all subsidiaries
6 that are Federal depository institu-
7 tions.

8 “(2) DETERMINATION OF TOTAL CONSOLI-
9 DATED ASSETS.—For purposes of paragraph (1)(A),
10 the total consolidated assets of a depository institu-
11 tion shall be determined in the same manner that
12 total consolidated assets of depository institutions
13 are determined for purposes of section 3(q) of the
14 Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

15 “(b) LEAD AGENCY SUPERVISION.—

16 “(1) IN GENERAL.—The lead Federal banking
17 agency for each depository institution holding com-
18 pany shall make examinations of the activities of
19 each nondepository institution subsidiary (other than
20 a functionally regulated subsidiary) of the depository
21 institution holding company that are permissible for
22 depository institution subsidiaries of the depository
23 institution holding company, to determine whether
24 the activities—

1 “(A) present safety and soundness risks to
2 any depository institution subsidiary of the de-
3 pository institution holding company;

4 “(B) are conducted in accordance with ap-
5 plicable law; and

6 “(C) are subject to appropriate systems for
7 monitoring and controlling the financial, oper-
8 ating, and other risks of the activity and pro-
9 tecting the depository institution subsidiaries of
10 the holding company.

11 “(2) PROCESS FOR EXAMINATION.—An exam-
12 ination under paragraph (1) shall be carried out
13 under the authority of the lead Federal banking
14 agency, as if the nondepository institution subsidiary
15 were an insured depository institution for which the
16 lead Federal banking agency is the appropriate Fed-
17 eral banking agency.

18 “(c) COORDINATION.—For each depository institu-
19 tion holding company for which the Board of Governors
20 is the appropriate Federal banking agency, the lead Fed-
21 eral banking agency of the depository institution holding
22 company shall coordinate the supervision of the activities
23 of subsidiaries described in subsection (b) with the Board
24 of Governors, in a manner that—

25 “(1) avoids duplication;

1 “(2) shares information relevant to the super-
2 vision of the depository institution holding company
3 by each agency;

4 “(3) achieves the objectives of subsection (b);
5 and

6 “(4) ensures that the depository institution
7 holding company and the subsidiaries of the depository
8 institution holding company are not subject to
9 conflicting supervisory demands by the 2 agencies.

10 “(d) REFERRALS FOR ENFORCEMENT.—

11 “(1) RECOMMENDATION OF ACTION BY BOARD
12 OF GOVERNORS.—The lead Federal banking agency
13 for a depository institution holding company, based
14 on information obtained pursuant to the responsibil-
15 ities of the agency under subsection (b), may submit
16 to the Board of Governors, in writing, a rec-
17 ommendation that the Board of Governors take en-
18 forcement action against a nondepository institution
19 subsidiary of the depository institution holding com-
20 pany, together with an explanation of the concerns
21 giving rise to the recommendation.

22 “(2) BACK-UP AUTHORITY OF THE LEAD FED-
23 ERAL BANKING AGENCY.—If, within the 60-day pe-
24 riod beginning on the date on which the Board of
25 Governors receives a recommendation under para-

1 graph (1), the Board of Governors does not take en-
2 forcement action against a nondepository institution
3 subsidiary or provide a plan for enforcement action
4 that is acceptable to the lead Federal banking agen-
5 cy, the lead Federal banking agency (upon the au-
6 thorization of the Comptroller, or the Corporation
7 upon a vote of its members, as applicable) may take
8 the recommended enforcement action, in the same
9 manner as if the subsidiary were an insured deposi-
10 tory institution for which the lead Federal banking
11 agency is the appropriate Federal banking agency.”.

12 **SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
13 **PANIES TO REMAIN WELL CAPITALIZED AND**
14 **WELL MANAGED.**

15 (a) AMENDMENT.—Section 4(l)(1) of the Bank Hold-
16 ing Company Act of 1956 (12 U.S.C. 1843(l)(1)) is
17 amended—

18 (1) in subparagraph (B), by striking “and” at
19 the end;

20 (2) by redesignating subparagraph (C) as sub-
21 paragraph (D);

22 (3) by inserting after subparagraph (B) the fol-
23 lowing:

24 “(C) the bank holding company is well
25 capitalized and well managed; and”;

1 (4) in subparagraph (D)(ii), as so redesignated,
2 by striking “subparagraphs (A) and (B)” and insert-
3 ing “subparagraphs (A), (B), and (C)”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the transfer date.

6 **SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.**

7 (a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of
8 the Bank Holding Company Act of 1956 (12 U.S.C.
9 1842(d)(1)(A)) is amended by striking “adequately cap-
10 italized and adequately managed” and inserting “well cap-
11 italized and well managed”.

12 (b) INTERSTATE BANK MERGERS.—Section
13 44(b)(4)(B) of the Federal Deposit Insurance Act (12
14 U.S.C. 1831u(b)(4)(B)) is amended by striking “will con-
15 tinue to be adequately capitalized and adequately man-
16 aged” and inserting “will be well capitalized and well man-
17 aged”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the transfer date.

20 **SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK**
21 **TRANSACTIONS WITH AFFILIATES.**

22 (a) AFFILIATE TRANSACTIONS.—Section 23A of the
23 Federal Reserve Act (12 U.S.C. 371c) is amended—

24 (1) in subsection (b)—

1 (A) in paragraph (1), by striking subpara-
2 graph (D) and inserting the following:

3 “(D) any investment fund with respect to
4 which a member bank or affiliate thereof is an
5 investment adviser; and”;

6 (B) in paragraph (7)—

7 (i) in subparagraph (A), by inserting
8 before the semicolon at the end the fol-
9 lowing: “, including a purchase of assets
10 subject to an agreement to repurchase”;

11 (ii) in subparagraph (C), by striking
12 “, including assets subject to an agreement
13 to repurchase,”;

14 (iii) in subparagraph (D)—

15 (I) by inserting “or other debt
16 obligations” after “acceptance of secu-
17 rities”; and

18 (II) by striking “or” at the end;

19 and

20 (iv) by adding at the end the fol-
21 lowing:

22 “(F) a transaction with an affiliate that
23 involves the borrowing or lending of securities,
24 to the extent that the transaction causes a

1 member bank or a subsidiary to have credit ex-
2 posure to the affiliate; or

3 “(G) a derivative transaction, as defined in
4 paragraph (3) of section 5200(b) of the Revised
5 Statutes of the United States (12 U.S.C.
6 84(b)), with an affiliate, to the extent that the
7 transaction causes a member bank or a sub-
8 sidiary to have credit exposure to the affiliate;”;
9 (2) in subsection (c)—

10 (A) in paragraph (1)—

11 (i) in the matter preceding subpara-
12 graph (A), by striking “subsidiary” and all
13 that follows through “time of the trans-
14 action” and inserting “subsidiary, and any
15 credit exposure of a member bank or a
16 subsidiary to an affiliate resulting from a
17 securities borrowing or lending transaction,
18 or a derivative transaction, shall be se-
19 cured at all times”; and

20 (ii) in each of subparagraphs (A)
21 through (D), by striking “or letter of cred-
22 it” and inserting “letter of credit, or credit
23 exposure”;

24 (B) by striking paragraph (2);

1 (C) by redesignating paragraphs (3)
2 through (5) as paragraphs (2) through (4), re-
3 spectively;

4 (D) in paragraph (2), as so redesignated,
5 by inserting before the period at the end “, or
6 credit exposure to an affiliate resulting from a
7 securities borrowing or lending transaction, or
8 derivative transaction”; and

9 (E) in paragraph (3), as so redesignated—

10 (i) by inserting “or other debt obliga-
11 tions” after “securities”; and

12 (ii) by striking “or guarantee” and all
13 that follows through “behalf of,” and in-
14 serting “guarantee, acceptance, or letter of
15 credit issued on behalf of, or credit expo-
16 sure from a securities borrowing or lending
17 transaction, or derivative transaction to,”;

18 (3) in subsection (d)(4), in the matter pre-
19 ceding subparagraph (A), by striking “or issuing”
20 and all that follows through “behalf of,” and insert-
21 ing “issuing a guarantee, acceptance, or letter of
22 credit on behalf of, or having credit exposure result-
23 ing from a securities borrowing or lending trans-
24 action, or derivative transaction to,”; and

25 (4) in subsection (f)—

1 (A) in paragraph (2)—

2 (i) by striking “or order”;

3 (ii) by striking “if it finds” and all
4 that follows through the end of the para-
5 graph and inserting the following: “if—

6 “(i) the Board finds the exemption to
7 be in the public interest and consistent
8 with the purposes of this section, and noti-
9 fies the Chairperson of the Federal Deposit
10 Insurance Corporation of such finding; and

11 “(ii) before the end of the 60-day pe-
12 riod beginning on the date on which the
13 Chairperson of the Federal Deposit Insur-
14 ance Corporation receives notice of the
15 finding under clause (i), the Chairperson
16 of the Federal Deposit Insurance Corpora-
17 tion does not object, in writing, to the find-
18 ing, based on a determination that the ex-
19 emption presents an unacceptable risk to
20 the Deposit Insurance Fund.”;

21 (iii) by striking the Board and insert-
22 ing the following:

23 “(A) IN GENERAL.—The Board”; and

24 (iv) by adding at the end the fol-
25 lowing:

1 “(B) ADDITIONAL EXEMPTIONS.—

2 “(i) NATIONAL BANKS.—The Comp-
3 troller of the Currency may, by order, ex-
4 empt a transaction of a national bank from
5 the requirements of this section if—

6 “(I) the Board and the Office of
7 the Comptroller of the Currency joint-
8 ly find the exemption to be in the
9 public interest and consistent with the
10 purposes of this section and notify the
11 Chairperson of the Federal Deposit
12 Insurance Corporation of such find-
13 ing; and

14 “(II) before the end of the 60-
15 day period beginning on the date on
16 which the Chairperson of the Federal
17 Deposit Insurance Corporation re-
18 ceives notice of the finding under sub-
19 clause (I), the Chairperson of the
20 Federal Deposit Insurance Corpora-
21 tion does not object, in writing, to the
22 finding, based on a determination that
23 the exemption presents an unaccept-
24 able risk to the Deposit Insurance
25 Fund.

1 “(ii) STATE BANKS.—The Federal
2 Deposit Insurance Corporation may, by
3 order, exempt a transaction of a State
4 bank from the requirements of this section
5 if—

6 “(I) the Board and the Federal
7 Deposit Insurance Corporation jointly
8 find that the exemption is in the pub-
9 lic interest and consistent with the
10 purposes of this section; and

11 “(II) the Chairperson of the Fed-
12 eral Deposit Insurance Corporation
13 finds that the exemption does not
14 present an unacceptable risk to the
15 Deposit Insurance Fund.”; and

16 (B) by adding at the end the following:

17 “(4) AMOUNTS OF COVERED TRANSACTIONS.—
18 The Board may issue such regulations or interpreta-
19 tions as the Board determines are necessary or ap-
20 propriate with respect to the manner in which a net-
21 ting agreement may be taken into account in deter-
22 mining the amount of a covered transaction between
23 a member bank or a subsidiary and an affiliate, in-
24 cluding the extent to which netting agreements be-
25 tween a member bank or a subsidiary and an affil-

1 iate may be taken into account in determining
2 whether a covered transaction is fully secured for
3 purposes of subsection (d)(4). An interpretation
4 under this paragraph with respect to a specific mem-
5 ber bank, subsidiary, or affiliate shall be issued
6 jointly with the appropriate Federal banking agency
7 for such member bank, subsidiary, or affiliate.”.

8 (b) TRANSACTIONS WITH AFFILIATES.—Section
9 23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e))
10 is amended—

11 (1) by striking the undesignated matter fol-
12 lowing subparagraph (B);

13 (2) by redesignating subparagraphs (A) and
14 (B) as clauses (i) and (ii), respectively, and adjust-
15 ing the clause margins accordingly;

16 (3) by redesignating paragraphs (1) and (2) as
17 subparagraphs (A) and (B), respectively, and adjust-
18 ing the subparagraph margins accordingly;

19 (4) by striking “The Board” and inserting the
20 following:

21 “(1) IN GENERAL.—The Board”;

22 (5) in paragraph (1)(B), as so redesignated—

23 (A) in the matter preceding clause (i), by
24 inserting before “regulations” the following:

25 “subject to paragraph (2), if the Board finds

1 that an exemption or exclusion is in the public
2 interest and is consistent with the purposes of
3 this section, and notifies the Chairperson of the
4 Federal Deposit Insurance Corporation of such
5 finding,”; and

6 (B) in clause (ii), by striking the comma at
7 the end and inserting a period; and
8 (6) by adding at the end the following:

9 “(2) EXCEPTION.—The Board may grant an
10 exemption or exclusion under this subsection only if,
11 during the 60-day period beginning on the date of
12 receipt of notice of the finding from the Board
13 under paragraph (1)(B), the Chairperson of the
14 Federal Deposit Insurance Corporation does not ob-
15 ject, in writing, to such exemption or exclusion,
16 based on a determination that the exemption pre-
17 sents an unacceptable risk to the Deposit Insurance
18 Fund.”.

19 (c) HOME OWNERS’ LOAN ACT.—Section 11 of the
20 Home Owners Loan Act (12 U.S.C. 1468) is amended by
21 adding at the end the following:

22 “(d) EXEMPTIONS.—

23 “(1) FEDERAL SAVINGS ASSOCIATIONS.—The
24 Comptroller of the Currency may, by order, exempt

1 a transaction of a Federal savings association from
2 the requirements of this section if—

3 “(A) the Board and the Office of the
4 Comptroller of the Currency jointly find the ex-
5 emption to be in the public interest and con-
6 sistent with the purposes of this section and no-
7 tify the Chairperson of the Federal Deposit In-
8 surance Corporation of such finding; and

9 “(B) before the end of the 60-day period
10 beginning on the date on which the Chairperson
11 of the Federal Deposit Insurance Corporation
12 receives notice of the finding under subpara-
13 graph (A), the Chairperson of the Federal De-
14 posit Insurance Corporation does not object, in
15 writing, to the finding, based on a determina-
16 tion that the exemption presents an unaccept-
17 able risk to the Deposit Insurance Fund.

18 “(2) STATE SAVINGS ASSOCIATION.—The Fed-
19 eral Deposit Insurance Corporation may, by order,
20 exempt a transaction of a State savings association
21 from the requirements of this section if the Board
22 and the Federal Deposit Insurance Corporation
23 jointly find that—

1 “(A) the exemption is in the public interest
2 and consistent with the purposes of this section;
3 and

4 “(B) the exemption does not present an
5 unacceptable risk to the Deposit Insurance
6 Fund.”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect 1 year after the transfer date.

9 **SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**
10 **WITH FINANCIAL SUBSIDIARIES.**

11 (a) AMENDMENT.—Section 23A(e) of the Federal Re-
12 serve Act (12 U.S.C. 371c(e)) is amended—

13 (1) by striking paragraph (3); and

14 (2) by redesignating paragraph (4) as para-
15 graph (3).

16 (b) PROSPECTIVE APPLICATION OF AMENDMENT.—
17 The amendments made by this section shall apply with
18 respect to any covered transaction between a bank and
19 a subsidiary of the bank, as those terms are defined in
20 section 23A of the Federal Reserve Act (12 U.S.C. 371c),
21 that is entered into on or after the date of enactment of
22 this Act.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect 1 year after the transfer date.

1 **SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
2 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
3 **PURCHASE AGREEMENTS, REVERSE REPUR-**
4 **CHASE AGREEMENTS, AND SECURITIES**
5 **LENDING AND BORROWING TRANSACTIONS.**

6 (a) NATIONAL BANKS.—Section 5200(b) of the Re-
7 vised Statutes of the United States (12 U.S.C. 84(b)) is
8 amended—

9 (1) in paragraph (1), by striking “shall in-
10 clude” and all that follows through the end of the
11 paragraph and inserting the following: “shall in-
12 clude—

13 “(A) all direct or indirect advances of
14 funds to a person made on the basis of any ob-
15 ligation of that person to repay the funds or re-
16 payable from specific property pledged by or on
17 behalf of the person;

18 “(B) to the extent specified by the Comp-
19 troller of the Currency, any liability of a na-
20 tional banking association to advance funds to
21 or on behalf of a person pursuant to a contrac-
22 tual commitment; and

23 “(C) any credit exposure to a person aris-
24 ing from a derivative transaction, repurchase
25 agreement, reverse repurchase agreement, secu-
26 rities lending transaction, or securities bor-

1 rowing transaction between the national bank-
2 ing association and the person;”;

3 (2) in paragraph (2), by striking the period at
4 the end and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(3) the term ‘derivative transaction’ includes
7 any transaction that is a contract, agreement, swap,
8 warrant, note, or option that is based, in whole or
9 in part, on the value of, any interest in, or any
10 quantitative measure or the occurrence of any event
11 relating to, one or more commodities, securities, cur-
12 rencies, interest or other rates, indices, or other as-
13 sets.”.

14 (b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the
15 Home Owners’ Loan Act (12 U.S.C. 1464(u)(3)) is
16 amended by striking “Director” each place that term ap-
17 pears and inserting “Comptroller of the Currency”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect 1 year after the transfer date.

20 **SEC. 611. APPLICATION OF NATIONAL BANK LENDING LIM-**
21 **ITS TO INSURED STATE BANKS.**

22 (a) AMENDMENT.—Section 18 of the Federal Deposit
23 Insurance Act (12 U.S.C. 1828) is amended by adding at
24 the end the following:

1 “(y) APPLICATION OF LENDING LIMITS TO INSURED
2 STATE BANKS.—Section 5200 of the Revised Statutes of
3 the United States (12 U.S.C. 84) shall apply to each in-
4 sured State bank, in the same manner and to the same
5 extent as if the insured State bank were a national bank-
6 ing association.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall take effect 1 year after the transfer date.

9 **SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED**
10 **BANKS.**

11 (a) CONVERSION OF A NATIONAL BANKING ASSOCIA-
12 TION TO A STATE BANK.—The Act entitled “An Act to
13 provide for the conversion of national banking associations
14 into and their merger or consolidation with State banks,
15 and for other purposes.” (12 U.S.C. 214 et seq.) is amend-
16 ed by adding at the end the following:

17 **“SEC. 10. PROHIBITION ON CONVERSION.**

18 “A national banking association may not convert to
19 a State bank or State savings association during any pe-
20 riod in which the national banking association is subject
21 to a cease and desist order (or other formal enforcement
22 order) issued by, or a memorandum of understanding en-
23 tered into with, the Comptroller of the Currency with re-
24 spect to a significant supervisory matter.”.

1 (b) CONVERSION OF A STATE BANK TO A NATIONAL
2 BANK.—Section 5154 of the Revised Statutes of the
3 United States (12 U.S.C. 35) is amended by adding at
4 the end the following: “The Comptroller of the Currency
5 may not approve the conversion of a State bank or State
6 savings association to a national banking association dur-
7 ing any period in which the State bank or State savings
8 association is subject to a cease and desist order (or other
9 formal enforcement order) issued by, or a memorandum
10 of understanding entered into with, a State supervisor
11 with respect to a significant supervisory matter.”.

12 (c) CONVERSION OF A FEDERAL SAVINGS ASSOCIA-
13 TION TO A NATIONAL OR STATE BANK OR STATE SAVINGS
14 ASSOCIATION.—Section 5(i) of the Home Owners’ Loan
15 Act (12 U.S.C. 1464(i)) is amended by adding at the end
16 the following:

17 “(6) LIMITATION ON CERTAIN CONVERSIONS BY
18 FEDERAL SAVINGS ASSOCIATIONS.—A Federal sav-
19 ings association may not convert to a national bank
20 or State bank or State savings association during
21 any period in which the Federal savings association
22 is subject to a cease and desist order (or other for-
23 mal enforcement order) issued by, or a memorandum
24 of understanding entered into with, the Office of
25 Thrift Supervision or the Comptroller of the Cur-

1 rency with respect to a significant supervisory mat-
2 ter.”.

3 **SEC. 613. DE NOVO BRANCHING INTO STATES.**

4 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the
5 Revised Statutes of the United States (12 U.S.C.
6 36(g)(1)(A)) is amended to read as follows:

7 “(A) the law of the State in which the
8 branch is located, or is to be located, would per-
9 mit establishment of the branch, if the national
10 bank were a State bank chartered by such
11 State; and”.

12 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i)
13 of the Federal Deposit Insurance Act (12 U.S.C.
14 1828(d)(4)(A)(i)) is amended to read as follows:

15 “(i) the law of the State in which the
16 branch is located, or is to be located, would
17 permit establishment of the branch, if the
18 bank were a State bank chartered by such
19 State; and”.

20 **SEC. 614. LENDING LIMITS TO INSIDERS.**

21 (a) EXTENSIONS OF CREDIT.—Section
22 22(h)(9)(D)(i) of the Federal Reserve Act (12 U.S.C.
23 375b(9)(D)(i)) is amended—

24 (1) by striking the period at the end and insert-
25 ing “; or”;

1 “(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

2 “(1) IN GENERAL.—An insured depository in-
3 stitution may not purchase an asset from, or sell an
4 asset to, an executive officer, director, or principal
5 shareholder of the insured depository institution, or
6 any related interest of such person (as such terms
7 are defined in section 22(h) of Federal Reserve Act),
8 unless—

9 “(A) the transaction is on market terms;
10 and

11 “(B) if the transaction represents more
12 than 10 percent of the capital stock and surplus
13 of the insured depository institution, the trans-
14 action has been approved in advance by a ma-
15 jority of the members of the board of directors
16 of the insured depository institution who do not
17 have an interest in the transaction.

18 “(2) RULEMAKING.—The Board of Governors
19 of the Federal Reserve System may issue such rules
20 as may be necessary to define terms and to carry
21 out the purposes this subsection. Before proposing
22 or adopting a rule under this paragraph, the Board
23 of Governors of the Federal Reserve System shall
24 consult with the Comptroller of the Currency and
25 the Corporation as to the terms of the rule.”.

1 (b) AMENDMENTS TO THE FEDERAL RESERVE
2 ACT.—Section 22(d) of the Federal Reserve Act (12
3 U.S.C. 375) is amended to read as follows:

4 “(d) [Reserved]”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on the transfer date.

7 **SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS OF**
8 **HOLDING COMPANIES.**

9 (a) CAPITAL LEVELS OF BANK HOLDING COMPA-
10 NIES.—Section 5(b) of the Bank Holding Company Act
11 of 1956 (12 U.S.C. 1844(b)) is amended by inserting after
12 “regulations” the following: “(including regulations relat-
13 ing to the capital requirements of bank holding compa-
14 nies)”.

15 (b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLD-
16 ING COMPANIES.—Section 10(g)(1) of the Home Owners’
17 Loan Act (12 U.S.C. 1467a(g)(1)) is amended by insert-
18 ing after “orders” the following: “(including regulations
19 relating to capital requirements for savings and loan hold-
20 ing companies)”.

21 (c) SOURCE OF STRENGTH.—The Federal Deposit
22 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
23 inserting after section 38 (12 U.S.C. 1831o) the following:

1 **“SEC. 38A. SOURCE OF STRENGTH.**

2 “(a) HOLDING COMPANIES.—The appropriate Fed-
3 eral banking agency for a bank holding company or sav-
4 ings and loan holding company shall require the bank
5 holding company or savings and loan holding company to
6 serve as a source of financial strength for any subsidiary
7 of the bank holding company or savings and loan holding
8 company that is a depository institution.

9 “(b) OTHER COMPANIES.—If an insured depository
10 institution is not the subsidiary of a bank holding com-
11 pany or savings and loan holding company, the appro-
12 priate Federal banking agency for the insured depository
13 institution shall require any company that directly or indi-
14 rectly controls the insured depository institution to serve
15 as a source of financial strength for such institution.

16 “(c) REPORTS.—The appropriate Federal banking
17 agency for an insured depository institution described in
18 subsection (b) may, from time to time, require the com-
19 pany, or a company that directly or indirectly controls the
20 insured depository institution to submit a report, under
21 oath, for the purposes of—

22 “(1) assessing the ability of such company to
23 comply with the requirement under subsection (b);
24 and

25 “(2) enforcing the compliance of such company
26 with the requirement under subsection (b).

1 “(d) RULES.—Not later than 1 year after the trans-
2 fer date, as defined in section 311 of the Enhancing Fi-
3 nancial Institution Safety and Soundness Act of 2010, the
4 appropriate Federal banking agencies shall jointly issue
5 final rules to carry out this section.

6 “(e) DEFINITION.—In this section, the term ‘source
7 of financial strength’ means the ability of a company that
8 directly or indirectly owns or controls an insured deposi-
9 tory institution to provide financial assistance to such in-
10 sured depository institution in the event of the financial
11 distress of the insured depository institution.”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the transfer date.

14 **SEC. 617. ELIMINATION OF ELECTIVE INVESTMENT BANK**
15 **HOLDING COMPANY FRAMEWORK.**

16 (a) AMENDMENT.—Section 17 of the Securities Ex-
17 change Act of 1934 (15 U.S.C. 78q) is amended—

18 (1) by striking subsection (i); and

19 (2) by redesignating subsections (j) and (k) as
20 subsections (i) and (j), respectively.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the transfer date.

23 **SEC. 618. SECURITIES HOLDING COMPANIES.**

24 (a) DEFINITIONS.—In this section—

1 (1) the term “associated person of a securities
2 holding company” means a person directly or indi-
3 rectly controlling, controlled by, or under common
4 control with, a securities holding company;

5 (2) the term “foreign bank” has the same
6 meaning as in section 1(b)(7) of the International
7 Banking Act of 1978 (12 U.S.C. 3101(b)(7));

8 (3) the term “insured bank” has the same
9 meaning as in section 3 of the Federal Deposit In-
10 surance Act (12 U.S.C. 1813);

11 (4) the term “securities holding company”—

12 (A) means—

13 (i) a person (other than a natural per-
14 son) that owns or controls 1 or more bro-
15 kers or dealers registered with the Com-
16 mission; and

17 (ii) the associated persons of a person
18 described in clause (i); and

19 (B) does not include a person that is—

20 (i) a nonbank financial company su-
21 pervised by the Board under title I;

22 (ii) an affiliate of an insured bank
23 (other than an institution described in sub-
24 paragraphs (D), (F), or (H) of section
25 2(c)(2) of the Bank Holding Company Act

1 of 1956 (12 U.S.C. 1841(c)(2)) or an affil-
2 iate of a savings association;

3 (iii) a foreign bank, foreign company,
4 or company that is described in section
5 8(a) of the International Banking Act of
6 1978 (12 U.S.C. 3106(a));

7 (iv) a foreign bank that controls, di-
8 rectly or indirectly, a corporation chartered
9 under section 25A of the Federal Reserve
10 Act (12 U.S.C. 611 et seq.); or

11 (v) subject to comprehensive consoli-
12 dated supervision by a foreign regulator;

13 (5) the term “supervised securities holding com-
14 pany” means a securities holding company that is
15 supervised by the Board of Governors under this
16 section; and

17 (6) the terms “affiliate”, “bank”, “bank hold-
18 ing company”, “company”, “control”, “savings asso-
19 ciation”, and “subsidiary” have the same meanings
20 as in section 2 of the Bank Holding Company Act
21 of 1956.

22 (b) SUPERVISION OF A SECURITIES HOLDING COM-
23 PANY NOT HAVING A BANK OR SAVINGS ASSOCIATION
24 AFFILIATE.—

1 (1) IN GENERAL.—A securities holding com-
2 pany that is required by a foreign regulator or provi-
3 sion of foreign law to be subject to comprehensive
4 consolidated supervision may register with the Board
5 of Governors under paragraph (2) to become a su-
6 pervised securities holding company. Any securities
7 holding company filing such a registration shall be
8 supervised in accordance with this section, and shall
9 comply with the rules and orders prescribed by the
10 Board of Governors applicable to supervised securi-
11 ties holding companies.

12 (2) REGISTRATION AS A SUPERVISED SECURI-
13 TIES HOLDING COMPANY.—

14 (A) REGISTRATION.—A securities holding
15 company that elects to be subject to comprehen-
16 sive consolidated supervision shall register by
17 filing with the Board of Governors such infor-
18 mation and documents as the Board of Gov-
19 ernors, by regulation, may prescribe as nec-
20 essary or appropriate in furtherance of the pur-
21 poses of this section.

22 (B) EFFECTIVE DATE.—A securities hold-
23 ing company that registers under subparagraph
24 (A) shall be deemed to be a supervised securi-
25 ties holding company, effective on the date that

1 is 45 days after the date of receipt of the reg-
2 istration information and documents under sub-
3 paragraph (A) by the Board of Governors, or
4 within such shorter period as the Board of Gov-
5 ernors, by rule or order, may determine.

6 (c) SUPERVISION OF SECURITIES HOLDING COMPA-
7 NIES.—

8 (1) RECORDKEEPING AND REPORTING.—

9 (A) RECORDKEEPING AND REPORTING RE-
10 QUIRED.—Each supervised securities holding
11 company and each affiliate of a supervised secu-
12 rities holding company shall make and keep for
13 periods determined by the Board of Governors
14 such records, furnish copies of such records,
15 and make such reports, as the Board of Gov-
16 ernors determines to be necessary or appro-
17 priate to carry out this section, to prevent eva-
18 sions thereof, and to monitor compliance by the
19 supervised securities holding company or affil-
20 iate with applicable provisions of law.

21 (B) FORM AND CONTENTS.—

22 (i) IN GENERAL.—Any record or re-
23 port required to be made, furnished, or
24 kept under this paragraph shall—

1 (I) be prepared in such form and
2 according to such specifications (in-
3 cluding certification by a registered
4 public accounting firm), as the Board
5 of Governors may require; and

6 (II) be provided promptly to the
7 Board of Governors at any time, upon
8 request by the Board of Governors.

9 (ii) CONTENTS.—Records and reports
10 required to be made, furnished, or kept
11 under this paragraph may include—

12 (I) a balance sheet or income
13 statement of the supervised securities
14 holding company or an affiliate of a
15 supervised securities holding company;

16 (II) an assessment of the consoli-
17 dated capital and liquidity of the su-
18 pervised securities holding company;

19 (III) a report by an independent
20 auditor attesting to the compliance of
21 the supervised securities holding com-
22 pany with the internal risk manage-
23 ment and internal control objectives of
24 the supervised securities holding com-
25 pany; and

1 (IV) a report concerning the ex-
2 tent to which the supervised securities
3 holding company or affiliate has com-
4 plied with the provisions of this sec-
5 tion and any regulations prescribed
6 and orders issued under this section.

7 (2) USE OF EXISTING REPORTS.—

8 (A) IN GENERAL.—The Board of Gov-
9 ernors shall, to the fullest extent possible, ac-
10 cept reports in fulfillment of the requirements
11 of this paragraph that a supervised securities
12 holding company or an affiliate of a supervised
13 securities holding company has been required to
14 provide to another regulatory agency or a self-
15 regulatory organization.

16 (B) AVAILABILITY.—A supervised securi-
17 ties holding company or an affiliate of a super-
18 vised securities holding company shall promptly
19 provide to the Board of Governors, at the re-
20 quest of the Board of Governors, any report de-
21 scribed in subparagraph (A), as permitted by
22 law.

23 (3) EXAMINATION AUTHORITY.—

24 (A) FOCUS OF EXAMINATION AUTHOR-
25 ITY.—The Board of Governors may make ex-

1 aminations of any supervised securities holding
2 company and any affiliate of a supervised secu-
3 rities holding company to carry out this sub-
4 section, to prevent evasions thereof, and to
5 monitor compliance by the supervised securities
6 holding company or affiliate with applicable
7 provisions of law.

8 (B) DEFERENCE TO OTHER EXAMINA-
9 TIONS.—For purposes of this subparagraph, the
10 Board of Governors shall, to the fullest extent
11 possible, use the reports of examination made
12 by other appropriate Federal or State regu-
13 latory authorities with respect to any function-
14 ally regulated subsidiary or any institution de-
15 scribed in subparagraphs (D), (F), or (H) of
16 section 2(c)(2) of the Bank Holding Company
17 Act of 1956 (12 U.S.C. 1841(c)(2)).

18 (d) CAPITAL AND RISK MANAGEMENT.—

19 (1) IN GENERAL.—The Board of Governors
20 shall, by regulation or order, prescribe capital ade-
21 quacy and other risk management standards for su-
22 pervised securities holding companies that are ap-
23 propriate to protect the safety and soundness of the
24 supervised securities holding companies and address

1 the risks posed to financial stability by supervised
2 securities holding companies.

3 (2) DIFFERENTIATION.—In imposing standards
4 under this subsection, the Board of Governors may
5 differentiate among supervised securities holding
6 companies on an individual basis, or by category,
7 taking into consideration the requirements under
8 paragraph (3).

9 (3) CONTENT.—Any standards imposed on a
10 supervised securities holding company under this
11 subsection shall take into account—

12 (A) the differences among types of busi-
13 ness activities carried out by the supervised se-
14 curities holding company;

15 (B) the amount and nature of the financial
16 assets of the supervised securities holding com-
17 pany;

18 (C) the amount and nature of the liabilities
19 of the supervised securities holding company,
20 including the degree of reliance on short-term
21 funding;

22 (D) the extent and nature of the off-bal-
23 ance sheet exposures of the supervised securi-
24 ties holding company;

1 (E) the extent and nature of the trans-
2 actions and relationships of the supervised secu-
3 rities holding company with other financial
4 companies;

5 (F) the importance of the supervised secu-
6 rities holding company as a source of credit for
7 households, businesses, and State and local gov-
8 ernments, and as a source of liquidity for the
9 financial system; and

10 (G) the nature, scope, and mix of the ac-
11 tivities of the supervised securities holding com-
12 pany.

13 (4) NOTICE.—A capital requirement imposed
14 under this subsection may not take effect earlier
15 than 180 days after the date on which a supervised
16 securities holding company is provided notice of the
17 capital requirement.

18 (e) OTHER PROVISIONS OF LAW APPLICABLE TO SU-
19 PERVISED SECURITIES HOLDING COMPANIES.—

20 (1) FEDERAL DEPOSIT INSURANCE ACT.—Sub-
21 sections (b), (c) through (s), and (u) of section 8 of
22 the Federal Deposit Insurance Act (12 U.S.C. 1818)
23 shall apply to any supervised securities holding com-
24 pany, and to any subsidiary (other than a bank or
25 an institution described in subparagraph (D), (F),

1 or (H) of section 2(c)(2) of the Bank Holding Com-
2 pany Act of 1956 (12 U.S.C. 1841(c)(2))) of a su-
3 pervised securities holding company, in the same
4 manner as such subsections apply to a bank holding
5 company for which the Board of Governors is the
6 appropriate Federal banking agency. For purposes
7 of applying such subsections to a supervised securi-
8 ties holding company or a subsidiary (other than a
9 bank or an institution described in subparagraph
10 (D), (F), or (H) of section 2(c)(2) of the Bank
11 Holding Company Act of 1956 (12 U.S.C.
12 1841(c)(2))) of a supervised securities holding com-
13 pany, the Board of Governors shall be deemed the
14 appropriate Federal banking agency for the super-
15 vised securities holding company or subsidiary.

16 (2) BANK HOLDING COMPANY ACT OF 1956.—
17 Except as the Board of Governors may otherwise
18 provide by regulation or order, a supervised securi-
19 ties holding company shall be subject to the provi-
20 sions of the Bank Holding Company Act of 1956
21 (12 U.S.C. 1841 et seq.) in the same manner and
22 to the same extent a bank holding company is sub-
23 ject to such provisions, except that a supervised se-
24 curities holding company may not, by reason of this
25 paragraph, be deemed to be a bank holding company

1 for purposes of section 4 of the Bank Holding Com-
2 pany Act of 1956 (12 U.S.C. 1843).

3 **SEC. 619. RESTRICTIONS ON CAPITAL MARKET ACTIVITY BY**
4 **BANKS AND BANK HOLDING COMPANIES.**

5 (a) DEFINITIONS.—In this section—

6 (1) the terms “hedge fund” and “private equity
7 fund” mean a company or other entity that is ex-
8 empt from registration as an investment company
9 pursuant to section 3(c)(1) or 3(c)(7) of the Invest-
10 ment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)
11 or 80a-3(c)(7)), or a similar fund, as jointly deter-
12 mined by the appropriate Federal banking agencies;

13 (2) the term “proprietary trading”—

14 (A) means purchasing or selling, or other-
15 wise acquiring and disposing of, stocks, bonds,
16 options, commodities, derivatives, or other fi-
17 nancial instruments by an insured depository
18 institution, a company that controls an insured
19 depository institution or is treated as a bank
20 holding company for purposes of the Bank
21 Holding Company Act of 1956 (12 U.S.C. 1841
22 et seq.), and any subsidiary of such institution
23 or company, for the trading book of such insti-
24 tution, company, or subsidiary; and

1 (B) does not include purchasing or selling,
2 or otherwise acquiring and disposing of, stocks,
3 bonds, options, commodities, derivatives, or
4 other financial instruments on behalf of a cus-
5 tomer, as part of market making activities, or
6 otherwise in connection with or in facilitation of
7 customer relationships, including hedging activi-
8 ties related to such a purchase, sale, acquisi-
9 tion, or disposal; and

10 (3) the term “sponsoring”, when used with re-
11 spect to a hedge fund or private equity fund,
12 means—

13 (A) serving as a general partner, managing
14 member, or trustee of the fund;

15 (B) in any manner selecting or controlling
16 (or having employees, officers, directors, or
17 agents who constitute) a majority of the direc-
18 tors, trustees, or management of the fund; or

19 (C) sharing with the fund, for corporate,
20 marketing, promotional, or other purposes, the
21 same name or a variation of the same name.

22 (b) PROHIBITION ON PROPRIETARY TRADING.—

23 (1) IN GENERAL.—Subject to the recommenda-
24 tions and modifications of the Council under sub-
25 section (g), and except as provided in paragraph (2)

1 or (3), the appropriate Federal banking agencies
2 shall, through a rulemaking under subsection (g),
3 jointly prohibit proprietary trading by an insured de-
4 pository institution, a company that controls an in-
5 sured depository institution or is treated as a bank
6 holding company for purposes of the Bank Holding
7 Company Act of 1956 (12 U.S.C. 1841 et seq.), and
8 any subsidiary of such institution or company.

9 (2) EXCEPTED OBLIGATIONS.—

10 (A) IN GENERAL.—The prohibition under
11 this subsection shall not apply with respect to
12 an investment that is otherwise authorized by
13 Federal law in—

14 (i) obligations of the United States or
15 any agency of the United States, including
16 obligations fully guaranteed as to principal
17 and interest by the United States or an
18 agency of the United States;

19 (ii) obligations, participations, or
20 other instruments of, or issued by, the
21 Government National Mortgage Associa-
22 tion, the Federal National Mortgage Asso-
23 ciation, or the Federal Home Loan Mort-
24 gage Corporation, including obligations

1 fully guaranteed as to principal and inter-
2 est by such entities; and

3 (iii) obligations of any State or any
4 political subdivision of a State.

5 (B) CONDITIONS.—The appropriate Fed-
6 eral banking agencies may impose conditions on
7 the conduct of investments described in sub-
8 paragraph (A).

9 (C) RULE OF CONSTRUCTION.—Nothing in
10 subparagraph (A) may be construed to grant
11 any authority to any person that is not other-
12 wise provided in Federal law.

13 (3) FOREIGN ACTIVITIES.—An investment or
14 activity conducted by a company pursuant to para-
15 graph (9) or (13) of section 4(c) of the Bank Hold-
16 ing Company Act of 1956 (12 U.S.C. 1843(c)) solely
17 outside of the United States shall not be subject to
18 the prohibition under paragraph (1), provided that
19 the company is not directly or indirectly controlled
20 by a company that is organized under the laws of
21 the United States or of a State.

22 (c) PROHIBITION ON SPONSORING AND INVESTING IN
23 HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), and subject to the recommendations and

1 modifications of the Council under subsection (g),
2 the appropriate Federal banking agencies shall,
3 through a rulemaking under subsection (g), jointly
4 prohibit an insured depository institution, a com-
5 pany that controls an insured depository institution
6 or is treated as a bank holding company for pur-
7 poses of the Bank Holding Company Act of 1956
8 (12 U.S.C. 1841 et seq.), or any subsidiary of such
9 institution or company, from sponsoring or investing
10 in a hedge fund or a private equity fund.

11 (2) APPLICATION TO FOREIGN ACTIVITIES OF
12 FOREIGN FIRMS.—An investment or activity con-
13 ducted by a company pursuant to paragraph (9) or
14 (13) of section 4(e) of the Bank Holding Company
15 Act of 1956 (12 U.S.C. 1843(c)) solely outside of
16 the United States shall not be subject to the prohibi-
17 tions and restrictions under paragraph (1), provided
18 that the company is not directly or indirectly con-
19 trolled by a company that is organized under the
20 laws of the United States or of a State.

21 (d) INVESTMENTS IN SMALL BUSINESS INVESTMENT
22 COMPANIES AND INVESTMENTS DESIGNED TO PROMOTE
23 THE PUBLIC WELFARE.—

24 (1) IN GENERAL.—A prohibition imposed by
25 the appropriate Federal banking agencies under sub-

1 section (e) shall not apply with respect an invest-
2 ment otherwise authorized under Federal law that
3 is—

4 (A) an investment in a small business in-
5 vestment company, as that term is defined in
6 section 103 of the Small Business Investment
7 Act of 1958 (15 U.S.C. 662); or

8 (B) designed primarily to promote the pub-
9 lic welfare, as provided in the 11th paragraph
10 of section 5136 of the Revised Statutes (12
11 U.S.C. 24).

12 (2) RULE OF CONSTRUCTION.—Nothing in
13 paragraph (1) may be construed to grant any au-
14 thority to any person that is not otherwise provided
15 in Federal law.

16 (e) LIMITATIONS ON RELATIONSHIPS WITH HEDGE
17 FUNDS AND PRIVATE EQUITY FUNDS.—

18 (1) COVERED TRANSACTIONS.—An insured de-
19 pository institution, a company that controls an in-
20 sured depository institution or is treated as a bank
21 holding company for purposes of the Bank Holding
22 Company Act of 1956 (12 U.S.C. 1841 et seq.), and
23 any subsidiary of such institution or company that
24 serves, directly or indirectly, as the investment man-
25 ager or investment adviser to a hedge fund or pri-

1 vate equity fund may not enter into a covered trans-
2 action, as defined in section 23A of the Federal Re-
3 serve Act (12 U.S.C. 371e) with such hedge fund or
4 private equity fund.

5 (2) AFFILIATION.—An insured depository insti-
6 tution, a company that controls an insured deposi-
7 tory institution or is treated as a bank holding com-
8 pany for purposes of the Bank Holding Company
9 Act of 1956 (12 U.S.C. 1841 et seq.), and any sub-
10 sidiary of such institution or company that serves,
11 directly or indirectly, as the investment manager or
12 investment adviser to a hedge fund or private equity
13 fund shall be subject to section 23B of the Federal
14 Reserve Act (12 U.S.C. 371e-1) as if such institu-
15 tion, company, or subsidiary were a member bank
16 and such hedge fund or private equity fund were an
17 affiliate.

18 (f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR
19 CERTAIN NONBANK FINANCIAL COMPANIES.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), and subject to the recommendations and
22 modifications of the Council under subsection (g),
23 the Board of Governors shall adopt rules imposing
24 additional capital requirements and specifying addi-
25 tional quantitative limits for nonbank financial com-

1 panies supervised by the Board of Governors under
2 section 113 that engage in proprietary trading or
3 sponsoring and investing in hedge funds and private
4 equity funds.

5 (2) EXCEPTIONS.—The rules under this sub-
6 section shall not apply with respect to the trading of
7 an investment that is otherwise authorized by Fed-
8 eral law—

9 (A) in obligations of the United States or
10 any agency of the United States, including obli-
11 gations fully guaranteed as to principal and in-
12 terest by the United States or an agency of the
13 United States;

14 (B) in obligations, participations, or other
15 instruments of, or issued by, the Government
16 National Mortgage Association, the Federal Na-
17 tional Mortgage Association, or the Federal
18 Home Loan Mortgage Corporation, including
19 obligations fully guaranteed as to principal and
20 interest by such entities;

21 (C) in obligations of any State or any po-
22 litical subdivision of a State;

23 (D) in a small business investment com-
24 pany, as that term is defined in section 103 of

1 the Small Business Investment Act of 1958 (15
2 U.S.C. 662); or

3 (E) that is designed primarily to promote
4 the public welfare, as provided in the 11th
5 paragraph of section 5136 of the Revised Stat-
6 utes (12 U.S.C. 24).

7 (g) COUNCIL STUDY AND RULEMAKING.—

8 (1) STUDY AND RECOMMENDATIONS.—Not
9 later than 6 months after the date of enactment of
10 this Act, the Council—

11 (A) shall complete a study of the defini-
12 tions under subsection (a) and the other provi-
13 sions under subsections (b) through (f), to as-
14 sess the extent to which the definitions under
15 subsection (a) and the implementation of sub-
16 sections (b) through (f) would—

17 (i) promote and enhance the safety
18 and soundness of depository institutions
19 and the affiliates of depository institutions;

20 (ii) protect taxpayers and enhance fi-
21 nancial stability by minimizing the risk
22 that depository institutions and the affili-
23 ates of depository institutions will engage
24 in unsafe and unsound activities;

1 (iii) limit the inappropriate transfer of
2 Federal subsidies from institutions that
3 benefit from deposit insurance and liquid-
4 ity facilities of the Federal Government to
5 unregulated entities;

6 (iv) reduce inappropriate conflicts of
7 interest between the self-interest of deposi-
8 tory institutions, affiliates of depository in-
9 stitutions, and financial companies super-
10 vised by the Board, and the interests of
11 the customers of such institutions and
12 companies;

13 (v) raise the cost of credit or other fi-
14 nancial services, reduce the availability of
15 credit or other financial services, or impose
16 other costs on households and businesses
17 in the United States; and

18 (vi) limit activities that have caused
19 undue risk or loss in depository institu-
20 tions, affiliates of depository institutions,
21 and financial companies supervised by the
22 Board of Governors, or that might reason-
23 ably be expected to create undue risk or
24 loss in such institutions, affiliates, and
25 companies;

1 (B) shall make recommendations regarding
2 the definitions under subsection (a) and the im-
3 plementation of other provisions under sub-
4 sections (b) through (f), including any modifica-
5 tions to the definitions, prohibitions, require-
6 ments, and limitations contained therein that
7 the Council determines would more effectively
8 implement the purposes of this section; and

9 (C) may make recommendations for pro-
10 hibiting the conduct of the activities described
11 in subsections (b) and (c) above a specific
12 threshold amount and imposing additional cap-
13 ital requirements on activities conducted below
14 such threshold amount.

15 (2) RULEMAKING.—Not earlier than the date of
16 completion of the study required under paragraph
17 (1), and not later than 9 months after the date of
18 completion of such study—

19 (A) the appropriate Federal banking agen-
20 cies shall jointly issue final regulations imple-
21 menting subsections (b) through (e), which
22 shall reflect any recommendations or modifica-
23 tions made by the Council pursuant to para-
24 graph (1)(B); and

1 (B) the Board of Governors shall issue
2 final regulations implementing subsection (f),
3 which shall reflect any recommendations or
4 modifications made by the Council pursuant to
5 paragraph (1)(B).

6 (h) TRANSITION.—

7 (1) IN GENERAL.—The final regulations issued
8 by the appropriate Federal banking agencies and the
9 Board of Governors under subsection (g)(2) shall
10 provide that, effective 2 years after the date on
11 which such final regulations are issued, no insured
12 depository institution, company that controls an in-
13 sured depository institution, company that is treated
14 as a bank holding company for purposes of the Bank
15 Holding Company Act of 1956 (12 U.S.C. 1841 et
16 seq.), or subsidiary of such institution or company,
17 may retain any investment or relationship prohibited
18 under such regulations.

19 (2) EXTENSION.—

20 (A) IN GENERAL.—The appropriate Fed-
21 eral banking agency for an insured depository
22 institution or a company described in paragraph
23 (1) may, upon the application of any such com-
24 pany, extend the 2-year period under paragraph
25 (1) with respect to such company, if the appro-

1 “(D) a company that controls an insured
2 depository institution;

3 “(E) a nonbank financial company super-
4 vised by the Board; and

5 “(F) a foreign bank or company that is
6 treated as a bank holding company for purposes
7 of this Act; and

8 “(3) the term ‘liabilities’ means—

9 “(A) with respect to a United States finan-
10 cial company—

11 “(i) the total risk-weighted assets of
12 the financial company, as determined
13 under the risk-based capital rules applica-
14 ble to bank holding companies, as adjusted
15 to reflect exposures that are deducted from
16 regulatory capital; less

17 “(ii) the total regulatory capital of the
18 financial company under the risk-based
19 capital rules applicable to bank holding
20 companies;

21 “(B) with respect to a foreign-based finan-
22 cial company—

23 “(i) the total risk-weighted assets of
24 the United States operations of the finan-
25 cial company, as determined under the ap-

1 plicable risk-based capital rules, as ad-
2 justed to reflect exposures that are de-
3 ducted from regulatory capital; less

4 “(ii) the total regulatory capital of the
5 United States operations of the financial
6 company, as determined under the applica-
7 ble risk-based capital rules; and

8 “(C) with respect to an insurance company
9 or other nonbank financial company supervised
10 by the Board, such assets of the company as
11 the Board shall specify by rule, in order to pro-
12 vide for consistent and equitable treatment of
13 such companies.

14 “(b) CONCENTRATION LIMIT.—Subject to the rec-
15 ommendations by the Council under subsection (e), a fi-
16 nancial company may not merge or consolidate with, ac-
17 quire all or substantially all of the assets of, or otherwise
18 acquire control of, another company, if the total consoli-
19 dated liabilities of the acquiring financial company upon
20 consummation of the transaction would exceed 10 percent
21 of the aggregate consolidated liabilities of all financial
22 companies at the end of the calendar year preceding the
23 transaction.

24 “(c) EXCEPTION TO CONCENTRATION LIMIT.—With
25 the prior written consent of the Board, the concentration

1 limit under subsection (b) shall not apply to an acquisi-
2 tion—

3 “(1) of a bank in default or in danger of de-
4 fault;

5 “(2) with respect to which assistance is pro-
6 vided by the Federal Deposit Insurance Corporation
7 under section 13(c) of the Federal Deposit Insur-
8 ance Act (12 U.S.C. 1823(c)); or

9 “(3) that would result only in a de minimis in-
10 crease in the liabilities of the financial company.

11 “(d) RULEMAKING AND GUIDANCE.—The Board
12 shall issue regulations implementing this section in accord-
13 ance with the recommendations of the Council under sub-
14 section (e), including the definition of terms, as necessary.
15 The Board may issue interpretations or guidance regard-
16 ing the application of this section to an individual financial
17 company or to financial companies in general.

18 “(e) COUNCIL STUDY AND RULEMAKING.—

19 “(1) STUDY AND RECOMMENDATIONS.—Not
20 later than 6 months after the date of enactment of
21 this section, the Council shall—

22 “(A) complete a study of the extent to
23 which the concentration limit under this section
24 would affect financial stability, moral hazard in
25 the financial system, the efficiency and competi-

1 tiveness of United States financial firms and fi-
2 nancial markets, and the cost and availability of
3 credit and other financial services to households
4 and businesses in the United States; and

5 “(B) make recommendations regarding any
6 modifications to the concentration limit that the
7 Council determines would more effectively im-
8 plement this section.

9 “(2) RULEMAKING.—Not later than 9 months
10 after the date of completion of the study under para-
11 graph (1), and notwithstanding subsections (b) and
12 (d), the Board shall issue final regulations imple-
13 menting this section, which shall reflect any rec-
14 ommendations by the Council under paragraph
15 (1)(B).”.

16 **TITLE VII—IMPROVEMENTS TO**
17 **REGULATION OF OVER-THE-**
18 **COUNTER DERIVATIVES MAR-**
19 **KETS**

20 **SEC. 701. SHORT TITLE.**

21 This title may be cited as the “Over-the-Counter De-
22 rivatives Markets Act of 2010”.

23 **SEC. 702. FINDINGS AND PURPOSES.**

24 (a) FINDINGS.—Congress finds that—

1 (1) in recent years, the global over-the-counter
2 derivatives market in notional amounts outstanding
3 has grown rapidly, from \$91 trillion in 1998 to \$592
4 trillion in 2008 according to the Bank for Inter-
5 national Settlements;

6 (2) the interconnectedness of the country's larg-
7 est financial institutions through the unregulated de-
8 rivatives market raised significant concerns about
9 counterparty risk exposures during the recent finan-
10 cial crisis;

11 (3) a substantial amount of American taxpayer
12 money was used to make counterparty payments be-
13 cause there was insufficient margin and capital held
14 by large financial institutions;

15 (4) although derivatives can be used to manage
16 risk, they can also increase leverage and allow exces-
17 sive risk-taking because market participants can
18 take large positions on a relatively small capital
19 base;

20 (5) in the over-the-counter derivatives market,
21 margin requirements are set bilaterally and do not
22 take into account the risk that each trade imposes
23 on the rest of the financial system, thereby allowing
24 systemically important exposures to build up without

1 sufficient capital to mitigate associated risks to
2 American taxpayers and the financial system;

3 (6) in the recent crisis, fears about
4 counterparty risk exposures caused credit markets to
5 freeze, as market participants questioned the viabil-
6 ity of counterparties and the safety of their own as-
7 sets;

8 (7) lack of transparency about counterparty ex-
9 posures and valuation of derivatives positions made
10 it more difficult for regulators to respond to the cri-
11 sis and made resolution of these positions more ex-
12 pensive for the taxpayer;

13 (8) bilaterally-executed derivatives contracts can
14 provide key benefits to certain market participants
15 and should be permitted under comprehensive regu-
16 lation, but all derivatives activities should be accom-
17 panied by appropriate risk management and pruden-
18 tial standards;

19 (9) the derivatives market suffers from a lack
20 of reliable and accurate transaction information that
21 is available to the public, investors, market partici-
22 pants, and regulators, hampering surveillance and
23 oversight of such markets;

24 (10) clearing more derivatives through well-reg-
25 ulated central counterparties will benefit the public

1 by reducing costs and risks to American taxpayers,
2 the financial system, and market participants;

3 (11) trading more derivatives on regulated ex-
4 changes should be encouraged because it will result
5 in more price transparency, efficiency in execution,
6 and liquidity; and

7 (12) the Group of 20 nations agreed that—

8 (A) all standardized over-the-counter deriv-
9 ative contracts should be traded on exchanges
10 or electronic trading platforms, where appro-
11 priate, and cleared through central counterpar-
12 ties by the end of calendar year 2012 at the lat-
13 est;

14 (B) over-the-counter derivative contracts
15 should be reported to trade repositories; and

16 (C) non-centrally cleared contracts should
17 be subject to higher capital requirements.

18 (b) PURPOSES.—The purposes of this title are—

19 (1) to establish well-regulated markets for de-
20 rivatives to increase transparency and reduce costs
21 and risks to American taxpayers, the financial sys-
22 tem, and market participants; and

23 (2) to promote the public interest, the protec-
24 tion of investors, the protection of market partici-

1 pants, and the maintenance of fair and orderly mar-
2 kets to assure—

3 (A) the prompt and accurate clearance and
4 settlement of transactions in derivatives that
5 can be cleared through a central counterparty;

6 (B) the prompt and accurate reporting of
7 transactions to regulators and trade reposi-
8 tories;

9 (C) the availability to the public, investors,
10 market participants, and regulators of reliable
11 and accurate quotation and transaction infor-
12 mation in derivatives;

13 (D) economically efficient execution of
14 transactions in swaps and security-based swaps;
15 and

16 (E) fair competition among markets in the
17 trading of swaps and security-based swaps.

18 **Subtitle A—Regulation of Swap** 19 **Markets**

20 **SEC. 711. DEFINITIONS.**

21 (a) AMENDMENTS TO DEFINITIONS IN THE COM-
22 MODITY EXCHANGE ACT.—Section 1a of the Commodity
23 Exchange Act (7 U.S.C. 1a) is amended—

24 (1) by redesignating paragraph (34) as para-
25 graph (35);

1 (2) by adding after paragraph (33) the fol-
2 lowing:

3 “(34) SWAP.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the term ‘swap’ means any
6 agreement, contract, or transaction that—

7 “(i) is a put, call, cap, floor, collar, or
8 similar option of any kind for the purchase
9 or sale of, or based on the value of, 1 or
10 more interest or other rates, currencies,
11 commodities, securities, instruments of in-
12 debtedness, indices, quantitative measures,
13 or other financial or economic interests or
14 property of any kind;

15 “(ii) provides for any purchase, sale,
16 payment, or delivery (other than a dividend
17 on an equity security) that is dependent on
18 the occurrence, nonoccurrence, or the ex-
19 tent of the occurrence of an event or con-
20 tingency associated with a potential finan-
21 cial, economic, or commercial consequence;

22 “(iii) provides on an executory basis
23 for the exchange, on a fixed or contingent
24 basis, of 1 or more payments based on the
25 value or level of 1 or more interest or other

1 rates, currencies, commodities, securities,
2 instruments of indebtedness, indices, quan-
3 titative measures, or other financial or eco-
4 nomic interests or property of any kind, or
5 any interest therein or based on the value
6 thereof, and that transfers, as between the
7 parties to the transaction, in whole or in
8 part, the financial risk associated with a
9 future change in any such value or level
10 without also conveying a current or future
11 direct or indirect ownership interest in an
12 asset (including any enterprise or invest-
13 ment pool) or liability that incorporates the
14 financial risk so transferred, including any
15 agreement, contract, or transaction com-
16 monly known as an interest rate swap, a
17 rate floor, rate cap, rate collar, cross-cur-
18 rency rate swap, basis swap, currency
19 swap, total return swap, equity index swap,
20 equity swap, debt index swap, debt swap,
21 credit spread, credit default swap, credit
22 swap, weather swap, energy swap, metal
23 swap, agricultural swap, emissions swap,
24 or commodity swap;

1 “(iv) is an agreement, contract, or
2 transaction that is, or in the future be-
3 comes, commonly known to the trade as a
4 swap; or

5 “(v) is any combination or permuta-
6 tion of, or option on, any agreement, con-
7 tract, or transaction described in any of
8 clauses (i) through (iv).

9 “(B) EXCLUSIONS.—The term ‘swap’ does
10 not include—

11 “(i) any contract of sale of a com-
12 modity for future delivery or security fu-
13 tures product traded on or subject to the
14 rules of any board of trade designated as
15 a contract market under section 5 or 5f;

16 “(ii) any sale of a nonfinancial com-
17 modity or any security for deferred ship-
18 ment or delivery, so long as such trans-
19 action is physically settled;

20 “(iii) any put, call, straddle, option, or
21 privilege on any security, certificate of de-
22 posit, or group or index of securities, in-
23 cluding any interest therein or based on
24 the value thereof;

1 “(iv) any put, call, straddle, option, or
2 privilege relating to foreign currency en-
3 tered into on a national securities exchange
4 registered pursuant to section 6(a) of the
5 Securities Exchange Act of 1934 (15
6 U.S.C. 78f(a));

7 “(v) any agreement, contract, or
8 transaction providing for the purchase or
9 sale of 1 or more securities on a fixed
10 basis;

11 “(vi) any agreement, contract, or
12 transaction providing for the purchase or
13 sale of 1 or more securities on a contingent
14 basis, unless such agreement, contract, or
15 transaction predicates such purchase or
16 sale on the occurrence of a bona fide con-
17 tingency that might reasonably be expected
18 to affect or be affected by the creditworthi-
19 ness of a party other than a party to the
20 agreement, contract, or transaction;

21 “(vii) any note, bond, or evidence of
22 indebtedness that is a security as defined
23 in section 2(a)(1) of the Securities Act of
24 1933 (15 U.S.C. 77b(a)(1)); or

1 “(viii) any agreement, contract, or
2 transaction that is—

3 “(I) based on a security; and

4 “(II) entered into directly or
5 through an underwriter, as that term
6 is defined in section 2(a)(11) of the
7 Securities Act of 1933 (15 U.S.C.
8 77b(a)(11)), by the issuer of such se-
9 curity for the purposes of raising cap-
10 ital, unless such agreement, contract,
11 or transaction is entered into to man-
12 age a risk associated with capital rais-
13 ing;

14 “(ix) any foreign exchange swap;

15 “(x) any foreign exchange forward;

16 “(xi) any agreement, contract, or
17 transaction a counterparty of which is a
18 Federal Reserve bank, the United States
19 Government, or an agency of the United
20 States Government that is expressly
21 backed by the full faith and credit of the
22 United States; and

23 “(xii) any security-based swap, other
24 than a security-based swap as described in
25 section 3(a)(68)(C) of the Securities Ex-

1 change Act of 1934 (15 U.S.C.
2 78c(a)(68)(C)).

3 “(C) RULE OF CONSTRUCTION REGARDING
4 MASTER AGREEMENTS.—The term ‘swap’ shall
5 be construed to include a master agreement
6 that provides for an agreement, contract, or
7 transaction that is a swap pursuant to subpara-
8 graph (A), together with all supplements to any
9 such master agreement, without regard to
10 whether the master agreement contains an
11 agreement, contract, or transaction that is not
12 a swap pursuant to subparagraph (A), except
13 that the master agreement shall be considered
14 to be a swap only with respect to each agree-
15 ment, contract, or transaction under the master
16 agreement that is a swap pursuant to subpara-
17 graph (A).”;

18 (3) in paragraph (12)—

19 (A) in subparagraph (A)—

20 (i) in clause (ii), by striking “deter-
21 mined by the Commission” and inserting
22 “determined jointly by the Commission
23 and the Securities and Exchange Commis-
24 sion”;

25 (ii) in clause (v)—

1 (I) in subclause (I)—

2 (aa) by inserting “net” after
3 “total”; and

4 (bb) by inserting “or” after
5 the semicolon;

6 (II) in subclause (II), by striking
7 “the obligations” and all that follows
8 through “\$1,000,000; and” and in-
9 serting the following:

10 “(II) that—

11 “(aa) has total net assets
12 exceeding \$5,000,000; and”;

13 (iii) in clause (vii), by striking “except
14 that” and all that follows through “section
15 2(c)(2)(B)(ii);” and inserting the following:
16 “except that such term does not include a
17 State or an entity, political subdivision, in-
18 strumentality, agency, or department re-
19 ferred to in subclause (I) or (III) of this
20 clause unless the State, entity, political
21 subdivision, instrumentality, agency, or de-
22 partment owns and invests on a discre-
23 tionary basis \$50,000,000 or more in in-
24 vestments, provided that, with respect to
25 any State or entity, political subdivision,

1 instrumentality, agency or department of a
2 State, such amount is exclusive of any pro-
3 ceeds from any offering of municipal secu-
4 rities as defined in section 3(a)(29) of the
5 Securities Exchange Act of 1934 (15
6 U.S.C. 78c(a)(29));” and

7 (iv) in clause (xi), by striking “total
8 assets in an amount” and inserting
9 “amounts invested on a discretionary
10 basis”;

11 (v) in clause (xi), by striking “an indi-
12 vidual” and all that follows through “of—
13 ” and inserting “a natural person who—”;
14 and

15 (vi) in clause (xi)—

16 (I) in subclause (I), by inserting
17 “owns and invests on a discretionary
18 basis in excess of” before
19 “\$10,000,000”; and

20 (II) in subclause (II), by insert-
21 ing “owns and invests on a discre-
22 tionary basis in excess of” before
23 “\$5,000,000”; and

24 (B) in subparagraph (C), by striking “de-
25 termines” and inserting “and the Securities and

1 Exchange Commission may further jointly de-
2 termine”;

3 (4) in paragraph (29)—

4 (A) by striking subparagraph (B);

5 (B) by redesignating subparagraphs (C)
6 and (D) as subparagraphs (B) and (C), respec-
7 tively.

8 (C) by redesignating subparagraph (E) as
9 subparagraph (F);

10 (D) in subparagraph (C) (as so redesign-
11 ated), by striking “and”; and

12 (E) by inserting after subparagraph (C)
13 (as so redesignated) the following:

14 “(D) an alternative swap execution facility
15 registered under section 5h;

16 “(E) a swap repository; and”; and

17 (5) by adding after paragraph (35) (as so re-
18 designated) the following:

19 “(36) BOARD.—The term ‘Board’ means the
20 Board of Governors of the Federal Reserve System.

21 “(37) SECURITY-BASED SWAP.—The term ‘se-
22 curity-based swap’ has the same meaning as in sec-
23 tion 3(a)(68) of the Securities Exchange Act of
24 1934 (15 U.S.C. 78c(a)(68)).

25 “(38) SWAP DEALER.—

1 “(A) IN GENERAL.—The term ‘swap deal-
2 er’ means any person engaged in the business
3 of buying and selling swaps for such person’s
4 own account, through a broker or otherwise.

5 “(B) EXCEPTION.—The term ‘swap dealer’
6 does not include a person that buys or sells
7 swaps for such person’s own account, either in-
8 dividually or in a fiduciary capacity, but not as
9 a part of a regular business.

10 “(39) MAJOR SWAP PARTICIPANT.—

11 “(A) IN GENERAL.—The term ‘major swap
12 participant’ means any person who is not a
13 swap dealer and—

14 “(i) who maintains a substantial net
15 position in outstanding swaps, excluding
16 positions held primarily for hedging, reduc-
17 ing, or otherwise mitigating commercial
18 risk; or

19 “(ii) whose failure to perform under
20 the terms of its swaps would cause signifi-
21 cant credit losses to its swap counterpar-
22 ties.

23 “(B) IMPLEMENTATION.—The Commission
24 shall implement the definition under this para-
25 graph by rule or regulation in a manner that is

1 prudent for the effective monitoring, manage-
2 ment, and oversight of the financial system.

3 “(40) MAJOR SECURITY-BASED SWAP PARTICI-
4 PANT.—The term ‘major security-based swap partici-
5 pant’ has the same meaning as in section 3(a)(67)
6 of the Securities Exchange Act of 1934 (15 U.S.C.
7 78c(a)(67)).

8 “(41) APPROPRIATE FEDERAL BANKING AGEN-
9 CY.—The term ‘appropriate Federal banking agency’
10 has the same meaning as in section 3 of the Federal
11 Deposit Insurance Act (12 U.S.C. 1813).

12 “(42) SECURITY-BASED SWAP DEALER.—The
13 term ‘security-based swap dealer’ has the same
14 meaning as in section 3(a)(71) of the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78c(a)(71)).

16 “(43) GOVERNMENT SECURITY.—The term
17 ‘government security’ has the same meaning as in
18 section 3(a)(42) of the Securities Exchange Act of
19 1934 (15 U.S.C. 78c(a)(42)).

20 “(44) FOREIGN EXCHANGE FORWARD.—The
21 term ‘foreign exchange forward’ means a transaction
22 that solely involves the exchange of 2 different cur-
23 rencies on a specific future date at a fixed rate
24 agreed at the inception of the contract.

1 “(45) FOREIGN EXCHANGE SWAP.—The term
2 ‘foreign exchange swap’ means a transaction that
3 solely involves the exchange of 2 different currencies
4 on a specific date at a fixed rate agreed at the incep-
5 tion of the contract, and a reverse exchange of the
6 same 2 currencies at a date further in the future
7 and at a fixed rate agreed at the inception of the
8 contract.

9 “(46) PERSON ASSOCIATED WITH A SECURITY-
10 BASED SWAP DEALER OR MAJOR SECURITY-BASED
11 SWAP PARTICIPANT.—The term ‘person associated
12 with a security-based swap dealer or major security-
13 based swap participant’ has the same meaning as in
14 section 3(a)(70) of the Securities Exchange Act of
15 1934 (15 U.S.C. 78c(a)(70)).

16 “(47) PERSON ASSOCIATED WITH A SWAP
17 DEALER OR MAJOR SWAP PARTICIPANT.—The term
18 ‘person associated with a swap dealer or major swap
19 participant’ or ‘associated person of a swap dealer or
20 major swap participant’ means—

21 “(A) any partner, officer, director, or
22 branch manager of such swap dealer or major
23 swap participant (or any person occupying a
24 similar status or performing similar functions);

1 “(B) any person directly or indirectly con-
2 trolling, controlled by, or under common control
3 with such swap dealer or major swap partici-
4 pant; or

5 “(C) any employee of such swap dealer or
6 major swap participant, except that any person
7 associated with a swap dealer or major swap
8 participant whose functions are solely clerical or
9 ministerial shall not be included in the meaning
10 of such term other than for purposes of section
11 4s(b)(6) of this Act.

12 “(48) SWAP REPOSITORY.—The term ‘swap re-
13 pository’ means any person that collects, calculates,
14 processes, or prepares information with respect to
15 transactions or positions in swaps or security-based
16 swaps.

17 “(49) PRIMARY FINANCIAL REGULATORY AGEN-
18 CY.—The term ‘primary financial regulatory agency’
19 has the same meaning as in section 2 of the Restor-
20 ing American Financial Stability Act of 2010.”.

21 (b) JOINT RULEMAKING ON FURTHER DEFINITION
22 OF TERMS.—

23 (1) IN GENERAL.—The Commodity Futures
24 Trading Commission and the Securities and Ex-
25 change Commission shall jointly adopt a rule or

1 rules further defining the terms “swap”, “security-
2 based swap”, “swap dealer”, “security-based swap
3 dealer”, “major swap participant”, “major security-
4 based swap participant”, and “eligible contract par-
5 ticipant” not later than 180 days after the effective
6 date of this title.

7 (2) PREVENTION OF EVASIONS.—The Com-
8 modity Futures Trading Commission and the Securi-
9 ties and Exchange Commission may jointly prescribe
10 rules defining the term “swap” or “security-based
11 swap” to include transactions that have been struc-
12 tured to evade this title.

13 (c) JOINT RULEMAKING UNDER THIS TITLE.—

14 (1) UNIFORM RULES.—Rules and regulations
15 prescribed jointly under this title by the Commodity
16 Futures Trading Commission and the Securities and
17 Exchange Commission shall be uniform.

18 (2) FINANCIAL STABILITY OVERSIGHT COUN-
19 CIL.—In the event that the Commodity Futures
20 Trading Commission and the Securities and Ex-
21 change Commission fail to jointly prescribe rules
22 pursuant to paragraph (1) in a timely manner, at
23 the request of either Commission, the Financial Sta-
24 bility Oversight Council shall resolve the dispute—

1 (A) within a reasonable time after receiv-
2 ing the request;

3 (B) after consideration of relevant infor-
4 mation provided by each Commission; and

5 (C) by agreeing with one of the Commis-
6 sions regarding the entirety of the matter or by
7 determining a compromise position.

8 (3) TREATMENT OF SIMILAR PRODUCTS.—In
9 adopting joint rules and regulations under this title,
10 the Commodity Futures Trading Commission and
11 the Securities and Exchange Commission shall treat
12 functionally or economically similar products simi-
13 larly.

14 (4) TREATMENT OF DISSIMILAR PRODUCTS.—
15 Nothing in this title shall be construed to require
16 the Commodity Futures Trading Commission and
17 the Securities and Exchange Commission to adopt
18 joint rules that treat functionally or economically
19 different products identically.

20 (5) JOINT INTERPRETATION.—Any interpreta-
21 tion of, or guidance regarding, a provision of this
22 title, shall be effective only if issued jointly by the
23 Commodity Futures Trading Commission and the
24 Securities and Exchange Commission if this title re-
25 quires the Commodity Futures Trading Commission

1 and the Securities and Exchange Commission to
2 issue joint regulations to implement the provision.

3 (d) EXEMPTIONS.—Section 4(c)(1) of the Commodity
4 Exchange Act (7 U.S.C. 6(c)(1)) is amended by adding
5 at the end the following: “The Commission shall not have
6 the authority to grant exemptions from the swap-related
7 provisions of the Over-the-Counter Derivatives Markets
8 Act of 2010, except as expressly authorized under the pro-
9 visions of that Act.”.

10 **SEC. 712. JURISDICTION.**

11 (a) EXCLUSIVE JURISDICTION.—The first sentence
12 of section 2(a)(1)(A) of the Commodity Exchange Act (7
13 U.S.C. 2(a)(1)(A)) is amended—

14 (1) by inserting “the Over-the-Counter Deriva-
15 tives Markets Act of 2010 and” after “otherwise
16 provided in”;

17 (2) by striking “subsections (e) through (i)”
18 and inserting “subsections (c) and (f)”; and

19 (3) by striking “involving contracts of sale” and
20 inserting “involving swaps, or contracts of sale”.

21 (b) ADDITIONS.—Section 2(c)(2)(A) of the Com-
22 modity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

23 (1) in clause (i), by striking “or”;

24 (2) by redesignating clause (ii) as clause (iii);

25 and

1 (3) by inserting after clause (i) the following:

2 “(ii) a swap; or”.

3 (c) LIMITATION.—Section 2 of the Commodity Ex-
4 change Act (7 U.S.C. 2) is amended by amending sub-
5 section (g) to read as follows:

6 “(g) EXCLUSION FOR SECURITIES.—Notwith-
7 standing any other provision of law, the Over-the-Counter
8 Derivatives Markets Act of 2010 shall not apply to, and
9 the Commodity Futures Trading Commission shall have
10 no jurisdiction under such Act (or any amendments to the
11 Commodity Exchange Act made by such Act) with respect
12 to, any security other than a security-based swap.”.

13 **SEC. 713. CLEARING.**

14 (a) CLEARING REQUIREMENT.—

15 (1) REPEALS.—Subsections (d), (e), and (h) of
16 section 2 of the Commodity Exchange Act (7 U.S.C.
17 2(d), 2(e), and 2(h)) are repealed.

18 (2) APPLICABILITY.—Section 2 of the Com-
19modity Exchange Act (7 U.S.C. 2) is further amend-
20ed by inserting after subsection (c) the following:

21 “(d) SWAPS.—Nothing in this Act, other than sub-
22 sections (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(G), (f),
23 and (j), sections 4a, 4b, 4b–1, 4c(a), 4c(b), 4o, 4r, 4s,
24 4t, 4u, 5, 5b, 5c, 5h, 6(c), 6(d), 6e, 6d, 8, 8a, 9, 12(e)(2),
25 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provi-

1 sions of this Act as are applicable by their terms to reg-
2 istered entities and Commission registrants, governs or
3 applies to a swap.

4 “(e) LIMITATION ON PARTICIPATION.—It shall be
5 unlawful for any person, other than an eligible contract
6 participant, to enter into a swap unless the swap is en-
7 tered into on or subject to the rules of a board of trade
8 designated as a contract market under section 5.”.

9 (3) CLEARING REQUIREMENT.—Section 2 of
10 the Commodity Exchange Act (7 U.S.C. 2) is fur-
11 ther amended by adding at the end the following:

12 “(j) CLEARING REQUIREMENT.—

13 “(1) SUBMISSION.—

14 “(A) IN GENERAL.—Except as provided in
15 paragraph (9), any person who is a party to a
16 swap shall submit such swap for clearing to a
17 derivatives clearing organization that is reg-
18 istered under this Act or a derivatives clearing
19 organization that is exempt from registration
20 under section 5b(j) of this Act.

21 “(B) REQUIRED CONDITIONS.—The rules
22 of a derivatives clearing organization described
23 in subparagraph (A) shall—

24 “(i) prescribe that all swaps with the
25 same terms and conditions accepted for

1 clearing by the derivatives clearing organi-
2 zation are fungible and may be offset with
3 each other; and

4 “(ii) provide for nondiscriminatory
5 clearing of a swap executed on or through
6 the rules of an unaffiliated designated con-
7 tract market or an alternative swap execu-
8 tion facility.

9 “(2) COMMISSION APPROVAL.—

10 “(A) IN GENERAL.—A derivatives clearing
11 organization shall submit to the Commission for
12 prior approval any group, category, type, or
13 class of swaps that the derivatives clearing or-
14 ganization seeks to accept for clearing, which
15 submission the Commission shall make available
16 to the public.

17 “(B) DEADLINE.—The Commission shall
18 take final action on a request submitted pursu-
19 ant to subparagraph (A) not later than 90 days
20 after submission of the request, unless the de-
21 rivatives clearing organization submitting the
22 request agrees to an extension of the time limi-
23 tation established under this subparagraph.

24 “(C) APPROVAL.—The Commission shall
25 approve, unconditionally or subject to such

1 terms and conditions as the Commission deter-
2 mines to be appropriate, any request submitted
3 pursuant to subparagraph (A) if the Commis-
4 sion finds that the request is consistent with
5 section 5b(c)(2). The Commission shall approve
6 any such request if the Commission does not
7 make such finding.

8 “(D) RULES.—Not later than 180 days
9 after the date of the enactment of the Over-the-
10 Counter Derivatives Markets Act of 2010, the
11 Commission shall adopt rules for a derivatives
12 clearing organization’s submission for approval,
13 pursuant to this paragraph, of any group, cat-
14 egory, type, or class of swaps that the deriva-
15 tive clearing organization seeks to accept for
16 clearing.

17 “(3) STAY OF CLEARING REQUIREMENT.—At
18 any time after issuance of an approval pursuant to
19 paragraph (2):

20 “(A) REVIEW PROCESS.—The Commission,
21 on application of a counterparty to a swap or
22 on its own initiative, may stay the clearing re-
23 quirement of paragraph (1) until the Commis-
24 sion completes a review of the terms of the

1 swap, or the group, category, type, or class of
2 swaps, and the clearing arrangement.

3 “(B) DEADLINE.—The Commission shall
4 complete a review undertaken pursuant to sub-
5 paragraph (A) not later than 90 days after
6 issuance of the stay, unless the derivatives
7 clearing organization that clears the swap, or
8 the group, category, type or class of swaps,
9 agrees to an extension of the time limitation es-
10 tablished under this subparagraph.

11 “(C) DETERMINATION.—Upon completion
12 of the review undertaken pursuant to subpara-
13 graph (A)—

14 “(i) the Commission may determine,
15 unconditionally or subject to such terms
16 and conditions as the Commission deter-
17 mines to be appropriate, that the swap, or
18 the group, category, type, or class of
19 swaps, must be cleared pursuant to this
20 subsection if the Commission finds that
21 such clearing—

22 “(I) is consistent with section
23 5b(c)(2); and

24 “(II) is otherwise in the public
25 interest, for the protection of inves-

1 tors, and consistent with the purposes
2 of this title;

3 “(ii) the Commission may determine
4 that the clearing requirement of paragraph
5 (1) shall not apply to the swap, or the
6 group, category, type, or class of swaps; or

7 “(iii) if a determination is made that
8 the clearing requirement of paragraph (1)
9 shall no longer apply, then it shall still be
10 permissible to clear such swap, or the
11 group, category, type, or class of swaps.

12 “(D) RULES.—Not later than 180 days
13 after the date of the enactment of the Over-the-
14 Counter Derivatives Markets Act of 2010, the
15 Commission shall adopt rules for reviewing,
16 pursuant to this paragraph, a derivatives clear-
17 ing organization’s clearing of a swap, or a
18 group, category, type, or class of swaps that the
19 Commission has accepted for clearing.

20 “(4) SWAPS REQUIRED TO BE ACCEPTED FOR
21 CLEARING.—

22 “(A) RULEMAKING.—Not later than 180
23 days of the date of enactment of the Over-the-
24 Counter Derivatives Markets Act of 2010, the
25 Commission and the Securities and Exchange

1 Commission shall jointly adopt rules to further
2 identify any group, category, type, or class of
3 swaps not submitted for approval under para-
4 graph (2) that the Commission and Securities
5 and Exchange Commission deem should be ac-
6 cepted for clearing. In adopting such rules, the
7 Commission and the Securities and Exchange
8 Commission shall take into account the fol-
9 lowing factors:

10 “(i) The extent to which any of the
11 terms of the group, category, type, or class
12 of swaps, including price, are disseminated
13 to third parties or are referenced in other
14 agreements, contracts, or transactions.

15 “(ii) The volume of transactions in
16 the group, category, type, or class of
17 swaps.

18 “(iii) The extent to which the terms of
19 the group, category, type, or class of swaps
20 are similar to the terms of other agree-
21 ments, contracts, or transactions that are
22 centrally cleared.

23 “(iv) Whether any differences in the
24 terms of the group, category, type, or class
25 of swaps, compared to other agreements,

1 contracts, or transactions that are cen-
2 trally cleared, are of economic significance.

3 “(v) Whether a derivatives clearing
4 organization is prepared to clear the
5 group, category, type, or class of swaps
6 and such derivatives clearing organization
7 has in place effective risk management sys-
8 tems.

9 “(vi) Any other factors the Commis-
10 sion and the Securities and Exchange
11 Commission determine to be appropriate.

12 “(B) OTHER DESIGNATIONS.—At any time
13 after the adoption of the rules required under
14 subparagraph (A), the Commission may sepa-
15 rately designate a particular swap or class of
16 swaps as subject to the clearing requirement in
17 paragraph (1), taking into account the factors
18 described in clauses (i) through (vi) of subpara-
19 graph (A) and the joint rules adopted under
20 such subparagraph.

21 “(5) PREVENTION OF EVASION.—The Commis-
22 sion and the Securities and Exchange Commission
23 shall have authority to prescribe rules under this
24 subsection, or issue interpretations of such rules, as
25 necessary to prevent evasions of this subsection pro-

1 vided that any such rules or interpretations shall be
2 issued jointly to be effective.

3 “(6) REQUIRED REPORTING.—

4 “(A) BOTH COUNTERPARTIES.—Both
5 counterparties to a swap that is not cleared by
6 any derivatives clearing organization shall re-
7 port such a swap either to a registered swap re-
8 pository described in section 21 or, if there is
9 no repository that would accept the swap, to the
10 Commission pursuant to section 4r.

11 “(B) TIMING.—Counterparties to a swap
12 shall submit the reports required under sub-
13 paragraph (A) not later than such time period
14 as the Commission may by rule or regulation
15 prescribe.

16 “(7) TRANSITION RULES.—

17 “(A) REPORTING TRANSITION RULES.—
18 Rules adopted by the Commission under this
19 section shall provide for the reporting of data,
20 as follows:

21 “(i) Swaps entered into before the
22 date of the enactment of this subsection
23 shall be reported to a registered swap re-
24 pository or the Commission not later than

1 180 days after the effective date of this
2 subsection.

3 “(ii) Swaps entered into on or after
4 such date of enactment shall be reported to
5 a registered swap repository or the Com-
6 mission not later than the later of—

7 “(I) 90 days after such effective
8 date; or

9 “(II) such other time after enter-
10 ing into the swap as the Commission
11 may prescribe by rule or regulation.

12 “(B) CLEARING TRANSITION RULES.—

13 “(i) Swaps entered into before the
14 date of the enactment of this subsection
15 are exempt from the clearing requirements
16 of this subsection if reported pursuant to
17 subparagraph (A)(i).

18 “(ii) Swaps entered into before appli-
19 cation of the clearing requirement pursu-
20 ant to this subsection are exempt from the
21 clearing requirements of this subsection if
22 reported pursuant to subparagraph (A)(ii).

23 “(8) TRADE EXECUTION.—

24 “(A) IN GENERAL.—With respect to trans-
25 actions involving swaps subject to the clearing

1 requirement of paragraph (1), counterparties
2 shall—

3 “(i) execute the transaction on a
4 board of trade designated as a contract
5 market under section 5; or

6 “(ii) execute the transaction on an al-
7 ternative swap execution facility registered
8 under section 5h or an alternative swap
9 execution facility that is exempt from reg-
10 istration under section 5h(f) of this Act.

11 “(B) EXCEPTION.—The requirements of
12 clauses (i) and (ii) of subparagraph (A) shall
13 not apply if no board of trade or alternative
14 swap execution facility makes the swap avail-
15 able to trade.

16 “(9) EXEMPTIONS.—

17 “(A) REQUIRED EXEMPTION.—The Com-
18 mission shall exempt a swap from the require-
19 ments of paragraphs (1) and (8), and any rules
20 issued under this subsection, if no derivatives
21 clearing organization registered under this Act
22 or no derivatives clearing organization that is
23 exempt from registration under section 5b(j) of
24 this Act will accept the swap for clearing.

1 “(B) PERMISSIVE EXEMPTION.—The Com-
2 mission by rule or order, in consultation with
3 the Financial Stability Oversight Council and
4 as the Commission deems consistent with the
5 public interest, may conditionally or uncondi-
6 tionally exempt a swap from the requirements
7 of paragraphs (1) and (8), and any rules issued
8 under this subsection, if 1 of the counterparties
9 to the swap—

10 “(i) is not a swap dealer or major
11 swap participant; and

12 “(ii) does not meet the eligibility re-
13 quirements of any derivatives clearing or-
14 ganization that clears the swap.

15 “(C) OPTION TO CLEAR.—If a swap is ex-
16 empt from the clearing requirements of para-
17 graph (1)—

18 “(i) the parties to the swap may sub-
19 mit the swap for clearing; and

20 “(ii) the swap shall be submitted for
21 clearing upon the request of a party to the
22 swap.”.

23 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

1 (1) IN GENERAL.—Subsections (a) and (b) of
2 section 5b of the Commodity Exchange Act (7
3 U.S.C. 7a–1) are amended to read as follows:

4 “(a) REGISTRATION REQUIREMENT.—It shall be un-
5 lawful for a derivatives clearing organization, unless reg-
6 istered with the Commission, directly or indirectly to make
7 use of the mails or any means or instrumentality of inter-
8 state commerce to perform the functions of a derivatives
9 clearing organization described in section 1a(9) with re-
10 spect to—

11 “(1) a contract of sale of a commodity for fu-
12 ture delivery (or option on such a contract) or option
13 on a commodity, in each case unless the contract or
14 option is—

15 “(A) excluded from this Act by section
16 2(a)(1)(C)(i), 2(c), or 2(f); or

17 “(B) a security futures product cleared by
18 a clearing agency registered with the Securities
19 and Exchange Commission under the Securities
20 Exchange Act of 1934 (15 U.S.C. 78a et seq.);
21 or

22 “(2) a swap.

23 “(b) VOLUNTARY REGISTRATION.—

24 “(1) DERIVATIVES CLEARING ORGANIZA-
25 TIONS.—A person that clears agreements, contracts,

1 or transactions that are not required to be cleared
2 under this Act may register with the Commission as
3 a derivatives clearing organization.

4 “(2) CLEARING AGENCIES.—A derivatives clear-
5 ing organization may clear security-based swaps that
6 are required to be cleared by a person who is reg-
7 istered as a clearing agency under the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78a et seq.).”

9 (2) REQUIRED REGISTRATION.—Section 5b of
10 the Commodity Exchange Act (7 U.S.C. 7a–1) is
11 amended by adding at the end the following:

12 “(g) REQUIRED REGISTRATION FOR BANKS AND
13 CLEARING AGENCIES.—Any person that is required to be
14 registered as a derivatives clearing organization under this
15 section shall register with the Commission regardless of
16 whether that person is also a bank or a clearing agency
17 registered with the Securities and Exchange Commission
18 under the Securities Exchange Act of 1934 (15 U.S.C.
19 78a et seq.).

20 “(h) HARMONIZATION OF RULES.—Not later than
21 180 days after the effective date of the Over-the-Counter
22 Derivatives Markets Act of 2010, the Commission and the
23 Securities and Exchange Commission shall jointly adopt
24 uniform rules governing—

1 “(1) the clearing and settlement of swaps, as
2 well as persons that are registered as derivatives
3 clearing organizations for swaps under this section;
4 and

5 “(2) the clearing and settlement of security-
6 based swaps, as well as persons that are registered
7 as clearing agencies for security-based swaps under
8 the Securities Exchange Act of 1934 (15 U.S.C. 78a
9 et seq.).

10 “(i) CONSULTATION.—The Commission and the Se-
11 curities and Exchange Commission shall consult with the
12 appropriate Federal banking agencies and each other prior
13 to adopting rules under this section with respect to swaps.

14 “(j) EXEMPTIONS.—The Commission may exempt,
15 conditionally or unconditionally, a derivatives clearing or-
16 ganization from registration under this section for the
17 clearing of swaps if the Commission finds that such de-
18 rivatives clearing organization is subject to comparable,
19 comprehensive supervision and regulation on a consoli-
20 dated basis by the Securities and Exchange Commission,
21 or the appropriate governmental authorities in the organi-
22 zation’s home country.

23 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

1 “(1) IN GENERAL.—Each derivatives clearing
2 organization shall designate an individual to serve as
3 a compliance officer.

4 “(2) DUTIES.—The compliance officer shall
5 perform the following duties:

6 “(A) Reporting directly to the board or to
7 the senior officer of the derivatives clearing or-
8 ganization.

9 “(B) Reviewing the compliance of the de-
10 rivatives clearing organization with the core
11 principles established in section 5b(c)(2).

12 “(C) Consulting with the board of the de-
13 rivatives clearing organization, a body per-
14 forming a function similar to that of a board,
15 or the senior officer of the derivatives clearing
16 organization, to resolve any conflicts of interest
17 that may arise.

18 “(D) Administering the policies and proce-
19 dures of the derivatives clearing organization
20 required to be established pursuant to this sec-
21 tion.

22 “(E) Ensuring compliance with this Act
23 and the rules and regulations issued there-
24 under, including rules prescribed by the Com-
25 mission pursuant to this section.

1 “(F) Establishing procedures for remedi-
2 ation of noncompliance issues found during
3 compliance office reviews, lookbacks, internal or
4 external audit findings, self-reported errors, or
5 through validated complaints. Procedures to be
6 established under this subparagraph include
7 procedures related to the handling, manage-
8 ment response, remediation, retesting, and clos-
9 ing of noncompliance issues.

10 “(3) ANNUAL REPORTS REQUIRED.—

11 “(A) IN GENERAL.—The compliance offi-
12 cer shall annually prepare and sign a report on
13 the compliance of the derivatives clearing orga-
14 nization with this Act and the policies and pro-
15 cedures of the organization, including the code
16 of ethics and conflict of interest policies of the
17 organization, in accordance with rules pre-
18 scribed by the Commission.

19 “(B) SUBMISSION.—The compliance report
20 required under subparagraph (A) shall accom-
21 pany the financial reports of the derivatives
22 clearing organization that are required to be
23 furnished to the Commission pursuant to this
24 section and shall include a certification that,

1 under penalty of law, the report is accurate and
2 complete.”.

3 (3) CORE PRINCIPLES.—Section 5b(c)(2) of the
4 Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)) is
5 amended to read as follows:

6 “(2) CORE PRINCIPLES FOR DERIVATIVES
7 CLEARING ORGANIZATIONS.—

8 “(A) COMPLIANCE.—

9 “(i) IN GENERAL.—To be registered
10 and to maintain registration as a deriva-
11 tives clearing organization, a derivatives
12 clearing organization shall comply with the
13 core principles established in this para-
14 graph and any requirement that the Com-
15 mission may impose by rule or regulation
16 pursuant to section 8a(5).

17 “(ii) REASONABLE DISCRETION.—Ex-
18 cept where the Commission determines
19 otherwise by rule or regulation, a deriva-
20 tives clearing organization shall have rea-
21 sonable discretion in establishing the man-
22 ner in which it complies with the core prin-
23 ciples established in this paragraph.

24 “(B) FINANCIAL RESOURCES.—

1 “(i) IN GENERAL.—Each derivatives
2 clearing organization shall have adequate
3 financial, operational, and managerial re-
4 sources to discharge its responsibilities.

5 “(ii) MINIMUM RESOURCES.—The fi-
6 nancial resources of each derivatives clear-
7 ing organization shall, at a minimum, ex-
8 ceed the total amount that would—

9 “(I) enable the organization to
10 meet its financial obligations to its
11 members and participants notwith-
12 standing a default by the member or
13 participant creating the largest finan-
14 cial exposure for that organization in
15 extreme but plausible market condi-
16 tions; and

17 “(II) enable the organization to
18 cover its operating costs for a period
19 of 1 year, calculated on a rolling
20 basis.

21 “(C) PARTICIPANT AND PRODUCT ELIGI-
22 BILITY.—

23 “(i) STANDARDS.—Each derivatives
24 clearing organization shall establish—

1 “(I) appropriate admission and
2 continuing eligibility standards (in-
3 cluding sufficient financial resources
4 and operational capacity to meet obli-
5 gations arising from participation in
6 the derivatives clearing organization)
7 for members of and participants in
8 the organization; and

9 “(II) appropriate standards for
10 determining eligibility of agreements,
11 contracts, or transactions submitted
12 to the organization for clearing.

13 “(ii) ONGOING VERIFICATION.—Each
14 derivatives clearing organization shall have
15 procedures in place to verify that its par-
16 ticipation and membership requirements
17 are met on an ongoing basis.

18 “(iii) FAIR STANDARDS.—Each de-
19 rivatives clearing organization’s participa-
20 tion and membership requirements shall be
21 objective, publicly disclosed, and permit
22 fair and open access.

23 “(D) RISK MANAGEMENT.—

24 “(i) IN GENERAL.—Each derivatives
25 clearing organization shall have the ability

1 to manage the risks associated with dis-
2 charging the responsibilities of a deriva-
3 tives clearing organization through the use
4 of appropriate tools and procedures.

5 “(ii) CREDIT EXPOSURE.—Each de-
6 rivatives clearing organization shall meas-
7 ure its credit exposures to its members and
8 participants at least once each business
9 day and shall monitor such exposures
10 throughout the business day.

11 “(iii) LIMITING EXPOSURE.—Through
12 margin requirements and other risk control
13 mechanisms, a derivatives clearing organi-
14 zation shall limit its exposures to potential
15 losses from defaults by its members and
16 participants so that the operations of the
17 organization would not be disrupted and
18 nondefaulting members or participants
19 would not be exposed to losses that such
20 members or participants cannot anticipate
21 or control.

22 “(iv) MARGIN REQUIREMENTS.—The
23 margin required by a derivatives clearing
24 organization from its members and partici-

1 pants shall be sufficient to cover potential
2 exposures in normal market conditions.

3 “(v) RISK-BASED MARGIN REQUIRE-
4 MENTS.—The models and parameters used
5 by a derivatives clearing organization in
6 setting the margin requirements under
7 clause (iv) shall be risk-based and reviewed
8 regularly.

9 “(E) SETTLEMENT PROCEDURES.—Each
10 derivatives clearing organization shall—

11 “(i) complete money settlements on a
12 timely basis, and not less than once each
13 business day;

14 “(ii) employ money settlement ar-
15 rangements that eliminate or strictly limit
16 the exposure of the organization to settle-
17 ment bank risks, such as credit and liquid-
18 ity risks from the use of banks to effect
19 money settlements;

20 “(iii) ensure money settlements are
21 final when effected;

22 “(iv) maintain an accurate record of
23 the flow of funds associated with each
24 money settlement;

1 “(v) have the ability to comply with
2 the terms and conditions of any permitted
3 netting or offset arrangements with other
4 clearing organizations;

5 “(vi) for physical settlements, estab-
6 lish rules that clearly state the obligations
7 of the organization with respect to physical
8 deliveries; and

9 “(vii) identify and manage the risks
10 from the obligations described under clause
11 (vi).

12 “(F) TREATMENT OF FUNDS.—

13 “(i) SAFETY OF FUNDS.—Each de-
14 rivatives clearing organization shall have
15 standards and procedures designed to pro-
16 tect and ensure the safety of member and
17 participant funds and assets.

18 “(ii) HOLDING OF FUNDS.—Each de-
19 rivatives clearing organization shall hold
20 member and participant funds and assets
21 in a manner whereby risk of loss or of
22 delay in the organization’s access to the
23 assets and funds is minimized.

24 “(iii) MINIMIZING RISKS.—Assets and
25 funds invested by a derivatives clearing or-

1 organization shall be held in instruments
2 with minimal credit, market, and liquidity
3 risks.

4 “(G) DEFAULT RULES AND PROCE-
5 DURES.—

6 “(i) INSOLVENCY ISSUES.—Each de-
7 rivatives clearing organization shall have
8 rules and procedures designed to allow for
9 the efficient, fair, and safe management of
10 events when members or participants be-
11 come insolvent or otherwise default on
12 their obligations to the organization.

13 “(ii) DEFAULT PROCEDURES.—The
14 default procedures of each derivatives
15 clearing organization shall be clearly stat-
16 ed, and shall ensure that the organization
17 can take timely action to contain losses
18 and liquidity pressures and to continue
19 meeting its obligations.

20 “(iii) PUBLIC AVAILABILITY.—The de-
21 fault procedures of each derivatives clear-
22 ing organization shall be publicly available.

23 “(H) ENFORCEMENT.—Each derivatives
24 clearing organization shall—

1 “(i) maintain adequate arrangements
2 and resources for the effective—

3 “(I) monitoring and enforcement
4 of compliance with the rules of the or-
5 ganization; and

6 “(II) resolution of disputes; and

7 “(ii) have the authority and ability to
8 discipline, limit, suspend, or terminate the
9 activities of a member or participant for
10 violations of the rules of the organization.

11 “(I) SYSTEM SAFEGUARDS.—Each deriva-
12 tives clearing organization shall—

13 “(i) establish and maintain a program
14 of risk analysis and oversight to identify
15 and minimize sources of operational risk
16 through the development of appropriate
17 controls and procedures, and the develop-
18 ment of automated systems, that are reli-
19 able, secure, and have adequate scalable
20 capacity;

21 “(ii) establish and maintain emer-
22 gency procedures, backup facilities, and a
23 plan for disaster recovery that allows for
24 the timely recovery and resumption of op-
25 erations and the fulfillment of the respon-

1 sibilities and obligations of the organiza-
2 tion; and

3 “(iii) periodically conduct tests to
4 verify that backup resources are sufficient
5 to ensure daily processing, clearing, and
6 settlement.

7 “(J) REPORTING.—Each derivatives clear-
8 ing organization shall provide to the Commis-
9 sion all information necessary for the Commis-
10 sion to conduct oversight of the organization.

11 “(K) RECORDKEEPING.—Each derivatives
12 clearing organization shall maintain for a pe-
13 riod of 5 years records of all activities related
14 to the business of the organization as a deriva-
15 tives clearing organization in a form and man-
16 ner acceptable to the Commission.

17 “(L) PUBLIC INFORMATION.—

18 “(i) IN GENERAL.—Each derivatives
19 clearing organization shall provide market
20 participants with sufficient information to
21 identify and evaluate accurately the risks
22 and costs associated with using the serv-
23 ices of the organization.

24 “(ii) AVAILABILITY OF RULES.—Each
25 derivatives clearing organization shall

1 make information concerning the rules and
2 operating procedures governing the clear-
3 ing and settlement systems (including de-
4 fault procedures) of the organization avail-
5 able to market participants.

6 “(iii) ADDITIONAL DISCLOSURES.—
7 Each derivatives clearing organization shall
8 disclose publicly, and to the Commission,
9 information concerning—

10 “(I) the terms and conditions of
11 contracts, agreements, and trans-
12 actions cleared and settled by the or-
13 ganization;

14 “(II) clearing and other fees that
15 the organization charges its members
16 and participants;

17 “(III) the margin-setting method-
18 ology and the size and composition of
19 the financial resource package of the
20 organization;

21 “(IV) other information relevant
22 to participation in the settlement and
23 clearing activities of the organization;
24 and

1 “(V) daily settlement prices, vol-
2 ume, and open interest for all con-
3 tracts settled or cleared by the organi-
4 zation.

5 “(M) INFORMATION-SHARING.—Each de-
6 rivatives clearing organization shall—

7 “(i) enter into and abide by the terms
8 of all appropriate and applicable domestic
9 and international information-sharing
10 agreements; and

11 “(ii) use relevant information obtained
12 from the agreements in carrying out the
13 risk management program of the organiza-
14 tion.

15 “(N) ANTITRUST CONSIDERATIONS.—Un-
16 less appropriate to achieve the purposes of this
17 Act, a derivatives clearing organization shall
18 avoid—

19 “(i) adopting any rule or taking any
20 action that results in any unreasonable re-
21 straint of trade; or

22 “(ii) imposing any material anti-
23 competitive burden.

24 “(O) GOVERNANCE FITNESS STAND-
25 ARDS.—

1 “(i) TRANSPARENCY.—Each deriva-
2 tives clearing organization shall establish
3 governance arrangements that are trans-
4 parent in order to fulfill public interest re-
5 quirements and to support the objectives of
6 owners and participants.

7 “(ii) FITNESS STANDARDS.—Each de-
8 rivatives clearing organization shall estab-
9 lish and enforce appropriate fitness stand-
10 ards for directors, members of any discipli-
11 nary committee, and members of the orga-
12 nization, and any other persons with direct
13 access to the settlement or clearing activi-
14 ties of the organization, including any par-
15 ties affiliated with any of the persons de-
16 scribed in this clause.

17 “(P) CONFLICTS OF INTEREST.—Each de-
18 rivatives clearing organization shall establish
19 and enforce rules to minimize conflicts of inter-
20 est in the decision-making process of the orga-
21 nization and establish a process for resolving
22 such conflicts of interest.

23 “(Q) COMPOSITION OF THE BOARDS.—
24 Each derivatives clearing organization shall en-
25 sure that the composition of the governing

1 board or committee includes market partici-
2 pants.

3 “(R) LEGAL RISK.—Each derivatives clear-
4 ing organization shall have a well-founded,
5 transparent, and enforceable legal framework
6 for each aspect of its activities.

7 “(S) MODIFICATION OF CORE PRIN-
8 CIPLES.—The Commission may conform the
9 core principles established in this paragraph to
10 reflect evolving United States and international
11 standards.”.

12 (4) REPORTING.—Section 5b of the Commodity
13 Exchange Act (7 U.S.C. 7a–1) is further amended
14 by adding after subsection (k), as added by this sec-
15 tion, the following:

16 “(l) REPORTING.—

17 “(1) TRANSPARENCY.—

18 “(A) IN GENERAL.—A derivatives clearing
19 organization that clears swaps shall provide to
20 the Commission and any swap repository des-
21 ignated by the Commission all information de-
22 termined by the Commission to be necessary to
23 perform its responsibilities under this Act.

24 “(B) DATA COLLECTION REQUIRE-
25 MENTS.—The Commission shall adopt data col-

1 lection and maintenance requirements for swaps
2 cleared by derivatives clearing organizations
3 that are comparable to the corresponding re-
4 quirements for swaps accepted by swap reposi-
5 tories and swaps traded on alternative swap
6 execution facilities.

7 “(C) REPORTS ON SECURITY-BASED SWAP
8 AGREEMENTS TO BE SHARED WITH THE SECU-
9 RITIES AND EXCHANGE COMMISSION.—A de-
10 rivatives clearing organization that clears secu-
11 rity-based swap agreements (as defined in sec-
12 tion 3(a)(76) of the Securities Exchange Act)
13 shall, upon request for the protection of inves-
14 tors and in the public interest, make available
15 to the Securities and Exchange Commission all
16 information relating to such security-based
17 swap agreements.

18 “(D) SHARING OF INFORMATION.—Subject
19 to section 8, the Commission shall share such
20 information, upon request, with the Board, the
21 Securities and Exchange Commission, the ap-
22 propriate Federal banking agencies, the Finan-
23 cial Stability Oversight Council, and the De-
24 partment of Justice or to other persons the
25 Commission deems appropriate, including for-

1 eign financial supervisors (including foreign fu-
2 tures authorities), foreign central banks, and
3 foreign ministries.

4 “(2) PUBLIC INFORMATION.—A derivatives
5 clearing organization that clears swaps shall provide
6 to the Commission, or its designee, such information
7 as is required by, and in a form and at a frequency
8 to be determined by, the Commission, in order to
9 comply with the public reporting requirements con-
10 tained in section 8(j).”.

11 (5) EXISTING BANKS AND CLEARING AGEN-
12 CIES.—Section 5b(e) of the Commodity Exchange
13 Act (7 U.S.C. 7a–1(c)) is amended by adding at the
14 end the following:

15 “(4) EXISTING BANKS AND CLEARING AGEN-
16 CIES.—A bank or a clearing agency registered with
17 the Securities and Exchange Commission under the
18 Securities Exchange Act of 1934 required to be reg-
19 istered as a derivatives clearing organization under
20 this section is deemed to be registered under this
21 section to the extent that the bank cleared swaps, as
22 defined in this Act, as a multilateral clearing organi-
23 zation or the clearing agency cleared swaps, as de-
24 fined in this Act, before the date of the enactment
25 of this paragraph. Such bank or clearing agency

1 shall be subject to the requirements of this Act and
2 regulations of the Commission thereunder that are
3 applicable to registered derivatives clearing organiza-
4 tions. A bank to which this paragraph applies may,
5 by the vote of the shareholders owning not less than
6 51 percent of the voting interests of the bank, be
7 converted into a State corporation, partnership, lim-
8 ited liability company, or other similar legal form
9 pursuant to a plan of conversion, if the conversion
10 is not in contravention of applicable State law.”.

11 (6) TECHNICAL CHANGE.—Section 8(e) of the
12 Commodity Exchange Act (7 U.S.C. 12(e)) is
13 amended in the last sentence—

14 (A) by inserting “, central bank and min-
15 istries,” after “department” each place that
16 term appears; and

17 (B) by striking “futures authority.” and
18 inserting “futures authority,”.

19 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING
20 PRODUCTS.—

21 (1) REPEAL.—Sections 402(d), 404, 407,
22 408(b), and 408(c)(2) of the Legal Certainty for
23 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,
24 27e, 27f(b), and 27f(c)(2)) are repealed.

1 (2) **LEGAL CERTAINTY.**—Section 403 of the
2 Legal Certainty for Bank Products Act of 2000 (7
3 U.S.C. 27a) is amended to read as follows:

4 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

5 “(a) **EXCLUSION.**—Except as provided in subsection
6 (b) or (c)—

7 “(1) the Commodity Exchange Act shall not
8 apply to, and the Commodity Futures Trading Com-
9 mission shall not exercise regulatory authority under
10 such Act with respect to, an identified banking prod-
11 uct; and

12 “(2) the definitions of ‘security-based swap’ in
13 section 3(a)(68) of the Securities Exchange Act of
14 1934 and ‘security-based swap agreement’ in section
15 3(a)(76) of the Securities Exchange Act of 1934 do
16 not include any identified banking product.

17 “(b) **EXCEPTION.**—An appropriate Federal banking
18 agency may except an identified banking product of a
19 bank under its regulatory jurisdiction from the exclusions
20 in subsection (a) if the agency determines, in consultation
21 with the Commodity Futures Trading Commission and the
22 Securities and Exchange Commission, that the product—

23 “(1) would meet the definition of swap in sec-
24 tion 1a(34) of the Commodity Exchange Act or se-

1 security-based swap in section 3(a)(68) of the Securi-
2 ties Exchange Act of 1934; and

3 “(2) has become known to the trade as a swap
4 or security-based swap, or otherwise has been struc-
5 tured as an identified banking product for the pur-
6 pose of evading the provisions of the Commodity Ex-
7 change Act (7 U.S.C. 1 et seq.), the Securities Act
8 of 1933 (15 U.S.C. 77a et seq.), or the Securities
9 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

10 “(c) EXCEPTION.—The exclusions in subsection (a)
11 shall not apply to an identified banking product that—

12 “(1) is a product of a bank that is not under
13 the regulatory jurisdiction of an appropriate Federal
14 banking agency;

15 “(2) meets the definition of swap in section
16 1a(34) of the Commodity Exchange Act or security-
17 based swap in section 3(a)(68) of the Securities Ex-
18 change Act of 1934; and

19 “(3) has become known to the trade as a swap
20 or security-based swap, or otherwise has been struc-
21 tured as an identified banking product for the pur-
22 pose of evading the provisions of the Commodity Ex-
23 change Act (7 U.S.C. 1 et seq.), the Securities Act
24 of 1933 (15 U.S.C. 77a et seq.), or the Securities
25 Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

1 **SEC. 714. PUBLIC REPORTING OF AGGREGATE SWAP DATA.**

2 Section 8 of the Commodity Exchange Act (7 U.S.C.
3 12) is amended by adding at the end the following:

4 “(j) PUBLIC REPORTING OF AGGREGATE SWAP
5 DATA.—

6 “(1) IN GENERAL.—The Commission, or a per-
7 son designated by the Commission pursuant to para-
8 graph (2), shall make available to the public, in a
9 manner that does not disclose the business trans-
10 actions and market positions of any person, aggre-
11 gate data on swap trading volumes and positions
12 from the sources set forth in paragraph (3).

13 “(2) DESIGNEE OF THE COMMISSION.—The
14 Commission may designate a derivatives clearing or-
15 ganization or a swap repository to carry out the
16 public reporting described in paragraph (1).

17 “(3) SOURCES OF INFORMATION.—The sources
18 of the information to be publicly reported as de-
19 scribed in paragraph (1) are—

20 “(A) derivatives clearing organizations
21 pursuant to section 5b(k)(2);

22 “(B) swap repositories pursuant to section
23 21(e)(3); and

24 “(C) reports received by the Commission
25 pursuant to section 4r.”

1 **SEC. 715. SWAP REPOSITORIES.**

2 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
3 is amended by inserting after section 20 the following:

4 **“SEC. 21. SWAP REPOSITORIES.**

5 “(a) **REGISTRATION REQUIREMENT.—**

6 “(1) **IN GENERAL.—**A person may register as a
7 swap repository by filing with the Commission an
8 application in such form as the Commission, by rule,
9 may prescribe, containing the rules of the swap re-
10 pository and such other information and documenta-
11 tion as the Commission, by rule, may prescribe as
12 necessary or appropriate in the public interest, for
13 the protection of investors, or in the furtherance of
14 the purposes of this section.

15 “(2) **INSPECTION AND EXAMINATION.—**Reg-
16 istered swap repositories shall be subject to inspec-
17 tion and examination by any representative of the
18 Commission.

19 “(3) **SHARING OF INFORMATION WITH SECURI-**
20 **TIES AND EXCHANGE COMMISSION.—**Registered
21 swap repositories shall make available to the Securi-
22 ties and Exchange Commission, upon request, all in-
23 formation relating to security-based swap agree-
24 ments that are maintained by such swap repository.

25 “(b) **STANDARD SETTING.—**

1 “(1) DATA IDENTIFICATION.—The Commission
2 shall prescribe standards that specify the data ele-
3 ments for each swap that shall be collected and
4 maintained by each registered swap repository.

5 “(2) DATA COLLECTION AND MAINTENANCE.—
6 The Commission shall prescribe data collection and
7 data maintenance standards for swap repositories.

8 “(3) COMPARABILITY.—The standards pre-
9 scribed by the Commission under this subsection
10 shall be comparable to the data standards imposed
11 by the Commission on derivatives clearing organiza-
12 tions that clear swaps.

13 “(c) DUTIES.—A swap repository shall—

14 “(1) accept data prescribed by the Commission
15 for each swap under subsection (b);

16 “(2) maintain such data in such form and man-
17 ner and for such period as may be required by the
18 Commission;

19 “(3) provide to the Commission, or its designee,
20 such information as is required by, and in a form
21 and at a frequency to be determined by, the Com-
22 mission, in order to comply with the public reporting
23 requirements contained in section 8(j); and

24 “(4) make available, on a confidential basis
25 pursuant to section 8, all data obtained by the swap

1 repository, including individual counterparty trade
2 and position data, to the Commission, the appro-
3 priate Federal banking agencies, the Financial Sta-
4 bility Oversight Council, the Securities and Ex-
5 change Commission, and the Department of Justice
6 or to other persons the Commission deems appro-
7 priate, including foreign financial supervisors (in-
8 cluding foreign futures authorities), foreign central
9 banks, and foreign ministries.

10 “(d) REQUIRED REGISTRATION FOR SECURITY-
11 BASED SWAP REPOSITORIES.—Any person that is re-
12 quired to be registered as a swap repository under this
13 section shall register with the Commission regardless of
14 whether that person also is registered with the Securities
15 and Exchange Commission as a security-based swap re-
16 pository.

17 “(e) HARMONIZATION OF RULES.—Not later than
18 180 days after the effective date of the Over-the-Counter
19 Derivatives Markets Act of 2010, the Commission and the
20 Securities and Exchange Commission shall jointly adopt
21 uniform rules governing persons that are registered under
22 this section and persons that are registered as security-
23 based swap repositories under the Securities Exchange
24 Act of 1934 (15 U.S.C. 78a et seq.), including uniform

1 rules that specify the data elements that shall be collected
2 and maintained by each repository.

3 “(f) EXEMPTIONS.—The Commission may exempt,
4 conditionally or unconditionally, a swap repository from
5 the requirements of this section if the Commission finds
6 that such swap repository is subject to comparable, com-
7 prehensive supervision and regulation on a consolidated
8 basis by the Securities and Exchange Commission, or the
9 appropriate governmental authorities in the organization’s
10 home country.”.

11 **SEC. 716. REPORTING AND RECORDKEEPING.**

12 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
13 is amended by inserting after section 4q the following:

14 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**
15 **SWAPS.**

16 “(a) IN GENERAL.—Any person who enters into a
17 swap shall satisfy the reporting requirements of subsection
18 (b), if such person—

19 “(1) did not clear the swap in accordance with
20 section 2(j)(1); and

21 “(2) did not have data regarding the swap ac-
22 cepted by a swap repository in accordance with rules
23 (including time frames) adopted by the Commission
24 under section 21.

1 “(b) REPORTS.—Any person described in subsection
2 (a) shall—

3 “(1) make such reports in such form and man-
4 ner and for such period as the Commission shall pre-
5 scribe by rule or regulation regarding the swaps held
6 by the person; and

7 “(2) keep books and records pertaining to the
8 swaps held by the person in such form and manner
9 and for such period as may be required by the Com-
10 mission, which books and records shall be open to
11 inspection by any representative of the Commission,
12 an appropriate Federal banking agency, the Securi-
13 ties and Exchange Commission, the Financial Sta-
14 bility Oversight Council, and the Department of Jus-
15 tice.

16 “(c) IDENTICAL DATA.—In adopting rules under this
17 section, the Commission shall require persons described in
18 subsection (a) to report the same or a more comprehensive
19 set of data than the Commission requires swap reposi-
20 tories to collect under section 21.”.

21 **SEC. 717. REGISTRATION AND REGULATION OF SWAP DEAL-**
22 **ERS AND MAJOR SWAP PARTICIPANTS.**

23 (a) IN GENERAL.—The Commodity Exchange Act (7
24 U.S.C. 1 et seq.) is amended by inserting after section
25 4r (as added by section 716) the following:

1 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
2 **ERS AND MAJOR SWAP PARTICIPANTS.**

3 “(a) REGISTRATION.—It shall be unlawful for any
4 person—

5 “(1) to act as a swap dealer unless such person
6 is registered as a swap dealer with the Commission;
7 and

8 “(2) to act as a major swap participant unless
9 such person shall have registered as a major swap
10 participant with the Commission.

11 “(b) REQUIREMENTS.—

12 “(1) IN GENERAL.—A person shall register as
13 a swap dealer or major swap participant by filing a
14 registration application with the Commission.

15 “(2) CONTENTS.—The application required
16 under paragraph (1) shall be made in such form and
17 manner as prescribed by the Commission, giving any
18 information and facts as the Commission may deem
19 necessary concerning the business in which the ap-
20 plicant is or will be engaged. Such person, when reg-
21 istered as a swap dealer or major swap participant,
22 shall continue to report and furnish to the Commis-
23 sion such information pertaining to such person’s
24 business as the Commission may require.

1 “(3) EXPIRATION.—Each registration shall ex-
2 pire at such time as the Commission may by rule or
3 regulation prescribe.

4 “(4) RULES.—Except as provided in sub-
5 sections (c), (d), and (e), the Commission may pre-
6 scribe rules applicable to swap dealers and major
7 swap participants, including rules that limit the ac-
8 tivities of swap dealers and major swap participants.

9 “(5) TRANSITION.—Rules adopted under this
10 section shall provide for the registration of swap
11 dealers and major swap participants not later than
12 1 year after the effective date of the Over-the-
13 Counter Derivatives Markets Act of 2010.

14 “(6) STATUTORY DISQUALIFICATION.—Except
15 to the extent otherwise specifically provided by rule,
16 regulation, or order, it shall be unlawful for a swap
17 dealer or a major swap participant to permit any
18 person associated with a swap dealer or a major
19 swap participant who is subject to a statutory dis-
20 qualification to effect or be involved in effecting
21 swaps on behalf of such swap dealer or major swap
22 participant, if such swap dealer or major swap par-
23 ticipant knew, or in the exercise of reasonable care
24 should have known, of such statutory disqualifica-
25 tion.

1 “(c) DUAL REGISTRATION.—

2 “(1) SWAP DEALER.—Any person that is re-
3 quired to be registered as a swap dealer under this
4 section shall register with the Commission regardless
5 of whether that person also is a bank or is registered
6 with the Securities and Exchange Commission as a
7 security-based swap dealer.

8 “(2) MAJOR SWAP PARTICIPANT.—Any person
9 that is required to be registered as a major swap
10 participant under this section shall register with the
11 Commission regardless of whether that person also
12 is a bank or is registered with the Securities and
13 Exchange Commission as a major security-based
14 swap participant.

15 “(d) JOINT RULES.—

16 “(1) IN GENERAL.—Not later than 180 days
17 after the effective date of the Over-the-Counter De-
18 rivatives Markets Act of 2010, the Commission and
19 the Securities and Exchange Commission shall joint-
20 ly adopt uniform rules for persons that are reg-
21 istered—

22 “(A) as swap dealers or major swap par-
23 ticipants under this section; and

24 “(B) as security-based swap dealers or
25 major security-based swap participants under

1 the Securities Exchange Act of 1934 (15
2 U.S.C. 78a et seq.).

3 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
4 MENTS.—The Commission and the Securities and
5 Exchange Commission shall not prescribe rules im-
6 posing prudential requirements (including activity
7 restrictions) on swap dealers, major swap partici-
8 pants, security-based swap dealers, or major secu-
9 rity-based swap participants for which there is a pri-
10 mary financial regulatory agency. This provision
11 shall not be construed as limiting the authority of
12 the Commission and the Securities and Exchange
13 Commission to prescribe appropriate business con-
14 duct, reporting, and recordkeeping requirements to
15 protect investors.

16 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

17 “(1) IN GENERAL.—

18 “(A) BANK SWAP DEALERS AND MAJOR
19 SWAP PARTICIPANTS.—Each registered swap
20 dealer and major swap participant for which
21 there is a primary financial regulatory agency
22 shall meet such minimum capital requirements
23 and minimum initial and variation margin re-
24 quirements as such primary financial regulatory
25 agency shall by rule or regulation prescribe

1 under paragraph (2)(A) to help ensure the safe-
2 ty and soundness of the swap dealer or major
3 swap participant.

4 “(B) NONBANK SWAP DEALERS AND
5 MAJOR SWAP PARTICIPANTS.—Each registered
6 swap dealer and major swap participant for
7 which there is not a primary financial regu-
8 latory agency shall meet such minimum capital
9 requirements and minimum initial and variation
10 margin requirements as the Commission and
11 the Securities and Exchange Commission shall
12 by rule or regulation jointly prescribe under
13 paragraph (2)(B) to help ensure the safety and
14 soundness of the swap dealer or major swap
15 participant.

16 “(2) JOINT RULES.—

17 “(A) BANK SWAP DEALERS AND MAJOR
18 SWAP PARTICIPANTS.—Not later than 180 days
19 of the date of the enactment of the Over-the-
20 Counter Derivatives Markets Act of 2010, the
21 primary financial regulatory agency, the Com-
22 mission, and the Securities and Exchange Com-
23 mission, shall jointly adopt rules imposing cap-
24 ital and margin requirements under this sub-
25 section for swap dealers and major swap par-

1 tures commission merchant or intro-
2 ducing broker registered pursuant to
3 section 4f(a) of this title (except for
4 section 4f(a)(3) thereof) in accordance
5 with section 4f(b) of this title; or

6 “(II) of the Securities and Ex-
7 change Commission to set financial
8 responsibility rules for a broker or
9 dealer registered pursuant to section
10 15(b) of the Securities Exchange Act
11 of 1934 (except for section 15(b)(11)
12 thereof) in accordance with section
13 15(c)(3) of the Securities Exchange
14 Act of 1934.

15 “(ii) FUTURES COMMISSION MER-
16 CHANTS AND OTHER DEALERS.—A futures
17 commission merchant, introducing broker,
18 broker, or dealer shall maintain sufficient
19 capital to comply with the stricter of any
20 applicable capital requirements to which
21 such futures commission merchant, intro-
22 ducing broker, broker, or dealer is subject
23 to under this title or the Securities Ex-
24 change Act of 1934.

25 “(4) MARGIN.—

1 “(A) BANK SWAP DEALERS AND MAJOR
2 SWAP PARTICIPANTS.—

3 “(i) IN GENERAL.—The primary fi-
4 nancial regulatory agency for bank swap
5 dealers and major swap participants shall
6 impose both initial and variation margin
7 requirements in accordance with paragraph
8 (2)(A) on all swaps that are not cleared by
9 a registered derivatives clearing organiza-
10 tion or a derivatives clearing organization
11 that is exempt from registration under sec-
12 tion 5b(j) of this Act.

13 “(ii) EXEMPTION.—The primary fi-
14 nancial regulatory agency for bank swap
15 dealers and major swap participants, by
16 rule or order, in consultation with the Fi-
17 nancial Stability Oversight Council and as
18 the agency deems consistent with the pub-
19 lic interest, may conditionally or uncondi-
20 tionally exempt a swap dealer or major
21 swap participant from the requirements of
22 this subsection and the rules issued under
23 this subsection with regard to any swap in
24 which 1 of the counterparties is—

1 “(I) not a swap dealer, major
2 swap participant, security-based swap
3 dealer, or a major security-based swap
4 participant;

5 “(II) using the swap as part of
6 an effective hedge under generally ac-
7 cepted accounting principles; and

8 “(III) predominantly engaged in
9 activities that are not financial in na-
10 ture, as defined in section 4(k) of the
11 Bank Holding Company Act of 1956
12 (12 U.S.C. 1843(k)).

13 “(B) NONBANK SWAP DEALERS AND
14 MAJOR SWAP PARTICIPANTS.—

15 “(i) IN GENERAL.—The Commission
16 and the Securities and Exchange Commis-
17 sion shall impose both initial and variation
18 margin requirements in accordance with
19 paragraph (2)(B) for nonbank swap deal-
20 ers and major swap participants on all
21 swaps that are not cleared by a registered
22 derivatives clearing organization or a de-
23 rivatives clearing organization that is ex-
24 empt from registration under section 5b(j)
25 of this Act. Any such initial and variation

1 margin requirements shall be as strict as
2 or stricter than the margin requirements
3 prescribed under paragraph (4)(A).

4 “(ii) EXEMPTION.—The Commission
5 by rule or order, in consultation with the
6 Financial Stability Oversight Council and
7 as the Commission deems consistent with
8 the public interest, may conditionally or
9 unconditionally exempt a nonbank swap
10 dealer or major swap participant from the
11 requirements of this subparagraph and the
12 rules issued under this subparagraph with
13 regard to any swap in which 1 of the
14 counterparties is—

15 “(I) not a swap dealer, major
16 swap participant, security-based swap
17 dealer, or a major security-based swap
18 participant;

19 “(II) using the swap as part of
20 an effective hedge under generally ac-
21 cepted accounting principles; and

22 “(III) predominantly engaged in
23 activities that are not financial in na-
24 ture, as defined in section 4(k) of the

1 Bank Holding Company Act of 1956
2 (12 U.S.C. 1843(k)).

3 “(5) MARGIN REQUIREMENTS.—In prescribing
4 margin requirements under this subsection, the pri-
5 mary financial regulatory agency for bank swap
6 dealers and major swap participants, the Commis-
7 sion, and the Securities and Exchange Commission
8 may permit the use of noncash collateral, as the
9 agency, the Commission, or the Securities and Ex-
10 change Commission determines to be consistent
11 with—

12 “(A) preserving the financial integrity of
13 markets trading swaps; and

14 “(B) preserving the stability of the United
15 States financial system.

16 “(6) REQUESTED MARGIN.—If any party to a
17 swap that is exempt from the margin requirements
18 of paragraph (4)(A)(i) pursuant to the provisions of
19 paragraph (4)(A)(ii) or from the margin require-
20 ments of paragraph (4)(B)(i) pursuant to the provi-
21 sions of paragraph (4)(B)(ii) requests that such
22 swap be margined, then—

23 “(A) the exemption shall not apply; and

24 “(B) the counterparty to such swap shall
25 provide the requested margin.

1 “(f) REPORTING AND RECORDKEEPING.—

2 “(1) IN GENERAL.—Each registered swap deal-
3 er and major swap participant—

4 “(A) shall make such reports as are pre-
5 scribed by rule or regulation regarding the
6 transactions and positions and financial condi-
7 tion of such dealer or participant;

8 “(B) for which—

9 “(i) there is a primary financial regu-
10 latory agency shall keep books and records
11 of all activities related to its business as a
12 swap dealer or major swap participant in
13 such form and manner and for such period
14 as may be prescribed by rule or regulation;
15 and

16 “(ii) there is not a primary financial
17 regulatory agency shall keep books and
18 records in such form and manner and for
19 such period as may be prescribed by rule
20 or regulation; and

21 “(C) shall keep such books and records
22 open to inspection and examination by any rep-
23 resentative of the Commission.

24 “(2) RULES.—Not later than 1 year of the date
25 of the enactment of the Over-the-Counter Deriva-

1 tives Markets Act of 2010, the Commission and the
2 Securities and Exchange Commission shall jointly
3 adopt rules governing reporting and recordkeeping
4 for swap dealers, major swap participants, security-
5 based swap dealers, and major security-based swap
6 participants.

7 “(g) DAILY TRADING RECORDS.—

8 “(1) IN GENERAL.—Each registered swap deal-
9 er and major swap participant shall, for such period
10 as may be prescribed by rule or regulation, maintain
11 daily trading records of that dealer’s or partici-
12 pant’s—

13 “(A) swaps and all related records (includ-
14 ing related cash or forward transactions); and

15 “(B) recorded communications, including
16 the electronic mail, instant messages, and re-
17 cordings of telephone calls.

18 “(2) INFORMATION REQUIREMENTS.—The daily
19 trading records required to be maintained under
20 paragraph (1) shall include such information as shall
21 be prescribed by rule or regulation.

22 “(3) CUSTOMER RECORDS.—Each registered
23 swap dealer and major swap participant shall main-
24 tain daily trading records for each customer or

1 counterparty in such manner and form as to be
2 identifiable with each swap transaction.

3 “(4) AUDIT TRAIL.—

4 “(A) MAINTENANCE OF AUDIT TRAIL.—

5 Each registered swap dealer and major swap
6 participant shall maintain a complete audit trail
7 for conducting comprehensive and accurate
8 trade reconstructions.

9 “(B) PERMISSIBLE COMPLIANCE BY ENTI-
10 TY OTHER THAN DEALER OR PARTICIPANT.—A
11 registered swap repository may, at the request
12 of a registered swap dealer or major swap par-
13 ticipant, satisfy the requirement of subpara-
14 graph (A) on behalf of such registered swap
15 dealer or major swap participant.

16 “(5) RULES.—Not later than 1 year of the date
17 of the enactment of the Over-the-Counter Deriva-
18 tives Markets Act of 2010, the Commission and the
19 Securities and Exchange Commission shall jointly
20 adopt rules governing daily trading records for swap
21 dealers, major swap participants, security-based
22 swap dealers, and major security-based swap partici-
23 pants.

24 “(h) BUSINESS CONDUCT STANDARDS.—

1 “(1) IN GENERAL.—Each registered swap deal-
2 er and major swap participant shall conform with
3 such business conduct standards as may be pre-
4 scribed by rule or regulation, including any stand-
5 ards addressing—

6 “(A) fraud, manipulation, and other abu-
7 sive practices involving swaps (including swaps
8 that are offered but not entered into);

9 “(B) diligent supervision of its business as
10 a swap dealer;

11 “(C) adherence to all applicable position
12 limits; and

13 “(D) such other matters as the Commis-
14 sion shall determine to be necessary or appro-
15 priate.

16 “(2) BUSINESS CONDUCT REQUIREMENTS.—
17 Business conduct requirements adopted by the Com-
18 mission pursuant to paragraph (1) shall—

19 “(A) establish the standard of care for a
20 swap dealer or major swap participant to verify
21 that any counterparty meets the eligibility
22 standards for an eligible contract participant;

23 “(B) require disclosure by the swap dealer
24 or major swap participant to any counterparty
25 to the transaction (other than a swap dealer,

1 major swap participant, security-based swap
2 dealer, or major security-based swap partici-
3 pant) of—

4 “(i) information about the material
5 risks and characteristics of the swap;

6 “(ii) the source and amount of any
7 fees or other material remuneration that
8 the swap dealer or major swap participant
9 would directly or indirectly expect to re-
10 ceive in connection with the swap; and

11 “(iii) any other material incentives or
12 conflicts of interest that the swap dealer or
13 major swap participant may have in con-
14 nection with the swap;

15 “(C) establish a standard of conduct for a
16 swap dealer or major swap participant to com-
17 municate in a fair and balanced manner based
18 on principles of fair dealing and good faith;

19 “(D) establish a standard of conduct for a
20 swap dealer or major swap participant, with re-
21 spect to a counterparty that is an eligible con-
22 tract participant within the meaning of sub-
23 clause (I) or (II) of clause (vii) of section
24 1a(12) of this Act, to have a reasonable basis

1 to believe that the counterparty has an inde-
2 pendent representative that—

3 “(i) has sufficient knowledge to evalu-
4 ate the transaction and risks;

5 “(ii) is not subject to a statutory dis-
6 qualification;

7 “(iii) is independent of the swap deal-
8 er or major swap participant;

9 “(iv) undertakes a duty to act in the
10 best interests of the counterparty it rep-
11 resents;

12 “(v) makes appropriate disclosures;
13 and

14 “(vi) will provide written representa-
15 tions to the eligible contract participant re-
16 garding fair pricing and the appropriate-
17 ness of the transaction; and

18 “(E) establish such other standards and
19 requirements as the Commission may determine
20 are necessary or appropriate in the public inter-
21 est, for the protection of investors, or otherwise
22 in furtherance of the purposes of this title.

23 “(3) RULES.—Not later than 1 year after the
24 date of enactment of the Over-the-Counter Deriva-
25 tives Markets Act of 2010, the Commission and the

1 Securities and Exchange Commission shall jointly
2 prescribe rules under this subsection governing busi-
3 ness conduct standards for swap dealers, major swap
4 participants, security-based swap dealers, and major
5 security-based swap participants.

6 “(i) DOCUMENTATION AND BACK OFFICE STAND-
7 ARDS.—

8 “(1) IN GENERAL.—Each registered swap deal-
9 er and major swap participant shall conform with
10 standards, as may be prescribed by rule or regula-
11 tion, addressing timely and accurate confirmation,
12 processing, netting, documentation, and valuation of
13 all swaps.

14 “(2) RULES.—Not later than 1 year after the
15 date of the enactment of the Over-the-Counter De-
16 rivatives Markets Act of 2010, the Commission and
17 the Securities and Exchange Commission shall joint-
18 ly adopt rules governing documentation and back of-
19 fice standards for swap dealers, major swap partici-
20 pants, security-based swap dealers, and major secu-
21 rity-based swap participants.

22 “(j) DEALER RESPONSIBILITIES.—Each registered
23 swap dealer and major swap participant shall, at all times,
24 comply with the following requirements:

1 “(1) MONITORING OF TRADING.—The swap
2 dealer or major swap participant shall monitor its
3 trading in swaps to prevent violations of applicable
4 position limits.

5 “(2) DISCLOSURE OF GENERAL INFORMA-
6 TION.—The swap dealer or major swap participant
7 shall disclose to the Commission information con-
8 cerning—

9 “(A) terms and conditions of its swaps;

10 “(B) swap trading operations, mechanisms,
11 and practices;

12 “(C) financial integrity protections relating
13 to swaps; and

14 “(D) other information relevant to its trad-
15 ing in swaps.

16 “(3) ABILITY TO OBTAIN INFORMATION.—The
17 swap dealer or major swap participant shall—

18 “(A) establish and enforce internal systems
19 and procedures to obtain any necessary infor-
20 mation to perform any of the functions de-
21 scribed in this section; and

22 “(B) provide the information to the Com-
23 mission upon request.

1 “(4) CONFLICTS OF INTEREST.—The swap
2 dealer and major swap participant shall implement
3 conflict of interest systems and procedures that—

4 “(A) establish structural and institutional
5 safeguards to assure that the activities of any
6 person within the firm relating to research or
7 analysis of the price or market for any com-
8 modity are separated by appropriate informa-
9 tional partitions within the firm from the re-
10 view, pressure, or oversight of those whose in-
11 volvement in trading or clearing activities might
12 potentially bias their judgment or supervision;
13 and

14 “(B) address such other issues as the
15 Commission determines appropriate.

16 “(5) ANTITRUST CONSIDERATIONS.—Unless
17 necessary or appropriate to achieve the purposes of
18 this Act, a swap dealer or major swap participant
19 shall avoid—

20 “(A) adopting any processes or taking any
21 actions that result in any unreasonable re-
22 straints of trade; or

23 “(B) imposing any material anticompeti-
24 tive burden on trading.

1 “(k) RULES.—The Commission and the Securities
2 and Exchange Commission shall consult with each other
3 prior to adopting any rules under the Over-the-Counter
4 Derivatives Markets Act of 2010.”.

5 (b) CONFLICT OF INTERESTS.—The Commodity Fu-
6 tures Trading Commission and the Securities and Ex-
7 change Commission shall jointly adopt rules mitigating
8 conflicts of interest in connection with a swap dealer, secu-
9 rity-based swap dealer, major swap participant, or major
10 security-based swap participant’s conduct of business with
11 a derivatives clearing organization, clearing agency, board
12 of trade, or an alternative swap execution facility that
13 clears or trades swaps in which such swap dealer, security-
14 based swap dealer, major swap participant, or major secu-
15 rity-based swap participant has a material debt or equity
16 investment.

17 **SEC. 718. SEGREGATION OF ASSETS HELD AS COLLATERAL**
18 **IN SWAP TRANSACTIONS.**

19 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
20 is amended by inserting after section 4s (as added by sec-
21 tion 717) the following:

22 **“SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL**
23 **IN SWAP TRANSACTIONS.**

24 “(a) CLEARED SWAPS.—A swap dealer, futures com-
25 mission merchant, or derivatives clearing organization by

1 or through which funds or other property provided as ini-
2 tial margin or collateral are held to margin, guarantee,
3 or secure the obligations of a counterparty under a swap
4 to be cleared by or through a derivatives clearing organiza-
5 tion shall segregate, maintain, and use the funds or other
6 property provided as initial margin or collateral for the
7 benefit of the counterparty, in accordance with such rules
8 and regulations as the Commission shall prescribe for
9 nonbank swap dealers, futures commission merchants, or
10 derivatives clearing organizations, or the primary financial
11 regulatory agency shall prescribe for bank swap dealers.
12 Any such funds or other property provided as initial mar-
13 gin or collateral shall be treated as customer property
14 under this Act.

15 “(b) OTHER SWAPS.—At the request of a swap
16 counterparty who provides funds or other property as ini-
17 tial margin or collateral to a swap dealer to margin, guar-
18 antee, or secure the obligations of the counterparty under
19 a swap between the counterparty and the swap dealer that
20 is not submitted for clearing to a derivatives clearing orga-
21 nization, the swap dealer shall segregate the funds or
22 other property provided as initial margin or collateral for
23 the benefit of the counterparty, and maintain the funds
24 or other property in an account that is carried by an inde-
25 pendent third-party custodian and designated as a seg-

1 regated account for the counterparty, in accordance with
2 such rules and regulations as the Commission shall pre-
3 scribe for nonbank swap dealers, futures commission mer-
4 chants, or derivatives clearing organizations, or the pri-
5 mary financial regulatory agency shall prescribe for bank
6 swap dealers. Any segregation requested under this sub-
7 section shall be made available by a swap dealer to a
8 counterparty on fair and reasonable terms on a non-dis-
9 criminatory basis. This subsection shall not be interpreted
10 to preclude commercial arrangements regarding the in-
11 vestment of the segregated funds or other property and
12 the related allocation of gains and losses resulting from
13 any such investment, provided, however, that the seg-
14 regated funds or other property under this subsection may
15 be invested only in such investments as the Commission
16 or the primary financial regulatory agency, as applicable,
17 permits by rule or regulation, and shall not be pledged,
18 re-hypothecated, or otherwise encumbered by a swap deal-
19 er.”.

20 **SEC. 719. CONFLICTS OF INTEREST.**

21 Section 4d of the Commodity Exchange Act (7 U.S.C.
22 6d) is amended by—

- 23 (1) redesignating subsection (c) as subsection
- 24 (d); and
- 25 (2) inserting after subsection (b) the following:

1 “(c) CONFLICTS OF INTEREST.—The Commission
2 shall require that futures commission merchants and in-
3 troducing brokers implement conflict of interest systems
4 and procedures that—

5 “(1) establish structural and institutional safe-
6 guards to assure that the activities of any person
7 within the firm relating to research or analysis of
8 the price or market for any commodity are separated
9 by appropriate informational partitions within the
10 firm from the review, pressure, or oversight of those
11 whose involvement in trading or clearing activities
12 might potentially bias their judgment or supervision;
13 and

14 “(2) address such other issues as the Commis-
15 sion determines appropriate.”.

16 **SEC. 720. ALTERNATIVE SWAP EXECUTION FACILITIES.**

17 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
18 is amended by inserting after section 5g the following:

19 **“SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.**

20 “(a) DEFINITION.—For purposes of this section, the
21 term ‘alternative swap execution facility’ means an elec-
22 tronic trading system with pre-trade and post-trade trans-
23 parency in which multiple participants have the ability to
24 execute or trade swaps by accepting bids and offers made

1 by other participants that are open to multiple partici-
2 pants in the system, but which is not an exchange.

3 “(b) REGISTRATION.—

4 “(1) IN GENERAL.—No person may operate a
5 facility for the trading of swaps unless the facility is
6 registered as an alternative swap execution facility
7 under this section or as a designated contract mar-
8 ket registered under this Act.

9 “(2) REQUIRED REGISTRATION FOR ALTER-
10 NATIVE SWAP EXECUTION FACILITIES.—Any person
11 that is required to be registered as an alternative
12 swap execution facility under this section shall reg-
13 ister with the Commission regardless of whether that
14 person also is registered with the Securities and Ex-
15 change Commission as an alternative swap execution
16 facility.

17 “(c) REQUIREMENTS FOR TRADING.—An alternative
18 swap execution facility that is registered under subsection
19 (b) may trade any swap.

20 “(d) TRADING BY CONTRACT MARKETS.—A board of
21 trade that operates a contract market shall, to the extent
22 that the board of trade also operates an alternative swap
23 execution facility and uses the same electronic trade execu-
24 tion system for trading on the contract market and the
25 alternative swap execution facility, identify whether elec-

1 tronic trading is taking place on the contract market or
2 the alternative swap execution facility.

3 “(e) CRITERIA FOR REGISTRATION.—

4 “(1) IN GENERAL.—To be registered as an al-
5 ternative swap execution facility, the facility shall be
6 required to demonstrate to the Commission that
7 such facility meets the criteria established under this
8 section.

9 “(2) DETERRENCE OF ABUSES.—Each alter-
10 native swap execution facility shall establish and en-
11 force trading and participation rules that will deter
12 abuses and have the capacity to detect, investigate,
13 and enforce those rules, including—

14 “(A) means to obtain information nec-
15 essary to perform the functions required under
16 this section; or

17 “(B) means to—

18 “(i) provide market participants with
19 impartial access to the market; and

20 “(ii) capture information that may be
21 used in establishing whether any violations
22 of this section have occurred.

23 “(3) TRADING PROCEDURES.—Each alternative
24 swap execution facility shall establish and enforce
25 rules or terms and conditions defining, or specifica-

1 tions detailing, trading procedures to be used in en-
2 tering and executing orders traded on or through its
3 facilities.

4 “(4) FINANCIAL INTEGRITY OF TRANS-
5 ACTIONS.—Each alternative swap execution facility
6 shall establish and enforce rules and procedures for
7 ensuring the financial integrity of swaps entered on
8 or through its facilities, including the clearance and
9 settlement of the swaps pursuant to section 2(j)(1).

10 “(f) CORE PRINCIPLES FOR ALTERNATIVE SWAP
11 EXECUTION FACILITIES.—

12 “(1) COMPLIANCE.—

13 “(A) IN GENERAL.—To maintain its reg-
14 istration as an alternative swap execution facil-
15 ity, the facility shall comply with the core prin-
16 ciples established in this subsection and any re-
17 quirement that the Commission may impose by
18 rule or regulation pursuant to section 8a(5).

19 “(B) REASONABLE DISCRETION.—Except
20 where the Commission determines otherwise by
21 rule or regulation, the facility shall have reason-
22 able discretion in establishing the manner in
23 which it complies with the core principles estab-
24 lished in this subsection.

1 “(2) COMPLIANCE WITH RULES.—Each alter-
2 native swap execution facility shall monitor and en-
3 force compliance with any of the rules of the facility,
4 including the terms and conditions of the swaps
5 traded on or through the facility and any limitations
6 on access to the facility.

7 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
8 NIPULATION.—Each alternative swap execution facil-
9 ity shall permit trading only in swaps that are not
10 readily susceptible to manipulation.

11 “(4) MONITORING OF TRADING.—Each alter-
12 native swap execution facility shall monitor trading
13 in swaps to prevent manipulation, price distortion,
14 and disruptions of the delivery or cash settlement
15 process through surveillance, compliance, and dis-
16 ciplinary practices and procedures, including meth-
17 ods for conducting real-time monitoring of trading
18 and comprehensive and accurate trade reconstruc-
19 tions.

20 “(5) ABILITY TO OBTAIN INFORMATION.—Each
21 alternative swap execution facility shall—

22 “(A) establish and enforce rules that will
23 allow the facility to obtain any necessary infor-
24 mation to perform any of the functions de-
25 scribed in this subsection;

1 “(B) provide the information to the Com-
2 mission upon request; and

3 “(C) have the capacity to carry out such
4 international information-sharing agreements as
5 the Commission may require.

6 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

7 “(A) IN GENERAL.—To reduce the poten-
8 tial threat of market manipulation or conges-
9 tion, especially during trading in the delivery
10 month, and to eliminate or prevent excessive
11 speculation as described in section 4a(a), an al-
12 ternative swap execution facility shall adopt for
13 each of its contracts, where necessary and ap-
14 propriate, position limitations or position ac-
15 countability for speculators.

16 “(B) FOR CERTAIN CONTRACTS.—For any
17 contract that is subject to a position limitation
18 established by the Commission pursuant to sec-
19 tion 4a(a), an alternative swap execution facil-
20 ity shall set its position limitation at a level no
21 higher than the Commission limitation.

22 “(7) EMERGENCY AUTHORITY.—Each alter-
23 native swap execution facility shall adopt rules to
24 provide for the exercise of emergency authority, in
25 consultation or cooperation with the Commission,

1 where necessary and appropriate, including the au-
2 thority—

3 “(A) to liquidate or transfer open positions
4 in any swap; or

5 “(B) to suspend or curtail trading in a
6 swap.

7 “(8) TIMELY PUBLICATION OF TRADING INFOR-
8 MATION.—Each alternative swap execution facility
9 shall make public timely information on price, trad-
10 ing volume, and other trading data on swaps to the
11 extent prescribed by the Commission.

12 “(9) RECORDKEEPING AND REPORTING.—

13 “(A) IN GENERAL.—Each alternative swap
14 execution facility shall—

15 “(i) maintain records of all activities
16 related to the business of the facility, in-
17 cluding a complete audit trail, in a form
18 and manner acceptable to the Commission
19 for a period of 5 years;

20 “(ii) report to the Commission all in-
21 formation determined by the Commission
22 to be necessary or appropriate for the
23 Commission to perform its responsibilities
24 under this Act in a form and manner ac-
25 ceptable to the Commission; and

1 “(iii) make available to the Securities
2 and Exchange Commission, upon request,
3 all information, including a complete audit
4 trail, relating to transactions in security-
5 based swap agreements (as such term is
6 defined in section 3(a)(76) of the Securi-
7 ties Exchange Act of 1934).

8 “(B) DATA COLLECTION REQUIRE-
9 MENTS.—The Commission shall adopt data col-
10 lection and reporting requirements for alter-
11 native swap execution facilities that are com-
12 parable to corresponding requirements for de-
13 rivatives clearing organizations and swap re-
14 positories.

15 “(10) ANTITRUST CONSIDERATIONS.—Unless
16 necessary or appropriate to achieve the purposes of
17 this Act, an alternative swap execution facility shall
18 avoid—

19 “(A) adopting any rules or taking any ac-
20 tions that result in any unreasonable restraints
21 of trade; or

22 “(B) imposing any material anticompeti-
23 tive burden on trading on the swap execution
24 facility.

1 “(11) CONFLICTS OF INTEREST.—Each alter-
2 native swap execution facility shall—

3 “(A) establish and enforce rules to mini-
4 mize conflicts of interest in its decision-making
5 process; and

6 “(B) establish a process for resolving any
7 conflicts of interest.

8 “(12) DESIGNATION OF COMPLIANCE OFFI-
9 CER.—

10 “(A) IN GENERAL.—Each alternative swap
11 execution facility shall designate an individual
12 to serve as a compliance officer.

13 “(B) DUTIES.—The compliance officer
14 shall perform the following duties:

15 “(i) Reporting directly to the board or
16 to the senior officer of the facility.

17 “(ii) Reviewing the compliance of the
18 facility with the core principles established
19 in this subsection.

20 “(iii) Consulting with the board of the
21 facility, a body performing a function simi-
22 lar to that of a board, or the senior officer
23 of the facility, to resolve any conflicts of
24 interest that may arise.

1 “(iv) Administering the policies and
2 procedures of the facility required to be es-
3 tablished pursuant to this section.

4 “(v) Ensuring compliance with com-
5 modity laws and the rules and regulations
6 issued thereunder, including any rules pre-
7 scribed by the Commission pursuant to
8 this section.

9 “(vi) Establishing procedures for re-
10 mediation of noncompliance issues found
11 during compliance office reviews,
12 lookbacks, internal or external audit find-
13 ings, self-reported errors, or through vali-
14 dated complaints. Procedures to be estab-
15 lished under this clause include procedures
16 related to the handling, management re-
17 sponse, remediation, retesting, and closing
18 of noncompliance issues.

19 “(C) ANNUAL REPORTS REQUIRED.—

20 “(i) IN GENERAL.—The compliance
21 officer shall annually prepare and sign a
22 report on the compliance of the alternative
23 swap execution facility with the commodity
24 laws and the policies and procedures of the
25 facility, including the code of ethics and

1 conflict of interest policies of the facility,
2 in accordance with rules prescribed by the
3 Commission.

4 “(ii) SUBMISSION.—The compliance
5 report required under clause (i) shall ac-
6 company the financial reports of the alter-
7 native swap execution facility that are re-
8 quired to be furnished to the Commission
9 pursuant to this section and shall include
10 a certification that, under penalty of law,
11 the report is accurate and complete.

12 “(g) EXEMPTIONS.—The Commission may exempt,
13 conditionally or unconditionally, an alternative swap exe-
14 cution facility from registration under this section if the
15 Commission finds that such facility is subject to com-
16 parable, comprehensive supervision and regulation on a
17 consolidated basis by the Securities and Exchange Com-
18 mission, the primary financial regulatory agency, or the
19 appropriate governmental authorities in the organization’s
20 home country.

21 “(h) HARMONIZATION OF RULES.—Not later than
22 180 days of the date of the enactment of the Over-the-
23 Counter Derivatives Markets Act of 2010, the Commission
24 and the Securities and Exchange Commission shall jointly
25 prescribe rules governing the regulation of alternative

1 swap execution facilities under this section and section 3C
2 of the Securities Exchange Act of 1934.”.

3 **SEC. 721. DERIVATIVES TRANSACTION EXECUTION FACILI-**
4 **TIES AND EXEMPT BOARDS OF TRADE.**

5 (a) IN GENERAL.—Sections 5a and 5d of the Com-
6modity Exchange Act (7 U.S.C. 7a and 7a-3) are repealed.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 2 of the Commodity Exchange Act
9 (7 U.S.C. 2) is amended—

10 (A) in subsection (a)(1)(A), in the first
11 sentence, by striking “or 5a”;

12 (B) in subsection (a)(1)(C)—

13 (i) in clause (ii)—

14 (I) by striking “, or register a de-
15rivatives transaction execution facility
16that trades or executes,”;

17 (II) by striking “, and no deriva-
18tives transaction execution facility
19shall trade or execute such contracts
20of sale (or options on such contracts)
21for future delivery,”; and

22 (III) by striking “or the deriva-
23tives transaction execution facility,”;
24and

25 (ii) in clause (v)—

1 (I) in subclause (II), by striking
2 “or derivatives transaction execution
3 facility”; and

4 (II) in subclause (V), by striking
5 “or registered derivatives transaction
6 execution facility,”

7 (C) in subsection (a)(1)(D)—

8 (i) in clause (i)—

9 (I) in the matter preceding sub-
10 clause (I)—

11 (aa) by striking “, or reg-
12 ister a derivatives transaction
13 execution facility that trades or
14 executes,”; and

15 (bb) by striking “, or reg-
16 istered as a derivatives trans-
17 action execution facility for,”;
18 and

19 (II) in subclause (IV), by striking
20 “registered derivatives transaction
21 execution facility,” each place that
22 term appears;

23 (ii) by amending clause (ii)(I) to read
24 as follows:

1 “(I) the transaction is conducted
2 on or subject to the rules of a board
3 of trade that has been designated by
4 the Commission as a contract market
5 in such security futures product;”;

6 (iii) in clause (ii)(II), by striking “or
7 registered derivatives transaction execution
8 facility”; and

9 (iv) in clause (ii)(III), by striking “or
10 registered derivatives transaction execution
11 facility”;

12 (D) in subsection (a)(9)(B)(ii), by striking
13 “or derivatives transaction execution facility”,
14 each place that term appears;

15 (E) in subsection (c)(1), by striking “sec-
16 tion 5a of this Act” and all that follows through
17 “5d of this Act” and inserting “section 5b of
18 this Act”;

19 (F) in subsection (c)(2)(B)(iv)—

20 (i) in subclause (II)(cc), by striking
21 “or a derivatives transaction execution fa-
22 cility”; and

23 (ii) in subclause (IV)(cc), by striking
24 “or a derivatives transaction execution fa-
25 cility”;

1 (G) in subsection (c)(2)(C)(iii)—

2 (i) in subclause (II)(cc), by striking
3 “or a derivatives transaction execution fa-
4 cility”; and

5 (ii) in subclause (IV)(cc), by striking
6 “or a derivatives transaction execution fa-
7 cility”;

8 (H) in subsection (e)(2), by striking “or a
9 derivatives transaction execution facility,”;

10 (I) subsection (g), by striking “section 5a
11 of this Act” and all that follows through “5d of
12 this Act” and inserting “section 5b of this
13 Act”;

14 (J) in subsection (h)(7)(B)—

15 (i) in clause (i), by striking “, or a de-
16 rivatives transaction execution facility,”;

17 (ii) in clause (ii), by striking “, or a
18 derivatives transaction execution facility,”;

19 and

20 (iii) in clause (iv), “, a derivatives
21 transaction execution facility,”; and

22 (K) in subsection (i)(2), by striking “sec-
23 tion 5a of this Act” and all that follows through
24 “5d of this Act” and inserting “section 5b of
25 this Act”.

1 (2) The Commodity Exchange Act (7 U.S.C. 1
2 et. seq) is amended—

3 (A) by striking “or derivatives transaction
4 execution facility” each place that term ap-
5 pears;

6 (B) by striking “or derivatives transaction
7 execution facility,” each place that term ap-
8 pears;

9 (C) by striking “, derivatives transaction
10 execution facility,” each place that term ap-
11 pears;

12 (D) by striking “derivatives transaction
13 execution facility” each place that term ap-
14 pears;

15 (E) by striking “or derivatives transaction
16 execution facilities,” each place that term ap-
17 pears;

18 (F) by striking “or derivatives transaction
19 execution facilities” each place that term ap-
20 pears;

21 (G) by striking “or registered derivatives
22 transaction execution facility” each place that
23 term appears;;

1 (H) by striking “or registered derivatives
2 transaction execution facility,” each place that
3 term appears;; and

4 (I) by striking “and registered derivatives
5 transaction execution facility” each place that
6 term appears.

7 (3) Section 4j of the Commodity Exchange Act
8 (7 U.S.C. 6j) is amended in the heading by striking
9 **“AND REGISTERED DERIVATIVES TRANS-**
10 **ACTION EXECUTION FACILITIES”**.

11 (4) Section 5(e)(2) of the Commodity Exchange
12 Act (7 U.S.C. 5(e)) is repealed.

13 (5) Sections 555, 556, 559, and 560 of title 11,
14 United States Code, are each amended by striking “,
15 a derivatives transaction execution facility registered
16 under the Commodity Exchange Act,” each place
17 that terms appears.

18 (6) Section 561 of title 11, United States Code,
19 is amended by striking “or a derivatives transaction
20 execution facility registered under the Commodity
21 Exchange Act”.

22 (7) Section 3(55)(C)(iii)(I) of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78c(55)(C)(iii)(I)) is
24 amended by striking “or registered derivatives trans-
25 action execution facility”.

1 (8) Section 6(g)(1)(A) of the Securities Ex-
2 change Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is
3 amended—

4 (A) by striking “that—” and all that fol-
5 lows through “(i) has been designated” and in-
6 serting “that has been designated”;

7 (B) by striking “; or” and inserting “;
8 and” and

9 (C) by striking clause (ii).

10 (9) Section 5(b)(2)(C)(iii) of the Securities In-
11 vestor Protection Act of 1970 (15 U.S.C.
12 78eee(b)(2)(C)(iii)) is amended by striking “, a de-
13 rivatives transaction execution facility registered
14 under the Commodity Exchange Act,”.

15 **SEC. 722. DESIGNATED CONTRACT MARKETS.**

16 (a) EXECUTION OF TRANSACTIONS.—Section 5(d) of
17 the Commodity Exchange Act (7 U.S.C. 7(d)) is amended
18 by amending paragraph (9) to read as follows:

19 “(9) EXECUTION OF TRANSACTIONS.—

20 “(A) OPEN MARKET.—The board of trade
21 shall provide a competitive, open, and efficient
22 market and mechanism for executing trans-
23 actions that protects the price discovery process
24 of trading in the board of trade’s centralized
25 market.

1 “(B) PERMISSIBLE TRANSACTIONS.—The
2 rules may authorize, for bona fide business pur-
3 poses—

4 “(i) transfer trades or office trades;

5 “(ii) an exchange of—

6 “(I) futures in connection with a
7 cash commodity transaction;

8 “(II) futures for cash commod-
9 ities; or

10 “(III) futures for swaps; or

11 “(iii) a futures commission merchant,
12 acting as principal or agent, to enter into
13 or confirm the execution of a contract for
14 the purchase or sale of a commodity for fu-
15 ture delivery if the contract is reported, re-
16 corded, or cleared in accordance with the
17 rules of the contract market or a deriva-
18 tives clearing organization.”.

19 (b) ADDITIONAL PRINCIPLES.—Section 5(d) of the
20 Commodity Exchange Act (7 U.S.C. 7(d)) is amended by
21 adding at the end the following:

22 “(19) FINANCIAL RESOURCES.—The board of
23 trade shall have adequate financial, operational, and
24 managerial resources to discharge the responsibil-
25 ities of a contract market. For the board of trade’s

1 financial resources to be considered adequate, their
2 value shall exceed the total amount that would en-
3 able the contract market to cover its operating costs
4 for a period of 1 year, calculated on a rolling basis.

5 “(20) SYSTEM SAFEGUARDS.—The board of
6 trade shall—

7 “(A) establish and maintain a program of
8 risk analysis and oversight to identify and mini-
9 mize sources of operational risk through the de-
10 velopment of appropriate controls and proce-
11 dures, and the development of automated sys-
12 tems, that are reliable, secure, and give ade-
13 quate scalable capacity;

14 “(B) establish and maintain emergency
15 procedures, backup facilities, and a plan for dis-
16 aster recovery that allow for the timely recovery
17 and resumption of operations and the fulfill-
18 ment of the board of trade’s responsibilities and
19 obligations; and

20 “(C) periodically conduct tests to verify
21 that back-up resources are sufficient to ensure
22 continued order processing and trade matching,
23 price reporting, market surveillance, and main-
24 tenance of a comprehensive and accurate audit
25 trail.”.

1 **SEC. 723. MARGIN.**

2 Section 8a of the Commodity Exchange Act (7 U.S.C.
3 12a) is amended in paragraph (7)(C), by striking “, ex-
4 cepting the setting of levels of margin”.

5 **SEC. 724. POSITION LIMITS.**

6 (a) EXCESSIVE SPECULATION.—Section 4a(a) of the
7 Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

8 (1) by inserting “(1)” after “(a)”;

9 (2) in the first sentence, by striking “on elec-
10 tronic trading facilities with respect to a significant
11 price discovery contract” and inserting “swaps that
12 perform or affect a significant price discovery func-
13 tion with respect to regulated markets”;

14 (3) in the second sentence, by—

15 (A) inserting “, including any group or
16 class of traders,” after “held by any person”;
17 and

18 (B) striking “on an electronic trading fa-
19 cility with respect to a significant price dis-
20 covery contract,” and inserting “swaps that
21 perform or affect a significant price discovery
22 function with respect to regulated markets,”;
23 and

24 (4) inserting at the end the following:

25 “(2) AGGREGATE POSITION LIMITS.—The Com-
26 mission may, by rule or regulation, establish limits

1 (including related hedge exemption provisions) on
2 the aggregate number or amount of positions in con-
3 tracts based upon the same underlying commodity
4 (as defined by the Commission) that may be held by
5 any person, including any group or class of traders,
6 for each month across—

7 “(A) contracts listed by designated con-
8 tract markets;

9 “(B) contracts traded on a foreign board
10 of trade that provides members or other partici-
11 pants located in the United States with direct
12 access to its electronic trading and order
13 matching system; and

14 “(C) swap contracts that perform or affect
15 a significant price discovery function with re-
16 spect to regulated markets.

17 “(3) SIGNIFICANT PRICE DISCOVERY FUNC-
18 TION.—In making a determination under paragraph
19 (2) whether a swap performs or affects a significant
20 price discovery function with respect to regulated
21 markets, the Commission shall consider, as appro-
22 priate the following:

23 “(A) PRICE LINKAGE.—The extent to
24 which the swap uses or otherwise relies on a
25 daily or final settlement price, or other major

1 price parameter, of another contract traded on
2 a regulated market based upon the same under-
3 lying commodity, to value a position, transfer or
4 convert a position, financially settle a position,
5 or close out a position.

6 “(B) ARBITRAGE.—The extent to which
7 the price for the swap is sufficiently related to
8 the price of another contract traded on a regu-
9 lated market based upon the same underlying
10 commodity so as to permit market participants
11 to effectively arbitrage between the markets by
12 simultaneously maintaining positions or exe-
13 cuting trades in the swaps on a frequent and
14 recurring basis.

15 “(C) MATERIAL PRICE REFERENCE.—The
16 extent to which, on a frequent and recurring
17 basis, bids, offers, or transactions in a contract
18 traded on a regulated market are directly based
19 on, or are determined by referencing, the price
20 generated by the swap.

21 “(D) MATERIAL LIQUIDITY.—The extent
22 to which the volume of swaps being traded in
23 the commodity is sufficient to have a material
24 effect on another contract traded on a regulated
25 market.

1 “(E) OTHER MATERIAL FACTORS.—Such
2 other material factors as the Commission speci-
3 fies by rule or regulation as relevant to deter-
4 mine whether a swap serves a significant price
5 discovery function with respect to a regulated
6 market.

7 “(4) EXEMPTIONS.—The Commission, by rule,
8 regulation, or order, may exempt, conditionally or
9 unconditionally, any person or class of persons, any
10 swap or class of swaps, or any transaction or class
11 of transactions from any requirement the Commis-
12 sion may establish under this section with respect to
13 position limits.”.

14 (b) TRACKING POSITION LIMITS.—Section 4a(b) of
15 the Commodity Exchange Act (7 U.S.C. 6a(b)) is amend-
16 ed—

17 (1) in paragraph (1), by striking “or derivatives
18 transaction execution facility or facilities or elec-
19 tronic trading facility” and inserting “or alternative
20 swap execution facility or facilities”; and

21 (2) in paragraph (2), by striking “or derivatives
22 transaction execution facility or facilities or elec-
23 tronic trading facility” and inserting “or alternative
24 swap execution facility”.

1 **SEC. 725. ENHANCED AUTHORITY OVER REGISTERED ENTI-**
2 **TIES.**

3 (a) Section 5(d)(1) of the Commodity Exchange Act
4 (7 U.S.C. 7(d)(1)) is amended by striking “The board of
5 trade shall have” and inserting “Except where the Com-
6 mission otherwise determines by rule or regulation pursu-
7 ant to section 8a(5), the board of trade shall have”.

8 (b) Section 5b(e)(2)(A) of the Commodity Exchange
9 Act (7 U.S.C. 7a–1(e)(2)(A)) is amended by striking “The
10 applicant shall have” and inserting “Except where the
11 Commission otherwise determines by rule or regulation
12 pursuant to section 8a(5), the applicant shall have”.

13 (c) Section 5c(a) of the Commodity Exchange Act (7
14 U.S.C. 7a–2(a)) is amended—

15 (1) in paragraph (1), by striking “5a(d) and
16 5b(c)(2)” and inserting “5b(e)(2) and 5h(e)”; and

17 (2) in paragraph (2), by striking “shall not”
18 and inserting “may”.

19 (d) Section 5c(c)(1) of the Commodity Exchange Act
20 (7 U.S.C. 7a–2(c)(1)) is amended—

21 (1) by striking “(1) IN GENERAL.—Subject to”
22 and inserting the following:

23 “(1) IN GENERAL.—

24 “(A) Subject to”; and

25 (2) by adding at the end the following:

1 “(B) Unless section 805(e) of the Pay-
2 ment, Clearing, and Settlement Supervision Act
3 of 2009 applies, the new contract or instrument
4 or clearing of the new contract or instrument,
5 new rule, or new amendment shall become ef-
6 fective, pursuant to the registered entity’s cer-
7 tification, 10 business days after the Commis-
8 sion’s receipt of the certification (or such short-
9 er period as may be determined by the Commis-
10 sion by rule or regulation) unless the Commis-
11 sion notifies the registered entity within such
12 time that the Commission is staying the certifi-
13 cation because there exist novel or complex
14 issues that require additional time to analyze,
15 an inadequate explanation by the submitting
16 registered entity, or a potential inconsistency
17 with this Act (including regulations under this
18 Act).

19 “(C) A notification by the Commission
20 pursuant to subparagraph (B) shall stay the
21 certification of the new contract or instrument
22 or clearing of the new contract or instrument,
23 new rule, or new amendment for up to an addi-
24 tional 90 days from the date of such notifica-
25 tion.”.

1 (e) Section 5c(d) of the Commodity Exchange Act (7
2 U.S.C. 7a–2(d)) is repealed.

3 **SEC. 726. FOREIGN BOARDS OF TRADE.**

4 (a) TECHNICAL AMENDMENT.—Section 4(b) of the
5 Commodity Exchange Act (7 U.S.C. 6(b)) is amended in
6 the third sentence by striking “No rule or regulation” and
7 inserting “Except as provided in paragraphs (1) and (2),
8 no rule or regulation”.

9 (b) REGISTRATION.—Section 4(b) of the Commodity
10 Exchange Act (7 U.S.C. 6(b)) is further amended by in-
11 serting before “The Commission” the following:

12 “(1) REGISTRATION.—The Commission may
13 adopt rules and regulations requiring registration
14 with the Commission for a foreign board of trade
15 that provides the members of the foreign board of
16 trade or other participants located in the United
17 States direct access to the electronic trading and
18 order matching system of the foreign board of trade,
19 including rules and regulations prescribing proce-
20 dures and requirements applicable to the registration
21 of such foreign boards of trade. For purposes of this
22 paragraph, ‘direct access’ refers to an explicit grant
23 of authority by a foreign board of trade to an identi-
24 fied member or other participant located in the
25 United States to enter trades directly into the elec-

1 tronic trading and order matching system of the for-
2 eign board of trade.

3 “(2) LINKED CONTRACTS.—It shall be unlawful
4 for a foreign board of trade to provide to the mem-
5 bers of the foreign board of trade or other partici-
6 pants located in the United States direct access to
7 the electronic trading and order matching system of
8 the foreign board of trade with respect to an agree-
9 ment, contract, or transaction that settles against
10 any price (including the daily or final settlement
11 price) of 1 or more contracts listed for trading on
12 a registered entity, unless the Commission deter-
13 mines that—

14 “(A) the foreign board of trade makes pub-
15 lic daily trading information regarding the
16 agreement, contract, or transaction that is com-
17 parable to the daily trading information pub-
18 lished by the registered entity for the 1 or more
19 contracts against which the agreement, con-
20 tract, or transaction traded on the foreign
21 board of trade settles; and

22 “(B) the foreign board of trade (or the for-
23 eign futures authority that oversees the foreign
24 board of trade)—

1 “(i) adopts position limits (including
2 related hedge exemption provisions) for the
3 agreement, contract, or transaction that
4 are comparable to the position limits (in-
5 cluding related hedge exemption provi-
6 sions) adopted by the registered entity for
7 the 1 or more contracts against which the
8 agreement, contract, or transaction traded
9 on the foreign board of trade settles;

10 “(ii) has the authority to require or
11 direct market participants to limit, reduce,
12 or liquidate any position the foreign board
13 of trade (or the foreign futures authority
14 that oversees the foreign board of trade)
15 determines to be necessary to prevent or
16 reduce the threat of price manipulation,
17 excessive speculation as described in sec-
18 tion 4a, price distortion, or disruption of
19 delivery or the cash settlement process;

20 “(iii) agrees to promptly notify the
21 Commission, with regard to the agreement,
22 contract, or transaction that settles against
23 any price (including the daily or final set-
24 tlement price) of 1 or more contracts listed

1 for trading on a registered entity, of any
2 change regarding—

3 “(I) the information that the for-
4 eign board of trade will make publicly
5 available;

6 “(II) the position limits that the
7 foreign board of trade or foreign fu-
8 tures authority will adopt and enforce;

9 “(III) the position reductions re-
10 quired to prevent manipulation, exces-
11 sive speculation as described in sec-
12 tion 4a, price distortion, or disruption
13 of delivery or the cash settlement
14 process; and

15 “(IV) any other area of interest
16 expressed by the Commission to the
17 foreign board of trade or foreign fu-
18 tures authority;

19 “(iv) provides information to the
20 Commission regarding large trader posi-
21 tions in the agreement, contract, or trans-
22 action that is comparable to the large trad-
23 er position information collected by the
24 Commission for the 1 or more contracts
25 against which the agreement, contract, or

1 transaction traded on the foreign board of
2 trade settles; and

3 “(v) provides the Commission with in-
4 formation necessary to publish reports on
5 aggregate trader positions for the agree-
6 ment, contract, or transaction traded on
7 the foreign board of trade that are com-
8 parable to such reports on aggregate trad-
9 er positions for the 1 or more contracts
10 against which the agreement, contract, or
11 transaction traded on the foreign board of
12 trade settles.

13 “(3) EXISTING FOREIGN BOARDS OF TRADE.—
14 Paragraphs (1) and (2) shall not be effective with
15 respect to any foreign board of trade to which the
16 Commission has granted direct access permission be-
17 fore the date of the enactment of this subsection
18 until the date that is 180 days after such date of en-
19 actment.

20 “(4) PERSONS LOCATED IN THE UNITED
21 STATES.—”.

22 (c) LIABILITY OF REGISTERED PERSONS TRADING
23 ON A FOREIGN BOARD OF TRADE.—

24 (1) Section 4(a) of the Commodity Exchange
25 Act (7 U.S.C. 6(a)) is amended by inserting “or by

1 subsection (f)” after “Unless exempted by the Com-
2 mission pursuant to subsection (c)”.

3 (2) Section 4 of the Commodity Exchange Act
4 (7 U.S.C. 6) is further amended by adding at the
5 end the following:

6 “(f) ADDITIONAL EXEMPTION.—A person registered
7 with the Commission, or exempt from registration by the
8 Commission, under this Act may not be found to have vio-
9 lated subsection (a) with respect to a transaction in, or
10 in connection with, a contract of sale of a commodity for
11 future delivery if the person has reason to believe that the
12 transaction and the contract is made on or subject to the
13 rules of a foreign board of trade that has complied with
14 paragraphs (1) and (2) of subsection (b).”.

15 (d) CONTRACT ENFORCEMENT FOR FOREIGN FU-
16 TURES CONTRACTS.—Section 22(a) of the Commodity Ex-
17 change Act (7 U.S.C. 25(a)) is amended by adding at the
18 end the following:

19 “(5) CONTRACT ENFORCEMENT FOR FOREIGN
20 FUTURES CONTRACTS.—A contract of sale of a com-
21 modity for future delivery traded or executed on or
22 through the facilities of a board of trade, exchange,
23 or market located outside the United States for pur-
24 poses of section 4(a) shall not be void, voidable, or
25 unenforceable, and a party to such a contract shall

1 not be entitled to rescind or recover any payment
2 made with respect to the contract, based on the fail-
3 ure of the foreign board of trade to comply with any
4 provision of this Act.”.

5 **SEC. 727. LEGAL CERTAINTY FOR SWAPS.**

6 Section 22(a)(4) of the Commodity Exchange Act (7
7 U.S.C. 25(a)(4)) is amended to read as follows:

8 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
9 GIBLE COUNTERPARTIES.—

10 “(A) HYBRIDS.—No hybrid instrument
11 sold to any investor shall be void, voidable, or
12 unenforceable, and no party to such hybrid in-
13 strument shall be entitled to rescind, or recover
14 any payment made with respect to, such a hy-
15 brid instrument under this section or any other
16 provision of Federal or State law, based solely
17 on the failure of the hybrid instrument to com-
18 ply with the terms or conditions of section 2(f)
19 or regulations of the Commission.

20 “(B) AGREEMENTS BETWEEN CONTRACT
21 PARTICIPANTS.—No agreement, contract, or
22 transaction between eligible contract partici-
23 pants or persons reasonably believed to be eligi-
24 ble contract participants shall be void, voidable,
25 or unenforceable, and no party thereto shall be

1 entitled to rescind, or recover any payment
2 made with respect to, such agreement, contract,
3 or transaction under this section or any other
4 provision of Federal or State law, based solely
5 on the failure of the agreement, contract, or
6 transaction to meet the definition of a swap set
7 forth in section 1a or to be cleared pursuant to
8 section 2(j)(1).”.

9 **SEC. 728. FDICIA AMENDMENTS.**

10 Sections 408 and 409 of the Federal Deposit Insur-
11 ance Corporation Improvement Act of 1991 (12 U.S.C.
12 4421-4422) are hereby repealed.

13 **SEC. 729. PRIMARY ENFORCEMENT AUTHORITY.**

14 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
15 is amended by adding the following new section after sec-
16 tion 4b:

17 **“SEC. 4b-1. PRIMARY ENFORCEMENT AUTHORITY.**

18 “(a) COMMODITY FUTURES TRADING COMMIS-
19 SION.—Except as provided in subsections (b), (c), and (d),
20 the Commission shall have primary authority to enforce
21 the provisions of subtitle A of the Over-the-Counter De-
22 rivatives Markets Act of 2010 with respect to any person.

23 “(b) PRIMARY FINANCIAL REGULATORY AGENCY.—
24 The primary financial regulatory agency shall have exclu-
25 sive authority to enforce the provisions of section 4s(e)

1 and other prudential requirements of this Act with respect
2 to banks and branches or agencies of foreign banks that
3 are swap dealers or major swap participants.

4 “(c) REFERRAL.—If the primary financial regulatory
5 agency has cause to believe that a swap dealer or major
6 swap participant may have engaged in conduct that con-
7 stitutes a violation of the nonprudential requirements of
8 section 4s or rules adopted by the Commission thereunder,
9 the agency may recommend in writing to the Commission
10 that the Commission initiate an enforcement proceeding
11 as authorized under this Act. The recommendation shall
12 be accompanied by a written explanation of the concerns
13 giving rise to the recommendation.

14 “(d) BACKSTOP ENFORCEMENT AUTHORITY.—If the
15 Commission does not initiate an enforcement proceeding
16 before the end of the 90-day period beginning on the date
17 on which the Commission receives a recommendation
18 under subsection (c), the primary financial regulatory
19 agency may initiate an enforcement proceeding as per-
20 mitted under Federal law.”.

21 **SEC. 730. ENFORCEMENT.**

22 (a) Section 4b(a)(2) of the Commodity Exchange Act
23 (7 U.S.C. 6b(a)(2)) is amended by striking “or other
24 agreement, contract, or transaction subject to paragraphs
25 (1) and (2) of section 5a(g),” and inserting “or swap,”.

1 (b) Section 4b(b) of the Commodity Exchange Act
2 (7 U.S.C. 6b(b)) is amended by striking “or other agree-
3 ment, contract or transaction subject to paragraphs (1)
4 and (2) of section 5a(g),” and inserting “or swap,”.

5 (c) Section 4c(a) of the Commodity Exchange Act (7
6 U.S.C. 6c(a)) is amended by inserting “or swap” before
7 “if the transaction is used or may be used”.

8 (d) Section 6(e) of the Commodity Exchange Act (7
9 U.S.C. 9) is amended by inserting “or of any swap,” be-
10 fore “or has willfully made”.

11 (e) Section 6(d) of the Commodity Exchange Act (7
12 U.S.C. 13b) is amended by inserting “or of any swap,”
13 before “or otherwise is violating”.

14 (f) Section 6c of the Commodity Exchange Act (7
15 U.S.C. 13a-1) is amended by inserting “or any swap”
16 after “commodity for future delivery”.

17 (g) Section 9(a)(2) of the Commodity Exchange Act
18 (7 U.S.C. 13(a)(2)) is amended by inserting “or of any
19 swap,” before “or to corner”.

20 (h) Section 9(a)(4) of the Commodity Exchange Act
21 (7 U.S.C. 13(a)(4)) is amended by inserting “swap reposi-
22 tory,” before “or futures association”.

23 (i) Section 9(e)(1) of the Commodity Exchange Act
24 (7 U.S.C. 13(e)(1)) is amended—

1 (1) by inserting “swap repository,” before “or
2 registered futures association”; and

3 (2) by inserting “, or swaps,” before “on the
4 basis”.

5 (j) Section 8(b) of the Federal Deposit Insurance Act
6 (12 U.S.C. 1818(b)) is amended—

7 (1) by redesignating paragraphs (6), (7), (8),
8 (9), and (10) as paragraphs (7), (8), (9), (10), and
9 (11), respectively; and

10 (2) by inserting after paragraph (5), the fol-
11 lowing:

12 “(6) This section shall apply to any swap deal-
13 er, major swap participant, security-based swap
14 dealer, major security-based swap participant, de-
15 rivatives clearing organization, swap repository, or
16 alternative swap execution facility, whether or not it
17 is an insured depository institution, for which there
18 is a primary financial regulatory agency for purposes
19 of the Over-the-Counter Derivatives Markets Act of
20 2010.”.

21 **SEC. 731. RETAIL COMMODITY TRANSACTIONS.**

22 Section 2(c) of the Commodity Exchange Act (7
23 U.S.C. 2(c)) is amended—

1 or subparagraphs (A), (B), or (C), in-
2 cluding any agreement, contract, or
3 transaction specifically excluded from
4 subparagraph (A), (B), or (C);

5 “(II) any security;

6 “(III) a contract of sale that—

7 “(aa) results in actual deliv-
8 ery not later than 28 days or
9 such other period as the Commis-
10 sion may determine by rule or
11 regulation based upon the typical
12 commercial practice in cash or
13 spot markets for the commodity
14 involved; or

15 “(bb) creates an enforceable
16 obligation to deliver between a
17 seller and a buyer that have the
18 ability to deliver and accept deliv-
19 ery, respectively, in connection
20 with their line of business;

21 “(IV) an agreement, contract, or
22 transaction that is listed on a national
23 securities exchange registered under
24 section 6(a) of the Securities Ex-

1 change Act of 1934 (15 U.S.C.
2 78f(a)); or

3 “(V) an identified banking prod-
4 uct, as defined in section 402(b) of
5 the Legal Certainty for Bank Prod-
6 ucts Act of 2000 (7 U.S.C. 27(b)).

7 “(iii) Sections 4(a), 4(b), and 4b shall
8 apply to any agreement, contract or trans-
9 action described in clause (i), that is not
10 excluded from clause (i) by clause (ii), as
11 if the agreement, contract, or transaction
12 were a contract of sale of a commodity for
13 future delivery.

14 “(iv) This subparagraph shall not be
15 construed to limit any jurisdiction that the
16 Commission may otherwise have under any
17 other provision of this Act over an agree-
18 ment, contract, or transaction that is a
19 contract of sale of a commodity for future
20 delivery.

21 “(v) This subparagraph shall not be
22 construed to limit any jurisdiction that the
23 Commission or the Securities and Ex-
24 change Commission may otherwise have
25 under any other provisions of this Act with

1 respect to security futures products and
2 persons effecting transactions in security
3 futures products.

4 “(vi) For the purposes of this sub-
5 paragraph, an agricultural producer, pack-
6 er, or handler shall be considered an eligi-
7 ble commercial entity for any agreement,
8 contract, or transaction for a commodity in
9 connection with its line of business.”.

10 **SEC. 732. LARGE SWAP TRADER REPORTING.**

11 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
12 is amended by adding after section 4t (as added by section
13 718) the following:

14 **“SEC. 4u. LARGE SWAP TRADER REPORTING.**

15 “(a) MANDATORY REPORTING OF CERTAIN
16 SWAPS.—

17 “(1) IN GENERAL.—A person that enters into
18 any swap shall file or cause to be filed with the
19 properly designated officer of the Commission the
20 reports described in paragraph (2).

21 “(2) REPORTS.—

22 “(A) SWAP REPORTS.—Each person de-
23 scribed in paragraph (1) shall, in accordance
24 with the rules and regulations of the Commis-
25 sion, keep books and records of any swaps or

1 transactions and positions in any related com-
2 modity traded on or subject to the rules of any
3 board of trade.

4 “(B) CASH OR SPOT TRANSACTIONS.—
5 Each person described in paragraph (1) shall,
6 in accordance with the rules and regulations of
7 the Commission, keep books and records of any
8 cash or spot transactions in, inventories of, and
9 purchase and sale commitments of, any related
10 commodity traded on or subject to the rules of
11 any board of trade, if—

12 “(i) such person directly or indirectly
13 enters into such swaps during any 1 day in
14 an amount equal to or in excess of such
15 amount as shall be fixed from time to time
16 by the Commission; and

17 “(ii) such person directly or indirectly
18 has or obtains a position in such swaps
19 equal to or in excess of such amount as
20 shall be fixed from time to time by the
21 Commission.

22 “(b) RECORDKEEPING.—Any books and records re-
23 quired to be kept under subsection (a) shall—

1 “(1) show complete details concerning all trans-
2 actions and positions as the Commission may by rule
3 or regulation prescribe;

4 “(2) be open at all times to inspection and ex-
5 amination by any representative of the Commission;
6 and

7 “(3) be open at all times to inspection and ex-
8 amination by the Securities and Exchange Commis-
9 sion, to the extent such books and records relate to
10 transactions in security-based swap agreements (as
11 that term is defined in section 3(a)(76) of the Secu-
12 rities Exchange Act of 1934).

13 “(c) **RULE OF CONSTRUCTION.**—For the purpose of
14 this section, the swaps, futures, and cash or spot trans-
15 actions and positions of any person shall include such
16 transactions and positions of any persons directly or indi-
17 rectly controlled by such person.

18 “(d) **CONSIDERATIONS.**—In making a determination
19 under this section whether a swap performs or affects a
20 significant price discovery function with respect to regu-
21 lated markets, the Commission shall consider the factors
22 set forth in section 4a(a)(3).”.

23 **SEC. 733. OTHER AUTHORITY.**

24 Unless otherwise provided by its terms, this subtitle
25 does not divest any appropriate Federal banking agency,

1 the Commission, the Securities and Exchange Commis-
2 sion, or other Federal or State agency, of any authority
3 derived from any other applicable law.

4 **SEC. 734. ANTITRUST.**

5 Nothing in the amendments made by this subtitle
6 shall be construed to modify, impair, or supersede the op-
7 eration of any of the antitrust laws. For purposes of this
8 subtitle, the term “antitrust laws” has the same meaning
9 given such term in subsection (a) of the first section of
10 the Clayton Act, except that such term includes section
11 5 of the Federal Trade Commission Act to the extent that
12 such section 5 applies to unfair methods of competition.

13 **Subtitle B—Regulation of Security-**
14 **Based Swap Markets**

15 **SEC. 751. DEFINITIONS UNDER THE SECURITIES EX-**
16 **CHANGE ACT OF 1934.**

17 Section 3(a) of the Securities Exchange Act of 1934
18 (15 U.S.C. 78c(a)) is amended—

19 (1) in subparagraphs (A) and (B) of paragraph
20 (5), by inserting “(but not security-based swaps,
21 other than security-based swaps with or for persons
22 that are not eligible contract participants)” after
23 “securities” each place that term appears;

24 (2) in paragraph (10), by inserting “security-
25 based swap,” after “security future,”;

1 (3) in paragraph (13), by adding at the end the
2 following: “For security-based swaps, such terms in-
3 clude the execution, termination (prior to its sched-
4 uled maturity date), assignment, exchange, or simi-
5 lar transfer or conveyance of, or extinguishing of
6 rights or obligations under, a security-based swap,
7 as the context may require.”;

8 (4) in paragraph (14), by adding at the end the
9 following: “For security-based swaps, such terms in-
10 clude the execution, termination (prior to its sched-
11 uled maturity date), assignment, exchange, or simi-
12 lar transfer or conveyance of, or extinguishing of
13 rights or obligations under, a security-based swap,
14 as the context may require.”;

15 (5) in paragraph (39)—

16 (A) by striking “or government securities
17 dealer” and inserting “government securities
18 dealer, security-based swap dealer, or major se-
19 curity-based swap participant” each place that
20 term appears; and

21 (B) in subparagraph (B)(i)(II), by insert-
22 ing “security-based swap dealer, major security-
23 based swap participant,” after “government se-
24 curities dealer,”; and

25 (6) by adding at the end the following:

1 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The
2 term ‘eligible contract participant’ has the same
3 meaning as in section 1a(12) of the Commodity Ex-
4 change Act (7 U.S.C. 1a(12)).

5 “(66) MAJOR SWAP PARTICIPANT.—The term
6 ‘major swap participant’ has the same meaning as in
7 section 1a(39) of the Commodity Exchange Act (7
8 U.S.C. 1a(40)).

9 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
10 PANT.—

11 “(A) IN GENERAL.—The term ‘major secu-
12 rity-based swap participant’ means any person
13 who is not a security-based swap dealer—

14 “(i) who maintains a substantial net
15 position in outstanding security-based
16 swaps, excluding positions held primarily
17 for hedging, reducing, or otherwise miti-
18 gating commercial risk; or

19 “(ii) whose failure to perform under
20 the terms of its security-based swaps would
21 cause significant credit losses to its secu-
22 rity-based swap counterparties.

23 “(B) IMPLEMENTATION.—The Commission
24 shall implement the definition under this para-
25 graph by rule or regulation in a manner that is

1 prudent for the effective monitoring, manage-
2 ment, and oversight of the financial system.

3 “(68) SECURITY-BASED SWAP.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the term ‘security-based
6 swap’ means any agreement, contract, or trans-
7 action that would be a swap under section
8 1a(34) of the Commodity Exchange Act (7
9 U.S.C. 1a(34))(without regard to paragraph
10 (34)(B)(xii) of such section), and that is based
11 on—

12 “(i) an index that is a narrow-based
13 security index, including any interest
14 therein or based on the value thereof;

15 “(ii) a single security or loan, includ-
16 ing any interest therein or based on the
17 value thereof; or

18 “(iii) the occurrence, nonoccurrence,
19 or extent of the occurrence of an event re-
20 lating to a single issuer of a security or the
21 issuers of securities in a narrow-based se-
22 curity index, provided that such event di-
23 rectly affects the financial statements, fi-
24 nancial condition, or financial obligations
25 of the issuer.

1 “(B) EXCLUSION.—The term ‘security-
2 based swap’ does not include any agreement,
3 contract, or transaction that meets the defini-
4 tion of security-based swap only because such
5 agreement, contract, or transaction references
6 or is based upon a government security.

7 “(C) MIXED SWAP.—

8 “(i) IN GENERAL.—The term ‘secu-
9 rity-based swap’ includes any agreement,
10 contract, or transaction that is as de-
11 scribed in subparagraph (A) and also is
12 based on—

13 “(I) the value of 1 or more inter-
14 est or other rates, currencies, com-
15 modities, instruments of indebtedness,
16 indices, quantitative measures, other
17 financial or economic interest or prop-
18 erty of any kind (other than securities
19 or any other financial or economic in-
20 terest or property described in sub-
21 paragraph (A) or a narrow-based se-
22 curity index); or

23 “(II) the occurrence, nonoccur-
24 rence, or the extent of the occurrence
25 of an event or contingency associated

1 with a potential financial, economic,
2 or commercial consequence (other
3 than an event or contingency de-
4 scribed in subparagraph (A)(iii)).

5 “(ii) RULE OF CONSTRUCTION.—A se-
6 curity-based swap shall not constitute, nor
7 shall be construed to constitute, a mixed
8 swap solely because the obligations or
9 rights of 1 party to the swap agreement
10 are defined by reference to 1 or more in-
11 terest rates or currencies.

12 “(D) RULE OF CONSTRUCTION REGARDING
13 MASTER AGREEMENTS.—The term ‘security-
14 based swap’ shall be construed to include a
15 master agreement that provides for an agree-
16 ment, contract, or transaction that is a secu-
17 rity-based swap pursuant to subparagraph (A),
18 together with all supplements to any such mas-
19 ter agreement, without regard to whether the
20 master agreement contains an agreement, con-
21 tract, or transaction that is not a security-based
22 swap pursuant to subparagraph (A), except
23 that the master agreement shall be considered
24 to be a security-based swap only with respect to
25 each agreement, contract, or transaction under

1 the master agreement that is a security-based
2 swap pursuant to subparagraph (A).

3 “(69) SWAP.—The term ‘swap’ has the same
4 meaning as in section 1a(34) of the Commodity Ex-
5 change Act (7 U.S.C. 1a(34)).

6 “(70) PERSON ASSOCIATED WITH A SECURITY-
7 BASED SWAP DEALER OR MAJOR SECURITY-BASED
8 SWAP PARTICIPANT.—The term ‘person associated
9 with a security-based swap dealer or major security-
10 based swap participant’ or ‘associated person of a
11 security-based swap dealer or major security-based
12 swap participant’ means—

13 “(A) any partner, officer, director, or
14 branch manager of such security-based swap
15 dealer or major security-based swap participant
16 (or any person occupying a similar status or
17 performing similar functions);

18 “(B) any person directly or indirectly con-
19 trolling, controlled by, or under common control
20 with such security-based swap dealer or major
21 security-based swap participant; or

22 “(C) any employee of such security-based
23 swap dealer or major security-based swap par-
24 ticipant, except that any person associated with
25 a security-based swap dealer or major security-

1 based swap participant whose functions are
2 solely clerical or ministerial shall not be in-
3 cluded in the meaning of such term other than
4 for purposes of section 15F(1).

5 “(71) SECURITY-BASED SWAP DEALER.—

6 “(A) IN GENERAL.—The term ‘security-
7 based swap dealer’ means any person engaged
8 in the business of buying and selling security-
9 based swaps for such person’s own account,
10 through a broker or otherwise.

11 “(B) EXCEPTION.—The term ‘security-
12 based swap dealer’ does not include a person
13 that buys or sells security-based swaps for such
14 person’s own account, either individually or in
15 a fiduciary capacity, but not as a part of a reg-
16 ular business.

17 “(72) APPROPRIATE FEDERAL BANKING AGEN-
18 CY.—The term ‘appropriate Federal banking agency’
19 has the same meaning as in section 3 of the Federal
20 Deposit Insurance Act (12 U.S.C. 1813).

21 “(73) BOARD.—The term ‘Board’ means the
22 Board of Governors of the Federal Reserve System.

23 “(74) SWAP DEALER.—The term ‘swap dealer’
24 has the same meaning as in section 1a(38) of the
25 Commodity Exchange Act (7 U.S.C. 1a(38)).

1 “(75) SECURITY-BASED SWAP AGREEMENT.—

2 “(A) IN GENERAL.—For purposes of sec-
3 tions 9, 10, 10B, 16, 20, and 21A of this Act,
4 and section 17 of the Securities Act of 1933,
5 the term ‘security-based swap agreement’
6 means a swap agreement as defined in section
7 206A of the Gramm-Leach-Bliley Act (15
8 U.S.C. 78c note) of which a material term is
9 based on the price, yield, value, or volatility of
10 any security or any group or index of securities,
11 or any interest therein.

12 “(B) EXCLUSIONS.—The term ‘security-
13 based swap agreement’ does not include any se-
14 curity-based swap.

15 “(76) PRIMARY FINANCIAL REGULATORY AGEN-
16 CY.—The term ‘primary financial regulatory agency’
17 has the same meaning as in section 2 of the Restor-
18 ing American Financial Stability Act of 2010.”.

19 **SEC. 752. REPEAL OF PROHIBITION ON REGULATION OF SE-**
20 **CURITY-BASED SWAPS.**

21 (a) REPEAL.—Sections 206B and 206C of the
22 Gramm-Leach-Bliley Act (15 U.S.C. 78c note) are hereby
23 repealed.

24 (b) CONFORMING AMENDMENTS TO GRAMM-LEACH-
25 BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley

1 Act (15 U.S.C. 78c note) is amended in the material pre-
2 ceding paragraph (1), by striking “Except as” and all that
3 follows through “that—” and inserting the following: “Ex-
4 cept as provided in subsection (b), as used in this section,
5 the term ‘swap agreement’ means any agreement, con-
6 tract, or transaction that—”

7 (c) CONFORMING AMENDMENTS TO THE SECURITIES
8 ACT OF 1933.—

9 (1) Section 2A(b) of the Securities Act of 1933
10 (15 U.S.C. 77b–1) is amended—

11 (A) by striking subsection (a) and reserv-
12 ing the subsection; and

13 (B) in subsection (b)—

14 (i) by striking “(as defined in section
15 206B of the Gramm-Leach-Bliley Act)”
16 each place that term appears; and

17 (ii) by striking paragraph (1); and

18 (iii) by redesignating paragraphs (2),
19 (3), and (4) as paragraphs (1), (2), and
20 (3), respectively.

21 (2) Section 17 of the Securities Act of 1933 (15
22 U.S.C. 77q) is amended—

23 (A) in subsection (a), by striking “206B of
24 the Gramm-Leach-Bliley Act” and inserting

1 “3(a)(76) of the Securities Exchange Act of
2 1934”; and

3 (B) in subsection (d), by striking “206B of
4 the Gramm-Leach-Bliley Act” and inserting
5 “3(a)(76) of the Securities Exchange Act of
6 1934”.

7 (d) CONFORMING AMENDMENTS TO THE SECURITIES
8 EXCHANGE ACT OF 1934.—The Securities Exchange Act
9 of 1934 (15 U.S.C. 78a et seq.) is amended—

10 (1) in section 3A (15 U.S.C. 78c–1)—

11 (A) by striking “(as defined in section
12 206B of the Gramm-Leach-Bliley Act)” each
13 place that term appears;

14 (B) by striking subsection (a) and reserv-
15 ing the subsection; and

16 (C) in subsection (b)—

17 (i) by striking paragraph (1);

18 (ii) by redesignating paragraphs (2),
19 (3), and (4) as paragraphs (1), (2), and
20 (3), respectively; and

21 (iii) in paragraph (2) (as so redesign-
22 ated), by inserting “or section 9(j) with
23 respect to rulemaking authority to prevent
24 fraudulent, deceptive, or manipulative
25 practices” after “reporting requirements”;

1 (2) in section 9(a) (15 U.S.C. 78i(a)), by strik-
2 ing paragraphs (2) through (5) and inserting the
3 following:

4 “(2) To effect, alone or with 1 or more other
5 persons, a series of transactions in any security reg-
6 istered on a national securities exchange or in con-
7 nection with any security-based swap or security-
8 based swap agreement with respect to such security
9 creating actual or apparent active trading in such
10 security, or raising or depressing the price of such
11 security, for the purpose of inducing the purchase or
12 sale of such security by others.

13 “(3) If a dealer, broker, security-based swap
14 dealer, major security-based swap participant, or
15 other person selling or offering for sale or pur-
16 chasing or offering to purchase the security or secu-
17 rity-based swap or security based-swap agreement
18 with respect to such security to induce the purchase
19 or sale of any security registered on a national secu-
20 rities exchange or any security-based swap or secu-
21 rity-based swap agreement with respect to such se-
22 curity by the circulation or dissemination in the or-
23 dinary course of business of information to the effect
24 that the price of any such security will or is likely
25 to rise or fall because of market operations of any

1 1 or more persons conducted for the purpose of rais-
2 ing or depressing the price of such security.

3 “(4) If a dealer, broker, security-based swap
4 dealer, major security-based swap participant, or
5 other person selling or offering for sale or pur-
6 chasing or offering to purchase the security or a se-
7 curity-based swap or security-based swap agreement
8 with respect to such security, to make, regarding
9 any security registered on a national securities ex-
10 change or any security-based swap or security-based
11 swap agreement with respect to such security, for
12 the purpose of inducing the purchase or sale of such
13 security or such security-based swap or security-
14 based swap agreement, any statement which was at
15 the time and in the light of the circumstances under
16 which it was made, false or misleading with respect
17 to any material fact, and which he or she knew or
18 had reasonable ground to believe was so false or
19 misleading.

20 “(5) For a consideration, received directly or
21 indirectly from a dealer, broker, security-based swap
22 dealer, major security-based swap participant, or
23 other person selling or offering for sale or pur-
24 chasing or offering to purchase the security or secu-
25 rity-based swap or security-based swap agreement

1 with respect to such security, to induce the purchase
2 or sale of any security registered on a national secu-
3 rities exchange or any security-based swap or secu-
4 rity-based swap agreement with respect to such se-
5 curity by the circulation or dissemination of informa-
6 tion to the effect that the price of any such security
7 will or is likely to rise or fall because of the market
8 operations of any 1 or more persons conducted for
9 the purpose of raising or depressing the price of
10 such security.”;

11 (3) in section 9(i) (15 U.S.C. 78i(i)), by strik-
12 ing “(as defined in section 206B of the Gramm-
13 Leach-Bliley Act)”;

14 (4) in section 10 (15 U.S.C. 78j), by striking
15 “(as defined in section 206B of the Gramm-Leach-
16 Bliley Act)” each place that term appears;

17 (5) in section 15(c)(1) (15 U.S.C. 78o(c)(1))—

18 (A) in subparagraph (A), by striking “, or
19 any security-based swap agreement (as defined
20 in section 206B of the Gramm-Leach-Bliley
21 Act),”;

22 (B) in subparagraphs (B) and (C), by
23 striking “agreement (as defined in section 206B
24 of the Gramm-Leach-Bliley Act)” each place
25 that term appears;

1 (6) in section 15(i) (15 U.S.C. 78o(i)), as
2 added by section 303(f) of the Commodity Futures
3 Modernization Act of 2000 (Public Law 106–554;
4 114 Stat. 2763A–455)), by striking “(as defined in
5 section 206B of the Gramm-Leach-Bliley Act)”;

6 (7) in section 16 (15 U.S.C. 78p)—

7 (A) in subsection (a)(2)(C), by striking
8 “(as defined in section 206(b) of the Gramm-
9 Leach-Bliley Act)” and inserting “or a security-
10 based swap”;

11 (B) in subsection (a)(3)(B), by inserting
12 “or security-based swaps” after “security-based
13 swap agreements”;

14 (C) in subsection (b)—

15 (i) by striking “(as defined in section
16 206B of the Gramm-Leach-Bliley Act)”
17 each place that term appears; and

18 (ii) inserting “or a security-based
19 swap” after “security-based swap agree-
20 ment” each place that term appears; and

21 (D) in subsection (g), by striking “(as de-
22 fined in section 206B of the Gramm-Leach-Bli-
23 ley Act)”;

24 (8) in section 20 (15 U.S.C. 78t)—

1 (A) in subsection (d), by striking “(as de-
2 fined in section 206B of the Gramm-Leach-Bli-
3 ley Act)”; and

4 (B) in subsection (f), by striking “(as de-
5 fined in section 206B of the Gramm-Leach-Bli-
6 ley Act)”; and

7 (9) in section 21A (15 U.S.C. 78u-1)—

8 (A) in subsection (a)(1), by striking “(as
9 defined in section 206B of the Gramm-Leach-
10 Bliley Act)”; and

11 (B) in subsection (g), by striking “(as de-
12 fined in section 206B of the Gramm-Leach-Bli-
13 ley Act)”.

14 **SEC. 753. AMENDMENTS TO THE SECURITIES EXCHANGE**

15 **ACT OF 1934.**

16 (a) CLEARING FOR SECURITY-BASED SWAPS.—The
17 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
18 is amended by adding the following section after section
19 3A:

20 **“SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.**

21 **“(a) CLEARING REQUIREMENT.—**

22 **“(1) SUBMISSION.—**

23 **“(A) IN GENERAL.—**Except as provided in
24 paragraph (9), any person who is a party to a
25 security-based swap shall submit such security-

1 based swap for clearing to a clearing agency
2 registered under section 17A of this Act.

3 “(B) REQUIRED CONDITIONS.—The rules
4 of a clearing agency described in subparagraph
5 (A) shall—

6 “(i) prescribe that all security-based
7 swaps with the same terms and conditions
8 accepted for clearing by the clearing agen-
9 cy are fungible and may be offset with
10 each other; and

11 “(ii) provide for nondiscriminatory
12 clearing of a security-based swap executed
13 on or through the rules of an unaffiliated
14 national securities exchange or an alter-
15 native swap execution facility.

16 “(2) COMMISSION APPROVAL.—

17 “(A) IN GENERAL.—A clearing agency
18 shall submit to the Commission for prior ap-
19 proval any group, category, type, or class of se-
20 curity-based swaps that the clearing agency
21 seeks to accept for clearing, which submission
22 the Commission shall make available to the
23 public.

24 “(B) DEADLINE.—The Commission shall
25 take final action on a request submitted pursu-

1 ant to subparagraph (A) not later than 90 days
2 after submission of the request, unless the
3 clearing agency submitting the request agrees
4 to an extension of the time limitation estab-
5 lished under this subparagraph.

6 “(C) APPROVAL.—The Commission shall
7 approve, unconditionally or subject to such
8 terms and conditions as the Commission deter-
9 mines to be appropriate, any request submitted
10 pursuant to subparagraph (A) if the Commis-
11 sion finds that the request is consistent with
12 the requirements of section 17A. The Commis-
13 sion shall approve any such request if the Com-
14 mission does not make such finding.

15 “(D) RULES.—Not later than 180 days
16 after the date of the enactment of the Over-the-
17 Counter Derivatives Markets Act of 2010, the
18 Commission shall adopt rules for a clearing
19 agency’s submission for approval, pursuant to
20 this paragraph, of any group, category, type, or
21 class of security-based swaps that the clearing
22 agency seeks to accept for clearing.

23 “(3) STAY OF CLEARING REQUIREMENT.—At
24 any time after issuance of an approval pursuant to
25 paragraph (2):

1 “(A) REVIEW PROCESS.—The Commission,
2 on application of a counterparty to a security-
3 based swap or on its own initiative, may stay
4 the clearing requirement of paragraph (1) until
5 the Commission completes a review of the terms
6 of the security-based swap, or the group, cat-
7 egory, type, or class of security-based swaps,
8 and the clearing arrangement.

9 “(B) DEADLINE.—The Commission shall
10 complete a review undertaken pursuant to sub-
11 paragraph (A) not later than 90 days after
12 issuance of the stay, unless the clearing agency
13 that clears the security-based swap, or the
14 group, category, type or class of security-based
15 swaps, agrees to an extension of the time limi-
16 tation established under this subparagraph.

17 “(C) DETERMINATION.—Upon completion
18 of the review undertaken pursuant to subpara-
19 graph (A)—

20 “(i) the Commission may determine,
21 unconditionally or subject to such terms
22 and conditions as the Commission deter-
23 mines to be appropriate, that the security-
24 based swap, or the group, category, type,
25 or class of security-based swaps, must be

1 cleared pursuant to this subsection if the
2 Commission finds that such clearing—

3 “(I) is consistent with the re-
4 quirements of section 17A; and

5 “(II) is otherwise in the public
6 interest, for the protection of inves-
7 tors, and consistent with the purposes
8 of this title;

9 “(ii) the Commission may determine
10 that the clearing requirement of paragraph
11 (1) shall not apply to the security-based
12 swap, or the group, category, type, or class
13 of security-based swaps; or

14 “(iii) if a determination is made that
15 the clearing requirement of paragraph (1)
16 shall no longer apply, then it shall still be
17 permissible to clear such security-based
18 swap, or the group, category, type, or class
19 of security-based swaps.

20 “(D) RULES.—Not later than 180 days
21 after the date of the enactment of the Over-the-
22 Counter Derivatives Markets Act of 2010, the
23 Commission shall adopt rules for reviewing,
24 pursuant to this paragraph, a clearing agency’s
25 clearing of a security-based swap, or a group,

1 category, type, or class of security-based swaps
2 that the Commission has accepted for clearing.

3 “(4) SECURITY-BASED SWAPS REQUIRED TO BE
4 ACCEPTED FOR CLEARING.—

5 “(A) RULEMAKING.—Not later than 180
6 days of the date of enactment of the Over-the-
7 Counter Derivatives Markets Act of 2010, the
8 Commission and the Commodity Futures Trad-
9 ing Commission shall jointly adopt rules to fur-
10 ther identify any group, category, type, or class
11 of security-based swaps not submitted for ap-
12 proval under paragraph (2) that the Commis-
13 sion and the Commodity Futures Trading Com-
14 mission deem should be accepted for clearing.
15 In adopting such rules, the Commission and the
16 Commodity Futures Trading Commission shall
17 take into account the following factors:

18 “(i) The extent to which any of the
19 terms of the group, category, type, or class
20 of security-based swaps, including price,
21 are disseminated to third parties or are
22 referenced in other agreements, contracts,
23 or transactions.

1 “(ii) The volume of transactions in
2 the group, category, type, or class of secu-
3 rity-based swaps.

4 “(iii) The extent to which the terms of
5 the group, category, type, or class of secu-
6 rity-based swaps are similar to the terms
7 of other agreements, contracts, or trans-
8 actions that are centrally cleared.

9 “(iv) Whether any differences in the
10 terms of the group, category, type, or class
11 of security-based swaps, compared to other
12 agreements, contracts, or transactions that
13 are centrally cleared, are of economic sig-
14 nificance.

15 “(v) Whether a clearing agency is pre-
16 pared to clear the group, category, type, or
17 class of security-based swaps and such
18 clearing agency has in place effective risk
19 management systems.

20 “(vi) Any other factors the Commis-
21 sion and the Commodity Futures Trading
22 Commission determine to be appropriate.

23 “(B) OTHER DESIGNATIONS.—At any time
24 after the adoption of the rules required under
25 subparagraph (A), the Commission may sepa-

1 rately designate a particular security-based
2 swap or class of security-based swaps as subject
3 to the clearing requirement in paragraph (1),
4 taking into account the factors established in
5 clauses (i) through (vi) of subparagraph (A)
6 and the joint rules adopted in such subpara-
7 graph.

8 “(5) PREVENTION OF EVASION.—The Commis-
9 sion shall have authority to prescribe rules under
10 this section, or issue interpretations of such rules, as
11 necessary to prevent evasions of this section.

12 “(6) REQUIRED REPORTING.—

13 “(A) BOTH COUNTERPARTIES.—Both
14 counterparties to a security-based swap that is
15 not cleared by any clearing agency shall report
16 such a security-based swap either to a reg-
17 istered security-based swap repository described
18 in section 13(n) or, if there is no repository
19 that would accept the security-based swap, to
20 the Commission pursuant to section 13A.

21 “(B) TIMING.—Counterparties to a secu-
22 rity-based swap shall submit the reports re-
23 quired under subparagraph (A) not later than
24 such time period as the Commission may by
25 rule or regulation prescribe.

1 “(7) TRANSITION RULES.—

2 “(A) REPORTING TRANSITION RULES.—

3 Rules adopted by the Commission under this
4 section shall provide for the reporting of data,
5 as follows:

6 “(i) Security-based swaps entered into
7 before the date of the enactment of this
8 section shall be reported to a registered se-
9 curity-based swap repository or the Com-
10 mission not later than 180 days after the
11 effective date of this section.

12 “(ii) Security-based swaps entered
13 into on or after such date of enactment
14 shall be reported to a registered security-
15 based swap repository or the Commission
16 not later than the later of—

17 “(I) 90 days after such effective
18 date; or

19 “(II) such other time after enter-
20 ing into the security-based swap as
21 the Commission may prescribe by rule
22 or regulation.

23 “(B) CLEARING TRANSITION RULES.—

24 “(i) Security-based swaps entered into
25 before the date of the enactment of this

1 section are exempt from the clearing re-
2 quirements of this subsection if reported
3 pursuant to subparagraph (A)(i).

4 “(ii) Security-based swaps entered
5 into before application of the clearing re-
6 quirement pursuant to this section are ex-
7 empt from the clearing requirements of
8 this section if reported pursuant to sub-
9 paragraph (A)(ii).

10 “(8) TRADE EXECUTION.—

11 “(A) IN GENERAL.—With respect to trans-
12 actions involving security-based swaps subject
13 to the clearing requirement of paragraph (1),
14 counterparties shall—

15 “(i) execute the transaction on an ex-
16 change; or

17 “(ii) execute the transaction on an al-
18 ternative swap execution facility registered
19 under section 3C or an alternative swap
20 execution facility that is exempt from reg-
21 istration under section 3C(f) of this Act.

22 “(B) EXCEPTION.—The requirements of
23 clauses (i) and (ii) of subparagraph (A) shall
24 not apply if no exchange or alternative swap

1 execution facility makes the swap available to
2 trade.

3 “(9) EXEMPTIONS.—

4 “(A) REQUIRED EXEMPTION.—The Com-
5 mission shall exempt a security-based swap
6 from the requirements of paragraphs (1) and
7 (8), and any rules issued under this subsection,
8 if no clearing agency registered under this Act
9 will accept the security-based swap for clearing.

10 “(B) PERMISSIVE EXEMPTION.—The Com-
11 mission by rule or order, in consultation with
12 the Financial Stability Oversight Council and
13 as the Commission deems consistent with the
14 public interest, may conditionally or uncondi-
15 tionally exempt a security-based swap from the
16 requirements of paragraphs (1) and (8), and
17 any rules issued under this subsection, if 1 of
18 the counterparties to the security-based swap—

19 “(i) is not a security-based swap deal-
20 er or major security-based swap partici-
21 pant; and

22 “(ii) does not meet the eligibility re-
23 quirements of any clearing agency that
24 clears the security-based swap.

1 “(C) OPTION TO CLEAR.—If a security-
2 based swap is exempt from the clearing require-
3 ments of paragraph (1)—

4 “(i) the parties to the security-based
5 swap may submit the security-based swap
6 for clearing; and

7 “(ii) the security-based swap shall be
8 submitted for clearing upon the request of
9 a party to the security-based swap.

10 “(10) RELATIONSHIP TO DERIVATIVES CLEAR-
11 ING ORGANIZATIONS.—A clearing agency may clear
12 swaps that are required to be cleared by a person
13 who is registered as a derivatives clearing organiza-
14 tion under the Commodity Exchange Act (7 U.S.C.
15 1 et seq.).

16 “(11) REQUIRED REGISTRATION FOR BANKS
17 AND CLEARING AGENCIES.—Any person that is re-
18 quired to be registered as a clearing agency under
19 this title shall register with the Commission regard-
20 less of whether that person is also a bank or a de-
21 rivatives clearing organization registered with the
22 Commodity Futures Trading Commission under the
23 Commodity Exchange Act (7 U.S.C. 1 et seq.).

24 “(b) REPORTING.—

25 “(1) TRANSPARENCY.—

1 “(A) IN GENERAL.—A clearing agency that
2 clears security-based swaps shall provide to the
3 Commission and any security-based swap repos-
4 itory designated by the Commission all informa-
5 tion determined by the Commission to be nec-
6 essary to perform its responsibilities under this
7 Act.

8 “(B) DATA COLLECTION REQUIRE-
9 MENTS.—The Commission shall adopt data col-
10 lection and maintenance requirements for secu-
11 rity-based swaps cleared by clearing agencies
12 that are comparable to the corresponding re-
13 quirements for security-based swaps accepted
14 by security-based swap repositories and secu-
15 rity-based swaps traded on alternative swap
16 execution facilities.

17 “(C) SHARING OF INFORMATION.—The
18 Commission shall share such information, upon
19 request, with the Board, the Commodity Fu-
20 tures Trading Commission, the appropriate
21 Federal banking agencies, the Financial Sta-
22 bility Oversight Council, and the Department of
23 Justice or to other persons the Commission
24 deems appropriate, including foreign financial
25 supervisors (including foreign futures authori-

1 ties), foreign central banks, and foreign min-
2 istries.

3 “(2) PUBLIC INFORMATION.—A clearing agency
4 that clears security-based swaps shall provide to the
5 Commission, or its designee, such information as is
6 required by, and in a form and at a frequency to be
7 determined by, the Commission, in order to comply
8 with the public reporting requirements contained in
9 section 13.

10 “(c) DESIGNATION OF COMPLIANCE OFFICER.—

11 “(1) IN GENERAL.—Each clearing agency shall
12 designate an individual to serve as a compliance offi-
13 cer.

14 “(2) DUTIES.—The compliance officer shall
15 perform the following duties:

16 “(A) Reporting directly to the board or to
17 the senior officer of the clearing agency.

18 “(B) Consulting with the board of the
19 clearing agency, a body performing a function
20 similar to that of a board, or the senior officer
21 of the clearing agency, to resolve any conflicts
22 of interest that may arise.

23 “(C) Administering the policies and proce-
24 dures of the clearing agency required to be es-
25 tablished pursuant to this section.

1 “(D) Ensuring compliance with securities
2 laws and the rules and regulations issued there-
3 under, including rules prescribed by the Com-
4 mission pursuant to this section.

5 “(E) Establishing procedures for remedi-
6 ation of noncompliance issues found during
7 compliance office reviews, lookbacks, internal or
8 external audit findings, self-reported errors, or
9 through validated complaints. Procedures to be
10 established under this subparagraph include
11 procedures related to the handling, manage-
12 ment response, remediation, retesting, and clos-
13 ing of noncompliance issues.

14 “(3) ANNUAL REPORTS REQUIRED.—

15 “(A) IN GENERAL.—The compliance offi-
16 cer shall annually prepare and sign a report on
17 the compliance of the clearing agency with the
18 securities laws and the policies and procedures
19 of the agency, including the code of ethics and
20 conflict of interest policies of the agency, in ac-
21 cordance with rules prescribed by the Commis-
22 sion.

23 “(B) SUBMISSION.—The compliance report
24 required under subparagraph (A) shall accom-
25 pany the financial reports of the clearing agen-

1 cy that are required to be furnished to the
2 Commission pursuant to this section and shall
3 include a certification that, under penalty of
4 law, the report is accurate and complete.

5 “(d) CONSULTATION.—The Commission and the
6 Commodity Futures Trading Commission shall consult
7 with the appropriate Federal banking agencies and each
8 other prior to adopting rules under this section with re-
9 spect to security-based swaps.

10 “(e) HARMONIZATION OF RULES.—Not later than
11 180 days after the effective date of the Over-the-Counter
12 Derivatives Markets Act of 2010, the Commission and the
13 Commodity Futures Trading Commission shall jointly
14 adopt uniform rules governing—

15 “(1) the clearing and settlement of swaps, as
16 well as persons that are registered as derivatives
17 clearing organizations for swaps under the Com-
18 modity Exchange Act (7 U.S.C. 1 et seq.); and

19 “(2) the clearing and settlement of security-
20 based swaps, as well as persons that are registered
21 as clearing agencies for security-based swaps under
22 this Act.”.

23 (b) ALTERNATIVE SWAP EXECUTION FACILITIES.—
24 The Securities Exchange Act of 1934 (15 U.S.C. 78a et

1 seq.) is further amended by adding after section 3B the
2 following:

3 **“SEC. 3C. ALTERNATIVE SWAP EXECUTION FACILITIES.**

4 “(a) DEFINITION.—For purposes of this section, the
5 term ‘alternative swap execution facility’ means an elec-
6 tronic trading system with pre-trade and post-trade trans-
7 parency in which multiple participants have the ability to
8 execute or trade swaps by accepting bids and offers made
9 by other participants that are open to multiple partici-
10 pants in the system, but which is not a designated contract
11 market.

12 “(b) REGISTRATION.—

13 “(1) IN GENERAL.—No person may operate a
14 facility for the trading of security-based swaps un-
15 less the facility is registered as an alternative swap
16 execution facility under this section or as a securities
17 exchange registered under this Act.

18 “(2) DUAL REGISTRATION.—Any person that is
19 required to be registered as an alternative swap exe-
20 cution facility under this section shall register with
21 the Commission regardless of whether that person
22 also is registered with the Commodity Futures Trad-
23 ing Commission as an alternative swap execution fa-
24 cility.

1 “(c) REQUIREMENTS FOR TRADING.—An alternative
2 swap execution facility that is registered under subsection
3 (b) may trade any security-based swap.

4 “(d) TRADING BY EXCHANGES.—An exchange shall,
5 to the extent that the exchange also operates an alter-
6 native swap execution facility and uses the same electronic
7 trade execution system for trading on the exchange and
8 the alternative swap execution facility, identify whether
9 the electronic trading is taking place on the exchange or
10 the alternative swap execution facility.

11 “(e) CRITERIA FOR REGISTRATION.—

12 “(1) IN GENERAL.—To be registered as an al-
13 ternative swap execution facility, the facility shall be
14 required to demonstrate to the Commission such fa-
15 cility meets the criteria established by this section.

16 “(2) DETERRENCE OF ABUSES.—Each alter-
17 native swap execution facility shall establish and en-
18 force trading and participation rules that will deter
19 abuses and have the capacity to detect, investigate,
20 and enforce those rules, including—

21 “(A) means to obtain information nec-
22 essary to perform the functions required under
23 this section; or

24 “(B) means to—

1 “(i) provide market participants with
2 impartial access to the market; and

3 “(ii) capture information that may be
4 used in establishing whether any violations
5 of this section have occurred.

6 “(3) TRADING PROCEDURES.—Each alternative
7 swap execution facility shall establish and enforce
8 rules or terms and conditions defining, or specifica-
9 tions detailing, trading procedures to be used in en-
10 tering and executing orders traded on or through its
11 facilities.

12 “(4) FINANCIAL INTEGRITY OF TRANS-
13 ACTIONS.—Each alternative swap execution facility
14 shall establish and enforce rules and procedures for
15 ensuring the financial integrity of security-based
16 swaps entered on or through its facilities, including
17 the clearance and settlement of the security-based
18 swaps.

19 “(f) CORE PRINCIPLES FOR ALTERNATIVE SWAP
20 EXECUTION FACILITIES.—

21 “(1) COMPLIANCE.—

22 “(A) IN GENERAL.—To maintain its reg-
23 istration as an alternative swap execution facil-
24 ity, the facility shall comply with the core prin-
25 ciples established in this subsection and any re-

1 requirement that the Commission may impose by
2 rule or regulation.

3 “(B) REASONABLE DISCRETION.—Except
4 where the Commission determines otherwise by
5 rule or regulation, the facility shall have reason-
6 able discretion in establishing the manner in
7 which it complies with the core principles estab-
8 lished in this subsection.

9 “(2) COMPLIANCE WITH RULES.—Each alter-
10 native swap execution facility shall monitor and en-
11 force compliance with any of the rules of the facility,
12 including the terms and conditions of the security-
13 based swaps traded on or through the facility and
14 any limitations on access to the facility.

15 “(3) SECURITY-BASED SWAPS NOT READILY
16 SUSCEPTIBLE TO MANIPULATION.—Each alternative
17 swap execution facility shall permit trading only in
18 security-based swaps that are not readily susceptible
19 to manipulation.

20 “(4) MONITORING OF TRADING.—Each alter-
21 native swap execution facility shall monitor trading
22 in security-based swaps to prevent manipulation and
23 price distortion through surveillance, compliance,
24 and disciplinary practices and procedures, including
25 methods for conducting real-time monitoring of trad-

1 ing and comprehensive and accurate trade recon-
2 structions.

3 “(5) ABILITY TO OBTAIN INFORMATION.—Each
4 alternative swap execution facility shall—

5 “(A) establish and enforce rules that will
6 allow the facility to obtain any necessary infor-
7 mation to perform any of the functions de-
8 scribed in this subsection;

9 “(B) provide the information to the Com-
10 mission upon request; and

11 “(C) have the capacity to carry out such
12 international information-sharing agreements as
13 the Commission may require.

14 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

15 “(A) IN GENERAL.—To reduce the poten-
16 tial threat of market manipulation or conges-
17 tion, an alternative swap execution facility shall
18 adopt for each of its contracts, where necessary
19 and appropriate, position limitations or position
20 accountability.

21 “(B) FOR CERTAIN CONTRACTS.—For any
22 contract that is subject to a position limitation
23 established by the Commission pursuant to sec-
24 tion 10B, an alternative swap execution facility

1 shall set its position limitation at a level no
2 higher than the Commission limitation.

3 “(7) EMERGENCY AUTHORITY.—Each alter-
4 native swap execution facility shall adopt rules to
5 provide for the exercise of emergency authority, in
6 consultation or cooperation with the Commission,
7 where necessary and appropriate, including the au-
8 thority to suspend or curtail trading in a security-
9 based swap.

10 “(8) TIMELY PUBLICATION OF TRADING INFOR-
11 MATION.—Each alternative swap execution facility
12 shall make public timely information on price, trad-
13 ing volume, and other trading data to the extent
14 prescribed by the Commission.

15 “(9) RECORDKEEPING AND REPORTING.—

16 “(A) IN GENERAL.—Each alternative swap
17 execution facility shall—

18 “(i) maintain records of all activities
19 related to the business of the facility, in-
20 cluding a complete audit trail, in a form
21 and manner acceptable to the Commission
22 for a period of 5 years; and

23 “(ii) report to the Commission all in-
24 formation determined by the Commission
25 to be necessary or appropriate for the

1 Commission to perform its responsibilities
2 under this Act in a form and manner ac-
3 ceptable to the Commission.

4 “(B) DATA COLLECTION REQUIRE-
5 MENTS.—The Commission shall adopt data col-
6 lection and reporting requirements for alter-
7 native swap execution facilities that are com-
8 parable to corresponding requirements for clear-
9 ing agencies and security-based swap reposi-
10 tories.

11 “(10) ANTITRUST CONSIDERATIONS.—Unless
12 necessary or appropriate to achieve the purposes of
13 this Act, an alternative swap execution facility shall
14 avoid—

15 “(A) adopting any rules or taking any ac-
16 tions that result in any unreasonable restraints
17 of trade; or

18 “(B) imposing any material anticompeti-
19 tive burden on trading on the swap execution
20 facility.

21 “(11) CONFLICTS OF INTEREST.—Each alter-
22 native swap execution facility shall—

23 “(A) establish and enforce rules to mini-
24 mize conflicts of interest in its decision making
25 process; and

1 “(B) establish a process for resolving any
2 conflicts of interest.

3 “(12) DESIGNATION OF COMPLIANCE OFFI-
4 CER.—

5 “(A) IN GENERAL.—Each alternative swap
6 execution facility shall designate an individual
7 to serve as a compliance officer.

8 “(B) DUTIES.—The compliance officer
9 shall perform the following duties:

10 “(i) Reporting directly to the board or
11 to the senior officer of the facility.

12 “(ii) Reviewing the compliance of the
13 facility with the core principles established
14 in this subsection.

15 “(iii) Consulting with the board of the
16 facility, a body performing a function simi-
17 lar to that of a board, or the senior officer
18 of the facility, to resolve any conflicts of
19 interest that may arise.

20 “(iv) Administering the policies and
21 procedures of the facility required to be es-
22 tablished pursuant to this section.

23 “(v) Ensuring compliance with securi-
24 ties laws and the rules and regulations
25 issued thereunder, including any rules pre-

1 scribed by the Commission pursuant to
2 this section.

3 “(vi) Establishing procedures for re-
4 mediation of noncompliance issues found
5 during compliance office reviews,
6 lookbacks, internal or external audit find-
7 ings, self-reported errors, or through vali-
8 dated complaints. Procedures to be estab-
9 lished under this clause include procedures
10 related to the handling, management re-
11 sponse, remediation, retesting, and closing
12 of noncompliance issues.

13 “(C) ANNUAL REPORTS REQUIRED.—

14 “(i) IN GENERAL.—The compliance
15 officer shall annually prepare and sign a
16 report on the compliance of the alternative
17 swap execution facility with the securities
18 laws and the policies and procedures of the
19 facility, including the code of ethics and
20 conflict of interest policies of the facility,
21 in accordance with rules prescribed by the
22 Commission.

23 “(ii) SUBMISSION.—The compliance
24 report required under clause (i) shall ac-
25 company the financial reports of the alter-

1 native swap execution facility that are re-
2 quired to be furnished to the Commission
3 pursuant to this section and shall include
4 a certification that, under penalty of law,
5 the report is accurate and complete.

6 “(g) EXEMPTIONS.—The Commission may exempt,
7 conditionally or unconditionally, an alternative swap exe-
8 cution facility from registration under this section if the
9 Commission finds that such organization is subject to
10 comparable, comprehensive supervision and regulation on
11 a consolidated basis by the Commodity Futures Trading
12 Commission, the primary financial regulatory agency, or
13 the appropriate governmental authorities in the organiza-
14 tion’s home country.

15 “(h) HARMONIZATION OF RULES.—Not later than
16 180 days of the effective date of the Over-the-Counter De-
17 rivatives Markets Act of 2010, the Commission and the
18 Commodity Futures Trading Commission shall jointly pre-
19 scribe rules governing the regulation of alternative swap
20 execution facilities under this section and section 5h of
21 the Commodity Exchange Act.”.

22 (c) TRADING IN SECURITY-BASED SWAP AGREE-
23 MENTS.—Section 6 of the Securities Exchange Act of
24 1934 (15 U.S.C. 78f) is amended by adding at the end
25 the following:

1 “(l) PROHIBITION.—It shall be unlawful for any per-
2 son to effect a transaction in a security-based swap with
3 or for a person that is not an eligible contract participant
4 unless such transaction is effected on a national securities
5 exchange registered pursuant to subsection (b).”.

6 (d) REGISTRATION AND REGULATION OF SECURITY-
7 BASED SWAP DEALERS AND MAJOR SECURITY-BASED
8 SWAP PARTICIPANTS.—The Securities Exchange Act of
9 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
10 section 15E (15 U.S.C. 78o–7) the following:

11 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
12 **BASED SWAP DEALERS AND MAJOR SECU-**
13 **RITY-BASED SWAP PARTICIPANTS.**

14 “(a) REGISTRATION.—It shall be unlawful for any
15 person—

16 “(1) to act as a security-based swap dealer un-
17 less such person is registered as a security-based
18 swap dealer with the Commission; and

19 “(2) to act as a major security-based swap par-
20 ticipant unless such person is registered as a major
21 security-based swap participant with the Commis-
22 sion.

23 “(b) REQUIREMENTS.—

24 “(1) IN GENERAL.—A person shall register as
25 a security-based swap dealer or major security-based

1 swap participant by filing a registration application
2 with the Commission.

3 “(2) CONTENTS.—The application required
4 under paragraph (1) shall be made in such form and
5 manner as prescribed by the Commission, giving any
6 information and facts as the Commission may deem
7 necessary concerning the business in which the ap-
8 plicant is or will be engaged. Such person, when reg-
9 istered as a security-based swap dealer or major se-
10 curity-based swap participant, shall continue to re-
11 port and furnish to the Commission such informa-
12 tion pertaining to such person’s business as the
13 Commission may require.

14 “(3) EXPIRATION.—Each registration shall ex-
15 pire at such time as the Commission may by rule or
16 regulation prescribe.

17 “(4) RULES.—Except as provided in sub-
18 sections (c), (d), and (e), the Commission may pre-
19 scribe rules applicable to security-based swap dealers
20 and major security-based swap participants, includ-
21 ing rules that limit the activities of security-based
22 swap dealers and major security-based swap partici-
23 pants. Except as provided in subsections (c) and (e),
24 the Commission may provide conditional or uncondi-
25 tional exemptions from rules prescribed under this

1 section for security-based swap dealers and major
2 security-based swap participants that are subject to
3 substantially similar requirements as brokers or
4 dealers.

5 “(5) TRANSITION.—Rules adopted under this
6 section shall provide for the registration of security-
7 based swap dealers and major security-based swap
8 participants not later than 1 year after the effective
9 date of the Over-the-Counter Derivatives Markets
10 Act of 2010.

11 “(c) DUAL REGISTRATION.—

12 “(1) SECURITY-BASED SWAP DEALERS.—Any
13 person that is required to be registered as a secu-
14 rity-based swap dealer under this section shall reg-
15 ister with the Commission regardless of whether that
16 person also is a bank or is registered with the Com-
17 modity Futures Trading Commission as a swap deal-
18 er.

19 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
20 PANTS.—Any person that is required to be reg-
21 istered as a major security-based swap participant
22 under this section shall register with the Commis-
23 sion regardless of whether that person also is a bank
24 or is registered with the Commodity Futures Trad-
25 ing Commission as a major swap participant.

1 “(d) JOINT RULES.—

2 “(1) IN GENERAL.—Not later than 180 days
3 after the effective date of the Over-the-Counter De-
4 rivatives Markets Act of 2010, the Commission and
5 the Commodity Futures Trading Commission shall
6 jointly adopt uniform rules for persons that are reg-
7 istered—

8 “(A) as security-based swap dealers or
9 major security-based swap participants under
10 this Act; and

11 “(B) as swap dealers or major swap par-
12 ticipants under the Commodity Exchange Act
13 (7 U.S.C. 1 et seq.).

14 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
15 MENTS.—The Commission and the Commodity Fu-
16 tures Trading Commission shall not prescribe rules
17 imposing prudential requirements (including activity
18 restrictions) on security-based swap dealers or major
19 security-based swap participants for which there is a
20 primary financial regulatory agency. This provision
21 shall not be construed as limiting the authority of
22 the Commission and the Commodity Futures Trad-
23 ing Commission to prescribe appropriate business
24 conduct, reporting, and recordkeeping requirements
25 to protect investors.

1 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

2 “(1) IN GENERAL.—

3 “(A) BANK SECURITY-BASED SWAP DEAL-
4 ERS AND MAJOR SECURITY-BASED SWAP PAR-
5 TICIPANTS.—Each registered security-based
6 swap dealer and major security-based swap par-
7 ticipant for which there is a primary financial
8 regulatory agency shall meet such minimum
9 capital requirements and minimum initial and
10 variation margin requirements as prescribed
11 under paragraph (2)(A) to help ensure the safe-
12 ty and soundness as the agency shall by rule or
13 regulation prescribe to help ensure the safety
14 and soundness of the security-based swap deal-
15 er or major security-based swap participant.

16 “(B) NONBANK SECURITY-BASED SWAP
17 DEALERS AND MAJOR SECURITY-BASED SWAP
18 PARTICIPANTS.—Each registered security-based
19 swap dealer and major security-based swap par-
20 ticipant for which there is not a primary finan-
21 cial regulatory agency shall meet such minimum
22 capital requirements and minimum initial and
23 variation margin requirements as prescribed
24 under paragraph (2)(B) to help ensure the safe-
25 ty and soundness as the Commission and the

1 Commodity Futures Trading Commission shall
2 by rule or regulation jointly prescribe to help
3 ensure the safety and soundness of the security-
4 based swap dealer or major security-based swap
5 participant.

6 “(2) JOINT RULES.—

7 “(A) BANK SECURITY-BASED SWAP DEAL-
8 ERS AND MAJOR SECURITY-BASED SWAP PAR-
9 TICIPANTS.—Not later than 180 days of the
10 date of the enactment of the Over-the-Counter
11 Derivatives Markets Act of 2010, the primary
12 financial regulatory agency, the Commission,
13 and the Commodity Futures Trading Commis-
14 sion, shall jointly adopt rules imposing capital
15 and margin requirements under this subsection
16 for security-based swap dealers and major secu-
17 rity-based swap participants for which there is
18 a primary financial regulatory agency.

19 “(B) NONBANK SECURITY-BASED SWAP
20 DEALERS AND MAJOR SECURITY-BASED SWAP
21 PARTICIPANTS.—Not later than 180 days of the
22 date of the enactment of the Over-the-Counter
23 Derivatives Markets Act of 2010, the Commis-
24 sion and the Commodity Futures Trading Com-
25 mission shall jointly adopt rules imposing cap-

1 ital and margin requirements under this sub-
2 section for security-based swap dealers and
3 major security-based swap participants for
4 which there is not a primary financial regu-
5 latory agency.

6 “(3) CAPITAL.—

7 “(A) BANK SECURITY-BASED SWAP DEAL-
8 ERS AND MAJOR SECURITY-BASED SWAP PAR-
9 TICIPANTS.—The capital requirements pre-
10 scribed under paragraph (2)(A) for bank secu-
11 rity-based swap dealers and major security-
12 based swap participants shall contain—

13 “(i) a capital requirement that is
14 greater than zero for security-based swaps
15 that are cleared by a clearing agency; and

16 “(ii) to offset the greater risk to the
17 security-based swap dealer or major secu-
18 rity-based swap participant and to the fi-
19 nancial system arising from the use of se-
20 curity-based swaps that are not centrally
21 cleared, substantially higher capital re-
22 quirements for security-based swaps that
23 are not cleared by a clearing agency than
24 for security-based swaps that are centrally
25 cleared.

1 “(B) NONBANK SECURITY-BASED SWAP
2 DEALERS AND MAJOR SECURITY-BASED SWAP
3 PARTICIPANTS.—The capital requirements pre-
4 scribed under paragraph (2)(B) for nonbank se-
5 curity-based swap dealers and major security-
6 based swap participants shall be as strict as or
7 stricter than the capital requirements pre-
8 scribed under paragraph (2)(A).

9 “(C) RULE OF CONSTRUCTION.—

10 “(i) IN GENERAL.—Nothing in this
11 section shall limit, or be construed to limit,
12 the authority—

13 “(I) the Commission to set finan-
14 cial responsibility rules for a broker or
15 dealer registered pursuant to section
16 15(b) (except for section 15(b)(11)
17 thereof) in accordance with section
18 15(c)(3); or

19 “(II) of the Commodity Futures
20 Trading Commission to set financial
21 responsibility rules for a futures com-
22 mission merchant or introducing
23 broker registered pursuant to section
24 4f(a) of the Commodity Exchange Act
25 (except for section 4f(a)(3) thereof) in

1 rity-based swap dealers and major secu-
2 rity-based swap participants, by rule or
3 order, in consultation with the Financial
4 Stability Oversight Council and as the
5 agency deems consistent with the public in-
6 terest, may conditionally or unconditionally
7 exempt a security-based swap dealer or
8 major security-based swap participant from
9 the requirements of this subsection and the
10 rules issued under this subsection with re-
11 gard to any security-based swap in which
12 1 of the counterparties is—

13 “(I) not a swap dealer, major
14 swap participant, security-based swap
15 dealer, or a major security-based swap
16 participant;

17 “(II) using the swap as part of
18 an effective hedge under generally ac-
19 cepted accounting principles; and

20 “(III) predominantly engaged in
21 activities that are not financial in na-
22 ture, as defined in section 4(k) of the
23 Bank Holding Company Act of 1956
24 (12 U.S.C. 1843(k)).

1 “(B) NONBANK SECURITY-BASED SWAP
2 DEALERS AND MAJOR SECURITY-BASED SWAP
3 PARTICIPANTS.—

4 “(i) IN GENERAL.—The Commission
5 and the Securities and Exchange Commis-
6 sion shall impose both initial and variation
7 margin requirements in accordance with
8 paragraph (2)(B) on all security-based
9 swaps that are not cleared by a clearing
10 agency. Any such requirements shall be as
11 strict as or stricter than the margin re-
12 quirements prescribed under paragraph
13 (4)(A).

14 “(ii) EXEMPTION.—The Commission
15 by rule or order, in consultation with the
16 Financial Stability Oversight Council and
17 as the Commission deems consistent with
18 the public interest, may conditionally or
19 unconditionally exempt a nonbank security-
20 based swap dealer or major security-based
21 swap participant from the requirements of
22 this subparagraph and the rules issued
23 under this subparagraph with regard to
24 any security-based swap in which 1 of the
25 counterparties is—

1 “(I) not a swap dealer, major
2 swap participant, security-based swap
3 dealer, or a major security-based swap
4 participant;

5 “(II) using the swap as part of
6 an effective hedge under generally ac-
7 cepted accounting principles; and

8 “(III) predominantly engaged in
9 activities that are not financial in na-
10 ture, as defined in section 4(k) of the
11 Bank Holding Company Act of 1956
12 (12 U.S.C. 1843(k)).

13 “(5) MARGIN REQUIREMENTS.—In prescribing
14 margin requirements under this subsection, the pri-
15 mary financial regulatory agency for bank security-
16 based swap dealers and major security-based swap
17 participants, the Commission, or the Commodity Fu-
18 tures Trading Commission may permit the use of
19 noncash collateral, as the agency, the Commission,
20 or the Commodity Futures Trading Commission de-
21 termines to be consistent with—

22 “(A) preserving the financial integrity of
23 markets trading security-based swaps; and

24 “(B) preserving the stability of the United
25 States financial system.

1 “(6) REQUESTED MARGIN.—If any party to a
2 security-based swap that is exempt from the margin
3 requirements of paragraph (4)(A)(i) pursuant to the
4 provisions of paragraph (4)(A)(ii) or from the mar-
5 gin requirements of paragraph (4)(B)(i) pursuant to
6 the provisions of paragraph (4)(B)(ii) requests that
7 such security-based swap be margined, then—

8 “(A) the exemption shall not apply; and

9 “(B) the counterparty to such security-
10 based swap shall provide the requested margin.

11 “(f) REPORTING AND RECORDKEEPING.—

12 “(1) IN GENERAL.—Each registered security-
13 based swap dealer and major security-based swap
14 participant—

15 “(A) shall make such reports as are pre-
16 scribed by rule or regulation regarding the
17 transactions and positions and financial condi-
18 tion of such dealer or participant;

19 “(B) for which—

20 “(i) there is a primary financial regu-
21 latory agency shall keep books and records
22 of all activities related to its business as a
23 security-based swap dealer or major secu-
24 rity-based swap participant in such form

1 and manner and for such period as may be
2 prescribed by rule or regulation; and

3 “(ii) there is not a primary financial
4 regulatory agency shall keep books and
5 records in such form and manner and for
6 such period as may be prescribed by rule
7 or regulation; and

8 “(C) shall keep such books and records
9 open to inspection and examination by any rep-
10 resentative of the Commission.

11 “(2) RULES.—Not later than 1 year of the date
12 of the enactment of the Over-the-Counter Deriva-
13 tives Markets Act of 2010, the Commission and the
14 Commodity Futures Trading Commission shall joint-
15 ly adopt rules governing reporting and recordkeeping
16 for swap dealers, major swap participants, security-
17 based swap dealers and major security-based swap
18 participants.

19 “(g) DAILY TRADING RECORDS.—

20 “(1) IN GENERAL.—Each registered security-
21 based swap dealer and major security-based swap
22 participant shall, for such period as may be pre-
23 scribed by rule or regulation, maintain daily trading
24 records of that dealer’s or participant’s—

1 “(A) security-based swaps and all related
2 records (including related transactions); and

3 “(B) recorded communications, including
4 electronic mail, instant messages, and record-
5 ings of telephone calls.

6 “(2) INFORMATION REQUIREMENTS.—The daily
7 trading records required to be maintained under
8 paragraph (1) shall include such information as shall
9 be prescribed by rule or regulation.

10 “(3) CUSTOMER RECORDS.—Each registered se-
11 curity-based swap dealer or major security-based
12 swap participant shall maintain daily trading records
13 for each customer or counterparty in such manner
14 and form as to be identifiable with each security-
15 based swap transaction.

16 “(4) AUDIT TRAIL.—

17 “(A) MAINTENANCE OF AUDIT TRAIL.—
18 Each registered security-based swap dealer or
19 major security-based swap participant shall
20 maintain a complete audit trail for conducting
21 comprehensive and accurate trade reconstruc-
22 tions.

23 “(B) PERMISSIBLE COMPLIANCE BY ENTI-
24 TY OTHER THAN DEALER OR PARTICIPANT.—A
25 registered security-based swap repository may,

1 at the request of a registered security-based
2 swap dealer or major security-based swap par-
3 ticipant, satisfy the requirement of subpara-
4 graph (A) on behalf of such registered security-
5 based swap dealer or major security-based swap
6 participant.

7 “(5) RULES.—Not later than 1 year after the
8 date of the enactment of the Over-the-Counter De-
9 rivatives Markets Act of 2010, the Commission and
10 the Commodity Futures Trading Commission shall
11 jointly adopt rules governing daily trading records
12 for swap dealers, major swap participants, security-
13 based swap dealers, and major security-based swap
14 participants.

15 “(h) BUSINESS CONDUCT STANDARDS.—

16 “(1) IN GENERAL.—Each registered security-
17 based swap dealer and major security-based swap
18 participant shall conform with such business conduct
19 standards as may be prescribed by rule or regula-
20 tion, including any standards addressing—

21 “(A) fraud, manipulation, and other abu-
22 sive practices involving security-based swaps
23 (including security-based swaps that are offered
24 but not entered into);

1 “(B) diligent supervision of its business as
2 a security-based swap dealer;

3 “(C) adherence to all applicable position
4 limits; and

5 “(D) such other matters as the Commis-
6 sion shall determine to be necessary or appro-
7 priate.

8 “(2) BUSINESS CONDUCT REQUIREMENTS.—
9 Business conduct requirements adopted by the Com-
10 mission pursuant to paragraph (1) shall—

11 “(A) establish a standard of care for a se-
12 curity-based swap dealer or major security-
13 based swap participant to verify that any secu-
14 rity-based swap counterparty meets the eligi-
15 bility standards for an eligible contract partici-
16 pant;

17 “(B) require disclosure by the security-
18 based swap dealer or major security-based swap
19 participant to any counterparty to the security-
20 based swap (other than a swap dealer, major
21 swap participant, security-based swap dealer, or
22 major security-based swap participant) of—

23 “(i) information about the material
24 risks and characteristics of the security-
25 based swap;

1 “(ii) the source and amount of any
2 fees or other material remuneration that
3 the security-based swap dealer or major se-
4 curity-based swap participant would di-
5 rectly or indirectly expect to receive in con-
6 nection with the security-based swap; and

7 “(iii) any other material incentives or
8 conflicts of interest that the security-based
9 swap dealer or major security-based swap
10 participant may have in connection with
11 the security-based swap; and

12 “(C) establish a standard of conduct for a
13 security-based swap dealer or major security-
14 based swap participant to communicate in a
15 fair and balanced manner based on principles of
16 fair dealing and good faith;

17 “(D) establish a standard of conduct for a
18 security-based swap dealer or major security-
19 based swap participant, with respect to a
20 counterparty that is an eligible contract partici-
21 pant within the meaning of subclause (I) or (II)
22 of clause (vii) section 1a(12) of the Commodity
23 Exchange Act (7 U.S.C. 1a(12)), to have a rea-
24 sonable basis to believe that the counterparty
25 has an independent representative that—

1 “(i) has sufficient knowledge to evalu-
2 ate the transaction and risks;

3 “(ii) is not subject to a statutory dis-
4 qualification;

5 “(iii) is independent of the security-
6 based swap dealer or major security-based
7 swap participant;

8 “(iv) undertakes a duty to act in the
9 best interests of the counterparty it rep-
10 resents;

11 “(v) makes appropriate disclosures;
12 and

13 “(vi) will provide written representa-
14 tions to the eligible contract participant re-
15 garding fair pricing and the appropriate-
16 ness of the transaction; and

17 “(E) establish such other standards and
18 requirements as the Commission may determine
19 are necessary or appropriate in the public inter-
20 est, for the protection of investors, or otherwise
21 in furtherance of the purposes of this title.

22 “(3) RULES.—Not later than 1 year after the
23 date of the enactment of the Over-the-Counter De-
24 rivatives Markets Act of 2010, the Commission and
25 the Commodity Futures Trading Commission shall

1 jointly prescribe rules under this subsection gov-
2 erning business conduct standards for swap dealers,
3 major swap participants, security-based swap deal-
4 ers, and major security-based swap participants.

5 “(i) DOCUMENTATION AND BACK OFFICE STAND-
6 ARDS.—

7 “(1) IN GENERAL.—Each registered security-
8 based swap dealer and major security-based swap
9 participant shall conform with standards, as may be
10 prescribed by rule or regulation, addressing timely
11 and accurate confirmation, processing, netting, docu-
12 mentation, and valuation of all security-based swaps.

13 “(2) RULES.—Not later than 1 year after the
14 date of the enactment of the Over-the-Counter De-
15 rivatives Markets Act of 2010, the Commission and
16 the Commodity Futures Trading Commission shall
17 jointly adopt rules governing documentation and
18 back office standards for swap dealers, major swap
19 participants, security-based swap dealers, and major
20 security-based swap participants.

21 “(j) DEALER RESPONSIBILITIES.—Each registered
22 security-based swap dealer and major security-based swap
23 participant shall, at all times, comply with the following
24 requirements:

1 “(1) MONITORING OF TRADING.—The security-
2 based swap dealer or major security-based swap par-
3 ticipant shall monitor its trading in security-based
4 swaps to prevent violations of applicable position
5 limits.

6 “(2) DISCLOSURE OF GENERAL INFORMA-
7 TION.—The security-based swap dealer or major se-
8 curity-based swap participant shall disclose to the
9 Commission information concerning—

10 “(A) terms and conditions of its security-
11 based swaps;

12 “(B) security-based swap trading oper-
13 ations, mechanisms, and practices;

14 “(C) financial integrity protections relating
15 to security-based swaps; and

16 “(D) other information relevant to its trad-
17 ing in security-based swaps.

18 “(3) ABILITY TO OBTAIN INFORMATION.—The
19 security-based swap dealer or major swap security-
20 based participant shall—

21 “(A) establish and enforce internal systems
22 and procedures to obtain any necessary infor-
23 mation to perform any of the functions de-
24 scribed in this section; and

1 “(B) provide the information to the Com-
2 mission upon request.

3 “(4) CONFLICTS OF INTEREST.—The security-
4 based swap dealer and major security-based swap
5 participant shall implement conflict of interest sys-
6 tems and procedures that—

7 “(A) establish structural and institutional
8 safeguards to assure that the activities of any
9 person within the firm relating to research or
10 analysis of the price or market for any security
11 are separated by appropriate informational par-
12 titions within the firm from the review, pres-
13 sure, or oversight of those whose involvement in
14 trading or clearing activities might potentially
15 bias their judgment or supervision; and

16 “(B) address such other issues as the
17 Commission determines appropriate.

18 “(5) ANTITRUST CONSIDERATIONS.—Unless
19 necessary or appropriate to achieve the purposes of
20 this Act, a security-based swap dealer or major secu-
21 rity-based swap participant shall avoid—

22 “(A) adopting any processes or taking any
23 actions that result in any unreasonable re-
24 straints of trade; or

1 “(B) imposing any material anticompeti-
2 tive burden on trading.

3 “(k) RULES.—The Commission and the Commodity
4 Futures Trading Commission shall consult with each other
5 prior to adopting any rules under the Over-the-Counter
6 Derivatives Markets Act of 2010.

7 “(l) STATUTORY DISQUALIFICATION.—Except to the
8 extent otherwise specifically provided by rule, regulation,
9 or order of the Commission, it shall be unlawful for a secu-
10 rity-based swap dealer or a major security-based swap par-
11 ticipant to permit any person associated with a security-
12 based swap dealer or a major security-based swap partici-
13 pant who is subject to a statutory disqualification to effect
14 or be involved in effecting security-based swaps on behalf
15 of such security-based swap dealer or major security-based
16 swap participant, if such security-based swap dealer or
17 major security-based swap participant knew, or in the ex-
18 ercise of reasonable care should have known, of such stat-
19 utory disqualification.

20 “(m) ENFORCEMENT AND ADMINISTRATIVE PRO-
21 CEEDING AUTHORITY.—

22 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

23 “(A) SECURITIES AND EXCHANGE COMMIS-
24 SION.—Except as provided in subsection (b),
25 the Commission shall have primary authority to

1 enforce the provisions of subtitle B of the Over-
2 the-Counter Derivatives Markets Act of 2010
3 with respect to any person.

4 “(B) PRIMARY FINANCIAL REGULATORY
5 AGENCY.—The primary financial regulatory
6 agency for bank security-based swap dealers
7 and major security-based swap participants
8 shall have exclusive authority to enforce the
9 provisions of subsection (e) and other pruden-
10 tial requirements of this Act with respect to
11 banks, and branches or agencies of foreign
12 banks, that are security-based swap dealers or
13 major security-based swap participants.

14 “(C) REFERRAL.—If the primary financial
15 regulatory agency for bank security-based swap
16 dealers and major security-based swap partici-
17 pants has cause to believe that such security-
18 based swap dealer or major security-based swap
19 participant may have engaged in conduct that
20 constitutes a violation of the nonprudential re-
21 quirements of this section or rules adopted by
22 the Commission thereunder, the agency may
23 recommend in writing to the Commission that
24 the Commission initiate an enforcement pro-
25 ceeding as authorized under this Act. The rec-

1 ommendation shall be accompanied by a written
2 explanation of the concerns giving rise to the
3 recommendation.

4 “(D) BACKSTOP ENFORCEMENT AUTHOR-
5 ITY.—If the Commission does not initiate an
6 enforcement proceeding before the end of the
7 90-day period beginning on the date on which
8 the Commission receives a recommendation
9 under subparagraph (C), the primary financial
10 regulatory agency for bank security-based swap
11 dealers and major security-based swap partici-
12 pants may initiate an enforcement proceeding
13 as permitted under Federal law.

14 “(2) ENFORCEMENT ACTIONS.—The Commis-
15 sion, by order, shall censure, place limitations on the
16 activities, functions, or operations of, or reject the
17 filing of any security-based swap dealer or major se-
18 curity-based swap participant that has registered
19 with the Commission pursuant to subsection (b) if it
20 finds, on the record after notice and opportunity for
21 hearing, that such censure, placing of limitations, or
22 rejection is in the public interest and that such secu-
23 rity-based swap dealer or major security-based swap
24 participant, or any person associated with such secu-
25 rity-based swap dealer or major security-based swap

1 participant effecting or involved in effecting trans-
2 actions in security-based swaps on behalf of such se-
3 curity-based swap dealer or major security-based
4 swap participant, whether prior or subsequent to be-
5 coming so associated—

6 “(A) has committed or omitted any act, or
7 is subject to an order or finding, described in
8 subparagraph (A), (D), or (E) of paragraph (4)
9 of section 15(b);

10 “(B) has been convicted of any offense
11 specified in subparagraph (B) of such para-
12 graph (4) not later than 10 years of the com-
13 mencement of the proceedings under this sub-
14 section;

15 “(C) is enjoined from any action, conduct,
16 or practice specified in subparagraph (C) of
17 such paragraph (4);

18 “(D) is subject to an order or a final order
19 specified in subparagraph (F) or (H), respec-
20 tively, of such paragraph (4); or

21 “(E) has been found by a foreign financial
22 regulatory authority to have committed or omit-
23 ted any act, or violated any foreign statute or
24 regulation, described in subparagraph (G) of
25 such paragraph (4).

1 “(3) PERSONNEL ENFORCEMENT ACTIONS.—

2 With respect to any person who is associated, who
3 is seeking to become associated, or, at the time of
4 the alleged misconduct, who was associated or was
5 seeking to become associated with a security-based
6 swap dealer or major security-based swap partici-
7 pant for the purpose of effecting or being involved
8 in effecting security-based swaps on behalf of such
9 security-based swap dealer or major security-based
10 swap participant, the Commission, by order, shall
11 censure, place limitations on the activities or func-
12 tions of such person, or suspend for a period not ex-
13 ceeding 12 months, or bar such person from being
14 associated with a security-based swap dealer or
15 major security-based swap participant, if the Com-
16 mission finds, on the record after notice and oppor-
17 tunity for a hearing, that such censure, placing of
18 limitations, suspension, or bar is in the public inter-
19 est and that such person—

20 “(A) has committed or omitted any act, or
21 is subject to an order or finding, described in
22 subparagraph (A), (D), or (E) of paragraph (4)
23 of section 15(b);

24 “(B) has been convicted of any offense
25 specified in subparagraph (B) of such para-

1 graph (4) not later than 10 years of the com-
2 mencement of the proceedings under this sub-
3 section;

4 “(C) is enjoined from any action, conduct,
5 or practice specified in subparagraph (C) of
6 such paragraph (4);

7 “(D) is subject to an order or a final order
8 specified in subparagraph (F) or (H), respec-
9 tively, of such paragraph (4); or

10 “(E) has been found by a foreign financial
11 regulatory authority to have committed or omit-
12 ted any act, or violated any foreign statute or
13 regulation, described in subparagraph (G) of
14 such paragraph (4).

15 “(4) NO VIOLATIONS OF ORDERS.—It shall be
16 unlawful—

17 “(A) for any person as to whom an order
18 under paragraph (3) is in effect, without the
19 consent of the Commission, willfully to become,
20 or to be, associated with a security-based swap
21 dealer or major security-based swap participant
22 in contravention of such order; or

23 “(B) for any security-based swap dealer or
24 major security-based swap participant to permit
25 such a person, without the consent of the Com-

1 mission, to become or remain a person associ-
2 ated with the security-based swap dealer or
3 major security-based swap participant in con-
4 travention of such order, if such security-based
5 swap dealer or major security-based swap par-
6 ticipant knew, or in the exercise of reasonable
7 care should have known, of such order.”.

8 (e) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
9 TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)
10 through (3) of section 9(b) of the Securities Exchange Act
11 of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read
12 as follows:

13 “(1) any transaction in connection with any se-
14 curity whereby any party to such transaction ac-
15 quires—

16 “(A) any put, call, straddle, or other op-
17 tion or privilege of buying the security from or
18 selling the security to another without being
19 bound to do so;

20 “(B) any security futures product on the
21 security; or

22 “(C) any security-based swap involving the
23 security or the issuer of the security;

1 “(2) any transaction in connection with any se-
2 curity with relation to which he has, directly or indi-
3 rectly, any interest in any—

4 “(A) such put, call, straddle, option, or
5 privilege;

6 “(B) such security futures product; or

7 “(C) such security-based swap; or

8 “(3) any transaction in any security for the ac-
9 count of any person who he has reason to believe
10 has, and who actually has, directly or indirectly, any
11 interest in any—

12 “(A) such put, call, straddle, option, or
13 privilege;

14 “(B) such security futures product with re-
15 lation to such security; or

16 “(C) any security-based swap involving
17 such security or the issuer of such security.”.

18 (f) RULEMAKING AUTHORITY TO PREVENT FRAUD,
19 MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-
20 BASED SWAPS AND SECURITY-BASED SWAP AGREE-
21 MENTS.—Section 9 of the Securities Exchange Act of
22 1934 (15 U.S.C. 78i) is amended by adding at the end
23 the following:

24 “(j) PROHIBITION.—It shall be unlawful for any per-
25 son, directly or indirectly, by the use of any means or in-

1 strumentality of interstate commerce or of the mails, or
2 of any facility of any national securities exchange, to effect
3 any transaction in, or to induce or attempt to induce the
4 purchase or sale of, any security-based swap or any secu-
5 rity-based swap agreement, in connection with which such
6 person engages in any fraudulent, deceptive, or manipula-
7 tive act or practice, makes any fictitious quotation, or en-
8 gages in any transaction, practice, or course of business
9 which operates as a fraud or deceit upon any person. The
10 Commission shall, for the purposes of this subsection, by
11 rules and regulations define, and prescribe means reason-
12 ably designed to prevent, such transactions, acts, prac-
13 tices, and courses of business as are fraudulent, deceptive,
14 or manipulative, and such quotations as are fictitious.”.

15 (g) POSITION LIMITS AND POSITION ACCOUNT-
16 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
17 Exchange Act of 1934 is amended by inserting after sec-
18 tion 10A (15 U.S.C. 78j–1) the following new section:

19 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
20 **ABILITY FOR SECURITY-BASED SWAPS AND**
21 **LARGE TRADER REPORTING.**

22 “(a) AGGREGATE POSITION LIMITS.—As a means
23 reasonably designed to prevent fraud and manipulation,
24 the Commission may, by rule or regulation, as necessary
25 or appropriate in the public interest or for the protection

1 of investors, establish limits (including related hedge ex-
2 emption provisions) on the aggregate number or amount
3 of positions that may be held by any person or persons
4 across security-based swaps that perform or affect a sig-
5 nificant price discovery function with respect to regulated
6 markets.

7 “(b) EXEMPTIONS.—The Commission, by rule, regu-
8 lation, or order, may conditionally or unconditionally ex-
9 empt any person or class of persons, any security-based
10 swap or class of security-based swaps, or any transaction
11 or class of transactions from any requirement it may es-
12 tablish under this section with respect to position limits.

13 “(c) SELF-REGULATORY ORGANIZATION RULES.—As
14 a means reasonably designed to prevent fraud or manipu-
15 lation, the Commission, by rule, regulation, or order, as
16 necessary or appropriate in the public interest, for the pro-
17 tection of investors, or otherwise in furtherance of the pur-
18 poses of this title, may direct a self-regulatory organiza-
19 tion—

20 “(1) to adopt rules regarding the size of posi-
21 tions in any security-based swap and any security on
22 which such security-based swap is based that may be
23 held by—

24 “(A) any member of such self-regulatory
25 organization; or

1 “(B) any person for whom a member of
2 such self-regulatory organization effects trans-
3 actions in such security-based swap or other se-
4 curity; and

5 “(2) to adopt rules reasonably designed to en-
6 sure compliance with requirements prescribed by the
7 Commission under subsection (a).

8 “(d) LARGE SECURITY-BASED SWAP TRADER RE-
9 PORTING.—

10 “(1) IN GENERAL.—A person that enters into
11 any security-based swap shall file or cause to be filed
12 with the properly designated officer of the Commis-
13 sion the reports described in paragraph (2).

14 “(2) REPORTS.—

15 “(A) SECURITY-BASED SWAP REPORTS.—

16 Each person described in paragraph (1) shall,
17 in accordance with the rules and regulations of
18 the Commission, keep books and records of any
19 security-based swaps or transactions and posi-
20 tions in any related security traded on or sub-
21 ject to the rules of any national securities ex-
22 change.

23 “(B) CASH OR SPOT TRANSACTIONS.—

24 Each person described in paragraph (1) shall,
25 in accordance with the rules and regulations of

1 the Commission, keep books and records of any
2 cash or spot transactions in, inventories of, and
3 purchase and sale commitments of, any related
4 security traded on or subject to the rules of any
5 national securities exchange, if—

6 “(i) such person directly or indirectly
7 enters into such security-based swaps dur-
8 ing any 1 day in an amount equal to or in
9 excess of such amount as shall be fixed
10 from time to time by the Commission; and

11 “(ii) such person directly or indirectly
12 has or obtains a position in such security-
13 based swaps equal to or in excess of such
14 amount as shall be fixed from time to time
15 by the Commission.

16 “(3) RECORDKEEPING.—The books and records
17 required to be kept under paragraph (2) shall—

18 “(A) show complete details concerning all
19 transactions and positions as the Commission
20 may by rule or regulation prescribe; and

21 “(B) be open at all times to inspection and
22 examination by any representative of the Com-
23 mission.

24 “(4) RULE OF CONSTRUCTION.—For the pur-
25 pose of this subsection, the security-based swaps,

1 and securities transactions and positions of any per-
2 son shall include such security-based swaps, trans-
3 actions and positions of any persons directly or indi-
4 rectly controlled by such person.”.

5 (h) PUBLIC REPORTING AND REPOSITORIES FOR SE-
6 CURITY-BASED SWAP AGREEMENTS.—Section 13 of the
7 Securities Exchange Act of 1934 (15 U.S.C. 78m) is
8 amended by adding at the end the following:

9 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
10 BASED SWAP DATA.—

11 “(1) IN GENERAL.—The Commission, or a per-
12 son designated by the Commission pursuant to para-
13 graph (2), shall make available to the public, in a
14 manner that does not disclose the business trans-
15 actions and market positions of any person, aggre-
16 gate data on security-based swap trading volumes
17 and positions from the sources set forth in para-
18 graph (3).

19 “(2) DESIGNEE OF THE COMMISSION.—The
20 Commission may designate a clearing agency or a
21 security-based swap repository to carry out the pub-
22 lic reporting requirement described in paragraph (1).

23 “(3) SOURCES OF INFORMATION.—The sources
24 of the information to be publicly reported as de-
25 scribed in paragraph (1) are—

1 “(A) clearing agencies pursuant to section
2 3B;

3 “(B) security-based swap repositories pur-
4 suant to subsection (n); and

5 “(C) reports received by the Commission
6 pursuant to section 13A.

7 “(n) SECURITY-BASED SWAP REPOSITORIES.—

8 “(1) REGISTRATION REQUIREMENT.—

9 “(A) IN GENERAL.—A person may register
10 as a security-based swap repository by filing
11 with the Commission an application in such
12 form as the Commission, by rule, may pre-
13 scribe, containing the rules of the security-
14 based swap repository and such other informa-
15 tion and documentation as the Commission, by
16 rule, may prescribe as necessary or appropriate
17 in the public interest, for the protection of in-
18 vestors, or in the furtherance of the purposes of
19 this section.

20 “(B) INSPECTION AND EXAMINATION.—

21 Registered security-based swap repositories
22 shall be subject to inspection and examination
23 by any representatives of the Commission.

24 “(2) STANDARD SETTING.—

1 “(A) DATA IDENTIFICATION.—The Com-
2 mission shall prescribe standards that specify
3 the data elements for each security-based swap
4 that shall be collected and maintained by each
5 security-based swap repository.

6 “(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data
7 collection and data maintenance standards for
8 security-based swap repositories.

9 “(C) COMPARABILITY.—The standards
10 prescribed by the Commission under this sub-
11 section shall be comparable to the data stand-
12 ards imposed by the Commission on clearing
13 agencies that clear security-based swaps.

14 “(3) DUTIES.—A security-based swap reposi-
15 tory shall—

16 “(A) accept data prescribed by the Com-
17 mission for each security-based swap under
18 paragraph (2);

19 “(B) maintain such data in such form and
20 manner and for such period as may be required
21 by the Commission;

22 “(C) provide to the Commission, or its des-
23 ignee, such information as is required by, and
24 in a form and at a frequency to be determined
25

1 by, the Commission, in order to comply with the
2 public reporting requirements contained in sub-
3 section (m); and

4 “(D) make available, on a confidential
5 basis, all data obtained by the security-based
6 swap repository, including individual
7 counterparty trade and position data, to the
8 Commission, the appropriate Federal banking
9 agencies, the Commodity Futures Trading
10 Commission, the Financial Stability Oversight
11 Council, and the Department of Justice or to
12 other persons the Commission deems appro-
13 priate, including foreign financial supervisors
14 (including foreign futures authorities), foreign
15 central banks, and foreign ministries.

16 “(4) REQUIRED REGISTRATION FOR SECURITY-
17 BASED SWAP REPOSITORIES.—Any person that is re-
18 quired to be registered as a securities-based swap re-
19 pository under this subsection shall register with the
20 Commission, regardless of whether that person also
21 is registered with the Commodity Futures Trading
22 Commission as a swap repository.

23 “(5) HARMONIZATION OF RULES.—Not later
24 than 180 days after the effective date of the Over-
25 the-Counter Derivatives Markets Act of 2010, the

1 Commission and the Commodity Futures Trading
2 Commission shall jointly adopt uniform rules gov-
3 erning persons that are registered under this section
4 and persons that are registered as swap repositories
5 under the Commodity Exchange Act (7 U.S.C. 1 et
6 seq.), including uniform rules that specify the data
7 elements that shall be collected and maintained by
8 each repository.

9 “(6) EXEMPTIONS.—The Commission may ex-
10 empt, conditionally or unconditionally, a security-
11 based swap repository from the requirements of this
12 section if the Commission finds that such security-
13 based swap repository is subject to comparable, com-
14 prehensive supervision or regulation on a consoli-
15 dated basis by the Commodity Futures Trading
16 Commission or the appropriate governmental au-
17 thorities in the organization’s home country.”.

18 (i) RECORDKEEPING BY SECURITY-BASED SWAP RE-
19 POSITORIES.—Section 17(a)(1) of the Securities Exchange
20 Act of 1934 (15 U.S.C. 78m) is amended by inserting
21 “registered security-based swap repository,” after “reg-
22 istered securities information processor,”.

1 **SEC. 754. SEGREGATION OF ASSETS HELD AS COLLATERAL**
2 **IN SECURITY-BASED SWAP TRANSACTIONS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.) is further amended by adding after section 3C (as
5 added by section 753) the following:

6 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
7 **IN SECURITY-BASED SWAP TRANSACTIONS.**

8 “(a) **CLEARED SECURITY-BASED SWAPS.**—A secu-
9 rity-based swap dealer or clearing agency by or through
10 which funds or other property provided as initial margin
11 or collateral are held to margin, guarantee, or secure the
12 obligations of a counterparty under a security-based swap
13 to be cleared by or through a clearing agency shall seg-
14 regate, maintain, and use the funds or other property pro-
15 vided as initial margin or collateral for the benefit of the
16 counterparty, in accordance with such rules and regula-
17 tions as the Commission shall prescribe for nonbank secu-
18 rity-based swap dealers or clearing agencies, or the pri-
19 mary financial regulatory agency shall prescribe for bank
20 security-based swap dealers. Any such funds or other
21 property provided as initial margin or collateral shall be
22 treated as customer property under this Act.

23 “(b) **OTHER SECURITY-BASED SWAPS.**—At the re-
24 quest of a security-based swap counterparty who provides
25 funds or other property as initial margin or collateral to
26 a security-based swap dealer to margin, guarantee, or se-

1 cure the obligations of the counterparty under a security-
2 based swap between the counterparty and the security-
3 based swap dealer that is not submitted for clearing to
4 a clearing agency, the security-based swap dealer shall
5 segregate the funds or other property provided as initial
6 margin or collateral for the benefit of the counterparty,
7 and maintain the funds or other property in an account
8 which is carried by an independent third-party custodian
9 and designated as a segregated account for the
10 counterparty, in accordance with such rules and regula-
11 tions as the Commission shall prescribe for nonbank secu-
12 rity-based swap dealers or clearing agencies, or the pri-
13 mary financial regulatory agency shall prescribe for bank
14 security-based swap dealers. Any segregation requested
15 under this subsection shall be made available by a secu-
16 rity-based swap dealer to a counterparty on fair and rea-
17 sonable terms on a non-discriminatory basis. This sub-
18 section shall not be interpreted to preclude commercial ar-
19 rangements regarding the investment of the segregated
20 funds or other property and the related allocation of gains
21 and losses resulting from any such investment, provided,
22 however, that the segregated funds or other property
23 under this subsection may be invested only in such invest-
24 ments as the Commission or the primary financial regu-
25 latory agency, as applicable, permits by rule or regulation,

1 and shall not be pledged, re-hypothecated, or otherwise en-
2 cumbered by a security-based swap dealer.”.

3 **SEC. 755. REPORTING AND RECORDKEEPING.**

4 (a) **ADDITIONAL REPORTING REQUIREMENTS.**—The
5 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
6 is amended by inserting after section 13 the following sec-
7 tion:

8 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
9 **TAIN SECURITY-BASED SWAPS.**

10 “(a) **IN GENERAL.**—Any person who enters into a se-
11 curity-based swap shall satisfy the reporting requirements
12 under subsection (b), if such person—

13 “(1) did not clear the security-based swap in
14 accordance with section 3B; and

15 “(2) did not have data regarding the security-
16 based swap accepted by a security-based swap repos-
17 itory in accordance with rules adopted by the Com-
18 mission under section 13(n).

19 “(b) **REPORTS.**—Any person described in subsection
20 (a) shall—

21 “(1) make such reports in such form and man-
22 ner and for such period as the Commission shall pre-
23 scribe by rule or regulation regarding the security-
24 based swaps held by the person; and

1 “(2) keep books and records pertaining to the
2 security-based swaps held by the person in such
3 form and manner and for such period as may be re-
4 quired by the Commission, which books and records
5 shall be open to inspection by any representative of
6 the Commission, an appropriate Federal banking
7 agency, the Commodity Futures Trading Commis-
8 sion, the Financial Stability Oversight Council, and
9 the Department of Justice.

10 “(c) IDENTICAL DATA.—In adopting rules under this
11 section, the Commission shall require persons described in
12 subsection (a) to report the same or more comprehensive
13 data than the Commission requires security-based swap
14 repositories to collect under section 13(n).”.

15 (b) BENEFICIAL OWNERSHIP REPORTING.—

16 (1) Section 13(d)(1) of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
18 inserting “or otherwise becomes or is deemed to be-
19 come a beneficial owner of any of the foregoing upon
20 the purchase or sale of a security-based swap or
21 other derivative instrument that the Commission
22 may define by rule, and” after “Alaska Native
23 Claims Settlement Act,”.

24 (2) Section 13(g)(1) of the Securities Exchange
25 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by

1 inserting “or otherwise becomes or is deemed to be-
2 come a beneficial owner of any security of a class de-
3 scribed in subsection (d)(1) upon the purchase or
4 sale of a security-based swap or other derivative in-
5 strument that the Commission may define by rule”
6 after “subsection (d)(1) of this section”.

7 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
8 AGERS.—Section 13(f) of the Securities Exchange Act of
9 1934 (15 U.S.C. 78m(f)(1)) is amended—

10 (1) in paragraph (1)—

11 (A) by inserting “(A)” after “accounts
12 holding”; and

13 (B) by inserting “or (B) security-based de-
14 rivative instruments or other derivative securi-
15 ties that the Commission may determine by
16 rule, having such values as the Commission, by
17 rule, may determine” after “less than
18 \$10,000,000) as the Commission, by rule, may
19 determine.”; and

20 (2) in paragraph (3), by striking “section
21 13(d)(1) of this title” and inserting “subsection
22 (d)(1) of this section and of security-based swaps or
23 other derivative instrument that the Commission
24 may determine by rule,”.

1 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
2 Section 15(b)(4) of the Securities Exchange Act of 1934
3 (15 U.S.C. 78o(b)(4)) is amended—

4 (1) in subparagraph (C), by inserting “security-
5 based swap dealer, major security-based swap partic-
6 ipant,” after “government securities dealer,”; and

7 (2) in subparagraph (F), by inserting “, or se-
8 curity-based swap dealer, or a major security-based
9 swap participant” after “or dealer”.

10 (e) TRANSACTIONS BY CORPORATE INSIDERS.—Sec-
11 tion 16(f) of the Securities Exchange Act of 1934 (15
12 U.S.C. 78p) is amended by inserting “or security-based
13 swaps” after “security futures products”.

14 **SEC. 756. STATE GAMING AND BUCKET SHOP LAWS.**

15 Section 28(a) of the Securities Exchange Act of 1934
16 (15 U.S.C. 78bb(a)) is amended to read as follows:

17 “(a) ADDITIONAL RIGHTS AND REMEDIES; RECOV-
18 ERY OF ACTUAL DAMAGES; STATE SECURITIES COMMIS-
19 SIONS.—Except as provided in subsection (f), the rights
20 and remedies provided by this title shall be in addition
21 to any and all other rights and remedies that may exist
22 at law or in equity, but no person permitted to maintain
23 a suit for damages under the provisions of this title shall
24 recover, through satisfaction of judgment in 1 or more ac-
25 tions, a total amount in excess of his actual damages on

1 account of the act complained of. Except as otherwise spe-
2 cifically provided in this title, nothing in this title shall
3 affect the jurisdiction of the securities commission (or any
4 agency or officer performing like functions) of any State
5 over any security or any person insofar as it does not con-
6 flict with the provisions of this title or the rules and regu-
7 lations thereunder. No State law that prohibits or regu-
8 lates the making or promoting of wagering or gaming con-
9 tracts, or the operation of ‘bucket shops’ or other similar
10 or related activities, shall invalidate—

11 “(1) any put, call, straddle, option, privilege, or
12 other security subject to this title (except a security-
13 based swap agreement and any security that has a
14 pari-mutuel payout or otherwise is determined by
15 the Commission, acting by rule, regulation, or order,
16 to be appropriately subject to such laws), or apply
17 to any activity which is incidental or related to the
18 offer, purchase, sale, exercise, settlement, or closeout
19 of any such security;

20 “(2) any security-based swap between eligible
21 contract participants; or

22 “(3) any security-based swap effected on a na-
23 tional securities exchange registered pursuant to sec-
24 tion 6(b).

1 No provision of State law regarding the offer, sale, or dis-
2 tribution of securities shall apply to any transaction in a
3 security-based swap or a security futures product, except
4 that this sentence shall not be construed as limiting any
5 State antifraud law of general applicability.”.

6 **SEC. 757. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

7 **TREATMENT OF SECURITY-BASED SWAPS.**

8 (a) DEFINITIONS.—Section 2(a) of the Securities Act
9 of 1933 (15 U.S.C. 77b(a)) is amended—

10 (1) in paragraph (1), by inserting “security-
11 based swap,” after “security future,”;

12 (2) in paragraph (3), by adding at the end the
13 following: “Any offer or sale of a security-based
14 swap by or on behalf of the issuer of the securities
15 upon which such security-based swap is based or is
16 referenced, an affiliate of the issuer, or an under-
17 writer, shall constitute a contract for sale of, sale of,
18 offer for sale, or offer to sell such securities,”; and

19 (3) by adding at the end the following:

20 “(17) The terms ‘swap’ and ‘security-based
21 swap’ have the same meanings as provided in sec-
22 tions 1a(34) of the Commodity Exchange Act (7
23 U.S.C. 1a(34)) and section 3(a)(68) of the Securi-
24 ties Exchange Act of 1934 (15 U.S.C. 78(c)(a)(68)),
25 respectively.

1 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
2 rity-based swap shall be deemed to mean the execu-
3 tion, termination (prior to its scheduled maturity
4 date), assignment, exchange, or similar transfer or
5 conveyance of, or extinguishing of rights or obliga-
6 tions under, a security-based swap, as the context
7 may require.”.

8 (b) REGISTRATION OF SECURITY-BASED SWAPS.—
9 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
10 is amended by adding at the end the following:

11 “(d) MANDATORY REGISTRATION: PROHIBITION ON
12 SALE.—Notwithstanding the provisions of section 3 or
13 section 4, except as the Commission shall otherwise ex-
14 empt by rule or regulation pursuant to this title, unless
15 a registration statement meeting the requirements of sub-
16 section (a) of section 10 is in effect as to a security-based
17 swap, it shall be unlawful for any person, directly or indi-
18 rectly, to make use of any means or instruments of trans-
19 portation or communication in interstate commerce or of
20 the mails to offer to sell, offer to buy or purchase or sell
21 a security-based swap to any person who is not an eligible
22 contract participant as defined in section 1a(12) of the
23 Commodity Exchange Act (7 U.S.C. 1a(13)).”.

1 **SEC. 758. OTHER AUTHORITY.**

2 Unless otherwise provided by its terms, this subtitle
3 does not divest any appropriate Federal banking agency,
4 the Commission, the Commodity Futures Trading Com-
5 mission, or other Federal or State agency, of any authority
6 derived from any other applicable law.

7 **SEC. 759. JURISDICTION.**

8 Section 36 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78mm) is amended

10 (1) in subsection (a)(1), by inserting “and (c)
11 and subject to subsection (d)” after “Except as pro-
12 vided in subsection (b)”;

13 (2) by adding at the end the following:

14 “(c) **LIMITATION ON AUTHORITY.**—The Commission
15 shall not have the authority to grant exemptions from the
16 security-based swap provisions of this Act or the Over-the-
17 Counter Derivatives Markets Act of 2010, except as ex-
18 pressly authorized under the provisions of that Act.

19 “(d) **EXPRESS AUTHORITY.**—The Commission is ex-
20 pressly authorized to use any authority granted to the
21 Commission under subsection (a) to exempt any person,
22 security, or transaction, or any class or classes of persons,
23 securities, or transactions from any provision or provisions
24 of this title, or of any rule or regulation thereunder, that
25 applies to such person, security, or transaction solely be-

1 cause a ‘security-based swap’ is a ‘security’ under section
2 3(a).”.

3 **Subtitle C—Other Provisions**

4 **SEC. 761. INTERNATIONAL HARMONIZATION.**

5 In order to promote effective and consistent global
6 regulation of swaps and security-based swaps, the Securi-
7 ties and Exchange Commission, the Commodity Futures
8 Trading Commission, the Financial Stability Oversight
9 Council, and the Treasury Department—

10 (1) shall, both individually and collectively, con-
11 sult and coordinate with foreign regulatory authori-
12 ties on the establishment of consistent international
13 standards with respect to the regulation of such
14 swaps; and

15 (2) may, both individually and collectively,
16 agree to such information-sharing arrangements as
17 may be deemed to be necessary or appropriate in the
18 public interest or for the protection of investors and
19 swap counterparties.

20 **SEC. 762. INTERAGENCY COOPERATION.**

21 (a) **JOINT ADVISORY COMMITTEE.**—

22 (1) **ESTABLISHMENT.**—The Securities and Ex-
23 change Commission and the Commodity Futures
24 Trading Commission, shall establish a joint advisory
25 committee or work through an established joint advi-

1 sory committee to consider and develop solutions to
2 emerging and ongoing issues of common interest re-
3 lating to the trading and regulation of products reg-
4 ulated by the Securities and Exchange Commission
5 and the Commodity Futures Trading Commission,
6 including securities, commodity futures, swaps and
7 securities-based swaps.

8 (2) MEMBERSHIP.—The joint advisory com-
9 mittee shall—

10 (A) be fairly balanced in terms of the
11 points of view represented and the functions to
12 be performed by the committee;

13 (B) include at least 1 representative from
14 each of the Securities and Exchange Commis-
15 sion and the Commodity Futures Trading Com-
16 mission; and

17 (C) include other individuals with expertise
18 in commodities and securities trading, commod-
19 ities and securities law, investor protection, con-
20 sumer protection, or international markets.

21 (3) REPORTING.—Not later than 6 months
22 after the date of enactment of this title, and every
23 6 months thereafter, the joint advisory committee
24 shall report its findings and recommendations to
25 the—

1 (A) Committee on Banking, Housing, and
2 Urban Affairs of the Senate;

3 (B) Committee on Financial Services of
4 the House of Representatives;

5 (C) Committee on Agriculture, Nutrition,
6 and Forestry of the Senate; and

7 (D) Committee on Agriculture of the
8 House of Representatives.

9 (4) **JOINT FUNDING.**—Notwithstanding any
10 other provision of law, amounts made available to
11 the Commodity Futures Trading Commission and
12 the Securities and Exchange Commission for the
13 current or subsequent fiscal years by a current or
14 future appropriations Act may be used for the inter-
15 agency funding of the joint advisory committee spon-
16 sored by such agencies pursuant to this section.

17 (b) **JOINT ENFORCEMENT TASK FORCE.**—The Secu-
18 rities and Exchange Commission and the Commodity Fu-
19 tures Trading Commission shall jointly establish an inter-
20 agency group to be known as the Joint Enforcement Task
21 Force in order to improve market oversight, enhance en-
22 forcement, and relieve duplicative regulatory burdens. The
23 Task Force shall consist of staff from each agency to co-
24 ordinate and develop processes for conducting joint inves-
25 tigations in response to events that affect both the com-

1 modities and securities markets. The Task Force shall
2 prepare and offer training programs for the staffs of both
3 agencies, develop enforcement and examination standards
4 and protocols, and coordinate information sharing.

5 (c) TRADING AND MARKETS FELLOWSHIP PRO-
6 GRAM.—

7 (1) IN GENERAL.—The Securities and Ex-
8 change Commission, the Commodity Futures Trad-
9 ing Commission, and the Board of Governors of the
10 Federal Reserve System shall jointly establish a
11 Trading and Markets Fellowship Program in order
12 to enhance staff understanding about the inter-
13 actions between financial markets and the economy.

14 (2) SELECTION OF FELLOWS.—On January 1
15 of each calendar year, the Chairmen of the Securi-
16 ties and Exchange Commission, the Commodity Fu-
17 tures Trading Commission, and the Board of Gov-
18 ernors of the Federal Reserve System shall jointly
19 announce the selection of 3 employees from their re-
20 spective agencies to participate in the fellowship pro-
21 gram established under paragraph (1), for a total
22 annual class size of 9 fellows per calendar year.

23 (3) JOINT TRAINING CURRICULUM.—

24 (A) DEVELOPMENT.—The Securities and
25 Exchange Commission, the Commodity Futures

1 Trading Commission, and the Board of Gov-
2 ernors of the Federal Reserve System shall
3 jointly develop a 1-month long training cur-
4 riculum that focuses on the mission and activi-
5 ties of each agency, enforcement matters, and
6 economic and financial analysis.

7 (B) FACULTY.—The training curriculum
8 developed under subparagraph (A) shall be
9 taught by senior officials from each agency, ex-
10 perience academics, and professionals from
11 commodities and securities trading.

12 (C) MANDATORY ATTENDANCE.—Each of
13 the 9 fellows selected under paragraph (2) shall
14 complete the training curriculum developed
15 under this paragraph.

16 (4) CROSS-AGENCY ROTATION.—

17 (A) IN GENERAL.—Following the comple-
18 tion of the 1-month training curriculum devel-
19 oped under paragraph (3), each fellow shall be
20 assigned to serve at each participating agency
21 for 3 months each.

22 (B) SUBMISSION OF PAPER.—Upon com-
23 pletion of the Trading and Markets Fellowship
24 Program, each fellow shall submit a written
25 paper to the Chairmen of the Securities and

1 Exchange Commission, the Commodity Futures
2 Trading Commission, and the Board of Gov-
3 ernors of the Federal Reserve System—

4 (i) summarizing his or her observa-
5 tions from participating in the program;
6 and

7 (ii) providing recommendations for en-
8 hancing the contribution of each agency to
9 the stable functioning of the financial mar-
10 kets and economy of the nation.

11 (d) **CROSS-AGENCY ENFORCEMENT.**—The Securities
12 and Exchange Commission and the Commodity Futures
13 Trading Commission shall jointly establish a cross-agency
14 training and education curriculum for enforcement per-
15 sonnel in order to improve the ability of employees at both
16 agencies to understand and respond to matters where both
17 agencies have enforcement jurisdiction and interest.

18 (e) **DETAILING OF STAFF.**—The Securities and Ex-
19 change Commission and the Commodity Futures Trading
20 Commission shall jointly establish a program for the reg-
21 ular detailing of staff between such agencies.

22 **SEC. 763. STUDY AND REPORT ON IMPLEMENTATION.**

23 (a) **STUDY REQUIRED.**—The Comptroller General of
24 the United States shall conduct a study of—

1 (1) how the Commodity Futures Trading Com-
2 mission and the Securities and Exchange Commis-
3 sion have implemented this title and the amend-
4 ments made by this title;

5 (2) the extent to which jurisdictional disputes
6 have created challenges in the process of imple-
7 menting this title and the amendments made by this
8 title;

9 (3) the benefits and drawbacks of harmonizing
10 laws implemented by the Commodity Futures Trad-
11 ing Commission and the Securities and Exchange
12 Commission, and merging those agencies;

13 (4) the benefits and feasibility of—

14 (A) holding of both futures and securities
15 products in the same account to allow cross-net-
16 ting; and

17 (B) creating the ability to cross-net across
18 securities and futures accounts; and

19 (5) the benefits and feasibility of imposing a
20 uniform fiduciary duty on financial intermediaries
21 who provide similar investment advisory services.

22 (b) REPORT REQUIRED.—Not later than 1 year after
23 the date of enactment of this title, the Comptroller Gen-
24 eral shall submit a report on the results of the study re-
25 quired by this section to Congress, the Commodity Fu-

1 tures Trading Commission, and the Securities and Ex-
2 change Commission.

3 **SEC. 764. RECOMMENDATIONS FOR CHANGES TO INSOL-**
4 **VENCY LAWS.**

5 Not later than 180 days after the date of enactment
6 of this Act, the Securities and Exchange Commission and
7 the Commodity Futures Trading Commission shall trans-
8 mit to Congress recommendations on legislative changes
9 to the Federal insolvency laws—

10 (1) in order to enhance the legal certainty with
11 respect to swap participants clearing swaps and se-
12 curity-based swaps through a derivatives clearing or-
13 ganization or clearing agency, including—

14 (A) customer rights to cover margin depos-
15 its or custodial property held at or through an
16 insolvent swap clearinghouse or clearing partici-
17 pant; and

18 (B) the enforceability or clearing rules re-
19 lating to the portability of customer swap posi-
20 tions (and associated margins) upon the insol-
21 vency of a clearing participant;

22 (2) to clarify and harmonize the insolvency law
23 framework applicable to entities that are both com-
24 modity brokers (as defined in section 101(6) of title
25 11, United States Code) and registered brokers or

1 dealers (as defined in section 3(a) of the Securities
2 Exchange Act of 1934 (15 U.S.C. 78c(a))); and

3 (3) to facilitate the portfolio margining of secu-
4 rities and commodities futures and options positions
5 held through entities that are both futures commis-
6 sion merchants (as defined in section 1a of the Com-
7 modity Exchange Act) and registered brokers or
8 dealers (as defined in section 3(a) of the Securities
9 Exchange Act of 1934 (15 U.S.C. 78c(a))).

10 **SEC. 765. EFFECTIVE DATE.**

11 Except as specifically provided in the amendments
12 made by this title, this title, and the amendments made
13 by this title, shall take effect 180 days after the date of
14 enactment of this Act.

15 **TITLE VIII—PAYMENT, CLEAR-**
16 **ING, AND SETTLEMENT SU-**
17 **PERVISION**

18 **SEC. 801. SHORT TITLE.**

19 This title may be cited as the “Payment, Clearing,
20 and Settlement Supervision Act of 2010”.

21 **SEC. 802. FINDINGS AND PURPOSES.**

22 (a) FINDINGS.—Congress finds the following:

23 (1) The proper functioning of the financial mar-
24 kets is dependent upon safe and efficient arrange-

1 ments for the clearing and settlement of payment,
2 securities, and other financial transactions.

3 (2) Financial market utilities that conduct or
4 support multilateral payment, clearing, or settlement
5 activities may reduce risks for their participants and
6 the broader financial system, but such utilities may
7 also concentrate and create new risks and thus must
8 be well designed and operated in a safe and sound
9 manner.

10 (3) Payment, clearing, and settlement activities
11 conducted by financial institutions also present im-
12 portant risks to the participating financial institu-
13 tions and to the financial system.

14 (4) Enhancements to the regulation and super-
15 vision of systemically important financial market
16 utilities and the conduct of systemically important
17 payment, clearing, and settlement activities by finan-
18 cial institutions are necessary—

19 (A) to provide consistency;

20 (B) to promote robust risk management
21 and safety and soundness;

22 (C) to reduce systemic risks; and

23 (D) to support the stability of the broader
24 financial system.

1 (b) PURPOSE.—The purpose of this title is to miti-
2 gate systemic risk in the financial system and promote fi-
3 nancial stability by—

4 (1) authorizing the Board of Governors to pre-
5 scribe uniform standards for the—

6 (A) management of risks by systemically
7 important financial market utilities; and

8 (B) conduct of systemically important pay-
9 ment, clearing, and settlement activities by fi-
10 nancial institutions;

11 (2) providing the Board of Governors an en-
12 hanced role in the supervision of risk management
13 standards for systemically important financial mar-
14 ket utilities;

15 (3) strengthening the liquidity of systemically
16 important financial market utilities; and

17 (4) providing the Board of Governors an en-
18 hanced role in the supervision of risk management
19 standards for systemically important payment, clear-
20 ing, and settlement activities by financial institu-
21 tions.

22 **SEC. 803. DEFINITIONS.**

23 In this title, the following definitions shall apply:

24 (1) DESIGNATED ACTIVITY.—The term “des-
25 ignated activity” means a payment, clearing, or set-

1 tlement activity that the Council has designated as
2 systemically important under section 804.

3 (2) DESIGNATED FINANCIAL MARKET UTIL-
4 ITY.—The term “designated financial market util-
5 ity” means a financial market utility that the Coun-
6 cil has designated as systemically important under
7 section 804.

8 (3) FINANCIAL INSTITUTION.—The term “fi-
9 nancial institution” means—

10 (A) a depository institution, as defined in
11 section 3 of the Federal Deposit Insurance Act
12 (12 U.S.C. 1813);

13 (B) a branch or agency of a foreign bank,
14 as defined in section 1(b) of the International
15 Banking Act of 1978 (12 U.S.C. 3101);

16 (C) an organization operating under sec-
17 tion 25 or 25A of the Federal Reserve Act (12
18 U.S.C. 601–604a and 611 through 631);

19 (D) a credit union, as defined in section
20 101 of the Federal Credit Union Act (12
21 U.S.C. 1752);

22 (E) a broker or dealer, as defined in sec-
23 tion 3 of the Securities Exchange Act of 1934
24 (15 U.S.C. 78c);

1 (F) an investment company, as defined in
2 section 3 of the Investment Company Act of
3 1940 (15 U.S.C. 80a-3);

4 (G) an insurance company, as defined in
5 section 2 of the Investment Company Act of
6 1940 (15 U.S.C. 80a-2);

7 (H) an investment adviser, as defined in
8 section 202 of the Investment Advisers Act of
9 1940 (15 U.S.C. 80b-2);

10 (I) a futures commission merchant, com-
11 modity trading advisor, or commodity pool oper-
12 ator, as defined in section 1a of the Commodity
13 Exchange Act (7 U.S.C. 1a); and

14 (J) any company engaged in activities that
15 are financial in nature or incidental to a finan-
16 cial activity, as described in section 4 of the
17 Bank Holding Company Act of 1956 (12
18 U.S.C. 1843(k)).

19 (4) FINANCIAL MARKET UTILITY.—The term
20 “financial market utility” means any person that
21 manages or operates a multilateral system for the
22 purpose of transferring, clearing, or settling pay-
23 ments, securities, or other financial transactions
24 among financial institutions or between financial in-
25 stitutions and the person.

1 (5) PAYMENT, CLEARING, OR SETTLEMENT AC-
2 TIVITY.—

3 (A) IN GENERAL.—The term “payment,
4 clearing, or settlement activity” means an activ-
5 ity carried out by 1 or more financial institu-
6 tions to facilitate the completion of financial
7 transactions.

8 (B) FINANCIAL TRANSACTION.—For the
9 purposes of subparagraph (A), the term “finan-
10 cial transaction” includes—

- 11 (i) funds transfers;
12 (ii) securities contracts;
13 (iii) contracts of sale of a commodity
14 for future delivery;
15 (iv) forward contracts;
16 (v) repurchase agreements;
17 (vi) swaps;
18 (vii) security-based swaps;
19 (viii) swap agreements;
20 (ix) security-based swap agreements;
21 (x) foreign exchange contracts;
22 (xi) financial derivatives contracts;
23 and

1 (xii) any similar transaction that the
2 Council determines to be a financial trans-
3 action for purposes of this title.

4 (C) INCLUDED ACTIVITIES.—When con-
5 ducted with respect to a financial transaction,
6 payment, clearing, and settlement activities may
7 include—

8 (i) the calculation and communication
9 of unsettled financial transactions between
10 counterparties;

11 (ii) the netting of transactions;

12 (iii) provision and maintenance of
13 trade, contract, or instrument information;

14 (iv) the management of risks and ac-
15 tivities associated with continuing financial
16 transactions;

17 (v) transmittal and storage of pay-
18 ment instructions;

19 (vi) the movement of funds;

20 (vii) the final settlement of financial
21 transactions; and

22 (viii) other similar functions that the
23 Council may determine.

24 (6) SUPERVISORY AGENCY.—

1 (A) IN GENERAL.—The term “Supervisory
2 Agency” means the Federal agency that has
3 primary jurisdiction over a designated financial
4 market utility under Federal banking, securi-
5 ties, or commodity futures laws, including—

6 (i) the Securities and Exchange Com-
7 mission, with respect to a designated fi-
8 nancial market utility that is a clearing
9 agency registered with the Securities and
10 Exchange Commission;

11 (ii) the Commodity Futures Trading
12 Commission, with respect to a designated
13 financial market utility that is a deriva-
14 tives clearing organization registered with
15 the Commodity Futures Trading Commis-
16 sion;

17 (iii) the appropriate Federal banking
18 agency, with respect to a designated finan-
19 cial market utility that is an institution de-
20 scribed in section 3(q) of the Federal De-
21 posit Insurance Act; and

22 (iv) the Board of Governors, with re-
23 spect to a designated financial market util-
24 ity that is otherwise not subject to the ju-

1 jurisdiction of any agency listed in clauses
2 (i), (ii), and (iii).

3 (B) MULTIPLE AGENCY JURISDICTION.—If
4 a designated financial market utility is subject
5 to the jurisdictional supervision of more than 1
6 agency listed in subparagraph (A), then such
7 agencies should agree on 1 agency to act as the
8 Supervisory Agency, and if such agencies can-
9 not agree on which agency has primary jurisdic-
10 tion, the Council shall decide which agency is
11 the Supervisory Agency for purposes of this
12 title.

13 (7) SYSTEMICALLY IMPORTANT AND SYSTEMIC
14 IMPORTANCE.—The terms “systemically important”
15 and “systemic importance” mean a situation where
16 the failure of or a disruption to the functioning of
17 a financial market utility or the conduct of a pay-
18 ment, clearing, or settlement activity could create, or
19 increase, the risk of significant liquidity or credit
20 problems spreading among financial institutions or
21 markets and thereby threaten the stability of the fi-
22 nancial system.

23 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

24 (a) DESIGNATION.—

1 (1) FINANCIAL STABILITY OVERSIGHT COUN-
2 CIL.—The Council, on a nondelegable basis and by
3 a vote of not fewer than $\frac{2}{3}$ of members then serving,
4 including an affirmative vote by the Chairperson,
5 shall designate those financial market utilities or
6 payment, clearing, or settlement activities that the
7 Council determines are, or are likely to become, sys-
8 temically important.

9 (2) CONSIDERATIONS.—In determining whether
10 a financial market utility or payment, clearing, or
11 settlement activity is, or is likely to become, system-
12 ically important, the Council shall take into consid-
13 eration the following:

14 (A) The aggregate monetary value of
15 transactions processed by the financial market
16 utility or carried out through the payment,
17 clearing, or settlement activity.

18 (B) The aggregate exposure of the finan-
19 cial market utility or a financial institution en-
20 gaged in payment, clearing, or settlement activi-
21 ties to its counterparties.

22 (C) The relationship, interdependencies, or
23 other interactions of the financial market utility
24 or payment, clearing, or settlement activity with

1 other financial market utilities or payment,
2 clearing, or settlement activities.

3 (D) The effect that the failure of or a dis-
4 ruption to the financial market utility or pay-
5 ment, clearing, or settlement activity would
6 have on critical markets, financial institutions,
7 or the broader financial system.

8 (E) Any other factors that the Council
9 deems appropriate.

10 (b) RESCISSION OF DESIGNATION.—

11 (1) IN GENERAL.—The Council, on a nondele-
12 gable basis and by a vote of not fewer than $\frac{2}{3}$ of
13 members then serving, including an affirmative vote
14 by the Chairperson, shall rescind a designation of
15 systemic importance for a designated financial mar-
16 ket utility or designated activity if the Council deter-
17 mines that the utility or activity no longer meets the
18 standards for systemic importance.

19 (2) EFFECT OF RESCISSION.—Upon rescission,
20 the financial market utility or financial institutions
21 conducting the activity will no longer be subject to
22 the provisions of this title or any rules or orders pre-
23 scribed by the Council under this title.

24 (c) CONSULTATION AND NOTICE AND OPPORTUNITY
25 FOR HEARING.—

1 (1) CONSULTATION.—Before making any deter-
2 mination under subsection (a) or (b), the Council
3 shall consult with the relevant Supervisory Agency
4 and the Board of Governors.

5 (2) ADVANCE NOTICE AND OPPORTUNITY FOR
6 HEARING.—

7 (A) IN GENERAL.—Before making any de-
8 termination under subsection (a) or (b), the
9 Council shall provide the financial market util-
10 ity or, in the case of a payment, clearing, or
11 settlement activity, financial institutions with
12 advance notice of the proposed determination of
13 the Council.

14 (B) NOTICE IN FEDERAL REGISTER.—The
15 Council shall provide such advance notice to fi-
16 nancial institutions by publishing a notice in
17 the Federal Register.

18 (C) REQUESTS FOR HEARING.—Within 30
19 days from the date of any notice of the pro-
20 posed determination of the Council, the finan-
21 cial market utility or, in the case of a payment,
22 clearing, or settlement activity, a financial insti-
23 tution engaged in the designated activity may
24 request, in writing, an opportunity for a written
25 or oral hearing before the Council to dem-

1 onstrate that the proposed designation or re-
2 scission of designation is not supported by sub-
3 stantial evidence.

4 (D) WRITTEN SUBMISSIONS.—Upon re-
5 ceipt of a timely request, the Council shall fix
6 a time, not more than 30 days after receipt of
7 the request, unless extended at the request of
8 the financial market utility or financial institu-
9 tion, and place at which the financial market
10 utility or financial institution may appear, per-
11 sonally or through counsel, to submit written
12 materials, or, at the sole discretion of the Coun-
13 cil, oral testimony or oral argument.

14 (3) EMERGENCY EXCEPTION.—

15 (A) WAIVER OR MODIFICATION BY VOTE
16 OF THE COUNCIL.—The Council may waive or
17 modify the requirements of paragraph (2) if the
18 Council determines, by an affirmative vote of
19 not less than $\frac{2}{3}$ of all members then serving,
20 including an affirmative vote by the Chair-
21 person, that the waiver or modification is nec-
22 essary to prevent or mitigate an immediate
23 threat to the financial system posed by the fi-
24 nancial market utility or the payment, clearing,
25 or settlement activity.

1 (B) NOTICE OF WAIVER OR MODIFICA-
2 TION.—The Council shall provide notice of the
3 waiver or modification to the financial market
4 utility concerned or, in the case of a payment,
5 clearing, or settlement activity, to financial in-
6 stitutions, as soon as practicable, which shall be
7 no later than 24 hours after the waiver or
8 modification in the case of a financial market
9 utility and 3 business days in the case of finan-
10 cial institutions. The Council shall provide the
11 notice to financial institutions by posting a no-
12 tice on the website of the Council and by pub-
13 lishing a notice in the Federal Register.

14 (d) NOTIFICATION OF FINAL DETERMINATION.—

15 (1) AFTER HEARING.—Within 60 days of any
16 hearing under subsection (c)(3), the Council shall
17 notify the financial market utility or financial insti-
18 tutions of the final determination of the Council in
19 writing, which shall include findings of fact upon
20 which the determination of the Council is based.

21 (2) WHEN NO HEARING REQUESTED.—If the
22 Council does not receive a timely request for a hear-
23 ing under subsection (c)(3), the Council shall notify
24 the financial market utility or financial institutions
25 of the final determination of the Council in writing

1 not later than 30 days after the expiration of the
2 date by which a financial market utility or a finan-
3 cial institution could have requested a hearing. All
4 notices to financial institutions under this subsection
5 shall be published in the Federal Register.

6 (e) **EXTENSION OF TIME PERIODS.**—The Council
7 may extend the time periods established in subsections (c)
8 and (d) as the Council determines to be necessary or ap-
9 propriate.

10 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-**
11 **NANCIAL MARKET UTILITIES AND PAYMENT,**
12 **CLEARING, OR SETTLEMENT ACTIVITIES.**

13 (a) **AUTHORITY TO PRESCRIBE STANDARDS.**—The
14 Board, by rule or order, and in consultation with the
15 Council and the Supervisory Agencies, shall prescribe risk
16 management standards, taking into consideration relevant
17 international standards and existing prudential require-
18 ments, governing—

19 (1) the operations related to the payment, clear-
20 ing, and settlement activities of designated financial
21 market utilities; and

22 (2) the conduct of designated activities by fi-
23 nancial institutions.

1 (b) OBJECTIVES AND PRINCIPLES.—The objectives
2 and principles for the risk management standards pre-
3 scribed under subsection (a) shall be to—

- 4 (1) promote robust risk management;
- 5 (2) promote safety and soundness;
- 6 (3) reduce systemic risks; and
- 7 (4) support the stability of the broader financial
8 system.

9 (c) SCOPE.—The standards prescribed under sub-
10 section (a) may address areas such as—

- 11 (1) risk management policies and procedures;
- 12 (2) margin and collateral requirements;
- 13 (3) participant or counterparty default policies
14 and procedures;
- 15 (4) the ability to complete timely clearing and
16 settlement of financial transactions;
- 17 (5) capital and financial resource requirements
18 for designated financial market utilities; and
- 19 (6) other areas that the Board determines are
20 necessary to achieve the objectives and principles in
21 subsection (b).

22 (d) THRESHOLD LEVEL.—The standards prescribed
23 under subsection (a) governing the conduct of designated
24 activities by financial institutions shall, where appropriate,
25 establish a threshold as to the level or significance of en-

1 gagement in the activity at which a financial institution
2 will become subject to the standards with respect to that
3 activity.

4 (e) COMPLIANCE REQUIRED.—Designated financial
5 market utilities and financial institutions subject to the
6 standards prescribed by the Board of Governors for a des-
7 ignated activity shall conduct their operations in compli-
8 ance with the applicable risk management standards pre-
9 scribed by the Board of Governors.

10 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MAR-**
11 **KET UTILITIES.**

12 (a) FEDERAL RESERVE ACCOUNT AND SERVICES.—
13 The Board of Governors may authorize a Federal Reserve
14 Bank to establish and maintain an account for a des-
15 ignated financial market utility and provide services to the
16 designated financial market utility that the Federal Re-
17 serve Bank is authorized under the Federal Reserve Act
18 to provide to a depository institution, subject to any appli-
19 cable rules, orders, standards, or guidelines prescribed by
20 the Board of Governors.

21 (b) ADVANCES.—The Board of Governors may au-
22 thorize a Federal Reserve Bank to provide to a designated
23 financial market utility the same discount and borrowing
24 privileges as the Federal Reserve Bank may provide to a
25 depository institution under the Federal Reserve Act, sub-

1 ject to any applicable rules, orders, standards, or guide-
2 lines prescribed by the Board of Governors.

3 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—

4 A Federal Reserve Bank may pay earnings on balances
5 maintained by or on behalf of a designated financial mar-
6 ket utility in the same manner and to the same extent
7 as the Federal Reserve Bank may pay earnings to a depos-
8 itory institution under the Federal Reserve Act, subject
9 to any applicable rules, orders, standards, or guidelines
10 prescribed by the Board of Governors.

11 (d) RESERVE REQUIREMENTS.—The Board of Gov-
12 ernors may exempt a designated financial market utility
13 from, or modify any, reserve requirements under section
14 19 of the Federal Reserve Act (12 U.S.C. 461) applicable
15 to a designated financial market utility.

16 (e) CHANGES TO RULES, PROCEDURES, OR OPER-
17 ATIONS.—

18 (1) ADVANCE NOTICE.—

19 (A) ADVANCE NOTICE OF PROPOSED
20 CHANGES REQUIRED.—A designated financial
21 market utility shall provide 60-days' advance
22 notice to its Supervisory Agency and the Board
23 of Governors of any proposed change to its
24 rules, procedures, or operations that could, as
25 defined in rules of the Board of Governors, ma-

1 terially affect, the nature or level of risks pre-
2 sented by the designated financial market util-
3 ity.

4 (B) TERMS AND STANDARDS PRESCRIBED
5 BY THE BOARD OF GOVERNORS.—The Board of
6 Governors shall prescribe regulations that de-
7 fine and describe the standards for determining
8 when notice is required to be provided under
9 subparagraph (A).

10 (C) CONTENTS OF NOTICE.—The notice of
11 a proposed change shall describe—

12 (i) the nature of the change and ex-
13 pected effects on risks to the designated fi-
14 nancial market utility, its participants, or
15 the market; and

16 (ii) how the designated financial mar-
17 ket utility plans to manage any identified
18 risks.

19 (D) ADDITIONAL INFORMATION.—The Su-
20 pervisory Agency or the Board of Governors
21 may require a designated financial market util-
22 ity to provide any information necessary to as-
23 sess the effect the proposed change would have
24 on the nature or level of risks associated with
25 the designated financial market utility's pay-

1 ment, clearing, or settlement activities and the
2 sufficiency of any proposed risk management
3 techniques.

4 (E) NOTICE OF OBJECTION.—The Super-
5 visory Agency or the Board of Governors shall
6 notify the designated financial market utility of
7 any objection regarding the proposed change
8 within 60 days from the later of—

9 (i) the date that the notice of the pro-
10 posed change is received; or

11 (ii) the date any further information
12 requested for consideration of the notice is
13 received.

14 (F) CHANGE NOT ALLOWED IF OBJEC-
15 TION.—A designated financial market utility
16 shall not implement a change to which the
17 Board of Governors or the Supervisory Agency
18 has an objection.

19 (G) CHANGE ALLOWED IF NO OBJECTION
20 WITHIN 60 DAYS.—A designated financial mar-
21 ket utility may implement a change if it has not
22 received an objection to the proposed change
23 within 60 days of the later of—

1 (i) the date that the Supervisory
2 Agency or the Board of Governors receives
3 the notice of proposed change; or

4 (ii) the date the Supervisory Agency
5 or the Board of Governors receives any
6 further information it requests for consid-
7 eration of the notice.

8 (H) REVIEW EXTENSION FOR NOVEL OR
9 COMPLEX ISSUES.—The Supervisory Agency or
10 the Board of Governors may, during the 60-day
11 review period, extend the review period for an
12 additional 60 days for proposed changes that
13 raise novel or complex issues, subject to the Su-
14 pervisory Agency or the Board of Governors
15 providing the designated financial market utility
16 with prompt written notice of the extension.
17 Any extension under this subparagraph will ex-
18 tend the time periods under subparagraphs (D)
19 and (F).

20 (I) CHANGE ALLOWED EARLIER IF NOTI-
21 FIED OF NO OBJECTION.—A designated finan-
22 cial market utility may implement a change in
23 less than 60 days from the date of receipt of
24 the notice of proposed change by the Super-
25 visory Agency or the Board of Governors, or the

1 date the Supervisory Agency or the Board of
2 Governors receives any further information it
3 requested, if the Supervisory Agency or the
4 Board of Governors notifies the designated fi-
5 nancial market utility in writing that it does
6 not object to the proposed change and author-
7 izes the designated financial market utility to
8 implement the change on an earlier date, sub-
9 ject to any conditions imposed by the Super-
10 visory Agency or the Board of Governors.

11 (2) EMERGENCY CHANGES.—

12 (A) IN GENERAL.—A designated financial
13 market utility may implement a change that
14 would otherwise require advance notice under
15 this subsection if it determines that—

- 16 (i) an emergency exists; and
17 (ii) immediate implementation of the
18 change is necessary for the designated fi-
19 nancial market utility to continue to pro-
20 vide its services in a safe and sound man-
21 ner.

22 (B) NOTICE REQUIRED WITHIN 24
23 HOURS.—The designated financial market util-
24 ity shall provide notice of any such emergency
25 change to its Supervisory Agency and the

1 Board of Governors, as soon as practicable,
2 which shall be no later than 24 hours after im-
3 plementation of the change.

4 (C) CONTENTS OF EMERGENCY NOTICE.—

5 In addition to the information required for
6 changes requiring advance notice, the notice of
7 an emergency change shall describe—

8 (i) the nature of the emergency; and

9 (ii) the reason the change was nec-
10 essary for the designated financial market
11 utility to continue to provide its services in
12 a safe and sound manner.

13 (D) MODIFICATION OR RESCISSION OF
14 CHANGE MAY BE REQUIRED.—The Supervisory
15 Agency or the Board of Governors may require
16 modification or rescission of the change if it
17 finds that the change is not consistent with the
18 purposes of this Act or any rules, orders, or
19 standards prescribed by the Board of Governors
20 hereunder.

21 (3) COPYING THE BOARD OF GOVERNORS.—The
22 Supervisory Agency shall provide the Board of Gov-
23 ernors concurrently with a complete copy of any no-
24 tice, request, or other information it issues, submits,
25 or receives under this subsection.

1 (4) CONSULTATION WITH BOARD OF GOV-
2 ERNORS.—Before taking any action on, or com-
3 pleting its review of, a change proposed by a des-
4 ignated financial market utility, the Supervisory
5 Agency shall consult with the Board of Governors.

6 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS**
7 **AGAINST DESIGNATED FINANCIAL MARKET**
8 **UTILITIES.**

9 (a) EXAMINATION.—Notwithstanding any other pro-
10 vision of law and subject to subsection (d), the Supervisory
11 Agency shall conduct examinations of a designated finan-
12 cial market utility at least once annually in order to deter-
13 mine the following:

14 (1) The nature of the operations of, and the
15 risks borne by, the designated financial market util-
16 ity.

17 (2) The financial and operational risks pre-
18 sented by the designated financial market utility to
19 financial institutions, critical markets, or the broad-
20 er financial system.

21 (3) The resources and capabilities of the des-
22 ignated financial market utility to monitor and con-
23 trol such risks.

24 (4) The safety and soundness of the designated
25 financial market utility.

1 (5) The designated financial market utility's
2 compliance with—

3 (A) this title; and

4 (B) the rules and orders prescribed by the
5 Board of Governors under this title.

6 (b) SERVICE PROVIDERS.—Whenever a service inte-
7 gral to the operation of a designated financial market util-
8 ity is performed for the designated financial market utility
9 by another entity, whether an affiliate or non-affiliate and
10 whether on or off the premises of the designated financial
11 market utility, the Supervisory Agency may examine
12 whether the provision of that service is in compliance with
13 applicable law, rules, orders, and standards to the same
14 extent as if the designated financial market utility were
15 performing the service on its own premises.

16 (c) ENFORCEMENT.—For purposes of enforcing the
17 provisions of this section, a designated financial market
18 utility shall be subject to, and the appropriate Supervisory
19 Agency shall have authority under the provisions of sub-
20 sections (b) through (n) of section 8 of the Federal De-
21 posit Insurance Act (12 U.S.C. 1818) in the same manner
22 and to the same extent as if the designated financial mar-
23 ket utility was an insured depository institution and the
24 Supervisory Agency was the appropriate Federal banking
25 agency for such insured depository institution.

1 (d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMI-
2 NATIONS.—

3 (1) BOARD OF GOVERNORS CONSULTATION ON
4 EXAMINATION PLANNING.—The Supervisory Agency
5 shall consult with the Board of Governors regarding
6 the scope and methodology of any examination con-
7 ducted under subsections (a) and (b).

8 (2) BOARD OF GOVERNORS PARTICIPATION IN
9 EXAMINATION.—The Board of Governors may, in its
10 discretion, participate in any examination led by a
11 Supervisory Agency and conducted under sub-
12 sections (a) and (b).

13 (e) BOARD OF GOVERNORS ENFORCEMENT REC-
14 OMMENDATIONS.—

15 (1) RECOMMENDATION.—The Board of Gov-
16 ernors may at any time recommend to the Super-
17 visory Agency that such agency take enforcement ac-
18 tion against a designated financial market utility.
19 Any such recommendation for enforcement action
20 shall provide a detailed analysis supporting the rec-
21 ommendation of the Board of Governors.

22 (2) CONSIDERATION.—The Supervisory Agency
23 shall consider the recommendation of the Board of
24 Governors and submit a response to the Board of
25 Governors within 60 days.

1 (3) MEDIATION.—If the Supervisory Agency re-
2 jects, in whole or in the part, the recommendation
3 of the Board of Governors, the Board of Governors
4 may dispute the matter by referring the rec-
5 ommendation to the Council, which shall attempt to
6 resolve the dispute.

7 (4) ENFORCEMENT ACTION.—If the Council is
8 unable to resolve the dispute under paragraph (3)
9 within 30 days from the date of referral, the Board
10 of Governors may, upon a vote of its members—

11 (A) exercise the enforcement authority ref-
12 erenced in subsection (c) as if it were the Su-
13 pervisory Agency; and

14 (B) take enforcement action against the
15 designated financial market utility.

16 (f) EMERGENCY ENFORCEMENT ACTIONS BY THE
17 BOARD OF GOVERNORS.—

18 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—
19 The Board of Governors may, after consulting with
20 the Council and the Supervisory Agency, take en-
21 forcement action against a designated financial mar-
22 ket utility if the Board of Governors has reasonable
23 cause to believe that—

24 (A) either—

1 (i) an action engaged in, or con-
2 templated by, a designated financial mar-
3 ket utility (including any change proposed
4 by the designated financial market utility
5 to its rules, procedures, or operations that
6 would otherwise be subject to section
7 806(e)) poses an imminent risk of substan-
8 tial harm to financial institutions, critical
9 markets, or the broader financial system;
10 or

11 (ii) the condition of a designated fi-
12 nancial market utility, poses an imminent
13 risk of substantial harm to financial insti-
14 tutions, critical markets, or the broader fi-
15 nancial system; and

16 (B) the imminent risk of substantial harm
17 precludes the Board of Governors' use of the
18 procedures in subsection (e).

19 (2) ENFORCEMENT AUTHORITY.—For purposes
20 of taking enforcement action under paragraph (1), a
21 designated financial market utility shall be subject
22 to, and the Board of Governors shall have authority
23 under the provisions of subsections (b) through (n)
24 of section 8 of the Federal Deposit Insurance Act
25 (12 U.S.C. 1818) in the same manner and to the

1 same extent as if the designated financial market
2 utility was an insured depository institution and the
3 Board of Governors was the appropriate Federal
4 banking agency for such insured depository institu-
5 tion.

6 (3) PROMPT NOTICE TO SUPERVISORY AGENCY
7 OF ENFORCEMENT ACTION.—Within 24 hours of
8 taking an enforcement action under this subsection,
9 the Board of Governors shall provide written notice
10 to the designated financial market utility’s Super-
11 visory Agency containing a detailed analysis of the
12 action of the Board of Governors, with supporting
13 documentation included.

14 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS**
15 **AGAINST FINANCIAL INSTITUTIONS SUBJECT**
16 **TO STANDARDS FOR DESIGNATED ACTIVI-**
17 **TIES.**

18 (a) EXAMINATION.—The primary financial regu-
19 latory agency is authorized to examine a financial institu-
20 tion subject to the standards prescribed by the Board of
21 Governors for a designated activity in order to determine
22 the following:

23 (1) The nature and scope of the designated ac-
24 tivities engaged in by the financial institution.

1 (2) The financial and operational risks the des-
2 ignated activities engaged in by the financial institu-
3 tion may pose to the safety and soundness of the fi-
4 nancial institution.

5 (3) The financial and operational risks the des-
6 ignated activities engaged in by the financial institu-
7 tion may pose to other financial institutions, critical
8 markets, or the broader financial system.

9 (4) The resources available to and the capabili-
10 ties of the financial institution to monitor and con-
11 trol the risks described in paragraphs (2) and (3).

12 (5) The financial institution's compliance with
13 this title and the rules and orders prescribed by the
14 Board of Governors under this title.

15 (b) ENFORCEMENT.—For purposes of enforcing the
16 provisions of this section, and the rules and orders pre-
17 scribed by the Board of Governors under this section, a
18 financial institution subject to the standards prescribed by
19 the Board of Governors for a designated activity shall be
20 subject to, and the primary financial regulatory agency
21 shall have authority under the provisions of subsections
22 (b) through (n) of section 8 of the Federal Deposit Insur-
23 ance Act (12 U.S.C. 1818) in the same manner and to
24 the same extent as if the financial institution was an in-
25 sured depository institution and the primary financial reg-

1 ulatory agency was the appropriate Federal banking agen-
2 cy for such insured depository institution.

3 (c) TECHNICAL ASSISTANCE.—The Board of Gov-
4 ernors shall consult with and provide such technical assist-
5 ance as may be required by the primary financial regu-
6 latory agencies to ensure that the rules and orders pre-
7 scribed by the Board of Governors under this title are in-
8 terpreted and applied in as consistent and uniform a man-
9 ner as practicable.

10 (d) DELEGATION.—

11 (1) EXAMINATION.—

12 (A) REQUEST TO BOARD OF GOV-
13 ERNORS.—The primary financial regulatory
14 agency may request the Board of Governors to
15 conduct or participate in an examination of a fi-
16 nancial institution subject to the standards pre-
17 scribed by the Board of Governors for a des-
18 ignated activity in order to assess the compli-
19 ance of such financial institution with—

20 (i) this title; or

21 (ii) the rules or orders prescribed by
22 the Board of Governors under this title.

23 (B) EXAMINATION BY BOARD OF GOV-
24 ERNORS.—Upon receipt of an appropriate writ-
25 ten request, the Board of Governors will con-

1 duct the examination under such terms and
2 conditions to which the Board of Governors and
3 the primary financial regulatory agency mutu-
4 ally agree.

5 (2) ENFORCEMENT.—

6 (A) REQUEST TO BOARD OF GOV-
7 ERNORS.—The primary financial regulatory
8 agency may request the Board of Governors to
9 enforce this title or the rules or orders pre-
10 scribed by the Board of Governors under this
11 title against a financial institution that is sub-
12 ject to the standards prescribed by the Board of
13 Governors for a designated activity.

14 (B) ENFORCEMENT BY BOARD OF GOV-
15 ERNORS.—Upon receipt of an appropriate writ-
16 ten request, the Board of Governors shall deter-
17 mine whether an enforcement action is war-
18 ranted, and, if so, it shall enforce compliance
19 with this title or the rules or orders prescribed
20 by the Board of Governors under this title and,
21 if so, the financial institution shall be subject
22 to, and the Board of Governors shall have au-
23 thority under the provisions of subsections (b)
24 through (n) of section 8 of the Federal Deposit
25 Insurance Act (12 U.S.C. 1818) in the same

1 manner and to the same extent as if the finan-
2 cial institution was an insured depository insti-
3 tution and the Board of Governors was the ap-
4 propriate Federal banking agency for such in-
5 sured depository institution

6 (e) BACK-UP AUTHORITY OF THE BOARD OF GOV-
7 ERNORS.—

8 (1) EXAMINATION AND ENFORCEMENT.—Not-
9 withstanding any other provision of law, the Board
10 of Governors may—

11 (A) conduct an examination of the type de-
12 scribed in subsection (a) of any financial insti-
13 tution that is subject to the standards pre-
14 scribed by the Board of Governors for a des-
15 ignated activity; and

16 (B) enforce the provisions of this title or
17 any rules or orders prescribed by the Board of
18 Governors under this title against any financial
19 institution that is subject to the standards pre-
20 scribed by the Board of Governors for a des-
21 ignated activity.

22 (2) LIMITATIONS.—

23 (A) EXAMINATION.—The Board of Gov-
24 ernors may exercise the authority described in

1 paragraph (1)(A) only if the Board of Gov-
2 ernors has—

3 (i) reasonable cause to believe that a
4 financial institution is not in compliance
5 with this title or the rules or orders pre-
6 scribed by the Board of Governors under
7 this title with respect to a designated activ-
8 ity;

9 (ii) notified, in writing, the primary fi-
10 nancial regulatory agency and the Council
11 of its belief under clause (i) with sup-
12 porting documentation included;

13 (iii) requested the primary financial
14 regulatory agency to conduct a prompt ex-
15 amination of the financial institution; and

16 (iv) either—

17 (I) not been afforded a reason-
18 able opportunity to participate in an
19 examination of the financial institu-
20 tion by the primary financial regu-
21 latory agency within 30 days after the
22 date of the Board's notification under
23 clause (ii); or

24 (II) reasonable cause to believe
25 that the financial institution's non-

1 compliance with this title or the rules
2 or orders prescribed by the Board of
3 Governors under this title poses a
4 substantial risk to other financial in-
5 stitutions, critical markets, or the
6 broader financial system, subject to
7 the Board of Governors affording the
8 primary financial regulatory agency a
9 reasonable opportunity to participate
10 in the examination.

11 (B) ENFORCEMENT.—The Board of Gov-
12 ernors may exercise the authority described in
13 paragraph (1)(B) only if the Board of Gov-
14 ernors has—

15 (i) reasonable cause to believe that a
16 financial institution is not in compliance
17 with this title or the rules or orders pre-
18 scribed by the Board of Governors under
19 this title with respect to a designated activ-
20 ity;

21 (ii) notified, in writing, the primary fi-
22 nancial regulatory agency and the Council
23 of its belief under clause (i) with sup-
24 porting documentation included and with a
25 recommendation that the primary financial

1 regulatory agency take 1 or more specific
2 enforcement actions against the financial
3 institution; and

4 (iii) either—

5 (I) not been notified, in writing,
6 by the primary financial regulatory
7 agency of the commencement of an
8 enforcement action recommended by
9 the Board of Governors against the fi-
10 nancial institution within 60 days
11 from the date of the notification
12 under clause (ii); or

13 (II) reasonable cause to believe
14 that the financial institution's non-
15 compliance with this title or the rules
16 or orders prescribed by the Board of
17 Governors under this title poses a
18 substantial risk to other financial in-
19 stitutions, critical markets, or the
20 broader financial system, subject to
21 the Board of Governors notifying the
22 primary financial regulatory agency of
23 the Board's enforcement action.

24 (3) ENFORCEMENT PROVISIONS.—For purposes
25 of taking enforcement action under paragraph (1),

1 the financial institution shall be subject to, and the
2 Board of Governors shall have authority under the
3 provisions of subsections (b) through (n) of section
4 8 of the Federal Deposit Insurance Act (12 U.S.C.
5 1818) in the same manner and to the same extent
6 as if the financial institution was an insured deposi-
7 tory institution and the Board of Governors was the
8 appropriate Federal banking agency for such insured
9 depository institution.

10 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR**
11 **RECORDS.**

12 (a) INFORMATION TO ASSESS SYSTEMIC IMPOR-
13 TANCE.—

14 (1) FINANCIAL MARKET UTILITIES.—The Coun-
15 cil is authorized to require any financial market util-
16 ity to submit such information as the Council may
17 require for the sole purpose of assessing whether
18 that financial market utility is systemically impor-
19 tant, but only if the Council has reasonable cause to
20 believe that the financial market utility meets the
21 standards for systemic importance set forth in sec-
22 tion 804.

23 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAY-
24 MENT, CLEARING, OR SETTLEMENT ACTIVITIES.—
25 The Council is authorized to require any financial

1 institution to submit such information as the Coun-
2 cil may require for the sole purpose of assessing
3 whether any payment, clearing, or settlement activ-
4 ity engaged in or supported by a financial institution
5 is systemically important, but only if the Council has
6 reasonable cause to believe that the activity meets
7 the standards for systemic importance set forth in
8 section 804.

9 (b) REPORTING AFTER DESIGNATION.—

10 (1) DESIGNATED FINANCIAL MARKET UTILI-
11 TIES.—The Board of Governors and the Council
12 may require a designated financial market utility to
13 submit reports or data to the Board of Governors
14 and the Council in such frequency and form as
15 deemed necessary by the Board of Governors and
16 the Council in order to assess the safety and sound-
17 ness of the utility and the systemic risk that the
18 utility's operations pose to the financial system.

19 (2) FINANCIAL INSTITUTIONS SUBJECT TO
20 STANDARDS DESIGNATED ACTIVITIES.—The Board
21 of Governors and the Council may require 1 or more
22 financial institutions subject to the standards pre-
23 scribed by the Board of Governors for a designated
24 activity to submit, in such frequency and form as
25 deemed necessary by the Board of Governors and

1 the Council, reports and data to the Board of Gov-
2 ernors and the Council solely with respect to the
3 conduct of the designated activity and solely to as-
4 sess whether—

5 (A) the rules, orders, or standards pre-
6 scribed by the Board of Governors with respect
7 to the designated activity appropriately address
8 the risks to the financial system presented by
9 such activity; and

10 (B) the financial institutions are in compli-
11 ance with this title and the rules and orders
12 prescribed by the Board of Governors under
13 this title with respect to the designated activity.

14 (c) COORDINATION WITH APPROPRIATE FEDERAL
15 SUPERVISORY AGENCY.—

16 (1) ADVANCE COORDINATION.—Before directly
17 requesting any material information from, or impos-
18 ing reporting or recordkeeping requirements on, any
19 financial market utility or any financial institution
20 engaged in a payment, clearing, or settlement activ-
21 ity, the Board of Governors and the Council shall co-
22 ordinate with the Supervisory Agency for a financial
23 market utility or the primary financial regulatory
24 agency for a financial institution to determine if the
25 information is available from or may be obtained by

1 the agency in the form, format, or detail required by
2 the Board of Governors and the Council.

3 (2) SUPERVISORY REPORTS.—Notwithstanding
4 any other provision of law, the Supervisory Agency,
5 the primary financial regulatory agency, and the
6 Board of Governors are authorized to disclose to
7 each other and the Council copies of its examination
8 reports or similar reports regarding any financial
9 market utility or any financial institution engaged in
10 payment, clearing, or settlement activities.

11 (d) TIMING OF RESPONSE FROM APPROPRIATE FED-
12 ERAL SUPERVISORY AGENCY.—If the information, report,
13 records, or data requested by the Board of Governors or
14 the Council under subsection (c)(1) are not provided in
15 full by the Supervisory Agency or the primary financial
16 regulatory agency in less than 15 days after the date on
17 which the material is requested, the Board of Governors
18 or the Council may request the information or impose rec-
19 ordkeeping or reporting requirements directly on such per-
20 sons as provided in subsections (a) and (b) with notice
21 to the agency.

22 (e) SHARING OF INFORMATION.—

23 (1) MATERIAL CONCERNS.—Notwithstanding
24 any other provision of law, the Board of Governors,

1 the Council, the primary financial regulatory agency,
2 and any Supervisory Agency are authorized to—

3 (A) promptly notify each other of material
4 concerns about a designated financial market
5 utility or any financial institution engaged in
6 designated activities; and

7 (B) share appropriate reports, information
8 or data relating to such concerns.

9 (2) OTHER INFORMATION.—Notwithstanding
10 any other provision of law, the Board of Governors,
11 the Council, the primary financial regulatory agency,
12 or any Supervisory Agency may, under such terms
13 and conditions as it deems appropriate, provide con-
14 fidential supervisory information and other informa-
15 tion obtained under this title to other persons it
16 deems appropriate, including the Secretary, State fi-
17 nancial institution supervisory agencies, foreign fi-
18 nancial supervisors, foreign central banks, and for-
19 eign finance ministries, subject to reasonable assur-
20 ances of confidentiality.

21 (f) PRIVILEGE MAINTAINED.—The Board of Gov-
22 ernors, the Council, the primary financial regulatory agen-
23 cy, and any Supervisory Agency providing reports or data
24 under this section shall not be deemed to have waived any
25 privilege applicable to those reports or data, or any portion

1 thereof, by providing the reports or data to the other party
2 or by permitting the reports or data, or any copies thereof,
3 to be used by the other party.

4 (g) DISCLOSURE EXEMPTION.—Information obtained
5 by the Board of Governors or the Council under this sec-
6 tion and any materials prepared by the Board of Gov-
7 ernors or the Council regarding its assessment of the sys-
8 temic importance of financial market utilities or any pay-
9 ment, clearing, or settlement activities engaged in by fi-
10 nancial institutions, and in connection with its supervision
11 of designated financial market utilities and designated ac-
12 tivities, shall be confidential supervisory information ex-
13 empt from disclosure under section 552 of title 5, United
14 States Code. For purposes of such section 552, this sub-
15 section shall be considered a statute described in sub-
16 section (b)(3) of such section 552.

17 **SEC. 810. RULEMAKING.**

18 The Board of Governors and the Council are author-
19 ized to prescribe such rules and issue such orders as may
20 be necessary to administer and carry out the authorities
21 and duties granted to the Board of Governors or the
22 Council, respectively, and prevent evasions thereof.

23 **SEC. 811. OTHER AUTHORITY.**

24 Unless otherwise provided by its terms, this title does
25 not divest any primary financial regulatory agency, any

1 Supervisory Agency, or any other Federal or State agency,
2 of any authority derived from any other applicable law,
3 except that any standards prescribed by the Board of Gov-
4 ernors under section 805 shall supersede any less strin-
5 gent requirements established under other authority to the
6 extent of any conflict.

7 **SEC. 812. EFFECTIVE DATE.**

8 This title is effective as of the date of enactment of
9 this Act.

10 **TITLE IX—INVESTOR PROTEC-**
11 **TIONS AND IMPROVEMENTS**
12 **TO THE REGULATION OF SE-**
13 **CURITIES**

14 **Subtitle A—Increasing Investor**
15 **Protection**

16 **SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

17 Title I of the Securities Exchange Act of 1934 (15
18 U.S.C. 78a et seq.) is amended by adding at the end the
19 following:

20 **“SEC. 39. INVESTOR ADVISORY COMMITTEE.**

21 **“(a) ESTABLISHMENT AND PURPOSE.—**

22 **“(1) ESTABLISHMENT.—**There is established
23 within the Commission the Investor Advisory Com-
24 mittee (referred to in this section as the ‘Com-
25 mittee’).

1 “(2) PURPOSE.—The Committee shall—

2 “(A) advise and consult with the Commis-
3 sion on—

4 “(i) regulatory priorities of the Com-
5 mission;

6 “(ii) issues relating to the regulation
7 of securities products, trading strategies,
8 and fee structures, and the effectiveness of
9 disclosure;

10 “(iii) initiatives to protect investor in-
11 terest; and

12 “(iv) initiatives to promote investor
13 confidence and the integrity of the securi-
14 ties marketplace; and

15 “(B) submit to the Commission such find-
16 ings and recommendations as the Committee
17 determines are appropriate, including rec-
18 ommendations for proposed legislative changes.

19 “(b) MEMBERSHIP.—

20 “(1) IN GENERAL.—The members of the Com-
21 mittee shall be—

22 “(A) the Investor Advocate;

23 “(B) a representative of State securities
24 commissions;

1 “(C) a representative of the interests of
2 senior citizens; and

3 “(D) not fewer than 12, and not more
4 than 22, members appointed by the Commis-
5 sion, from among individuals who—

6 “(i) represent the interests of indi-
7 vidual equity and debt investors;

8 “(ii) represent the interests of institu-
9 tional investors, including the interests of
10 pension funds;

11 “(iii) are knowledgeable about invest-
12 ment issues and decisions; and

13 “(iv) have reputations of integrity.

14 “(2) TERM.—Each member of the Commission
15 appointed under paragraph (1)(B) shall serve for a
16 term of 4 years.

17 “(3) MEMBERS NOT COMMISSION EMPLOY-
18 EES.—Members appointed under paragraph (1)(B)
19 shall not be deemed to be employees or agents of the
20 Commission solely because of membership on the
21 Committee.

22 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
23 SISTANT SECRETARY.—

1 “(1) IN GENERAL.—The members of the Com-
2 mittee shall elect, from among the members of the
3 Committee—

4 “(A) a chairman, who may not be em-
5 ployed by an issuer;

6 “(B) a vice chairman, who may not be em-
7 ployed by an issuer;

8 “(C) a secretary; and

9 “(D) an assistant secretary.

10 “(2) TERM.—Each member elected under para-
11 graph (1) shall serve for a term of 3 years in the
12 capacity for which the member was elected under
13 paragraph (1).

14 “(d) MEETINGS.—

15 “(1) FREQUENCY OF MEETINGS.—The Com-
16 mittee shall meet—

17 “(A) not less frequently than twice annu-
18 ally, at the call of the chairman of the Com-
19 mittee; and

20 “(B) from time to time, at the call of the
21 Commission.

22 “(2) NOTICE.—The chairman of the Committee
23 shall give the members of the Committee written no-
24 tice of each meeting, not later than 2 weeks before
25 the date of the meeting.

1 “(e) COMPENSATION AND TRAVEL EXPENSES.—
2 Each member of the Committee who is not a full-time em-
3 ployee of the United States shall—

4 “(1) be compensated at a rate not to exceed the
5 daily equivalent of the annual rate of basic pay in
6 effect for a position at level V of the Executive
7 Schedule under section 5316 of title 5, United
8 States Code, for each day during which the member
9 is engaged in the actual performance of the duties
10 of the Committee; and

11 “(2) while away from the home or regular place
12 of business of the member in the performance of
13 services for the Committee, be allowed travel ex-
14 penses, including per diem in lieu of subsistence, in
15 the same manner as persons employed intermittently
16 in the Government service are allowed expenses
17 under section 5703(b) of title 5, United States Code.

18 “(f) STAFF.—The Commission shall make available
19 to the Committee such staff as the chairman of the Com-
20 mittee determines are necessary to carry out this section.

21 “(g) REVIEW BY COMMISSION.—The Commission
22 shall—

23 “(1) review the findings and recommendations
24 of the Committee; and

1 Exchange Act of 1934 (15 U.S.C.78c), and the purposes
2 of considering, proposing, adopting, or engaging in any
3 such rule or program or developing new rules or programs,
4 the Commission may—

5 “(1) gather information from and communicate
6 with investors or other members of the public;

7 “(2) engage in such temporary investor testing
8 programs as the Commission determines are in the
9 public interest or would protect investors; and

10 “(3) consult with academics and consultants, as
11 necessary to carry out this subsection.”.

12 **SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGA-**
13 **TIONS OF BROKERS, DEALERS, AND INVEST-**
14 **MENT ADVISERS.**

15 (a) DEFINITIONS.—In this section—

16 (1) the term “FINRA” means the Financial In-
17 dustry Regulatory Authority; and

18 (2) the term “retail customer” means an indi-
19 vidual customer of a broker, dealer, investment ad-
20 viser, person associated with a broker or dealer, or
21 a person associated with an investment adviser.

22 (b) IN GENERAL.—The Commission shall conduct a
23 study to evaluate—

24 (1) the effectiveness of existing legal or regu-
25 latory standards of care for brokers, dealers, invest-

1 ment advisers, persons associated with brokers or
2 dealers, and persons associated with investment ad-
3 visers for providing personalized investment advice
4 and recommendations about securities to retail cus-
5 tomers imposed by the Commission and FINRA,
6 and other Federal and State legal or regulatory
7 standards; and

8 (2) whether there are legal or regulatory gaps
9 or overlap in legal or regulatory standards in the
10 protection of retail customers relating to the stand-
11 ards of care for brokers, dealers, investment advis-
12 ers, persons associated with brokers or dealers, and
13 persons associated with investment advisers for pro-
14 viding personalized investment advice about securi-
15 ties to retail customers that should be addressed by
16 rule or statute.

17 (c) CONSIDERATIONS.—In conducting the study re-
18 quired under subsection (b), the Commission shall con-
19 sider—

20 (1) the regulatory, examination, and enforce-
21 ment resources devoted to, and activities of, the
22 Commission and FINRA to enforce the standards of
23 care for brokers, dealers, investment advisers, per-
24 sons associated with brokers or dealers, and persons
25 associated with investment advisers when providing

1 personalized investment advice and recommendations
2 about securities to retail customers, including—

3 (A) the frequency of examinations of bro-
4 kers, dealers, and investment advisers; and

5 (B) the length of time of the examinations;

6 (2) the substantive differences, compared and
7 contrasted in detail, in the regulation of brokers,
8 dealers, and investment advisers, when providing
9 personalized investment advice and recommendations
10 about securities to retail customers, including the
11 differences in the amount of resources devoted to the
12 regulation and examination of brokers, dealers, and
13 investment advisers, by the Commission and
14 FINRA;

15 (3) the specific instances in which—

16 (A) the regulation and oversight of invest-
17 ment advisers provide greater protection to re-
18 tail customers than the regulation and oversight
19 of brokers and dealers; and

20 (B) the regulation and oversight of brokers
21 and dealers provide greater protection to retail
22 customers than the regulation and oversight of
23 investment advisers;

1 (4) the existing legal or regulatory standards of
2 State securities regulators and other regulators in-
3 tended to protect retail customers;

4 (5) the potential impact on retail customers, in-
5 cluding the potential impact on access of retail cus-
6 tomers to the range of products and services offered
7 by brokers and dealers, of imposing upon brokers,
8 dealers, and persons associated with brokers or deal-
9 ers—

10 (A) the standard of care applied under the
11 Investment Advisers Act of 1940 (15 U.S.C.
12 80b–1 et seq.) for providing personalized invest-
13 ment advice about securities to retail customers
14 of investment advisers; and

15 (B) other requirements of the Investment
16 Advisers Act of 1940 (15 U.S.C. 80b–1 et
17 seq.);

18 (6) the potential impact of—

19 (A) imposing on investment advisers the
20 standard of care applied by the Commission
21 and FINRA under the Securities Exchange Act
22 of 1934 (15 U.S.C. 78a et seq.) for providing
23 recommendations about securities to retail cus-
24 tomers of brokers and dealers and other Com-

1 mission and FINRA requirements applicable to
2 brokers and dealers; and

3 (B) authorizing the Commission to des-
4 ignate 1 or more self-regulatory organizations
5 to augment the efforts of the Commission to
6 oversee investment advisers;

7 (7) the potential impact of eliminating the
8 broker and dealer exclusion from the definition of
9 “investment adviser” under section 202(a)(11)(C) of
10 the Investment Advisers Act of 1940 (15 U.S.C.
11 80b–2(a)(11)(C)), in terms of—

12 (A) the potential benefits or harm to retail
13 customers that could result from such a change,
14 including any potential impact on access to per-
15 sonalized investment advice and recommenda-
16 tions about securities to retail customers or the
17 availability of such advice and recommenda-
18 tions;

19 (B) the number of additional entities and
20 individuals that would be required to register
21 under, or become subject to, the Investment
22 Advisers Act of 1940 (15 U.S.C. 80b–1 et
23 seq.), and the additional requirements to which
24 brokers, dealers, and persons associated with

1 brokers and dealers would become subject, in-
2 cluding—

3 (i) any potential additional associated
4 person licensing, registration, and exam-
5 ination requirements; and

6 (ii) the additional costs, if any, to the
7 additional entities and individuals; and

8 (C) the impact on Commission resources
9 to—

10 (i) conduct examinations of registered
11 investment advisers and the representatives
12 of registered investment advisers, including
13 the impact on the examination cycle; and

14 (ii) enforce the standard of care and
15 other applicable requirements imposed
16 under the Investment Advisers Act of 1940
17 (15 U.S.C. 80b–1 et seq.);

18 (8) the ability of investors to understand the
19 differences in terms of regulatory oversight and ex-
20 aminations between brokers, dealers, and investment
21 advisers;

22 (9) the varying level of services provided by bro-
23 kers, dealers, investment advisers, persons associated
24 with brokers or dealers, and persons associated with
25 investment advisers to retail customers and the vary-

1 ing scope and terms of retail customer relationships
2 of brokers, dealers, investment advisers, persons as-
3 sociated with brokers or dealers, and persons associ-
4 ated with investment advisers with such retail cus-
5 tomers;

6 (10) any potential benefits or harm to retail
7 customers that could result from any potential
8 changes in the regulatory requirements or legal
9 standards affecting brokers, dealers, investment ad-
10 visers, persons associated with brokers or dealers,
11 and persons associated with investment advisers re-
12 lating to their obligations to retail customers, includ-
13 ing any potential impact on—

14 (A) protection from fraud;

15 (B) access to personalized investment ad-
16 vice, and recommendations about securities to
17 retail customers; or

18 (C) the availability of such advice and rec-
19 ommendations;

20 (11) the additional costs and expenses to retail
21 customers and to brokers, dealers, and investment
22 advisers resulting from potential changes in the reg-
23 ulatory requirements or legal standards affecting
24 brokers, dealers, investment advisers, persons associ-
25 ated with brokers or dealers, and persons associated

1 with investment advisers relating to their obligations
2 to retail customers; and

3 (12) any other consideration that the Commis-
4 sion deems necessary and appropriate to effectively
5 execute the study required under subsection (b).

6 (d) REPORT.—

7 (1) IN GENERAL.—Not later than 1 year after
8 the date of enactment of this Act, the Commission
9 shall submit a report on the study required under
10 subsection (b) to—

11 (A) the Committee on Banking, Housing,
12 and Urban Affairs of the Senate; and

13 (B) the Committee on Financial Services
14 of the House of Representatives.

15 (2) CONTENT REQUIREMENTS.—The report re-
16 quired under paragraph (1) shall describe the find-
17 ings, conclusions, and recommendations of the Com-
18 mission from the study required under subsection
19 (b), including—

20 (A) a description of the considerations,
21 analysis, and public and industry input that the
22 Commission considered, as required under sub-
23 section (e), to make such findings, conclusions,
24 and policy recommendations; and

25 (B) an analysis of—

1 (i) whether any identified legal or reg-
2 ulatory gaps or overlap in legal or regu-
3 latory standards in the protection of retail
4 customers relating to the standards of care
5 for brokers, dealers, investment advisers,
6 persons associated with brokers or dealers,
7 and persons associated with investment ad-
8 visers for providing personalized invest-
9 ment advice about securities to retail cus-
10 tomers can be addressed by rule; and

11 (ii) whether, and the extent to which,
12 the Commission would require additional
13 statutory authority to address such gaps or
14 overlap.

15 (e) PUBLIC COMMENT.—The Commission shall seek
16 and consider public input, comments, and data in order
17 to prepare the report required under subsection (d).

18 (f) RULEMAKING.—

19 (1) IN GENERAL.—If the study required under
20 subsection (b) identifies any gaps or overlap in the
21 legal or regulatory standards in the protection of re-
22 tail customers relating to the standards of care for
23 brokers, dealers, investment advisers, persons associ-
24 ated with brokers or dealers, and persons associated
25 with investment advisers for providing personalized

1 investment advice about securities to such retail cus-
2 tomers, the Commission, not later than 2 years after
3 the date of enactment of this Act, shall—

4 (A) commence a rulemaking, as necessary
5 or appropriate in the public interest and for the
6 protection of retail customers, to address such
7 regulatory gaps and overlap that can be ad-
8 dressed by rule, using its authority under the
9 Securities Exchange Act of 1934 (15 U.S.C.
10 78a et seq.) and the Investment Advisers Act of
11 1940 (15 U.S.C. 80b–1 et seq.); and

12 (B) consider and take into account the
13 findings, conclusions, and recommendations of
14 the study required under this section.

15 (2) **RULE OF CONSTRUCTION.**—Nothing in this
16 section shall be construed to limit the rulemaking
17 authority of the Commission under any other provi-
18 sion of Federal law.

19 **SEC. 914. OFFICE OF THE INVESTOR ADVOCATE.**

20 Section 4 of the Securities Exchange Act of 1934 (15
21 U.S.C. 78d) is amended by adding at the end the fol-
22 lowing:

23 “(g) **OFFICE OF THE INVESTOR ADVOCATE.**—

24 “(1) **OFFICE ESTABLISHED.**—There is estab-
25 lished within the Commission the Office of the In-

1 investor Advocate (in this subsection referred to as the
2 ‘Office’).

3 “(2) INVESTOR ADVOCATE.—

4 “(A) IN GENERAL.—The head of the Of-
5 fice shall be the Investor Advocate, who shall—

6 “(i) report directly to the Chairman;
7 and

8 “(ii) be appointed by the Chairman, in
9 consultation with the Commission, from
10 among individuals having experience in ad-
11 vocating for the interests of investors in se-
12 curities and investor protection issues,
13 from the perspective of investors.

14 “(B) COMPENSATION.—The annual rate of
15 pay for the Investor Advocate shall be equal to
16 the highest rate of annual pay for a Senior Ex-
17 ecutive Service position within the Commission.

18 “(C) LIMITATION ON SERVICE.—An indi-
19 vidual who serves as the Investor Advocate may
20 not be employed by the Commission—

21 “(i) during the 2-year period ending
22 on the date of appointment as Investor Ad-
23 vocate; or

1 “(ii) during the 5-year period begin-
2 ning on the date on which the person
3 ceases to serve as the Investor Advocate.

4 “(3) STAFF OF OFFICE.—The Investor Advo-
5 cate may retain or employ independent counsel, re-
6 search staff, and service staff, as the Investor Advo-
7 cate deems necessary to carry out the functions,
8 powers, and duties of the Office.

9 “(4) FUNCTIONS OF THE INVESTOR ADVO-
10 CATE.—The Investor Advocate shall—

11 “(A) assist retail investors in resolving sig-
12 nificant problems such investors may have with
13 the Commission or with self-regulatory organi-
14 zations;

15 “(B) identify areas in which investors
16 would benefit from changes in the regulations
17 of the Commission or the rules of self-regu-
18 latory organizations;

19 “(C) identify problems that investors have
20 with financial service providers and investment
21 products;

22 “(D) analyze the potential impact on inves-
23 tors of—

24 “(i) proposed regulations of the Com-
25 mission; and

1 “(ii) proposed rules of self-regulatory
2 organizations registered under this title;
3 and

4 “(E) to the extent practicable, propose to
5 the Commission changes in the regulations or
6 orders of the Commission and to Congress any
7 legislative, administrative, or personnel changes
8 that may be appropriate to mitigate problems
9 identified under this paragraph and to promote
10 the interests of investors.

11 “(5) ACCESS TO DOCUMENTS.—The Commis-
12 sion shall ensure that the Investor Advocate has full
13 access to the documents of the Commission and any
14 self-regulatory organization, as necessary to carry
15 out the functions of the Office.

16 “(6) ANNUAL REPORTS.—

17 “(A) REPORT ON OBJECTIVES.—

18 “(i) IN GENERAL.—Not later than
19 June 30 of each year after 2010, the In-
20 vestor Advocate shall submit to the Com-
21 mittee on Banking, Housing, and Urban
22 Affairs of the Senate and the Committee
23 on Financial Services of the House of Rep-
24 resentatives a report on the objectives of

1 the Investor Advocate for the following fis-
2 cal year.

3 “(ii) CONTENTS.—Each report re-
4 quired under clause (i) shall contain full
5 and substantive analysis and explanation.

6 “(B) REPORT ON ACTIVITIES.—

7 “(i) IN GENERAL.—Not later than
8 December 31 of each year after 2010, the
9 Investor Advocate shall submit to the Com-
10 mittee on Banking, Housing, and Urban
11 Affairs of the Senate and the Committee
12 on Financial Services of the House of Rep-
13 resentatives a report on the activities of
14 the Investor Advocate during the imme-
15 diately preceding fiscal year.

16 “(ii) CONTENTS.—Each report re-
17 quired under clause (i) shall include—

18 “(I) appropriate statistical infor-
19 mation and full and substantive anal-
20 ysis;

21 “(II) information on steps that
22 the Investor Advocate has taken dur-
23 ing the reporting period to improve in-
24 vestor services and the responsiveness

1 of the Commission and self-regulatory
2 organizations to investor concerns;

3 “(III) a summary of the most se-
4 rious problems encountered by inves-
5 tors during the reporting period;

6 “(IV) an inventory of the items
7 described in subclauses (III) that in-
8 cludes—

9 “(aa) identification of any
10 action taken by the Commission
11 or the self-regulatory organiza-
12 tion and the result of such ac-
13 tion;

14 “(bb) the length of time that
15 each item has remained on such
16 inventory; and

17 “(cc) for items on which no
18 action has been taken, the rea-
19 sons for inaction, and an identi-
20 fication of any official who is re-
21 sponsible for such action;

22 “(V) recommendations for such
23 administrative and legislative actions
24 as may be appropriate to resolve prob-
25 lems encountered by investors; and

1 “(VI) any other information, as
2 determined appropriate by the Inves-
3 tor Advocate.

4 “(iii) INDEPENDENCE.—Each report
5 required under this paragraph shall be pro-
6 vided directly to the Committees listed in
7 clause (i) without any prior review or com-
8 ment from the Commission, any commis-
9 sioner, any other officer or employee of the
10 Commission, or the Office of Management
11 and Budget.

12 “(iv) CONFIDENTIALITY.—No report
13 required under clause (i) may contain con-
14 fidential information.

15 “(7) REGULATIONS.—The Commission shall, by
16 regulation, establish procedures requiring a formal
17 response to all recommendations submitted to the
18 Commission by the Investor Advocate, not later than
19 3 months after the date of such submission.”.

20 **SEC. 915. STREAMLINING OF FILING PROCEDURES FOR**
21 **SELF-REGULATORY ORGANIZATIONS.**

22 (a) FILING PROCEDURES.—Section 19(b) of the Se-
23 curities Exchange Act of 1934 (15 U.S.C. 78s(b)) is
24 amended by striking paragraph (2) (including the undesig-

1 nated matter immediately following subparagraph (B))
2 and inserting the following:

3 “(2) APPROVAL PROCESS.—

4 “(A) APPROVAL PROCESS ESTABLISHED.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii), not later than 45 days
7 after the date of publication of a proposed
8 rule change under paragraph (1), the Com-
9 mission shall—

10 “(I) by order, approve the pro-
11 posed rule change; or

12 “(II) institute proceedings under
13 subparagraph (B) to determine wheth-
14 er the proposed rule change should be
15 disapproved.

16 “(ii) EXTENSION OF TIME PERIOD.—

17 The Commission may extend the period es-
18 tablished under clause (i) by not more than
19 an additional 45 days, if—

20 “(I) the Commission determines
21 that a longer period is appropriate
22 and publishes the reasons for such de-
23 termination; or

1 “(II) the self-regulatory organiza-
2 tion that filed the proposed rule
3 change consents to the longer period.

4 “(B) PROCEEDINGS.—

5 “(i) NOTICE AND HEARING.—If the
6 Commission does not approve a proposed
7 rule change under subparagraph (A), the
8 Commission shall provide to the self-regu-
9 latory organization that filed the proposed
10 rule change—

11 “(I) notice of the grounds for
12 disapproval under consideration; and

13 “(II) opportunity for hearing, to
14 be concluded not later than 180 days
15 of the date of publication of notice of
16 the filing of the proposed rule change.

17 “(ii) ORDER OF APPROVAL OR DIS-
18 APPROVAL.—

19 “(I) IN GENERAL.—Except as
20 provided in subclause (II), not later
21 than 180 days after the date of publi-
22 cation under paragraph (1), the Com-
23 mission shall issue an order approving
24 or disapproving the proposed rule
25 change.

1 “(II) EXTENSION OF TIME PE-
2 RIOD.—The Commission may extend
3 the period for issuance under clause
4 (I) by not more than 60 days, if—

5 “(aa) the Commission deter-
6 mines that a longer period is ap-
7 propriate and publishes the rea-
8 sons for such determination; or

9 “(bb) the self-regulatory or-
10 ganization that filed the proposed
11 rule change consents to the
12 longer period.

13 “(C) STANDARDS FOR APPROVAL AND DIS-
14 APPROVAL.—

15 “(i) APPROVAL.—The Commission
16 shall approve a proposed rule change of a
17 self-regulatory organization if it finds that
18 such proposed rule change is consistent
19 with the requirements of this title and the
20 rules and regulations issued under this
21 title that are applicable to such organiza-
22 tion.

23 “(ii) DISAPPROVAL.—The Commission
24 shall disapprove a proposed rule change of

1 a self-regulatory organization if it does not
2 make a finding described in clause (i).

3 “(iii) TIME FOR APPROVAL.—The
4 Commission may not approve a proposed
5 rule change earlier than 30 days after the
6 date of publication under paragraph (1),
7 unless the Commission finds good cause
8 for so doing and publishes the reason for
9 the finding.

10 “(D) RESULT OF FAILURE TO INSTITUTE
11 OR CONCLUDE PROCEEDINGS.—A proposed rule
12 change shall be deemed to have been approved
13 by the Commission, if—

14 “(i) the Commission does not approve
15 the proposed rule change or begin pro-
16 ceedings under subparagraph (B) within
17 the period described in subparagraph (A);
18 or

19 “(ii) the Commission does not issue
20 an order approving or disapproving the
21 proposed rule change under subparagraph
22 (B) within the period described in subpara-
23 graph (B)(ii).

24 “(E) PUBLICATION DATE BASED ON
25 WEBSITE PUBLISHING.—For purposes of this

1 paragraph, if, after filing a proposed rule
2 change with the Commission pursuant to para-
3 graph (1), a self-regulatory organization pub-
4 lishes a notice of the filing of such proposed
5 rule change, together with the substantive
6 terms of such proposed rule change, on a pub-
7 licly accessible website, the date of publication
8 of notice of the filing of such proposed rule
9 change shall be deemed to be the date on which
10 such website publication is made.”.

11 (b) CLARIFICATION OF FILING DATE.—

12 (1) RULE OF CONSTRUCTION.—Section 19(b) of
13 the Securities Exchange Act of 1934 (15 U.S.C.
14 78s(b)) is amended by adding at the end the fol-
15 lowing:

16 “(10) RULE OF CONSTRUCTION RELATING TO
17 FILING DATE OF PROPOSED RULE CHANGES.—

18 “(A) IN GENERAL.—For purposes of this
19 subsection, the date of filing of a proposed rule
20 change shall be deemed to be the date on which
21 the Commission receives the proposed rule
22 change.

23 “(B) EXCEPTION.—A proposed rule
24 change has not been received by the Commis-
25 sion for purposes of subparagraph (A) if, not

1 later than 7 days after the date of receipt by
2 the Commission, the Commission notifies the
3 self-regulatory organization that such proposed
4 rule change does not comply with the rules of
5 the Commission relating to the required form of
6 a proposed rule change.”.

7 (2) PUBLICATION.—Section 19(b)(1) of the Se-
8 curities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))
9 is amended by striking “upon” and inserting “as
10 soon as practicable after the date of”.

11 (c) EFFECTIVE DATE OF PROPOSED RULES.—Sec-
12 tion 19(b)(3) of the Securities Exchange Act of 1934 (15
13 U.S.C. 78s(b)(3)) is amended—

14 (1) in subparagraph (A)—

15 (A) by striking “may take effect” and in-
16 serting “shall take effect”; and

17 (B) by inserting “ on any person, whether
18 or not the person is a member of the self-regu-
19 latory organization” after “charge imposed by
20 the self-regulatory organization”; and

21 (2) in subparagraph (C)—

22 (A) by amending the second sentence to
23 read as follows: “At any time within the 60-day
24 period beginning on the date of filing of such
25 a proposed rule change in accordance with the

1 provisions of paragraph (1), the Commission
2 summarily may temporarily suspend the change
3 in the rules of the self-regulatory organization
4 made thereby, if it appears to the Commission
5 that such action is necessary or appropriate in
6 the public interest, for the protection of inves-
7 tors, or otherwise in furtherance of the pur-
8 poses of this title.”;

9 (B) by inserting after the second sentence
10 the following: “If the Commission takes such
11 action, the Commission shall institute pro-
12 ceedings under paragraph (2)(B) to determine
13 whether the proposed rule should be approved
14 or disapproved.”; and

15 (C) in the third sentence, by striking “the
16 preceding sentence” and inserting “this sub-
17 paragraph”.

18 (d) CONFORMING CHANGE.—Section 19(b)(4)(D) of
19 the Securities Exchange Act of 1934 (15 U.S.C.
20 78s(b)(4)(D)) is amended to read as follows:

21 “(D)(i) The Commission shall order the
22 temporary suspension of any change in the
23 rules of a clearing agency made by a proposed
24 rule change that has taken effect under para-
25 graph (3), if the appropriate regulatory agency

1 for the clearing agency notifies the Commission
2 not later than 30 days after the date on which
3 the proposed rule change was filed of—

4 “(I) the determination by the appro-
5 priate regulatory agency that the rules of
6 such clearing agency, as so changed, may
7 be inconsistent with the safeguarding of
8 securities or funds in the custody or con-
9 trol of such clearing agency or for which it
10 is responsible; and

11 “(II) the reasons for the determina-
12 tion described in subclause (I).

13 “(ii) If the Commission takes action under
14 clause (i), the Commission shall institute pro-
15 ceedings under paragraph (2)(B) to determine
16 if the proposed rule change should be approved
17 or disapproved.”.

18 **SEC. 916. STUDY REGARDING FINANCIAL LITERACY AMONG**

19 **INVESTORS.**

20 (a) IN GENERAL.—The Commission shall conduct a
21 study to identify—

22 (1) the existing level of financial literacy among
23 retail investors, including subgroups of investors
24 identified by the Commission;

1 (2) methods to improve the timing, content, and
2 format of disclosures to investors with respect to fi-
3 nancial intermediaries, investment products, and in-
4 vestment services;

5 (3) the most useful and understandable relevant
6 information that retail investors need to make in-
7 formed financial decisions before engaging a finan-
8 cial intermediary or purchasing an investment prod-
9 uct or service that is typically sold to retail inves-
10 tors, including shares of open-end companies, as
11 that term is defined in section 5 of the Investment
12 Company Act of 1940 (15 U.S.C. 80a-5) that are
13 registered under section 8 of that Act;

14 (4) methods to increase the transparency of ex-
15 penses and conflicts of interests in transactions in-
16 volving investment services and products, including
17 shares of open-end companies described in para-
18 graph (3);

19 (5) the most effective existing private and pub-
20 lic efforts to educate investors; and

21 (6) in consultation with the Financial Literacy
22 and Education Commission, a strategy (including, to
23 the extent practicable, measurable goals and objec-
24 tives) to increase the financial literacy of investors

1 in order to bring about a positive change in investor
2 behavior.

3 (b) REPORT.—Not later than 2 years after the date
4 of enactment of this Act, the Commission shall submit a
5 report on the study required under subsection (a) to—

6 (1) the Committee on Banking, Housing, and
7 Urban Affairs of the Senate; and

8 (2) the Committee on Financial Services of the
9 House of Representatives.

10 **SEC. 917. STUDY REGARDING MUTUAL FUND ADVERTISING.**

11 (a) IN GENERAL.—The Comptroller General of the
12 United States shall conduct a study on mutual fund adver-
13 tising to identify—

14 (1) existing and proposed regulatory require-
15 ments for open-end investment company advertise-
16 ments;

17 (2) current marketing practices for the sale of
18 open-end investment company shares, including the
19 use of past performance data, funds that have
20 merged, and incubator funds;

21 (3) the impact of such advertising on con-
22 sumers; and

23 (4) recommendations to improve investor pro-
24 tections in mutual fund advertising and additional
25 information necessary to ensure that investors can

1 make informed financial decisions when purchasing
2 shares.

3 (b) REPORT.—Not later than 1 year after the date
4 of enactment of this Act, the Comptroller General of the
5 United States shall submit a report on the results of the
6 study conducted under subsection (a) to—

7 (1) the Committee on Banking, Housing, and
8 Urban Affairs of the United States Senate; and

9 (2) the Committee on Financial Services of the
10 House of Representatives.

11 **SEC. 918. CLARIFICATION OF COMMISSION AUTHORITY TO**
12 **REQUIRE INVESTOR DISCLOSURES BEFORE**
13 **PURCHASE OF INVESTMENT PRODUCTS AND**
14 **SERVICES.**

15 Section 15 of the Securities Exchange Act of 1934
16 (15 U.S.C. 78o) is amended by adding at the end the fol-
17 lowing:

18 “(k) DISCLOSURES TO RETAIL INVESTORS.—

19 “(1) IN GENERAL.—Notwithstanding any other
20 provision of the securities laws, the Commission may
21 issue rules designating documents or information
22 that shall be provided by a broker or dealer to a re-
23 tail investor before the purchase of an investment
24 product or service by the retail investor.

1 “(2) CONSIDERATIONS.—In developing any
2 rules under paragraph (1), the Commission shall
3 consider whether the rules will promote investor pro-
4 tection, efficiency, competition, and capital forma-
5 tion.”.

6 **Subtitle B—Increasing Regulatory**
7 **Enforcement and Remedies**

8 **SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MAN-**
9 **DATORY PREDISPUTE ARBITRATION.**

10 (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF
11 1934.—Section 15 of the Securities Exchange Act of 1934
12 (15 U.S.C. 78o), as amended by section 918, is amended
13 by adding at the end the following:

14 “(1) AUTHORITY TO RESTRICT MANDATORY
15 PREDISPUTE ARBITRATION.—The Commission may con-
16 duct a rulemaking to reaffirm or prohibit, or impose or
17 not impose conditions or limitations on the use of, agree-
18 ments that require customers or clients of any broker,
19 dealer, or municipal securities dealer to arbitrate any dis-
20 pute between them and such broker, dealer, or municipal
21 securities dealer that arises under the securities laws or
22 the rules of a self-regulatory organization, if the Commis-
23 sion finds that such reaffirmation, prohibition, imposition
24 of conditions or limitations, or other action is in the public
25 interest and for the protection of investors.”.

1 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF
2 1940.—Section 205 of the Investment Advisers Act of
3 1940 (15 U.S.C. 80b–5) is amended by adding at the end
4 the following:

5 “(f) AUTHORITY TO ISSUE RULES RELATED TO
6 MANDATORY PREDISPUTE ARBITRATION.—The Commis-
7 sion may conduct rulemaking to reaffirm or prohibit, or
8 impose or not impose conditions or limitations on the use
9 of, agreements that require customers or clients of any
10 investment adviser to arbitrate any dispute between them
11 and such broker, dealer, or municipal securities dealer
12 that arises under the securities laws, as defined in section
13 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c),
14 or the rules of a self-regulatory organization, if the Com-
15 mission finds that such reaffirmation, prohibition, imposi-
16 tion of conditions or limitations, or other action is in the
17 public interest and for the protection of investors.”.

18 **SEC. 922. WHISTLEBLOWER PROTECTION.**

19 The Securities Exchange Act of 1934 (15 U.S.C. 78a
20 et seq.) is amended by inserting after section 21E the fol-
21 lowing:

22 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
23 **PROTECTION.**

24 “(a) DEFINITIONS.—In this section the following def-
25 inition shall apply:

1 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
2 ACTION.—The term ‘covered judicial or administra-
3 tive action’ means any judicial or administrative ac-
4 tion brought by the Commission under the securities
5 laws that results in monetary sanctions exceeding
6 \$1,000,000.

7 “(2) FUND.—The term ‘Fund’ means the Secu-
8 rities and Exchange Commission Investor Protection
9 Fund.

10 “(3) ORIGINAL INFORMATION.—The term
11 ‘original information’ means information that—

12 “(A) is derived from the independent
13 knowledge or analysis of a whistleblower;

14 “(B) is not known to the Commission from
15 any other source, unless the whistleblower is the
16 original source of the information; and

17 “(C) is not exclusively derived from an al-
18 legation made in a judicial or administrative
19 hearing, in a governmental report, hearing,
20 audit, or investigation, or from the news media,
21 unless the whistleblower is a source of the infor-
22 mation.

23 “(4) MONETARY SANCTIONS.—The term ‘mone-
24 tary sanctions’, when used with respect to any judi-
25 cial or administrative action, means—

1 “(A) any monies, including penalties,
2 disgorgement, and interest, ordered to be paid;
3 and

4 “(B) any monies deposited into a
5 disgorgement fund or other fund pursuant to
6 section 308(b) of the Sarbanes-Oxley Act of
7 2002 (15 U.S.C. 7246(b)), as a result of such
8 action or any settlement of such action.

9 “(5) RELATED ACTION.—The term ‘related ac-
10 tion’, when used with respect to any judicial or ad-
11 ministrative action brought by the Commission
12 under the securities laws, means any judicial or ad-
13 ministrative action brought by an entity described in
14 subclauses (I) through (IV) of subsection
15 (h)(2)(D)(i) that is based upon the original informa-
16 tion provided by a whistleblower pursuant to sub-
17 section (a) that led to the successful enforcement of
18 the Commission action.

19 “(6) WHISTLEBLOWER.—The term ‘whistle-
20 blower’ means any individual, or 2 or more individ-
21 uals acting jointly, that provides information relat-
22 ing to a violation of the securities laws to the Com-
23 mission, in a manner established, by rule or regula-
24 tion, by the Commission.

25 “(b) AWARDS.—

1 “(1) IN GENERAL.—In any covered judicial or
2 administrative action, or related action, the Commis-
3 sion, under regulations prescribed by the Commis-
4 sion and subject to subsection (c), shall pay an
5 award or awards to 1 or more whistleblowers who
6 voluntarily provided original information to the
7 Commission that led to the successful enforcement
8 of the covered judicial or administrative action, or
9 related action, in an aggregate amount equal to—

10 “(A) not less than 10 percent, in total, of
11 what has been collected of the monetary sanc-
12 tions imposed in the action or related actions;
13 and

14 “(B) not more than 30 percent, in total, of
15 what has been collected of the monetary sanc-
16 tions imposed in the action or related actions.

17 “(2) PAYMENT OF AWARDS.—Any amount paid
18 under paragraph (1) shall be paid from the Fund.

19 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
20 TERMINATION OF AWARD.—

21 “(1) DETERMINATION OF AMOUNT OF
22 AWARD.—

23 “(A) DISCRETION.—The determination of
24 the amount of an award made under subsection
25 (b) shall be in the discretion of the Commission.

1 “(B) CRITERIA.—In determining the
2 amount of an award made under subsection (b),
3 the Commission shall take into account—

4 “(i) the significance of the informa-
5 tion provided by the whistleblower to the
6 success of the covered judicial or adminis-
7 trative action;

8 “(ii) the degree of assistance provided
9 by the whistleblower and any legal rep-
10 resentative of the whistleblower in a cov-
11 ered judicial or administrative action;

12 “(iii) the programmatic interest of the
13 Commission in deterring violations of the
14 securities laws by making awards to whis-
15 tleblowers who provide information that
16 lead to the successful enforcement of such
17 laws; and

18 “(iv) such additional relevant factors
19 as the Commission may establish by rule
20 or regulation.

21 “(2) DENIAL OF AWARD.—No award under
22 subsection (b) shall be made—

23 “(A) to any whistleblower who is, or was at
24 the time the whistleblower acquired the original

1 information submitted to the Commission, a
2 member, officer, or employee of—

3 “(i) an appropriate regulatory agency;

4 “(ii) the Department of Justice;

5 “(iii) a self-regulatory organization;

6 “(iv) the Public Company Accounting
7 Oversight Board; or

8 “(v) a law enforcement organization;

9 “(B) to any whistleblower who is convicted
10 of a criminal violation related to the judicial or
11 administrative action for which the whistle-
12 blower otherwise could receive an award under
13 this section; or

14 “(C) to any whistleblower who fails to sub-
15 mit information to the Commission in such
16 form as the Commission may, by rule, require.

17 “(d) REPRESENTATION.—

18 “(1) PERMITTED REPRESENTATION.—Any
19 whistleblower who makes a claim for an award under
20 subsection (b) may be represented by counsel.

21 “(2) REQUIRED REPRESENTATION.—

22 “(A) IN GENERAL.—Any whistleblower
23 who anonymously makes a claim for an award
24 under subsection (b) shall be represented by
25 counsel if the whistleblower anonymously sub-

1 mits the information upon which the claim is
2 based.

3 “(B) DISCLOSURE OF IDENTITY.—Prior to
4 the payment of an award, a whistleblower shall
5 disclose the identity of the whistleblower and
6 provide such other information as the Commis-
7 sion may require, directly or through counsel
8 for the whistleblower.

9 “(e) NO CONTRACT NECESSARY.—No contract with
10 the Commission is necessary for any whistleblower to re-
11 ceive an award under subsection (b), unless otherwise re-
12 quired by the Commission by rule or regulation.

13 “(f) APPEALS.—Any determination made under this
14 section, including whether, to whom, or in what amount
15 to make awards, shall be in the discretion of the Commis-
16 sion. Any such determination may be appealed to the ap-
17 propriate court of appeals of the United States not more
18 than 30 days after the determination is issued by the
19 Commission. The court shall review the determination
20 made by the Commission in accordance with section 706
21 of title 5, United States Code.

22 “(g) INVESTOR PROTECTION FUND.—

23 “(1) FUND ESTABLISHED.—There is estab-
24 lished in the Treasury of the United States a fund

1 to be known as the ‘Securities and Exchange Com-
2 mission Investor Protection Fund’.

3 “(2) USE OF FUND.—The Fund shall be avail-
4 able to the Commission, without further appropria-
5 tion or fiscal year limitation, for—

6 “(A) paying awards to whistleblowers as
7 provided in subsection (b); and

8 “(B) funding the activities of the Inspector
9 General of the Commission under section 4(i).

10 “(3) DEPOSITS AND CREDITS.—There shall be
11 deposited into or credited to the Fund an amount
12 equal to—

13 “(A) the amount awarded under subsection
14 (b) from any monetary sanction collected by the
15 Commission in any judicial or administrative
16 action brought by the Commission that is based
17 on information provided by a whistleblower
18 under the securities laws, unless, the balance of
19 the Fund at the time the monetary sanction is
20 collected exceeds \$200,000,000;

21 “(B) any monetary sanction added to a
22 disgorgement fund or other fund pursuant to
23 section 308 of the Sarbanes-Oxley Act of 2002
24 (15 U.S.C. 7246) that is not distributed to the
25 victims for whom the disgorgement fund was

1 established, unless the balance of the
2 disgorgement fund at the time the determina-
3 tion is made not to distribute the monetary
4 sanction to such victims exceeds \$100,000,000;
5 and

6 “(C) all income from investments made
7 under paragraph (4).

8 “(4) INVESTMENTS.—

9 “(A) AMOUNTS IN FUND MAY BE IN-
10 VESTED.—The Commission may request the
11 Secretary of the Treasury to invest the portion
12 of the Fund that is not, in the discretion of the
13 Commission, required to meet the current needs
14 of the Fund.

15 “(B) ELIGIBLE INVESTMENTS.—Invest-
16 ments shall be made by the Secretary of the
17 Treasury in obligations of the United States or
18 obligations that are guaranteed as to principal
19 and interest by the United States, with matu-
20 rities suitable to the needs of the Fund as de-
21 termined by the Commission on the record.

22 “(C) INTEREST AND PROCEEDS CRED-
23 ITED.—The interest on, and the proceeds from
24 the sale or redemption of, any obligations held
25 in the Fund shall be credited to the Fund.

1 “(5) REPORTS TO CONGRESS.—Not later than
2 October 30 of each fiscal year beginning after the
3 date of enactment of this subsection, the Commis-
4 sion shall submit to the Committee on Banking,
5 Housing, and Urban Affairs of the Senate, and the
6 Committee on Financial Services of the House of
7 Representatives a report on—

8 “(A) the whistleblower award program, es-
9 tablished under this section, including—

10 “(i) a description of the number of
11 awards granted; and

12 “(ii) the types of cases in which
13 awards were granted during the preceding
14 fiscal year;

15 “(B) the balance of the Fund at the begin-
16 ning of the preceding fiscal year;

17 “(C) the amounts deposited into or cred-
18 ited to the Fund during the preceding fiscal
19 year;

20 “(D) the amount of earnings on invest-
21 ments made under paragraph (4) during the
22 preceding fiscal year;

23 “(E) the amount paid from the Fund dur-
24 ing the preceding fiscal year to whistleblowers
25 pursuant to subsection (b);

1 “(F) the balance of the Fund at the end
2 of the preceding fiscal year; and

3 “(G) a complete set of audited financial
4 statements, including—

5 “(i) a balance sheet;

6 “(ii) income statement; and

7 “(iii) cash flow analysis.

8 “(h) PROTECTION OF WHISTLEBLOWERS.—

9 “(1) PROHIBITION AGAINST RETALIATION.—

10 “(A) IN GENERAL.—No employer may dis-
11 charge, demote, suspend, threaten, harass, di-
12 rectly or indirectly, or in any other manner dis-
13 criminate against, a whistleblower in the terms
14 and conditions of employment because of any
15 lawful act done by the whistleblower—

16 “(i) in providing information to the
17 Commission in accordance with subsection
18 (a); or

19 “(ii) in assisting in any investigation
20 or judicial or administrative action of the
21 Commission based upon or related to such
22 information.

23 “(B) ENFORCEMENT.—

24 “(i) CAUSE OF ACTION.—An indi-
25 vidual who alleges discharge or other dis-

1 crimination in violation of subparagraph
2 (A) may bring an action under this sub-
3 section in the appropriate district court of
4 the United States for the relief provided in
5 subparagraph (C).

6 “(ii) SUBPOENAS.—A subpoena re-
7 quiring the attendance of a witness at a
8 trial or hearing conducted under this sec-
9 tion may be served at any place in the
10 United States.

11 “(iii) STATUTE OF LIMITATIONS.—

12 “(I) IN GENERAL.—An action
13 under this subsection may not be
14 brought—

15 “(aa) more than 6 years
16 after the date on which the viola-
17 tion of subparagraph (A) oc-
18 curred;

19 “(bb) or more than 3 years
20 after the date when facts mate-
21 rial to the right of action are
22 known or reasonably should have
23 been known by the employee al-
24 leging a violation of subpara-
25 graph (A).

1 “(II) REQUIRED ACTION WITHIN
2 10 YEARS.—Notwithstanding sub-
3 clause (I), an action under this sub-
4 section may not in any circumstance
5 be brought more than 10 years after
6 the date on which the violation occurs.

7 “(C) RELIEF.—Relief for an individual
8 prevailing in an action brought under subpara-
9 graph (B) shall include—

10 “(i) reinstatement with the same se-
11 niority status that the individual would
12 have had, but for the discrimination;

13 “(ii) 2 times the amount of back pay
14 otherwise owed to the individual, with in-
15 terest; and

16 “(iii) compensation for litigation
17 costs, expert witness fees, and reasonable
18 attorneys’ fees.

19 “(2) CONFIDENTIALITY.—

20 “(A) IN GENERAL.—Unless and until re-
21 quired to be disclosed to a defendant or re-
22 spondent in connection with a proceeding insti-
23 tuted by the Commission or any entity de-
24 scribed in subparagraph (D), all information

1 provided to the Commission by a whistle-
2 blower—

3 “(i) in any proceeding in any Federal
4 or State court or administrative agency—

5 “(I) shall be confidential and
6 privileged as an evidentiary matter;
7 and

8 “(II) shall not be subject to civil
9 discovery or other legal process; and

10 “(ii) shall not be subject to disclosure
11 under section 552 of title 5, United States
12 Code (commonly referred to as the Free-
13 dom of Information Act) or under any pro-
14 ceeding under that section.

15 “(B) EXEMPTED STATUTE.—For purposes
16 of section 552 of title 5, United States Code,
17 this paragraph shall be considered a statute de-
18 scribed in subsection (b)(3)(B) of such section
19 552.

20 “(C) RULE OF CONSTRUCTION.—Nothing
21 in this section is intended to limit, or shall be
22 construed to limit, the ability of the Attorney
23 General to present such evidence to a grand
24 jury or to share such evidence with potential

1 witnesses or defendants in the course of an on-
2 going criminal investigation.

3 “(D) AVAILABILITY TO GOVERNMENT
4 AGENCIES.—

5 “(i) IN GENERAL.—Without the loss
6 of its status as confidential and privileged
7 in the hands of the Commission, all infor-
8 mation referred to in subparagraph (A)
9 may, in the discretion of the Commission,
10 when determined by the Commission to be
11 necessary to accomplish the purposes of
12 this Act and to protect investors, be made
13 available to—

14 “(I) the Attorney General of the
15 United States;

16 “(II) an appropriate regulatory
17 authority;

18 “(III) a self-regulatory organiza-
19 tion;

20 “(IV) a State attorney general in
21 connection with any criminal inves-
22 tigation;

23 “(V) any appropriate State regu-
24 latory authority;

1 “(VI) the Public Company Ac-
2 counting Oversight Board;

3 “(VII) a foreign securities au-
4 thority; and

5 “(VIII) a foreign law enforce-
6 ment authority.

7 “(ii) CONFIDENTIALITY.—

8 “(I) IN GENERAL.—Each of the
9 entities described in subclauses (I)
10 through (VI) of clause (i) shall main-
11 tain such information as confidential
12 and privileged, in accordance with the
13 requirements established under sub-
14 paragraph (A).

15 “(II) FOREIGN AUTHORITIES.—
16 Each of the entities described in sub-
17 clauses (VII) and (VIII) of clause (i)
18 shall maintain such information in ac-
19 cordance with such assurances of con-
20 fidentiality as the Commission deter-
21 mines appropriate.

22 “(3) RIGHTS RETAINED.—Nothing in this sec-
23 tion shall be deemed to diminish the rights, privi-
24 leges, or remedies of any whistleblower under any

1 Federal or State law, or under any collective bar-
2 gaining agreement.

3 “(i) PROVISION OF FALSE INFORMATION.—A whis-
4 tleblower shall not be entitled to an award under this sec-
5 tion if the whistleblower—

6 “(1) knowingly and willfully makes any false,
7 fictitious, or fraudulent statement or representation;
8 or

9 “(2) uses any false writing or document know-
10 ing the writing or document contains any false, ficti-
11 tious, or fraudulent statement or entry.

12 “(j) RULEMAKING AUTHORITY.—The Commission
13 shall have the authority to issue such rules and regulations
14 as may be necessary or appropriate to implement the pro-
15 visions of this section consistent with the purposes of this
16 section.”.

17 **SEC. 923. CONFORMING AMENDMENTS FOR WHISTLE-**
18 **BLOWER PROTECTION.**

19 (a) IN GENERAL.—

20 (1) SECURITIES ACT OF 1933.—Section
21 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C.
22 77t(d)(3)(A)) is amended by inserting “and section
23 21F of the Securities Exchange Act of 1934” after
24 “the Sarbanes-Oxley Act of 2002”.

1 (2) INVESTMENT COMPANY ACT OF 1940.—Sec-
2 tion 42(e)(3)(A) of the Investment Company Act of
3 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by
4 inserting “and section 21F of the Securities Ex-
5 change Act of 1934” after “the Sarbanes-Oxley Act
6 of 2002”.

7 (3) INVESTMENT ADVISERS ACT OF 1940.—Sec-
8 tion 209(e)(3)(A) of the Investment Advisers Act of
9 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by in-
10 serting “and section 21F of the Securities Exchange
11 Act of 1934” after “the Sarbanes-Oxley Act of
12 2002”.

13 (b) SECURITIES EXCHANGE ACT.—

14 (1) SECTION 21.—Section 21(d)(3)(C)(i) of the
15 Securities Exchange Act of 1934 (15 U.S.C.
16 78u(d)(3)(C)(i)) is amended by inserting “and sec-
17 tion 21F of this title” after “the Sarbanes-Oxley Act
18 of 2002”.

19 (2) SECTION 21A.—Section 21A of the Securi-
20 ties Exchange Act of 1934 (15 U.S.C. 78u–1) is
21 amended—

22 (A) in subsection (d)(1) by—

23 (i) striking “(subject to subsection
24 (e))”; and

1 (ii) inserting “and section 21F of this
2 title” after “the Sarbanes-Oxley Act of
3 2002”;

4 (B) by striking subsection (e); and

5 (C) by redesignating subsections (f) and
6 (g) as subsections (e) and (f), respectively.

7 **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS**

8 **FOR WHISTLEBLOWER PROTECTION.**

9 (a) IMPLEMENTING RULES.—The Commission shall
10 issue final regulations implementing the provisions of sec-
11 tion 21F of the Securities Exchange Act of 1934, as added
12 by this subtitle, not later than 270 days after the date
13 of enactment of this Act.

14 (b) ORIGINAL INFORMATION.—Information provided
15 to the Commission by a whistleblower in accordance with
16 the regulations referenced in subsection (a) shall not lose
17 the status of original information (as defined in section
18 21F(i)(1) of the Securities Exchange Act of 1934, as
19 added by this subtitle) solely because the whistleblower
20 provided the information prior to the effective date of the
21 regulations, provided that the information is—

22 (1) provided by the whistleblower after the date
23 of enactment of this subtitle, or monetary sanctions
24 are collected after the date of enactment of this sub-
25 title; or

1 (2) related to a violation for which an award
2 under section 21F of the Securities Exchange Act of
3 1934, as added by this subtitle, could have been paid
4 at the time the information was provided by the
5 whistleblower.

6 (c) AWARDS.—A whistleblower may receive an award
7 pursuant to section 21F of the Securities Exchange Act
8 of 1934, as added by this subtitle, regardless of whether
9 any violation of a provision of the securities laws, or a
10 rule or regulation thereunder, underlying the judicial or
11 administrative action upon which the award is based, oc-
12 curred prior to the date of enactment of this subtitle.

13 **SEC. 925. COLLATERAL BARS.**

14 (a) SECURITIES EXCHANGE ACT OF 1934.—

15 (1) SECTION 15.—Section 15(b)(6)(A) of the
16 Securities Exchange Act of 1934 (15 U.S.C.
17 78o(b)(6)(A)) is amended by striking “12 months,
18 or bar such person from being associated with a
19 broker or dealer,” and inserting “12 months, or bar
20 any such person from being associated with a
21 broker, dealer, investment adviser, municipal securi-
22 ties dealer, municipal advisor, transfer agent, or na-
23 tionally recognized statistical rating organization,”.

24 (2) SECTION 15B.—Section 15B(c)(4) of the Se-
25 curities Exchange Act of 1934 (15 U.S.C. 78o-

1 4(c)(4)) is amended by striking “twelve months or
2 bar any such person from being associated with a
3 municipal securities dealer,” and inserting “12
4 months or bar any such person from being associ-
5 ated with a broker, dealer, investment adviser, mu-
6 nicipal securities dealer, municipal advisor, transfer
7 agent, or nationally recognized statistical rating or-
8 ganization,”.

9 (3) SECTION 17A.—Section 17A(c)(4)(C) of the
10 Securities Exchange Act of 1934 (15 U.S.C. 78q-
11 1(c)(4)(C)) is amended by striking “twelve months
12 or bar any such person from being associated with
13 the transfer agent,” and inserting “12 months or
14 bar any such person from being associated with any
15 transfer agent, broker, dealer, investment adviser,
16 municipal securities dealer, municipal advisor, or na-
17 tionally recognized statistical rating organization,”.

18 (b) INVESTMENT ADVISERS ACT OF 1940.—Section
19 203(f) of the Investment Advisers Act of 1940 (15 U.S.C.
20 80b-3(f)) is amended by striking “twelve months or bar
21 any such person from being associated with an investment
22 adviser,” and inserting “12 months or bar any such per-
23 son from being associated with an investment adviser,
24 broker, dealer, municipal securities dealer, municipal advi-

1 sor transfer agent, or nationally recognized statistical rat-
2 ing organization.”.

3 **SEC. 926. AUTHORITY OF STATE REGULATORS OVER REGU-**
4 **LATION D OFFERINGS.**

5 Section 18(b)(4) of the Securities Act of 1933 (15
6 U.S.C. 77r(b)(4)) is amended—

7 (1) by striking “A security” and inserting “(A)
8 IN GENERAL”;

9 (2) by redesignating subparagraphs (A) through
10 (D) as clauses (i) through (iv), respectively, and ad-
11 justing the margins accordingly; and

12 (3) by striking clause (iv), as so redesignated,
13 and inserting the following:

14 “(iv) Commission rules or regulations
15 issued under section 4(2), except that the
16 Commission may designate, by rule, a class
17 of securities that it deems not to be cov-
18 ered securities because the offering of such
19 securities is not of sufficient size or
20 scope.”.

21 “(B) DESIGNATION OF NON-COVERED SE-
22 CURITIES.—In making a designation under sub-
23 paragraph (A)(iv), the Commission shall con-
24 sider—

25 “(i) the size of the offering;

1 issuer to comply with all applicable
2 terms, conditions, and requirements of
3 the filing; and

4 “(II) upon review of the filing,
5 the State securities commissioner (or
6 equivalent State officer) determines
7 that any failure to comply with the
8 applicable filing terms, conditions, and
9 requirements are insignificant to the
10 offering as a whole.

11 “(D) EFFECT ON STATE FILING REQUIRE-
12 MENTS.—

13 “(i) IN GENERAL.—Nothing in sub-
14 paragraph (A)(iv), (B), or (C), shall be
15 construed to prohibit a State from impos-
16 ing notice filing requirements that are sub-
17 stantially similar to filing requirements re-
18 quired by rule or regulation under section
19 4(4) that were in effect on September 1,
20 1996.

21 “(ii) NOTIFICATION.—Not later than
22 180 days after the date of enactment of
23 the Restoring American Financial Stability
24 Act of 2010, the Commission shall imple-
25 ment procedures, after consultation with

1 the States, to promptly notify States upon
2 completion of review of securities offerings
3 described in subparagraph (A)(iv) by the
4 Commission.”.

5 **SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGA-**
6 **NIZATION RULES.**

7 Section 29(a) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
9 required thereby” and inserting “a self-regulatory organi-
10 zation,”.

11 **SEC. 928. CLARIFICATION THAT SECTION 205 OF THE IN-**
12 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**
13 **APPLY TO STATE-REGISTERED ADVISERS.**

14 Section 205(a) of the Investment Advisers Act of
15 1940 (15 U.S.C. 80b–5(a)) is amended, in the matter pre-
16 ceding paragraph (1)—

17 (1) by striking “, unless exempt from registra-
18 tion pursuant to section 203(b),” and inserting
19 “registered or required to be registered with the
20 Commission”;

21 (2) by striking “make use of the mails or any
22 means or instrumentality of interstate commerce, di-
23 rectly or indirectly, to”; and

24 (3) by striking “to” after “in any way”.

1 **SEC. 929. UNLAWFUL MARGIN LENDING.**

2 Section 7(c)(1)(A) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;
4 and” and inserting “; or”.

5 **SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDI-**
6 **ARIES AND AFFILIATES OF PUBLICLY TRAD-**
7 **ED COMPANIES.**

8 Section 1514A of title 18, United States Code, is
9 amended by inserting “including any subsidiary or affil-
10 iate whose financial information is included in the consoli-
11 dated financial statements of such company” after “the
12 Securities Exchange Act of 1934 (15 U.S.C. 78o(d))”.

13 **Subtitle C—Improvements to the**
14 **Regulation of Credit Rating**
15 **Agencies**

16 **SEC. 931. FINDINGS.**

17 Congress finds the following:

18 (1) Because of the systemic importance of cred-
19 it ratings and the reliance placed on credit ratings
20 by individual and institutional investors and finan-
21 cial regulators, the activities and performances of
22 credit rating agencies, including nationally recog-
23 nized statistical rating organizations, are matters of
24 national public interest, as credit rating agencies are
25 central to capital formation, investor confidence, and

1 the efficient performance of the United States econ-
2 omy.

3 (2) Credit rating agencies, including nationally
4 recognized statistical rating organizations, play a
5 critical “gatekeeper” role in the debt market that is
6 functionally similar to that of securities analysts,
7 who evaluate the quality of securities in the equity
8 market, and auditors, who review the financial state-
9 ments of firms. Such role justifies a similar level of
10 public oversight and accountability.

11 (3) Because credit rating agencies perform eval-
12 uative and analytical services on behalf of clients,
13 much as other financial “gatekeepers” do, the activi-
14 ties of credit rating agencies are fundamentally com-
15 mercial in character and should be subject to the
16 same standards of liability and oversight as apply to
17 auditors, securities analysts, and investment bank-
18 ers.

19 (4) In certain activities, particularly in advising
20 arrangers of structured financial products on poten-
21 tial ratings of such products, credit rating agencies
22 face conflicts of interest that need to be carefully
23 monitored and that therefore should be addressed
24 explicitly in legislation in order to give clearer au-
25 thority to the Securities and Exchange Commission.

1 (5) In the recent financial crisis, the ratings on
2 structured financial products have proven to be inac-
3 curate. This inaccuracy contributed significantly to
4 the mismanagement of risks by financial institutions
5 and investors, which in turn adversely impacted the
6 health of the economy in the United States and
7 around the world. Such inaccuracy necessitates in-
8 creased accountability on the part of credit rating
9 agencies.

10 **SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND**
11 **TRANSPARENCY OF NATIONALLY RECOG-**
12 **NIZED STATISTICAL RATING ORGANIZA-**
13 **TIONS.**

14 Section 15E of the Securities Exchange Act of 1934
15 (15 U.S.C. 78o-7) is amended—

16 (1) in subsection (c)—

17 (A) in paragraph (2), in the second sen-
18 tence, by inserting “any other provision of this
19 section, or” after “Notwithstanding”; and

20 (B) by adding at the end the following:

21 “(3) INTERNAL CONTROLS OVER PROCESSES
22 FOR DETERMINING CREDIT RATINGS.—

23 “(A) IN GENERAL.—Each nationally recog-
24 nized statistical rating organization shall estab-
25 lish, maintain, enforce, and document an effec-

1 tive internal control structure governing the im-
2 plementation of and adherence to policies, pro-
3 cedures, and methodologies for determining
4 credit ratings, taking into consideration such
5 factors as the Commission may prescribe, by
6 rule.

7 “(B) ATTESTATION REQUIREMENT.—The
8 Commission shall prescribe rules requiring each
9 nationally recognized statistical organization to
10 submit to the Commission an annual internal
11 controls report, which shall contain—

12 “(i) a description of the responsibility
13 of the management of the nationally recog-
14 nized statistical rating organization in es-
15 tablishing and maintaining an effective in-
16 ternal control structure under subpara-
17 graph (A);

18 “(ii) an assessment of the effective-
19 ness of the internal control structure of the
20 national recognized statistical rating orga-
21 nization; and

22 “(iii) the attestation of the chief exec-
23 utive officer, or equivalent individual, of
24 the nationally recognized statistical rating
25 organization.”;

1 (2) in subsection (d)—

2 (A) in the subsection heading, by inserting
3 “FINE,” after “CENSURE,”;

4 (B) by inserting “fine,” after “censure,”
5 each place that term appears;

6 (C) in paragraph (2), by redesignating
7 subparagraphs (A) and (B) as clauses (i) and
8 (ii), respectively, and adjusting the clause mar-
9 gins accordingly;

10 (D) by redesignating paragraphs (1)
11 through (5) as subparagraphs (A) through (E),
12 respectively, and adjusting the subparagraph
13 margins accordingly;

14 (E) in the matter preceding subparagraph
15 (A), as so redesignated, by striking “The Com-
16 mission” and inserting the following:

17 “(1) IN GENERAL.—The Commission”;

18 (F) in subparagraph (D), as so redesi-
19 gnated, by striking “or” at the end;

20 (G) in subparagraph (E), as so redesi-
21 gnated, by striking the period at the end and in-
22 serting a semicolon; and

23 (H) by adding at the end the following:

24 “(F) has failed reasonably to supervise,
25 with a view to preventing a violation of the se-

1 securities laws, an individual who commits such a
2 violation, if the individual is subject to the su-
3 pervision of that person.

4 “(2) SUSPENSION OR REVOCATION FOR PAR-
5 TICULAR CLASS OF SECURITIES.—

6 “(A) IN GENERAL.—The Commission may
7 temporarily suspend or permanently revoke the
8 registration of a nationally recognized statistical
9 rating organization with respect to a particular
10 class or subclass of securities, if the Commis-
11 sion finds, on the record after notice and oppor-
12 tunity for hearing, that the nationally recog-
13 nized statistical rating organization does not
14 have adequate financial and managerial re-
15 sources to consistently produce credit ratings
16 that are accurate.

17 “(B) CONSIDERATIONS.—In making any
18 determination under subparagraph (A), the
19 Commission shall consider—

20 “(i) whether the nationally recognized
21 statistical rating organization has failed
22 over a sustained period of time, as deter-
23 mined by the Commission, to produce rat-
24 ings with integrity for that class or sub-
25 class of securities; and

1 “(ii) such other factors as the Com-
2 mission may determine.”;

3 (3) in subsection (h), by adding at the end the
4 following:

5 “(3) SEPARATION OF RATINGS FROM SALES
6 AND MARKETING.—

7 “(A) RULES REQUIRED.—The Commission
8 shall issue rules to prevent the sales and mar-
9 keting considerations of a nationally recognized
10 statistical rating organization from influencing
11 the production of ratings by the nationally rec-
12 ognized statistical rating organization.

13 “(B) CONTENTS OF RULES.—The rules
14 issued under subparagraph (A) shall provide
15 for—

16 “(i) exceptions for small nationally
17 recognized statistical rating organizations
18 with respect to which the Commission de-
19 termines that the separation of the produc-
20 tion of ratings and sales and marketing ac-
21 tivities is not appropriate; and

22 “(ii) suspension or revocation of the
23 registration of a nationally recognized sta-
24 tistical rating organization, if the Commis-

1 sion finds, on the record, after notice and
2 opportunity for a hearing, that—

3 “(I) the nationally recognized
4 statistical rating organization has
5 committed a violation of a rule issued
6 under this subsection; and

7 “(II) the violation of a rule
8 issued under this subsection affected a
9 rating.”;

10 (4) in subsection (j)—

11 (A) by striking “Each” and inserting the
12 following:

13 “(1) IN GENERAL.—Each”; and

14 (B) by adding at the end the following:

15 “(2) LIMITATIONS.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), an individual designated
18 under paragraph (1) may not, while serving in
19 the designated capacity—

20 “(i) perform credit ratings;

21 “(ii) participate in the development of
22 ratings methodologies or models;

23 “(iii) perform marketing or sales
24 functions; or

1 “(iv) participate in establishing com-
2 pensation levels, other than for employees
3 working for that individual.

4 “(B) EXCEPTION.—The Commission may
5 exempt a small nationally recognized statistical
6 rating organization from the limitations under
7 this paragraph, if the Commission finds that
8 compliance with such limitations would impose
9 an unreasonable burden on the nationally recog-
10 nized statistical rating organization.

11 “(3) OTHER DUTIES.—Each individual des-
12 ignated under paragraph (1) shall establish proce-
13 dures for the receipt, retention, and treatment of—

14 “(A) complaints regarding credit ratings,
15 models, methodologies, and compliance with the
16 securities laws and the policies and procedures
17 developed under this section; and

18 “(B) confidential, anonymous complaints
19 by employees or users of credit ratings.

20 “(4) ANNUAL REPORTS REQUIRED.—

21 “(A) ANNUAL REPORTS REQUIRED.—Each
22 individual designated under paragraph (1) shall
23 submit to the nationally recognized statistical
24 rating organization an annual report on the
25 compliance of the nationally recognized statis-

1 tical rating organization with the securities laws
2 and the policies and procedures of the nation-
3 ally recognized statistical rating organization
4 that includes—

5 “(i) a description of any material
6 changes to the code of ethics and conflict
7 of interest policies of the nationally recog-
8 nized statistical rating organization; and

9 “(ii) a certification that the report is
10 accurate and complete.

11 “(B) SUBMISSION OF REPORTS TO THE
12 COMMISSION.—Each nationally recognized sta-
13 tistical rating organization shall file the reports
14 required under subparagraph (A) together with
15 the financial report that is required to be sub-
16 mitted to the Commission under this section.”;
17 and

18 (5) by striking subsection (p) and inserting the
19 following:

20 “(p) REGULATION OF NATIONALLY RECOGNIZED
21 STATISTICAL RATING ORGANIZATIONS.—

22 “(1) ESTABLISHMENT OF OFFICE OF CREDIT
23 RATINGS.—

24 “(A) OFFICE ESTABLISHED.—The Com-
25 mission shall establish within the Commission

1 an Office of Credit Ratings (referred to in this
2 subsection as the ‘Office’) to administer the
3 rules of the Commission—

4 “(i) with respect to the practices of
5 nationally recognized statistical rating or-
6 ganizations in determining ratings, for the
7 protection of users of credit ratings and in
8 the public interest;

9 “(ii) to promote accuracy in credit
10 ratings issued by nationally recognized sta-
11 tistical rating organizations; and

12 “(iii) to ensure that such ratings are
13 not unduly influenced by conflicts of inter-
14 est.

15 “(B) DIRECTOR OF THE OFFICE.—The
16 head of the Office shall be the Director, who
17 shall report to the Chairman.

18 “(2) STAFFING.—The Office established under
19 this subsection shall be staffed sufficiently to carry
20 out fully the requirements of this section. The staff
21 shall include persons with knowledge of and exper-
22 tise in corporate, municipal, and structured debt fi-
23 nance.

24 “(3) COMMISSION EXAMINATIONS.—

1 “(A) ANNUAL EXAMINATIONS RE-
2 QUIRED.—The Office shall conduct an examina-
3 tion of each nationally recognized statistical
4 rating organization at least annually.

5 “(B) CONDUCT OF EXAMINATIONS.—Each
6 examination under subparagraph (A) shall in-
7 clude a review of—

8 “(i) whether the nationally recognized
9 statistical rating organization conducts
10 business in accordance with the policies,
11 procedures, and rating methodologies of
12 the nationally recognized statistical rating
13 organization;

14 “(ii) the management of conflicts of
15 interest by the nationally recognized statis-
16 tical rating organization;

17 “(iii) implementation of ethics policies
18 by the nationally recognized statistical rat-
19 ing organization;

20 “(iv) the internal supervisory controls
21 of the nationally recognized statistical rat-
22 ing organization;

23 “(v) the governance of the nationally
24 recognized statistical rating organization;

1 “(vi) the activities of the individual
2 designated by the nationally recognized
3 statistical rating organization under sub-
4 section (j)(1);

5 “(vii) the processing of complaints by
6 the nationally recognized statistical rating
7 organization; and

8 “(viii) the policies of the nationally
9 recognized statistical rating organization
10 governing the post-employment activities of
11 former staff of the nationally recognized
12 statistical rating organization.

13 “(C) INSPECTION REPORTS.—The Com-
14 mission shall make available to the public, in an
15 easily understandable format, an annual report
16 summarizing—

17 “(i) the essential findings of all ex-
18 aminations conducted under subparagraph
19 (A), as deemed appropriate by the Com-
20 mission;

21 “(ii) the responses by the nationally
22 recognized statistical rating organizations
23 to any material regulatory deficiencies
24 identified by the Commission under clause
25 (i); and

1 “(iii) whether the nationally recog-
2 nized statistical organizations have appro-
3 priately addressed the recommendations of
4 the Commission contained in previous re-
5 ports under this subparagraph.

6 “(4) RULEMAKING AUTHORITY.—The Commis-
7 sion shall—

8 “(A) establish, by rule, fines, and other
9 penalties applicable to any nationally recognized
10 statistical rating organization that violates the
11 requirements of this subsection and the rules
12 thereunder; and

13 “(B) issue such rules as may be necessary
14 to carry out this subsection.

15 “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

16 “(1) RULEMAKING REQUIRED.—The Commis-
17 sion shall, by rule, require that each nationally rec-
18 ognized statistical rating organization publicly dis-
19 close information on the initial credit ratings deter-
20 mined by the nationally recognized statistical rating
21 organization for each type of obligor, security, and
22 money market instrument, and any subsequent
23 changes to such credit ratings, for the purpose of al-
24 lowing users of credit ratings to evaluate the accu-
25 racy of ratings and compare the performance of rat-

1 ings by different nationally recognized statistical rat-
2 ing organizations.

3 “(2) CONTENT.—The rules of the Commission
4 under this subsection shall require, at a minimum,
5 disclosures that—

6 “(A) are comparable among nationally rec-
7 ognized statistical rating organizations, to allow
8 users of credit ratings to compare the perform-
9 ance of credit ratings across nationally recog-
10 nized statistical rating organizations;

11 “(B) are clear and informative for inves-
12 tors who use or might use credit ratings;

13 “(C) include performance information over
14 a range of years and for a variety of types of
15 credit ratings, including for credit ratings with-
16 drawn by the nationally recognized statistical
17 rating organization;

18 “(D) are published and made freely avail-
19 able by the nationally recognized statistical rat-
20 ing organization, on an easily accessible portion
21 of its website, and in writing, when requested;
22 and

23 “(E) are appropriate to the business model
24 of a nationally recognized statistical rating or-
25 ganization.

1 “(r) CREDIT RATINGS METHODOLOGIES.—The Com-
2 mission shall prescribe rules, for the protection of inves-
3 tors and in the public interest, with respect to the proce-
4 dures and methodologies, including qualitative and quan-
5 titative data and models, used by nationally recognized
6 statistical rating organizations that require each nation-
7 ally recognized statistical rating organization—

8 “(1) to ensure that credit ratings are deter-
9 mined using procedures and methodologies, includ-
10 ing qualitative and quantitative data and models,
11 that are—

12 “(A) approved by the board of the nation-
13 ally recognized statistical rating organization, a
14 body performing a function similar to that of a
15 board, or the senior credit officer of the nation-
16 ally recognized statistical rating organization;
17 and

18 “(B) in accordance with the policies and
19 procedures of the nationally recognized statis-
20 tical rating organization for the development
21 and modification of credit rating procedures
22 and methodologies;

23 “(2) to ensure that when material changes to
24 credit rating procedures and methodologies, includ-

1 ing changes to qualitative and quantitative data and
2 models, are made, that—

3 “(A) the changes are applied consistently
4 to all credit ratings to which the changed proce-
5 dures and methodologies apply;

6 “(B) to the extent that changes are made
7 to credit rating surveillance procedures and
8 methodologies, the changes are applied to then-
9 current credit ratings by the nationally recog-
10 nized statistical rating organization within a
11 reasonable time period determined by the Com-
12 mission, by rule; and

13 “(C) the nationally recognized statistical
14 rating organization publicly discloses the reason
15 for the change; and

16 “(3) to notify users of credit ratings—

17 “(A) of the version of a procedure or meth-
18 odology, including the qualitative methodology
19 or quantitative inputs, used with respect to a
20 particular credit rating;

21 “(B) when a material change is made to a
22 procedure or methodology, including to a quali-
23 tative model or quantitative inputs;

24 “(C) when a significant error is identified
25 in a procedure or methodology, including a

1 qualitative or quantitative model, that may re-
2 sult in credit rating actions; and

3 “(D) of the likelihood of a material change
4 described in subparagraph (B) resulting in a
5 change in current credit ratings.

6 “(s) TRANSPARENCY OF CREDIT RATING METH-
7 ODOLOGIES AND INFORMATION REVIEWED.—

8 “(1) FORM FOR DISCLOSURES.—The Commis-
9 sion shall require, by rule, each nationally recognized
10 statistical rating organization to prescribe a form to
11 accompany the publication of each credit rating that
12 discloses—

13 “(A) information relating to—

14 “(i) the assumptions underlying the
15 credit rating procedures and methodolo-
16 gies;

17 “(ii) the data that was relied on to de-
18 termine the credit rating; and

19 “(iii) if applicable, how the nationally
20 recognized statistical rating organization
21 used servicer or remittance reports, and
22 with what frequency, to conduct surveil-
23 lance of the credit rating; and

24 “(B) information that can be used by in-
25 vestors and other users of credit ratings to bet-

1 ter understand credit ratings in each class of
2 credit rating issued by the nationally recognized
3 statistical rating organization.

4 “(2) FORMAT.—The form developed under
5 paragraph (1) shall—

6 “(A) be easy to use and helpful for users
7 of credit ratings to understand the information
8 contained in the report;

9 “(B) require the nationally recognized sta-
10 tistical rating organization to provide the con-
11 tent described in paragraph (3)(B) in a manner
12 that is directly comparable across types of secu-
13 rities; and

14 “(C) be made readily available to users of
15 credit ratings, in electronic or paper form, as
16 the Commission may, by rule, determine.

17 “(3) CONTENT OF FORM.—

18 “(A) QUALITATIVE CONTENT.—Each na-
19 tionally recognized statistical rating organiza-
20 tion shall disclose on the form developed under
21 paragraph (1)—

22 “(i) the credit ratings produced by the
23 nationally recognized statistical rating or-
24 ganization;

1 “(ii) the main assumptions and prin-
2 ciples used in constructing procedures and
3 methodologies, including qualitative meth-
4 odologies and quantitative inputs and as-
5 sumptions about the correlation of defaults
6 across obligors used in rating structured
7 products;

8 “(iii) the potential limitations of the
9 credit ratings, and the types of risks ex-
10 cluded from the credit ratings that the na-
11 tionally recognized statistical rating orga-
12 nization does not comment on, including li-
13 quidity, market, and other risks;

14 “(iv) information on the uncertainty
15 of the credit rating, including—

16 “(I) information on the reli-
17 ability, accuracy, and quality of the
18 data relied on in determining the
19 credit rating; and

20 “(II) a statement relating to the
21 extent to which data essential to the
22 determination of the credit rating
23 were reliable or limited, including—

24 “(aa) any limits on the
25 scope of historical data; and

1 “(bb) any limits in accessi-
2 bility to certain documents or
3 other types of information that
4 would have better informed the
5 credit rating;

6 “(v) whether and to what extent third
7 party due diligence services have been used
8 by the nationally recognized statistical rat-
9 ing organization, a description of the infor-
10 mation that such third party reviewed in
11 conducting due diligence services, and a
12 description of the findings or conclusions
13 of such third party;

14 “(vi) a description of the data about
15 any obligor, issuer, security, or money
16 market instrument that were relied upon
17 for the purpose of determining the credit
18 rating;

19 “(vii) a statement containing an over-
20 all assessment of the quality of information
21 available and considered in producing a
22 rating for an obligor, security, or money
23 market instrument, in relation to the qual-
24 ity of information available to the nation-

1 ally recognized statistical rating organiza-
2 tion in rating similar issuances;

3 “(viii) information relating to conflicts
4 of interest of the nationally recognized sta-
5 tistical rating organization; and

6 “(ix) such additional information as
7 the Commission may require.

8 “(B) QUANTITATIVE CONTENT.—Each na-
9 tionally recognized statistical rating organiza-
10 tion shall disclose on the form developed under
11 this subsection—

12 “(i) an explanation or measure of the
13 potential volatility of the credit rating, in-
14 cluding—

15 “(I) any factors that might lead
16 to a change in the credit ratings; and

17 “(II) the magnitude of the
18 change that a user can expect under
19 different market conditions;

20 “(ii) information on the content of the
21 rating, including—

22 “(I) the historical performance of
23 the rating; and

1 “(II) the expected probability of
2 default and the expected loss in the
3 event of default;

4 “(iii) information on the sensitivity of
5 the rating to assumptions made by the na-
6 tionally recognized statistical rating orga-
7 nization; and

8 “(iv) such additional information as
9 may be required by the Commission.

10 “(4) DUE DILIGENCE SERVICES FOR ASSET-
11 BACKED SECURITIES.—

12 “(A) FINDINGS.—The issuer or under-
13 writer of any asset-backed security shall make
14 publicly available the findings and conclusions
15 of any third-party due diligence report obtained
16 by the issuer or underwriter.

17 “(B) CERTIFICATION REQUIRED.—In any
18 case in which third-party due diligence services
19 are employed by a nationally recognized statis-
20 tical rating organization, an issuer, or an un-
21 derwriter, the person providing the due dili-
22 gence services shall provide to any nationally
23 recognized statistical rating organization that
24 produces a rating to which such services relate,

1 written certification, as provided in subpara-
2 graph (C).

3 “(C) FORMAT AND CONTENT.—The Com-
4 mission shall establish the appropriate format
5 and content for the written certifications re-
6 quired under subparagraph (B), to ensure that
7 providers of due diligence services have con-
8 ducted a thorough review of data, documenta-
9 tion, and other relevant information necessary
10 for a nationally recognized statistical rating or-
11 ganization to provide an accurate rating.

12 “(D) DISCLOSURE OF CERTIFICATION.—
13 The Commission shall adopt rules requiring a
14 nationally recognized statistical rating organiza-
15 tion, at the time at which the nationally recog-
16 nized statistical rating organization produces a
17 rating, to disclose the certification described in
18 subparagraph (B) to the public in a manner
19 that allows the public to determine the ade-
20 quacy and level of due diligence services pro-
21 vided by a third party.”.

22 **SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.**

23 (a) ACCOUNTABILITY.—Section 15E(m) of the Secu-
24 rities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) is
25 amended to read as follows:

1 “(m) ACCOUNTABILITY.—

2 “(1) IN GENERAL.—The enforcement and pen-
3 alty provisions of this title shall apply to statements
4 made by a credit rating agency in the same manner
5 and to the same extent as such provisions apply to
6 statements made by a registered public accounting
7 firm or a securities analyst under the securities laws,
8 and such statements shall not be deemed forward-
9 looking statements for the purposes of section 21E.

10 “(2) RULEMAKING.—The Commission shall
11 issue such rules as may be necessary to carry out
12 this subsection.”.

13 (b) STATE OF MIND.—Section 21D(b)(2) of the Se-
14 curities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2))
15 is amended—

16 (1) by striking “In any” and inserting the fol-
17 lowing:

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), in any”; and

20 (2) by adding at the end the following:

21 “(B) EXCEPTION.—In the case of an ac-
22 tion for money damages brought against a cred-
23 it rating agency or a controlling person under
24 this title, it shall be sufficient, for purposes of
25 pleading any required state of mind in relation

1 to such action, that the complaint state with
2 particularity facts giving rise to a strong infer-
3 ence that the credit rating agency knowingly or
4 recklessly failed—

5 “(i) to conduct a reasonable investiga-
6 tion of the rated security with respect to
7 the factual elements relied upon by its own
8 methodology for evaluating credit risk; or

9 “(ii) to obtain reasonable verification
10 of such factual elements (which verification
11 may be based on a sampling technique that
12 does not amount to an audit) from other
13 sources that the credit rating agency con-
14 sidered to be competent and that were
15 independent of the issuer and under-
16 writer.”.

17 **SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR**
18 **REGULATORY AUTHORITIES.**

19 Section 15E of the Securities Exchange Act of 1934
20 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-
21 ed by adding at the end the following:

22 “(t) **DUTY TO REPORT TIPS ALLEGING MATERIAL**
23 **VIOLATIONS OF LAW.—**

24 “(1) **DUTY TO REPORT.—**Each nationally rec-
25 ognized statistical rating organization shall refer to

1 the appropriate law enforcement or regulatory au-
2 thorities any information that the nationally recog-
3 nized statistical rating organization receives from a
4 third party and finds credible that alleges that an
5 issuer of securities rated by the nationally recog-
6 nized statistical rating organization has committed
7 or is committing a material violation of law that has
8 not been adjudicated by a Federal or State court.

9 “(2) RULE OF CONSTRUCTION.—Nothing in
10 paragraph (1) may be construed to require a nation-
11 ally recognized statistical rating organization to
12 verify the accuracy of the information described in
13 paragraph (1).”.

14 **SEC. 935. CONSIDERATION OF INFORMATION FROM**
15 **SOURCES OTHER THAN THE ISSUER IN RAT-**
16 **ING DECISIONS.**

17 Section 15E of the Securities Exchange Act of 1934
18 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-
19 ed by adding at the end the following:

20 “(u) INFORMATION FROM SOURCES OTHER THAN
21 THE ISSUER.—In producing a credit rating, a nationally
22 recognized statistical rating organization shall consider in-
23 formation about an issuer that the nationally recognized
24 statistical rating organization has, or receives from a
25 source other than the issuer, that the nationally recog-

1 nized statistical rating organization finds credible and po-
2 tentially significant to a rating decision.”.

3 **SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RAT-**
4 **ING ANALYSTS.**

5 Not later than 1 year after the date of enactment
6 of this Act, the Commission shall issue rules that are rea-
7 sonably designed to ensure that any person employed by
8 a nationally recognized statistical rating organization to
9 perform credit ratings—

10 (1) meets standards of training, experience, and
11 competence necessary to produce accurate ratings
12 for the categories of issuers whose securities the per-
13 son rates; and

14 (2) is tested for knowledge of the credit rating
15 process.

16 **SEC. 937. TIMING OF REGULATIONS.**

17 Unless otherwise specifically provided in this subtitle,
18 the Commission shall issue final regulations, as required
19 by this subtitle and the amendments made by this subtitle,
20 not later than 1 year after the date of enactment of this
21 Act.

22 **SEC. 938. UNIVERSAL RATINGS SYMBOLS.**

23 (a) RULEMAKING.—The Commission shall require, by
24 rule, each nationally recognized statistical rating organiza-

1 tion to establish, maintain, and enforce written policies
2 and procedures that—

3 (1) assess the probability that an issuer of a se-
4 curity or money market instrument will default, fail
5 to make timely payments, or otherwise not make
6 payments to investors in accordance with the terms
7 of the security or money market instrument;

8 (2) clearly define and disclose the meaning of
9 any symbol used by the nationally recognized statis-
10 tical rating organization to denote a credit rating;
11 and

12 (3) apply any symbol described in paragraph
13 (2) in a manner that is consistent for all types of
14 securities and money market instruments for which
15 the symbol is used.

16 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
17 tion shall prohibit a nationally recognized statistical rating
18 organization from using distinct sets of symbols to denote
19 credit ratings for different types of securities or money
20 market instruments.

1 **SEC. 939. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **AND FEDERAL AGENCY REVIEW OF RE-**
3 **QUIRED USES OF NATIONALLY RECOGNIZED**
4 **STATISTICAL RATING ORGANIZATION RAT-**
5 **INGS.**

6 (a) STUDY.—The Comptroller General of the United
7 States shall conduct a study of the scope of provisions of
8 Federal and State laws and regulations with respect to
9 the regulation of securities markets, banking, insurance,
10 and other areas that require the use of ratings issued by
11 nationally recognized statistical rating organizations (in
12 this section referred to as the “ratings requirements”).

13 (b) SUBJECTS FOR EVALUATION; PROCESS OF EVAL-
14 UATION.—

15 (1) SUBJECTS FOR EVALUATION.—In con-
16 ducting the study under subsection (a), the Comp-
17 troller General of the United States shall evaluate—

18 (A) the necessity for and purpose of rat-
19 ings requirements;

20 (B) which ratings requirements, if any,
21 could be removed with minimal disruption to
22 the financial markets;

23 (C) the potential impact on the financial
24 markets and on investors if the ratings require-
25 ments identified under subparagraph (B) were
26 rescinded; and

1 (D) whether the financial markets and in-
2 vestors would benefit from the rescission of
3 such ratings requirements.

4 (2) PROCESS OF EVALUATION.—In conducting
5 the study under subsection (a), the Comptroller Gen-
6 eral of the United States shall research and take
7 into consideration the views of—

8 (A) the Federal financial regulatory agen-
9 cies;

10 (B) hedge funds;

11 (C) banks;

12 (D) brokerage firms;

13 (E) mutual funds;

14 (F) pension funds; and

15 (G) all other interested parties.

16 (c) REPORT AND RECOMMENDATIONS.—Not later
17 than 2 years after the date of enactment of this Act, the
18 Comptroller General of the United States shall submit to
19 the Committee on Banking, Housing, and Urban Affairs
20 of the Senate and the Committee on Financial Services
21 of the House of Representatives a report on the results
22 of the study conducted under subsection (a), including rec-
23 ommendations, if any, on—

1 (1) which ratings requirements, if any, could be
2 removed with minimal disruption to the markets;
3 and

4 (2) whether the financial markets and investors
5 would benefit from the rescission of the ratings re-
6 quirements identified under paragraph (1).

7 (d) FEDERAL AGENCY REVIEW OF RATINGS RE-
8 QUIREMENTS.—

9 (1) REVIEW.—Each covered Federal agency
10 shall review—

11 (A) any regulation of the covered Federal
12 agency that requires the use of an assessment
13 of the credit worthiness of a security or money
14 market instrument;

15 (B) any other reference to credit ratings or
16 requirement relating to credit ratings in a regu-
17 lation of the covered Federal agency; and

18 (C) alternative standards of creditworthi-
19 ness that are based on market-generated indica-
20 tors, including yield spreads, bond prices, and
21 credit default swap spreads.

22 (2) MODIFICATIONS REQUIRED.—Except as
23 provided in paragraph (3), each covered Federal
24 agency shall modify any regulation identified under
25 paragraph (1)—

1 (A) to remove any reference to credit rat-
2 ings or a credit ratings requirement in the reg-
3 ulation; and

4 (B) to amend the regulation to require the
5 use of a standard of credit worthiness that—

6 (i) is not related to credit ratings; and

7 (ii) the covered Federal agency deter-
8 mines appropriate.

9 (3) EXCEPTION.—A covered Federal agency
10 may elect not to amend a regulation identified under
11 paragraph (1), if the covered Federal agency deter-
12 mines that—

13 (A) there is no reasonable alternative
14 standard of credit worthiness that could replace
15 a credit rating for purposes of the regulation;
16 and

17 (B) an amendment to the regulation would
18 be inconsistent with the purposes of the statute
19 that authorized the regulation and not in the
20 public interest.

21 (4) REPORT.—Not later than 1 year after the
22 date on which the Comptroller General submits the
23 report required under subsection (c), each covered
24 Federal agency shall submit to Congress a report
25 that contains—

1 (A) a description of any amendment under
2 paragraph (2); and

3 (B) an explanation of any determination
4 under paragraph (3).

5 (5) DEFINITION.—In this subsection, the term
6 “covered Federal agency” means—

7 (A) the Commission;

8 (B) the Corporation;

9 (C) the Office of the Comptroller of the
10 Currency;

11 (D) the Board of Governors;

12 (E) the National Credit Union Administra-
13 tion; and

14 (F) the Federal Housing Finance Agency.

15 **SEC. 939A. SECURITIES AND EXCHANGE COMMISSION**
16 **STUDY ON STRENGTHENING CREDIT RATING**
17 **AGENCY INDEPENDENCE.**

18 (a) STUDY.—The Commission shall conduct a study
19 of—

20 (1) the independence of nationally recognized
21 statistical rating organizations; and

22 (2) how the independence of nationally recog-
23 nized statistical rating organizations affects the rat-
24 ings issued by the nationally organized statistical
25 rating organizations.

1 (b) SUBJECTS FOR EVALUATION.—In conducting the
2 study under subsection (a), the Commission shall evalu-
3 ate—

4 (1) the management of conflicts of interest
5 raised by a nationally recognized statistical rating
6 organization providing other services, including risk
7 management advisory services, ancillary assistance,
8 or consulting services;

9 (2) the potential impact of rules prohibiting a
10 nationally recognized statistical rating organization
11 that provides a rating to an issuer from providing
12 other services to the issuer; and

13 (3) any other issue relating to nationally recog-
14 nized statistical organizations, as the Chairman of
15 the Commission determines is appropriate.

16 (c) REPORT.—Not later than 3 years after the date
17 of enactment of this Act, the Chairman of the Commission
18 shall submit to the Committee on Banking, Housing, and
19 Urban Affairs of the Senate and the Committee on Finan-
20 cial Services of the House of Representatives a report on
21 the results of the study conducted under subsection (a),
22 including recommendations, if any, for improving the in-
23 tegrity of ratings issued by nationally recognized statis-
24 tical rating organizations.

1 **SEC. 939B. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **ON ALTERNATIVE BUSINESS MODELS.**

3 (a) STUDY.—The Comptroller General of the United
4 States shall conduct a study on alternative means for com-
5 pensating nationally recognized statistical rating organiza-
6 tions in order to create incentives for nationally recognized
7 statistical rating organizations to provide more accurate
8 credit ratings, including any statutory changes that would
9 be required to facilitate the use of an alternative means
10 of compensation.

11 (b) REPORT.—Not later than 1 year after the date
12 of enactment of this Act, the Comptroller General shall
13 submit to the Committee on Banking, Housing, and
14 Urban Affairs of the Senate and the Committee on Finan-
15 cial Services of the House of Representatives a report on
16 the results of the study conducted under subsection (a),
17 including recommendations, if any, for providing incen-
18 tives to credit rating agencies to improve the credit rating
19 process.

20 **SEC. 939C. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
21 **ON THE CREATION OF AN INDEPENDENT**
22 **PROFESSIONAL ANALYST ORGANIZATION.**

23 (a) STUDY.—The Comptroller General of the United
24 States shall conduct a study on the feasibility and merits
25 of creating an independent professional organization for

1 rating analysts employed by nationally recognized statis-
2 tical rating organizations that would be responsible for—

3 (1) establishing independent standards for gov-
4 erning the profession of rating analysts;

5 (2) establishing a code of ethical conduct; and

6 (3) overseeing the profession of rating analysts.

7 (b) REPORT.—Not later than 1 year after the date
8 of enactment of this Act, the Comptroller General shall
9 submit to the Committee on Banking, Housing, and
10 Urban Affairs of the Senate and the Committee on Finan-
11 cial Services of the House of Representatives a report on
12 the results of the study conducted under subsection (a).

13 **Subtitle D—Improvements to the**
14 **Asset-Backed Securitization**
15 **Process**

16 **SEC. 941. REGULATION OF CREDIT RISK RETENTION.**

17 (a) DEFINITION OF ASSET-BACKED SECURITY.—Sec-
18 tion 3(a) of the Securities Exchange Act of 1934 (15
19 U.S.C. 78c(a)) is amended by adding at the end the fol-
20 lowing:

21 “(65) ASSET-BACKED SECURITY.—The term
22 ‘asset-backed security’—

23 “(A) means a fixed-income or other secu-
24 rity collateralized by any type of self-liquidating
25 financial asset (including a loan, a lease, a

1 mortgage, or a secured or unsecured receivable)
2 that allows the holder of the security to receive
3 payments that depend primarily on cash flow
4 from the asset, including—

5 “(i) a collateralized mortgage obliga-
6 tion;

7 “(ii) a collateralized debt obligation;

8 “(iii) a collateralized bond obligation;

9 “(iv) a collateralized debt obligation of
10 asset backed-securities;

11 “(v) a collateralized debt obligation of
12 collateralized debt obligations; and

13 “(vi) a security that the Commission,
14 by rule, determines to be an asset-backed
15 security for purposes of this section; and

16 “(B) does not include a security issued by
17 a finance subsidiary held by the parent com-
18 pany or a company controlled by the parent
19 company, if none of the securities issued by the
20 finance subsidiary are held by an entity that is
21 not controlled by the parent company.”.

22 (b) CREDIT RISK RETENTION.—The Securities Ex-
23 change Act of 1934 (15 U.S.C. 78a et seq.) is amended
24 by inserting after section 15F, as added by this Act, the
25 following:

1 **“SEC. 15G. CREDIT RISK RETENTION.**

2 “(a) DEFINITIONS.—In this section—

3 “(1) the term ‘Federal banking agencies’ means
4 the Office of the Comptroller of the Currency and
5 the Federal Deposit Insurance Corporation;

6 “(2) the term ‘insured depository institution’
7 has the same meaning as in section 3(e) of the Fed-
8 eral Deposit Insurance Act (12 U.S.C. 1813(e));

9 “(3) the term ‘securitizer’ means—

10 “(A) an issuer of an asset-backed security;

11 or

12 “(B) a person who organizes and initiates
13 an asset-backed securities transaction by selling
14 or transferring assets, either directly or indi-
15 rectly, including through an affiliate, to the
16 issuer; and

17 “(4) the term ‘originator’ means a person who
18 sells an asset to a securitizer.

19 “(b) IN GENERAL.—Not later than 270 days after
20 the date of enactment of this section, the Federal banking
21 agencies and the Commission shall jointly prescribe regu-
22 lations to require any securitizer to retain an economic
23 interest in a material portion of the credit risk for any
24 asset that the securitizer, through the issuance of an
25 asset-backed security, transfers, sells, or conveys to a third
26 party.

1 “(c) STANDARDS FOR REGULATIONS.—

2 “(1) STANDARDS.—The regulations prescribed
3 under subsection (b) shall—

4 “(A) prohibit a securitizer from directly or
5 indirectly hedging or otherwise transferring the
6 credit risk that the securitizer is required to re-
7 tain with respect to an asset;

8 “(B) require a securitizer to retain—

9 “(i) not less than 5 percent of the
10 credit risk for any asset that is trans-
11 ferred, sold, or conveyed through the
12 issuance of an asset-backed security by the
13 securitizer; or

14 “(ii) less than 5 percent of the credit
15 risk for an asset that is transferred, sold,
16 or conveyed through the issuance of an
17 asset-backed security by the securitizer, if
18 the originator of the asset meets the un-
19 derwriting standards prescribed under
20 paragraph (2)(B);

21 “(C) specify—

22 “(i) the permissible forms of risk re-
23 tention for purposes of this section; and

24 “(ii) the minimum duration of the
25 risk retention required under this section;

1 “(D) apply, regardless of whether the
2 securitizer is an insured depository institution;
3 and

4 “(E) provide for—

5 “(i) a total or partial exemption of
6 any securitization, as may be appropriate
7 in the public interest or for the protection
8 of investors; and

9 “(ii) the allocation of risk retention
10 obligations between a securitizer and an
11 originator in the case of a securitizer that
12 purchases assets from an originator, as the
13 Federal banking agencies and the Commis-
14 sion jointly determine appropriate.

15 “(2) ASSET CLASSES.—

16 “(A) ASSET CLASSES.—The regulations
17 prescribed under subsection (b) shall establish
18 asset classes with separate rules for securitizers
19 of different classes of assets, including residen-
20 tial mortgages, commercial mortgages, commer-
21 cial loans, auto loans, and any other class of as-
22 sets that the Federal banking agencies and the
23 Commission deem appropriate.

24 “(B) CONTENTS.—For each asset class es-
25 tablished under subparagraph (A), the regula-

1 tions prescribed under subsection (b) shall es-
2 tablish underwriting standards that specify the
3 terms, conditions, and characteristics of a loan
4 within the asset class that indicate a reduced
5 credit risk with respect to the loan.

6 “(d) ORIGINATORS.—In determining how to allocate
7 risk retention obligations between a securitizer and an
8 originator under subsection (c)(1)(E)(ii), the Federal
9 banking agencies and the Commission shall—

10 “(1) reduce the percentage of risk retention ob-
11 ligations required of the securitizer by the percent-
12 age of risk retention obligations required of the
13 originator; and

14 “(2) consider—

15 “(A) whether the assets sold to the
16 securitizer have terms, conditions, and charac-
17 teristics that reflect reduced credit risk;

18 “(B) whether the form or volume of trans-
19 actions in securitization markets creates incen-
20 tives for imprudent origination of the type of
21 loan or asset to be sold to the securitizer; and

22 “(C) the potential impact of the risk reten-
23 tion obligations on the access of consumers and
24 businesses to credit on reasonable terms.

1 “(e) EXEMPTIONS, EXCEPTIONS, AND ADJUST-
2 MENTS.—

3 “(1) IN GENERAL.—The Federal banking agen-
4 cies and the Commission may jointly adopt or issue
5 exemptions, exceptions, or adjustments to the rules
6 issued under this section, including exemptions, ex-
7 ceptions, or adjustments for classes of institutions or
8 assets relating to the risk retention requirement and
9 the prohibition on hedging under subsection (c)(1).

10 “(2) APPLICABLE STANDARDS.—Any exemp-
11 tion, exception, or adjustment adopted or issued by
12 the Federal banking agencies and the Commission
13 under this paragraph shall—

14 “(A) help ensure high quality underwriting
15 standards for the securitizers and originators of
16 assets that are securitized or available for
17 securitization; and

18 “(B) encourage appropriate risk manage-
19 ment practices by the securitizers and origina-
20 tors of assets, improve the access of consumers
21 to credit on reasonable terms, or otherwise be
22 in the public interest and for the protection of
23 investors.

24 “(f) ENFORCEMENT.—The regulations issued under
25 this section shall be enforced by—

1 “(1) the appropriate Federal banking agency,
2 with respect to any securitizer that is an insured de-
3 pository institution; and

4 “(2) the Commission, with respect to any
5 securitizer that is not an insured depository institu-
6 tion.

7 “(g) AUTHORITY OF COMMISSION.—The authority of
8 the Commission under this section shall be in addition to
9 the authority of the Commission to otherwise enforce the
10 securities laws.

11 “(h) EFFECTIVE DATE OF REGULATIONS.—The reg-
12 ulations issued under this section shall become effective—

13 “(1) with respect to securitizers and originators
14 of asset-backed securities backed by residential
15 mortgages, 1 year after the date on which final rules
16 under this section are published in the Federal Reg-
17 ister; and

18 “(2) with respect to securitizers and originators
19 of all other classes of asset-backed securities, 2 years
20 after the date on which final rules under this section
21 are published in the Federal Register.”.

1 **SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-**
2 **BACKED SECURITIES.**

3 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
4 15(d) of Securities Exchange Act of 1934 (15 U.S.C.
5 78o(d)) is amended—

6 (1) by striking “(d) Each” and inserting the
7 following:

8 “(d) SUPPLEMENTARY AND PERIODIC INFORMA-
9 TION.—

10 “(1) IN GENERAL.—Each”;

11 (2) in the third sentence, by inserting after “se-
12 curities of each class” the following: “, other than
13 any class of asset-backed securities,”; and

14 (3) by adding at the end the following:

15 “(2) ASSET-BACKED SECURITIES.—

16 “(A) SUSPENSION OF DUTY TO FILE.—The
17 Commission may, by rule or regulation, provide
18 for the suspension or termination of the duty to
19 file under this subsection for any class of asset-
20 backed security, on such terms and conditions
21 and for such period or periods as the Commis-
22 sion deems necessary or appropriate in the pub-
23 lic interest or for the protection of investors.

24 “(B) CLASSIFICATION OF ISSUERS.—The
25 Commission may, for purposes of this sub-
26 section, classify issuers and prescribe require-

1 “(ii) the nature and extent of the
2 compensation of the broker or originator of
3 the assets backing the security; and

4 “(iii) the amount of risk retention by
5 the originator and the securitizer of such
6 assets.”.

7 **SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-**
8 **BACKED OFFERINGS.**

9 Not later than 180 days after the date of enactment
10 of this Act, the Securities and Exchange Commission shall
11 prescribe regulations on the use of representations and
12 warranties in the market for asset-backed securities (as
13 that term is defined in section 3(a)(65) of the Securities
14 Exchange Act of 1934, as added by this subtitle) that—

15 (1) require each national recognized statistical
16 rating organization to include in any report accom-
17 panying a credit rating a description of—

18 (A) the representations, warranties, and
19 enforcement mechanisms available to investors;
20 and

21 (B) how they differ from the representa-
22 tions, warranties, and enforcement mechanisms
23 in issuances of similar securities; and

24 (2) require any securitizer (as that term is de-
25 fined in section 15G(a) of the Securities Exchange

1 Act of 1934, as added by this subtitle) to disclose
2 fulfilled and unfulfilled repurchase requests across
3 all trusts aggregated by the securitizer, so that in-
4 vestors may identify asset originators with clear un-
5 derwriting deficiencies.

6 **SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURI-**
7 **TIES ACT OF 1933.**

8 (a) EXEMPTION ELIMINATED.—Section 4 of the Se-
9 curities Act of 1933 (15 U.S.C. 77d) is amended—

10 (1) by striking paragraph (5); and

11 (2) by striking “(6) transactions” and inserting
12 the following:

13 “(5) transactions”.

14 (b) CONFORMING AMENDMENT.—Section
15 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934
16 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking
17 “4(6)” and inserting “4(5)”.

18 **SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN**
19 **ASSET-BACKED SECURITIES ISSUES.**

20 Section 7 of the Securities Act of 1933 (15 U.S.C.
21 77g), as amended by this subtitle, is amended by adding
22 at the end the following:

23 “(d) REGISTRATION STATEMENT FOR ASSET-
24 BACKED SECURITIES.—Not later than 180 days after the
25 date of enactment of this subsection, the Commission shall

1 issue rules relating to the registration statement required
2 to be filed by any issuer of an asset-backed security (as
3 that term is defined in section 3(a)(65) of the Securities
4 Exchange Act of 1934) that require any issuer of an asset-
5 backed security—

6 “(1) to perform a due diligence analysis of the
7 assets underlying the asset-backed security; and

8 “(2) to disclose the nature of the analysis under
9 paragraph (1).”.

10 **Subtitle E—Accountability and** 11 **Executive Compensation**

12 **SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-** 13 **TION DISCLOSURES.**

14 The Securities Exchange Act of 1934 (15 U.S.C. 78a
15 et seq.) is amended by inserting after section 14 (15
16 U.S.C. 78n) the following:

17 **“SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECU-** 18 **TIVE COMPENSATION.**

19 “(a) SEPARATE RESOLUTION REQUIRED.—Any
20 proxy or consent or authorization for an annual or other
21 meeting of the shareholders occurring after the end of the
22 6-month period beginning on the date of enactment of this
23 section, for which the proxy solicitation rules of the Com-
24 mission require compensation disclosure, shall include a
25 separate resolution subject to shareholder vote to approve

1 the compensation of executives, as disclosed pursuant to
2 section 229.402 of title 17, Code of Federal Regulations,
3 or any successor thereto.

4 “(b) RULE OF CONSTRUCTION.—The shareholder
5 vote referred to in subsection (a) shall not be binding on
6 the issuer or the board of directors of an issuer, and may
7 not be construed—

8 “(1) as overruling a decision by such issuer or
9 board of directors;

10 “(2) to create or imply any change to the fidu-
11 ciary duties of such issuer or board of directors;

12 “(3) to create or imply any additional fiduciary
13 duties for such issuer or board of directors; or

14 “(4) to restrict or limit the ability of share-
15 holders to make proposals for inclusion in proxy ma-
16 terials related to executive compensation.”.

17 **SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.**

18 The Securities Exchange Act of 1934 (15 U.S.C. 78
19 et seq.) is amended by inserting after section 10B, as
20 added by section 753, the following:

21 **“SEC. 10C. COMPENSATION COMMITTEES.**

22 “(a) INDEPENDENCE OF COMPENSATION COMMIT-
23 TEES.—

24 “(1) LISTING STANDARDS.—The Commission
25 shall, by rule, direct the national securities ex-

1 changes and national securities associations to pro-
2 hibit the listing of any security of an issuer that
3 does not comply with the requirements of this sub-
4 section.

5 “(2) INDEPENDENCE OF COMPENSATION COM-
6 MITTEES.—The rules of the Commission under para-
7 graph (1) shall require that each member of the
8 compensation committee of the board of directors of
9 an issuer be—

10 “(A) a member of the board of directors of
11 the issuer; and

12 “(B) independent.

13 “(3) INDEPENDENCE.—The rules of the Com-
14 mission under paragraph (1) shall require that, in
15 determining the definition of the term ‘independ-
16 ence’ for purposes of paragraph (2), the national se-
17 curities exchanges and the national securities asso-
18 ciations shall consider relevant factors, including—

19 “(A) the source of compensation of a mem-
20 ber of the board of directors of an issuer, in-
21 cluding any consulting, advisory, or other com-
22 pensatory fee paid by the issuer to such mem-
23 ber of the board of directors; and

24 “(B) whether a member of the board of di-
25 rectors of an issuer is affiliated with the issuer,

1 a subsidiary of the issuer, or an affiliate of a
2 subsidiary of the issuer.

3 “(4) EXEMPTION AUTHORITY.—The rules of
4 the Commission under paragraph (1) shall permit a
5 national securities exchange or a national securities
6 association to exempt a particular relationship from
7 the requirements of paragraph (2), with respect to
8 the members of a compensation committee, as the
9 national securities exchange or national securities
10 association determines is appropriate, taking into
11 consideration the size of an issuer and any other rel-
12 evant factors.

13 “(b) INDEPENDENCE OF COMPENSATION CONSULT-
14 ANTS AND OTHER COMPENSATION COMMITTEE ADVIS-
15 ERS.—

16 “(1) IN GENERAL.—The compensation com-
17 mittee of an issuer may only select a compensation
18 consultant, legal counsel, or other adviser to the
19 compensation committee after taking into consider-
20 ation the factors identified by the Commission under
21 paragraph (2).

22 “(2) RULES.—The Commission shall identify
23 factors that affect the independence of a compensa-
24 tion consultant, legal counsel, or other adviser to a
25 compensation committee of an issuer, including—

1 “(A) the provision of other services to the
2 issuer by the person that employs the com-
3 pensation consultant, legal counsel, or other ad-
4 viser;

5 “(B) the amount of fees received from the
6 issuer by the person that employs the com-
7 pensation consultant, legal counsel, or other ad-
8 viser, as a percentage of the total revenue of
9 the person that employs the compensation con-
10 sultant, legal counsel, or other adviser;

11 “(C) the policies and procedures of the
12 person that employs the compensation consult-
13 ant, legal counsel, or other adviser that are de-
14 signed to prevent conflicts of interest;

15 “(D) any business or personal relationship
16 of the compensation consultant, legal counsel,
17 or other adviser with a member of the com-
18 pensation committee; and

19 “(E) any stock of the issuer owned by the
20 compensation consultant, legal counsel, or other
21 adviser.

22 “(c) COMPENSATION COMMITTEE AUTHORITY RE-
23 LATING TO COMPENSATION CONSULTANTS.—

24 “(1) AUTHORITY TO RETAIN COMPENSATION
25 CONSULTANT.—

1 “(A) IN GENERAL.—The compensation
2 committee of an issuer, in its capacity as a
3 committee of the board of directors, may, in its
4 sole discretion, retain or obtain the advice of a
5 compensation consultant.

6 “(B) DIRECT RESPONSIBILITY OF COM-
7 PENSATION COMMITTEE.—The compensation
8 committee of an issuer shall be directly respon-
9 sible for the appointment, compensation, and
10 oversight of the work of a compensation con-
11 sultant.

12 “(C) RULE OF CONSTRUCTION.—This
13 paragraph may not be construed—

14 “(i) to require the compensation com-
15 mittee to implement or act consistently
16 with the advice or recommendations of the
17 compensation consultant; or

18 “(ii) to affect the ability or obligation
19 of a compensation committee to exercise its
20 own judgment in fulfillment of the duties
21 of the compensation committee.

22 “(2) DISCLOSURE.—In any proxy or consent
23 solicitation material for an annual meeting of the
24 shareholders (or a special meeting in lieu of the an-
25 nual meeting) occurring on or after the date that is

1 1 year after the date of enactment of this section,
2 each issuer shall disclose in the proxy or consent
3 material, in accordance with regulations of the Com-
4 mission, whether—

5 “(A) the compensation committee of the
6 issuer retained or obtained the advice of a com-
7 pensation consultant; and

8 “(B) the work of the compensation com-
9 mittee has raised any conflict of interest and, if
10 so, the nature of the conflict and how the con-
11 flict is being addressed.

12 “(d) **AUTHORITY TO ENGAGE INDEPENDENT LEGAL**
13 **COUNSEL AND OTHER ADVISERS.—**

14 “(1) **IN GENERAL.—**The compensation com-
15 mittee of an issuer, in its capacity as a committee
16 of the board of directors, may, in its sole discretion,
17 retain and obtain the advice of independent legal
18 counsel and other advisers.

19 “(2) **DIRECT RESPONSIBILITY OF COMPENSA-**
20 **TION COMMITTEE.—**The compensation committee of
21 an issuer shall be directly responsible for the ap-
22 pointment, compensation, and oversight of the work
23 of independent legal counsel and other advisers.

24 “(3) **RULE OF CONSTRUCTION.—**This sub-
25 section may not be construed—

1 “(A) to require a compensation committee
2 to implement or act consistently with the advice
3 or recommendations of independent legal coun-
4 sel or other advisers under this subsection; or

5 “(B) to affect the ability or obligation of a
6 compensation committee to exercise its own
7 judgment in fulfillment of the duties of the
8 compensation committee.

9 “(e) COMPENSATION OF COMPENSATION CONSULT-
10 ANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER AD-
11 VISORS.—Each issuer shall provide for appropriate fund-
12 ing, as determined by the compensation committee in its
13 capacity as a committee of the board of directors, for pay-
14 ment of reasonable compensation—

15 “(1) to a compensation consultant; and

16 “(2) to independent legal counsel or any other
17 adviser to the compensation committee.

18 “(f) COMMISSION RULES.—

19 “(1) IN GENERAL.—Not later than 360 days
20 after the date of enactment of this section, the Com-
21 mission shall, by rule, direct the national securities
22 exchanges and national securities associations to
23 prohibit the listing of any security of an issuer that
24 is not in compliance with the requirements of this
25 section.

1 “(2) OPPORTUNITY TO CURE DEFECTS.—The
2 rules of the Commission under paragraph (1) shall
3 provide for appropriate procedures for an issuer to
4 have a reasonable opportunity to cure any defects
5 that would be the basis for the prohibition under
6 paragraph (1), before the imposition of such prohibi-
7 tion.

8 “(3) EXEMPTION AUTHORITY.—

9 “(A) IN GENERAL.—The rules of the Com-
10 mission under paragraph (1) shall permit a na-
11 tional securities exchange or a national securi-
12 ties association to exempt a category of issuers
13 from the requirements under this section, as
14 the national securities exchange or the national
15 securities association determines is appropriate.

16 “(B) CONSIDERATIONS.—In determining
17 appropriate exemptions under subparagraph
18 (A), the national securities exchange or the na-
19 tional securities association shall take into ac-
20 count the potential impact of the requirements
21 of this section on smaller reporting issuers.”.

22 **SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.**

23 Section 14 of the Securities Exchange Act of 1934
24 (15 U.S.C. 78n), as amended by this title, is amended by
25 adding at the end the following:

1 “(j) DISCLOSURE OF PAY VERSUS PERFORMANCE.—
2 The Commission shall, by rule, require each issuer to dis-
3 close in the annual proxy statement of the issuer a clear
4 description of any compensation required to be disclosed
5 by the issuer under section 229.402 of title 17, Code of
6 Federal Regulations (or any successor thereto), including
7 information that shows the relationship between executive
8 compensation actually paid and the financial performance
9 of the issuer, taking into account any change in the value
10 of the shares of stock and dividends of the issuer and any
11 distributions. The disclosure under this subsection may in-
12 clude a graphic representation of the information required
13 to be disclosed.”.

14 **SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COM-**
15 **PENSATION.**

16 Section 16 of the Securities Exchange Act of 1934
17 (15 U.S.C. 78p) is amended by adding at the end the fol-
18 lowing:

19 “(h) RECOVERY OF ERRONEOUSLY AWARDED COM-
20 PENSATION POLICY.—

21 “(1) LISTING STANDARDS.—The Commission
22 shall, by rule, direct the national securities ex-
23 changes and national securities associations to pro-
24 hibit the listing of any security of an issuer that

1 does not comply with the requirements of this sub-
2 section.

3 “(2) RECOVERY OF FUNDS.—The rules of the
4 Commission under paragraph (1) shall require each
5 issuer to develop and implement a policy providing—

6 “(A) for disclosure of the policy of the
7 issuer on incentive-based compensation that is
8 based on financial information required to be
9 reported under the securities laws; and

10 “(B) that, in the event that the issuer is
11 required to prepare an accounting restatement
12 due to the material noncompliance of the issuer
13 with any financial reporting requirement under
14 the securities laws, the issuer will recover from
15 any current or former executive officer of the
16 issuer who received incentive-based compensa-
17 tion (including stock options awarded as com-
18 pensation) during the 3-year period preceding
19 the date on which the issuer is required to pre-
20 pare an accounting restatement, based on the
21 erroneous data, in excess of what would have
22 been paid to the executive officer under the ac-
23 counting restatement.”.

1 **SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIREC-**
2 **TOR HEDGING.**

3 Section 14 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78n), as amended by this title, is amended by
5 adding at the end the following:

6 “(1) DISCLOSURE OF HEDGING BY EMPLOYEES AND
7 DIRECTORS.—The Commission shall, by rule, require each
8 issuer to disclose in the annual proxy statement of the
9 issuer whether any employee or member of the board of
10 directors of the issuer, or any designee of such employee
11 or member, is permitted to purchase financial instruments
12 (including prepaid variable forward contracts, equity
13 swaps, collars, and exchange funds) that are designed to
14 hedge or offset any decrease in the market value of equity
15 securities—

16 “(1) granted to the employee or member of the
17 board of directors by the issuer as part of the com-
18 pensation of the employee or member of the board
19 of directors; or

20 “(2) held, directly or indirectly, by the employee
21 or member of the board of directors.”.

22 **SEC. 956. EXCESSIVE COMPENSATION BY HOLDING COMPA-**
23 **NIES OF DEPOSITORY INSTITUTIONS.**

24 Section 5 of the Bank Holding Company Act of 1956
25 (12 U.S.C. 1844) is amended by adding at the end the
26 following:

1 “(h) EXCESSIVE COMPENSATION.—

2 “(1) IN GENERAL.—Not later than 180 days
3 after the transfer date established under section 311
4 of the Restoring American Financial Stability Act of
5 2010, the Board of Governors shall, by rule, estab-
6 lish standards prohibiting as an unsafe and unsound
7 practice any compensation plan of a bank holding
8 company that—

9 “(A) provides an executive officer, em-
10 ployee, director, or principal shareholder of the
11 bank holding company with excessive compensa-
12 tion, fees, or benefits; or

13 “(B) could lead to material financial loss
14 to the bank holding company.

15 “(2) CONSIDERATIONS.—In establishing the
16 standards under paragraph (1), the Board of Gov-
17 ernors shall take into consideration the compensa-
18 tion standards described in section 39(e) of the Fed-
19 eral Deposit Insurance Act (12 U.S.C. 1831p-
20 1(c)).”.

1 **Subtitle F—Improvements to the**
2 **Management of the Securities**
3 **and Exchange Commission**

4 **SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SU-**
5 **PERVISORY CONTROLS.**

6 (a) ANNUAL REPORTS AND CERTIFICATION.—Not
7 later than 90 days after end of each fiscal year, the Com-
8 mission shall submit a report to the Committee on Bank-
9 ing, Housing, and Urban Affairs of the Senate and the
10 Committee on Financial Services of the House of Rep-
11 resentatives on the conduct by the Commission of exami-
12 nations of registered entities, enforcement investigations,
13 and review of corporate financial securities filings.

14 (b) CONTENTS OF REPORTS.—Each report under
15 subsection (a) shall contain—

16 (1) an assessment, as of the end of the most re-
17 cent fiscal year, of the effectiveness of—

18 (A) the internal supervisory controls of the
19 Commission; and

20 (B) the procedures of the Commission ap-
21 plicable to the staff of the Commission who per-
22 form examinations of registered entities, en-
23 forcement investigations, and reviews of cor-
24 poration financial securities filings;

1 (2) a certification that the Commission has ade-
2 quate internal supervisory controls to carry out the
3 duties of the Commission described in paragraph
4 (1)(B); and

5 (3) a summary by the Comptroller General of
6 the United States of the review carried out under
7 subsection (d).

8 (c) CERTIFICATION.—

9 (1) SIGNATURE.—The certification under sub-
10 section (b)(2) shall be signed by the Director of the
11 Division of Enforcement, the Director of the Divi-
12 sion of Corporation Finance, and the Director of the
13 Office of Compliance Inspections and Examinations
14 (or the head of any successor division or office).

15 (2) CONTENT OF CERTIFICATION.—Each indi-
16 vidual described in paragraph (1) shall certify that
17 the individual—

18 (A) is directly responsible for establishing
19 and maintaining the internal supervisory con-
20 trols of the Division or Office of which the indi-
21 vidual is the head;

22 (B) is knowledgeable about the internal su-
23 pervisory controls of the Division or Office of
24 which the individual is the head;

1 (C) has evaluated the effectiveness of the
2 internal supervisory controls during the 90-day
3 period ending on the final day of the fiscal year
4 to which the report relates; and

5 (D) has disclosed to the Commission any
6 significant deficiencies in the design or oper-
7 ation of internal supervisory controls that could
8 adversely affect the ability of the Division or
9 Office to consistently conduct inspections, or in-
10 vestigations, or reviews of filings with profes-
11 sional competence and integrity.

12 (d) REVIEW BY THE COMPTROLLER GENERAL.—Not
13 later than the date on which the first report is submitted
14 under subsection (a), the Comptroller General of the
15 United States shall submit to the Committee on Banking,
16 Housing, and Urban Affairs of the Senate and the Com-
17 mittee on Financial Services of the House of Representa-
18 tives an initial report that contains a review of the ade-
19 quacy and effectiveness of the internal supervisory control
20 structure and procedures described in subsection (b)(1).

21 **SEC. 962. TRIENNIAL REPORT ON PERSONNEL MANAGE-**
22 **MENT.**

23 (a) TRIENNIAL REPORT REQUIRED.—Once every 3
24 years, the Comptroller General of the United States shall
25 submit a report to the Committee on Banking, Housing,

1 and Urban Affairs of the Senate and the Committee on
2 Financial Services of the House of Representatives on the
3 quality of personnel management by the Commission.

4 (b) CONTENTS OF REPORT.—Each report under sub-
5 section (a) shall include—

6 (1) an evaluation of—

7 (A) the effectiveness of supervisors in
8 using the skills, talents, and motivation of the
9 employees of the Commission to achieve the
10 goals of the Commission;

11 (B) the criteria for promoting employees of
12 the Commission to supervisory positions;

13 (C) the fairness of the application of the
14 promotion criteria to the decisions of the Com-
15 mission;

16 (D) the competence the professional staff
17 of the Commission;

18 (E) the efficiency of communication be-
19 tween the units of the Commission regarding
20 the work of the Commission (including commu-
21 nication between divisions and between subunits
22 of a division) and the efforts by the Commission
23 to promote such communication;

24 (F) the turnover within subunits of the
25 Commission, including the identification of su-

1 pervisors whose subordinates have an unusually
2 high rate of turnover;

3 (G) whether there are excessive numbers of
4 low-level, mid-level, or senior-level managers;

5 (H) any initiatives of the Commission that
6 increase the competence of the staff of the
7 Commission;

8 (I) the actions taken by the Commission
9 regarding employees of the Commission who
10 have failed to perform their duties; and

11 (J) such other factors relating to the man-
12 agement of the Commission as the Comptroller
13 General determines are appropriate;

14 (2) an evaluation of any improvements made
15 with respect to the areas described in paragraph (1)
16 since the date of submission of the previous report;
17 and

18 (3) recommendations for how the Commission
19 can use the human resources of the Commission
20 more effectively and efficiently to carry out the mis-
21 sion of the Commission.

22 (c) CONSULTATION.—In preparing the report under
23 subsection (a), the Comptroller General shall consult with
24 current employees of the Commission, retired employees
25 and other former employees of the Commission, the In-

1 spector General of the Commission, persons that have
2 business before the Commission, any union representing
3 the employees of the Commission, private management
4 consultants, academics, and any other source that the
5 Comptroller General deems appropriate.

6 (d) REPORT BY COMMISSION.—Not later than 90
7 days after the date on which the Comptroller General sub-
8 mits each report under subsection (a), the Commission
9 shall submit to the Committee on Banking, Housing, and
10 Urban Affairs of the Senate and the Committee on Finan-
11 cial Services of the House of Representatives a report de-
12 scribing the actions taken by the Commission in response
13 to the recommendations contained in the report under
14 subsection (a).

15 (e) REIMBURSEMENTS FOR COST OF REPORTS.—

16 (1) REIMBURSEMENTS REQUIRED.—The Com-
17 mission shall reimburse the Government Account-
18 ability Office for the full cost of making the reports
19 under this section, as billed therefor by the Comp-
20 troller General.

21 (2) CREDITING AND USE OF REIMBURSE-
22 MENTS.—Such reimbursements shall—

23 (A) be credited to the appropriation ac-
24 count “Salaries and Expenses, Government Ac-

1 countability Office” current when the payment
2 is received; and

3 (B) remain available until expended.

4 **SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.**

5 (a) REPORTS OF COMMISSION.—

6 (1) ANNUAL REPORTS REQUIRED.—Not later
7 than 6 months after the end of each fiscal year, the
8 Commission shall publish and submit to Congress a
9 report that—

10 (A) describes the responsibility of the man-
11 agement of the Commission for establishing and
12 maintaining an adequate internal control struc-
13 ture and procedures for financial reporting; and

14 (B) contains an assessment of the effec-
15 tiveness of the internal control structure and
16 procedures for financial reporting of the Com-
17 mission during that fiscal year.

18 (2) ATTESTATION.—The reports required under
19 paragraph (1) shall be attested to by the Chairman
20 and chief financial officer of the Commission.

21 (b) REPORT BY COMPTROLLER GENERAL.—

22 (1) REPORT REQUIRED.—Not later than 6
23 months after the end of the first fiscal year after the
24 date of enactment of this Act, the Comptroller Gen-

1 **SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURI-**
2 **TIES ASSOCIATIONS.**

3 (a) REPORT REQUIRED.—Not later than 2 years
4 after the date of enactment of this Act, and every 3 years
5 thereafter, the Comptroller General of the United States
6 shall submit to the Committee on Banking, Housing, and
7 Urban Affairs of the Senate and the Committee on Finan-
8 cial Services of the House of Representatives a report that
9 includes an evaluation of the oversight by the Commission
10 of national securities associations registered under section
11 15A of the Securities Exchange Act of 1934 (15 U.S.C.
12 78o–3) with respect to—

13 (1) the governance of such national securities
14 associations, including the identification and man-
15 agement of conflicts of interest by such national se-
16 curities associations, together with an analysis of the
17 impact of any conflicts of interest on the regulatory
18 enforcement or rulemaking by such national securi-
19 ties associations;

20 (2) the examinations carried out by the national
21 securities associations, including the expertise of the
22 examiners;

23 (3) the executive compensation practices of such
24 national securities associations;

25 (4) the arbitration services provided by the na-
26 tional securities associations;

1 (5) the review performed by national securities
2 associations of advertising by the members of the
3 national securities associations;

4 (6) the cooperation with and assistance to State
5 securities administrators by the national securities
6 associations to promote investor protection;

7 (7) how the funding of national securities asso-
8 ciations is used to support the mission of the na-
9 tional securities associations, including—

10 (A) the methods of funding;

11 (B) the sufficiency of funds;

12 (C) how funds are invested by the national
13 securities association pending use; and

14 (D) the impact of the methods, sufficiency,
15 and investment of funds on regulatory enforce-
16 ment by the national securities associations;

17 (8) the policies regarding the employment of
18 former employees of the national securities associa-
19 tion by regulated entities;

20 (9) the ongoing effectiveness of the rules of the
21 national securities associations in achieving the goals
22 of the rules;

23 (10) the transparency of governance and activi-
24 ties of the national securities associations; and

1 **SEC. 965. COMPLIANCE EXAMINERS.**

2 Section 4 of the Securities Exchange Act of 1934 (15
3 U.S.C. 78d) is amended by adding at the end the fol-
4 lowing:

5 “(h) EXAMINERS.—

6 “(1) DIVISION OF TRADING AND MARKETS.—

7 The Division of Trading and Markets of the Com-
8 mission, or any successor organizational unit, shall
9 have a staff of examiners who shall—

10 “(A) perform compliance inspections and
11 examinations of entities under the jurisdiction
12 of that Division; and

13 “(B) report to the Director of that Divi-
14 sion.

15 “(2) DIVISION OF INVESTMENT MANAGE-
16 MENT.—The Division of Investment Management of
17 the Commission, or any successor organizational
18 unit, shall have a staff of examiners who shall—

19 “(A) perform compliance inspections and
20 examinations of entities under the jurisdiction
21 of that Division; and

22 “(B) report to the Director of that Divi-
23 sion.”.

1 **SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE**
2 **COMMISSION.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.) is amended by inserting after section 4C (15
5 U.S.C. 78d-3) the following:

6 **“SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.**

7 “(a) SUGGESTION SUBMISSIONS BY COMMISSION EM-
8 PLOYEES.—

9 “(1) HOTLINE ESTABLISHED.—The Inspector
10 General of the Commission shall establish and main-
11 tain a telephone hotline or other electronic means for
12 the receipt of—

13 “(A) suggestions by employees of the Com-
14 mission for improvements in the work effi-
15 ciency, effectiveness, and productivity, and the
16 use of the resources, of the Commission; and

17 “(B) allegations by employees of the Com-
18 mission of waste, abuse, misconduct, or mis-
19 management within the Commission.

20 “(2) CONFIDENTIALITY.—The Inspector Gen-
21 eral shall maintain as confidential—

22 “(A) the identity of any individual who
23 provides information by the means established
24 under paragraph (1), unless the individual re-
25 quests otherwise, in writing; and

1 “(B) at the request of any such individual,
2 any specific information provided by the indi-
3 vidual.

4 “(b) CONSIDERATION OF REPORTS.—The Inspector
5 General shall consider any suggestions or allegations re-
6 ceived by the means established under subsection (a)(1),
7 and shall recommend appropriate action in relation to
8 such suggestions or allegations.

9 “(c) RECOGNITION.—The Inspector General may rec-
10 ognize any employee who makes a suggestion under sub-
11 section (a)(1) (or by other means) that would or does—

12 “(1) increase the work efficiency, effectiveness,
13 or productivity of the Commission; or

14 “(2) reduce waste, abuse, misconduct, or mis-
15 management within the Commission.

16 “(d) REPORT.—The Inspector General of the Com-
17 mission shall submit to Congress an annual report con-
18 taining a description of—

19 “(1) the nature, number, and potential benefits
20 of any suggestions received under subsection (a);

21 “(2) the nature, number, and seriousness of
22 any allegations received under subsection (a);

23 “(3) any recommendations made or actions
24 taken by the Inspector General in response to sub-

1 stantiated allegations received under subsection (a);
2 and

3 “(4) any action the Commission has taken in
4 response to suggestions or allegations received under
5 subsection (a).

6 “(e) FUNDING.—The activities of the Inspector Gen-
7 eral under this subsection shall be funded by the Securities
8 and Exchange Commission Investor Protection Fund es-
9 tablished under section 21F.”.

10 **Subtitle G—Strengthening**
11 **Corporate Governance**

12 **SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN**
13 **UNCONTESTED ELECTIONS.**

14 The Securities Exchange Act of 1934 (15 U.S.C. 78a
15 et seq.) is amended by inserting after section 14A, as
16 added by this title, the following:

17 **“SEC. 14B. CORPORATE GOVERNANCE.**

18 **“(a) CORPORATE GOVERNANCE STANDARDS.—**

19 **“(1) LISTING STANDARDS.—**

20 **“(A) IN GENERAL.—**Not later than 1 year
21 after the date of enactment of this subsection,
22 the Commission shall, by rule, direct the na-
23 tional securities exchanges and national securi-
24 ties associations to prohibit the listing of any

1 security of an issuer that is not in compliance
2 with any of the requirements of this subsection.

3 “(B) OPPORTUNITY TO COMPLY AND
4 CURE.—The rules established under this para-
5 graph shall allow an issuer to have an oppor-
6 tunity to come into compliance with the require-
7 ments of this subsection, and to cure any defect
8 that would be the basis for a prohibition under
9 subparagraph (A), before the imposition of such
10 prohibition.

11 “(C) AUTHORITY TO EXEMPT.—The Com-
12 mission may, by rule or order, exempt an issuer
13 from any or all of the requirements of this sub-
14 section and the rules issued under this sub-
15 section, based on the size of the issuer, the
16 market capitalization of the issuer, the number
17 of shareholders of record of the issuer, or any
18 other criteria, as the Commission deems nec-
19 essary and appropriate in the public interest or
20 for the protection of investors.

21 “(2) COMMISSION RULES ON ELECTIONS.—In
22 an election for membership on the board of directors
23 of an issuer—

1 “(A) that is uncontested, each director who
2 receives a majority of the votes cast shall be
3 deemed to be elected;

4 “(B) that is contested, if the number of
5 nominees exceeds the number of directors to be
6 elected, each director shall be elected by the
7 vote of a plurality of the shares represented at
8 a meeting and entitled to vote; and

9 “(C) if a director of an issuer receives less
10 than a majority of the votes cast in an
11 uncontested election—

12 “(i) the director shall tender the res-
13 ignation of the director to the board of di-
14 rectors; and

15 “(ii) the board of directors—

16 “(I) shall—

17 “(aa) accept the resignation
18 of the director;

19 “(bb) determine a date on
20 which the resignation will take
21 effect, within a reasonable period
22 of time, as established by the
23 Commission; and

24 “(cc) make the date under
25 item (bb) public within a reason-

1 able period of time, as estab-
2 lished by the Commission; or

3 “(II) shall, upon a unanimous
4 vote of the board, decline to accept
5 the resignation and, not later than 30
6 days after the date of the vote (or
7 within such shorter period as the
8 Commission may establish), make
9 public, together with a discussion of
10 the analysis used in reaching the con-
11 clusion, the specific reasons that—

12 “(aa) the board chose not to
13 accept the resignation; and

14 “(bb) the decision was in the
15 best interests of the issuer and
16 the shareholders of the issuer.”.

17 **SEC. 972. PROXY ACCESS.**

18 (a) PROXY ACCESS.—Section 14(a) of the Securities
19 Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

20 (1) by inserting “(1)” after “(a)”; and

21 (2) by adding at the end the following:

22 “(2) The rules and regulations prescribed by the
23 Commission under paragraph (1) may include—

24 “(A) a requirement that a solicitation of proxy,
25 consent, or authorization by (or on behalf of) an

1 issuer include a nominee submitted by a shareholder
2 to serve on the board of directors of the issuer; and

3 “(B) a requirement that an issuer follow a cer-
4 tain procedure in relation to a solicitation described
5 in subparagraph (A).”.

6 (b) REGULATIONS.—The Commission may issue rules
7 permitting the use by shareholders of proxy solicitation
8 materials supplied by an issuer of securities for the pur-
9 pose of nominating individuals to membership on the
10 board of directors of the issuer, under such terms and con-
11 ditions as the Commission determines are in the interests
12 of shareholders and for the protection of investors.

13 **SEC. 973. DISCLOSURES REGARDING CHAIRMAN AND CEO**
14 **STRUCTURES.**

15 Section 14B of the Securities Exchange Act of 1934,
16 as added by section 971, is amended by adding at the end
17 the following:

18 “(b) DISCLOSURES REGARDING CHAIRMAN AND CEO
19 STRUCTURES.—Not later than 180 days after the date of
20 enactment of this subsection, the Commission shall issue
21 rules that require an issuer to disclose in the annual proxy
22 sent to investors the reasons why the issuer has chosen—
23 “(1) the same person to serve as chairman of
24 the board of directors and chief executive officer (or
25 in equivalent positions); or

1 “(2) different individuals to serve as chairman
2 of the board of directors and chief executive officer
3 (or in equivalent positions of the issuer).”.

4 **Subtitle H—Municipal Securities**

5 **SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND** 6 **CHANGES TO THE BOARD OF THE MSRB.**

7 (a) REGISTRATION OF MUNICIPAL SECURITIES
8 DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of
9 the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a))
10 is amended—

11 (1) in paragraph (1)—

12 (A) by inserting “(A)” after “(1)”; and

13 (B) by adding at the end the following:

14 “(B) It shall be unlawful for a municipal
15 advisor to provide advice to or on behalf of a
16 municipal entity with respect to municipal fi-
17 nancial products or the issuance of municipal
18 securities, or to undertake a solicitation of a
19 municipal entity, unless the municipal advisor is
20 registered in accordance with this subsection.”;

21 (2) in paragraph (2), by inserting “or municipal
22 advisor” after “municipal securities dealer” each
23 place that term appears;

1 (3) in paragraph (3), by inserting “or municipal
2 advisor” after “municipal securities dealer” each
3 place that term appears;

4 (4) in paragraph (4), by striking “dealer, or
5 municipal securities dealer or class of brokers, deal-
6 ers, or municipal securities dealers” and inserting
7 “dealer, municipal securities dealer, or municipal ad-
8 visor, or class of brokers, dealers, municipal securi-
9 ties dealers, or municipal advisors”; and

10 (5) by adding at the end the following:

11 “(5) No municipal advisor shall make use of the
12 mails or any means or instrumentality of interstate
13 commerce to provide advice to or on behalf of a mu-
14 nicipal entity or obligated person with respect to mu-
15 nicipal financial products, the issuance of municipal
16 securities, or participation in the issuance of munic-
17 ipal securities, or to undertake a solicitation of a
18 municipal entity or obligated person, in connection
19 with which such municipal advisor engages in any
20 fraudulent, deceptive, or manipulative act or prac-
21 tice.”.

22 (b) MUNICIPAL SECURITIES RULEMAKING BOARD.—
23 Section 15B(b) of the Securities Exchange Act of 1934
24 (15 U.S.C. 78o-4(b)) is amended—

25 (1) in paragraph (1)—

1 (A) in the first sentence, by striking “Not
2 later than” and all that follows through “ap-
3 pointed by the Commission” and inserting “The
4 Municipal Securities Rulemaking Board shall be
5 composed of 15 members, or such other number
6 of members as specified by rules of the Board
7 pursuant to paragraph (2)(B),”;

8 (B) by striking the second sentence and in-
9 serting the following: “The members of the
10 Board shall serve as members for a term of 3
11 years or for such other terms as specified by
12 rules of the Board pursuant to paragraph
13 (2)(B), and shall consist of (A) 8 individuals
14 who are not associated with any broker, dealer,
15 municipal securities dealer, or municipal advisor
16 (other than by reason of being under common
17 control with, or indirectly controlling, any
18 broker or dealer which is not a municipal secu-
19 rities broker or municipal securities dealer), at
20 least 1 of whom shall be representative of insti-
21 tutional or retail investors in municipal securi-
22 ties, at least 1 of whom shall be representative
23 of municipal entities, and at least 1 of whom
24 shall be a member of the public with knowledge
25 of or experience in the municipal industry

1 (which members are hereinafter referred to as
2 ‘public representatives’); and (B) 7 individuals
3 who are associated with a broker, dealer, mu-
4 nicipal securities dealer, or municipal advisor,
5 including at least 1 individual who is associated
6 with and representative of brokers, dealers, or
7 municipal securities dealers that are not banks
8 or subsidiaries or departments or divisions of
9 banks (which members are hereinafter referred
10 to as ‘broker-dealer representatives’), at least 1
11 individual who is associated with and represent-
12 ative of municipal securities dealers which are
13 banks or subsidiaries or departments or divi-
14 sions of banks (which members are hereinafter
15 referred to as ‘bank representatives’), and at
16 least 1 individual who is associated with a mu-
17 nicipal advisor (which member is hereinafter re-
18 ferred to as the ‘advisor representative’).”;

19 (C) in the third sentence, by striking “ini-
20 tial”;

21 (2) in paragraph (2)—

22 (A) in the matter preceding subparagraph
23 (A)—

24 (i) by inserting before the period at
25 the end of the first sentence the following:

1 “and advice provided to or on behalf of
2 municipal entities or obligated persons by
3 brokers, dealers, municipal securities deal-
4 ers, and municipal advisors with respect to
5 municipal financial products, the issuance
6 of municipal securities, or participation in
7 the issuance of municipal securities, and
8 solicitations of municipal entities or obli-
9 gated persons undertaken by brokers, deal-
10 ers, municipal securities dealers, and mu-
11 nicipal advisors”; and

12 (ii) by striking the second sentence;

13 (B) in subparagraph (A)—

14 (i) in the matter preceding clause

15 (i)—

16 (I) by inserting “, and no broker,
17 dealer, municipal securities dealer, or
18 municipal advisor shall provide advice
19 to or on behalf of a municipal entity
20 or obligated person with respect to
21 municipal financial products, the
22 issuance of municipal securities, or
23 participation in the issuance of munic-
24 ipal securities” after “sale of, any mu-
25 nicipal security”; and

1 (II) by inserting “and municipal
2 entities or obligated persons” after
3 “protection of investors”;

4 (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”;

10 (iii) in clause (ii), by adding “and” at
11 the end;

12 (iv) in clause (iii), by striking “; and”
13 and inserting a period; and

14 (v) by striking clause (iv);

15 (C) in subparagraph (B), by striking
16 “nominations and elections” and all that follows
17 through “specify” and inserting “nominations
18 and elections of public representatives, broker-dealer representatives, bank representatives,
19 and advisor representatives. Such rules shall
20 provide that the membership of the Board shall
21 at all times be as evenly divided in number as
22 possible between entities or individuals who are
23 subject to regulation by the Board and entities
24 or individuals not subject to regulation by the
25

1 Board, provided, however, that a majority of
2 the members of the Board shall at all times be
3 public representatives. Such rules shall also
4 specify”;

5 (D) in subparagraph (C)—

6 (i) by inserting “and municipal finan-
7 cial products” after “municipal securities”
8 the first two times that term appears;

9 (ii) by inserting “, municipal entities,
10 obligated persons,” before “and the public
11 interest”;

12 (iii) by striking “between” and insert-
13 ing “among”;

14 (iv) by striking “issuers, municipal se-
15 curities brokers, or municipal securities
16 dealers, to fix” and inserting “municipal
17 entities, obligated persons, municipal secu-
18 rities brokers, municipal securities dealers,
19 or municipal advisors, to fix”; and

20 (v) by striking “brokers or municipal
21 securities dealers, to regulate” and insert-
22 ing “brokers, municipal securities dealers,
23 or municipal advisors, to regulate”;

24 (E) in subparagraph (D)—

1 (i) by inserting “and advice con-
2 cerning municipal financial products” after
3 “transactions in municipal securities”;

4 (ii) by striking “That no” and insert-
5 ing “that no”;

6 (iii) by inserting “municipal advisor,”
7 before “or person associated”; and

8 (iv) by striking “a municipal securi-
9 ties broker or municipal securities dealer
10 may be compelled” and inserting “a mu-
11 nicipal securities broker, municipal securi-
12 ties dealer, or municipal advisor may be
13 compelled”;

14 (F) in subparagraph (E)—

15 (i) by striking “municipal securities
16 brokers and municipal securities dealers”
17 and inserting “municipal securities bro-
18 kers, municipal securities dealers, and mu-
19 nicipal advisors”; and

20 (ii) by striking “municipal securities
21 broker or municipal securities dealer” and
22 inserting “municipal securities broker, mu-
23 nicipal securities dealer, or municipal advi-
24 sor”;

1 (G) in subparagraph (G), by striking “mu-
2 nicipal securities brokers and municipal securi-
3 ties dealers” and inserting “municipal securities
4 brokers, municipal securities dealers, and mu-
5 nicipal advisors”;

6 (H) in subparagraph (J)—

7 (i) by striking “municipal securities
8 broker and each municipal securities deal-
9 er” and inserting “municipal securities
10 broker, municipal securities dealer, and
11 municipal advisor”; and

12 (ii) by striking the period at the end
13 of the second sentence and inserting “,
14 which may include charges for failure to
15 submit to the Board required information
16 or documents to any information system
17 operated by the Board in a full, accurate,
18 or timely manner, or any other failure to
19 comply with the rules of the Board.”;

20 (I) in subparagraph (K)—

21 (i) by inserting “broker, dealer, or”
22 before “municipal securities dealer” each
23 place that term appears; and

24 (ii) by striking “municipal securities
25 investment portfolio” and inserting “re-

1 lated account of a broker, dealer, or mu-
2 nicipal securities dealer”; and

3 (J) by adding at the end the following:

4 “(L) provide continuing education require-
5 ments for municipal advisors.

6 “(M) professional standards.

7 “(N) not impose an inappropriate regu-
8 latory burden on small municipal advisors.”;

9 (3) by redesignating paragraph (3) as para-
10 graph (7); and

11 (4) by inserting after paragraph (2) the fol-
12 lowing:

13 “(3) The Board, in conjunction with or on be-
14 half of any Federal financial regulator or self-regu-
15 latory organization, may—

16 “(A) establish information systems; and

17 “(B) assess such reasonable fees and
18 charges for the submission of information to, or
19 the receipt of information from, such systems
20 from any persons which systems may be devel-
21 oped for the purposes of serving as a repository
22 of information from municipal market partici-
23 pants or otherwise in furtherance of the pur-
24 poses of the Board, a Federal financial regu-
25 lator, or a self-regulatory organization.

1 “(4) The Board shall provide guidance and as-
2 sistance in the enforcement of, and examination for,
3 compliance with the rules of the Board to the Com-
4 mission, a registered securities association under
5 section 15A, or any other appropriate regulatory
6 agency, as applicable.”.

7 (c) DISCIPLINE OF DEALERS AND MUNICIPAL ADVI-
8 SORS AND OTHER MATTERS.—Section 15B(c) of the Se-
9 curities Exchange Act of 1934 (15 U.S.C. 78o-4(c)) is
10 amended—

11 (1) in paragraph (1), by inserting “, and no
12 broker, dealer, municipal securities dealer, or munic-
13 ipal advisor shall make use of the mails or any
14 means or instrumentality of interstate commerce to
15 provide advice to or on behalf of a municipal entity
16 or obligated person with respect to municipal finan-
17 cial products, the issuance of municipal securities, or
18 participation in the issuance of municipal securities,
19 or to undertake a solicitation of a municipal entity
20 or obligated person,” after “any municipal security”;

21 (2) in paragraph (2), by inserting “or municipal
22 advisor” after “municipal securities dealer” each
23 place that term appears;

24 (3) in paragraph (3)—

1 (A) by inserting “or municipal entities”
2 after “protection of investors” each place that
3 term appears; and

4 (B) by inserting “or municipal advisor”
5 after “municipal securities dealer” each place
6 that term appears;

7 (4) in paragraph (4), by inserting “or municipal
8 advisor” after “municipal securities dealer” each
9 place that term appears;

10 (5) in paragraph (6)(B), by inserting “or mu-
11 nicipal entities” after “protection of investors”;

12 (6) in paragraph (7)—

13 (A) in subparagraph (A)—

14 (i) in clause (i), by striking “; and”
15 and inserting a semicolon;

16 (ii) in clause (ii), by striking the pe-
17 riod and inserting “; and”; and

18 (iii) by adding at the end the fol-
19 lowing:

20 “(iii) the Commission, or its designee,
21 in the case of municipal advisors.”.

22 (B) in subparagraph (B), by inserting “or
23 municipal entities” after “protection of inves-
24 tors”; and

25 (7) by adding at the end the following:

1 “(9)(A) Fines collected by the Commission for
2 violations of the rules of the Board shall be equally
3 divided between the Commission and the Board.

4 “(B) Fines collected by a registered securities
5 association under section 15A(7) with respect to vio-
6 lations of the rules of the Board shall be accounted
7 for by such registered securities association sepa-
8 rately from other fines collected under section
9 15A(7) and shall be allocated between such reg-
10 istered securities association and the Board at the
11 direction of the Commission.”.

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 insert “through a municipal securities broker,
18 municipal securities dealer, municipal advisor, or
19 otherwise”; and

20 (2) by inserting “or municipal advisors” before
21 “to furnish”.

22 (e) DEFINITIONS.—Section 15B of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78o-4) is amended by add-
24 ing at the end the following:

25 “(e) DEFINITIONS.—For purposes of this section—

1 “(1) the term ‘Board’ means the Municipal Se-
2 curities Rulemaking Board established under sub-
3 section (b)(1);

4 “(2) the term ‘guaranteed investment contract’
5 includes any investment that has specified with-
6 drawal or reinvestment provisions and a specifically
7 negotiated or bid interest rate, and also includes any
8 agreement to supply investments on 2 or more fu-
9 ture dates, such as a forward supply contract;

10 “(3) the term ‘investment strategies’ includes
11 plans or programs for the investment of the proceeds
12 of municipal securities that are not municipal de-
13 rivatives, guaranteed investment contracts, and the
14 recommendation of and brokerage of municipal es-
15 crow investments;

16 “(4) the term ‘municipal advisor’ means a per-
17 son (who is not a municipal entity or an employee
18 of a municipal entity) that—

19 “(A) provides advice to or on behalf of a
20 municipal entity with respect to municipal fi-
21 nancial products or the issuance of municipal
22 securities, including advice with respect to the
23 structure, timing, terms, and other similar mat-
24 ters concerning such financial products or
25 issues; or

1 “(B) undertakes a solicitation of a munic-
2 ipal entity (including financial advisors, guaran-
3 teed investment contract brokers, third-party
4 marketers, placement agents, solicitors, finders,
5 and swap advisors, but not including registered
6 brokers, dealers, and municipal securities deal-
7 ers, attorneys offering legal advice or providing
8 services that are of a traditional legal nature
9 and engineers providing engineering advice);

10 “(5) the term ‘municipal derivative’ means any
11 financial instrument contract designed to hedge a
12 risk (including interest rate swaps, basis swaps,
13 credit default swaps, caps, floors, and collars);

14 “(6) the term ‘municipal financial product’
15 means municipal derivatives and investment strate-
16 gies;

17 “(7) the term ‘rules of the Board’ means the
18 rules proposed and adopted by the Board under sub-
19 section (b)(2);

20 “(8) the term ‘person associated with a munic-
21 ipal advisor’ or ‘associated person of an advisor’
22 means—

23 “(A) any partner, officer, director, or
24 branch manager of such municipal advisor (or

1 any person occupying a similar status or per-
2 forming similar functions);

3 “(B) any other employee of such municipal
4 advisor who is engaged in the management, di-
5 rection, supervision, or performance of any ac-
6 tivities relating to the provision of advice to or
7 on behalf of a municipal entity or obligated per-
8 son with respect to municipal financial prod-
9 ucts, the issuance of municipal securities, or
10 participation in the issuance of municipal secu-
11 rities; and

12 “(C) any person directly or indirectly con-
13 trolling, controlled by, or under common control
14 with such municipal advisor;

15 “(9) the term ‘municipal entity’ means any
16 State, political subdivision of a State, or municipal
17 corporate instrumentality of a State, including—

18 “(A) any agency, authority, or instrumen-
19 tality of the State, political subdivision, or mu-
20 nicipal corporate instrumentality;

21 “(B) any plan, program, or pool of assets
22 sponsored or established by the State, political
23 subdivision, or municipal corporate instrumen-
24 tality or any agency, authority, or instrumen-
25 tality thereof; and

1 “(C) any other issuer of municipal securi-
2 ties;

3 “(10) the term ‘solicitation of a municipal enti-
4 ty or obligated person’ means a direct or indirect
5 communication with a municipal entity or obligated
6 person made by a person, for direct or indirect com-
7 pensation, on behalf of a broker, dealer, municipal
8 securities dealer, municipal advisor, or investment
9 adviser (as defined in section 202 of the Investment
10 Advisers Act of 1940) that does not control, is not
11 controlled by, or is not under common control, with
12 the person undertaking such solicitation for the pur-
13 pose of obtaining or retaining an engagement by a
14 municipal entity or obligated person of a broker,
15 dealer, municipal securities dealer, or municipal ad-
16 visor for or in connection with municipal financial
17 products, the issuance of municipal securities, or
18 participation in the issuance of municipal securities,
19 or of an investment adviser to provide investment
20 advisory services to or on behalf of a municipal enti-
21 ty; and

22 “(11) the term ‘obligated person’ means any
23 person, including an issuer of municipal securities,
24 who is either generally or through an enterprise,
25 fund, or account of such person, committed by con-

1 tract or other arrangement to support the payment
2 of all or part of the obligations on the municipal se-
3 curities to be sold in an offering of municipal securi-
4 ties.”.

5 (f) REGISTERED SECURITIES ASSOCIATION.—Section
6 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C.
7 78o-3(b)) is amended by adding at the end the following:

8 “(15) The rules of the association provide that
9 the association shall—

10 “(A) request guidance from the Municipal
11 Securities Rulemaking Board in interpretation
12 of the rules of the Municipal Securities Rule-
13 making Board; and

14 “(B) provide information to the Municipal
15 Securities Rulemaking Board about the enforce-
16 ment actions and examinations of the associa-
17 tion under section 15B(b)(2)(E), so that the
18 Municipal Securities Rulemaking Board may—

19 “(i) assist in such enforcement actions
20 and examinations; and

21 “(ii) evaluate the ongoing effective-
22 ness of the rules of the Board.”.

23 (g) REGISTRATION AND REGULATION OF BROKERS
24 AND DEALERS.—Section 15 of the Securities Exchange
25 Act of 1934 is amended—

1 (1) in subsection (b)(4), by inserting “municipal advisor,” after “municipal securities dealer”
2 each place that term appears; and

3 (2) in subsection (c), by inserting “broker, dealer, or” before “municipal securities dealer” each
4 place that term appears.

5 (h) ACCOUNTS AND RECORDS, REPORTS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS.—Section 17(a)(1) of the Securities Exchange Act of 1934 is
6 amended by inserting “municipal advisor,” after “municipal securities dealer”.

7 (i) SAVINGS CLAUSE.—Notwithstanding any provision of the Over-the-Counter Derivatives Markets Act of
8 2010, or any amendment made pursuant to such Act, the provisions of this section, and the amendments made pursuant to this section, shall apply to any municipal derivative.
9

10 (j) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on October
11 1, 2010.

12 **SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
13 **OF INCREASED DISCLOSURE TO INVESTORS.**

14 (a) STUDY.—The Comptroller General of the United States shall conduct a study and review of the disclosure
15 required to be made by issuers of municipal securities.

1 (b) SUBJECTS FOR EVALUATION.—In conducting the
2 study under subsection (a), the Comptroller General of the
3 United States shall—

4 (1) broadly describe—

5 (A) the size of the municipal securities
6 markets and the issuers and investors; and

7 (B) the disclosures provided by issuers to
8 investors;

9 (2) compare the amount, frequency, and quality
10 of disclosures that issuers of municipal securities are
11 required by law to provide for the benefit of munic-
12 ipal securities holders, including the amount of and
13 frequency of disclosures actually provided by issuers
14 of municipal securities, with the amount of and fre-
15 quency of disclosures that issuers of corporate secu-
16 rities provide for the benefit of corporate securities
17 holders, taking into account the differences between
18 issuers of municipal securities and issuers of cor-
19 porate securities;

20 (3) evaluate the costs and benefits to various
21 types of issuers of municipal securities of requiring
22 issuers of municipal bonds to provide additional fi-
23 nancial disclosures for the benefit of investors; and

24 (4) make recommendations relating to disclo-
25 sure requirements for municipal issuers, including

1 the advisability of the repeal or retention of section
2 15B(d) of the Securities Exchange Act of 1934 (15
3 U.S.C. 78o-4(d)) (commonly known as the “Tower
4 Amendment”).

5 (c) REPORT.—Not later than 1 year after the date
6 of enactment of this Act, the Comptroller General of the
7 United States shall submit a report to Congress on the
8 results of the study conducted under subsection (a), in-
9 cluding recommendations for how to improve disclosure by
10 issuers of municipal securities.

11 **SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
12 **ON THE MUNICIPAL SECURITIES MARKETS.**

13 (a) STUDY.—The Comptroller General of the United
14 States shall conduct a study of the municipal securities
15 markets.

16 (b) REPORT.—Not later than 180 days after the date
17 of enactment of this Act, the Comptroller General of the
18 United States shall submit a report to the Committee on
19 Banking, Housing, and Urban Affairs of the Senate, and
20 the Committee on Financial Services of the House of Rep-
21 resentatives, with copies to the Special Committee on
22 Aging of the Senate and the Commission, on the results
23 of the study conducted under subsection (a), including—

24 (1) an analysis of the mechanisms for trading,
25 quality of trade executions, market transparency,

1 trade reporting, price discovery, settlement clearing,
2 and credit enhancements;

3 (2) the needs of the markets and investors and
4 the impact of recent innovations;

5 (3) recommendations for how to improve the
6 transparency, efficiency, fairness, and liquidity of
7 trading in the municipal securities market, including
8 with reference to items listed in paragraph (1); and

9 (4) potential uses of derivatives in the munic-
10 ipal markets.

11 (c) RESPONSES.—Not later than 180 days after re-
12 ceipt of the report required under subsection (b), the Com-
13 mission shall submit a response to the Committee on
14 Banking, Housing, and Urban Affairs of the Senate, and
15 the Financial Services Committee of the House of Rep-
16 resentatives, with a copy to the Special Committee on
17 Aging of the Senate, stating the actions the Commission
18 has taken in response to the recommendations contained
19 in such report.

20 **SEC. 978. STUDY OF FUNDING FOR GOVERNMENT AC-**
21 **COUNTING STANDARDS BOARD.**

22 (a) STUDY.—The Commission shall conduct a study
23 that evaluates—

1 (1) the role and importance of the Government
2 Accounting Standards Board in the municipal secu-
3 rities markets;

4 (2) the manner in which the Government Ac-
5 counting Standards Board is funded, and how such
6 manner of funding affects the financial information
7 available to securities investors;

8 (3) the advisability of changes to the manner in
9 which the Government Accounting Standards Board
10 is funded; and

11 (4) whether legislative changes to the manner
12 in which the Government Accounting Standards
13 Board is funded are necessary for the benefit of in-
14 vestors and in the public interest.

15 (b) CONSULTATION.—In conducting the study re-
16 quired under subsection (a), the Commission shall consult
17 with State and local government financial officers.

18 (c) REPORT.—Not later than 270 days after the date
19 of enactment of this Act, the Commission shall submit to
20 the Committee on Banking, Housing, and Urban Affairs
21 of the Senate and the Committee on Financial Services
22 of the House of Representatives a report on the study re-
23 quired under subsection (a).

1 **SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.**

2 (a) IN GENERAL.—There shall be in the Commission
3 an Office of Municipal Securities, which shall—

4 (1) administer the rules of the Commission with
5 respect to the practices of municipal securities bro-
6 kers and dealers, municipal securities advisors, mu-
7 nicipal securities investors, and municipal securities
8 issuers; and

9 (2) coordinate with the Municipal Securities
10 Rulemaking Board for rulemaking and enforcement
11 actions as required by law.

12 (b) DIRECTOR OF THE OFFICE.—The head of the Of-
13 fice of Municipal Securities shall be the Director, who
14 shall report to the Chairman.

15 (c) STAFFING.—

16 (1) IN GENERAL.—The Office of Municipal Se-
17 curities shall be staffed sufficiently to carry out the
18 requirements of this section.

19 (2) REQUIREMENT.—The staff of the Office of
20 Municipal Securities shall include individuals with
21 knowledge of and expertise in municipal finance.

1 **Subtitle I—Public Company Ac-**
2 **counting Oversight Board, Port-**
3 **folio Margining, and Other Mat-**
4 **ters**

5 **SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION**
6 **WITH FOREIGN AUTHORITIES.**

7 (a) DEFINITION.—Section 2(a) of the Sarbanes-
8 Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by
9 adding at the end the following:

10 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-
11 ITY.—The term ‘foreign auditor oversight authority’
12 means any governmental body or other entity em-
13 powered by a foreign government to conduct inspec-
14 tions of public accounting firms or otherwise to ad-
15 minister or enforce laws related to the regulation of
16 public accounting firms.”.

17 (b) AVAILABILITY TO SHARE INFORMATION.—Sec-
18 tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15
19 U.S.C. 7215(b)(5)) is amended by adding at the end the
20 following:

21 “(C) AVAILABILITY TO FOREIGN OVER-
22 SIGHT AUTHORITIES.—Without the loss of its
23 status as confidential and privileged in the
24 hands of the Board, all information referred to
25 in subparagraph (A) that relates to a public ac-

1 (c) CONFORMING AMENDMENT.—Section
2 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15
3 U.S.C. 7215(b)(5)(A)) is amended by striking “subpara-
4 graph (B)” and inserting “subparagraphs (B) and (C)”.

5 **SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.**

6 (a) DEFINITIONS.—

7 (1) DEFINITIONS AMENDED.—Title I of the
8 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et
9 seq.) is amended by adding at the end the following
10 new section:

11 **“SEC. 110. DEFINITIONS.**

12 “For the purposes of this title, the following defini-
13 tions shall apply:

14 “(1) AUDIT.—The term ‘audit’ means an exam-
15 ination of the financial statements, reports, docu-
16 ments, procedures, controls, or notices of any issuer,
17 broker, or dealer by an independent public account-
18 ing firm in accordance with the rules of the Board
19 or the Commission, for the purpose of expressing an
20 opinion on the financial statements or providing an
21 audit report.

22 “(2) AUDIT REPORT.—The term ‘audit report’
23 means a document, report, notice, or other record—

24 “(A) prepared following an audit per-
25 formed for purposes of compliance by an issuer,

1 broker, or dealer with the requirements of the
2 securities laws; and

3 “(B) in which a public accounting firm ei-
4 ther—

5 “(i) sets forth the opinion of that firm
6 regarding a financial statement, report, no-
7 tice, or other document, procedures, or
8 controls; or

9 “(ii) asserts that no such opinion can
10 be expressed.

11 “(3) BROKER.—The term ‘broker’ means a
12 broker (as such term is defined in section 3(a)(4) of
13 the Securities Exchange Act of 1934 (15 U.S.C.
14 78c(a)(4))) that is required to file a balance sheet,
15 income statement, or other financial statement
16 under section 17(e)(1)(A) of such Act (15 U.S.C.
17 78q(e)(1)(A)), where such balance sheet, income
18 statement, or financial statement is required to be
19 certified by a registered public accounting firm.

20 “(4) DEALER.—The term ‘dealer’ means a
21 dealer (as such term is defined in section 3(a)(5) of
22 the Securities Exchange Act of 1934 (15 U.S.C.
23 78c(a)(5))) that is required to file a balance sheet,
24 income statement, or other financial statement
25 under section 17(e)(1)(A) of such Act (15 U.S.C.

1 78q(e)(1)(A)), where such balance sheet, income
2 statement, or financial statement is required to be
3 certified by a registered public accounting firm.

4 “(5) PROFESSIONAL STANDARDS.—The term
5 ‘professional standards’ means—

6 “(A) accounting principles that are—

7 “(i) established by the standard set-
8 ting body described in section 19(b) of the
9 Securities Act of 1933, as amended by this
10 Act, or prescribed by the Commission
11 under section 19(a) of that Act (15 U.S.C.
12 17a(s)) or section 13(b) of the Securities
13 Exchange Act of 1934 (15 U.S.C. 78a(m));
14 and

15 “(ii) relevant to audit reports for par-
16 ticular issuers, brokers, or dealers, or dealt
17 with in the quality control system of a par-
18 ticular registered public accounting firm;
19 and

20 “(B) auditing standards, standards for at-
21 testation engagements, quality control policies
22 and procedures, ethical and competency stand-
23 ards, and independence standards (including
24 rules implementing title II) that the Board or
25 the Commission determines—

1 “(i) relate to the preparation or
2 issuance of audit reports for issuers, bro-
3 kers, or dealers; and

4 “(ii) are established or adopted by the
5 Board under section 103(a), or are pro-
6 mulgated as rules of the Commission.

7 “(6) SELF-REGULATORY ORGANIZATION.—The
8 term ‘self-regulatory organization’ has the same
9 meaning as in section 3(a) of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78c(a)).”.

11 (2) CONFORMING AMENDMENT.—Section 2(a)
12 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
13 7201(a)) is amended in the matter preceding para-
14 graph (1), by striking “In this” and inserting “Ex-
15 cept as otherwise specifically provided in this Act, in
16 this”.

17 (b) ESTABLISHMENT AND ADMINISTRATION OF THE
18 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
19 Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
20 7211) is amended—

21 (1) by striking “issuers” each place that term
22 appears and inserting “issuers, brokers, and deal-
23 ers”; and

24 (2) in subsection (a)—

1 (A) by striking “public companies” and in-
2 serting “companies”; and

3 (B) by striking “for companies the securi-
4 ties of which are sold to, and held by and for,
5 public investors”.

6 (c) REGISTRATION WITH THE BOARD.—Section 102
7 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is
8 amended—

9 (1) in subsection (a)—

10 (A) by striking “Beginning 180” and all
11 that follows through “101(d), it” and inserting
12 “It”; and

13 (B) by striking “issuer” and inserting
14 “issuer, broker, or dealer”;

15 (2) in subsection (b)—

16 (A) in paragraph (2)(A), by striking
17 “issuers” and inserting “issuers, brokers, and
18 dealers”; and

19 (B) by striking “issuer” each place that
20 term appears and inserting “issuer, broker, or
21 dealer”.

22 (d) AUDITING AND INDEPENDENCE.—Section 103(a)
23 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a))
24 is amended—

1 (1) in paragraph (1), by striking “and such eth-
2 ics standards” and inserting “such ethics standards,
3 and such independence standards”;

4 (2) in paragraph (2)(A)(iii), by striking “de-
5 scribe in each audit report” and inserting “in each
6 audit report for an issuer, describe”; and

7 (3) in paragraph (2)(B)(i), by striking
8 “issuers” and inserting “issuers, brokers, and deal-
9 ers”.

10 (e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-
11 ING FIRMS.—Section 104 of the Sarbanes-Oxley Act of
12 2002 (15 U.S.C. 7214) is amended—

13 (1) in subsection (a), by striking “issuers” and
14 inserting “issuers, brokers, and dealers”; and

15 (2) in subsection (b)(1)—

16 (A) by striking “audit reports for” each
17 place that term appears and inserting “audit
18 reports on annual financial statements for”;

19 (B) in subparagraph (A), by striking
20 “and” at the end;

21 (C) in subparagraph (B), by striking the
22 period at the end and inserting “; and”; and

23 (D) by adding at the end the following:

24 “(C) with respect to each registered public
25 accounting firm that regularly provides audit

1 reports and that is not described in subpara-
2 graph (A) or (B), on a basis determined by the
3 Board, by rule, that is consistent with the pub-
4 lic interest and protection of investors.”.

5 (f) INVESTIGATIONS AND DISCIPLINARY PRO-
6 CEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley
7 Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

8 (1) in the subparagraph heading, by inserting
9 “, BROKER, OR DEALER” after “ISSUER”;

10 (2) by striking “any issuer” each place that
11 term appears and inserting “any issuer, broker, or
12 dealer”; and

13 (3) by striking “an issuer under this sub-
14 section” and inserting “a registered public account-
15 ing firm under this subsection”.

16 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
17 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
18 7216(a)) is amended—

19 (1) in paragraph (1), by striking “issuer” and
20 inserting “issuer, broker, or dealer”; and

21 (2) in paragraph (2), by striking “issuers” and
22 inserting “issuers, brokers, or dealers”.

23 (h) FUNDING.—Section 109 of the Sarbanes-Oxley
24 Act of 2002 (15 U.S.C. 7219) is amended—

1 (1) in subsection (c)(2), by striking “subsection
2 (i)” and inserting “subsection (j)”;

3 (2) in subsection (d)—

4 (A) in paragraph (2), by striking “allowing
5 for differentiation among classes of issuers, as
6 appropriate” and inserting “and among brokers
7 and dealers, in accordance with subsection (h),
8 and allowing for differentiation among classes
9 of issuers, brokers and dealers, as appropriate”;
10 and

11 (B) by adding at the end the following:

12 “(3) **BROKERS AND DEALERS.**—The Board
13 shall begin the allocation, assessment, and collection
14 of fees under paragraph (2) with respect to brokers
15 and dealers with the payment of support fees to
16 fund the first full fiscal year beginning after the ef-
17 fective date of this paragraph.”;

18 (3) by redesignating subsections (h), (i), and (j)
19 as subsections (i), (j), and (k), respectively; and

20 (4) by inserting after subsection (g) the fol-
21 lowing:

22 “(h) **ALLOCATION OF ACCOUNTING SUPPORT FEES**
23 **AMONG BROKERS AND DEALERS.**—

24 “(1) **OBLIGATION TO PAY.**—Each broker or
25 dealer shall pay to the Board the annual accounting

1 support fee allocated to such broker or dealer under
2 this section.

3 “(2) ALLOCATION.—Any amount due from a
4 broker or dealer (or from a particular class of bro-
5 kers and dealers) under this section shall be allo-
6 cated among brokers and dealers and payable by the
7 broker or dealer (or the brokers and dealers in the
8 particular class, as applicable).

9 “(3) PROPORTIONALITY.—The amount due
10 from a broker or dealer shall be in proportion to the
11 net capital of the broker or dealer, compared to the
12 total net capital of all brokers and dealers, in ac-
13 cordance with rules issued by the Board.”.

14 (i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-
15 LATORY ORGANIZATION.—Section 105(b)(4)(B) of the
16 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B))
17 is amended—

18 (1) by redesignating clauses (ii) and (iii) as
19 clauses (iii) and (iv), respectively; and

20 (2) by inserting after clause (i) the following:

21 “(ii) to a self-regulatory organization,
22 in the case of an investigation that con-
23 cerns an audit report for a broker or deal-
24 er that is under the jurisdiction of such
25 self-regulatory organization;”.

1 (j) USE OF DOCUMENTS RELATED TO AN INSPEC-
2 TION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of the
3 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii))
4 is amended—

5 (1) in subclause (III), by striking “and” at the
6 end;

7 (2) in subclause (IV), by striking the comma
8 and inserting “; and”; and

9 (3) by inserting after subclause (IV) the fol-
10 lowing:

11 “(V) a self-regulatory organiza-
12 tion, with respect to an audit report
13 for a broker or dealer that is under
14 the jurisdiction of such self-regulatory
15 organization,”.

16 (k) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect 180 days after the date of
18 enactment of this Act.

19 **SEC. 983. PORTFOLIO MARGINING.**

20 (a) ADVANCES.—Section 9(a)(1) of the Securities In-
21 vestor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(1))
22 is amended by inserting “or options on commodity futures
23 contracts” after “claim for securities”.

1 (b) DEFINITIONS.—Section 16 of the Securities In-
2 vestor Protection Act of 1970 (15 U.S.C. 78*lll*) is amend-
3 ed—

4 (1) by striking paragraph (2) and inserting the
5 following:

6 “(2) CUSTOMER.—

7 “(A) IN GENERAL.—The term ‘customer’
8 of a debtor means any person (including any
9 person with whom the debtor deals as principal
10 or agent) who has a claim on account of securi-
11 ties received, acquired, or held by the debtor in
12 the ordinary course of its business as a broker
13 or dealer from or for the securities accounts of
14 such person for safekeeping, with a view to sale,
15 to cover consummated sales, pursuant to pur-
16 chases, as collateral, security, or for purposes of
17 effecting transfer.

18 “(B) INCLUDED PERSONS.—The term
19 ‘customer’ includes—

20 “(i) any person who has deposited
21 cash with the debtor for the purpose of
22 purchasing securities;

23 “(ii) any person who has a claim
24 against the debtor for cash, securities, fu-
25 tures contracts, or options on futures con-

1 tracts received, acquired, or held in a port-
2 folio margining account carried as a secu-
3 rities account pursuant to a portfolio mar-
4 gining program approved by the Commis-
5 sion; and

6 “(iii) any person who has a claim
7 against the debtor arising out of sales or
8 conversions of such securities.

9 “(C) EXCLUDED PERSONS.—The term
10 ‘customer’ does not include any person, to the
11 extent that—

12 “(i) the claim of such person arises
13 out of transactions with a foreign sub-
14 sidiary of a member of SIPC; or

15 “(ii) such person has a claim for cash
16 or securities which by contract, agreement,
17 or understanding, or by operation of law,
18 is part of the capital of the debtor, or is
19 subordinated to the claims of any or all
20 creditors of the debtor, notwithstanding
21 that some ground exists for declaring such
22 contract, agreement, or understanding void
23 or voidable in a suit between the claimant
24 and the debtor.”;

25 (2) in paragraph (4)—

1 (A) in subparagraph (C), by striking
2 “and” at the end;

3 (B) by redesignating subparagraph (D) as
4 subparagraph (E); and

5 (C) by inserting after subparagraph (C)
6 the following:

7 “(D) in the case of a portfolio margining
8 account of a customer that is carried as a secu-
9 rities account pursuant to a portfolio margining
10 program approved by the Commission, a futures
11 contract or an option on a futures contract re-
12 ceived, acquired, or held by or for the account
13 of a debtor from or for such portfolio margining
14 account, and the proceeds thereof; and”;

15 (3) in paragraph (9), in the matter following
16 subparagraph (L), by inserting after “Such term”
17 the following: “includes revenues earned by a broker
18 or dealer in connection with a transaction in the
19 portfolio margining account of a customer carried as
20 securities accounts pursuant to a portfolio margining
21 program approved by the Commission. Such term”;
22 and

23 (4) in paragraph (11)

24 (A) in subparagraph (A)—

1 (i) by striking “filing date, all” and
2 all that follows through the end of the sub-
3 paragraph and inserting the following: “fil-
4 ing date—

5 “(i) all securities positions of such
6 customer (other than customer name secu-
7 rities reclaimed by such customer); and

8 “(ii) all positions in futures contracts
9 and options on futures contracts held in a
10 portfolio margining account carried as a
11 securities account pursuant to a portfolio
12 margining program approved by the Com-
13 mission, including all property
14 collateralizing such positions, to the extent
15 that such property is not otherwise in-
16 cluded herein; minus”; and

17 (B) in the matter following subparagraph
18 (C), by striking “In determining” and inserting
19 the following: “A claim for a commodity futures
20 contract received, acquired, or held in a port-
21 folio margining account pursuant to a portfolio
22 margining program approved by the Commis-
23 sion or a claim for a security futures contract,
24 shall be deemed to be a claim with respect to
25 such contract as of the filing date, and such

1 claim shall be treated as a claim for cash. In
2 determining”.

3 **SEC. 984. LOAN OR BORROWING OF SECURITIES.**

4 (a) RULEMAKING AUTHORITY.—Section 10 of the Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78j) is amended
6 by adding at the end the following:

7 “(e)(1) To effect, accept, or facilitate a trans-
8 action involving the loan or borrowing of securities
9 in contravention of such rules and regulations as the
10 Commission may prescribe as necessary or appro-
11 priate in the public interest or for the protection of
12 investors.

13 “(2) Nothing in paragraph (1) may be con-
14 strued to limit the authority of the appropriate Fed-
15 eral banking agency (as defined in section 3(q) of
16 the Federal Deposit Insurance Act (12 U.S.C.
17 1813(q))), the National Credit Union Administra-
18 tion, or any other Federal department or agency
19 having a responsibility under Federal law to pre-
20 scribe rules or regulations restricting transactions
21 involving the loan or borrowing of securities in order
22 to protect the safety and soundness of a financial in-
23 stitution or to protect the financial system from sys-
24 temic risk.”.

1 (b) RULEMAKING REQUIRED.—Not later than 1 year
2 after the date of enactment of this Act, the Commission
3 shall promulgate rules that are designed to increase the
4 transparency of information available to brokers, dealers,
5 and investors, with respect to the loan or borrowing of
6 securities.

7 **SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURI-**
8 **TIES LAWS.**

9 (a) SECURITIES ACT OF 1933.—The Securities Act
10 of 1933 (15 U.S.C. 77a et seq.) is amended—

11 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
12 striking “individual;” and inserting “individual;”;

13 (2) in section 18 (15 U.S.C. 77r)—

14 (A) in subsection (b)(1)(C), by striking “is
15 a security” and inserting “a security”; and

16 (B) in subsection (c)(2)(B)(i), by striking
17 “State, or” and inserting “State or”;

18 (3) in section 19(d)(6)(A) (15 U.S.C.
19 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
20 and inserting “in paragraph (1) or (3)”; and

21 (4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–
22 2(c)(1)(B)(ii)), by striking “business entity;” and in-
23 serting “business entity;”.

1 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
3 is amended—

4 (1) in section 2 (15 U.S.C. 78b), by striking
5 “affected” and inserting “effected”;

6 (2) in section 3 (15 U.S.C. 78c)—

7 (A) in subsection (a)(55)(A), by striking
8 “section 3(a)(12) of the Securities Exchange
9 Act of 1934” and inserting “section 3(a)(12) of
10 this title”; and

11 (B) in subsection (g), by striking “com-
12 pany, account person, or entity” and inserting
13 “company, account, person, or entity”;

14 (3) in section 10A(i)(1)(B) (15 U.S.C. 78j-
15 1(i)(1)(B))—

16 (A) in the subparagraph heading, by strik-
17 ing “MINIMUS” and inserting “MINIMIS”; and

18 (B) in clause (i), by striking “nonaudit”
19 and inserting “non-audit”;

20 (4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
21 by striking “earning statement” and inserting
22 “earnings statement”;

23 (5) in section 15 (15 U.S.C. 78o)—

24 (A) in subsection (b)(1)—

1 (i) in subparagraph (B), by striking
2 “The order granting” and all that follows
3 through “from such membership.”; and

4 (ii) in the undesignated matter imme-
5 diately following subparagraph (B), by in-
6 sserting after the first sentence the fol-
7 lowing: “The order granting registration
8 shall not be effective until such broker or
9 dealer has become a member of a reg-
10 istered securities association, or until such
11 broker or dealer has become a member of
12 a national securities exchange, if such
13 broker or dealer effects transactions solely
14 on that exchange, unless the Commission
15 has exempted such broker or dealer, by
16 rule or order, from such membership.”;

17 (6) in section 15C(a)(2) (15 U.S.C. 78o-
18 5(a)(2))—

19 (A) by redesignating clauses (i) and (ii) as
20 subparagraphs (A) and (B), respectively, and
21 adjusting the subparagraph margins accord-
22 ingly;

23 (B) in subparagraph (B), as so redesign-
24 nated, by striking “The order granting” and all

1 that follows through “from such membership.”;
2 and

3 (C) in the matter following subparagraph
4 (B), as so redesignated, by inserting after the
5 first sentence the following: “The order grant-
6 ing registration shall not be effective until such
7 government securities broker or government se-
8 curities dealer has become a member of a na-
9 tional securities exchange registered under sec-
10 tion 6 of this title, or a securities association
11 registered under section 15A of this title, unless
12 the Commission has exempted such government
13 securities broker or government securities deal-
14 er, by rule or order, from such membership.”;

15 (7) in section 16(a)(2)(C) (15 U.S.C.
16 78p(a)(2)(C)), by striking “section 206(b)” and in-
17 serting “section 206B”;

18 (8) in section 17(b)(1)(B) (15 U.S.C.
19 78q(b)(1)(B)), by striking “15A(k) gives” and in-
20 serting “15A(k), give”; and

21 (9) in section 21C(c)(2) (15 U.S.C. 78u-
22 3(c)(2)), by striking “paragraph (1) subsection” and
23 inserting “Paragraph (1)”.

1 (c) TRUST INDENTURE ACT OF 1939.—The Trust
2 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
3 amended—

4 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
5 striking “section 2 of such Act” and inserting “sec-
6 tion 2(a) of such Act”; and

7 (2) in section 317(a)(1) (15 U.S.C.
8 77qqq(a)(1)), by striking “, in the” and inserting
9 “in the”.

10 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
11 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
12 is amended—

13 (1) in section 2(a)(19) (15 U.S.C. 80a–
14 2(a)(19)), in the matter following subparagraph
15 (B)(vii)—

16 (A) by striking “clause (vi)” each place
17 that term appears and inserting “clause (vii)”;
18 and

19 (B) in each of subparagraphs (A)(vi) and
20 (B)(vi), by adding and at the end of subclause
21 (III);

22 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
23 9(b)(4)(B)), by adding “or” after the semicolon at
24 the end;

1 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
2 12(d)(1)(J)), by striking “any provision of this sub-
3 section” and inserting “any provision of this para-
4 graph”;

5 (4) in section 17(f) (15 U.S.C. 80a–17(f))—

6 (A) in paragraph (4), by striking “No such
7 member” and inserting “No member of a na-
8 tional securities exchange”; and

9 (B) in paragraph (6), by striking “com-
10 pany may serve” and inserting “company, may
11 serve”; and

12 (5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
13 60(a)(3)(B)(iii))—

14 (A) by striking “paragraph (1) of section
15 205” and inserting “section 205(a)(1)”; and

16 (B) by striking “clause (A) or (B) of that
17 section” and inserting “paragraph (1) or (2) of
18 section 205(b)”.

19 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
20 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
21 is amended—

22 (1) in section 203 (15 U.S.C. 80b–3)—

23 (A) in subsection (c)(1)(A), by striking
24 “principal business office and” and inserting

1 “principal office, principal place of business,
2 and”; and

3 (B) in subsection (k)(4)(B), in the matter
4 following clause (ii), by striking “principal place
5 of business” and inserting “principal office or
6 place of business”;

7 (2) in section 206(3) (15 U.S.C. 80b–6(3)), by
8 adding “or” after the semicolon at the end;

9 (3) in section 213(a) (15 U.S.C. 80b–13(a)), by
10 striking “principal place of business” and inserting
11 “principal office or place of business”; and

12 (4) in section 222 (15 U.S.C. 80b–18a), by
13 striking “principal place of business” each place that
14 term appears and inserting “principal office and
15 place of business”.

16 **SEC. 986. CONFORMING AMENDMENTS RELATING TO RE-**
17 **PEAL OF THE PUBLIC UTILITY HOLDING**
18 **COMPANY ACT OF 1935.**

19 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
20 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
21 amended—

22 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
23 by striking “the Public Utility Holding Company
24 Act of 1935 (15 U.S.C. 79a et seq.)”;

1 (2) in section 12(k) (15 U.S.C. 78l(k)), by
2 amending paragraph (7) to read as follows:

3 “(7) DEFINITION.—For purposes of this sub-
4 section, the term ‘emergency’ means—

5 “(A) a major market disturbance charac-
6 terized by or constituting—

7 “(i) sudden and excessive fluctuations
8 of securities prices generally, or a substan-
9 tial threat thereof, that threaten fair and
10 orderly markets; or

11 “(ii) a substantial disruption of the
12 safe or efficient operation of the national
13 system for clearance and settlement of
14 transactions in securities, or a substantial
15 threat thereof; or

16 “(B) a major disturbance that substan-
17 tially disrupts, or threatens to substantially dis-
18 rupt—

19 “(i) the functioning of securities mar-
20 kets, investment companies, or any other
21 significant portion or segment of the secu-
22 rities markets; or

23 “(ii) the transmission or processing of
24 securities transactions.”; and

1 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),
2 by striking “section 18(c) of the Public Utility Hold-
3 ing Company Act of 1935,”.

4 (b) TRUST INDENTURE ACT OF 1939.—The Trust
5 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
6 amended—

7 (1) in section 303 (15 U.S.C. 77ccc), by strik-
8 ing paragraph (17) and inserting the following:

9 “(17) The terms ‘Securities Act of 1933’ and
10 ‘Securities Exchange Act of 1934’ shall be deemed
11 to refer, respectively, to such Acts, as amended,
12 whether amended prior to or after the enactment of
13 this title.”;

14 (2) in section 308 (15 U.S.C. 77hhh), by strik-
15 ing “Securities Act of 1933, the Securities Exchange
16 Act of 1934, or the Public Utility Holding Company
17 Act of 1935” each place that term appears and in-
18 serting “Securities Act of 1933 or the Securities Ex-
19 change Act of 1934”;

20 (3) in section 310 (15 U.S.C. 77jjj), by striking
21 subsection (c);

22 (4) in section 311 (15 U.S.C. 77kkk), by strik-
23 ing subsection (c);

24 (5) in section 323(b) (15 U.S.C. 77www(b)), by
25 striking “Securities Act of 1933, or the Securities

1 Exchange Act of 1934, or the Public Utility Holding
2 Company Act of 1935” and inserting “Securities Act
3 of 1933 or the Securities Exchange Act of 1934”;
4 and

5 (6) in section 326 (15 U.S.C. 77zzz), by strik-
6 ing “Securities Act of 1933, or the Securities Ex-
7 change Act of 1934, or the Public Utility Holding
8 Company Act of 1935,” and inserting “Securities
9 Act of 1933 or the Securities Exchange Act of
10 1934”.

11 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
12 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
13 is amended—

14 (1) in section 2(a)(44) (15 U.S.C. 80a–
15 2(a)(44)), by striking “‘Public Utility Holding Com-
16 pany Act of 1935’,”;

17 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
18 striking paragraph (8) and inserting the following:

19 “(8) [Repealed]”;

20 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
21 striking “the Public Utility Holding Company Act of
22 1935,”; and

23 (4) in section 50 (15 U.S.C. 80a–49), by strik-
24 ing “the Public Utility Holding Company Act of
25 1935,”.

1 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
2 202(a)(21) of the Investment Advisers Act of 1940 (15
3 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
4 Utility Holding Company Act of 1935’”.

5 **SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
6 **AND NONMATERIAL LOSSES TO THE DEPOSIT**
7 **INSURANCE FUND FOR PURPOSES OF IN-**
8 **SPECTOR GENERAL REVIEWS.**

9 (a) IN GENERAL.—Section 38(k) of the Federal De-
10 posit Insurance Act (U.S.C. 1831o(k)) is amended—

11 (1) in paragraph (2), by striking subparagraph
12 (B) and inserting the following:

13 “(B) MATERIAL LOSS DEFINED.—The
14 term ‘material loss’ means any estimated loss in
15 excess of—

16 “(i) \$100,000,000, if the loss occurs
17 during the period beginning on September
18 30, 2009, and ending on December 31,
19 2010;

20 “(ii) \$75,000,000, if the loss occurs
21 during the period beginning on January 1,
22 2011, and ending on December 31, 2011;
23 and

24 “(iii) \$50,000,000, if the loss occurs
25 on or after January 1, 2012.”;

1 (2) in paragraph (4)(A) by striking “the re-
2 port” and inserting “any report on losses required
3 under this subsection,”;

4 (3) by striking paragraph (6);

5 (4) by redesignating paragraph (5) as para-
6 graph (6); and

7 (5) by inserting after paragraph (4) the fol-
8 lowing:

9 “(5) LOSSES THAT ARE NOT MATERIAL.—

10 “(A) SEMIANNUAL REPORT.—For the 6-
11 month period ending on March 31, 2010, and
12 each 6-month period thereafter, the Inspector
13 General of each Federal banking agency shall—

14 “(i) identify losses that the Inspector
15 General estimates have been incurred by
16 the Deposit Insurance Fund during that 6-
17 month period, with respect to the insured
18 depository institutions supervised by the
19 Federal banking agency;

20 “(ii) for each loss incurred by the De-
21 posit Insurance Fund that is not a mate-
22 rial loss, determine—

23 “(I) the grounds identified by the
24 Federal banking agency or State bank
25 supervisor for appointing the Corpora-

1 tion as receiver under section
2 11(c)(5); and

3 “(II) whether any unusual cir-
4 cumstances exist that might warrant
5 an in-depth review of the loss; and

6 “(iii) prepare and submit a written re-
7 port to the appropriate Federal banking
8 agency and to Congress on the results of
9 any determination by the Inspector Gen-
10 eral, including—

11 “(I) an identification of any loss
12 that warrants an in-depth review, to-
13 gether with the reasons why such re-
14 view is warranted, or, if the Inspector
15 General determines that no review is
16 warranted, an explanation of such de-
17 termination; and

18 “(II) for each loss identified
19 under subclause (I) that warrants an
20 in-depth review, the date by which
21 such review, and a report on such re-
22 view prepared in a manner consistent
23 with reports under paragraph (1)(A),
24 will be completed and submitted to

1 the Federal banking agency and Con-
2 gress.

3 “(B) DEADLINE FOR SEMIANNUAL RE-
4 PORT.—The Inspector General of each Federal
5 banking agency shall—

6 “(i) submit each report required
7 under paragraph (A) expeditiously, and not
8 later than 90 days after the end of the 6-
9 month period covered by the report; and

10 “(ii) provide a copy of the report re-
11 quired under paragraph (A) to any Mem-
12 ber of Congress, upon request.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
14 The heading for subsection (k) of section 38 of the Fed-
15 eral Deposit Insurance Act (U.S.C. 1831o(k)) is amended
16 to read as follows:

17 “(k) REVIEWS REQUIRED WHEN DEPOSIT INSUR-
18 ANCE FUND INCURS LOSSES.—”.

1 **SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
2 **AND NONMATERIAL LOSSES TO THE NA-**
3 **TIONAL CREDIT UNION SHARE INSURANCE**
4 **FUND FOR PURPOSES OF INSPECTOR GEN-**
5 **ERAL REVIEWS.**

6 (a) IN GENERAL.—Section 216(j) of the Federal
7 Credit Union Act (12 U.S.C. 1790d(j)) is amended to read
8 as follows:

9 “(j) REVIEWS REQUIRED WHEN SHARE INSURANCE
10 FUND EXPERIENCES LOSSES.—

11 “(1) IN GENERAL.—If the Fund incurs a mate-
12 rial loss with respect to an insured credit union, the
13 Inspector General of the Board shall—

14 “(A) submit to the Board a written report
15 reviewing the supervision of the credit union by
16 the Administration (including the implementa-
17 tion of this section by the Administration),
18 which shall include—

19 “(i) a description of the reasons why
20 the problems of the credit union resulted
21 in a material loss to the Fund; and

22 “(ii) recommendations for preventing
23 any such loss in the future; and

24 “(B) submit a copy of the report under
25 subparagraph (A) to—

1 “(i) the Comptroller General of the
2 United States;

3 “(ii) the Corporation;

4 “(iii) in the case of a report relating
5 to a State credit union, the appropriate
6 State supervisor; and

7 “(iv) to any Member of Congress,
8 upon request.

9 “(2) MATERIAL LOSS DEFINED.—For purposes
10 of determining whether the Fund has incurred a ma-
11 terial loss with respect to an insured credit union, a
12 loss is material if it exceeds the sum of—

13 “(A) \$25,000,000; and

14 “(B) an amount equal to 10 percent of the
15 total assets of the credit union on the date on
16 which the Board initiated assistance under sec-
17 tion 208 or was appointed liquidating agent.

18 “(3) PUBLIC DISCLOSURE REQUIRED.—

19 “(A) IN GENERAL.—The Board shall dis-
20 close a report under this subsection, upon re-
21 quest under section 552 of title 5, United
22 States Code, without excising—

23 “(i) any portion under section
24 552(b)(5) of title 5, United States Code; or

1 appointing the Board as the liqui-
2 dating agent for any Federal or State
3 credit union; and

4 “(II) whether any unusual cir-
5 cumstances exist that might warrant
6 an in-depth review of the loss; and

7 “(iii) prepare and submit a written re-
8 port to the Board and to the Congress on
9 the results of the determinations of the In-
10 specter General that includes—

11 “(I) an identification of any loss
12 that warrants an in-depth review, and
13 the reasons such review is warranted,
14 or if the Inspector General determines
15 that no review is warranted, an expla-
16 nation of such determination; and

17 “(II) for each loss identified in
18 subclause (I) that warrants an in-
19 depth review, the date by which such
20 review, and a report on the review
21 prepared in a manner consistent with
22 reports under paragraph (1)(A), will
23 be completed.

1 “(B) DEADLINE FOR SEMIANNUAL RE-
2 PORT.—The Inspector General of the Board
3 shall—

4 “(i) submit each report required
5 under subparagraph (A) expeditiously, and
6 not later than 90 days after the end of the
7 6-month period covered by the report; and

8 “(ii) provide a copy of the report re-
9 quired under subparagraph (A) to any
10 Member of Congress, upon request.

11 “(5) GAO REVIEW.—The Comptroller General
12 of the United States shall, under such conditions as
13 the Comptroller General determines to be appro-
14 priate—

15 “(A) review each report made under para-
16 graph (1), including the extent to which the In-
17 specter General of the Board complied with the
18 requirements under section 8L of the Inspector
19 General Act of 1978 (5 U.S.C. App.) with re-
20 spect to each such report; and

21 “(B) recommend improvements to the su-
22 pervision of insured credit unions (including im-
23 provements relating to the implementation of
24 this section).”.

1 **SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **ON PROPRIETARY TRADING.**

3 (a) DEFINITIONS.—In this section—

4 (1) the term “covered entity” means—

5 (A) an insured depository institution, an
6 affiliate of an insured depository institution, a
7 bank holding company, a financial holding com-
8 pany, or a subsidiary of a bank holding com-
9 pany or a financial holding company, as those
10 terms are defined in the Bank Holding Com-
11 pany Act of 1956 (12 U.S.C. 1841 et seq.); and

12 (B) any other entity, as the Comptroller
13 General of the United States may determine;
14 and

15 (2) the term “proprietary trading” means the
16 act of a covered entity investing as a principal in se-
17 curities, commodities, derivatives, hedge funds, pri-
18 vate equity firms, or such other financial products or
19 entities as the Comptroller General may determine.

20 (b) STUDY.—

21 (1) IN GENERAL.—The Comptroller General of
22 the United States shall conduct a study regarding
23 the risks and conflicts associated with proprietary
24 trading by and within covered entities, including an
25 evaluation of—

1 (A) whether proprietary trading presents a
2 material systemic risk to the stability of the
3 United States financial system, and if so, the
4 costs and benefits of options for mitigating such
5 systemic risk;

6 (B) whether proprietary trading presents
7 material risks to the safety and soundness of
8 the covered entities that engage in such activi-
9 ties, and if so, the costs and benefits of options
10 for mitigating such risks;

11 (C) whether proprietary trading present
12 material conflicts of interest between covered
13 entities that engage in proprietary trading and
14 the clients of the institutions who use the firm
15 to execute trades or who rely on the firm to
16 manage assets, and if so, the costs and benefits
17 of options for mitigating such conflicts of inter-
18 est;

19 (D) whether adequate disclosure regarding
20 the risks and conflicts of proprietary trading is
21 provided to the depositors, trading and asset
22 management clients, and investors of covered
23 entities that engage in proprietary trading, and
24 if not, the costs and benefits of options for the
25 improvement of such disclosure; and

1 (E) whether the banking, securities, and
2 commodities regulators of institutions that en-
3 gage in proprietary trading have in place ade-
4 quate systems and controls to monitor and con-
5 tain any risks and conflicts of interest related
6 to proprietary trading, and if not, the costs and
7 benefits of options for the improvement of such
8 systems and controls.

9 (2) CONSIDERATIONS.—In carrying out the
10 study required under paragraph (1), the Comptroller
11 General shall consider—

12 (A) current practice relating to proprietary
13 trading;

14 (B) the advisability of a complete ban on
15 proprietary trading;

16 (C) limitations on the scope of activities
17 that covered entities may engage in with respect
18 to proprietary trading;

19 (D) the advisability of additional capital
20 requirements for covered entities that engage in
21 proprietary trading;

22 (E) enhanced restrictions on transactions
23 between affiliates related to proprietary trading;

24 (F) enhanced accounting disclosures relat-
25 ing to proprietary trading;

1 (G) enhanced public disclosure relating to
2 proprietary trading; and

3 (H) any other options the Comptroller
4 General deems appropriate.

5 (c) REPORT TO CONGRESS.—Not later than 15
6 months after the date of enactment of this Act, the Comp-
7 troller General shall submit a report to Congress on the
8 results of the study conducted under subsection (b).

9 (d) ACCESS BY COMPTROLLER GENERAL.—For pur-
10 poses of conducting the study required under subsection
11 (b), the Comptroller General shall have access, upon re-
12 quest, to any information, data, schedules, books, ac-
13 counts, financial records, reports, files, electronic commu-
14 nications, or other papers, things, or property belonging
15 to or in use by a covered entity that engages in proprietary
16 trading, and to the officers, directors, employees, inde-
17 pendent public accountants, financial advisors, staff, and
18 agents and representatives of a covered entity (as related
19 to the activities of the agent or representative on behalf
20 of the covered entity), at such reasonable times as the
21 Comptroller General may request. The Comptroller Gen-
22 eral may make and retain copies of books, records, ac-
23 counts, and other records, as the Comptroller General
24 deems appropriate.

25 (e) CONFIDENTIALITY OF REPORTS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the Comptroller General may not disclose
3 information regarding—

4 (A) any proprietary trading activity of a
5 covered entity, unless such information is dis-
6 closed at a level of generality that does not re-
7 veal the investment or trading position or strat-
8 egy of the covered entity for any specific secu-
9 rity, commodity, derivative, or other investment
10 or financial product; or

11 (B) any individual interviewed by the
12 Comptroller General for purposes of the study
13 under subsection (b), unless such information is
14 disclosed at a level of generality that does not
15 reveal—

16 (i) the name of or identifying details
17 relating to such individual; or

18 (ii) in the case of an individual who is
19 an employee of a third party that provides
20 professional services to a covered entity be-
21 lieved to be engaged in proprietary trading,
22 the name of or any identifying details re-
23 lating to such third party.

1 (2) EXCEPTIONS.—The Comptroller General
2 may disclose the information described in paragraph
3 (1)—

4 (A) to a department, agency, or official of
5 the Federal Government, for official use, upon
6 request;

7 (B) to a committee of Congress, upon re-
8 quest; and

9 (C) to a court, upon an order of such
10 court.

11 **SEC. 989A. SENIOR INVESTOR PROTECTIONS.**

12 (a) DEFINITIONS.—As used in this section—

13 (1) the term “eligible entity” means—

14 (A) a securities commission (or any agency
15 or office performing like functions) of a State
16 that the Office determines has adopted rules on
17 the appropriate use of designations in the offer
18 or sale of securities or investment advice that
19 meet or exceed the minimum requirements of
20 the NASAA Model Rule on the Use of Senior-
21 Specific Certifications and Professional Des-
22 ignations (or any successor thereto);

23 (B) the insurance commission (or any
24 agency or office performing like functions) of
25 any State that the Office determines has—

1 (i) adopted rules on the appropriate
2 use of designations in the sale of insurance
3 products that, to the extent practicable,
4 conform to the minimum requirements of
5 the National Association of Insurance
6 Commissioners Model Regulation on the
7 Use of Senior-Specific Certifications and
8 Professional Designations in the Sale of
9 Life Insurance and Annuities (or any suc-
10 cessor thereto); and

11 (ii) adopted rules with respect to fidu-
12 ciary or suitability requirements in the sale
13 of annuities that meet or exceed the min-
14 imum requirements established by the
15 Suitability in Annuity Transactions Model
16 Regulation of the National Association of
17 Insurance Commissioners (or any successor
18 thereto); or

19 (C) a consumer protection agency of any
20 State, if—

21 (i) the securities commission (or any
22 agency or office performing like functions)
23 of the State is eligible under subparagraph
24 (A); or

1 (ii) the insurance commission (or any
2 agency or office performing like functions)
3 of the State is eligible under subparagraph
4 (B);

5 (2) the term “financial product” means a secu-
6 rity, an insurance product (including an insurance
7 product that pays a return, whether fixed or vari-
8 able), a bank product, and a loan product;

9 (3) the term “misleading designation”—

10 (A) means a certification, professional des-
11 ignation, or other purported credential that in-
12 dicates or implies that a salesperson or adviser
13 has special certification or training in advising
14 or servicing seniors; and

15 (B) does not include a certification, profes-
16 sional designation, license, or other credential
17 that—

18 (i) was issued by or obtained from an
19 academic institution having regional ac-
20 creditation;

21 (ii) meets the standards for certifi-
22 cations, licenses, and professional designa-
23 tions outlined by the NASAA Model Rule
24 on the Use of Senior-Specific Certifications
25 and Professional Designations in the Sale

1 of Life Insurance and Annuities, adopted
2 by the National Association of Insurance
3 Commissioners (or any successor thereto);
4 or
5 (iii) was issued by or obtained from a
6 State;

7 (4) the term “misleading or fraudulent mar-
8 keting” means the use of a misleading designation
9 by a person that sells to or advises a senior in con-
10 nection with the sale of a financial product;

11 (5) the term “NASAA” means the North Amer-
12 ican Securities Administrators Association;

13 (6) the term “Office” means the Office of Fi-
14 nancial Literacy of the Bureau; and

15 (7) the term “senior” means any individual who
16 has attained the age of 62 years or older.

17 (b) GRANTS TO STATES FOR ENHANCED PROTEC-
18 TION OF SENIORS FROM BEING MISLED BY FALSE DES-
19 IGNATIONS.—The Office shall establish a program under
20 which the Office may make grants to States or eligible
21 entities—

22 (1) to hire staff to identify, investigate, and
23 prosecute (through civil, administrative, or criminal
24 enforcement actions) cases involving misleading or
25 fraudulent marketing;

1 (2) to fund technology, equipment, and training
2 for regulators, prosecutors, and law enforcement of-
3 ficers, in order to identify salespersons and advisers
4 who target seniors through the use of misleading
5 designations;

6 (3) to fund technology, equipment, and training
7 for prosecutors to increase the successful prosecution
8 of salespersons and advisers who target seniors with
9 the use of misleading designations;

10 (4) to provide educational materials and train-
11 ing to regulators on the appropriateness of the use
12 of designations by salespersons and advisers in con-
13 nection with the sale and marketing of financial
14 products;

15 (5) to provide educational materials and train-
16 ing to seniors to increase awareness and under-
17 standing of misleading or fraudulent marketing;

18 (6) to develop comprehensive plans to combat
19 misleading or fraudulent marketing of financial
20 products to seniors; and

21 (7) to enhance provisions of State law to pro-
22 vide protection for seniors against misleading or
23 fraudulent marketing.

24 (c) APPLICATIONS.—A State or eligible entity desir-
25 ing a grant under this section shall submit an application

1 to the Office, in such form and in such a manner as the
2 Office may determine, that includes—

3 (1) a proposal for activities to protect seniors
4 from misleading or fraudulent marketing that are
5 proposed to be funded using a grant under this sec-
6 tion, including—

7 (A) an identification of the scope of the
8 problem of misleading or fraudulent marketing
9 in the State;

10 (B) a description of how the proposed ac-
11 tivities would—

12 (i) protect seniors from misleading or
13 fraudulent marketing in the sale of finan-
14 cial products, including by proactively iden-
15 tifying victims of misleading and fraudu-
16 lent marketing who are seniors;

17 (ii) assist in the investigation and
18 prosecution of those using misleading or
19 fraudulent marketing; and

20 (iii) discourage and reduce cases of
21 misleading or fraudulent marketing; and

22 (C) a description of how the proposed ac-
23 tivities would be coordinated with other State
24 efforts; and

1 (2) any other information, as the Office deter-
2 mines is appropriate.

3 (d) PERFORMANCE OBJECTIVES AND REPORTING
4 REQUIREMENTS.—The Office may establish such perform-
5 ance objectives and reporting requirements for States and
6 eligible entities receiving a grant under this section as the
7 Office determines are necessary to carry out and assess
8 the effectiveness of the program under this section.

9 (e) MAXIMUM AMOUNT.—The amount of a grant
10 under this section may not exceed—

11 (1) \$500,000 for each of 3 consecutive fiscal
12 years, if the recipient is a State, or an eligible entity
13 of a State, that has adopted rules—

14 (A) on the appropriate use of designations
15 in the offer or sale of securities or investment
16 advice that meet or exceed the minimum re-
17 quirements of the NASAA Model Rule on the
18 Use of Senior-Specific Certifications and Pro-
19 fessional Designations (or any successor there-
20 to);

21 (B) on the appropriate use of designations
22 in the sale of insurance products that, to the
23 extent practicable, conform to the minimum re-
24 quirements of the National Association of In-
25 surance Commissioners Model Regulation on

1 the Use of Senior-Specific Certifications and
2 Professional Designations in the Sale of Life
3 Insurance and Annuities (or any successor
4 thereto); and

5 (C) with respect to fiduciary or suitability
6 requirements in the sale of annuities that meet
7 or exceed the minimum requirements estab-
8 lished by the Suitability in Annuity Trans-
9 actions Model Regulation of the National Asso-
10 ciation of Insurance Commissioners (or any
11 successor thereto); and

12 (2) \$100,000 for each of 3 consecutive fiscal
13 years, if the recipient is a State, or an eligible entity
14 of a State, that has adopted—

15 (A) rules on the appropriate use of des-
16 ignations in the offer or sale of securities or in-
17 vestment advice that meet or exceed the min-
18 imum requirements of the NASAA Model Rule
19 on the Use of Senior-Specific Certifications and
20 Professional Designations (or any successor
21 thereto); or

22 (B) rules—

23 (i) on the appropriate use of designa-
24 tions in the sale of insurance products
25 that, to the extent practicable, conform to

1 the minimum requirements of the National
2 Association of Insurance Commissioners
3 Model Regulation on the Use of Senior-
4 Specific Certifications and Professional
5 Designations in the Sale of Life Insurance
6 and Annuities (or any successor thereto);
7 and

8 (ii) with respect to fiduciary or suit-
9 ability requirements in the sale of annu-
10 ities that meet or exceed the minimum re-
11 quirements established by the Suitability in
12 Annuity Transactions Model Regulation of
13 the National Association of Insurance
14 Commissioners (or any successor thereto).

15 (f) SUBGRANTS.—A State or eligible entity that re-
16 ceives a grant under this section may make a subgrant,
17 as the State or eligible entity determines is necessary to
18 carry out the activities funded using a grant under this
19 section.

20 (g) REAPPLICATION.—A State or eligible entity that
21 receives a grant under this section may reapply for a grant
22 under this section, notwithstanding the limitations on
23 grant amounts under subsection (e).

1 (h) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to carry out this section,
3 \$8,000,000 for each of fiscal years 2011 through 2015.

4 **SEC. 989B. CHANGES IN APPOINTMENT OF CERTAIN IN-**
5 **SPECTORS GENERAL.**

6 (a) ELEVATION OF CERTAIN INSPECTORS GENERAL
7 TO APPOINTMENT PURSUANT TO SECTION 3 OF THE IN-
8 SPECTOR GENERAL ACT OF 1978.—

9 (1) INCLUSION IN CERTAIN DEFINITIONS.—Sec-
10 tion 12 of the Inspector General Act of 1978 (5
11 U.S.C. App.) is amended—

12 (A) in paragraph (1), by striking “or the
13 Federal Cochairpersons of the Commissions es-
14 tablished under section 15301 of title 40,
15 United States Code;” and inserting “the Fed-
16 eral Cochairpersons of the Commissions estab-
17 lished under section 15301 of title 40, United
18 States Code; the Chairman of the Board of
19 Governors of the Federal Reserve System; the
20 Chairman of the Commodity Futures Trading
21 Commission; the Chairman of the National
22 Credit Union Administration; the Chairman of
23 the Board of Directors of the Pension Benefit
24 Guaranty Corporation; the Chairman of the Se-
25 curities and Exchange Commission; or the Di-

1 rector of the Bureau of Consumer Financial
2 Protection;” and

3 (B) in paragraph (2), by striking “or the
4 Commissions established under section 15301
5 of title 40, United States Code,” and inserting
6 “the Commissions established under section
7 15301 of title 40, United States Code, the
8 Board of Governors of the Federal Reserve Sys-
9 tem, the Commodity Futures Trading Commis-
10 sion, the National Credit Union Administration,
11 the Pension Benefit Guaranty Corporation, the
12 Securities and Exchange Commission, or the
13 Director of the Bureau of Consumer Financial
14 Protection,”.

15 (2) EXCLUSION FROM DEFINITION OF DES-
16 IGNATED FEDERAL ENTITY.—Section 8G(a)(2) of
17 the Inspector General Act of 1978 (5 U.S.C. App.)
18 is amended—

19 (A) by striking “the Board of Governors of
20 the Federal Reserve System,”;

21 (B) by striking “the Commodity Futures
22 Trading Commission,”;

23 (C) by striking “the National Credit Union
24 Administration,”; and

1 (D) by striking “the Pension Benefit
2 Guaranty Corporation, the Securities and Ex-
3 change Commission,”.

4 (b) CONTINUATION OF PROVISIONS RELATING TO
5 PERSONNEL.—

6 (1) IN GENERAL.—The Inspector General Act
7 of 1978 (5 U.S.C. App.) is amended by inserting
8 after section 8L the following:

9 **“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**
10 **TABLISHMENTS.**

11 “(a) DEFINITION.—For purposes of this section, the
12 term ‘covered establishment’ means the Board of Gov-
13 ernors of the Federal Reserve System, the Commodity Fu-
14 tures Trading Commission, the National Credit Union Ad-
15 ministration, the Pension Benefit Guaranty Corporation,
16 and the Securities and Exchange Commission.

17 “(b) PROVISIONS RELATING TO ALL COVERED ES-
18 TABLISHMENTS.—

19 “(1) PROVISIONS RELATING TO INSPECTORS
20 GENERAL.—In the case of the Inspector General of
21 a covered establishment, subsections (b) and (c) of
22 section 4 of the Inspector General Reform Act of
23 2008 (Public Law 110–409; 122 Stat. 4304) shall
24 apply in the same manner as if such covered estab-
25 lishment were a designated Federal entity under sec-

1 tion 8G of this Act. An Inspector General who is
2 subject to the preceding sentence shall not be sub-
3 ject to section 3(e) of this Act.

4 “(2) PROVISIONS RELATING TO OTHER PER-
5 SONNEL.—Notwithstanding paragraphs (7) and (8)
6 of section 6(a), the Inspector General of a covered
7 establishment may select, appoint, and employ such
8 officers and employees as may be necessary for car-
9 rying out the functions, powers, and duties of the
10 Office of Inspector General of the covered establish-
11 ment and to obtain the temporary or intermittent
12 services of experts or consultants or an organization
13 of experts or consultants, subject to the applicable
14 laws and regulations that govern such selections, ap-
15 pointments, and employment, and the obtaining of
16 such services, within the covered establishment.

17 “(c) PROVISION RELATING TO THE BOARD OF GOV-
18 ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-
19 visions of subsection (a) of section 8D (other than the pro-
20 visions of subparagraphs (A), (B), (C), and (E) of para-
21 graph (1) of such subsection (a)) shall apply to the Inspec-
22 tor General of the Board of Governors of the Federal Re-
23 serve System and the Chairman of the Board of Governors
24 of the Federal Reserve System in the same manner as
25 such provisions apply to the Inspector General of the De-

1 partment of the Treasury and the Secretary of the Treas-
2 ury, respectively.”.

3 (2) CONFORMING AMENDMENT.—Paragraph (3)
4 of section 8G(g) of the Inspector General Act of
5 1978 (5 U.S.C. App.) is repealed.

6 (c) CORRECTIVE RESPONSES BY HEADS OF CERTAIN
7 ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY IN-
8 SPECTORS GENERAL.—The Chairman of the Board of
9 Governors, the Chairman of the Commodity Futures
10 Trading Commission, the Chairman of the National Credit
11 Union Administration, the Chairman of the Board of Di-
12 rectors of the Pension Benefit Guaranty Corporation, and
13 the Chairman of the Commission shall each—

14 (1) take action to address deficiencies identified
15 by a report or investigation of the Inspector General
16 of the establishment concerned; or

17 (2) certify to the Senate and the House of Rep-
18 resentatives that no action is necessary or appro-
19 priate in connection with a deficiency described in
20 paragraph (1).

21 (d) EFFECTIVE DATE; TRANSITION RULE.—

22 (1) EFFECTIVE DATE.—This section and the
23 amendments made by this section shall take effect
24 30 days after the date of the enactment of this Act.

1 (2) TRANSITION RULE.—An individual serving
2 as Inspector General of the Board of Governors, the
3 Commodity Futures Trading Commission, the Na-
4 tional Credit Union Administration, the Pension
5 Benefit Guaranty Corporation, or the Commission
6 on the effective date of this section pursuant to an
7 appointment made under section 8G of the Inspector
8 General Act of 1978 (5 U.S.C. App.)—

9 (A) may continue so serving until the
10 President makes an appointment under section
11 3(a) of such Act with respect to the Board of
12 Governors, the Commodity Futures Trading
13 Commission, the National Credit Union Admin-
14 istration, the Pension Benefit Guaranty Cor-
15 poration, or the Commission, as the case may
16 be, consistent with the amendments made by
17 subsection (a); and

18 (B) shall, while serving under subpara-
19 graph (A)—

20 (i) remain subject to the provisions of
21 section 8G of such Act that applied with
22 respect to the Inspector General of the
23 Board of Governors, the Commodity Fu-
24 tures Trading Commission, the National
25 Credit Union Administration, the Pension

1 Benefit Guaranty Corporation, or the
2 Commission, as the case may be, on the
3 day before the effective date of this sec-
4 tion; and

5 (ii) suffer no reduction in pay.

6 **Subtitle J—Self-funding of the Se-**
7 **curities and Exchange Commis-**
8 **sion**

9 **SEC. 991. SECURITIES AND EXCHANGE COMMISSION SELF-**
10 **FUNDING.**

11 (a) SELF-FUNDING AUTHORITY.—Section 4 of the
12 Securities Exchange Act of 1934 (15 U.S.C. 78d) is
13 amended—

14 (1) in subsection (c), in the second sentence, by
15 striking “credited to the appropriated funds of the
16 Commission” and inserting “deposited in the ac-
17 count described in subsection (j)(4)”;

18 (2) in subsection (f), in the second sentence, by
19 striking “considered a reimbursement to the appro-
20 priated funds of the Commission” and inserting “de-
21 posited in the account described in subsection
22 (j)(4)”;

23 (3) by adding at the end the following:

24 “(j) FUNDING OF THE COMMISSION.—

1 “(1) BUDGET.—For each fiscal year, the Chair-
2 man of the Commission shall prepare and submit to
3 Congress a budget to Congress. Such budget shall be
4 submitted at the same time the President submits a
5 budget of the United States to Congress for such
6 fiscal year. The budget submitted by the Chairman
7 of the Commission pursuant to this paragraph shall
8 not be considered a request for appropriations.

9 “(2) TREASURY PAYMENT.—

10 “(A) On the first day of each fiscal year,
11 the Treasury shall pay into the account de-
12 scribed in paragraph (4) an amount equal to
13 the budget submitted by the Chairman of the
14 Commission pursuant to paragraph (1) for such
15 fiscal year.

16 “(B) At or prior to the end of each fiscal
17 year, the Commission shall pay to the Treasury
18 from fees and assessments deposited in the ac-
19 count described in paragraph (4) an amount
20 equal to the amount paid by the Treasury pur-
21 suant to subparagraph (A) for such fiscal year,
22 unless there are not sufficient fees and assess-
23 ments deposited in such account at or prior to
24 the end of the fiscal year to make such pay-

1 ment, in which case the Commission shall make
2 such payment in a subsequent fiscal year.

3 “(3) OBLIGATIONS AND EXPENSES.—

4 “(A) IN GENERAL.—The Commission shall
5 determine and prescribe the manner in which—

6 “(i) the obligations of the Commission
7 shall be incurred; and

8 “(ii) the disbursements and expenses
9 of the Commission allowed and paid.

10 “(B) INSUFFICIENT FUNDS.—If, in the
11 course of any fiscal year, the Chairman of the
12 Commission determines that, due to unforeseen
13 circumstances, the obligations of the Commis-
14 sion will exceed those provided for in the budget
15 submitted under paragraph (1), the Chairman
16 of the Commission may notify Congress of the
17 amount and expected uses of the additional ob-
18 ligations.

19 “(C) AUTHORITY TO INCUR EXCESS OBLI-
20 GATIONS.—The Commission may incur obliga-
21 tions in excess of the budget submitted under
22 paragraph (1) from amounts available in the
23 account described in paragraph (4).

1 “(D) RULE OF CONSTRUCTION.—Any noti-
2 fication to Congress under this paragraph shall
3 not be considered a request for appropriations.

4 “(4) ACCOUNT.—

5 “(A) ESTABLISHMENT.—Fees and assess-
6 ments collected under this title, section 6(b) of
7 the Securities Act of 1933 (15 U.S.C. 77f(b)),
8 and section 24(f) of the Investment Company
9 Act of 1940 (15 U.S.C. 80a–24(f)) and pay-
10 ments made by the Treasury pursuant to para-
11 graph (2)(A) for any fiscal year shall be depos-
12 ited into an account established at any regular
13 Government depository or any State or national
14 bank.

15 “(B) RULE OF CONSTRUCTION.—Any
16 amounts deposited into the account established
17 under subparagraph (A) shall not be construed
18 to be Government funds or appropriated mon-
19 ies.

20 “(C) NO APPORTIONMENT.—Any amounts
21 deposited into the account established under
22 subparagraph (A) shall not be subject to appor-
23 tionment for the purpose of chapter 15 of title
24 31, United States Code, or under any other au-
25 thority.

1 “(5) USE OF ACCOUNT FUNDS.—

2 “(A) PERMISSIBLE USES.—Amounts avail-
3 able in the account described in paragraph (4)
4 may be withdrawn by the Commission and used
5 for the purposes described in paragraphs (2)
6 and (3).

7 “(B) IMPERMISSIBLE USE.—Except as
8 provided in paragraph (6), no amounts available
9 in the account described in paragraph (4) shall
10 be deposited and credited as general revenue of
11 the Treasury.

12 “(6) EXCESS FUNDS.—If, at the end of any fis-
13 cal year and after all payments have been made to
14 the Treasury pursuant to paragraph (2)(B) for such
15 fiscal year and all prior fiscal years, the balance of
16 the account described in paragraph (4) exceeds 25
17 percent of the budget of the Commission for the fol-
18 lowing fiscal year, the amount by which the balance
19 exceeds 25 percent of such budget shall be credited
20 as general revenue of the Treasury.”.

21 (b) CONFORMING AMENDMENTS TO TRANSACTION
22 FEE PROVISIONS.—Section 31 of the Securities Exchange
23 Act of 1934 (15 U.S.C. 78ee) is amended—

24 (1) by amending subsection (a) to read as fol-
25 lows:

1 “(a) RECOVERY OF COSTS AND EXPENSES.—

2 “(1) IN GENERAL.—The Commission shall, in
3 accordance with this section, collect transaction fees
4 and assessments that are designed—

5 “(A) to recover the reasonable costs and
6 expenses of the Commission, as set forth in the
7 annual budget of the Commission; and

8 “(B) to provide funds necessary to main-
9 tain a reserve.

10 “(2) OVERPAYMENTS.—The authority to collect
11 transaction fees and assessments in accordance with
12 this section shall include the authority to offset from
13 such collection any overpayment of transactions fees
14 or assessments, regardless of the fiscal year in which
15 such overpayment is made.”;

16 (2) in subsection (e)(2), by striking “September
17 30” and inserting “September 25”;

18 (3) in subsection (g), by striking “April 30”
19 and inserting “August 31”;

20 (4) by amending subsection (i) to read as fol-
21 lows:

22 “(i) FEE COLLECTIONS.—Fees and assessments col-
23 lected pursuant to this section shall be deposited and cred-
24 ited in accordance with section 4(g) of this title.”;

1 (5) by amending subsection (j) to read as fol-
2 lows:

3 “(j) ADJUSTMENTS TO TRANSACTION FEE RATES.—

4 “(1) ANNUAL ADJUSTMENT.—For each fiscal
5 year, the Commission shall by order adjust each of
6 the rates applicable under subsections (b) and (c)
7 for such fiscal year to a uniform adjusted rate that,
8 when applied to the baseline estimate of the aggre-
9 gate dollar amount of sales for such fiscal year, is
10 reasonably likely to produce aggregate fee collections
11 under this section (including assessments collected
12 under subsection (d)) that are equal to the budget
13 of the Commission for such fiscal year, plus amounts
14 necessary to maintain a reserve.

15 “(2) MID-YEAR ADJUSTMENT.—For each fiscal
16 year, the Commission shall determine, by March 1 of
17 such fiscal year, whether, based on the actual aggre-
18 gate dollar volume of sales during the first 4 months
19 of such fiscal year, the baseline estimate of the ag-
20 gregate dollar volume of sales used under paragraph
21 (1) for such fiscal year is reasonably likely to be 10
22 percent (or more) greater or less than the actual ag-
23 gregate dollar volume of sales for such fiscal year.
24 If the Commission so determines, the Commission
25 shall by order, not later than March 1, adjust each

1 of the rates applicable under subsections (b) and (c)
2 for such fiscal year to a uniform adjusted rate that,
3 when applied to the revised estimate of the aggregate
4 dollar amount of sales for the remainder of
5 such fiscal year, is reasonably likely to produce aggregate
6 fee collections under this section (including
7 fees estimated to be collected under subsections (b)
8 and (c) during such fiscal year prior to the effective
9 date of the new uniform adjusted rate and assessments
10 collected under subsection (d)) that are equal
11 to the budget of the Commission for such fiscal year,
12 plus amounts necessary to maintain a reserve. In
13 making such revised estimate, the Commission shall,
14 after consultation with the Congressional Budget Office
15 and the Office of Management and Budget, use
16 the same methodology required by paragraph (4).

17 “(3) REVIEW AND EFFECTIVE DATE.—In exercising
18 its authority under this subsection, the Commission
19 shall not be required to comply with the provisions
20 of section 553 of title 5 United States Code.
21 An adjusted rate prescribed under paragraph (1) or
22 (2) and published under subsection (g) shall not be
23 subject to judicial review. An adjusted rate prescribed
24 under paragraph (1) shall take effect on the
25 first day of the fiscal year to which such rate ap-

1 plies. An adjusted rate prescribed under paragraph
2 (2) shall take effect on April 1 of the fiscal year to
3 which such rate applies.

4 “(4) BASELINE ESTIMATE OF THE AGGREGATE
5 DOLLAR AMOUNT OF SALES.—For purposes of this
6 subsection, the baseline estimate of the aggregate
7 dollar amount of sales for any fiscal year is the
8 baseline estimate of the aggregate dollar amount of
9 sales of securities (other than bonds, debentures,
10 other evidences of indebtedness, security futures
11 products, and options on securities indexes excluding
12 a narrow-based security index)) to be transacted on
13 each national securities exchange and by or through
14 any member of each national securities association
15 (otherwise than on a national securities exchange)
16 during such fiscal year as determined by the Com-
17 mission, after consultation with the Congressional
18 Budget Office and the Office of Management and
19 Budget, using the methodology required for making
20 projections pursuant to section 907 of title 2.”; and

21 (6) by striking subsections (k) and (l).

22 (c) CONFORMING AMENDMENTS TO REGISTRATION
23 FEE PROVISIONS.—

1 (1) SECTION 6(B) OF THE SECURITIES ACT OF
2 1933.—Section 6(b) of the Securities Act of 1933
3 (15 U.S.C. 77f(b)) is amended—

4 (A) by striking “offsetting” each place that
5 term appears and inserting “fee”;

6 (B) in paragraph (3), in the paragraph
7 heading, by striking “OFFSETTING” and insert-
8 ing “FEE”;

9 (C) in paragraph (11)(A), in the subpara-
10 graph heading, by striking “OFFSETTING” and
11 inserting “FEE”;

12 (D) by striking paragraphs (1), (3), (4),
13 (6), (8), and (9);

14 (E) by redesignating paragraph (2) as
15 paragraph (1);

16 (F) in paragraph (1), as so redesignated,
17 by striking “(5) or (6)” and inserting “(3)”;

18 (G) by inserting after paragraph (1), as so
19 redesignated, the following:

20 “(2) FEE COLLECTIONS.—Fees collected pursu-
21 ant to this subsection shall be deposited and credited
22 in accordance with section 4(j) of the Securities Ex-
23 change Act of 1934.”;

24 (H) by redesignating paragraph (5) as
25 paragraph (3);

1 (I) in paragraph (3), as redesignated—

2 (i) by striking “of the fiscal years
3 2003 through 2011” and inserting “fiscal
4 year”; and

5 (ii) by striking “paragraph (2)” and
6 inserting “paragraph (1)”;

7 (J) by redesignating paragraph (7) as
8 paragraph (4);

9 (K) by inserting after paragraph (4), as so
10 redesignated, the following:

11 “(5) REVIEW AND EFFECTIVE DATE.—In exer-
12 cising its authority under this subsection, the Com-
13 mission shall not be required to comply with the pro-
14 visions of section 553 of title 5, United States Code.
15 An adjusted rate prescribed under paragraph (3)
16 and published under paragraph (6) shall not be sub-
17 ject to judicial review. An adjusted rate prescribed
18 under paragraph (3) shall take effect on the first
19 day of the fiscal year to which such rate applies.”;

20 (L) by redesignating paragraphs (10) and
21 (11), as paragraphs (6) and (7);

22 (M) in paragraph (6), as redesignated, by
23 striking “April 30” and inserting “August 31”;
24 and

25 (N) in paragraph (7), as redesignated—

1 (i) by striking “of the fiscal years
2 2002 through 2011” and inserting “fiscal
3 year”; and

4 (ii) by inserting at the end of the
5 table in subparagraph (A) the following:

2012 and each succeeding fiscal year	An amount that is equal to the target fee collection amount for the prior fiscal year adjusted by the rate of inflation.
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6 (2) SECTION 13(E) OF THE SECURITIES EX-
7 CHANGE ACT OF 1934.—Section 13(e) of the Securi-
8 ties Exchange Act of 1934 (15 U.S.C. 78m(e)) is
9 amended—

10 (A) by striking “offsetting” each place that
11 term appears and inserting “fee”;

12 (B) in paragraph (3) by striking “para-
13 graphs (5) and (6)” and inserting “paragraph
14 (5)”;

15 (C) by amending paragraph (4) to read as
16 follows:

17 “(4) FEE COLLECTIONS.—Fees collected pursu-
18 ant to this subsection shall be deposited and credited
19 in accordance with section 4(g) of this title.”;

1 (D) in paragraph (5), by striking “of the
2 fiscal years 2003 through 2011” and inserting
3 “fiscal year”;

4 (E) by striking paragraphs (6), (7), and
5 (8);

6 (F) by redesignating paragraph (7) as
7 paragraph (6);

8 (G) by inserting after paragraph (6), as so
9 redesignated, the following:

10 “(7) REVIEW AND EFFECTIVE DATE.—In exer-
11 cising its authority under this subsection, the Com-
12 mission shall not be required to comply with the pro-
13 visions of section 553 of title 5. An adjusted rate
14 prescribed under paragraph (5) and published under
15 paragraph (8) shall not be subject to judicial review.
16 An adjusted rate prescribed under paragraph (5)
17 shall take effect on the first day of the fiscal year
18 to which such rate applies.”;

19 (H) by striking paragraph (9);

20 (I) by redesignating paragraph (10) as
21 paragraph (8); and

22 (J) in paragraph (8), as so redesignated,
23 by striking “6(b)(10)” and inserting “6(b)(6)”.

24 (3) SECTION 14 OF THE SECURITIES EXCHANGE
25 ACT OF 1934.—Section 14(g) of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78n(g)) is amend-
2 ed—

3 (A) by striking the word “offsetting” each
4 time that it appears and inserting in its place
5 the word “fee”;

6 (B) in paragraph (1)(A), by striking
7 “paragraphs (5) and (6)” each time it appears
8 and inserting “paragraph (5)”;

9 (C) in paragraph (3), by striking “para-
10 graphs (5) and (6)” and inserting “paragraph
11 (5)”;

12 (D) by amending paragraph (4) to read as
13 follows:

14 “(4) FEE COLLECTIONS.—Fees collected pursu-
15 ant to this subsection shall be deposited and credited
16 in accordance with section 4(g) of this title.”;

17 (E) in paragraph (5), by striking “of the
18 fiscal years 2003 through 2011” and inserting
19 “fiscal year”;

20 (F) by striking paragraphs (6), (8), and
21 (9);

22 (G) by redesignating paragraph (7) as
23 paragraph (6);

24 (H) by inserting after paragraph (6), as so
25 redesignated, the following:

1 “(7) REVIEW AND EFFECTIVE DATE.—In exer-
2 cising its authority under this subsection, the Com-
3 mission shall not be required to comply with the pro-
4 visions of section 553 of title 5. An adjusted rate
5 prescribed under paragraph (5) and published under
6 paragraph (8) shall not be subject to judicial review.
7 An adjusted rate prescribed under paragraph (5)
8 shall take effect on the first day of the fiscal year
9 to which such rate applies.”;

10 (I) by redesignating paragraphs (10) and
11 (11) as paragraphs (8) and (9), respectively;
12 and

13 (J) in paragraph (9), as so redesignated,
14 by striking “6(b)(10)” and inserting “6(b)(7)”.

15 (d) REPEAL OF AUTHORIZATION OF APPROPRIA-
16 TIONS.—Section 35 of the Securities Exchange Act of
17 1934 (15 U.S.C. 78kk) is repealed.

18 (e) CONFORMING AMENDMENT TO TITLE 2.—Section
19 255(g)(1)(A) of the Balanced Budget and Emergency
20 Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is
21 amended by inserting after “Salaries of Article III
22 judges;” the following:

23 “Securities and Exchange Commission: Salaries and
24 Expenses (50-0100-0-1-376);”.

1 (f) EFFECTIVE DATE AND TRANSITION PROVI-
2 SIONS.—

3 (1) IN GENERAL.—Except as provided in para-
4 graphs (2) and (3), the amendments made by this
5 section shall be effective on the first day of the fiscal
6 year following the fiscal year in which this Act is en-
7 acted.

8 (2) TRANSITION PERIOD.—For the fiscal year
9 following the fiscal year in which this Act is enacted,
10 the budget of the Commission shall be deemed to be
11 the budget submitted by the Chairman of the Com-
12 mission to the President for such fiscal year in ac-
13 cordance with the provisions of section 1108 of title
14 31, United States Code.

15 (3) OTHER PROVISIONS.—The amendments
16 made by this section to sections 31(g) and (j)(1) of
17 the Securities Exchange Act of 1934 (15 U.S.C.
18 78ee (g) and (j)(1)) shall be effective on the date of
19 enactment of this Act, and shall require the Com-
20 mission to make and publish an annual adjustment
21 to the fee rates applicable under sections 31(b) and
22 (c) of the Securities Exchange Act of 1934 (15
23 U.S.C. 78ee (b) and (c)) for the fiscal year following
24 the fiscal year in which this Act is enacted. The ad-
25 justed rate described in the preceding sentence shall

1 supersede any previously published adjusted rate ap-
2 plicable under sections 31 (b) and (c) of the Securi-
3 ties Exchange Act of 1934 for the fiscal year fol-
4 lowing the fiscal year in which this Act is enacted
5 and shall take effect on the first day of the fiscal
6 year following the fiscal year in which this Act is en-
7 acted, except that, if this Act is enacted on or after
8 August 31 and on or prior to September 30, the ad-
9 justed rate described in the first sentence shall be
10 published not later than 15 days after the date of
11 enactment of this Act and take effect 30 days there-
12 after, and the Commission shall continue to collect
13 fees under sections 31 (b) and (c) of the Securities
14 Exchange Act of 1934 at the rate in effect during
15 the preceding fiscal year until the adjusted rate is
16 effective.

17 **TITLE X—BUREAU OF CON-**
18 **SUMER FINANCIAL PROTEC-**
19 **TION**

20 **SEC. 1001. SHORT TITLE.**

21 This title may be cited as the “Consumer Financial
22 Protection Act of 2010”.

23 **SEC. 1002. DEFINITIONS.**

24 Except as otherwise provided in this title, for pur-
25 poses of this title, the following definitions shall apply:

1 (1) AFFILIATE.—The term “affiliate” means
2 any person that controls, is controlled by, or is
3 under common control with another person.

4 (2) BUREAU.—The term “Bureau” means the
5 Bureau of Consumer Financial Protection.

6 (3) BUSINESS OF INSURANCE.—The term
7 “business of insurance” means the writing of insur-
8 ance or the reinsuring of risks by an insurer, includ-
9 ing all acts necessary to such writing or reinsuring
10 and the activities relating to the writing of insurance
11 or the reinsuring of risks conducted by persons who
12 act as, or are, officers, directors, agents, or employ-
13 ees of insurers or who are other persons authorized
14 to act on behalf of such persons.

15 (4) CONSUMER.—The term “consumer” means
16 an individual or an agent, trustee, or representative
17 acting on behalf of an individual.

18 (5) CONSUMER FINANCIAL PRODUCT OR SERV-
19 ICE.—The term “consumer financial product or serv-
20 ice” means any financial product or service de-
21 scribed in one or more categories under—

22 (A) paragraph (13) and is offered or pro-
23 vided for use by consumers primarily for per-
24 sonal, family, or household purposes; or

1 (B) clause (i), (iii), (ix), or (x) of para-
2 graph (13)(A), and is delivered, offered, or pro-
3 vided in connection with a consumer financial
4 product or service referred to in subparagraph
5 (A).

6 (6) COVERED PERSON.—The term “covered
7 person” means—

8 (A) any person that engages in offering or
9 providing a consumer financial product or serv-
10 ice; and

11 (B) any affiliate of a person described in
12 subparagraph (A) if such affiliate acts as a
13 service provider to such person.

14 (7) CREDIT.—The term “credit” means the
15 right granted by a person to a consumer to defer
16 payment of a debt, incur debt and defer its payment,
17 or purchase property or services and defer payment
18 for such purchase.

19 (8) DEPOSIT-TAKING ACTIVITY.—The term “de-
20 posit-taking activity” means—

21 (A) the acceptance of deposits, mainte-
22 nance of deposit accounts, or the provision of
23 services related to the acceptance of deposits or
24 the maintenance of deposit accounts;

1 (B) the acceptance of funds, the provision
2 of other services related to the acceptance of
3 funds, or the maintenance of member share ac-
4 counts by a credit union; or

5 (C) the receipt of funds or the equivalent
6 thereof, as the Bureau may determine by rule
7 or order, received or held by a covered person
8 (or an agent for a covered person) for the pur-
9 pose of facilitating a payment or transferring
10 funds or value of funds between a consumer
11 and a third party.

12 (9) DESIGNATED TRANSFER DATE.—The term
13 “designated transfer date” means the date estab-
14 lished under section 1062.

15 (10) DIRECTOR.—The term “Director” means
16 the Director of the Bureau.

17 (11) ENUMERATED CONSUMER LAWS.—The
18 term “enumerated consumer laws” means—

19 (A) the Alternative Mortgage Transaction
20 Parity Act of 1982 (12 U.S.C. 3801 et seq.);

21 (B) the Consumer Leasing Act of 1976
22 (15 U.S.C. 1667 et seq.);

23 (C) the Electronic Fund Transfer Act (15
24 U.S.C. 1693 et seq.);

1000

1 (D) the Equal Credit Opportunity Act (15
2 U.S.C. 1691 et seq.);

3 (E) the Fair Credit Billing Act (15 U.S.C.
4 1666 et seq.);

5 (F) the Fair Credit Reporting Act (15
6 U.S.C. 1681 et seq.), except with respect to sec-
7 tions 615(e) and 628 of that Act (15 U.S.C.
8 1681m(e), 1681w);

9 (G) the Home Owners Protection Act of
10 1998 (12 U.S.C. 4901 et seq.);

11 (H) the Fair Debt Collection Practices Act
12 (15 U.S.C. 1692 et seq.);

13 (I) subsections (c) through (f) of section
14 43 of the Federal Deposit Insurance Act (12
15 U.S.C. 1831t(c)–(f));

16 (J) sections 502 through 509 of the
17 Gramm-Leach-Bliley Act (15 U.S.C. 6802–
18 6809);

19 (K) the Home Mortgage Disclosure Act of
20 1975 (12 U.S.C. 2801 et seq.);

21 (L) the Home Ownership and Equity Pro-
22 tection Act of 1994 (15 U.S.C. 1601 note);

23 (M) the Real Estate Settlement Procedures
24 Act of 1974 (12 U.S.C. 2601 et seq.);

1001

1 (N) the S.A.F.E. Mortgage Licensing Act
2 of 2008 (12 U.S.C. 5101 et seq.);

3 (O) the Truth in Lending Act (15 U.S.C.
4 1601 et seq.); and

5 (P) the Truth in Savings Act (12 U.S.C.
6 4301 et seq.).

7 (12) FEDERAL CONSUMER FINANCIAL LAW.—
8 The term “Federal consumer financial law” means
9 the provisions of this title, the enumerated consumer
10 laws, the laws for which authorities are transferred
11 under subtitles F and H, and any rule or order pre-
12 scribed by the Bureau under this title, an enumer-
13 ated consumer law, or pursuant to the authorities
14 transferred under subtitles F and H.

15 (13) FINANCIAL PRODUCT OR SERVICE.—The
16 term “financial product or service”—

17 (A) means—

18 (i) extending credit and servicing
19 loans, including acquiring, purchasing, sell-
20 ing, brokering, or other extensions of credit
21 (other than solely extending commercial
22 credit to a person who originates consumer
23 credit transactions);

24 (ii) extending or brokering leases of
25 personal or real property that are the func-

1002

1 tional equivalent of purchase finance ar-
2 rangements, if—

3 (I) the lease is on a non-oper-
4 ating basis;

5 (II) the initial term of the lease
6 is at least 90 days; and

7 (III) in the case of a lease involv-
8 ing real property, at the inception of
9 the initial lease, the transaction is in-
10 tended to result in ownership of the
11 leased property to be transferred to
12 the lessee, subject to standards pre-
13 scribed by the Bureau;

14 (iii) providing real estate settlement
15 services or performing appraisals of real
16 estate or personal property;

17 (iv) engaging in deposit-taking activi-
18 ties, transmitting or exchanging funds, or
19 otherwise acting as a custodian of funds or
20 any financial instrument for use by or on
21 behalf of a consumer;

22 (v) selling, providing, or issuing stored
23 value or payment instruments, except that,
24 in the case of a sale of, or transaction to
25 reload, stored value, only if the seller exer-

1003

1 cises substantial control over the terms or
2 conditions of the stored value provided to
3 the consumer where, for purposes of this
4 clause—

5 (I) a seller shall not be found to
6 exercise substantial control over the
7 terms or conditions of the stored value
8 if the seller is not a party to the con-
9 tract with the consumer for the stored
10 value product, and another person is
11 principally responsible for establishing
12 the terms or conditions of the stored
13 value; and

14 (II) advertising the nonfinancial
15 goods or services of the seller on the
16 stored value card or device is not in
17 itself an exercise of substantial control
18 over the terms or conditions;

19 (vi) check cashing, check collection, or
20 check guaranty services;

21 (vii) providing payments or other fi-
22 nancial data processing products or serv-
23 ices to a consumer by any technological
24 means, including processing or storing fi-
25 nancial or banking data for any payment

1004

1 instrument, or through any payments sys-
2 tems or network used for processing pay-
3 ments data, including payments made
4 through an online banking system or mo-
5 bile telecommunications network, except
6 that a person shall not be deemed to be a
7 covered person with respect to financial
8 data processing solely because the per-
9 son—

10 (I) unknowingly or incidentally
11 processes, stores, or transmits over
12 the Internet, telephone line, mobile
13 network, or any other mode of trans-
14 mission, as part of a stream of other
15 types of data, financial data in a man-
16 ner that such data is undifferentiated
17 from other types of data of the same
18 form that the person processes, stores,
19 or transmits;

20 (II) is a merchant, retailer, or
21 seller of any nonfinancial good or
22 service who engages in financial data
23 processing by transmitting or storing
24 payments data about a consumer ex-
25 clusively for purpose of initiating pay-

1005

1 ments instructions by the consumer to
2 pay such person for the purchase of,
3 or to complete a commercial trans-
4 action for, such nonfinancial good or
5 service sold directly by such person to
6 the consumer; or

7 (III) provides access to a host
8 server to a person for purposes of en-
9 abling that person to establish and
10 maintain a website;

11 (viii) providing financial advisory serv-
12 ices to consumers on individual financial
13 matters or relating to proprietary financial
14 products or services (other than by pub-
15 lishing any bona fide newspaper, news
16 magazine, or business or financial publica-
17 tion of general and regular circulation, in-
18 cluding publishing market data, news, or
19 data analytics or investment information or
20 recommendations that are not tailored to
21 the individual needs of a particular con-
22 sumer), including—

23 (I) providing credit counseling to
24 any consumer; and

1006

1 (II) providing services to assist a
2 consumer with debt management or
3 debt settlement, modifying the terms
4 of any extension of credit, or avoiding
5 foreclosure;

6 (ix) collecting, analyzing, maintaining,
7 or providing consumer report information
8 or other account information, including in-
9 formation relating to the credit history of
10 consumers, used or expected to be used in
11 connection with any decision regarding the
12 offering or provision of a consumer finan-
13 cial product or service, except to the extent
14 that—

15 (I) a person—

16 (aa) collects, analyzes, or
17 maintains information that re-
18 lates solely to the transactions
19 between a consumer and such
20 person; or

21 (bb) provides the informa-
22 tion described in item (aa) to an
23 affiliate of such person; and

24 (II) the information described in
25 subclause (I)(aa) is not used by such

1007

1 person or affiliate in connection with
2 any decision regarding the offering or
3 provision of a consumer financial
4 product or service to the consumer,
5 other than credit described in section
6 1027(a)(2)(A);

7 (x) collecting debt related to any con-
8 sumer financial product or service; and

9 (xi) such other financial product or
10 service as may be defined by the Bureau,
11 by regulation, for purposes of this title, if
12 the Bureau finds that such financial prod-
13 uct or service is—

14 (I) entered into or conducted as
15 a subterfuge or with a purpose to
16 evade any Federal consumer financial
17 law; or

18 (II) permissible for a bank or for
19 a financial holding company to offer
20 or to provide under any provision of a
21 Federal law or regulation applicable
22 to a bank or a financial holding com-
23 pany, and has, or likely will have, a
24 material impact on consumers; and

1008

1 (B) does not include the business of insur-
2 ance.

3 (14) FOREIGN EXCHANGE.—The term “foreign
4 exchange” means the exchange, for compensation, of
5 currency of the United States or of a foreign govern-
6 ment for currency of another government.

7 (15) INSURED CREDIT UNION.—The term “in-
8 sured credit union” has the same meaning as in sec-
9 tion 101 of the Federal Credit Union Act (12 U.S.C.
10 1752).

11 (16) PAYMENT INSTRUMENT.—The term “pay-
12 ment instrument” means a check, draft, warrant,
13 money order, traveler’s check, electronic instrument,
14 or other instrument, payment of money, or monetary
15 value (other than currency).

16 (17) PERSON.—The term “person” means an
17 individual, partnership, company, corporation, asso-
18 ciation (incorporated or unincorporated), trust, es-
19 tate, cooperative organization, or other entity.

20 (18) PERSON REGULATED BY THE COMMODITY
21 FUTURES TRADING COMMISSION.—The term “person
22 regulated by the Commodity Futures Trading Com-
23 mission” means any person that is registered, or re-
24 quired by statute or regulation to be registered, with
25 the Commodity Futures Trading Commission, but

1 only to the extent that the activities of such person
2 are subject to the jurisdiction of the Commodity Fu-
3 tures Trading Commission under the Commodity
4 Exchange Act.

5 (19) PERSON REGULATED BY THE COMMIS-
6 SION.—The term “person regulated by the Commis-
7 sion” means a person who is—

8 (A) a broker or dealer that is required to
9 be registered under the Securities Exchange Act
10 of 1934;

11 (B) an investment adviser that is reg-
12 istered under the Investment Advisers Act of
13 1940;

14 (C) an investment company that is re-
15 quired to be registered under the Investment
16 Company Act of 1940;

17 (D) a national securities exchange that is
18 required to be registered under the Securities
19 Exchange Act of 1934;

20 (E) a transfer agent that is required to be
21 registered under the Securities Exchange Act of
22 1934;

23 (F) a clearing corporation that is required
24 to be registered under the Securities Exchange
25 Act of 1934; and

1010

1 (G) any employee, agent, or contractor act-
2 ing on behalf of, registered with, or providing
3 services to, any person described in any of sub-
4 paragraphs (A) through (F), but only to the ex-
5 tent that any person described in any of sub-
6 paragraphs (A) through (F), or the employee,
7 agent, or contractor of such person, acts in a
8 regulated capacity.

9 (20) PERSON REGULATED BY A STATE INSUR-
10 ANCE REGULATOR.—The term “person regulated by
11 a State insurance regulator” means any person that
12 is engaged in the business of insurance and subject
13 to regulation by any State insurance regulator, but
14 only to the extent that such person acts in such ca-
15 pacity.

16 (21) PERSON THAT PERFORMS INCOME TAX
17 PREPARATION ACTIVITIES FOR CONSUMERS.—The
18 term “person that performs income tax preparation
19 activities for consumers” means—

20 (A) any tax return preparer (as defined in
21 section 7701(a)(36) of the Internal Revenue
22 Code of 1986), regardless of whether com-
23 pensated, but only to the extent that the person
24 acts in such capacity;

1011

1 (B) any person regulated by the Secretary
2 under section 330 of title 31, United States
3 Code, but only to the extent that the person
4 acts in such capacity; and

5 (C) any authorized IRS e-file Providers (as
6 defined for purposes of section 7216 of the In-
7 ternal Revenue Code of 1986), but only to the
8 extent that the person acts in such capacity.

9 (22) PRUDENTIAL REGULATOR.—The term
10 “prudential regulator” means—

11 (A) in the case of an insured depository in-
12 stitution, the appropriate Federal banking
13 agency, as that term is defined in section 3 of
14 the Federal Deposit Insurance Act; and

15 (B) in the case of an insured credit union,
16 the National Credit Union Administration.

17 (23) RELATED PERSON.—The term “related
18 person”—

19 (A) shall apply only with respect to a cov-
20 ered person that is not a bank holding company
21 (as that term is defined in section 2 of the
22 Bank Holding Company Act of 1956), credit
23 union, or depository institution;

1012

1 (B) shall be deemed to mean a covered
2 person for all purposes of any provision of Fed-
3 eral consumer financial law; and

4 (C) means—

5 (i) any director, officer, or employee
6 charged with managerial responsibility, or
7 controlling shareholder of, or agent for,
8 such covered person;

9 (ii) any shareholder, consultant, joint
10 venture partner, or other person, as deter-
11 mined by the Bureau (by rule or on a case-
12 by-case basis) who materially participates
13 in the conduct of the affairs of such cov-
14 ered person; and

15 (iii) any independent contractor (in-
16 cluding any attorney, appraiser, or ac-
17 countant) who knowingly or recklessly par-
18 ticipates in any—

19 (I) violation of any provision of
20 law or regulation; or

21 (II) breach of a fiduciary duty.

22 (24) SERVICE PROVIDER.—

23 (A) IN GENERAL.—The term “service pro-
24 vider” means any person that provides a mate-
25 rial service to a covered person in connection

1013

1 with the offering or provision by such covered
2 person of a consumer financial product or serv-
3 ice, including a person that—

4 (i) participates in designing, oper-
5 ating, or maintaining the consumer finan-
6 cial product or service; or

7 (ii) processes transactions relating to
8 the consumer financial product or service
9 (other than unknowingly or incidentally
10 transmitting or processing financial data in
11 a manner that such data is undifferen-
12 tiated from other types of data of the same
13 form as the person transmits or processes).

14 (B) EXCEPTIONS.—The term “service pro-
15 vider” does not include a person solely by virtue
16 of such person offering or providing to a cov-
17 ered person—

18 (i) a support service of a type pro-
19 vided to businesses generally or a similar
20 ministerial service; or

21 (ii) time or space for an advertisement
22 for a consumer financial product or service
23 through print, newspaper, or electronic
24 media.

1 (C) RULE OF CONSTRUCTION.—A person
2 that is a service provider shall be deemed to be
3 a covered person, to the extent that such person
4 engages in the offering or provision of its own
5 consumer financial product or service.

6 (25) STATE.—The term “State” means any
7 State, territory, or possession of the United States,
8 the District of Columbia, Commonwealth of Puerto
9 Rico, Commonwealth of the Northern Mariana Is-
10 lands, Guam, American Samoa, or the United States
11 Virgin Islands or any federally recognized Indian
12 tribe, as defined by the Secretary of the Interior
13 under section 104(a) of the Federally Recognized In-
14 dian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).

15 (26) STORED VALUE.—The term “stored value”
16 means funds or monetary value represented in any
17 electronic format, whether or not specially encrypted,
18 and stored or capable of storage on electronic media
19 in such a way as to be retrievable and transferred
20 electronically, and includes a prepaid debit card or
21 product, or any other similar product, regardless of
22 whether the amount of the funds or monetary value
23 may be increased or reloaded.

24 (27) TRANSMITTING OR EXCHANGING
25 MONEY.—The term “transmitting or exchanging

1 money” means receiving currency, monetary value,
2 or payment instruments from a consumer for the
3 purpose of exchanging or transmitting the same by
4 any means, including transmission by wire, fac-
5 simile, electronic transfer, courier, the Internet, or
6 through bill payment services or through other busi-
7 nesses that facilitate third-party transfers within the
8 United States or to or from the United States.

9 **Subtitle A—Bureau of Consumer**
10 **Financial Protection**

11 **SEC. 1011. ESTABLISHMENT OF THE BUREAU.**

12 (a) BUREAU ESTABLISHED.—There is established in
13 the Federal Reserve System the Bureau of Consumer Fi-
14 nancial Protection, which shall regulate the offering and
15 provision of consumer financial products or services under
16 the Federal consumer financial laws.

17 (b) DIRECTOR AND DEPUTY DIRECTOR.—

18 (1) IN GENERAL.—There is established the po-
19 sition of the Director, who shall serve as the head
20 of the Bureau.

21 (2) APPOINTMENT.—Subject to paragraph (3),
22 the Director shall be appointed by the President, by
23 and with the advice and consent of the Senate.

1016

1 (3) QUALIFICATION.—The President shall
2 nominate the Director from among individuals who
3 are citizens of the United States.

4 (4) COMPENSATION.—The Director shall be
5 compensated at the rate prescribed for level II of the
6 Executive Schedule under section 5313 of title 5,
7 United States Code.

8 (5) DEPUTY DIRECTOR.—There is established
9 the position of Deputy Director, who shall—

10 (A) be appointed by the Director; and

11 (B) serve as acting Director in the absence
12 or unavailability of the Director.

13 (c) TERM.—

14 (1) IN GENERAL.—The Director shall serve for
15 a term of 5 years.

16 (2) EXPIRATION OF TERM.—An individual may
17 serve as Director after the expiration of the term for
18 which appointed, until a successor has been ap-
19 pointed and qualified.

20 (3) REMOVAL FOR CAUSE.—The President may
21 remove the Director for inefficiency, neglect of duty,
22 or malfeasance in office.

23 (d) SERVICE RESTRICTION.—No Director or Deputy
24 Director may hold any office, position, or employment in
25 any Federal reserve bank, Federal home loan bank, cov-

1 ered person, or service provider during the period of serv-
2 ice of such person as Director or Deputy Director.

3 (e) OFFICES.—The principal office of the Bureau
4 shall be in the District of Columbia. The Director may
5 establish regional offices of the Bureau, including in cities
6 in which the Federal reserve banks, or branches of such
7 banks, are located, in order to carry out the responsibil-
8 ities assigned to the Bureau under the Federal consumer
9 financial laws.

10 **SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.**

11 (a) POWERS OF THE BUREAU.—The Bureau is au-
12 thorized to establish the general policies of the Bureau
13 with respect to all executive and administrative functions,
14 including—

15 (1) the establishment of rules for conducting
16 the general business of the Bureau, in a manner not
17 inconsistent with this title;

18 (2) to bind the Bureau and enter into con-
19 tracts;

20 (3) directing the establishment and mainte-
21 nance of divisions or other offices within the Bureau,
22 in order to carry out the responsibilities under the
23 Federal consumer financial laws, and to satisfy the
24 requirements of other applicable law;

1 (4) to coordinate and oversee the operation of
2 all administrative, enforcement, and research activi-
3 ties of the Bureau;

4 (5) to adopt and use a seal;

5 (6) to determine the character of and the neces-
6 sity for the obligations and expenditures of the Bu-
7 reau;

8 (7) the appointment and supervision of per-
9 sonnel employed by the Bureau;

10 (8) the distribution of business among per-
11 sonnel appointed and supervised by the Director and
12 among administrative units of the Bureau;

13 (9) the use and expenditure of funds;

14 (10) implementing the Federal consumer finan-
15 cial laws through rules, orders, guidance, interpreta-
16 tions, statements of policy, examinations, and en-
17 forcement actions; and

18 (11) performing such other functions as may be
19 authorized or required by law.

20 (b) DELEGATION OF AUTHORITY.—The Director of
21 the Bureau may delegate to any duly authorized employee,
22 representative, or agent any power vested in the Bureau
23 by law.

24 (c) AUTONOMY OF THE BUREAU.—

1019

1 (1) COORDINATION WITH THE BOARD OF GOV-
2 ERNORS.—Notwithstanding section 18 of the Fed-
3 eral Trade Commission Act (15 U.S.C. 57a) and any
4 other provision of law applicable to the supervision
5 or examination of persons with respect to Federal
6 consumer financial laws, the Board of Governors
7 may delegate to the Bureau the authorities to exam-
8 ine persons subject to the jurisdiction of the Board
9 of Governors for compliance with the Federal con-
10 sumer financial laws.

11 (2) AUTONOMY.—Notwithstanding the authori-
12 ties granted to the Board of Governors under the
13 Federal Reserve Act, the Board of Governors may
14 not—

15 (A) intervene in any matter or proceeding
16 before the Director, including examinations or
17 enforcement actions, unless otherwise specifi-
18 cally provided by law;

19 (B) appoint, direct, or remove any officer
20 or employee of the Bureau; or

21 (C) merge or consolidate the Bureau, or
22 any of the function or responsibility of the Bu-
23 reau, with any division or office of the Board of
24 Governors or the Federal reserve banks.

1020

1 (3) RULES AND ORDERS.—No rule or order of
2 the Bureau shall be subject to approval or review by
3 the Board of Governors. The Board of Governors
4 may not delay or prevent the issuance of any rule
5 or order of the Bureau.

6 (4) RECOMMENDATIONS AND TESTIMONY.—No
7 officer or agency of the United States shall have any
8 authority to require the Director or any other officer
9 of the Bureau to submit legislative recommenda-
10 tions, or testimony or comments on legislation, to
11 any officer or agency of the United States for ap-
12 proval, comments, or review prior to the submission
13 of such recommendations, testimony, or comments to
14 the Congress, if such recommendations, testimony,
15 or comments to the Congress include a statement in-
16 dicating that the views expressed therein are those
17 of the Director or such officer, and do not nec-
18 essarily reflect the views of the Board of Governors
19 or the President.

20 **SEC. 1013. ADMINISTRATION.**

21 (a) PERSONNEL.—

22 (1) APPOINTMENT.—

23 (A) IN GENERAL.—The Director may fix
24 the number of, and appoint and direct, all em-
25 ployees of the Bureau.

1021

1 (B) EMPLOYEES OF THE BUREAU.—The
2 Director is authorized to employ attorneys,
3 compliance examiners, compliance supervision
4 analysts, economists, statisticians, and other
5 employees as may be deemed necessary to con-
6 duct the business of the Bureau. Notwith-
7 standing any other provision of law, all such
8 employees shall be appointed and compensated
9 on terms and conditions that are consistent
10 with the terms and conditions set forth in sec-
11 tion 11(l) of the Federal Reserve Act (12
12 U.S.C. 248(l)).

13 (2) COMPENSATION.—The Director shall at all
14 times provide compensation and benefits to each
15 class of employees that, at a minimum, are equiva-
16 lent to the compensation and benefits then being
17 provided by the Board of Governors for the cor-
18 responding class of employees.

19 (b) SPECIFIC FUNCTIONAL UNITS.—

20 (1) RESEARCH.—The Director shall establish a
21 unit whose functions shall include researching, ana-
22 lyzing, and reporting on—

23 (A) developments in markets for consumer
24 financial products or services, including market
25 areas of alternative consumer financial products

1 or services with high growth rates and areas of
2 risk to consumers;

3 (B) access to fair and affordable credit for
4 traditionally underserved communities;

5 (C) consumer awareness, understanding,
6 and use of disclosures and communications re-
7 garding consumer financial products or services;

8 (D) consumer awareness and under-
9 standing of costs, risks, and benefits of con-
10 sumer financial products or services; and

11 (E) consumer behavior with respect to con-
12 sumer financial products or services.

13 (2) COMMUNITY AFFAIRS.—The Director shall
14 establish a unit whose functions shall include pro-
15 viding information, guidance, and technical assist-
16 ance regarding the offering and provision of con-
17 sumer financial products or services to traditionally
18 underserved consumers and communities.

19 (3) COLLECTING AND TRACKING COM-
20 PLAINTS.—

21 (A) IN GENERAL.—The Director shall es-
22 tablish a unit whose functions shall include es-
23 tablishing a single, toll-free telephone number, a
24 website, and database to facilitate the central-
25 ized collection, monitoring, and response to con-

1023

1 consumer complaints regarding consumer financial
2 products or services. The Director shall coordi-
3 nate with other Federal agencies to route com-
4 plaints to other Federal regulators, where ap-
5 propriate.

6 (B) ROUTING CALLS TO STATES.—To the
7 extent practicable, State agencies may receive
8 appropriate complaints from the systems estab-
9 lished under subparagraph (A), if—

10 (i) the State agency system has the
11 functional capacity to receive calls or elec-
12 tronic reports routed by the Bureau sys-
13 tems; and

14 (ii) the State agency has satisfied any
15 conditions of participation in the system
16 that the Bureau may establish, including
17 treatment of personally identifiable infor-
18 mation and sharing of information on com-
19 plaint resolution or related compliance pro-
20 cedures and resources.

21 (C) REPORTS TO THE CONGRESS.—The
22 Director shall present an annual report to Con-
23 gress not later than March 31 of each year on
24 the complaints received by the Bureau in the
25 prior year regarding consumer financial prod-

1 ucts and services. Such report shall include in-
2 formation and analysis about complaint num-
3 bers, types, and, where applicable, information
4 about resolution of complaints.

5 (D) DATA SHARING REQUIRED.—To facili-
6 tate preparation of the reports required under
7 subparagraph (C), supervision and enforcement
8 activities, and monitoring of the market for
9 consumer financial products and services, the
10 Bureau shall share consumer complaint infor-
11 mation with prudential regulators, other Fed-
12 eral agencies, and State agencies, consistent
13 with Federal law applicable to personally identi-
14 fiable information. The prudential regulators
15 and other Federal agencies shall share data re-
16 lating to consumer complaints regarding con-
17 sumer financial products and services with the
18 Bureau, consistent with Federal law applicable
19 to personally identifiable information.

20 (e) OFFICE OF FAIR LENDING AND EQUAL OPPOR-
21 TUNITY.—

22 (1) ESTABLISHMENT.—The Director shall es-
23 tablish within the Bureau the Office of Fair Lending
24 and Equal Opportunity.

1025

1 (2) FUNCTIONS.—The Office of Fair Lending
2 and Equal Opportunity shall have such powers and
3 duties as the Director may delegate to the Office, in-
4 cluding—

5 (A) providing oversight and enforcement of
6 Federal laws intended to ensure the fair, equi-
7 table, and nondiscriminatory access to credit for
8 both individuals and communities that are en-
9 forced by the Bureau, including the Equal
10 Credit Opportunity Act and the Home Mort-
11 gage Disclosure Act;

12 (B) coordinating fair lending and fair
13 housing efforts of the Bureau with other Fed-
14 eral agencies and State regulators, as appro-
15 priate, to promote consistent, efficient and ef-
16 fective enforcement of Federal fair lending laws;

17 (C) working with private industry, fair
18 lending, civil rights, consumer and community
19 advocates on the promotion of fair lending com-
20 pliance and education; and

21 (D) providing annual reports to Congress
22 on the efforts of the Bureau to fulfill its fair
23 lending mandate.

24 (3) ADMINISTRATION OF OFFICE.—There is es-
25 tablished the position of Assistant Director of the

1 Bureau for Fair Lending and Equal Opportunity,
2 who—

3 (A) shall be appointed by the Director; and

4 (B) shall carry out such duties as the Di-
5 rector may delegate to such Assistant Director.

6 (d) OFFICE OF FINANCIAL LITERACY.—

7 (1) ESTABLISHMENT.—The Director shall es-
8 tablish an Office of Financial Literacy, which shall
9 be responsible for developing and implementing ini-
10 tiatives intended to educate and empower consumers
11 to make better informed financial decisions.

12 (2) OTHER DUTIES.—The Office of Financial
13 Literacy shall develop and implement a strategy to
14 improve the financial literacy of consumers that in-
15 cludes measurable goals and objectives, in consulta-
16 tion with the Financial Literacy and Education
17 Commission, consistent with the National Strategy
18 for Financial Education, through activities including
19 providing opportunities for consumers to access—

20 (A) financial counseling;

21 (B) information to assist with the evalua-
22 tion of credit products and the understanding
23 of credit histories and scores;

24 (C) savings, borrowing, and other services
25 found at mainstream financial institutions;

1027

1 (D) activities intended to—

2 (i) prepare the consumer for edu-
3 cational expenses and the submission of fi-
4 nancial aid applications, and other major
5 purchases;

6 (ii) reduce debt; and

7 (iii) improve the financial situation of
8 the consumer;

9 (E) assistance in developing long-term sav-
10 ings strategies; and

11 (F) wealth building and financial services
12 during the preparation process to claim earned
13 income tax credits and Federal benefits.

14 (3) COORDINATION.—The Office of Financial
15 Literacy shall coordinate with other units within the
16 Bureau in carrying out its functions, including—

17 (A) working with the Community Affairs
18 Office to implement the strategy to improve fi-
19 nancial literacy of consumers; and

20 (B) working with the research unit estab-
21 lished by the Director to conduct research re-
22 lated to consumer financial education and coun-
23 seling.

24 (4) REPORT.—Not later than 24 months after
25 the designated transfer date, and annually there-

1 after, the Director shall submit a report on its finan-
2 cial literacy activities and strategy to improve finan-
3 cial literacy of consumers to—

4 (A) the Committee on Banking, Housing,
5 and Urban Affairs of the Senate; and

6 (B) the Committee on Financial Services
7 of the House of Representatives.

8 (5) MEMBERSHIP IN FINANCIAL LITERACY AND
9 EDUCATION COMMISSION.—Section 513(c)(1) of the
10 Financial Literacy and Education Improvement Act
11 (20 U.S.C. 9702(c)(1)) is amended—

12 (A) in subparagraph (B), by striking
13 “and” at the end;

14 (B) by redesignating subparagraph (C) as
15 subparagraph (D); and

16 (C) by inserting after subparagraph (B)
17 the following new subparagraph:

18 “(C) the Director of the Bureau of Con-
19 sumer Financial Protection; and”.

20 (6) CONFORMING AMENDMENT.—Section
21 513(d) of the Financial Literacy and Education Im-
22 provement Act (20 U.S.C. 9702(d)) is amended by
23 adding at the end the following: “The Director of
24 the Bureau of Consumer Financial Protection shall
25 serve as the Vice Chairman.”.

1 **SEC. 1014. CONSUMER ADVISORY BOARD.**

2 (a) ESTABLISHMENT REQUIRED.—The Director shall
3 establish a Consumer Advisory Board to advise and con-
4 sult with the Bureau in the exercise of its functions under
5 this title, the enumerated consumer laws, and to provide
6 information on emerging practices in the consumer finan-
7 cial products or services industry, including regional
8 trends, concerns, and other relevant information.

9 (b) MEMBERSHIP.—In appointing the members of
10 the Consumer Advisory Board, the Director shall seek to
11 assemble experts in consumer protection, financial serv-
12 ices, community development, fair lending, and consumer
13 financial products or services and seek representation of
14 the interests of covered persons and consumers, without
15 regard to party affiliation. Not fewer than 6 members
16 shall be appointed upon the recommendation of the re-
17 gional Federal Reserve Bank Presidents, on a rotating
18 basis.

19 (c) MEETINGS.—The Consumer Advisory Board shall
20 meet from time to time at the call of the Director, but,
21 at a minimum, shall meet at least twice in each year.

22 (d) COMPENSATION AND TRAVEL EXPENSES.—Mem-
23 bers of the Consumer Advisory Board who are not full-
24 time employees of the United States shall—

25 (1) be entitled to receive compensation at a rate
26 fixed by the Director while attending meetings of the

1030

1 Consumer Advisory Board, including travel time;
2 and

3 (2) be allowed travel expenses, including trans-
4 portation and subsistence, while away from their
5 homes or regular places of business.

6 **SEC. 1015. COORDINATION.**

7 The Bureau shall coordinate with the Commission,
8 the Commodity Futures Trading Commission, and other
9 Federal agencies and State regulators, as appropriate, to
10 promote consistent regulatory treatment of consumer fi-
11 nancial and investment products and services.

12 **SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CON-**
13 **GRESS.**

14 (a) APPEARANCES BEFORE CONGRESS.—The Direc-
15 tor of the Bureau shall appear before the Committee on
16 Banking, Housing, and Urban Affairs of the Senate and
17 the Committee on Financial Services of the House of Rep-
18 resentatives at semi-annual hearings regarding the reports
19 required under subsection (b).

20 (b) REPORTS REQUIRED.—The Bureau shall, concu-
21 rent with each semi-annual hearing referred to in sub-
22 section (a), prepare and submit to the President and to
23 the Committee on Banking, Housing, and Urban Affairs
24 of the Senate and the Committee on Financial Services

1 of the House of Representatives, a report, beginning with
2 the session following the designated transfer date.

3 (c) CONTENTS.—The reports required by subsection
4 (b) shall include—

5 (1) a discussion of the significant problems
6 faced by consumers in shopping for or obtaining
7 consumer financial products or services;

8 (2) a justification of the budget request of the
9 previous year;

10 (3) a list of the significant rules and orders
11 adopted by the Bureau, as well as other significant
12 initiatives conducted by the Bureau, during the pre-
13 ceding year and the plan of the Bureau for rules, or-
14 ders, or other initiatives to be undertaken during the
15 upcoming period;

16 (4) an analysis of complaints about consumer
17 financial products or services that the Bureau has
18 received and collected in its central database on
19 complaints during the preceding year;

20 (5) a list, with a brief statement of the issues,
21 of the public supervisory and enforcement actions to
22 which the Bureau was a party during the preceding
23 year;

24 (6) the actions taken regarding rules, orders,
25 and supervisory actions with respect to covered per-

1 sons which are not credit unions or depository insti-
2 tutions;

3 (7) an assessment of significant actions by
4 State attorneys general or State regulators relating
5 to Federal consumer financial law; and

6 (8) an analysis of the efforts of the Bureau to
7 fulfill the fair lending mission of the Bureau.

8 **SEC. 1017. FUNDING; PENALTIES AND FINES.**

9 (a) **TRANSFER OF FUNDS FROM BOARD OF GOV-**
10 **ERNORS.—**

11 (1) **IN GENERAL.—**Each year (or quarter of
12 such year), beginning on the designated transfer
13 date, and each quarter thereafter, the Board of Gov-
14 ernors shall transfer to the Bureau from the com-
15 bined earnings of the Federal Reserve System, the
16 amount determined by the Director to be reasonably
17 necessary to carry out the authorities of the Bureau
18 under Federal consumer financial law, taking into
19 account such other sums made available to the Bu-
20 reau from the preceding year (or quarter of such
21 year).

22 (2) **FUNDING CAP.—**

23 (A) **IN GENERAL.—**Notwithstanding para-
24 graph (1), and in accordance with this para-
25 graph, the amount that shall be transferred to

1033

1 the Bureau in each fiscal year shall not exceed
2 a fixed percentage of the total operating ex-
3 penses of the Federal Reserve System, as re-
4 ported in the Annual Report, 2009, of the
5 Board of Governors, equal to—

6 (i) 10 percent of such combined ex-
7 penditures in fiscal year 2011;

8 (ii) 11 percent of such combined ex-
9 penditures in fiscal year 2012; and

10 (iii) 12 percent of such combined ex-
11 penditures in fiscal year 2013, and in each
12 year thereafter.

13 (B) AMOUNT ADJUSTED FOR INFLA-
14 TION.—The dollar amount referred to in sub-
15 paragraph (A) shall be adjusted annually, using
16 the percent by which the average urban con-
17 sumer price index for the quarter preceding the
18 date of the payment differs from the average of
19 that index for the same quarter in the prior
20 year.

21 (3) TRANSITION PERIOD.—Beginning on the
22 date of enactment of this Act and until the des-
23 ignated transfer date, the Board of Governors shall
24 transfer to the Bureau the amount estimated by the
25 Secretary needed to carry out the authorities grant-

1 ed to the Bureau under Federal consumer financial
2 law, from the date of enactment of this Act until the
3 designated transfer date.

4 (4) BUDGET AND FINANCIAL MANAGEMENT.—

5 (A) FINANCIAL OPERATING PLANS AND
6 FORECASTS.—The Director shall provide to the
7 Director of the Office of Management and
8 Budget copies of the financial operating plans
9 and forecasts of the Director, as prepared by
10 the Director in the ordinary course of the oper-
11 ations of the Bureau, and copies of the quar-
12 terly reports of the financial condition and re-
13 sults of operations of the Bureau, as prepared
14 by the Director in the ordinary course of the
15 operations of the Bureau.

16 (B) FINANCIAL STATEMENTS.—The Bu-
17 reau shall prepare annually a statement of—

18 (i) assets and liabilities and surplus or
19 deficit;

20 (ii) income and expenses; and

21 (iii) sources and application of funds.

22 (C) FINANCIAL MANAGEMENT SYSTEMS.—

23 The Bureau shall implement and maintain fi-
24 nancial management systems that comply sub-
25 stantially with Federal financial management

1 systems requirements and applicable Federal
2 accounting standards.

3 (D) ASSERTION OF INTERNAL CON-
4 TROLS.—The Director shall provide to the
5 Comptroller General of the United States an as-
6 sertion as to the effectiveness of the internal
7 controls that apply to financial reporting by the
8 Bureau, using the standards established in sec-
9 tion 3512(c) of title 31, United States Code.

10 (E) RULE OF CONSTRUCTION.—This sub-
11 section may not be construed as implying any
12 obligation on the part of the Director to consult
13 with or obtain the consent or approval of the
14 Director of the Office of Management and
15 Budget with respect to any report, plan, fore-
16 cast, or other information referred to in sub-
17 paragraph (A) or any jurisdiction or oversight
18 over the affairs or operations of the Bureau.

19 (5) AUDIT OF THE BUREAU.—

20 (A) IN GENERAL.—The Comptroller Gen-
21 eral shall annually audit the financial trans-
22 actions of the Bureau in accordance with the
23 United States generally accepted government
24 auditing standards, as may be prescribed by the
25 Comptroller General of the United States. The

1036

1 audit shall be conducted at the place or places
2 where accounts of the Bureau are normally
3 kept. The representatives of the Government
4 Accountability Office shall have access to the
5 personnel and to all books, accounts, docu-
6 ments, papers, records (including electronic
7 records), reports, files, and all other papers,
8 automated data, things, or property belonging
9 to or under the control of or used or employed
10 by the Bureau pertaining to its financial trans-
11 actions and necessary to facilitate the audit,
12 and such representatives shall be afforded full
13 facilities for verifying transactions with the bal-
14 ances or securities held by depositories, fiscal
15 agents, and custodians. All such books, ac-
16 counts, documents, records, reports, files, pa-
17 pers, and property of the Bureau shall remain
18 in possession and custody of the Bureau. The
19 Comptroller General may obtain and duplicate
20 any such books, accounts, documents, records,
21 working papers, automated data and files, or
22 other information relevant to such audit with-
23 out cost to the Comptroller General and the
24 Comptroller General's right of access to such

1 information shall be enforceable pursuant to
2 section 716(e) of title 31, United States Code.

3 (B) REPORT.—The Comptroller General
4 shall submit to the Congress a report of each
5 annual audit conducted under this subsection.
6 The report to the Congress shall set forth the
7 scope of the audit and shall include the state-
8 ment of assets and liabilities and surplus or
9 deficit, the statement of income and expenses,
10 the statement of sources and application of
11 funds, and such comments and information as
12 may be deemed necessary to inform Congress of
13 the financial operations and condition of the
14 Bureau, together with such recommendations
15 with respect thereto as the Comptroller General
16 may deem advisable. A copy of each report shall
17 be furnished to the President and to the Bu-
18 reau at the time submitted to the Congress.

19 (C) ASSISTANCE AND COSTS.—For the
20 purpose of conducting an audit under this sub-
21 section, the Comptroller General may, in the
22 discretion of the Comptroller General, employ
23 by contract, without regard to section 3709 of
24 the Revised Statutes of the United States (41
25 U.S.C. 5), professional services of firms and or-

1 ganizations of certified public accountants for
2 temporary periods or for special purposes. Upon
3 the request of the Comptroller General, the Di-
4 rector of the Bureau shall transfer to the Gov-
5 ernment Accountability Office from funds avail-
6 able, the amount requested by the Comptroller
7 General to cover the full costs of any audit and
8 report conducted by the Comptroller General.
9 The Comptroller General shall credit funds
10 transferred to the account established for sala-
11 ries and expenses of the Government Account-
12 ability Office, and such amount shall be avail-
13 able upon receipt and without fiscal year limita-
14 tion to cover the full costs of the audit and re-
15 port.

16 (b) CONSUMER FINANCIAL PROTECTION FUND.—

17 (1) SEPARATE FUND IN FEDERAL RESERVE
18 BOARD ESTABLISHED.—There is established in the
19 Federal Reserve Board a separate fund, to be known
20 as the “Consumer Financial Protection Fund” (re-
21 ferred to in this section as the “Bureau Fund”).

22 (2) FUND RECEIPTS.—All amounts transferred
23 to the Bureau under subsection (a) shall be depos-
24 ited into the Bureau Fund.

25 (3) INVESTMENT AUTHORITY.—

1039

1 (A) AMOUNTS IN BUREAU FUND MAY BE
2 INVESTED.—The Bureau may request the
3 Board of Governors to invest the portion of the
4 Bureau Fund that is not, in the judgment of
5 the Bureau, required to meet the current needs
6 of the Bureau.

7 (B) ELIGIBLE INVESTMENTS.—Invest-
8 ments authorized by this paragraph shall be
9 made by the Board of Governors in obligations
10 of the United States or obligations that are
11 guaranteed as to principal and interest by the
12 United States, with maturities suitable to the
13 needs of the Bureau Fund, as determined by
14 the Bureau.

15 (C) INTEREST AND PROCEEDS CRED-
16 ITED.—The interest on, and the proceeds from
17 the sale or redemption of, any obligations held
18 in the Fund shall be credited to the Fund.

19 (c) USE OF FUNDS.—

20 (1) IN GENERAL.—Funds obtained by, trans-
21 ferred to, or credited to the Bureau Fund shall be
22 immediately available to the Bureau and under the
23 control of the Director, and shall remain available
24 until expended, to pay the expenses of the Bureau
25 in carrying out its duties and responsibilities. The

1 compensation of Director and other employees of the
2 Bureau and all other expenses thereof may be paid
3 from obtained by, transferred to, or credited to the
4 Bureau Fund under this section.

5 (2) FUNDS THAT ARE NOT GOVERNMENT
6 FUNDS.—Funds obtained by or transferred to the
7 Bureau Fund shall not be construed to be Govern-
8 ment funds or appropriated monies.

9 (3) AMOUNTS NOT SUBJECT TO APPORTION-
10 MENT.—Notwithstanding any other provision of law,
11 amounts in the Bureau Fund and in the Civil Pen-
12 alty Fund established under subsection (d) shall not
13 be subject to apportionment for purposes of chapter
14 15 of title 31, United States Code, or under any
15 other authority.

16 (d) PENALTIES AND FINES.—

17 (1) ESTABLISHMENT OF VICTIMS RELIEF
18 FUND.—There is established in the Federal Reserve
19 Board a fund to be known as the “Consumer Finan-
20 cial Protection Civil Penalty Fund” (referred to in
21 this subsection as the “Civil Penalty Fund”). If the
22 Bureau obtains a civil penalty against any person in
23 any judicial or administrative action under Federal
24 consumer financial laws, the Bureau shall deposit

1 into the Civil Penalty Fund, the amount of the pen-
2 alty collected.

3 (2) PAYMENT TO VICTIMS.—Amounts in the
4 Civil Penalty Fund shall be available to the Bureau,
5 without fiscal year limitation, for payments to the
6 victims of activities for which civil penalties have
7 been imposed under the Federal consumer financial
8 laws. To the extent such victims cannot be located
9 or such payments are otherwise not practicable, the
10 Bureau may use such funds for the purpose of con-
11 sumer education and financial literacy programs.

12 **SEC. 1018. EFFECTIVE DATE.**

13 This subtitle shall become effective on the date of en-
14 actment of this Act.

15 **Subtitle B—General Powers of the**
16 **Bureau**

17 **SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.**

18 (a) PURPOSE.—The Bureau shall seek to implement
19 and, where applicable, enforce Federal consumer financial
20 law consistently for the purpose of ensuring that markets
21 for consumer financial products and services are fair,
22 transparent, and competitive.

23 (b) OBJECTIVES.—The Bureau is authorized to exer-
24 cise its authorities under Federal consumer financial law

1 for the purposes of ensuring that, with respect to con-
2 sumer financial products and services—

3 (1) consumers are provided with timely and un-
4 derstandable information to make responsible deci-
5 sions about financial transactions;

6 (2) consumers are protected from unfair, decep-
7 tive, or abusive acts and practices and from dis-
8 crimination;

9 (3) outdated, unnecessary, or unduly burden-
10 some regulations are regularly identified and ad-
11 dressed in order to reduce unwarranted regulatory
12 burdens;

13 (4) Federal consumer financial law is enforced
14 consistently, without regard to the status of a person
15 as a depository institution, in order to promote fair
16 competition; and

17 (5) markets for consumer financial products
18 and services operate transparently and efficiently to
19 facilitate access and innovation.

20 (c) FUNCTIONS.—The primary functions of the Bu-
21 reau are—

22 (1) conducting financial education programs;

23 (2) collecting, investigating, and responding to
24 consumer complaints;

1 (3) collecting, researching, monitoring, and
2 publishing information relevant to the functioning of
3 markets for consumer financial products and serv-
4 ices to identify risks to consumers, and the proper
5 functioning of such markets;

6 (4) subject to sections 1024 through 1026, su-
7 pervising covered persons for compliance with Fed-
8 eral consumer financial law, and taking appropriate
9 enforcement action to address violations of Federal
10 consumer financial law;

11 (5) issuing rules, orders, and guidance imple-
12 menting Federal consumer financial law; and

13 (6) performing such support activities as may
14 be necessary or useful to facilitate the other func-
15 tions of the Bureau.

16 **SEC. 1022. RULEMAKING AUTHORITY.**

17 (a) IN GENERAL.—The Bureau is authorized to exer-
18 cise its authorities under Federal consumer financial law
19 to administer, enforce, and otherwise implement the provi-
20 sions of Federal consumer financial law.

21 (b) RULEMAKING, ORDERS, AND GUIDANCE.—

22 (1) GENERAL AUTHORITY.—The Director may
23 prescribe rules and issue orders and guidance, as
24 may be necessary or appropriate to enable the Bu-
25 reau to administer and carry out the Federal con-

1 consumer financial laws, and to prevent evasions there-
2 of.

3 (2) STANDARDS FOR RULEMAKING.—In pre-
4 scribing a rule under the Federal consumer financial
5 laws—

6 (A) the Bureau shall consider the potential
7 benefits and costs to consumers and covered
8 persons, including the potential reduction of ac-
9 cess by consumers to consumer financial prod-
10 ucts or services resulting from such rule;

11 (B) the Bureau shall consult with the pru-
12 dential regulators, or other Federal agencies, as
13 appropriate, prior to proposing a rule and dur-
14 ing the comment process regarding consistency
15 with prudential, market, or systemic objectives
16 administered by such agencies; and

17 (C) if, during the consultation process de-
18 scribed in subparagraph (B), a prudential regu-
19 lator provides the Bureau with a written objec-
20 tion to the proposed rule of the Bureau or a
21 portion thereof, the Bureau shall include in the
22 adopting release a description of the objection
23 and the basis for the Bureau decision, if any,
24 regarding such objection, except that nothing in
25 this clause shall be construed as altering or lim-

1 product or service and the extent to which
2 such provisions provide consumers with
3 adequate protections.

4 (4) EXCLUSIVE RULEMAKING AUTHORITY.—

5 Notwithstanding any other provisions of Federal
6 law, to the extent that a provision of Federal con-
7 sumer financial law authorizes the Bureau and an-
8 other Federal agency to issue regulations under that
9 provision of law for purposes of assuring compliance
10 with Federal consumer financial law and any regula-
11 tions thereunder, the Bureau shall have the exclusive
12 authority to prescribe rules subject to those provi-
13 sions of law.

14 (c) MONITORING.—

15 (1) IN GENERAL.—In order to support its rule-
16 making and other functions, the Bureau shall mon-
17 itor for risks to consumers in the offering or provi-
18 sion of consumer financial products or services, in-
19 cluding developments in markets for such products
20 or services.

21 (2) CONSIDERATIONS.—In allocating its re-
22 sources to perform the monitoring required by this
23 section, the Bureau may consider, among other fac-
24 tors—

1 (A) likely risks and costs to consumers as-
2 sociated with buying or using a type of con-
3 sumer financial product or service;

4 (B) understanding by consumers of the
5 risks of a type of consumer financial product or
6 service;

7 (C) the legal protections applicable to the
8 offering or provision of a consumer financial
9 product or service, including the extent to which
10 the law is likely to adequately protect con-
11 sumers;

12 (D) rates of growth in the offering or pro-
13 vision of a consumer financial product or serv-
14 ice;

15 (E) the extent, if any, to which the risks
16 of a consumer financial product or service may
17 disproportionately affect traditionally under-
18 served consumers; or

19 (F) the types, number, and other pertinent
20 characteristics of covered persons that offer or
21 provide the consumer financial product or serv-
22 ice.

23 (3) REPORTS.—The Bureau shall publish not
24 fewer than 1 report of significant findings of its
25 monitoring required by this subsection in each cal-

1 endar year, beginning with the first calendar year
2 that begins at least 1 year after the designated
3 transfer date.

4 (4) COLLECTION OF INFORMATION.—In con-
5 ducting research on the offering and provision of
6 consumer financial products or services, the Bureau
7 shall have the authority to gather information from
8 time to time regarding the organization, business
9 conduct, markets, and activities of persons operating
10 in consumer financial services markets. In order to
11 gather such information, the Bureau may—

12 (A) gather and compile information from
13 examination reports concerning covered persons
14 or service providers, assessment of consumer
15 complaints, surveys and interviews of covered
16 persons and consumers, and review of available
17 databases;

18 (B) require persons to file with the Bu-
19 reau, under oath or otherwise, in such form and
20 within such reasonable period of time as the
21 Bureau may prescribe, by rule or order, annual
22 or special reports, or answers in writing to spe-
23 cific questions, furnishing such information as
24 the Bureau may require; and

1 (C) make public such information obtained
2 by the Bureau under this section, as is in the
3 public interest in reports or otherwise in the
4 manner best suited for public information and
5 use.

6 (5) CONFIDENTIALITY RULES.—The Bureau
7 shall prescribe rules regarding the confidential treat-
8 ment of information obtained from persons in con-
9 nection with the exercise of its authorities under
10 Federal consumer financial law.

11 (A) ACCESS BY THE BUREAU TO REPORTS
12 OF OTHER REGULATORS.—

13 (i) EXAMINATION AND FINANCIAL
14 CONDITION REPORTS.—Upon providing
15 reasonable assurances of confidentiality,
16 the Bureau shall have access to any report
17 of examination or financial condition made
18 by a prudential regulator or other Federal
19 agency having jurisdiction over a covered
20 person or service provider, and to all revi-
21 sions made to any such report.

22 (ii) PROVISION OF OTHER REPORTS
23 TO THE BUREAU.—In addition to the re-
24 ports described in clause (i), a prudential
25 regulator or other Federal agency having

1050

1 jurisdiction over a covered person or serv-
2 ice provider may, in its discretion, furnish
3 to the Bureau any other report or other
4 confidential supervisory information con-
5 cerning any insured depository institution,
6 credit union, or other entity examined by
7 such agency under authority of any provi-
8 sion of Federal law.

9 (B) ACCESS BY OTHER REGULATORS TO
10 REPORTS OF THE BUREAU.—

11 (i) EXAMINATION REPORTS.—Upon
12 providing reasonable assurances of con-
13 fidentiality, a prudential regulator, a State
14 regulator, or any other Federal agency
15 having jurisdiction over a covered person
16 or service provider shall have access to any
17 report of examination made by the Bureau
18 with respect to such person, and to all re-
19 visions made to any such report.

20 (ii) PROVISION OF OTHER REPORTS
21 TO OTHER REGULATORS.—In addition to
22 the reports described in clause (i), the Bu-
23 reau may, in its discretion, furnish to a
24 prudential regulator or other agency hav-
25 ing jurisdiction over covered person or

1 service provider any other report or other
2 confidential supervisory information con-
3 cerning such person examined by the Bu-
4 reau under the authority of any other pro-
5 vision of Federal law.

6 (6) PRIVACY CONSIDERATIONS.—In collecting
7 information from any person, publicly releasing in-
8 formation held by the Bureau, or requiring covered
9 persons to publicly report information, the Bureau
10 shall take steps to ensure that proprietary, personal,
11 or confidential consumer information that is pro-
12 tected from public disclosure under section 552(b) or
13 552a of title 5, United States Code, or any other
14 provision of law, is not made public under this title.

15 (d) ASSESSMENT OF SIGNIFICANT RULES.—

16 (1) IN GENERAL.—The Bureau shall conduct
17 an assessment of each significant rule or order
18 adopted by the Bureau under Federal consumer fi-
19 nancial law. The assessment shall address, among
20 other relevant factors, the effectiveness of the rule or
21 order in meeting the purposes and objectives of this
22 title and the specific goals stated by the Bureau.
23 The assessment shall reflect available evidence and
24 any data that the Bureau reasonably may collect.

1052

1 (2) REPORTS.—The Bureau shall publish a re-
2 port of its assessment under this subsection not
3 later than 5 years after the effective date of the sub-
4 ject rule or order.

5 (3) PUBLIC COMMENT REQUIRED.—Before pub-
6 lishing a report of its assessment, the Bureau shall
7 invite public comment on recommendations for modi-
8 fying, expanding, or eliminating the newly adopted
9 significant rule or order.

10 (e) INFORMATION GATHERING.—In conducting any
11 monitoring or assessment required by this section, the Bu-
12 reau may gather information through a variety of meth-
13 ods, including by conducting surveys or interviews of con-
14 sumers.

15 **SEC. 1023. REVIEW OF BUREAU REGULATIONS.**

16 (a) REVIEW OF BUREAU REGULATIONS.—On the pe-
17 tition of a member agency of the Council, the Council may
18 set aside a final regulation prescribed by the Bureau, or
19 any provision thereof, if the Council decides, in accordance
20 with subsection (e), that the regulation or provision would
21 put the safety and soundness of the United States banking
22 system or the stability of the financial sector of the United
23 States at risk.

24 (b) PETITION.—

1053

1 (1) PROCEDURE.—An agency represented by a
2 member of the Council may petition the Council, in
3 writing, and in accordance with rules prescribed pur-
4 suant to subsection (f), to stay the effectiveness of,
5 or set aside, a regulation if the member agency filing
6 the petition—

7 (A) has in good faith attempted to work
8 with the Bureau to resolve concerns regarding
9 the effect of the rule on financial stability or
10 the safety and soundness of the United States
11 banking system; and

12 (B) files the petition with the Council not
13 later than 10 days after the date on which the
14 regulation has been published in the Federal
15 Register.

16 (2) PUBLICATION.—Any petition filed with the
17 Council under this section shall be published in the
18 Federal Register and transmitted contemporaneously
19 with filing to the Committee on Banking, Housing,
20 and Urban Affairs of the Senate and the Committee
21 on Financial Services of the House of Representa-
22 tives.

23 (c) STAYS AND SET ASIDES.—

24 (1) STAY.—

1054

1 (A) IN GENERAL.—Upon the request of
2 any member agency, the Chairperson of the
3 Council may stay the effectiveness of a regula-
4 tion for the purpose of allowing appropriate
5 consideration of the petition by the Council.

6 (B) EXPIRATION.—A stay issued under
7 this paragraph shall expire on the earlier of—

8 (i) 90 days after the date of filing of
9 the petition under subsection (b); or

10 (ii) the date on which the Council
11 makes a decision under paragraph (3).

12 (2) NO ADVERSE INFERENCE.—After the expi-
13 ration of any stay imposed under this section, no in-
14 ference shall be drawn regarding the validity or en-
15 forceability of a regulation which was the subject of
16 the petition.

17 (3) VOTE.—

18 (A) IN GENERAL.—The decision to issue a
19 stay of, or set aside, any regulation under this
20 section shall be made only with the affirmative
21 vote in accordance with subparagraph (B) of $\frac{2}{3}$
22 of the members of the Council then serving.

23 (B) AUTHORIZATION TO VOTE.—A member
24 of the Council may vote to stay the effectiveness
25 of, or set aside, a final regulation prescribed by

1 the Bureau only if the agency or department
2 represented by that member has—

3 (i) considered any relevant informa-
4 tion provided by the agency submitting the
5 petition and by the Bureau; and

6 (ii) made an official determination, at
7 a public meeting where applicable, that the
8 regulation which is the subject of the peti-
9 tion would put the safety and soundness of
10 the United States banking system or the
11 stability of the financial system of the
12 United States at risk.

13 (4) DECISIONS TO SET ASIDE.—

14 (A) EFFECT OF DECISION.—A decision by
15 the Council to set aside a regulation prescribed
16 by the Bureau, or provision thereof, shall
17 render such regulation, or provision thereof, un-
18 enforceable.

19 (B) TIMELY ACTION REQUIRED.—The
20 Council may not issue a decision to set aside a
21 regulation, or provision thereof, which is the
22 subject of a petition under this section after the
23 expiration of the later of—

1056

1 (i) 45 days following the date of filing
2 of the petition, unless a stay is issued
3 under paragraph (1); or

4 (ii) the expiration of a stay issued by
5 the Council under this section.

6 (C) SEPARATE AUTHORITY.—The issuance
7 of a stay under this section does not affect the
8 authority of the Council to set aside a regula-
9 tion.

10 (5) DISMISSAL DUE TO INACTION.—A petition
11 under this section shall be deemed dismissed if the
12 Council has not issued a decision to set aside a regu-
13 lation, or provision thereof, within the period for
14 timely action under paragraph (4)(B).

15 (6) PUBLICATION OF DECISION.—Any decision
16 under this subsection to issue a stay of, or set aside,
17 a regulation or provision thereof shall be published
18 by the Council in the Federal Register as soon as
19 practicable after the decision is made, with an expla-
20 nation of the reasons for the decision.

21 (7) RULEMAKING PROCEDURES INAPPLI-
22 CABLE.—The notice and comment procedures under
23 section 553 of title 5, United States Code, shall not
24 apply to any decision under this section of the Coun-
25 cil to issue a stay of, or set aside, a regulation.

1 (8) JUDICIAL REVIEW OF DECISIONS BY THE
2 COUNCIL.—A decision by the Council to set aside a
3 regulation prescribed by the Bureau, or provision
4 thereof, shall be subject to review under chapter 7
5 of title 5, United States Code.

6 (d) APPLICATION OF OTHER LAW.—Nothing in this
7 section shall be construed as altering, limiting, or restrict-
8 ing the application of any other provision of law, except
9 as otherwise specifically provided in this section, including
10 chapter 5 and chapter 7 of title 5, United States Code,
11 to a regulation which is the subject of a petition filed
12 under this section.

13 (e) SAVINGS CLAUSE.—Nothing in this section shall
14 be construed as limiting or restricting the Bureau from
15 engaging in a rulemaking in accordance with applicable
16 law.

17 (f) IMPLEMENTING RULES.—The Council shall pre-
18 scribe procedural rules to implement this section.

19 **SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED**
20 **PERSONS.**

21 (a) SCOPE OF COVERAGE.—

22 (1) COVERED PERSONS.—Notwithstanding any
23 other provision of this title, and except as provided
24 in paragraph (3), this section shall apply to any cov-
25 ered person who—

1 (A) offers or provides origination, broker-
2 age, or servicing of loans secured by real estate
3 for use by consumers primarily for personal,
4 family, or household purposes, or loan modifica-
5 tion or foreclosure relief services in connection
6 with such loans; or

7 (B) is a larger participant of a market for
8 other consumer financial products or services,
9 as defined by rule in accordance with paragraph
10 (2).

11 (2) RULEMAKING TO DEFINE COVERED PER-
12 SONS SUBJECT TO THIS SECTION.—The Bureau
13 shall consult with the Federal Trade Commission
14 prior to issuing a rule to define covered persons sub-
15 ject to this section, in accordance with paragraph
16 (1)(B). The Bureau shall issue its initial rule within
17 1 year of the date of enactment of this Act.

18 (3) RULES OF CONSTRUCTION.—

19 (A) CERTAIN PERSONS EXCLUDED.—This
20 section shall not apply to persons described in
21 section 1025(a) or 1026(a).

22 (B) ACTIVITY LEVELS.—For purposes of
23 computing activity levels under paragraph (1)
24 or rules issued thereunder, activities of affili-
25 ated companies (other than insured depository

1 institutions or insured credit unions) shall be
2 aggregated.

3 (b) SUPERVISION.—

4 (1) IN GENERAL.—The Bureau shall require re-
5 ports and conduct examinations on a periodic basis
6 of persons described in subsection (a) for purposes
7 of—

8 (A) assessing compliance with the require-
9 ments of Federal consumer financial law;

10 (B) obtaining information about the activi-
11 ties and compliance systems or procedures of
12 such person; and

13 (C) detecting and assessing risks to con-
14 sumers and to markets for consumer financial
15 products and services.

16 (2) RISK-BASED SUPERVISION PROGRAM.—The
17 Bureau shall exercise its authority under paragraph
18 (1) in a manner designed to ensure that such exer-
19 cise, with respect to persons described in subsection
20 (a), is based on the assessment by the Bureau of the
21 risks posed to consumers in the relevant product
22 markets and geographic markets, and taking into
23 consideration, as applicable—

24 (A) the asset size of the covered person;

1060

1 (B) the volume of transactions involving
2 consumer financial products or services in
3 which the covered person engages;

4 (C) the risks to consumers created by the
5 provision of such consumer financial products
6 or services;

7 (D) the extent to which such institutions
8 are subject to oversight by State authorities for
9 consumer protection; and

10 (E) any other factors that the Bureau de-
11 termines to be relevant to a class of covered
12 persons.

13 (3) COORDINATION.—To minimize regulatory
14 burden, the Bureau shall coordinate its supervisory
15 activities with the supervisory activities conducted by
16 prudential regulators and the State bank regulatory
17 authorities, including establishing their respective
18 schedules for examining persons described in sub-
19 section (a) and requirements regarding reports to be
20 submitted by such persons.

21 (4) USE OF EXISTING REPORTS.—The Bureau
22 shall, to the fullest extent possible, use—

23 (A) reports pertaining to persons described
24 in subsection (a) that have been provided or re-

1061

1 required to have been provided to a Federal or
2 State agency; and

3 (B) information that has been reported
4 publicly.

5 (5) PRESERVATION OF AUTHORITY.—Nothing
6 in this title may be construed as limiting the author-
7 ity of the Director to require reports from persons
8 described in subsection (a), as permitted under para-
9 graph (1), regarding information owned or under the
10 control of such person, regardless of whether such
11 information is maintained, stored, or processed by
12 another person.

13 (6) REPORTS OF TAX LAW NONCOMPLIANCE.—
14 The Bureau shall provide the Commissioner of In-
15 ternal Revenue with any report of examination or re-
16 lated information identifying possible tax law non-
17 compliance.

18 (7) REGISTRATION, RECORDKEEPING AND
19 OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

20 (A) IN GENERAL.—The Bureau shall pre-
21 scribe rules to facilitate supervision of persons
22 described in subsection (a) and assessment and
23 detection of risks to consumers.

24 (B) REGISTRATION.—

1062

1 (i) IN GENERAL.—The Bureau shall
2 prescribe rules regarding registration re-
3 quirements for persons described in sub-
4 section (a).

5 (ii) EXCEPTION FOR RELATED PER-
6 SONS.—The Bureau may not impose re-
7 quirements under this section regarding
8 the registration of a related person.

9 (iii) REGISTRATION INFORMATION.—
10 Subject to rules prescribed by the Bureau,
11 the Bureau shall publicly disclose the reg-
12 istration information about persons de-
13 scribed in subsection (a) to facilitate the
14 ability of consumers to identify persons de-
15 scribed in subsection (a) registered with
16 the Bureau.

17 (C) RECORDKEEPING.—The Bureau may
18 require a person described in subsection (a), to
19 generate, provide, or retain records for the pur-
20 poses of facilitating supervision of such persons
21 and assessing and detecting risks to consumers.

22 (D) REQUIREMENTS CONCERNING OBLIGA-
23 TIONS.—The Bureau may prescribe rules re-
24 garding a person described in subsection (a), to
25 ensure that such persons are legitimate entities

1 and are able to perform their obligations to con-
2 sumers. Such requirements may include back-
3 ground checks for principals, officers, directors,
4 or key personnel and bonding or other appro-
5 priate financial requirements.

6 (E) CONSULTATION WITH STATE AGEN-
7 CIES.—In developing and implementing require-
8 ments under this paragraph, the Bureau shall
9 consult with State agencies regarding require-
10 ments or systems (including coordinated or
11 combined systems for registration), where ap-
12 propriate.

13 (c) PRIMARY ENFORCEMENT AUTHORITY.—

14 (1) THE BUREAU TO HAVE PRIMARY ENFORCE-
15 MENT AUTHORITY.—To the extent that a Federal
16 law authorizes the Bureau and another Federal
17 agency to enforce Federal consumer financial law,
18 the Bureau shall have exclusive authority to enforce
19 that Federal consumer financial law with respect to
20 any person described in subsection (a)(1)(B).

21 (2) REFERRAL.—Any Federal agency author-
22 ized to enforce a Federal financial consumer law de-
23 scribed in paragraph (1) may recommend in writing
24 to the Bureau that the Bureau initiate an enforce-

1 ment proceeding, as the Bureau is authorized by
2 that Federal law or by this title.

3 (3) COORDINATION WITH THE FEDERAL TRADE
4 COMMISSION.—

5 (A) IN GENERAL.—The Bureau and the
6 Federal Trade Commission shall coordinate en-
7 forcement actions for violations of Federal law
8 regarding the offering or provision of consumer
9 financial products or services by any covered
10 person that is described in subsection (a)(1)(A),
11 or service providers thereto. In carrying out this
12 subparagraph, the agencies shall negotiate an
13 agreement to establish procedures for such co-
14 ordination, including procedures for notice to
15 the other agency, where feasible, prior to initi-
16 ating a civil action to enforce a Federal law re-
17 garding the offering or provision of consumer
18 financial products or services.

19 (B) CIVIL ACTIONS.—Whenever a civil ac-
20 tion has been filed by, or on behalf of, the Bu-
21 reau or the Federal Trade Commission for any
22 violation of any provision of Federal law de-
23 scribed in subparagraph (A), or any regulation
24 prescribed under such provision of law—

1 (i) the other agency may not, during
2 the pendency of that action, institute a
3 civil action under such provision of law
4 against any defendant named in the com-
5 plaint in such pending action for any viola-
6 tion alleged in the complaint; and

7 (ii) the Bureau or the Federal Trade
8 Commission may intervene as a party in
9 any such action brought by the other agen-
10 cy, and, upon intervening—

11 (I) be heard on all matters aris-
12 ing in such enforcement action; and

13 (II) file petitions for appeal in
14 such actions.

15 (C) AGREEMENT TERMS.—The terms of
16 any agreement negotiated under subparagraph
17 (A) may modify or supersede the provisions of
18 subparagraph (B).

19 (D) DEADLINE.—The agencies shall reach
20 the agreement required under subparagraph (A)
21 not later than 6 months after the transfer date.

22 (d) EXCLUSIVE RULEMAKING AND EXAMINATION
23 AUTHORITY.—Notwithstanding any other provision of
24 Federal law, to the extent that a provision of Federal law
25 authorizes the Bureau and another Federal agency to

1 issue regulations or guidance, conduct examinations, or re-
2 quire reports from a person described in subsection (a)
3 under that provision of law for purposes of assuring com-
4 pliance with Federal consumer financial law and any regu-
5 lations thereunder, the Bureau shall have the exclusive au-
6 thority to prescribe rules, issue guidance, conduct exami-
7 nations, require reports, or issue exemptions with regard
8 to a person described in subsection (a), subject to those
9 provisions of law.

10 (e) SERVICE PROVIDERS.—A service provider to a
11 person described in subsection (a) shall be subject to the
12 authority of the Bureau under this section, to the same
13 extent as if such service provider were engaged in a service
14 relationship with a bank, and the Bureau were an appro-
15 priate Federal banking agency under section 7(c) of the
16 Bank Service Company Act 12 U.S.C. 1867(c). In con-
17 ducting any examination or requiring any report from a
18 service provider subject to this subsection the Bureau shall
19 coordinate with the appropriate prudential regulator, as
20 applicable.

21 **SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS**

22 **ASSOCIATIONS, AND CREDIT UNIONS.**

23 (a) SCOPE OF COVERAGE.—

24 (1) APPLICABILITY.—This section shall apply
25 to any covered person that is—

1067

1 (A) an insured depository institution with
2 total assets of more than \$10,000,000,000 and
3 any affiliate thereof; or

4 (B) an insured credit union with total as-
5 sets of more than \$10,000,000,000 and any af-
6 filiate thereof.

7 (2) RULE OF CONSTRUCTION.—For purposes of
8 determining total assets under this section and sec-
9 tion 1026, the Bureau shall rely on the same regula-
10 tions and interim methodologies specified in section
11 312(e).

12 (b) SUPERVISION.—

13 (1) IN GENERAL.—The Bureau shall require re-
14 ports and conduct examinations on a periodic basis
15 of a person described in subsection (a) for purposes
16 of assessing compliance with the requirements of
17 Federal consumer financial law, obtaining informa-
18 tion about the activities and compliance systems or
19 procedures of such person, and detecting and assess-
20 ing risks to consumers and to markets for consumer
21 financial products and services

22 (2) COORDINATION.—To minimize regulatory
23 burden, the Bureau shall coordinate its supervisory
24 activities with the supervisory activities conducted by
25 prudential regulators and the State bank regulatory

1 authorities, including establishing their respective
2 schedules for examining such persons described in
3 subsection (a) and requirements regarding reports to
4 be submitted by such persons.

5 (3) USE OF EXISTING REPORTS.—The Bureau
6 shall, to the fullest extent possible, use—

7 (A) reports pertaining to a person de-
8 scribed in subsection (a) that have been pro-
9 vided or required to have been provided to a
10 Federal or State agency; and

11 (B) information that has been reported
12 publicly.

13 (4) PRESERVATION OF AUTHORITY.—Nothing
14 in this title may be construed as limiting the author-
15 ity of the Director to require reports from a person
16 described in subsection (a), as permitted under para-
17 graph (1), regarding information owned or under the
18 control of such person, regardless of whether such
19 information is maintained, stored, or processed by
20 another person.

21 (5) REPORTS OF TAX LAW NONCOMPLIANCE.—
22 The Bureau shall provide the Commissioner of In-
23 ternal Revenue with any report of examination or re-
24 lated information identifying possible tax law non-
25 compliance.

1 (c) PRIMARY ENFORCEMENT AUTHORITY.—

2 (1) THE BUREAU TO HAVE PRIMARY ENFORCE-
3 MENT AUTHORITY.—To the extent that the Bureau
4 and another Federal agency are authorized to en-
5 force a Federal consumer financial law, the Bureau
6 shall have primary authority to enforce that Federal
7 consumer financial law with respect to any person
8 described in subsection (a).

9 (2) REFERRAL.—Any Federal agency, other
10 than the Federal Trade Commission, that is author-
11 ized to enforce a Federal consumer financial law
12 may recommend, in writing, to the Bureau that the
13 Bureau initiate an enforcement proceeding with re-
14 spect to a person described in subsection (a), as the
15 Bureau is authorized to do by that Federal con-
16 sumer financial law.

17 (3) BACKUP ENFORCEMENT AUTHORITY OF
18 OTHER FEDERAL AGENCY.—If the Bureau does not,
19 before the end of the 120-day period beginning on
20 the date on which the Bureau receives a rec-
21 ommendation under paragraph (2), initiate an en-
22 forcement proceeding, the other agency referred to
23 in paragraph (2) may initiate an enforcement pro-
24 ceeding, as permitted by the subject provision of
25 Federal law.

1 (d) SERVICE PROVIDERS.—A service provider to a
2 person described in subsection (a) shall be subject to the
3 authority of the Bureau under this section, to the same
4 extent as if the Bureau were an appropriate Federal bank-
5 ing agency under section 7(c) of the Bank Service Com-
6 pany Act 12 U.S.C. 1867(c). In conducting any examina-
7 tion or requiring any report from a service provider sub-
8 ject to this subsection, the Bureau shall coordinate with
9 the appropriate prudential regulator.

10 (e) SIMULTANEOUS AND COORDINATED SUPER-
11 VISORY ACTION.—

12 (1) EXAMINATIONS.—A prudential regulator
13 and the Bureau shall, with respect to each insured
14 depository institution, insured credit union, or other
15 covered person supervised by the prudential regu-
16 lator and the Bureau, respectively—

17 (A) coordinate the scheduling of examina-
18 tions of the insured depository institution, in-
19 sured credit union, or other covered person;

20 (B) conduct simultaneous examinations of
21 each insured depository institution, insured
22 credit union, or other covered person, unless
23 such institution requests examinations to be
24 conducted separately;

1 (C) share each draft report of examination
2 with the other agency and permit the receiving
3 agency a reasonable opportunity (which shall
4 not be less than a period of 30 days after the
5 date of receipt) to comment on the draft report
6 before such report is made final; and

7 (D) prior to issuing a final report of exam-
8 ination or taking supervisory action, take into
9 consideration concerns, if any, raised in the
10 comments made by the other agency.

11 (2) COORDINATION WITH STATE BANK SUPER-
12 VISORS.—The Bureau shall pursue arrangements
13 and agreements with State bank supervisors to co-
14 ordinate examinations, consistent with paragraph
15 (1).

16 (3) AVOIDANCE OF CONFLICT IN SUPER-
17 VISION.—

18 (A) BANK REQUEST.—If the proposed su-
19 pervisory determinations of the Bureau and a
20 prudential regulator (in this section referred to
21 collectively as the “agencies”) are conflicting,
22 an insured depository institution, insured credit
23 union, or other covered person may request the
24 agencies to coordinate and present a joint state-
25 ment of coordinated supervisory action.

1 (B) JOINT STATEMENT.—The agencies
2 shall provide a joint statement under subpara-
3 graph (A), not later than 30 days after the date
4 of receipt of the request of the insured depository
5 institution, credit union, or covered person.

6 (4) APPEALS TO GOVERNING PANEL.—

7 (A) IN GENERAL.—If the agencies do not
8 resolve the conflict or issue a joint statement
9 required by subparagraph (B), or if either of
10 the agencies takes or attempts to take any su-
11 pervisory action relating to the request for the
12 joint statement without the consent of the other
13 agency, an insured depository institution, in-
14 sured credit union, or other covered person may
15 institute an appeal to a governing panel, as pro-
16 vided in this subsection, not later than 30 days
17 after the expiration of the period during which
18 a joint statement is required to be filed under
19 paragraph (3)(B).

20 (B) COMPOSITION OF GOVERNING
21 PANEL.—The governing panel for an appeal
22 under this paragraph shall be composed of—

23 (i) a representative from the Bureau
24 and a representative of the prudential reg-
25 ulator, both of whom—

1073

1 (I) have not participated in the
2 material supervisory determinations
3 under appeal; and

4 (II) do not directly or indirectly
5 report to the person who participated
6 materially in the supervisory deter-
7 minations under appeal; and

8 (ii) one individual representative, to
9 be determined on a rotating basis, from
10 among the Board of Governors, the Cor-
11 poration, the National Credit Union Ad-
12 ministration, and the Office of the Comp-
13 troller of the Currency, other than any
14 agency involved in the subject dispute.

15 (C) CONDUCT OF APPEAL.—In an appeal
16 under this paragraph—

17 (i) the insured depository institution,
18 insured credit union, or other covered per-
19 son—

20 (I) shall include in its appeal all
21 the facts and legal arguments per-
22 taining to the matter; and

23 (II) may, through counsel, em-
24 ployees, or representatives, appear be-

1074

1 fore the governing panel in person or
2 by telephone; and

3 (ii) the governing panel—

4 (I) may request the insured de-
5 pository institution, insured credit
6 union, or other covered person, the
7 Bureau, or the prudential regulator to
8 produce additional information rel-
9 evant to the appeal; and

10 (II) by a majority vote of its
11 members, shall provide a final deter-
12 mination, in writing, not later than 30
13 days after the date of filing of an
14 informationally complete appeal, or
15 such longer period as the panel and
16 the insured depository institution, in-
17 sured credit union, or other covered
18 person may jointly agree.

19 (D) PUBLIC AVAILABILITY OF DETERMINA-
20 TIONS.—A governing panel shall publish all in-
21 formation contained in determination by the
22 interagency supervisory panel, with appropriate
23 redactions of information that would be subject
24 to an exemption from disclosure under section
25 552 of title 5, United States Code.

1075

1 (E) PROHIBITION AGAINST RETALIA-
2 TION.—The Bureau and the prudential regu-
3 lators shall prescribe rules to provide safe-
4 guards from retaliation against the insured de-
5 pository institution, insured credit union, or
6 other covered person instituting an appeal
7 under this paragraph, as well as their officers
8 and employees.

9 (F) LIMITATION.—The process provided in
10 this paragraph shall not apply to a determina-
11 tion by a prudential regulator to appoint a con-
12 servator or receiver for an insured depository
13 institution or a liquidating agent for an insured
14 credit union, as the case may be, or a decision
15 to take action pursuant to section 38 of the
16 Federal Deposit Insurance Act (12 U.S.C.
17 1831o) or section 212 of the Federal Credit
18 Union Act (112 U.S.C. 1790a), as applicable.

19 (G) EFFECT ON OTHER AUTHORITY.—
20 Nothing in this section shall modify or limit the
21 authority of the Bureau to interpret, or take
22 enforcement action under, any Federal con-
23 sumer financial law.

1076

1 **SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND**
2 **CREDIT UNIONS.**

3 (a) **SCOPE OF COVERAGE.**—This section shall apply
4 to any covered person that is—

5 (1) an insured depository institution with total
6 assets of \$10,000,000,000 or less; or

7 (2) an insured credit union with total assets of
8 \$10,000,000,000 or less.

9 (b) **REPORTS.**—The Director may require reports
10 from a person described in subsection (a), as necessary
11 to support the role of the Bureau in implementing Federal
12 consumer financial law, to support its examination activi-
13 ties under subsection (c), and to assess and detect risks
14 to consumers and consumer financial markets.

15 (1) **USE OF EXISTING REPORTS.**—The Bureau
16 shall, to the fullest extent possible, use—

17 (A) reports pertaining to a person de-
18 scribed in subsection (a) that have been pro-
19 vided or required to have been provided to a
20 Federal or State agency; and

21 (B) information that has been reported
22 publicly.

23 (2) **PRESERVATION OF AUTHORITY.**—Nothing
24 in this subsection may be construed as limiting the
25 authority of the Director from requiring from a per-
26 son described in subsection (a), as permitted under

1 paragraph (1), information owned or under the con-
2 trol of such person, regardless of whether such infor-
3 mation is maintained, stored, or processed by an-
4 other person.

5 (3) REPORTS OF TAX LAW NONCOMPLIANCE.—
6 The Bureau shall provide the Commissioner of In-
7 ternal Revenue with any report of examination or re-
8 lated information identifying possible tax law non-
9 compliance.

10 (c) EXAMINATIONS.—

11 (1) IN GENERAL.—The Bureau may, at its dis-
12 cretion, include examiners on a sampling basis of the
13 examinations performed by the prudential regulator
14 of persons described in subsection (a).

15 (2) AGENCY COORDINATION.—The prudential
16 regulator shall—

17 (A) provide all reports, records, and docu-
18 mentation related to the examination process
19 for any institution included in the sample re-
20 ferred to in paragraph (1) to the Bureau on a
21 timely and continual basis;

22 (B) involve such Bureau examiner in the
23 entire examination process for such person; and

24 (C) consider input of the Bureau con-
25 cerning the scope of an examination, conduct of

1 the examination, the contents of the examina-
2 tion report, the designation of matters requiring
3 attention, and examination ratings.

4 (d) ENFORCEMENT.—

5 (1) IN GENERAL.—Except for requiring reports
6 under subsection (b), the prudential regulator shall
7 have exclusive authority to enforce compliance with
8 respect to a person described in subsection (a).

9 (2) COORDINATION WITH PRUDENTIAL REGU-
10 LATOR.—

11 (A) REFERRAL.—When the Bureau has
12 reason to believe that a person described in sub-
13 section (a) has engaged in a material violation
14 of a Federal consumer financial law, the Bu-
15 reau shall notify the prudential regulator in
16 writing and recommend appropriate action to
17 respond.

18 (B) RESPONSE.—Upon receiving a rec-
19 ommendation under subparagraph (A), the pru-
20 dential regulator shall provide a written re-
21 sponse to the Bureau not later than 60 days
22 thereafter.

23 (e) SERVICE PROVIDERS.—A service provider to a
24 substantial number of persons described in subsection (a)
25 shall be subject to the authority of the Bureau under sec-

1 tion 1025 to the same extent as if the Bureau were an
2 appropriate Federal bank agency under section 7(c) of the
3 Bank Service Company Act (12 U.S.C. 1867(c)). When
4 conducting any examination or requiring any report from
5 a service provider subject to this subsection, the Bureau
6 shall coordinate with the appropriate prudential regulator.

7 **SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU;**

8 **PRESERVATION OF AUTHORITIES.**

9 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND
10 OTHER SELLERS OF NONFINANCIAL SERVICES.—

11 (1) SALE OR BROKERAGE OF NONFINANCIAL
12 GOOD OR SERVICE.—The Bureau may not exercise
13 any rulemaking, supervisory, enforcement or other
14 authority under this title with respect to a person
15 who is a merchant, retailer, or seller of any non-
16 financial good or service and is engaged in the sale
17 or brokerage of such nonfinancial good or service,
18 except to the extent that such person is engaged in
19 offering or providing any consumer financial product
20 or service, or is otherwise subject to any Federal
21 consumer financial law.

22 (2) OFFERING OR PROVISION OF CERTAIN CON-
23 SUMER FINANCIAL PRODUCTS OR SERVICES IN CON-
24 NECTION WITH THE SALE OR BROKERING OF NON-
25 FINANCIAL GOOD OR SERVICE.—

1080

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), and subject to subparagraph
3 (C), the Bureau may not exercise any rule-
4 making, supervisory, enforcement, or other au-
5 thority under this title with respect to a mer-
6 chant, retailer, or seller of nonfinancial goods
7 who—

8 (i) extends credit directly to a con-
9 sumer, in a case in which the good or serv-
10 ice being provided is not itself a consumer
11 financial product or service (other than
12 credit described in this subparagraph), ex-
13 clusively for the purpose of enabling that
14 consumer to purchase such nonfinancial
15 good or service directly from the merchant,
16 retailer, or seller;

17 (ii) directly, or through an agreement
18 with another person, collects debt arising
19 from credit extended as described in clause
20 (i); or

21 (iii) sells or conveys debt described in
22 clause (i) that is delinquent or otherwise in
23 default.

24 (B) APPLICABILITY.—Subparagraph (A)
25 does not apply to any credit transaction or col-

1 lection of debt, other than as described in sub-
2 paragraph (C), arising from a transaction de-
3 scribed in subparagraph (A)—

4 (i) in which the merchant, retailer, or
5 seller of nonfinancial goods or services as-
6 signs, sells or otherwise conveys to another
7 person such debt owed by the consumer
8 (except for a sale of debt that is delinquent
9 or otherwise in default, as described in
10 subparagraph (A)(iii));

11 (ii) in which the credit extended ex-
12 ceeds the market value of the nonfinancial
13 good or service provided, or the Bureau
14 otherwise finds that the sale of the non-
15 financial good or service is done as a sub-
16 terfuge, so as to evade or circumvent the
17 provisions of this title; or

18 (iii) in which the merchant, retailer,
19 or seller of nonfinancial goods or services
20 regularly extends credit and the credit is—

21 (I) subject to a finance charge; or

22 (II) payable by written agree-
23 ment in more than 4 installments.

24 (C) LIMITATION.—Notwithstanding sub-
25 paragraph (B), the Bureau may not exercise

1 any rulemaking, supervisory enforcement, or
2 other authority under this title with respect to
3 a merchant, retailer, or seller of nonfinancial
4 goods or services that is not engaged signifi-
5 cantly in offering or providing consumer finan-
6 cial products or services.

7 (D) RULE OF CONSTRUCTION.—No provi-
8 sion of this title may be construed as modifying,
9 limiting, or superseding the supervisory or en-
10 forcement authority of the Federal Trade Com-
11 mission or any other agency with respect to
12 credit extended, or the collection of debt arising
13 from such extension, directly by a merchant or
14 retailer to a consumer exclusively for the pur-
15 pose of enabling that consumer to purchase
16 nonfinancial goods or services directly from the
17 merchant or retailer.

18 (b) EXCLUSION FOR REAL ESTATE BROKERAGE AC-
19 TIVITIES.—

20 (1) REAL ESTATE BROKERAGE ACTIVITIES EX-
21 CLUDED.—Without limiting subsection (a), and ex-
22 cept as permitted in paragraph (2), the Bureau may
23 not exercise any rulemaking, supervisory, enforce-
24 ment, or other authority under this title with respect
25 to a person that is licensed or registered as a real

1 estate broker or real estate agent, in accordance
2 with State law, to the extent that such person—

3 (A) acts as a real estate agent or broker
4 for a buyer, seller, lessor, or lessee of real prop-
5 erty;

6 (B) brings together parties interested in
7 the sale, purchase, lease, rental, or exchange of
8 real property;

9 (C) negotiates, on behalf of any party, any
10 portion of a contract relating to the sale, pur-
11 chase, lease, rental, or exchange of real prop-
12 erty (other than in connection with the provi-
13 sion of financing with respect to any such
14 transaction); or

15 (D) offers to engage in any activity, or act
16 in any capacity, described in subparagraph (A),
17 (B), or (C).

18 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
19 (1) shall not apply to any person to the extent such
20 person is engaged in the offering or provision of any
21 consumer financial product or service, or is other-
22 wise subject to any Federal consumer financial law.

23 (c) EXCLUSION FOR MANUFACTURED HOME RETAIL-
24 ERS AND MODULAR HOME RETAILERS.—

1 (1) IN GENERAL.—The Director may not exer-
2 cise any rulemaking, supervisory, enforcement, or
3 other authority over a person to the extent that—

4 (A) such person is not described in para-
5 graph (2); and

6 (B) such person—

7 (i) acts as an agent or broker for a
8 buyer or seller of a manufactured home or
9 a modular home;

10 (ii) facilitates the purchase by a con-
11 sumer of a manufactured home or modular
12 home, by negotiating the purchase price or
13 terms of the sales contract (other than
14 providing financing with respect to such
15 transaction); or

16 (iii) offers to engage in any activity
17 described in clause (i) or (ii).

18 (2) DESCRIPTION OF ACTIVITIES.—A person is
19 described in this paragraph, to the extent that such
20 person is engaged in the offering or provision of any
21 consumer financial product or service, or is other-
22 wise subject to any Federal consumer financial law.

23 (3) DEFINITIONS.—For purposes of this sub-
24 section, the following definitions shall apply:

1 (A) MANUFACTURED HOME.—The term
2 “manufactured home” has the same meaning as
3 in section 603 of the National Manufactured
4 Housing Construction and Safety Standards
5 Act of 1974 (42 U.S.C. 5402).

6 (B) MODULAR HOME.—The term “mod-
7 ular home” means a house built in a factory in
8 2 or more modules that meet the State or local
9 building codes where the house will be located,
10 and where such modules are transported to the
11 building site, installed on foundations, and com-
12 pleted.

13 (d) EXCLUSION FOR ACCOUNTANTS AND TAX PRE-
14 PARERS.—

15 (1) IN GENERAL.—Except as permitted in para-
16 graph (2), the Bureau may not exercise any rule-
17 making, supervisory, enforcement, or other authority
18 over—

19 (A) any person that is a certified public ac-
20 countant, permitted to practice as a certified
21 public accounting firm, or certified or licensed
22 for such purpose by a State, or any individual
23 who is employed by or holds an ownership inter-
24 est with respect to a person described in this

1086

1 subparagraph, when such person is performing
2 or offering to perform—

3 (i) customary and usual accounting
4 activities, including the provision of ac-
5 counting, tax, advisory, other services that
6 are subject to the regulatory authority of a
7 State board of accountancy or a Federal
8 authority; or

9 (ii) other services that are incidental
10 to such customary and usual accounting
11 activities, to the extent that such incidental
12 services are not offered or provided—

13 (I) by the person separate and
14 apart from such customary and usual
15 accounting activities; or

16 (II) to consumers who are not re-
17 ceiving such customary and usual ac-
18 counting activities; or

19 (B) any person, other than a person de-
20 scribed in subparagraph (A) that performs in-
21 come tax preparation activities for consumers.

22 (2) DESCRIPTION OF ACTIVITIES.—

23 (A) IN GENERAL.—Paragraph (1) shall not
24 apply to any person described in paragraph
25 (1)(A) or (1)(B) to the extent such person is

1 engaged in any activity which is not a cus-
2 tomary and usual accounting activity described
3 in paragraph (1)(A) or incidental thereto but
4 which is the offering or provision of any con-
5 sumer financial product or service, except to the
6 extent that a person described in paragraph
7 (1)(A) is engaged in an activity which is a cus-
8 tomary and usual accounting activity described
9 in paragraph (1)(A), or incidental thereto.

10 (B) NOT A CUSTOMARY AND USUAL AC-
11 COUNTING ACTIVITY.—For purposes of this
12 subsection, extending or brokering credit is not
13 a customary and usual accounting activity, or
14 incidental thereto.

15 (C) RULE OF CONSTRUCTION.—For pur-
16 poses of subparagraphs (A) and (B), a person
17 described in paragraph (1)(A) shall not be
18 deemed to be extending credit, if such person is
19 only extending credit directly to a consumer, ex-
20 clusively for the purpose of enabling such con-
21 sumer to purchase services described in para-
22 graph (1)(A)(i) directly from such person, and
23 such credit is—

24 (i) not subject to a finance charge;

25 and

1 (ii) not payable by written agreement
2 in more than 4 installments.

3 (D) OTHER LIMITATIONS.—Paragraph (1)
4 does not apply to any person described in para-
5 graph (1)(A) or (1)(B) that is otherwise subject
6 to any Federal consumer financial law.

7 (e) EXCLUSION FOR ATTORNEYS.—

8 (1) IN GENERAL.—The Bureau may not exer-
9 cise any authority to conduct examinations of an at-
10 torney licensed by a State, to the extent that the at-
11 torney is engaged in the practice of law under the
12 laws of such State.

13 (2) EXCEPTION FOR ENUMERATED CONSUMER
14 LAWS AND TRANSFERRED AUTHORITIES.—Para-
15 graph (1) shall not apply to an attorney who is en-
16 gaged in the offering or provision of any consumer
17 financial product or service, or is otherwise subject
18 to any Federal consumer financial law.

19 (f) EXCLUSION FOR PERSONS REGULATED BY A
20 STATE INSURANCE REGULATOR.—

21 (1) IN GENERAL.—No provision of this title
22 shall be construed as altering, amending, or affect-
23 ing the authority of any State insurance regulator to
24 adopt rules, initiate enforcement proceedings, or
25 take any other action with respect to a person regu-

1 lated by a State insurance regulator. Except as pro-
2 vided in paragraph (2), the Bureau shall have no au-
3 thority to exercise any power to enforce this title
4 with respect to a person regulated by a State insur-
5 ance regulator.

6 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
7 (1) does not apply to any person described in such
8 paragraph, to the extent that such person is engaged
9 in the offering or provision of any consumer finan-
10 cial product or service, or is otherwise subject to any
11 Federal consumer financial law.

12 (g) EXCLUSION FOR EMPLOYEE BENEFIT AND COM-
13 PENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS
14 UNDER THE INTERNAL REVENUE CODE OF 1986.—

15 (1) PRESERVATION OF AUTHORITY OF OTHER
16 AGENCIES.—No provision of this title shall be con-
17 strued as altering, amending, or affecting the au-
18 thority of the Secretary of the Treasury, the Sec-
19 retary of Labor, or the Commissioner of Internal
20 Revenue to adopt regulations, initiate enforcement
21 proceedings, or take any actions with respect to any
22 specified plan or arrangement.

23 (2) ACTIVITIES NOT CONSTITUTING THE OF-
24 FERING OR PROVISION OF ANY FINANCIAL PRODUCT
25 OR SERVICE.—For purposes of this title, a person

1090

1 shall not be treated as having engaged in the offer-
2 ing or provision of any consumer financial product
3 or service solely because such person is a specified
4 plan or arrangement, or is engaged in the activity of
5 establishing or maintaining, for the benefit of em-
6 ployees of such person (or for members of an em-
7 ployee organization), any specified plan or arrange-
8 ment.

9 (3) LIMITATION ON BUREAU AUTHORITY.—

10 (A) IN GENERAL.—Except as provided
11 under subparagraphs (B) and (C), the Bureau
12 may not exercise any rulemaking or enforce-
13 ment authority with respect to services that re-
14 late to any specified plan or arrangement.

15 (B) BUREAU ACTION ONLY PURSUANT TO
16 AGENCY REQUEST.—The Secretary and the Sec-
17 retary of Labor may jointly issue a written re-
18 quest to the Bureau regarding implementation
19 of appropriate consumer protection standards
20 under this title with respect to the provision of
21 services relating to any specified plan or ar-
22 rangement. Subject to a request made under
23 this subparagraph, the Bureau may exercise
24 rulemaking authority, and may act to enforce a
25 rule prescribed pursuant to such request, in ac-

1 cordance with the provisions of this title. A re-
2 quest made by the Secretary and the Secretary
3 of Labor under this subparagraph shall describe
4 the basis for, and scope of, appropriate con-
5 sumer protection standards to be implemented
6 under this title with respect to the provision of
7 services relating to any specified plan or ar-
8 rangement.

9 (C) DESCRIPTION OF SERVICES.—To the
10 extent that a person engaged in providing serv-
11 ices relating to any specified plan or arrange-
12 ment is subject to any Federal consumer finan-
13 cial law, subparagraph (A) shall not apply with
14 respect to such Federal consumer financial law.

15 (4) SPECIFIED PLAN OR ARRANGEMENT.—For
16 purposes of this subsection, the term “specified plan
17 or arrangement” means any plan, account, or ar-
18 rangement described in section 220, 223, 401(a),
19 403(a), 403(b), 408, 408A, 529, or 530 of the Inter-
20 nal Revenue Code of 1986, or any employee benefit
21 or compensation plan or arrangement, including a
22 plan that is subject to title I of the Employee Retirement
23 Income Security Act of 1974.

24 (h) PERSONS REGULATED BY A STATE SECURITIES
25 COMMISSION.—

1 (1) IN GENERAL.—No provision of this title
2 shall be construed as altering, amending, or affect-
3 ing the authority of any securities commission (or
4 any agency or office performing like functions) of
5 any State to adopt rules, initiate enforcement pro-
6 ceedings, or take any other action with respect to a
7 person regulated by any securities commission (or
8 any agency or office performing like functions) of
9 any State. Except as permitted in paragraph (2) and
10 subsection (f), the Bureau shall have no authority to
11 exercise any power to enforce this title with respect
12 to a person regulated by any securities commission
13 (or any agency or office performing like functions)
14 of any State, but only to the extent that the person
15 acts in such regulated capacity.

16 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
17 (1) shall not apply to any person to the extent such
18 person is engaged in the offering or provision of any
19 consumer financial product or service, or is other-
20 wise subject to any Federal consumer financial law.

21 (i) EXCLUSION FOR PERSONS REGULATED BY THE
22 COMMISSION.—

23 (1) IN GENERAL.—No provision of this title
24 may be construed as altering, amending, or affecting
25 the authority of the Commission to adopt rules, ini-

1 tiate enforcement proceedings, or take any other ac-
2 tion with respect to a person regulated by the Com-
3 mission. The Bureau shall have no authority to exer-
4 cise any power to enforce this title with respect to
5 a person regulated by the Commission.

6 (2) CONSULTATION AND COORDINATION.—Not-
7 withstanding paragraph (1), the Commission shall
8 consult and coordinate with the Bureau with respect
9 to any rule (including any advance notice of pro-
10 posed rulemaking) regarding an investment product
11 or service that is the same type of product as, or
12 that competes directly with, a consumer financial
13 product or service that is subject to the jurisdiction
14 of the Bureau under this title or under any other
15 law.

16 (j) EXCLUSION FOR PERSONS REGULATED BY THE
17 COMMODITY FUTURES TRADING COMMISSION.—

18 (1) IN GENERAL.—No provision of this title
19 shall be construed as altering, amending, or affect-
20 ing the authority of the Commodity Futures Trading
21 Commission to adopt rules, initiate enforcement pro-
22 ceedings, or take any other action with respect to a
23 person regulated by the Commodity Futures Trading
24 Commission. The Bureau shall have no authority to
25 exercise any power to enforce this title with respect

1 to a person regulated by the Commodity Futures
2 Trading Commission.

3 (2) CONSULTATION AND COORDINATION.—Not-
4 withstanding paragraph (1), the Commodity Futures
5 Trading Commission shall consult and coordinate
6 with the Bureau with respect to any rule (including
7 any advance notice of proposed rulemaking) regard-
8 ing a product or service that is the same type of
9 product as, or that competes directly with, a con-
10 sumer financial product or service that is subject to
11 the jurisdiction of the Bureau under this title or
12 under any other law.

13 (k) EXCLUSION FOR ACTIVITIES RELATING TO
14 CHARITABLE CONTRIBUTIONS.—

15 (1) IN GENERAL.—The Director and the Bu-
16 reau may not exercise any rulemaking, supervisory,
17 enforcement, or other authority, including authority
18 to order penalties, over any activities related to the
19 solicitation or making of voluntary contributions to
20 a tax-exempt organization as recognized by the In-
21 ternal Revenue Service, by any agent, volunteer, or
22 representative of such organizations to the extent
23 the organization, agent, volunteer, or representative
24 thereof is soliciting or providing advice, information,

1 education, or instruction to any donor or potential
2 donor relating to a contribution to the organization.

3 (2) LIMITATION.—The exclusion in paragraph
4 (1) does not apply to other activities not described
5 in paragraph (1) that are the offering or provision
6 of any consumer financial product or service, or oth-
7 erwise subject to any Federal consumer financial
8 law.

9 (l) INSURANCE.—Except with respect to insurance
10 activities described in section 1002, the Bureau may not
11 define as a financial product or service, by regulation or
12 otherwise, engaging in the business of insurance.

13 (m) LIMITED AUTHORITY OF THE BUREAU.—Not-
14 withstanding subsections (a) through (h) and (k), a person
15 subject to or described in one or more of such sub-
16 sections—

17 (1) may be a service provider; and

18 (2) may be subject to requests from, or require-
19 ments imposed by, the Bureau regarding informa-
20 tion in order to carry out the responsibilities and
21 functions of the Bureau and in accordance with sec-
22 tion 1022, 1052, or 1053.

23 (n) NO AUTHORITY TO IMPOSE USURY LIMIT.—No
24 provision of this title shall be construed as conferring au-
25 thority on the Bureau to establish a usury limit applicable

1 to an extension of credit offered or made by a covered per-
2 son to a consumer, unless explicitly authorized by law.

3 (o) ATTORNEY GENERAL.—No provision of this title
4 shall affect the authorities of the Attorney General under
5 otherwise applicable provisions of law.

6 (p) SECRETARY OF THE TREASURY.—No provision of
7 this title shall affect the authorities of the Secretary, in-
8 cluding with respect to prescribing rules, initiating en-
9 forcement proceedings, or taking other actions with re-
10 spect to a person that performs income tax preparation
11 activities for consumers.

12 **SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
13 **PUTE ARBITRATION.**

14 (a) STUDY AND REPORT.—The Bureau shall conduct
15 a study of, and shall provide a report to Congress con-
16 cerning, the use of agreements providing for arbitration
17 of any future dispute between covered persons and con-
18 sumers in connection with the offering or providing of con-
19 sumer financial products or services.

20 (b) FURTHER AUTHORITY.—The Bureau, by regula-
21 tion, may prohibit or impose conditions or limitations on
22 the use of an agreement between a covered person and
23 a consumer for a consumer financial product or service
24 providing for arbitration of any future dispute between the
25 parties, if the Bureau finds that such a prohibition or im-

1 position of conditions or limitations is in the public inter-
2 est and for the protection of consumers. The findings in
3 such rule shall be consistent with the study conducted
4 under subsection (a).

5 (c) **LIMITATION.**—The authority described in sub-
6 section (b) may not be construed to prohibit or restrict
7 a consumer from entering into a voluntary arbitration
8 agreement with a covered person after a dispute has aris-
9 en.

10 (d) **EFFECTIVE DATE.**—Notwithstanding any other
11 provision of law, any regulation prescribed by the Bureau
12 under subsection (a) shall apply, consistent with the terms
13 of the regulation, to any agreement between a consumer
14 and a covered person entered into after the end of the
15 180-day period beginning on the effective date of the regu-
16 lation, as established by the Bureau.

17 **SEC. 1029. EFFECTIVE DATE.**

18 This subtitle shall become effective on the designated
19 transfer date.

20 **Subtitle C—Specific Bureau**
21 **Authorities**

22 **SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**
23 **ACTS OR PRACTICES.**

24 (a) **IN GENERAL.**—The Bureau may take any action
25 authorized under subtitle E to prevent a covered person

1 or service provider from committing or engaging in an un-
2 fair, deceptive, or abusive act or practice under Federal
3 law in connection with any transaction with a consumer
4 for a consumer financial product or service, or the offering
5 of a consumer financial product or service.

6 (b) RULEMAKING.—The Bureau may prescribe rules
7 identifying as unlawful unfair, deceptive, or abusive acts
8 or practices in connection with any transaction with a con-
9 sumer for a consumer financial product or service, or the
10 offering of a consumer financial product or service. Rules
11 under this section may include requirements for the pur-
12 pose of preventing such acts or practices.

13 (c) UNFAIRNESS.—

14 (1) IN GENERAL.—The Bureau shall have no
15 authority under this section to declare an act or
16 practice in connection with a transaction with a con-
17 sumer for a consumer financial product or service,
18 or the offering of a consumer financial product or
19 service, to be unlawful on the grounds that such act
20 or practice is unfair, unless the Bureau has a rea-
21 sonable basis to conclude that—

22 (A) the act or practice causes or is likely
23 to cause substantial injury to consumers which
24 is not reasonably avoidable by consumers; and

1 (B) such substantial injury is not out-
2 weighed by countervailing benefits to consumers
3 or to competition.

4 (2) CONSIDERATION OF PUBLIC POLICIES.—In
5 determining whether an act or practice is unfair, the
6 Bureau may consider established public policies as
7 evidence to be considered with all other evidence.
8 Such public policy considerations may not serve as
9 a primary basis for such determination.

10 (d) ABUSIVE.—The Bureau shall have no authority
11 under this section to declare an act or practice abusive
12 in connection with the provision of a consumer financial
13 product or service, unless the act or practice—

14 (1) materially interferes with the ability of a
15 consumer to understand a term or condition of a
16 consumer financial product or service; or

17 (2) takes unreasonable advantage of—

18 (A) a lack of understanding on the part of
19 the consumer of the material risks, costs, or
20 conditions of the product or service;

21 (B) the inability of the consumer to protect
22 the interests of the consumer in selecting or
23 using a consumer financial product or service;
24 or

1100

1 (C) the reasonable reliance by the con-
2 sumer on a covered person to act in the inter-
3 ests of the consumer.

4 (e) CONSULTATION.—In prescribing rules under this
5 section, the Bureau shall consult with the Federal banking
6 agencies, or other Federal agencies, as appropriate, con-
7 cerning the consistency of the proposed rule with pruden-
8 tial, market, or systemic objectives administered by such
9 agencies.

10 **SEC. 1032. DISCLOSURES.**

11 (a) IN GENERAL.—The Bureau may prescribe rules
12 to ensure that the features of any consumer financial
13 product or service, both initially and over the term of the
14 product or service, are fully, accurately, and effectively
15 disclosed to consumers in a manner that permits con-
16 sumers to understand the costs, benefits, and risks associ-
17 ated with the product or service, in light of the facts and
18 circumstances.

19 (b) MODEL DISCLOSURES.—

20 (1) IN GENERAL.—Any final rule prescribed by
21 the Bureau under this section requiring disclosures
22 may include a model form that may be used at the
23 option of the covered person for provision of the re-
24 quired disclosures.

1101

1 (2) **FORMAT.**—A model form issued pursuant to
2 paragraph (1) shall contain a clear and conspicuous
3 disclosure that, at a minimum—

4 (A) uses plain language comprehensible to
5 consumers;

6 (B) contains a clear format and design,
7 such as an easily readable type font; and

8 (C) succinctly explains the information
9 that must be communicated to the consumer.

10 (3) **CONSUMER TESTING.**—Any model form
11 issued pursuant to this subsection shall be validated
12 through consumer testing.

13 (c) **BASIS FOR RULEMAKING.**—In prescribing rules
14 under this section, the Bureau shall consider available evi-
15 dence about consumer awareness, understanding of, and
16 responses to disclosures or communications about the
17 risks, costs, and benefits of consumer financial products
18 or services.

19 (d) **SAFE HARBOR.**—Any covered person that uses a
20 model form included with a rule issued under this section
21 shall be deemed to be in compliance with the disclosure
22 requirements of this section with respect to such model
23 form.

24 (e) **TRIAL DISCLOSURE PROGRAMS.**—

1 (1) IN GENERAL.—The Bureau may permit a
2 covered person to conduct a trial program that is
3 limited in time and scope, subject to specified stand-
4 ards and procedures, for the purpose of providing
5 trial disclosures to consumers that are designed to
6 improve upon any model form issued pursuant to
7 subsection (b)(1), or any other model form issued to
8 implement an enumerated statute, as applicable.

9 (2) SAFE HARBOR.—The standards and proce-
10 dures issued by the Bureau shall be designed to en-
11 courage covered persons to conduct trial disclosure
12 programs. For the purposes of administering this
13 subsection, the Bureau may establish a limited pe-
14 riod during which a covered person conducting a
15 trial disclosure program shall be deemed to be in
16 compliance with, or may be exempted from, a re-
17 quirement of a rule or an enumerated consumer law.

18 (3) PUBLIC DISCLOSURE.—The rules of the Bu-
19 reau shall provide for public disclosure of trial dis-
20 closure programs, which public disclosure may be
21 limited, to the extent necessary to encourage covered
22 persons to conduct effective trials.

23 (f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not
24 later than 1 year after the designated transfer date, the
25 Bureau shall propose for public comment rules and model

1 disclosures that combine the disclosures required under
2 the Truth in Lending Act and the Real Estate Settlement
3 Procedures Act of 1974, into a single, integrated disclo-
4 sure for mortgage loan transactions covered by those laws,
5 unless the Bureau determines that any proposal issued by
6 the Board of Governors and the Secretary of Housing and
7 Urban Development carries out the same purpose.

8 **SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.**

9 (a) IN GENERAL.—Subject to rules prescribed by the
10 Bureau, a covered person shall make available to a con-
11 sumer, upon request, information in the control or posses-
12 sion of the covered person concerning the consumer finan-
13 cial product or service that the consumer obtained from
14 such covered person, including information relating to any
15 transaction, series of transactions, or to the account in-
16 cluding costs, charges and usage data. The information
17 shall be made available in an electronic form usable by
18 consumers.

19 (b) EXCEPTIONS.—A covered person may not be re-
20 quired by this section to make available to the consumer—

21 (1) any confidential commercial information, in-
22 cluding an algorithm used to derive credit scores or
23 other risk scores or predictors;

24 (2) any information collected by the covered
25 person for the purpose of preventing fraud or money

1 laundrying, or detecting, or making any report re-
2 garding other unlawful or potentially unlawful con-
3 duct;

4 (3) any information required to be kept con-
5 fidential by any other provision of law; or

6 (4) any information that the covered person
7 cannot retrieve in the ordinary course of its business
8 with respect to that information.

9 (c) NO DUTY TO MAINTAIN RECORDS.—Nothing in
10 this section shall be construed to impose any duty on a
11 covered person to maintain or keep any information about
12 a consumer.

13 (d) STANDARDIZED FORMATS FOR DATA.—The Bu-
14 reau, by rule, shall prescribe standards applicable to cov-
15 ered persons to promote the development and use of stand-
16 ardized formats for information, including through the use
17 of machine readable files, to be made available to con-
18 sumers under this section.

19 (e) CONSULTATION.—The Bureau shall, when pre-
20 scribing any rule under this section, consult with the Fed-
21 eral banking agencies and the Federal Trade Commission
22 to ensure that the rules—

23 (1) impose substantively similar requirements
24 on covered persons;

1 (C) to make reports or provide information
2 to the Bureau; or
3 (3) knowingly or recklessly to provide substan-
4 tial assistance to another person in violation of the
5 provisions of section 1031, or any rule or order
6 issued thereunder, and notwithstanding any provi-
7 sion of this title, the provider of such substantial as-
8 sistance shall be deemed to be in violation of that
9 section to the same extent as the person to whom
10 such assistance is provided.

11 **Subtitle D—Preservation of State**
12 **Law**

13 **SEC. 1041. RELATION TO STATE LAW.**

14 (a) IN GENERAL.—

15 (1) RULE OF CONSTRUCTION.—This title, other
16 than sections 1044 through 1048, may not be con-
17 strued as annulling, altering, or affecting, or ex-
18 empting any person subject to the provisions of this
19 title from complying with, the statutes, regulations,
20 orders, or interpretations in effect in any State, ex-
21 cept to the extent that any such provision of law is
22 inconsistent with the provisions of this title, and
23 then only to the extent of the inconsistency.

24 (2) GREATER PROTECTION UNDER STATE
25 LAW.—For purposes of this subsection, a statute,

1 regulation, order, or interpretation in effect in any
2 State is not inconsistent with the provisions of this
3 title if the protection that such statute, regulation,
4 order, or interpretation affords to consumers is
5 greater than the protection provided under this title.
6 A determination regarding whether a statute, regu-
7 lation, order, or interpretation in effect in any State
8 is inconsistent with the provisions of this title may
9 be made by the Bureau on its own motion or in re-
10 sponse to a nonfrivolous petition initiated by any in-
11 terested person.

12 (b) RELATION TO OTHER PROVISIONS OF ENUMER-
13 ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—
14 No provision of this title, except as provided in section
15 1083, shall be construed as modifying, limiting, or super-
16 seding the operation of any provision of an enumerated
17 consumer law that relates to the application of a law in
18 effect in any State with respect to such Federal law.

19 (c) ADDITIONAL CONSUMER PROTECTION REGULA-
20 TIONS IN RESPONSE TO STATE ACTION.—

21 (1) NOTICE OF PROPOSED RULE REQUIRED.—
22 The Bureau shall issue a notice of proposed rule-
23 making whenever a majority of the States has en-
24 acted a resolution in support of the establishment or

1 modification of a consumer protection regulation by
2 the Bureau.

3 (2) BUREAU CONSIDERATIONS REQUIRED FOR
4 ISSUANCE OF FINAL REGULATION.—Before pre-
5 scribing a final regulation based upon a notice
6 issued pursuant to paragraph (1), the Bureau shall
7 take into account whether—

8 (A) the proposed regulation would afford
9 greater protection to consumers than any exist-
10 ing regulation;

11 (B) the intended benefits of the proposed
12 regulation for consumers would outweigh any
13 increased costs or inconveniences for con-
14 sumers, and would not discriminate unfairly
15 against any category or class of consumers; and

16 (C) a Federal banking agency has advised
17 that the proposed regulation is likely to present
18 an unacceptable safety and soundness risk to
19 insured depository institutions.

20 (3) EXPLANATION OF CONSIDERATIONS.—The
21 Bureau—

22 (A) shall include a discussion of the con-
23 siderations required in subsection (b) in the
24 Federal Register notice of a final regulation
25 prescribed pursuant to this section; and

1 (B) whenever the Bureau determines not
2 to prescribe a final regulation, shall publish an
3 explanation of such determination in the Fed-
4 eral Register, and provide a copy of such expla-
5 nation to each State that enacted a resolution
6 in support of the proposed regulation, the Com-
7 mittee on Financial Services of the House of
8 Representatives, and the Committee on Bank-
9 ing, Housing, and Urban Affairs of the Senate.

10 (4) RESERVATION OF AUTHORITY.—No provi-
11 sion of this section shall be construed as limiting or
12 restricting the authority of the Bureau to enhance
13 consumer protection standards established pursuant
14 to this title in response to its own motion or in re-
15 sponse to a request by any other interested person.

16 (5) RULE OF CONSTRUCTION.—No provision of
17 this section shall be construed as exempting the Bu-
18 reau from complying with subchapter II of chapter
19 5 of title 5, United States Code.

20 (6) DEFINITION.—For purposes of this section,
21 the term “consumer protection regulation” means a
22 regulation that the Bureau is authorized to prescribe
23 under the Federal consumer financial laws.

1 **SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF**
2 **STATES.**

3 (a) IN GENERAL.—

4 (1) ACTION BY STATE.—The attorney general
5 (or the equivalent thereof) of any State may bring
6 a civil action in the name of such State, as *parens*
7 *patriae* on behalf of natural persons residing in such
8 State, in any district court of the United States in
9 that State or in State court having jurisdiction over
10 the defendant, to enforce provisions of this title or
11 regulations issued thereunder and to secure remedies
12 under provisions of this title or remedies otherwise
13 provided under other law. A State regulator may
14 bring a civil action or other appropriate proceeding
15 to enforce the provisions of this title or regulations
16 issued thereunder with respect to any entity that is
17 State-chartered, incorporated, licensed, or otherwise
18 authorized to do business under State law, and to
19 secure remedies under provisions of this title or rem-
20 edies otherwise provided under other provisions of
21 law with respect to a State chartered entity.

22 (2) RULE OF CONSTRUCTION.—No provision of
23 this title shall be construed as modifying, limiting,
24 or superseding the operation of any provision of an
25 enumerated consumer law that relates to the author-

1 (ii) the alleged facts underlying the
2 proceeding; and

3 (iii) whether there may be a need to
4 coordinate the prosecution of the pro-
5 ceeding so as not to interfere with any ac-
6 tion, including any rulemaking, undertaken
7 by the Director, the Bureau, or another
8 Federal agency.

9 (2) BUREAU RESPONSE.—In any action de-
10 scribed in paragraph (1), the Bureau may—

11 (A) intervene in the action as a party;

12 (B) upon intervening—

13 (i) remove the action to the appro-
14 priate United States district court, if the
15 action was not originally brought there;
16 and

17 (ii) be heard on all matters arising in
18 the action; and

19 (C) appeal any order or judgment, to the
20 same extent as any other party in the pro-
21 ceeding may.

22 (c) REGULATIONS.—The Director shall prescribe reg-
23 ulations to implement the requirements of this section
24 and, from time to time, provide guidance in order to fur-

1 ther coordinate actions with the State attorneys general
2 and other regulators.

3 (d) PRESERVATION OF STATE AUTHORITY.—

4 (1) STATE CLAIMS.—No provision of this sec-
5 tion shall be construed as altering, limiting, or af-
6 fecting the authority of a State attorney general or
7 any other regulatory or enforcement agency or au-
8 thority to bring an action or other regulatory pro-
9 ceeding arising solely under the law in effect in that
10 State.

11 (2) STATE SECURITIES REGULATORS.—No pro-
12 vision of this title shall be construed as altering, lim-
13 iting, or affecting the authority of a State securities
14 commission (or any agency or office performing like
15 functions) under State law to adopt rules, initiate
16 enforcement proceedings, or take any other action
17 with respect to a person regulated by such commis-
18 sion or authority.

19 (3) STATE INSURANCE REGULATORS.—No pro-
20 vision of this title shall be construed as altering, lim-
21 iting, or affecting the authority of a State insurance
22 commission or State insurance regulator under State
23 law to adopt rules, initiate enforcement proceedings,
24 or take any other action with respect to a person
25 regulated by such commission or regulator.

1 **SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.**

2 This title, and regulations, orders, guidance, and in-
3 terpretations prescribed, issued, or established by the Bu-
4 reau, shall not be construed to alter or affect the applica-
5 bility of any regulation, order, guidance, or interpretation
6 prescribed, issued, and established by the Comptroller of
7 the Currency or the Director of the Office of Thrift Super-
8 vision regarding the applicability of State law under Fed-
9 eral banking law to any contract entered into on or before
10 the date of the enactment of this title, by national banks,
11 Federal savings associations, or subsidiaries thereof that
12 are regulated and supervised by the Comptroller of the
13 Currency or the Director of the Office of Thrift Super-
14 vision, respectively.

15 **SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NA-**
16 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
17 **FIED.**

18 (a) IN GENERAL.—Chapter one of title LXII of the
19 Revised Statutes of the United States (12 U.S.C. 21 et
20 seq.) is amended by inserting after section 5136B the fol-
21 lowing new section:

22 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
23 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
24 **FIED.**

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

1 “(1) NATIONAL BANK.—The term ‘national
2 bank’ includes—

3 “(A) any bank organized under the laws of
4 the United States; and

5 “(B) any Federal branch established in ac-
6 cordance with the International Banking Act of
7 1978.

8 “(2) STATE CONSUMER FINANCIAL LAWS.—The
9 term ‘State consumer financial law’ means a State
10 law that does not directly or indirectly discriminate
11 against national banks and that directly and specifi-
12 cally regulates the manner, content, or terms and
13 conditions of any financial transaction (as may be
14 authorized for national banks to engage in), or any
15 account related thereto, with respect to a consumer.

16 “(3) OTHER DEFINITIONS.—The terms ‘affil-
17 iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the
18 same meanings as in section 3 of the Federal De-
19 posit Insurance Act.

20 “(b) PREEMPTION STANDARD.—

21 “(1) IN GENERAL.—State consumer financial
22 laws are preempted, only if—

23 “(A) application of a State consumer fi-
24 nancial law would have a discriminatory effect

1 on national banks, in comparison with the effect
2 of the law on a bank chartered by that State;

3 “(B) a determination regarding preemption
4 of a State consumer financial law is in accord-
5 ance with the legal standard of the decision of
6 the Supreme Court in *Barnett Bank v. Nelson*,
7 517 U.S. 25 (1996), and such determination
8 may be made by a court or by regulation or
9 order of the Comptroller of the Currency, in ac-
10 cordance with applicable law, on a case-by-case
11 basis, and any such determination by a court
12 shall comply with the standards set forth in
13 subsection (d), with the court making the find-
14 ing under subsection (d), de novo; or

15 “(C) the State consumer financial law is
16 preempted by a provision of Federal law other
17 than this title.

18 “(2) SAVINGS CLAUSE.—This title does not pre-
19 empt, annul, or affect the applicability of any State
20 law to any subsidiary or affiliate of a national bank
21 (other than a subsidiary or affiliate that is chartered
22 as a national bank).

23 “(3) CASE-BY-CASE BASIS.—

24 “(A) DEFINITION.—As used in this section
25 the term ‘case-by-case basis’ refers to a deter-

1 mination pursuant to this section made by the
2 Comptroller concerning the impact of a par-
3 ticular State consumer financial law on any na-
4 tional bank that is subject to that law, or the
5 law of any other State with substantively equiv-
6 alent terms.

7 “(B) CONSULTATION.—When making a
8 determination on a case-by-case basis that a
9 State consumer financial law of another State
10 has substantively equivalent terms as one that
11 the Comptroller is preempting, the Comptroller
12 shall first consult with the Bureau of Consumer
13 Financial Protection and shall take the views of
14 the Bureau into account when making the de-
15 termination.

16 “(4) RULE OF CONSTRUCTION.—This title does
17 not occupy the field in any area of State law.

18 “(5) STANDARDS OF REVIEW.—

19 “(A) PREEMPTION.—A court reviewing
20 any determinations made by the Comptroller re-
21 garding preemption of a State law by this title
22 shall assess the validity of such determinations,
23 depending upon the thoroughness evident in the
24 agency’s consideration, the validity of the rea-
25 soning of the agency, the consistency with other

1 valid determinations made by the agency, and
2 other factors which the court finds persuasive
3 and relevant to its decision.

4 “(B) SAVINGS CLAUSE.—Except as pro-
5 vided in subparagraph (A), nothing in this sec-
6 tion shall affect the deference that a court may
7 afford to the Comptroller in making determina-
8 tions regarding the meaning or interpretation of
9 title LXII of the Revised Statutes of the United
10 States or other Federal laws.

11 “(6) COMPTROLLER DETERMINATION NOT DEL-
12 EGABLE.—Any regulation, order, or determination
13 made by the Comptroller of the Currency under
14 paragraph (1)(B) shall be made by the Comptroller,
15 and shall not be delegable to another officer or em-
16 ployee of the Comptroller of the Currency.

17 “(c) SUBSTANTIAL EVIDENCE.—No regulation or
18 order of the Comptroller of the Currency prescribed under
19 subsection (b)(1)(B), shall be interpreted or applied so as
20 to invalidate, or otherwise declare inapplicable to a na-
21 tional bank, the provision of the State consumer financial
22 law, unless substantial evidence, made on the record of
23 the proceeding, supports the specific finding that the pro-
24 vision prevents, significantly interferes with, or materially

1 impairs the ability of a national bank to engage in the
2 business of banking.

3 “(d) OTHER FEDERAL LAWS.—Notwithstanding any
4 other provision of law, the Comptroller of the Currency
5 may not prescribe a regulation or order pursuant to sub-
6 section (b)(1)(B) until the Comptroller of the Currency,
7 after consultation with the Director of the Bureau of Con-
8 sumer Financial Protection, makes a finding, in writing,
9 that a Federal law provides a substantive standard, appli-
10 cable to a national bank, which regulates the particular
11 conduct, activity, or authority that is subject to such pro-
12 vision of the State consumer financial law.

13 “(e) PERIODIC REVIEW OF PREEMPTION DETER-
14 MINATIONS.—

15 “(1) IN GENERAL.—The Comptroller of the
16 Currency shall periodically conduct a review,
17 through notice and public comment, of each deter-
18 mination that a provision of Federal law preempts a
19 State consumer financial law. The agency shall con-
20 duct such review within the 5-year period after pre-
21 scribing or otherwise issuing such determination,
22 and at least once during each 5-year period there-
23 after. After conducting the review of, and inspecting
24 the comments made on, the determination, the agen-
25 cy shall publish a notice in the Federal Register an-

1 nouncing the decision to continue or rescind the de-
2 termination or a proposal to amend the determina-
3 tion. Any such notice of a proposal to amend a de-
4 termination and the subsequent resolution of such
5 proposal shall comply with the procedures set forth
6 in subsections (a) and (b) of section 5244 of the Re-
7 vised Statutes of the United States (12 U.S.C. 43
8 (a), (b)).

9 “(2) REPORTS TO CONGRESS.—At the time of
10 issuing a review conducted under paragraph (1), the
11 Comptroller of the Currency shall submit a report
12 regarding such review to the Committee on Finan-
13 cial Services of the House of Representatives and
14 the Committee on Banking, Housing, and Urban Af-
15 fairs of the Senate. The report submitted to the re-
16 spective committees shall address whether the agen-
17 cy intends to propose to continue, amend, or rescind
18 any determination that a provision of Federal law
19 preempts a State consumer financial law, and the
20 reasons there for.

21 “(f) APPLICATION OF STATE CONSUMER FINANCIAL
22 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
23 standing any provision of this title, a State consumer fi-
24 nancial law shall apply to a subsidiary or affiliate of a
25 national bank (other than a subsidiary or affiliate that is

1 chartered as a national bank) to the same extent that the
2 State consumer financial law applies to any person, cor-
3 poration, or other entity subject to such State law.

4 “(g) PRESERVATION OF POWERS RELATED TO
5 CHARGING INTEREST.—No provision of this title shall be
6 construed as altering or otherwise affecting the authority
7 conferred by section 5197 of the Revised Statutes of the
8 United States (12 U.S.C. 85) for the charging of interest
9 by a national bank at the rate allowed by the laws of the
10 State, territory, or district where the bank is located, in-
11 cluding with respect to the meaning of ‘interest’ under
12 such provision.

13 “(h) TRANSPARENCY OF OCC PREEMPTION DETER-
14 MINATIONS.—The Comptroller of the Currency shall pub-
15 lish and update no less frequently than quarterly, a list
16 of preemption determinations by the Comptroller of the
17 Currency then in effect that identifies the activities and
18 practices covered by each determination and the require-
19 ments and constraints determined to be preempted.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 for chapter one of title LXII of the Revised Statutes of
22 the United States is amended by inserting after the item
23 relating to section 5136B the following new item:

“Sec. 5136C. State law preemption standards for national banks and subsidi-
aries clarified.”.

1 **SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NON-**
2 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

3 Section 5136C of the Revised Statutes of the United
4 States (as added by this subtitle) is amended by adding
5 at the end the following:

6 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
7 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
8 ATES OF NATIONAL BANKS.—

9 “(1) DEFINITIONS.—For purposes of this sub-
10 section, the terms ‘depository institution’, ‘sub-
11 sidiary’, and ‘affiliate’ have the same meanings as in
12 section 3 of the Federal Deposit Insurance Act.

13 “(2) RULE OF CONSTRUCTION.—No provision
14 of this title shall be construed as preempting, annul-
15 ling, or affecting the applicability of State law to
16 any subsidiary, affiliate, or agent of a national bank
17 (other than a subsidiary, affiliate, or agent that is
18 chartered as a national bank).”.

19 **SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FED-**
20 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**
21 **ARIES CLARIFIED.**

22 (a) IN GENERAL.—The Home Owners’ Loan Act (12
23 U.S.C. 1461 et seq.) is amended by inserting after section
24 5 the following new section:

1 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
2 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

3 “(a) IN GENERAL.—Any determination by a court or
4 by the Director or any successor officer or agency regard-
5 ing the relation of State law to a provision of this Act
6 or any regulation or order prescribed under this Act shall
7 be made in accordance with the laws and legal standards
8 applicable to national banks regarding the preemption of
9 State law.

10 “(b) PRINCIPLES OF CONFLICT PREEMPTION APPLI-
11 CABLE.—Notwithstanding the authorities granted under
12 section 4 and 5, this Act does not occupy the field in any
13 area of State law.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)
16 is amended by striking the item relating to section 6 and
17 inserting the following new item:

“6. State law preemption standards for Federal savings associations and subsidi-
aries clarified.”.

18 **SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS**
19 **AND SAVINGS ASSOCIATIONS.**

20 (a) NATIONAL BANKS.—Section 5136C of the Re-
21 vised Statutes of the United States (as added by this sub-
22 title) is amended by adding at the end the following:

23 “(j) VISITORIAL POWERS.—

1 “(1) IN GENERAL.—No provision of this title
2 which relates to visitorial powers to which any na-
3 tional bank is subject shall be construed as limiting
4 or restricting the authority of any attorney general
5 (or other chief law enforcement officer) of any State
6 to bring any action in any court of appropriate juris-
7 diction, as authorized under section 5240(a)—

8 “(A) to enforce any applicable provision of
9 Federal or State law, as authorized by such
10 law; or

11 “(B) on behalf of residents of such State,
12 to enforce any applicable provision of any Fed-
13 eral or State law against a national bank, as
14 authorized by such law, or to seek relief and re-
15 cover damages for such residents from any vio-
16 lation of any such law by any national bank.

17 “(2) PRIOR CONSULTATION WITH OCC RE-
18 QUIRED.—The attorney general (or other chief law
19 enforcement officer) of any State shall consult with
20 the Comptroller of the Currency before acting under
21 paragraph (1).

22 “(k) ENFORCEMENT ACTIONS.—The ability of the
23 Comptroller of the Currency to bring an enforcement ac-
24 tion under this title or section 5 of the Federal Trade
25 Commission Act does not preclude any private party from

1 enforcing rights granted under Federal or State law in the
2 courts.”.

3 (b) SAVINGS ASSOCIATIONS.—Section 6 of the Home
4 Owners’ Loan Act (as added by this title) is amended by
5 adding at the end the following:

6 “(c) VISITORIAL POWERS.—

7 “(1) IN GENERAL.—No provision of this Act
8 shall be construed as limiting or restricting the au-
9 thority of any attorney general (or other chief law
10 enforcement officer) of any State to bring any action
11 in any court of appropriate jurisdiction—

12 “(A) to enforce any applicable provision of
13 Federal or State law, as authorized by such
14 law; or

15 “(B) on behalf of residents of such State,
16 to enforce any applicable provision of any Fed-
17 eral or State law against a Federal savings as-
18 sociation, as authorized by such law, or to seek
19 relief and recover damages for such residents
20 from any violation of any such law by any Fed-
21 eral savings association.

22 “(2) PRIOR CONSULTATION WITH OCC RE-
23 QUIRED.—The attorney general (or other chief law
24 enforcement officer) of any State shall consult with

1 the Comptroller of the Currency before acting under
2 paragraph (1).

3 “(d) ENFORCEMENT ACTIONS.—The ability of the
4 Comptroller of the Currency to bring an enforcement ac-
5 tion under this Act or section 5 of the Federal Trade Com-
6 mission Act does not preclude any private party from en-
7 forcing rights granted under Federal or State law in the
8 courts.”.

9 **SEC. 1048. EFFECTIVE DATE.**

10 This subtitle shall become effective on the designated
11 transfer date.

12 **Subtitle E—Enforcement Powers**

13 **SEC. 1051. DEFINITIONS.**

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

16 (1) CIVIL INVESTIGATIVE DEMAND AND DE-
17 MAND.—The terms “civil investigative demand” and
18 “demand” mean any demand issued by the Bureau.

19 (2) BUREAU INVESTIGATION.—The term “Bu-
20 reau investigation” means any inquiry conducted by
21 a Bureau investigator for the purpose of
22 ascertaining whether any person is or has been en-
23 gaged in any conduct that is a violation, as defined
24 in this section.

1 (3) BUREAU INVESTIGATOR.—The term “Bu-
2 reau investigator” means any attorney or investi-
3 gator employed by the Bureau who is charged with
4 the duty of enforcing or carrying into effect any
5 Federal consumer financial law.

6 (4) CUSTODIAN.—The term “custodian” means
7 the custodian or any deputy custodian designated by
8 the Bureau.

9 (5) DOCUMENTARY MATERIAL.—The term
10 “documentary material” includes the original or any
11 copy of any book, document, record, report, memo-
12 randum, paper, communication, tabulation, chart,
13 logs, electronic files, or other data or data compila-
14 tions stored in any medium.

15 (6) VIOLATION.—The term “violation” means
16 any act or omission that, if proved, would constitute
17 a violation of any provision of Federal consumer fi-
18 nancial law.

19 **SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DIS-**
20 **COVERY.**

21 (a) JOINT INVESTIGATIONS.—

22 (1) IN GENERAL.—The Bureau or, where ap-
23 propriate, a Bureau investigator, may engage in
24 joint investigations and requests for information, as
25 authorized under this title.

1 (2) FAIR LENDING.—The authority under para-
2 graph (1) includes matters relating to fair lending,
3 and where appropriate, joint investigations with, and
4 requests for information from, the Secretary of
5 Housing and Urban Development, the Attorney Gen-
6 eral of the United States, or both.

7 (b) SUBPOENAS.—

8 (1) IN GENERAL.—The Bureau or a Bureau in-
9 vestigator may issue subpoenas for the attendance
10 and testimony of witnesses and the production of
11 relevant papers, books, documents, or other material
12 in connection with hearings under this title.

13 (2) FAILURE TO OBEY.—In case of contumacy
14 or refusal to obey a subpoena issued pursuant to
15 this paragraph and served upon any person, the dis-
16 trict court of the United States for any district in
17 which such person is found, resides, or transacts
18 business, upon application by the Bureau or a Bu-
19 reau investigator and after notice to such person,
20 may issue an order requiring such person to appear
21 and give testimony or to appear and produce docu-
22 ments or other material.

23 (3) CONTEMPT.—Any failure to obey an order
24 of the court under this subsection may be punished
25 by the court as a contempt thereof.

1 (c) DEMANDS.—

2 (1) IN GENERAL.—Whenever the Bureau has
3 reason to believe that any person may be in posses-
4 sion, custody, or control of any documentary mate-
5 rial or tangible things, or may have any information,
6 relevant to a violation, the Bureau may, before the
7 institution of any proceedings under the Federal
8 consumer financial law, issue in writing, and cause
9 to be served upon such person, a civil investigative
10 demand requiring such person to—

11 (A) produce such documentary material for
12 inspection and copying or reproduction in the
13 form or medium requested by the Bureau;

14 (B) submit such tangible things;

15 (C) file written reports or answers to ques-
16 tions;

17 (D) give oral testimony concerning docu-
18 mentary material, tangible things, or other in-
19 formation; or

20 (E) furnish any combination of such mate-
21 rial, answers, or testimony.

22 (2) REQUIREMENTS.—Each civil investigative
23 demand shall state the nature of the conduct consti-
24 tuting the alleged violation which is under investiga-

1 tion and the provision of law applicable to such vio-
2 lation.

3 (3) PRODUCTION OF DOCUMENTS.—Each civil
4 investigative demand for the production of documen-
5 tary material shall—

6 (A) describe each class of documentary
7 material to be produced under the demand with
8 such definiteness and certainty as to permit
9 such material to be fairly identified;

10 (B) prescribe a return date or dates which
11 will provide a reasonable period of time within
12 which the material so demanded may be assem-
13 bled and made available for inspection and
14 copying or reproduction; and

15 (C) identify the custodian to whom such
16 material shall be made available.

17 (4) PRODUCTION OF THINGS.—Each civil inves-
18 tigative demand for the submission of tangible
19 things shall—

20 (A) describe each class of tangible things
21 to be submitted under the demand with such
22 definiteness and certainty as to permit such
23 things to be fairly identified;

24 (B) prescribe a return date or dates which
25 will provide a reasonable period of time within

1 which the things so demanded may be assem-
2 bled and submitted; and

3 (C) identify the custodian to whom such
4 things shall be submitted.

5 (5) DEMAND FOR WRITTEN REPORTS OR AN-
6 SWERS.—Each civil investigative demand for written
7 reports or answers to questions shall—

8 (A) propound with definiteness and cer-
9 tainty the reports to be produced or the ques-
10 tions to be answered;

11 (B) prescribe a date or dates at which time
12 written reports or answers to questions shall be
13 submitted; and

14 (C) identify the custodian to whom such
15 reports or answers shall be submitted.

16 (6) ORAL TESTIMONY.—Each civil investigative
17 demand for the giving of oral testimony shall—

18 (A) prescribe a date, time, and place at
19 which oral testimony shall be commenced; and

20 (B) identify a Bureau investigator who
21 shall conduct the investigation and the custo-
22 dian to whom the transcript of such investiga-
23 tion shall be submitted.

1 (7) SERVICE.—Any civil investigative demand
2 and any enforcement petition filed under this section
3 may be served—

4 (A) by any Bureau investigator at any
5 place within the territorial jurisdiction of any
6 court of the United States; and

7 (B) upon any person who is not found
8 within the territorial jurisdiction of any court of
9 the United States—

10 (i) in such manner as the Federal
11 Rules of Civil Procedure prescribe for serv-
12 ice in a foreign nation; and

13 (ii) to the extent that the courts of
14 the United States have authority to assert
15 jurisdiction over such person, consistent
16 with due process, the United States Dis-
17 trict Court for the District of Columbia
18 shall have the same jurisdiction to take
19 any action respecting compliance with this
20 section by such person that such district
21 court would have if such person were per-
22 sonally within the jurisdiction of such dis-
23 trict court.

24 (8) METHOD OF SERVICE.—Service of any civil
25 investigative demand or any enforcement petition

1 filed under this section may be made upon a person,
2 including any legal entity, by—

3 (A) delivering a duly executed copy of such
4 demand or petition to the individual or to any
5 partner, executive officer, managing agent, or
6 general agent of such person, or to any agent
7 of such person authorized by appointment or by
8 law to receive service of process on behalf of
9 such person;

10 (B) delivering a duly executed copy of such
11 demand or petition to the principal office or
12 place of business of the person to be served; or

13 (C) depositing a duly executed copy in the
14 United States mails, by registered or certified
15 mail, return receipt requested, duly addressed
16 to such person at the principal office or place
17 of business of such person.

18 (9) PROOF OF SERVICE.—

19 (A) IN GENERAL.—A verified return by the
20 individual serving any civil investigative demand
21 or any enforcement petition filed under this sec-
22 tion setting forth the manner of such service
23 shall be proof of such service.

24 (B) RETURN RECEIPTS.—In the case of
25 service by registered or certified mail, such re-

1 turn shall be accompanied by the return post
2 office receipt of delivery of such demand or en-
3 forcement petition.

4 (10) PRODUCTION OF DOCUMENTARY MATE-
5 RIAL.—The production of documentary material in
6 response to a civil investigative demand shall be
7 made under a sworn certificate, in such form as the
8 demand designates, by the person, if a natural per-
9 son, to whom the demand is directed or, if not a
10 natural person, by any person having knowledge of
11 the facts and circumstances relating to such produc-
12 tion, to the effect that all of the documentary mate-
13 rial required by the demand and in the possession,
14 custody, or control of the person to whom the de-
15 mand is directed has been produced and made avail-
16 able to the custodian.

17 (11) SUBMISSION OF TANGIBLE THINGS.—The
18 submission of tangible things in response to a civil
19 investigative demand shall be made under a sworn
20 certificate, in such form as the demand designates,
21 by the person to whom the demand is directed or,
22 if not a natural person, by any person having knowl-
23 edge of the facts and circumstances relating to such
24 production, to the effect that all of the tangible
25 things required by the demand and in the posses-

1 sion, custody, or control of the person to whom the
2 demand is directed have been submitted to the cus-
3 todian.

4 (12) SEPARATE ANSWERS.—Each reporting re-
5 quirement or question in a civil investigative demand
6 shall be answered separately and fully in writing
7 under oath, unless it is objected to, in which event
8 the reasons for the objection shall be stated in lieu
9 of an answer, and it shall be submitted under a
10 sworn certificate, in such form as the demand des-
11 ignates, by the person, if a natural person, to whom
12 the demand is directed or, if not a natural person,
13 by any person responsible for answering each report-
14 ing requirement or question, to the effect that all in-
15 formation required by the demand and in the posses-
16 sion, custody, control, or knowledge of the person to
17 whom the demand is directed has been submitted.

18 (13) TESTIMONY.—

19 (A) IN GENERAL.—

20 (i) OATH OR AFFIRMATION.—Any Bu-
21 reau investigator before whom oral testi-
22 mony is to be taken shall put the witness
23 under oath or affirmation, and shall per-
24 sonally, or by any individual acting under
25 the direction of and in the presence of the

1136

1 Bureau investigator, record the testimony
2 of the witness.

3 (ii) TRANSCRIPTION.—The testimony
4 shall be taken stenographically and tran-
5 scribed.

6 (iii) TRANSMISSION TO CUSTODIAN.—
7 After the testimony is fully transcribed,
8 the Bureau investigator before whom the
9 testimony is taken shall promptly transmit
10 a copy of the transcript of the testimony to
11 the custodian.

12 (B) PARTIES PRESENT.—Any Bureau in-
13 vestigator before whom oral testimony is to be
14 taken shall exclude from the place where the
15 testimony is to be taken all other persons, ex-
16 cept the person giving the testimony, the attor-
17 ney of that person, the officer before whom the
18 testimony is to be taken, and any stenographer
19 taking such testimony.

20 (C) LOCATION.—The oral testimony of any
21 person taken pursuant to a civil investigative
22 demand shall be taken in the judicial district of
23 the United States in which such person resides,
24 is found, or transacts business, or in such other
25 place as may be agreed upon by the Bureau in-

1 investigator before whom the oral testimony of
2 such person is to be taken and such person.

3 (D) ATTORNEY REPRESENTATION.—

4 (i) IN GENERAL.—Any person com-
5 pelled to appear under a civil investigative
6 demand for oral testimony pursuant to this
7 section may be accompanied, represented,
8 and advised by an attorney.

9 (ii) AUTHORITY.—The attorney may
10 advise a person described in clause (i), in
11 confidence, either upon the request of such
12 person or upon the initiative of the attor-
13 ney, with respect to any question asked of
14 such person.

15 (iii) OBJECTIONS.—A person de-
16 scribed in clause (i), or the attorney for
17 that person, may object on the record to
18 any question, in whole or in part, and such
19 person shall briefly state for the record the
20 reason for the objection. An objection may
21 properly be made, received, and entered
22 upon the record when it is claimed that
23 such person is entitled to refuse to answer
24 the question on grounds of any constitu-
25 tional or other legal right or privilege, in-

1 cluding the privilege against self-incrimina-
2 tion, but such person shall not otherwise
3 object to or refuse to answer any question,
4 and such person or attorney shall not oth-
5 erwise interrupt the oral examination.

6 (iv) REFUSAL TO ANSWER.—If a per-
7 son described in clause (i) refuses to an-
8 swer any question—

9 (I) the Bureau may petition the
10 district court of the United States
11 pursuant to this section for an order
12 compelling such person to answer
13 such question; and

14 (II) on grounds of the privilege
15 against self-incrimination, the testi-
16 mony of such person may be com-
17 pelled in accordance with the provi-
18 sions of section 6004 of title 18,
19 United States Code.

20 (E) TRANSCRIPTS.—For purposes of this
21 subsection—

22 (i) after the testimony of any witness
23 is fully transcribed, the Bureau investi-
24 gator shall afford the witness (who may be

1 accompanied by an attorney) a reasonable
2 opportunity to examine the transcript;

3 (ii) the transcript shall be read to or
4 by the witness, unless such examination
5 and reading are waived by the witness;

6 (iii) any changes in form or substance
7 which the witness desires to make shall be
8 entered and identified upon the transcript
9 by the Bureau investigator, with a state-
10 ment of the reasons given by the witness
11 for making such changes;

12 (iv) the transcript shall be signed by
13 the witness, unless the witness in writing
14 waives the signing, is ill, cannot be found,
15 or refuses to sign; and

16 (v) if the transcript is not signed by
17 the witness during the 30-day period fol-
18 lowing the date on which the witness is
19 first afforded a reasonable opportunity to
20 examine the transcript, the Bureau investi-
21 gator shall sign the transcript and state on
22 the record the fact of the waiver, illness,
23 absence of the witness, or the refusal to
24 sign, together with any reasons given for
25 the failure to sign.

1 (F) CERTIFICATION BY INVESTIGATOR.—

2 The Bureau investigator shall certify on the
3 transcript that the witness was duly sworn by
4 him or her and that the transcript is a true
5 record of the testimony given by the witness,
6 and the Bureau investigator shall promptly de-
7 liver the transcript or send it by registered or
8 certified mail to the custodian.

9 (G) COPY OF TRANSCRIPT.—The Bureau
10 investigator shall furnish a copy of the tran-
11 script (upon payment of reasonable charges for
12 the transcript) to the witness only, except that
13 the Bureau may for good cause limit such wit-
14 ness to inspection of the official transcript of
15 his testimony.

16 (H) WITNESS FEES.—Any witness appear-
17 ing for the taking of oral testimony pursuant to
18 a civil investigative demand shall be entitled to
19 the same fees and mileage which are paid to
20 witnesses in the district courts of the United
21 States.

22 (d) CONFIDENTIAL TREATMENT OF DEMAND MATE-
23 RIAL.—

24 (1) IN GENERAL.—Documentary materials and
25 tangible things received as a result of a civil inves-

1 tigtative demand shall be subject to requirements and
2 procedures regarding confidentiality, in accordance
3 with rules established by the Bureau.

4 (2) DISCLOSURE TO CONGRESS.—No rule es-
5 tablished by the Bureau regarding the confidentiality
6 of materials submitted to, or otherwise obtained by,
7 the Bureau shall be intended to prevent disclosure to
8 either House of Congress or to an appropriate com-
9 mittee of the Congress, except that the Bureau is
10 permitted to adopt rules allowing prior notice to any
11 party that owns or otherwise provided the material
12 to the Bureau and had designated such material as
13 confidential.

14 (e) PETITION FOR ENFORCEMENT.—

15 (1) IN GENERAL.—Whenever any person fails
16 to comply with any civil investigative demand duly
17 served upon him under this section, or whenever sat-
18 isfactory copying or reproduction of material re-
19 quested pursuant to the demand cannot be accom-
20 plished and such person refuses to surrender such
21 material, the Bureau, through such officers or attor-
22 neys as it may designate, may file, in the district
23 court of the United States for any judicial district
24 in which such person resides, is found, or transacts
25 business, and serve upon such person, a petition for

1 an order of such court for the enforcement of this
2 section.

3 (2) SERVICE OF PROCESS.—All process of any
4 court to which application may be made as provided
5 in this subsection may be served in any judicial dis-
6 trict.

7 (f) PETITION FOR ORDER MODIFYING OR SETTING
8 ASIDE DEMAND.—

9 (1) IN GENERAL.—Not later than 20 days after
10 the service of any civil investigative demand upon
11 any person under subsection (b), or at any time be-
12 fore the return date specified in the demand, which-
13 ever period is shorter, or within such period exceed-
14 ing 20 days after service or in excess of such return
15 date as may be prescribed in writing, subsequent to
16 service, by any Bureau investigator named in the de-
17 mand, such person may file with the Bureau a peti-
18 tion for an order by the Bureau modifying or setting
19 aside the demand.

20 (2) COMPLIANCE DURING PENDENCY.—The
21 time permitted for compliance with the demand in
22 whole or in part, as determined proper and ordered
23 by the Bureau, shall not run during the pendency of
24 a petition under paragraph (1) at the Bureau, ex-
25 cept that such person shall comply with any portions

1 of the demand not sought to be modified or set
2 aside.

3 (3) SPECIFIC GROUNDS.—A petition under
4 paragraph (1) shall specify each ground upon which
5 the petitioner relies in seeking relief, and may be
6 based upon any failure of the demand to comply
7 with the provisions of this section, or upon any con-
8 stitutional or other legal right or privilege of such
9 person.

10 (g) CUSTODIAL CONTROL.—At any time during
11 which any custodian is in custody or control of any docu-
12 mentary material, tangible things, reports, answers to
13 questions, or transcripts of oral testimony given by any
14 person in compliance with any civil investigative demand,
15 such person may file, in the district court of the United
16 States for the judicial district within which the office of
17 such custodian is situated, and serve upon such custodian,
18 a petition for an order of such court requiring the per-
19 formance by such custodian of any duty imposed upon him
20 by this section or rule promulgated by the Bureau.

21 (h) JURISDICTION OF COURT.—

22 (1) IN GENERAL.—Whenever any petition is
23 filed in any district court of the United States under
24 this section, such court shall have jurisdiction to
25 hear and determine the matter so presented, and to

1 enter such order or orders as may be required to
2 carry out the provisions of this section.

3 (2) APPEAL.—Any final order entered as de-
4 scribed in paragraph (1) shall be subject to appeal
5 pursuant to section 1291 of title 28, United States
6 Code.

7 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

8 (a) IN GENERAL.—The Bureau is authorized to con-
9 duct hearings and adjudication proceedings with respect
10 to any person in the manner prescribed by chapter 5 of
11 title 5, United States Code in order to ensure or enforce
12 compliance with—

13 (1) the provisions of this title, including any
14 rules prescribed by the Bureau under this title; and

15 (2) any other Federal law that the Bureau is
16 authorized to enforce, including an enumerated con-
17 sumer law, and any regulations or order prescribed
18 thereunder, unless such Federal law specifically lim-
19 its the Bureau from conducting a hearing or adju-
20 dication proceeding and only to the extent of such
21 limitation.

22 (b) SPECIAL RULES FOR CEASE-AND-DESIST PRO-
23 CEEDINGS.—

24 (1) ORDERS AUTHORIZED.—

1 (A) IN GENERAL.—If, in the opinion of the
2 Bureau, any covered person or service provider
3 is engaging or has engaged in an activity that
4 violates a law, rule, or any condition imposed in
5 writing on the person by the Bureau, the Bu-
6 reau may, subject to sections 1024, 1025, and
7 1026, issue and serve upon the covered person
8 or service provider a notice of charges in re-
9 spect thereof.

10 (B) CONTENT OF NOTICE.—The notice
11 under subparagraph (A) shall contain a state-
12 ment of the facts constituting the alleged viola-
13 tion or violations, and shall fix a time and place
14 at which a hearing will be held to determine
15 whether an order to cease and desist should
16 issue against the covered person or service pro-
17 vider, such hearing to be held not earlier than
18 30 days nor later than 60 days after the date
19 of service of such notice, unless an earlier or a
20 later date is set by the Bureau, at the request
21 of any party so served.

22 (C) CONSENT.—Unless the party or par-
23 ties served under subparagraph (B) appear at
24 the hearing personally or by a duly authorized
25 representative, such person shall be deemed to

1 have consented to the issuance of the cease-and-
2 desist order.

3 (D) PROCEDURE.—In the event of consent
4 under subparagraph (C), or if, upon the record,
5 made at any such hearing, the Bureau finds
6 that any violation specified in the notice of
7 charges has been established, the Bureau may
8 issue and serve upon the covered person or
9 service provider an order to cease and desist
10 from the violation or practice. Such order may,
11 by provisions which may be mandatory or other-
12 wise, require the covered person or service pro-
13 vider to cease and desist from the subject activ-
14 ity, and to take affirmative action to correct the
15 conditions resulting from any such violation.

16 (2) EFFECTIVENESS OF ORDER.—A cease-and-
17 desist order shall become effective at the expiration
18 of 30 days after the date of service of an order
19 under paragraph (1) upon the covered person or
20 service provider concerned (except in the case of a
21 cease-and-desist order issued upon consent, which
22 shall become effective at the time specified therein),
23 and shall remain effective and enforceable as pro-
24 vided therein, except to such extent as the order is

1 stayed, modified, terminated, or set aside by action
2 of the Bureau or a reviewing court.

3 (3) DECISION AND APPEAL.—Any hearing pro-
4 vided for in this subsection shall be held in the Fed-
5 eral judicial district or in the territory in which the
6 residence or principal office or place of business of
7 the person is located unless the person consents to
8 another place, and shall be conducted in accordance
9 with the provisions of chapter 5 of title 5 of the
10 United States Code. After such hearing, and within
11 90 days after the Bureau has notified the parties
12 that the case has been submitted to the Bureau for
13 final decision, the Bureau shall render its decision
14 (which shall include findings of fact upon which its
15 decision is predicated) and shall issue and serve
16 upon each party to the proceeding an order or or-
17 ders consistent with the provisions of this section.
18 Judicial review of any such order shall be exclusively
19 as provided in this subsection. Unless a petition for
20 review is timely filed in a court of appeals of the
21 United States, as provided in paragraph (4), and
22 thereafter until the record in the proceeding has
23 been filed as provided in paragraph (4), the Bureau
24 may at any time, upon such notice and in such man-
25 ner as the Bureau shall determine proper, modify,

1 terminate, or set aside any such order. Upon filing
2 of the record as provided, the Bureau may modify,
3 terminate, or set aside any such order with permis-
4 sion of the court.

5 (4) APPEAL TO COURT OF APPEALS.—Any
6 party to any proceeding under this subsection may
7 obtain a review of any order served pursuant to this
8 subsection (other than an order issued with the con-
9 sent of the person concerned) by the filing in the
10 court of appeals of the United States for the circuit
11 in which the principal office of the covered person is
12 located, or in the United States Court of Appeals for
13 the District of Columbia Circuit, within 30 days
14 after the date of service of such order, a written pe-
15 tition praying that the order of the Bureau be modi-
16 fied, terminated, or set aside. A copy of such peti-
17 tion shall be forthwith transmitted by the clerk of
18 the court to the Bureau, and thereupon the Bureau
19 shall file in the court the record in the proceeding,
20 as provided in section 2112 of title 28 of the United
21 States Code. Upon the filing of such petition, such
22 court shall have jurisdiction, which upon the filing of
23 the record shall except as provided in the last sen-
24 tence of paragraph (3) be exclusive, to affirm, mod-
25 ify, terminate, or set aside, in whole or in part, the

1 order of the Bureau. Review of such proceedings
2 shall be had as provided in chapter 7 of title 5 of
3 the United States Code. The judgment and decree of
4 the court shall be final, except that the same shall
5 be subject to review by the Supreme Court upon cer-
6 tiorari, as provided in section 1254 of title 28 of the
7 United States Code.

8 (5) NO STAY.—The commencement of pro-
9 ceedings for judicial review under paragraph (4)
10 shall not, unless specifically ordered by the court,
11 operate as a stay of any order issued by the Bureau.

12 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-
13 DESIST PROCEEDINGS.—

14 (1) IN GENERAL.—Whenever the Bureau deter-
15 mines that the violation specified in the notice of
16 charges served upon a person, including a service
17 provider, pursuant to subsection (b), or the continu-
18 ation thereof, is likely to cause the person to be in-
19 solvent or otherwise prejudice the interests of con-
20 sumers before the completion of the proceedings con-
21 ducted pursuant to subsection (b), the Bureau may
22 issue a temporary order requiring the person to
23 cease and desist from any such violation or practice
24 and to take affirmative action to prevent or remedy
25 such insolvency or other condition pending comple-

1 tion of such proceedings. Such order may include
2 any requirement authorized under this subtitle. Such
3 order shall become effective upon service upon the
4 person and, unless set aside, limited, or suspended
5 by a court in proceedings authorized by paragraph
6 (2), shall remain effective and enforceable pending
7 the completion of the administrative proceedings
8 pursuant to such notice and until such time as the
9 Bureau shall dismiss the charges specified in such
10 notice, or if a cease-and-desist order is issued
11 against the person, until the effective date of such
12 order.

13 (2) APPEAL.—Not later than 10 days after the
14 covered person or service provider concerned has
15 been served with a temporary cease-and-desist order,
16 the person may apply to the United States district
17 court for the judicial district in which the residence
18 or principal office or place of business of the person
19 is located, or the United States District Court for
20 the District of Columbia, for an injunction setting
21 aside, limiting, or suspending the enforcement, oper-
22 ation, or effectiveness of such order pending the
23 completion of the administrative proceedings pursu-
24 ant to the notice of charges served upon the person

1 under subsection (b), and such court shall have ju-
2 risdiction to issue such injunction.

3 (3) INCOMPLETE OR INACCURATE RECORDS.—

4 (A) TEMPORARY ORDER.—If a notice of
5 charges served under subsection (b) specifies,
6 on the basis of particular facts and cir-
7 cumstances, that the books and records of a
8 covered person or service provider are so incom-
9 plete or inaccurate that the Bureau is unable to
10 determine the financial condition of that person
11 or the details or purpose of any transaction or
12 transactions that may have a material effect on
13 the financial condition of that person, the Bu-
14 reau may issue a temporary order requiring—

15 (i) the cessation of any activity or
16 practice which gave rise, whether in whole
17 or in part, to the incomplete or inaccurate
18 state of the books or records; or

19 (ii) affirmative action to restore such
20 books or records to a complete and accu-
21 rate state, until the completion of the pro-
22 ceedings under subsection (b)(1).

23 (B) EFFECTIVE PERIOD.—Any temporary
24 order issued under subparagraph (A)—

1 (i) shall become effective upon service;

2 and

3 (ii) unless set aside, limited, or sus-
4 pended by a court in proceedings under
5 paragraph (2), shall remain in effect and
6 enforceable until the earlier of—

7 (I) the completion of the pro-
8 ceeding initiated under subsection (b)
9 in connection with the notice of
10 charges; or

11 (II) the date the Bureau deter-
12 mines, by examination or otherwise,
13 that the books and records of the cov-
14 ered person or service provider are ac-
15 curate and reflect the financial condi-
16 tion thereof.

17 (d) SPECIAL RULES FOR ENFORCEMENT OF OR-
18 DERS.—

19 (1) IN GENERAL.—The Bureau may in its dis-
20 cretion apply to the United States district court
21 within the jurisdiction of which the principal office
22 or place of business of the person is located, for the
23 enforcement of any effective and outstanding notice
24 or order issued under this section, and such court

1 shall have jurisdiction and power to order and re-
2 quire compliance herewith.

3 (2) EXCEPTION.—Except as otherwise provided
4 in this subsection, no court shall have jurisdiction to
5 affect by injunction or otherwise the issuance or en-
6 forcement of any notice or order or to review, mod-
7 ify, suspend, terminate, or set aside any such notice
8 or order.

9 (e) RULES.—The Bureau shall prescribe rules estab-
10 lishing such procedures as may be necessary to carry out
11 this section.

12 **SEC. 1054. LITIGATION AUTHORITY.**

13 (a) IN GENERAL.—If any person violates a Federal
14 consumer financial law the Bureau may, subject to sec-
15 tions 1024, 1025, and 1026, commence a civil action
16 against such person to impose a civil penalty or to seek
17 all appropriate legal and equitable relief including a per-
18 manent or temporary injunction as permitted by law.

19 (b) REPRESENTATION.—The Bureau may act in its
20 own name and through its own attorneys in enforcing any
21 provision of this title, rules thereunder, or any other law
22 or regulation, or in any action, suit, or proceeding to which
23 the Bureau is a party.

1 (c) COMPROMISE OF ACTIONS.—The Bureau may
2 compromise or settle any action if such compromise is ap-
3 proved by the court.

4 (d) NOTICE TO THE ATTORNEY GENERAL.—When
5 commencing a civil action under Federal consumer finan-
6 cial law, or any rule thereunder, the Bureau shall notify
7 the Attorney General.

8 (e) APPEARANCE BEFORE THE SUPREME COURT.—
9 The Bureau may represent itself in its own name before
10 the Supreme Court of the United States, provided that
11 the Bureau makes a written request to the Attorney Gen-
12 eral within the 10-day period which begins on the date
13 of entry of the judgment which would permit any party
14 to file a petition for writ of certiorari, and the Attorney
15 General concurs with such request or fails to take action
16 within 60 days of the request of the Bureau.

17 (f) FORUM.—Any civil action brought under this title
18 may be brought in a United States district court or in
19 any court of competent jurisdiction of a state in a district
20 in which the defendant is located or resides or is doing
21 business, and such court shall have jurisdiction to enjoin
22 such person and to require compliance with this title, any
23 enumerated consumer law, any Federal consumer financial
24 law.

25 (g) TIME FOR BRINGING ACTION.—

1 (1) IN GENERAL.—Except as otherwise per-
2 mitted by law or equity, no action may be brought
3 under this title more than 3 years after the date of
4 discovery of the violation to which an action relates.

5 (2) LIMITATIONS UNDER OTHER FEDERAL
6 LAWS.—

7 (A) IN GENERAL.—For purposes of this
8 section, an action arising under this title does
9 not include claims arising solely under enumer-
10 ated consumer laws.

11 (B) BUREAU AUTHORITY.—In any action
12 arising solely under an enumerated consumer
13 law, the Bureau may commence, defend, or in-
14 tervene in the action in accordance with the re-
15 quirements of that provision of law, as applica-
16 ble.

17 (C) TRANSFERRED AUTHORITY.—In any
18 action arising solely under the Federal con-
19 sumer financial law, the Bureau may com-
20 mence, defend, or intervene in the action in ac-
21 cordance with the requirements of that provi-
22 sion of law, as applicable.

23 **SEC. 1055. RELIEF AVAILABLE.**

24 (a) ADMINISTRATIVE PROCEEDINGS OR COURT AC-
25 TIONS.—

1 (1) JURISDICTION.—The court (or the Bureau,
2 as the case may be) in an action or adjudication pro-
3 ceeding brought under Federal consumer financial
4 law, shall have jurisdiction to grant any appropriate
5 legal or equitable relief with respect to a violation of
6 Federal consumer financial law, including a violation
7 of a rule or order prescribed under a Federal con-
8 sumer financial law.

9 (2) RELIEF.—Relief under this section may in-
10 clude, without limitation—

11 (A) rescission or reformation of contracts;

12 (B) refund of moneys or return of real
13 property;

14 (C) restitution;

15 (D) disgorgement or compensation for un-
16 just enrichment;

17 (E) payment of damages or other mone-
18 tary relief;

19 (F) public notification regarding the viola-
20 tion, including the costs of notification;

21 (G) limits on the activities or functions of
22 the person; and

23 (H) civil money penalties, as set forth
24 more fully in subsection (c).

1 (3) NO EXEMPLARY OR PUNITIVE DAMAGES.—

2 Nothing in this subsection shall be construed as au-
3 thorizing the imposition of exemplary or punitive
4 damages.

5 (b) RECOVERY OF COSTS.—In any action brought by
6 the Bureau, a State attorney general, or any State regu-
7 lator to enforce any Federal consumer financial law, the
8 Bureau, the State attorney general, or the State regulator
9 may recover its costs in connection with prosecuting such
10 action if the Bureau, the State attorney general, or the
11 State regulator is the prevailing party in the action.

12 (c) CIVIL MONEY PENALTY IN COURT AND ADMINIS-
13 TRATIVE ACTIONS.—

14 (1) IN GENERAL.—Any person that violates,
15 through any act or omission, any provision of Fed-
16 eral consumer financial law shall forfeit and pay a
17 civil penalty pursuant to this subsection.

18 (2) PENALTY AMOUNTS.—

19 (A) FIRST TIER.—For any violation of a
20 law, rule, or final order or condition imposed in
21 writing by the Bureau, a civil penalty may not
22 exceed \$5,000 for each day during which such
23 violation or failure to pay continues.

24 (B) SECOND TIER.—Notwithstanding
25 paragraph (A), for any person that recklessly

1 engages in a violation of a Federal consumer fi-
2 nancial law, a civil penalty may not exceed
3 \$25,000 for each day during which such viola-
4 tion continues.

5 (C) THIRD TIER.—Notwithstanding sub-
6 paragraphs (A) and (B), for any person that
7 knowingly violates a Federal consumer financial
8 law, a civil penalty may not exceed \$1,000,000
9 for each day during which such violation con-
10 tinues.

11 (3) MITIGATING FACTORS.—In determining the
12 amount of any penalty assessed under paragraph
13 (2), the Bureau or the court shall take into account
14 the appropriateness of the penalty with respect to—

15 (A) the size of financial resources and good
16 faith of the person charged;

17 (B) the gravity of the violation or failure
18 to pay;

19 (C) the severity of the risks to or losses of
20 the consumer, which may take into account the
21 number of products or services sold or provided;

22 (D) the history of previous violations; and

23 (E) such other matters as justice may re-
24 quire.

1 (4) AUTHORITY TO MODIFY OR REMIT PEN-
2 ALTY.—The Bureau may compromise, modify, or
3 remit any penalty which may be assessed or had al-
4 ready been assessed under paragraph (2). The
5 amount of such penalty, when finally determined,
6 shall be exclusive of any sums owed by the person
7 to the United States in connection with the costs of
8 the proceeding, and may be deducted from any sums
9 owing by the United States to the person charged.

10 (5) NOTICE AND HEARING.—No civil penalty
11 may be assessed under this subsection with respect
12 to a violation of this title, any enumerated consumer
13 law, or any rule or order prescribed by the Bureau,
14 unless—

15 (A) the Bureau gives notice and an oppor-
16 tunity for a hearing to the person accused of
17 the violation; or

18 (B) the appropriate court has ordered such
19 assessment and entered judgment in favor of
20 the Bureau.

21 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

22 If the Bureau obtains evidence that any person, do-
23 mestic or foreign, has engaged in conduct that may con-
24 stitute a violation of Federal criminal law, the Bureau
25 shall have the power to transmit such evidence to the At-

1 torney General of the United States, who may institute
2 criminal proceedings under appropriate law. Nothing in
3 this section affects any other authority of the Bureau to
4 disclose information.

5 **SEC. 1057. EMPLOYEE PROTECTION.**

6 (a) IN GENERAL.—No covered person or service pro-
7 vider shall terminate or in any other way discriminate
8 against, or cause to be terminated or discriminated
9 against, any covered employee or any authorized rep-
10 resentative of covered employees by reason of the fact that
11 such employee or representative, whether at the initiative
12 of the employee or in the ordinary course of the duties
13 of the employee (or any person acting pursuant to a re-
14 quest of the employee), has—

15 (1) provided, caused to be provided, or is about
16 to provide or cause to be provided, information to
17 the employer, the Bureau, or any other State, local,
18 or Federal, government authority or law enforce-
19 ment agency relating to any violation of, or any act
20 or omission that the employee reasonably believes to
21 be a violation of, any provision of this title or any
22 other provision of law that is subject to the jurisdic-
23 tion of the Bureau, or any rule, order, standard, or
24 prohibition prescribed by the Bureau;

1 (2) testified or will testify in any proceeding re-
2 sulting from the administration or enforcement of
3 any provision of this title or any other provision of
4 law that is subject to the jurisdiction of the Bureau,
5 or any rule, order, standard, or prohibition pre-
6 scribed by the Bureau;

7 (3) filed, instituted or caused to be filed or in-
8 stituted any proceeding under any enumerated con-
9 sumer law or any provision of Federal consumer fi-
10 nancial law; or

11 (4) objected to, or refused to participate in, any
12 activity, policy, practice, or assigned task that the
13 employee (or other such person) reasonably believed
14 to be in violation of any law, rule, order, standard,
15 or prohibition, subject to the jurisdiction of, or en-
16 forceable by, the Bureau.

17 (b) DEFINITION OF COVERED EMPLOYEE.—For the
18 purposes of this section, the term “covered employee”
19 means any individual performing tasks related to the of-
20 fering or provision of a consumer financial product or
21 service.

22 (c) PROCEDURES AND TIMETABLES.—

23 (1) COMPLAINT.—

24 (A) IN GENERAL.—A person who believes
25 that he or she has been discharged or otherwise

1 discriminated against by any person in violation
2 of subsection (a) may, not later than 180 days
3 after the date on which such alleged violation
4 occurs, file (or have any person file on his or
5 her behalf) a complaint with the Secretary of
6 Labor alleging such discharge or discrimination
7 and identifying the person responsible for such
8 act.

9 (B) ACTIONS OF SECRETARY OF LABOR.—
10 Upon receipt of such a complaint, the Secretary
11 of Labor shall notify, in writing, the person
12 named in the complaint who is alleged to have
13 committed the violation, of —

- 14 (i) the filing of the complaint;
15 (ii) the allegations contained in the
16 complaint;
17 (iii) the substance of evidence sup-
18 porting the complaint; and
19 (iv) opportunities that will be afforded
20 to such person under paragraph (2).

21 (2) INVESTIGATION BY SECRETARY OF
22 LABOR.—

23 (A) IN GENERAL.—Not later than 60 days
24 after the date of receipt of a complaint filed
25 under paragraph (1), and after affording the

1 complainant and the person named in the com-
2 plaint who is alleged to have committed the vio-
3 lation that is the basis for the complaint an op-
4 portunity to submit to the Secretary of Labor
5 a written response to the complaint and an op-
6 portunity to meet with a representative of the
7 Secretary of Labor to present statements from
8 witnesses, the Secretary of Labor shall—

9 (i) initiate an investigation and deter-
10 mine whether there is reasonable cause to
11 believe that the complaint has merit; and

12 (ii) notify the complainant and the
13 person alleged to have committed the viola-
14 tion of subsection (a), in writing, of such
15 determination.

16 (B) NOTICE OF RELIEF AVAILABLE.—If
17 the Secretary of Labor concludes that there is
18 reasonable cause to believe that a violation of
19 subsection (a) has occurred, the Secretary of
20 Labor shall, together with the notice under sub-
21 paragraph (A)(ii), issue a preliminary order
22 providing the relief prescribed by paragraph
23 (4)(B).

24 (C) REQUEST FOR HEARING.—Not later
25 than 30 days after the date of receipt of notifi-

1 cation of a determination of the Secretary of
2 Labor under this paragraph, either the person
3 alleged to have committed the violation or the
4 complainant may file objections to the findings
5 or preliminary order, or both, and request a
6 hearing on the record. The filing of such objec-
7 tions shall not operate to stay any reinstatement
8 remedy contained in the preliminary
9 order. Any such hearing shall be conducted ex-
10 peditiously, and if a hearing is not requested in
11 such 30-day period, the preliminary order shall
12 be deemed a final order that is not subject to
13 judicial review.

14 (3) GROUNDS FOR DETERMINATION OF COM-
15 PLAINTS.—

16 (A) IN GENERAL.—The Secretary of Labor
17 shall dismiss a complaint filed under this sub-
18 section, and shall not conduct an investigation
19 otherwise required under paragraph (2), unless
20 the complainant makes a prima facie showing
21 that any behavior described in paragraphs (1)
22 through (4) of subsection (a) was a contrib-
23 uting factor in the unfavorable personnel action
24 alleged in the complaint.

1 (B) REBUTTAL EVIDENCE.—Notwith-
2 standing a finding by the Secretary of Labor
3 that the complainant has made the showing re-
4 quired under subparagraph (A), no investiga-
5 tion otherwise required under paragraph (2)
6 shall be conducted, if the employer dem-
7 onstrates, by clear and convincing evidence,
8 that the employer would have taken the same
9 unfavorable personnel action in the absence of
10 that behavior.

11 (C) EVIDENTIARY STANDARDS.—The Sec-
12 retary of Labor may determine that a violation
13 of subsection (a) has occurred only if the com-
14 plainant demonstrates that any behavior de-
15 scribed in paragraphs (1) through (4) of sub-
16 section (a) was a contributing factor in the un-
17 favorable personnel action alleged in the com-
18 plaint. Relief may not be ordered under sub-
19 paragraph (A) if the employer demonstrates by
20 clear and convincing evidence that the employer
21 would have taken the same unfavorable per-
22 sonnel action in the absence of that behavior.

23 (4) ISSUANCE OF FINAL ORDERS; REVIEW PRO-
24 CEDURES.—

1166

1 (A) TIMING.—Not later than 120 days
2 after the date of conclusion of any hearing
3 under paragraph (2), the Secretary of Labor
4 shall issue a final order providing the relief pre-
5 scribed by this paragraph or denying the com-
6 plaint. At any time before issuance of a final
7 order, a proceeding under this subsection may
8 be terminated on the basis of a settlement
9 agreement entered into by the Secretary of
10 Labor, the complainant, and the person alleged
11 to have committed the violation.

12 (B) PENALTIES.—If, in response to a com-
13 plaint filed under paragraph (1), the Secretary
14 of Labor determines that a violation of sub-
15 section (a) has occurred, the Secretary of Labor
16 shall order the person who committed such vio-
17 lation—

18 (i) to take affirmative action to abate
19 the violation;

20 (ii) to reinstate the complainant to his
21 or her former position, together with com-
22 pensation (including back pay) and restore
23 the terms, conditions, and privileges associ-
24 ated with his or her employment; and

1 (iii) to provide compensatory damages
2 to the complainant. If such an order is
3 issued under this paragraph, the Secretary
4 of Labor, at the request of the complain-
5 ant, shall assess against the person against
6 whom the order is issued a sum equal to
7 the aggregate amount of all costs and ex-
8 penses (including attorneys' and expert
9 witness fees) reasonably incurred, as deter-
10 mined by the Secretary of Labor, by the
11 complainant for, or in connection with, the
12 bringing of the complaint upon which the
13 order was issued.

14 (C) PENALTY FOR FRIVOLOUS CLAIMS.—If
15 the Secretary of Labor finds that a complaint
16 under paragraph (1) is frivolous or has been
17 brought in bad faith, the Secretary of Labor
18 may award to the prevailing employer a reason-
19 able attorney fee, not exceeding \$1,000, to be
20 paid by the complainant.

21 (D) DE NOVO REVIEW.—

22 (i) FAILURE OF THE SECRETARY TO
23 ACT.—If the Secretary of Labor has not
24 issued a final order within 210 days after
25 the date of filing of a complaint under this

1 subsection, or within 90 days after the
2 date of receipt of a written determination,
3 the complainant may bring an action at
4 law or equity for de novo review in the ap-
5 propriate district court of the United
6 States having jurisdiction, which shall have
7 jurisdiction over such an action without re-
8 gard to the amount in controversy, and
9 which action shall, at the request of either
10 party to such action, be tried by the court
11 with a jury.

12 (ii) PROCEDURES.—A proceedings
13 under clause (i) shall be governed by the
14 same legal burdens of proof specified in
15 paragraph (3). The court shall have juris-
16 diction to grant all relief necessary to
17 make the employee whole, including injunc-
18 tive relief and compensatory damages, in-
19 cluding—

20 (I) reinstatement with the same
21 seniority status that the employee
22 would have had, but for the discharge
23 or discrimination;

24 (II) the amount of back pay, with
25 interest; and

1 (III) compensation for any spe-
2 cial damages sustained as a result of
3 the discharge or discrimination, in-
4 cluding litigation costs, expert witness
5 fees, and reasonable attorney fees.

6 (E) OTHER APPEALS.—Unless the com-
7 plainant brings an action under subparagraph
8 (D), any person adversely affected or aggrieved
9 by a final order issued under subparagraph (A)
10 may file a petition for review of the order in the
11 United States Court of Appeals for the circuit
12 in which the violation with respect to which the
13 order was issued, allegedly occurred or the cir-
14 cuit in which the complainant resided on the
15 date of such violation, not later than 60 days
16 after the date of the issuance of the final order
17 of the Secretary of Labor under subparagraph
18 (A). Review shall conform to chapter 7 of title
19 5, United States Code. The commencement of
20 proceedings under this subparagraph shall not,
21 unless ordered by the court, operate as a stay
22 of the order. An order of the Secretary of
23 Labor with respect to which review could have
24 been obtained under this subparagraph shall

1 not be subject to judicial review in any criminal
2 or other civil proceeding.

3 (5) FAILURE TO COMPLY WITH ORDER.—

4 (A) ACTIONS BY THE SECRETARY.—If any
5 person has failed to comply with a final order
6 issued under paragraph (4), the Secretary of
7 Labor may file a civil action in the United
8 States district court for the district in which
9 the violation was found to have occurred, or in
10 the United States district court for the District
11 of Columbia, to enforce such order. In actions
12 brought under this paragraph, the district
13 courts shall have jurisdiction to grant all appro-
14 priate relief including injunctive relief and com-
15 pensatory damages.

16 (B) CIVIL ACTIONS TO COMPEL COMPLI-
17 ANCE.—A person on whose behalf an order was
18 issued under paragraph (4) may commence a
19 civil action against the person to whom such
20 order was issued to require compliance with
21 such order. The appropriate United States dis-
22 trict court shall have jurisdiction, without re-
23 gard to the amount in controversy or the citi-
24 zenship of the parties, to enforce such order.

1 (C) AWARD OF COSTS AUTHORIZED.—The
2 court, in issuing any final order under this
3 paragraph, may award costs of litigation (in-
4 cluding reasonable attorney and expert witness
5 fees) to any party, whenever the court deter-
6 mines such award is appropriate.

7 (D) MANDAMUS PROCEEDINGS.—Any non-
8 discretionary duty imposed by this section shall
9 be enforceable in a mandamus proceeding
10 brought under section 1361 of title 28, United
11 States Code.

12 (d) UNENFORCEABILITY OF CERTAIN AGREE-
13 MENTS.—

14 (1) NO WAIVER OF RIGHTS AND REMEDIES.—
15 Except as provided under paragraph (3), and not-
16 withstanding any other provision of law, the rights
17 and remedies provided for in this section may not be
18 waived by any agreement, policy, form, or condition
19 of employment, including by any predispute arbitra-
20 tion agreement.

21 (2) NO PREDISPUTE ARBITRATION AGREE-
22 MENTS.—Except as provided under paragraph (3),
23 and notwithstanding any other provision of law, no
24 predispute arbitration agreement shall be valid or

1 enforceable if it requires arbitration of a dispute
2 arising under this section.

3 (3) EXCEPTION.—Notwithstanding paragraphs
4 (1) and (2), an arbitration provision in a collective
5 bargaining agreement shall be enforceable as to dis-
6 putes arising under subsection (a) (4), unless the
7 Bureau determines, by rule, that such provision is
8 inconsistent with the purposes of this title.

9 **SEC. 1058. EFFECTIVE DATE.**

10 This subtitle shall become effective on the designated
11 transfer date.

12 **Subtitle F—Transfer of Functions**
13 **and Personnel; Transitional**
14 **Provisions**

15 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**
16 **TION FUNCTIONS.**

17 (a) DEFINED TERMS.—For purposes of this sub-
18 title—

19 (1) the term “consumer financial protection
20 functions” means research, rulemaking, issuance of
21 orders or guidance, supervision, examination, and
22 enforcement activities, powers, and duties relating to
23 the offering or provision of consumer financial prod-
24 ucts or services; and

1 (2) the terms “transferor agency” and “trans-
2 feror agencies” mean, respectively—

3 (A) the Board of Governors (and any Fed-
4 eral reserve bank, as the context requires), the
5 Federal Deposit Insurance Corporation, the
6 Federal Trade Commission, the National Credit
7 Union Administration, the Office of the Comp-
8 troller of the Currency, the Office of Thrift Su-
9 pervision, and the Department of Housing and
10 Urban Development, and the heads of those
11 agencies; and

12 (B) the agencies listed in subparagraph
13 (A), collectively.

14 (b) IN GENERAL.—Except as provided in subsection
15 (c), consumer financial protection functions are trans-
16 ferred as follows:

17 (1) BOARD OF GOVERNORS.—

18 (A) TRANSFER OF FUNCTIONS.—All con-
19 sumer financial protection functions of the
20 Board of Governors are transferred to the Bu-
21 reau.

22 (B) BOARD OF GOVERNORS AUTHORITY.—
23 The Bureau shall have all powers and duties
24 that were vested in the Board of Governors, re-
25 lating to consumer financial protection func-

1 tions, on the day before the designated transfer
2 date.

3 (2) COMPTROLLER OF THE CURRENCY.—

4 (A) TRANSFER OF FUNCTIONS.—All con-
5 sumer financial protection functions of the
6 Comptroller of the Currency are transferred to
7 the Bureau.

8 (B) COMPTROLLER AUTHORITY.—The Bu-
9 reau shall have all powers and duties that were
10 vested in the Comptroller of the Currency, re-
11 lating to consumer financial protection func-
12 tions, on the day before the designated transfer
13 date.

14 (3) DIRECTOR OF THE OFFICE OF THRIFT SU-
15 PERVISION.—

16 (A) TRANSFER OF FUNCTIONS.—All con-
17 sumer financial protection functions of the Di-
18 rector of the Office of Thrift Supervision are
19 transferred to the Bureau.

20 (B) DIRECTOR AUTHORITY.—The Bureau
21 shall have all powers and duties that were vest-
22 ed in the Director of the Office of Thrift Super-
23 vision, relating to consumer financial protection
24 functions, on the day before the designated
25 transfer date.

1175

1 (4) FEDERAL DEPOSIT INSURANCE CORPORA-
2 TION.—

3 (A) TRANSFER OF FUNCTIONS.—All con-
4 sumer financial protection functions of the Fed-
5 eral Deposit Insurance Corporation are trans-
6 ferred to the Bureau.

7 (B) CORPORATION AUTHORITY.—The Bu-
8 reau shall have all powers and duties that were
9 vested in the Federal Deposit Insurance Cor-
10 poration, relating to consumer financial protec-
11 tion functions, on the day before the designated
12 transfer date.

13 (5) FEDERAL TRADE COMMISSION.—

14 (A) TRANSFER OF FUNCTIONS.—Except as
15 provided in subparagraph (C), all consumer fi-
16 nancial protection functions of the Federal
17 Trade Commission are transferred to the Bu-
18 reau.

19 (B) COMMISSION AUTHORITY.—Except as
20 provided in subparagraph (C), the Bureau shall
21 have all powers and duties that were vested in
22 the Federal Trade Commission relating to con-
23 sumer financial protection functions on the day
24 before the designated transfer date.

1176

1 (C) CONTINUATION OF CERTAIN COMMIS-
2 SION AUTHORITIES.—Notwithstanding subpara-
3 graphs (A) and (B), the Federal Trade Com-
4 mission shall continue to have authority to en-
5 force, and issue rules with respect to—

6 (i) the Credit Repair Organizations
7 Act (15 U.S.C. 1679 et seq.);

8 (ii) section 5 of the Federal Trade
9 Commission Act (15 U.S.C. 45); and

10 (iii) the Telemarketing and Consumer
11 Fraud and Abuse Prevention Act (15
12 U.S.C. 6101 et seq.).

13 (6) NATIONAL CREDIT UNION ADMINISTRA-
14 TION.—

15 (A) TRANSFER OF FUNCTIONS.—All con-
16 sumer financial protection functions of the Na-
17 tional Credit Union Administration are trans-
18 ferred to the Bureau.

19 (B) NATIONAL CREDIT UNION ADMINIS-
20 TRATION AUTHORITY.—The Bureau shall have
21 all powers and duties that were vested in the
22 National Credit Union Administration, relating
23 to consumer financial protection functions, on
24 the day before the designated transfer date.

1 (7) DEPARTMENT OF HOUSING AND URBAN DE-
2 VELOPMENT.—

3 (A) TRANSFER OF FUNCTIONS.—All con-
4 sumer protection functions of the Secretary of
5 the Department of Housing and Urban Devel-
6 opment relating to the Real Estate Settlement
7 Procedures Act of 1974 (12 U.S.C. 2601 et
8 seq.) and the Secure and Fair Enforcement for
9 Mortgage Licensing Act of 2008 (12 U.S.C.
10 5102 et seq.) are transferred to the Bureau.

11 (B) DEPARTMENT OF HOUSING AND
12 URBAN DEVELOPMENT'S AUTHORITY.—The Bu-
13 reau shall have all powers and duties that were
14 vested in the Secretary of the Department of
15 Housing and Urban Development relating to
16 the Real Estate Settlement Procedures Act of
17 1974, and the Secure and Fair Enforcement for
18 Mortgage Licensing Act of 2008, on the day be-
19 fore the designated transfer date.

20 (c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAM-
21 INATION AND ENFORCEMENT AUTHORITY REMAINING
22 WITH TRANSFEROR AGENCIES.—The transfers of func-
23 tions in subsection (b) do not affect the authority of the
24 agencies identified in subsection (b) from conducting ex-
25 aminations or initiating and maintaining enforcement pro-

1 ceedings in accordance with sections 1024, 1025, and
2 1026.

3 (d) **TERMINATION OF AUTHORITY OF TRANSFEROR**
4 **AGENCIES TO COLLECT FEES FOR CONSUMER FINAN-**
5 **CIAL PROTECTION PURPOSES.**—Authorities of the agen-
6 cies identified in subsection (b) to assess and collect fees
7 to cover the cost of conducting consumer financial protec-
8 tion functions shall terminate on the day before the des-
9 igned transfer date.

10 (e) **EFFECTIVE DATE.**—Subsections (b) and (c) shall
11 become effective on the designated transfer date.

12 **SEC. 1062. DESIGNATED TRANSFER DATE.**

13 (a) **IN GENERAL.**—Not later than 60 days after the
14 date of enactment of this Act, the Secretary shall—

15 (1) in consultation with the Chairman of the
16 Board of Governors, the Chairperson of the Cor-
17 poration, the Chairman of the Federal Trade Com-
18 mission, the Chairman of the National Credit Union
19 Administration Board, the Comptroller of the Cur-
20 rency, the Director of the Office of Thrift Super-
21 vision, the Secretary of the Department of Housing
22 and Urban Development, and the Director of the Of-
23 fice of Management and Budget, designate a single
24 calendar date for the transfer of functions to the
25 Bureau under section 1061; and

1 (2) publish notice of that designated date in the
2 Federal Register.

3 (b) CHANGING DESIGNATION.—The Secretary—

4 (1) may, in consultation with the Chairman of
5 the Board of Governors, the Chairperson of the Fed-
6 eral Deposit Insurance Corporation, the Chairman
7 of the Federal Trade Commission, the Chairman of
8 the National Credit Union Administration Board,
9 the Comptroller of the Currency, the Director of the
10 Office of Thrift Supervision, the Secretary of the
11 Department of Housing and Urban Development,
12 and the Director of the Office of Management and
13 Budget, change the date designated under sub-
14 section (a); and

15 (2) shall publish notice of any changed des-
16 igned date in the Federal Register.

17 (c) PERMISSIBLE DATES.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), any date designated under this section
20 shall be not earlier than 180 days, nor later than 18
21 months, after the date of enactment of this Act.

22 (2) EXTENSION OF TIME.—The Secretary may
23 designate a date that is later than 18 months after
24 the date of enactment of this Act if the Secretary
25 transmits to appropriate committees of Congress—

1 (A) a written determination that orderly
2 implementation of this title is not feasible be-
3 fore the date that is 18 months after the date
4 of enactment of this Act;

5 (B) an explanation of why an extension is
6 necessary for the orderly implementation of this
7 title; and

8 (C) a description of the steps that will be
9 taken to effect an orderly and timely implemen-
10 tation of this title within the extended time pe-
11 riod.

12 (3) EXTENSION LIMITED.—In no case may any
13 date designated under this section be later than 24
14 months after the date of enactment of this Act.

15 **SEC. 1063. SAVINGS PROVISIONS.**

16 (a) BOARD OF GOVERNORS.—

17 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
18 TIONS NOT AFFECTED.—Section 1061(b)(1) does
19 not affect the validity of any right, duty, or obliga-
20 tion of the United States, the Board of Governors
21 (or any Federal reserve bank), or any other person
22 that—

23 (A) arises under any provision of law relat-
24 ing to any consumer financial protection func-

1 tion of the Board of Governors transferred to
2 the Bureau by this title; and

3 (B) existed on the day before the des-
4 ignated transfer date.

5 (2) CONTINUATION OF SUITS.—No provision of
6 this Act shall abate any proceeding commenced by
7 or against the Board of Governors (or any Federal
8 reserve bank) before the designated transfer date
9 with respect to any consumer financial protection
10 function of the Board of Governors (or any Federal
11 reserve bank) transferred to the Bureau by this title,
12 except that the Bureau, subject to sections 1024,
13 1025, and 1026, shall be substituted for the Board
14 of Governors (or Federal reserve bank) as a party
15 to any such proceeding as of the designated transfer
16 date.

17 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Section 1061(b)(4) does
20 not affect the validity of any right, duty, or obliga-
21 tion of the United States, the Federal Deposit In-
22 surance Corporation, the Board of Directors of that
23 Corporation, or any other person, that—

24 (A) arises under any provision of law relat-
25 ing to any consumer financial protection func-

1 tion of the Federal Deposit Insurance Corpora-
2 tion transferred to the Bureau by this title; and

3 (B) existed on the day before the des-
4 ignated transfer date.

5 (2) CONTINUATION OF SUITS.—No provision of
6 this Act shall abate any proceeding commenced by
7 or against the Federal Deposit Insurance Corpora-
8 tion (or the Board of Directors of that Corporation)
9 before the designated transfer date with respect to
10 any consumer financial protection function of the
11 Federal Deposit Insurance Corporation transferred
12 to the Bureau by this title, except that the Bureau,
13 subject to sections 1024, 1025, and 1026, shall be
14 substituted for the Federal Deposit Insurance Cor-
15 poration (or Board of Directors) as a party to any
16 such proceeding as of the designated transfer date.

17 (c) FEDERAL TRADE COMMISSION.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Section 1061(b)(5) does
20 not affect the validity of any right, duty, or obliga-
21 tion of the United States, the Federal Trade Com-
22 mission, or any other person, that—

23 (A) arises under any provision of law relat-
24 ing to any consumer financial protection func-

1 tion of the Federal Trade Commission trans-
2 ferred to the Bureau by this title; and

3 (B) existed on the day before the des-
4 ignated transfer date.

5 (2) CONTINUATION OF SUITS.—No provision of
6 this Act shall abate any proceeding commenced by
7 or against the Federal Trade Commission before the
8 designated transfer date with respect to any con-
9 sumer financial protection function of the Federal
10 Trade Commission transferred to the Bureau by this
11 title, except that the Bureau, subject to sections
12 1024, 1025, and 1026, shall be substituted for the
13 Federal Trade Commission as a party to any such
14 proceeding as of the designated transfer date.

15 (d) NATIONAL CREDIT UNION ADMINISTRATION.—

16 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
17 TIONS NOT AFFECTED.—Section 1061(b)(6) does
18 not affect the validity of any right, duty, or obliga-
19 tion of the United States, the National Credit Union
20 Administration, the National Credit Union Adminis-
21 tration Board, or any other person, that—

22 (A) arises under any provision of law relat-
23 ing to any consumer financial protection func-
24 tion of the National Credit Union Administra-
25 tion transferred to the Bureau by this title; and

1 (B) existed on the day before the des-
2 igned transfer date.

3 (2) CONTINUATION OF SUITS.—No provision of
4 this Act shall abate any proceeding commenced by
5 or against the National Credit Union Administration
6 (or the National Credit Union Administration
7 Board) before the designated transfer date with re-
8 spect to any consumer financial protection function
9 of the National Credit Union Administration trans-
10 ferred to the Bureau by this title, except that the
11 Bureau, subject to sections 1024, 1025, and 1026,
12 shall be substituted for the National Credit Union
13 Administration (or National Credit Union Adminis-
14 tration Board) as a party to any such proceeding as
15 of the designated transfer date.

16 (e) OFFICE OF THE COMPTROLLER OF THE CUR-
17 RENCY.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Section 1061(b)(2) does
20 not affect the validity of any right, duty, or obliga-
21 tion of the United States, the Comptroller of the
22 Currency, the Office of the Comptroller of the Cur-
23 rency, or any other person, that—

24 (A) arises under any provision of law relat-
25 ing to any consumer financial protection func-

1 tion of the Comptroller of the Currency trans-
2 ferred to the Bureau by this title; and

3 (B) existed on the day before the des-
4 ignated transfer date.

5 (2) CONTINUATION OF SUITS.—No provision of
6 this Act shall abate any proceeding commenced by
7 or against the Comptroller of the Currency (or the
8 Office of the Comptroller of the Currency) with re-
9 spect to any consumer financial protection function
10 of the Comptroller of the Currency transferred to
11 the Bureau by this title before the designated trans-
12 fer date, except that the Bureau, subject to sections
13 1024, 1025, and 1026, shall be substituted for the
14 Comptroller of the Currency (or the Office of the
15 Comptroller of the Currency) as a party to any such
16 proceeding as of the designated transfer date.

17 (f) OFFICE OF THRIFT SUPERVISION.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Section 1061(b)(3) does
20 not affect the validity of any right, duty, or obliga-
21 tion of the United States, the Director of the Office
22 of Thrift Supervision, the Office of Thrift Super-
23 vision, or any other person, that—

24 (A) arises under any provision of law relat-
25 ing to any consumer financial protection func-

1 tion of the Director of the Office of Thrift Su-
2 pervision transferred to the Bureau by this
3 title; and

4 (B) that existed on the day before the des-
5 ignated transfer date.

6 (2) CONTINUATION OF SUITS.—No provision of
7 this Act shall abate any proceeding commenced by
8 or against the Director of the Office of Thrift Su-
9 pervision (or the Office of Thrift Supervision) with
10 respect to any consumer financial protection func-
11 tion of the Director of the Office of Thrift Super-
12 vision transferred to the Bureau by this title before
13 the designated transfer date, except that the Bu-
14 reau, subject to sections 1024, 1025, and 1026,
15 shall be substituted for the Director (or the Office
16 of Thrift Supervision) as a party to any such pro-
17 ceeding as of the designated transfer date.

18 (g) DEPARTMENT OF HOUSING AND URBAN DEVEL-
19 OPMENT.—

20 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
21 TIONS NOT AFFECTED.—Section 1061(b)(7) shall
22 not affect the validity of any right, duty, or obliga-
23 tion of the United States, the Secretary of the De-
24 partment of Housing and Urban Development (or

1 the Department of Housing and Urban Develop-
2 ment), or any other person, that—

3 (A) arises under any provision of law relat-
4 ing to any function of the Secretary of the De-
5 partment of Housing and Urban Development
6 with respect to the Real Estate Settlement Pro-
7 cedures Act of 1974 (12 U.S.C. 2601 et seq.)
8 or the Secure and Fair Enforcement for Mort-
9 gage Licensing Act of 2008 (12 U.S.C. 5102 et
10 seq.) transferred to the Bureau by this title;
11 and

12 (B) existed on the day before the des-
13 igned transfer date.

14 (2) CONTINUATION OF SUITS.—This title shall
15 not abate any proceeding commenced by or against
16 the Secretary of the Department of Housing and
17 Urban Development (or the Department of Housing
18 and Urban Development) with respect to any con-
19 sumer financial protection function of the Secretary
20 of the Department of Housing and Urban Develop-
21 ment transferred to the Bureau by this title before
22 the designated transfer date, except that the Bu-
23 reau, subject to sections 1024, 1025, and 1026,
24 shall be substituted for the Secretary of the Depart-
25 ment of Housing and Urban Development (or the

1 Department of Housing and Urban Development) as
2 a party to any such proceeding as of the designated
3 transfer date.

4 (h) CONTINUATION OF EXISTING ORDERS, RULES,
5 DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—

6 All orders, resolutions, determinations, agreements, and
7 rules that have been issued, made, prescribed, or allowed
8 to become effective by any transferor agency or by a court
9 of competent jurisdiction, in the performance of consumer
10 financial protection functions that are transferred by this
11 title and that are in effect on the day before the designated
12 transfer date, shall continue in effect according to the
13 terms of those orders, resolutions, determinations, agree-
14 ments, and rules, and shall not be enforceable by or
15 against the Bureau.

16 (i) IDENTIFICATION OF RULES CONTINUED.—Not
17 later than the designated transfer date, the Bureau—

18 (1) shall, after consultation with the head of
19 each transferor agency, identify the rules continued
20 under subsection (g) that will be enforced by the Bu-
21 reau; and

22 (2) shall publish a list of such rules in the Fed-
23 eral Register.

24 (j) STATUS OF RULES PROPOSED OR NOT YET EF-
25 FECTIVE.—

1 (1) PROPOSED RULES.—Any proposed rule of a
2 transferor agency which that agency, in performing
3 consumer financial protection functions transferred
4 by this title, has proposed before the designated
5 transfer date, but has not been published as a final
6 rule before that date, shall be deemed to be a pro-
7 posed rule of the Bureau.

8 (2) RULES NOT YET EFFECTIVE.—Any interim
9 or final rule of a transferor agency which that agen-
10 cy, in performing consumer financial protection
11 functions transferred by this title, has published be-
12 fore the designated transfer date, but which has not
13 become effective before that date, shall become effec-
14 tive as a rule of the Bureau according to its terms.

15 **SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.**

16 (a) IN GENERAL.—

17 (1) CERTAIN FEDERAL RESERVE SYSTEM EM-
18 PLOYEES TRANSFERRED.—

19 (A) IDENTIFYING EMPLOYEES FOR TRANS-
20 FER.—The Bureau and the Board of Governors
21 shall—

22 (i) jointly determine the number of
23 employees of the Board of Governors nec-
24 essary to perform or support the consumer
25 financial protection functions of the Board

1 of Governors that are transferred to the
2 Bureau by this title; and

3 (ii) consistent with the number deter-
4 mined under clause (i), jointly identify em-
5 ployees of the Board of Governors for
6 transfer to the Bureau, in a manner that
7 the Bureau and the Board of Governors, in
8 their sole discretion, determine equitable.

9 (B) IDENTIFIED EMPLOYEES TRANS-
10 FERRED.—All employees of the Board of Gov-
11 ernors identified under subparagraph (A)(ii)
12 shall be transferred to the Bureau for employ-
13 ment.

14 (C) FEDERAL RESERVE BANK EMPLOY-
15 EES.—Employees of any Federal reserve bank
16 who, on the day before the designated transfer
17 date, are performing consumer financial protec-
18 tion functions on behalf of the Board of Gov-
19 ernors shall be treated as employees of the
20 Board of Governors for purposes of subpara-
21 graphs (A) and (B).

22 (2) CERTAIN FDIC EMPLOYEES TRANS-
23 FERRED.—

24 (A) IDENTIFYING EMPLOYEES FOR TRANS-
25 FER.—The Bureau and the Board of Directors

1 of the Federal Deposit Insurance Corporation
2 shall—

3 (i) jointly determine the number of
4 employees of that Corporation necessary to
5 perform or support the consumer financial
6 protection functions of the Corporation
7 that are transferred to the Bureau by this
8 title; and

9 (ii) consistent with the number deter-
10 mined under clause (i), jointly identify em-
11 ployees of the Corporation for transfer to
12 the Bureau, in a manner that the Bureau
13 and the Board of Directors of the Corpora-
14 tion, in their sole discretion, determine eq-
15 uitable.

16 (B) IDENTIFIED EMPLOYEES TRANS-
17 FERRED.—All employees of the Corporation
18 identified under subparagraph (A)(ii) shall be
19 transferred to the Bureau for employment.

20 (3) CERTAIN NCUA EMPLOYEES TRANS-
21 FERRED.—

22 (A) IDENTIFYING EMPLOYEES FOR TRANS-
23 FER.—The Bureau and the National Credit
24 Union Administration Board shall—

1 (i) jointly determine the number of
2 employees of the National Credit Union
3 Administration necessary to perform or
4 support the consumer financial protection
5 functions of the National Credit Union Ad-
6 ministration that are transferred to the
7 Bureau by this title; and

8 (ii) consistent with the number deter-
9 mined under clause (i), jointly identify em-
10 ployees of the National Credit Union Ad-
11 ministration for transfer to the Bureau, in
12 a manner that the Bureau and the Na-
13 tional Credit Union Administration Board,
14 in their sole discretion, determine equi-
15 table.

16 (B) IDENTIFIED EMPLOYEES TRANS-
17 FERRED.—All employees of the National Credit
18 Union Administration identified under subpara-
19 graph (A)(ii) shall be transferred to the Bureau
20 for employment.

21 (4) CERTAIN EMPLOYEES OF DEPARTMENT OF
22 HOUSING AND URBAN DEVELOPMENT TRANS-
23 FERRED.—

24 (A) IDENTIFYING EMPLOYEES FOR TRANS-
25 FER.—The Bureau and the Secretary of the

1 Department of Housing and Urban Develop-
2 ment shall—

3 (i) jointly determine the number of
4 employees of the Department of Housing
5 and Urban Development necessary to per-
6 form or support the consumer protection
7 functions of the Department that are
8 transferred to the Bureau by this title; and

9 (ii) consistent with the number deter-
10 mined under clause (i), jointly identify em-
11 ployees of the Department of Housing and
12 Urban Development for transfer to the Bu-
13 reau in a manner that the Bureau and the
14 Secretary of the Department of Housing
15 and Urban Development, in their sole dis-
16 cretion, deem equitable.

17 (B) IDENTIFIED EMPLOYEES TRANS-
18 FERRED.—All employees of the Department of
19 Housing and Urban Development identified
20 under subparagraph (A)(ii) shall be transferred
21 to the Bureau for employment.

22 (5) APPOINTMENT AUTHORITY FOR EXCEPTED
23 SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-
24 FERRED.—

1194

1 (A) IN GENERAL.—In the case of employee
2 occupying a position in the excepted service or
3 the Senior Executive Service, any appointment
4 authority established pursuant to law or regula-
5 tions of the Office of Personnel Management
6 for filling such positions shall be transferred,
7 subject to subparagraph (B).

8 (B) DECLINING TRANSFERS ALLOWED.—
9 An agency or entity may decline to make a
10 transfer of authority under subparagraph (A)
11 (and the employees appointed pursuant thereto)
12 to the extent that such authority relates to posi-
13 tions excepted from the competitive service be-
14 cause of their confidential, policy-making, pol-
15 icy-determining, or policy-advocating character,
16 and non-career positions in the Senior Execu-
17 tive Service (within the meaning of section
18 3132(a)(7) of title 5, United States Code).

19 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
20 MENTS.—Each employee to be transferred under this sec-
21 tion shall—

22 (1) be transferred not later than 90 days after
23 the designated transfer date; and

1 (2) receive notice of a position assignment not
2 later than 120 days after the effective date of his or
3 her transfer.

4 (c) TRANSFER OF FUNCTION.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of law, the transfer of employees shall be
7 deemed a transfer of functions for the purpose of
8 section 3503 of title 5, United States Code.

9 (2) PRIORITY OF THIS TITLE.—If any provi-
10 sions of this title conflict with any protection pro-
11 vided to transferred employees under section 3503 of
12 title 5, United States Code, the provisions of this
13 title shall control.

14 (d) EQUAL STATUS AND TENURE POSITIONS.—

15 (1) EMPLOYEES TRANSFERRED FROM FDIC,
16 FTC, HUD, NCUA, OCC, AND OTS.—Each employee
17 transferred from the Federal Deposit Insurance Cor-
18 poration, the Federal Trade Commission, the Na-
19 tional Credit Union Administration, the Office of the
20 Comptroller of the Currency, the Office of Thrift
21 Supervision, or the Department of Housing and
22 Urban Development shall be placed in a position at
23 the Bureau with the same status and tenure as that
24 employee held on the day before the designated
25 transfer date.

1196

1 (2) EMPLOYEES TRANSFERRED FROM THE
2 FEDERAL RESERVE SYSTEM.—

3 (A) COMPARABILITY.—Each employee
4 transferred from the Board of Governors or
5 from a Federal reserve bank shall be placed in
6 a position with the same status and tenure as
7 that of an employee transferring to the Bureau
8 from the Office of the Comptroller of the Cur-
9 rency who perform similar functions and have
10 similar periods of service.

11 (B) SERVICE PERIODS CREDITED.—For
12 purposes of this paragraph, periods of service
13 with the Board of Governors or a Federal re-
14 serve bank shall be credited as periods of serv-
15 ice with a Federal agency.

16 (e) ADDITIONAL CERTIFICATION REQUIREMENTS
17 LIMITED.—Examiners transferred to the Bureau are not
18 subject to any additional certification requirements before
19 being placed in a comparable examiner position at the Bu-
20 reau examining the same types of institutions as they ex-
21 amined before they were transferred.

22 (f) PERSONNEL ACTIONS LIMITED.—

23 (1) 2-YEAR PROTECTION.—Except as provided
24 in paragraph (2), each transferred employee holding
25 a permanent position on the day before the des-

1 ignated transfer date may not, during the 2-year pe-
2 riod beginning on the designated transfer date, be
3 involuntarily separated, or involuntarily reassigned
4 outside his or her locality pay area, as defined by
5 the Office of Personnel Management.

6 (2) EXCEPTIONS.—Paragraph (1) does not
7 limit the right of the Bureau—

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

10 (B) to terminate an appointment to a posi-
11 tion excepted from the competitive service be-
12 cause of its confidential policy-making, policy-
13 determining, or policy-advocating character; or

14 (C) to reassign a supervisory employee out-
15 side his or her locality pay area, as defined by
16 the Office of Personnel Management, when the
17 Bureau determines that the reassignment is
18 necessary for the efficient operation of the Bu-
19 reau.

20 (g) PAY.—

21 (1) 2-YEAR PROTECTION.—Except as provided
22 in paragraph (2), each transferred employee shall,
23 during the 2-year period beginning on the des-
24 ignated transfer date, receive pay at a rate equal to
25 not less than the basic rate of pay (including any ge-

1 ographic differential) that the employee received
2 during the pay period immediately preceding the
3 date of transfer.

4 (2) EXCEPTIONS.—Paragraph (1) does not
5 limit the right of the Bureau to reduce the rate of
6 basic pay of a transferred employee—

7 (A) for cause;

8 (B) for unacceptable performance; or

9 (C) with the consent of the employee.

10 (3) PROTECTION ONLY WHILE EMPLOYED.—
11 Paragraph (1) applies to a transferred employee
12 only while that employee remains employed by the
13 Bureau.

14 (4) PAY INCREASES PERMITTED.—Paragraph
15 (1) does not limit the authority of the Bureau to in-
16 crease the pay of a transferred employee.

17 (h) REORGANIZATION.—

18 (1) BETWEEN 1ST AND 3RD YEAR.—

19 (A) IN GENERAL.—If the Bureau deter-
20 mines, during the 2-year period beginning 1
21 year after the designated transfer date, that a
22 reorganization of the staff of the Bureau is re-
23 quired—

24 (i) that reorganization shall be
25 deemed a “major reorganization” for pur-

1 poses of affording affected employees re-
2 tirement under section 8336(d)(2) or
3 8414(b)(1)(B) of title 5, United States
4 Code;

5 (ii) before the reorganization occurs,
6 all employees in the same locality pay area
7 as defined by the Office of Personnel Man-
8 agement shall be placed in a uniform posi-
9 tion classification system; and

10 (iii) any resulting reduction in force
11 shall be governed by the provisions of
12 chapter 35 of title 5, United States Code,
13 except that the Bureau shall—

14 (I) establish competitive areas
15 (as that term is defined in regulations
16 issued by the Office of Personnel
17 Management) to include at a min-
18 imum all employees in the same local-
19 ity pay area as defined by the Office
20 of Personnel Management;

21 (II) establish competitive levels
22 (as that term is defined in regulations
23 issued by the Office of Personnel
24 Management) without regard to
25 whether the particular employees have

1200

1 been appointed to positions in the
2 competitive service or the excepted
3 service; and

4 (III) afford employees appointed
5 to positions in the excepted service
6 (other than to a position excepted
7 from the competitive service because
8 of its confidential policy-making, pol-
9 icy-determining, or policy-advocating
10 character) the same assignment rights
11 to positions within the Bureau as em-
12 ployees appointed to positions in the
13 competitive service.

14 (B) SERVICE CREDIT FOR REDUCTIONS IN
15 FORCE.—For purposes of this paragraph, peri-
16 ods of service with a Federal home loan bank,
17 a joint office of the Federal home loan banks,
18 the Board of Governors, a Federal reserve
19 bank, the Federal Deposit Insurance Corpora-
20 tion, or the National Credit Union Administra-
21 tion shall be credited as periods of service with
22 a Federal agency.

23 (2) AFTER 3RD YEAR.—

24 (A) IN GENERAL.—If the Bureau deter-
25 mines, at any time after the 3-year period be-

1201

1 ginning on the designated transfer date, that a
2 reorganization of the staff of the Bureau is re-
3 quired, any resulting reduction in force shall be
4 governed by the provisions of chapter 35 of title
5 5, United States Code, except that the Bureau
6 shall establish competitive levels (as that term
7 is defined in regulations issued by the Office of
8 Personnel Management) without regard to
9 types of appointment held by particular employ-
10 ees transferred under this section.

11 (B) SERVICE CREDIT FOR REDUCTIONS IN
12 FORCE.—For purposes of this paragraph, peri-
13 ods of service with a Federal home loan bank,
14 a joint office of the Federal home loan banks,
15 the Board of Governors, a Federal reserve
16 bank, the Federal Deposit Insurance Corpora-
17 tion, or the National Credit Union Administra-
18 tion shall be credited as periods of service with
19 a Federal agency.

20 (i) BENEFITS.—

21 (1) RETIREMENT BENEFITS FOR TRANSFERRED
22 EMPLOYEES.—

23 (A) IN GENERAL.—

24 (i) CONTINUATION OF EXISTING RE-
25 TIREMENT PLAN.—Except as provided in

1202

1 subparagraph (B), each transferred em-
2 ployee shall remain enrolled in his or her
3 existing retirement plan, through any pe-
4 riod of continuous employment with the
5 Bureau.

6 (ii) EMPLOYER CONTRIBUTION.—The
7 Bureau shall pay any employer contribu-
8 tions to the existing retirement plan of
9 each transferred employee, as required
10 under that plan.

11 (B) OPTION FOR EMPLOYEES TRANS-
12 FERRED FROM FEDERAL RESERVE SYSTEM TO
13 BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-
14 MENT PROGRAM.—

15 (i) ELECTION.—Any transferred em-
16 ployee who was enrolled in a Federal Re-
17 serve System retirement plan on the day
18 before his or her transfer to the Bureau
19 may, during the 1-year period beginning 6
20 months after the designated transfer date,
21 elect to be subject to the Federal employee
22 retirement program.

23 (ii) EFFECTIVE DATE OF COV-
24 ERAGE.—For any employee making an
25 election under clause (i), coverage by the

1203

1 Federal employee retirement program shall
2 begin 1 year after the designated transfer
3 date.

4 (C) BUREAU PARTICIPATION IN FEDERAL
5 RESERVE SYSTEM RETIREMENT PLAN.—

6 (i) SEPARATE ACCOUNT IN FEDERAL
7 RESERVE SYSTEM RETIREMENT PLAN ES-
8 TABLISHED.—Notwithstanding any other
9 provision of law, and subject to the terms
10 and conditions of this section, a separate
11 account in the Federal Reserve System re-
12 tirement plan shall be established for Bu-
13 reau employees who do not make the elec-
14 tion under subparagraph (B).

15 (ii) FUNDS ATTRIBUTABLE TO TRANS-
16 FERRED EMPLOYEES REMAINING IN FED-
17 ERAL RESERVE SYSTEM RETIREMENT
18 PLAN TRANSFERRED.—The proportionate
19 share of funds in the Federal Reserve Sys-
20 tem retirement plan, including the propor-
21 tionate share of any funding surplus in
22 that plan, attributable to a transferred em-
23 ployee who does not make the election
24 under subparagraph (B), shall be trans-

1 ferred to the account established under
2 clause (i).

3 (iii) EMPLOYER CONTRIBUTIONS DE-
4 POSITED.—The Bureau shall deposit into
5 the account established under clause (i)
6 the employer contributions that the Bu-
7 reau makes on behalf of employees who do
8 not make the election under subparagraph
9 (B).

10 (iv) ACCOUNT ADMINISTRATION.—The
11 Bureau shall administer the account estab-
12 lished under clause (i) as a participating
13 employer in the Federal Reserve System
14 retirement plan.

15 (D) DEFINITIONS.—For purposes of this
16 paragraph—

17 (i) the term “existing retirement
18 plan” means, with respect to any employee
19 transferred under this section, the par-
20 ticular retirement plan (including the Fi-
21 nancial Institutions Retirement Fund) and
22 any associated thrift savings plan of the
23 agency or Federal reserve bank from which
24 the employee was transferred, which the

1205

1 employee was enrolled in on the day before
2 the designated transfer date; and

3 (ii) the term “Federal employee re-
4 tirement program” means the retirement
5 program for Federal employees established
6 by chapter 84 of title 5, United States
7 Code.

8 (2) BENEFITS OTHER THAN RETIREMENT BEN-
9 EFITS FOR TRANSFERRED EMPLOYEES.—

10 (A) DURING 1ST YEAR.—

11 (i) EXISTING PLANS CONTINUE.—
12 Each transferred employee may, for 1 year
13 after the designated transfer date, retain
14 membership in any other employee benefit
15 program of the agency or bank from which
16 the employee transferred, including a den-
17 tal, vision, long term care, or life insurance
18 program, to which the employee belonged
19 on the day before the designated transfer
20 date.

21 (ii) EMPLOYER CONTRIBUTION.—The
22 Bureau shall reimburse the agency or bank
23 from which an employee was transferred
24 for any cost incurred by that agency or
25 bank in continuing to extend coverage in

1206

1 the benefit program to the employee, as re-
2 quired under that program or negotiated
3 agreements.

4 (B) DENTAL, VISION, OR LIFE INSURANCE
5 AFTER 1ST YEAR.—If, after the 1-year period
6 beginning on the designated transfer date, the
7 Bureau decides not to continue participation in
8 any dental, vision, or life insurance program of
9 an agency or bank from which an employee
10 transferred, a transferred employee who is a
11 member of such a program may, before the de-
12 cision of the Bureau takes effect, elect to enroll,
13 without regard to any regularly scheduled open
14 season, in—

15 (i) the enhanced dental benefits estab-
16 lished by chapter 89A of title 5, United
17 States Code;

18 (ii) the enhanced vision benefits estab-
19 lished by chapter 89B of title 5, United
20 States Code; or

21 (iii) the Federal Employees Group
22 Life Insurance Program established by
23 chapter 87 of title 5, United States Code,
24 without regard to any requirement of in-
25 surability.

1207

1 (C) LONG TERM CARE INSURANCE AFTER
2 1ST YEAR.—If, after the 1-year period begin-
3 ning on the designated transfer date, the Bu-
4 reau decides not to continue participation in
5 any long term care insurance program of an
6 agency or bank from which an employee trans-
7 ferred, a transferred employee who is a member
8 of such a program may, before the decision of
9 the Bureau takes effect, elect to apply for cov-
10 erage under the Federal Long Term Care In-
11 surance Program established by chapter 90 of
12 title 5, United States Code, under the under-
13 writing requirements applicable to a new active
14 workforce member (as defined in part 875, title
15 5, Code of Federal Regulations).

16 (D) EMPLOYEE CONTRIBUTION.—An indi-
17 vidual enrolled in the Federal Employees
18 Health Benefits program shall pay any em-
19 ployee contribution required by the plan.

20 (E) ADDITIONAL FUNDING.—The Bureau
21 shall transfer to the Federal Employees Health
22 Benefits Fund established under section 8909
23 of title 5, United States Code, an amount deter-
24 mined by the Director of the Office of Per-
25 sonnel Management, after consultation with the

1 Bureau and the Office of Management and
2 Budget, to be necessary to reimburse the Fund
3 for the cost to the Fund of providing benefits
4 under this paragraph.

5 (F) CREDIT FOR TIME ENROLLED IN
6 OTHER PLANS.—For employees transferred
7 under this title, enrollment in a health benefits
8 plan administered by a transferor agency or a
9 Federal reserve bank, as the case may be, im-
10 mediately before enrollment in a health benefits
11 plan under chapter 89 of title 5, United States
12 Code, shall be considered as enrollment in a
13 health benefits plan under that chapter for pur-
14 poses of section 8905(b)(1)(A) of title 5, United
15 States Code.

16 (G) SPECIAL PROVISIONS TO ENSURE CON-
17 TINUATION OF LIFE INSURANCE BENEFITS.—

18 (i) IN GENERAL.—An annuitant (as
19 defined in section 8901(3) of title 5,
20 United States Code) who is enrolled in a
21 life insurance plan administered by a
22 transferor agency on the day before the
23 designated transfer date shall be eligible
24 for coverage by a life insurance plan under
25 sections 8706(b), 8714a, 8714b, and

1209

1 8714c of title 5, United States Code, or in
2 a life insurance plan established by the
3 Bureau, without regard to any regularly
4 scheduled open season and requirement of
5 insurability.

6 (ii) EMPLOYEE CONTRIBUTION.—An
7 individual enrolled in a life insurance plan
8 under this subparagraph shall pay any em-
9 ployee contribution required by the plan.

10 (iii) ADDITIONAL FUNDING.—The Bu-
11 reau shall transfer to the Employees' Life
12 Insurance Fund established under section
13 8714 of title 5, United States Code, an
14 amount determined by the Director of the
15 Office of Personnel Management, after
16 consultation with the Bureau and the Of-
17 fice of Management and Budget, to be nec-
18 essary to reimburse the Fund for the cost
19 to the Fund of providing benefits under
20 this subparagraph not otherwise paid for
21 by the employee under clause (ii).

22 (iv) CREDIT FOR TIME ENROLLED IN
23 OTHER PLANS.—For employees transferred
24 under this title, enrollment in a life insur-
25 ance plan administered by a transferor

1210

1 agency immediately before enrollment in a
2 life insurance plan under chapter 87 of
3 title 5, United States Code, shall be con-
4 sidered as enrollment in a life insurance
5 plan under that chapter for purposes of
6 section 8706(b)(1)(A) of title 5, United
7 States Code.

8 (3) OPM RULES.—The Office of Personnel
9 Management shall issue such rules as are necessary
10 to carry out this subsection.

11 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
12 FICATION SYSTEM.—Not later than 2 years after the des-
13 ignated transfer date, the Bureau shall implement a uni-
14 form pay and classification system for all employees trans-
15 ferred under this title.

16 (k) EQUITABLE TREATMENT.—In administering the
17 provisions of this section, the Bureau—

18 (1) shall take no action that would unfairly dis-
19 advantage transferred employees relative to each
20 other based on their prior employment by the Board
21 of Governors, the Federal Deposit Insurance Cor-
22 poration, the Federal Trade Commission, the Na-
23 tional Credit Union Administration, the Office of the
24 Comptroller of the Currency, the Office of Thrift
25 Supervision, a Federal reserve bank, a Federal home

1 loan bank, or a joint office of the Federal home loan
2 banks; and

3 (2) may take such action as is appropriate in
4 individual cases so that employees transferred under
5 this section receive equitable treatment, with respect
6 to the status, tenure, pay, benefits (other than bene-
7 fits under programs administered by the Office of
8 Personnel Management), and accrued leave or vaca-
9 tion time of those employees, for prior periods of
10 service with any Federal agency, including the
11 Board of Governors, the Corporation, the Federal
12 Trade Commission, the National Credit Union Ad-
13 ministration, the Office of the Comptroller of the
14 Currency, the Office of Thrift Supervision, a Federal
15 reserve bank, a Federal home loan bank, or a joint
16 office of the Federal home loan banks.

17 (l) IMPLEMENTATION.—In implementing the provi-
18 sions of this section, the Bureau shall coordinate with the
19 Office of Personnel Management and other entities having
20 expertise in matters related to employment to ensure a
21 fair and orderly transition for affected employees.

22 **SEC. 1065. INCIDENTAL TRANSFERS.**

23 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Di-
24 rector of the Office of Management and Budget, in con-
25 sultation with the Secretary, shall make such additional

1 incidental transfers and dispositions of assets and liabil-
2 ities held, used, arising from, available, or to be made
3 available, in connection with the functions transferred by
4 this title, as the Director may determine necessary to ac-
5 complish the purposes of this title.

6 (b) SUNSET.—The authority provided in this section
7 shall terminate 5 years after the date of enactment of this
8 Act.

9 **SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.**

10 (a) IN GENERAL.—The Secretary is authorized to
11 perform the functions of the Bureau under this subtitle
12 until the Director of the Bureau is confirmed by the Sen-
13 ate in accordance with section 1011.

14 (b) INTERIM ADMINISTRATIVE SERVICES BY THE
15 DEPARTMENT OF THE TREASURY.—The Department of
16 the Treasury may provide administrative services nec-
17 essary to support the Bureau before the designated trans-
18 fer date.

19 (c) INTERIM FUNDING FOR THE DEPARTMENT OF
20 THE TREASURY.—

21 (1) IN GENERAL.—There are authorized to be
22 appropriated to the Department of the Treasury
23 such sums as are necessary to carry out this section.

24 (2) APPORTIONMENT AND RESTRICTIONS.—
25 Notwithstanding any other provision of law,

1 amounts appropriated under paragraph (1) shall be
2 subject to apportionment under section 1517 of title
3 31, United States Code, and restrictions that gen-
4 erally apply to the use of appropriated funds in title
5 31, United States Code, and other laws.

6 **SEC. 1067. TRANSITION OVERSIGHT.**

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

- 9 (1) has an orderly and organized startup;
10 (2) attracts and retains a qualified workforce;
11 and
12 (3) establishes comprehensive employee training
13 and benefits programs.

14 (b) REPORTING REQUIREMENT.—

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

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

23 (A) TRAINING AND WORKFORCE DEVELOP-
24 MENT PLAN.—The Bureau shall submit a train-

1 ing and workforce development plan that in-
2 cludes, to the extent practicable—

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

6 (ii) steps taken to foster innovation
7 and creativity;

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

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

12 (B) WORKPLACE FLEXIBILITIES PLAN.—

13 The Bureau shall submit a workforce flexibility
14 plan that includes, to the extent practicable—

15 (i) telework;

16 (ii) flexible work schedules;

17 (iii) phased retirement;

18 (iv) reemployed annuitants;

19 (v) part-time work;

20 (vi) job sharing;

21 (vii) parental leave benefits and

22 childcare assistance;

23 (viii) domestic partner benefits;

24 (ix) other workplace flexibilities; or

1215

1 (x) any combination of the items de-
2 scribed in clauses (i) through (ix).

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

7 (i) the steps necessary to target highly
8 qualified applicant pools with diverse back-
9 grounds;

10 (ii) streamlined employment applica-
11 tion processes;

12 (iii) the provision of timely notifica-
13 tion of the status of employment applica-
14 tions to applicants; and

15 (iv) the collection of information to
16 measure indicators of hiring effectiveness.

17 (c) EXPIRATION.—The reporting requirement under
18 subsection (b) shall terminate 5 years after the date of
19 enactment of this Act.

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

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

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

3 **Subtitle G—Regulatory**
4 **Improvements**

5 **SEC. 1071. COLLECTION OF DEPOSIT ACCOUNT DATA.**

6 (a) PURPOSE.—The purpose of this section is to pro-
7 mote awareness and understanding of the access of indi-
8 viduals and communities to financial services, and to iden-
9 tify business and community development needs and op-
10 portunities.

11 (b) IN GENERAL.—

12 (1) RECORDS REQUIRED.—For each branch,
13 automated teller machine at which deposits are ac-
14 cepted, and other deposit taking service facility with
15 respect to any financial institution, the financial in-
16 stitution shall maintain a record of the number and
17 dollar amounts of deposit accounts of customers.

18 (2) GEO-CODED ADDRESSES OF DEPOSITORS.—
19 Customer addresses shall be geo-coded for the collec-
20 tion of data regarding the census tracts of the resi-
21 dences or business locations of customers.

22 (3) IDENTIFICATION OF DEPOSITOR TYPE.—In
23 maintaining records on any deposit account under
24 this section, the financial institution shall record

1 whether the deposit account is for a residential or
2 commercial customer.

3 (4) PUBLIC AVAILABILITY.—

4 (A) IN GENERAL.—Each financial institu-
5 tion shall make publicly available on an annual
6 basis, from information collected under this sec-
7 tion—

8 (i) the address and census tract of
9 each branch, automated teller machine at
10 which deposits are accepted, and other de-
11 posit taking service facility with respect to
12 the financial institution;

13 (ii) the type of deposit account, in-
14 cluding whether the account was a check-
15 ing or savings account; and

16 (iii) data on the number and dollar
17 amount of the accounts, presented by cen-
18 sus tract location of the residential and
19 commercial customer.

20 (B) PROTECTION OF IDENTITY.—In mak-
21 ing data publicly available, any personally iden-
22 tifiable data element shall be removed so as to
23 protect the identities of the commercial and res-
24 idential customers.

25 (c) AVAILABILITY OF INFORMATION.—

1 (1) SUBMISSION TO AGENCIES.—The data re-
2 quired to be compiled and maintained under this
3 section by any financial institution shall be sub-
4 mitted annually to the Bureau, or to a Federal
5 banking agency, in accordance with rules prescribed
6 by the Bureau.

7 (2) AVAILABILITY OF INFORMATION.—Informa-
8 tion compiled and maintained under this section
9 shall be retained for not less than 3 years after the
10 date of preparation and shall be made available to
11 the public, upon request, in the form required under
12 rules prescribed by the Bureau.

13 (d) BUREAU USE.—The Bureau—

14 (1) shall use the data on branches and deposit
15 accounts acquired under this section as part of the
16 examination of a covered person as part of an exam-
17 ination under this title;

18 (2) shall assess the distribution of residential
19 and commercial accounts at such financial institu-
20 tion across income and minority level of census
21 tracts; and

22 (3) may use the data for any other purpose as
23 permitted by law.

24 (e) RULES AND GUIDANCE.—The Bureau shall pre-
25 scribe such rules and issue guidance as may be necessary

1 to carry out, enforce, and compile data pursuant to this
2 section. The Bureau shall prescribe rules regarding the
3 provision of data compiled under this section to the Fed-
4 eral banking agencies to carry out the purposes of this
5 section, and shall issue guidance to financial institutions
6 regarding measures to facilitate compliance with this sec-
7 tion and the requirements of rules prescribed thereunder.

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

10 (1) DEPOSIT ACCOUNT.—The term “deposit ac-
11 count” includes any checking account, savings ac-
12 count, credit union share account, and other type of
13 account as defined by the Bureau.

14 (2) FINANCIAL INSTITUTION.—The term “fi-
15 nancial institution”—

16 (A) has the meaning given to the term “in-
17 sured depository institution” in section 3(e)(2)
18 of the Federal Deposit Insurance Act; and

19 (B) includes any credit union.

20 (g) EFFECTIVE DATE.—This section shall become ef-
21 fective on the designated transfer date.

22 **SEC. 1072. SMALL BUSINESS DATA COLLECTION.**

23 (a) IN GENERAL.—The Equal Credit Opportunity
24 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
25 section 704A the following new section:

1 **“SEC. 740B. SMALL BUSINESS LOAN DATA COLLECTION.**

2 “(a) PURPOSE.—The purpose of this section is to fa-
3 cilitate enforcement of fair lending laws and enable com-
4 munities, governmental entities, and creditors to identify
5 business and community development needs and opportu-
6 nities of women-owned and minority-owned small busi-
7 nesses.

8 “(b) INFORMATION GATHERING.—Subject to the re-
9 quirements of this section, in the case of any application
10 to a financial institution for credit for a small business,
11 the financial institution shall—

12 “(1) inquire whether the small business is a
13 women- or minority-owned small business, without
14 regard to whether such application is received in
15 person, by mail, by telephone, by electronic mail or
16 other form of electronic transmission, or by any
17 other means, and whether or not such application is
18 in response to a solicitation by the financial institu-
19 tion; and

20 “(2) maintain a record of the responses to such
21 inquiry, separate from the application and accom-
22 panying information.

23 “(c) RIGHT TO REFUSE.—Any applicant for credit
24 may refuse to provide any information requested pursuant
25 to subsection (b) in connection with any application for
26 credit.

1221

1 “(d) NO ACCESS BY UNDERWRITERS.—

2 “(1) LIMITATION.—Where feasible, no loan un-
3 derwriter or other officer or employee of a financial
4 institution, or any affiliate of a financial institution,
5 involved in making any determination concerning an
6 application for credit shall have access to any infor-
7 mation provided by the applicant pursuant to a re-
8 quest under subsection (b) in connection with such
9 application.

10 “(2) LIMITED ACCESS.—If a financial institu-
11 tion determines that loan underwriter or other offi-
12 cer or employee of a financial institution, or any af-
13 filiate of a financial institution, involved in making
14 any determination concerning an application for
15 credit should have access to any information pro-
16 vided by the applicant pursuant to a request under
17 subsection (b), the financial institution shall provide
18 notice to the applicant of the access of the under-
19 writer to such information, along with notice that
20 the financial institution may not discriminate on this
21 basis of such information.

22 “(e) FORM AND MANNER OF INFORMATION.—

23 “(1) IN GENERAL.—Each financial institution
24 shall compile and maintain, in accordance with regu-
25 lations of the Bureau, a record of the information

1 provided by any loan applicant pursuant to a request
2 under subsection (b).

3 “(2) ITEMIZATION.—Information compiled and
4 maintained under paragraph (1) shall be itemized in
5 order to clearly and conspicuously disclose—

6 “(A) the number of the application and the
7 date on which the application was received;

8 “(B) the type and purpose of the loan or
9 other credit being applied for;

10 “(C) the amount of the credit or credit
11 limit applied for, and the amount of the credit
12 transaction or the credit limit approved for such
13 applicant;

14 “(D) the type of action taken with respect
15 to such application, and the date of such action;

16 “(E) the census tract in which is located
17 the principal place of business of the small busi-
18 ness loan applicant;

19 “(F) the gross annual revenue of the busi-
20 ness in the last fiscal year of the small business
21 loan applicant preceding the date of the appli-
22 cation;

23 “(G) the race and ethnicity of the principal
24 owners of the business; and

1223

1 “(H) any additional data that the Bureau
2 determines would aid in fulfilling the purposes
3 of this section.

4 “(3) NO PERSONALLY IDENTIFIABLE INFORMA-
5 TION.—In compiling and maintaining any record of
6 information under this section, a financial institution
7 may not include in such record the name, specific
8 address (other than the census tract required under
9 paragraph (1)(E)), telephone number, electronic
10 mail address, or any other personally identifiable in-
11 formation concerning any individual who is, or is
12 connected with, the small business loan applicant.

13 “(4) DISCRETION TO DELETE OR MODIFY PUB-
14 LICLY-AVAILABLE DATA.—The Bureau may, at its
15 discretion, delete or modify data collected under this
16 section which is or will be available to the public, if
17 the Bureau determines that the deletion or modifica-
18 tion of the data would advance a compelling privacy
19 interest.

20 “(f) AVAILABILITY OF INFORMATION.—

21 “(1) SUBMISSION TO BUREAU.—The data re-
22 quired to be compiled and maintained under this
23 section by any financial institution shall be sub-
24 mitted annually to the Bureau.

1 “(2) AVAILABILITY OF INFORMATION.—Infor-
2 mation compiled and maintained under this section
3 shall be—

4 “(A) retained for not less than 3 years
5 after the date of preparation;

6 “(B) made available to any member of the
7 public, upon request, in the form required
8 under regulations prescribed by the Bureau;

9 “(C) annually made available to the public
10 generally by the Bureau, in such form and in
11 such manner as is determined appropriate by
12 the Bureau.

13 “(3) COMPILATION OF AGGREGATE DATA.—The
14 Bureau may, at its discretion—

15 “(A) compile and aggregate data collected
16 under this section for its own use; and

17 “(B) make public such compilations of ag-
18 gregate data.

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

21 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
22 nancial institution’ means any partnership, com-
23 pany, corporation, association (incorporated or unin-
24 corporated), trust, estate, cooperative organization,
25 or other entity that engages in any financial activity.

1225

1 “(2) MINORITY-OWNED SMALL BUSINESS.—The
2 term ‘minority-owned small business’ means a small
3 business—

4 “(A) more than 50 percent of the owner-
5 ship or control of which is held by 1 or more
6 minority individuals; and

7 “(B) more than 50 percent of the net prof-
8 it or loss of which accrues to 1 or more minor-
9 ity individuals.

10 “(3) WOMEN-OWNED SMALL BUSINESS.—The
11 term ‘women-owned small business’ means a busi-
12 ness—

13 “(A) more than 50 percent of the owner-
14 ship or control of which is held by 1 or more
15 women; and

16 “(B) more than 50 percent of the net prof-
17 it or loss of which accrues to 1 or more women.

18 “(4) MINORITY.—The term ‘minority’ has the
19 same meaning as in section 1204(c)(3) of the Finan-
20 cial Institutions Reform, Recovery and Enforcement
21 Act of 1989.

22 “(5) SMALL BUSINESS LOAN.—The term ‘small
23 business loan’ shall be defined by the Bureau, which
24 may take into account—

25 “(A) the gross revenues of the borrower;

1 “(B) the total number of employees of the
2 borrower;

3 “(C) the industry in which the borrower
4 has its primary operations; and

5 “(D) the size of the loan.

6 “(h) BUREAU ACTION.—

7 “(1) IN GENERAL.—The Bureau shall prescribe
8 such rules and issue such guidance as may be nec-
9 essary to carry out, enforce, and compile data pursu-
10 ant to this section.

11 “(2) EXCEPTIONS.—The Bureau, by rule or
12 order, may adopt exceptions to any requirement of
13 this section and may, conditionally or uncondition-
14 ally, exempt any financial institution or class of fi-
15 nancial institutions from the requirements of this
16 section, as the Bureau deems necessary or appro-
17 priate to carry out the purposes of this section.

18 “(3) GUIDANCE.—The Bureau shall issue guid-
19 ance designed to facilitate compliance with the re-
20 quirements of this section, including assisting finan-
21 cial institutions in working with applicants to deter-
22 mine whether the applicants are women- or minor-
23 ity-owned for purposes of this section.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
2 Section 701(b) of the Equal Credit Opportunity Act (15
3 U.S.C. 1691(b)) is amended—

4 (1) in paragraph (3), by striking “or” at the
5 end;

6 (2) in paragraph (4), by striking the period at
7 the end and inserting “; or”; and

8 (3) by inserting after paragraph (4), the fol-
9 lowing:

10 “(5) to make an inquiry under section 704B, in
11 accordance with the requirements of that section.”.

12 (c) CLERICAL AMENDMENT.—The table of sections
13 for title VII of the Consumer Credit Protection Act is
14 amended by inserting after the item relating to section
15 704A the following new item:

“704B. Small business loan data collection.”.

16 (d) EFFECTIVE DATE.—This section shall become ef-
17 fective on the designated transfer date.

18 **SEC. 1073. GAO STUDY ON THE EFFECTIVENESS AND IM-**
19 **PACT OF VARIOUS APPRAISAL METHODS.**

20 (a) IN GENERAL.—The Government Accountability
21 Office shall conduct a study on the effectiveness and im-
22 pact of various appraisal methods, including the cost ap-
23 proach, the comparative sales approach, the income ap-
24 proach, and others that may be available.

25 (b) STUDY.—Not later than—

1 (1) one year after the date of enactment of this
2 Act, the Government Accountability Office shall sub-
3 mit a study to the Committee on Banking, Housing,
4 and Urban Affairs of the Senate and the Committee
5 on Financial Services of the House of Representa-
6 tives;

7 (2) 90 days after the date of enactment of this
8 Act, the Government Accountability Office shall pro-
9 vide a report on the status of the study and any pre-
10 liminary findings to the Committee on Banking,
11 Housing, and Urban Affairs of the Senate and the
12 Committee on Financial Services of the House of
13 Representatives.

14 (c) CONTENT OF STUDY.—The study required by this
15 section shall include an examination of—

16 (1) the prevalence, alone or in combination, of
17 these approaches in purchase-money and refinance
18 mortgage transactions;

19 (2) the accuracy of the various approaches in
20 assessing the property as collateral;

21 (3) whether and how the approaches contrib-
22 uted to price speculation in the previous cycle;

23 (4) the costs to consumers of these approaches;

24 (5) the disclosure of fees to consumers in the
25 appraisal process;

1 (6) to what extent such approaches may be in-
2 fluenced by a conflict of interest between the mort-
3 gage lender and the appraiser and the mechanism by
4 which the lender selects and compensates the ap-
5 praiser; and

6 (7) the suitability of appraisal approaches in
7 rural versus urban areas.

8 **SEC. 1074. PROHIBITION ON CERTAIN PREPAYMENT PEN-**
9 **ALTIES.**

10 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
11 ing Act (15 U.S.C. 1631 et. seq.) is amended by inserting
12 after section 129A (15 U.S.C. 1639A) the following new
13 section:

14 **“§ 129B. Prohibition on certain prepayment penalties**

15 “(a) PROHIBITED ON CERTAIN LOANS.—A residen-
16 tial mortgage loan that is not a qualified mortgage may
17 not contain terms under which a consumer must pay a
18 prepayment penalty for paying all or part of the principal
19 after the loan is consummated.

20 “(b) PHASED-OUT PENALTIES ON QUALIFIED MORT-
21 GAGES.—

22 “(1) IN GENERAL.—A qualified mortgage may
23 not contain terms under which a consumer must pay
24 a prepayment penalty for paying all or part of the

1 principal after the loan is consummated in excess
2 of—

3 “(A) during the 1-year period beginning on
4 the date on which the loan is consummated, an
5 amount equal to 3 percent of the outstanding
6 balance on the loan;

7 “(B) during the 1-year period beginning
8 after the period described in subparagraph (A),
9 an amount equal to 2 percent of the out-
10 standing balance on the loan; and

11 “(C) during the 1-year period beginning
12 after the 1-year period described in subpara-
13 graph (B), an amount equal to 1 percent of the
14 outstanding balance on the loan.

15 “(2) PROHIBITION.—After the end of the 3-
16 year period beginning on the date on which the loan
17 is consummated, no prepayment penalty may be im-
18 posed on a qualified mortgage.

19 “(c) OPTION FOR NO PREPAYMENT PENALTY RE-
20 QUIRED.—A creditor may not offer a residen-
21 tial mortgage loan product that has a prepayment penalty
22 for paying all or part of the principal after the loan is
23 consummated as a term of the loan, without offering to
24 the consumer a residential mortgage loan product that
25 does not have a prepayment penalty as a term of the loan.

1231

1 “(d) PROHIBITIONS ON EVASIONS, STRUCTURING OF
2 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A
3 creditor may not take any action in connection with a resi-
4 dential mortgage loan—

5 “(1) to structure a loan transaction as an open
6 end consumer credit plan or another form of loan for
7 the purpose and with the intent of evading the provi-
8 sions of this section; or

9 “(2) to divide any loan transaction into sepa-
10 rate parts for the purpose and with the intent of
11 evading provisions of this section.

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

14 “(1) PREPAYMENT PENALTY.—The term ‘pre-
15 payment penalty’ means any penalty for paying all
16 or part of the principal on an extension of credit be-
17 fore the date on which the principal is due, including
18 a computation of a refund of unearned interest by
19 a method that is less favorable to the consumer than
20 the actuarial method, as defined in section 933(d) of
21 the Housing and Community Development Act of
22 1992 (15 U.S.C. 4 1615(d)).

23 “(2) RESIDENTIAL MORTGAGE LOAN.—The
24 term ‘residential mortgage loan’ means any con-
25 sumer credit transaction that is secured by a mort-

1 gage, deed of trust, or other equivalent consensual
2 security interest on a dwelling or on residential real
3 property that includes a dwelling, other than a con-
4 sumer credit transaction under an open end credit
5 plan or an extension of credit relating to a plan de-
6 scribed in section 101(53D) of title 11, United
7 States Code.

8 “(3) QUALIFIED MORTGAGE.—The term ‘quali-
9 fied mortgage’ means any residential mortgage
10 loan—

11 “(A) that does not have an adjustable rate;

12 “(B) that does not allow a consumer to
13 defer repayment of principal or interest, or is
14 not otherwise deemed a ‘non-traditional mort-
15 gage’ under guidance, advisories, or regulations
16 prescribed by the Federal Banking Agencies;

17 “(C) that does not provide for a repayment
18 schedule that results in negative amortization
19 at any time;

20 “(D) for which the terms are fully amor-
21 tizing and which does not result in a balloon
22 payment, where a ‘balloon payment’ is a sched-
23 uled payment that is more than twice as large
24 as the average of earlier scheduled payments;

1233

1 “(E) which has an annual percentage rate
2 that does not exceed the average prime offer
3 rate for a comparable transaction, as of the
4 date the interest rate is set—

5 “(i) by 1.5 or more percentage points,
6 in the case of a first lien residential mort-
7 gage loan having a original principal obli-
8 gation amount that is equal to or less than
9 the amount of the maximum limitation on
10 the original principal obligation of mort-
11 gage in effect for a residence of the appli-
12 cable size, as of the date of such interest
13 rate set, pursuant to the sixth sentence of
14 section 305(a)(2) the Federal Home Loan
15 Mortgage Corporation Act (12 U.S.C.
16 1454(a)(2));

17 “(ii) by 2.5 or more percentage
18 points, in the case of a first lien residential
19 mortgage loan having a original principal
20 obligation amount that is more than the
21 amount of the maximum limitation on the
22 original principal obligation of mortgage in
23 effect for a residence of the applicable size,
24 as of the date of such interest rate set,
25 pursuant to the sixth sentence of section

1234

1 305(a)(2) the Federal Home Loan Mort-
2 gage Corporation Act (12 U.S.C.
3 1454(a)(2)); and

4 “(iii) by 3.5 or more percentage
5 points, in the case of a subordinate lien
6 residential mortgage loan;

7 “(F) for which the income and financial
8 resources relied upon to qualify the obligors on
9 the loan are verified and documented;

10 “(G) for which the underwriting process is
11 based on a payment schedule that fully amor-
12 tizes the loan over the loan term and takes into
13 account all applicable taxes, insurance, and as-
14 sessments;

15 “(H) that does not cause the consumer’s
16 total monthly debts, including amounts under
17 the loan, to exceed a percentage established by
18 regulation of the consumer’s monthly gross in-
19 come or such other maximum percentage of
20 such income as may be prescribed by regulation
21 under subsection (g), and such rules shall also
22 take into consideration the consumer’s income
23 available to pay regular expenses after payment
24 of all installment and revolving debt;

1235

1 “(I) for which the total points and fees
2 payable in connection with the loan do not ex-
3 ceed 2 percent of the total loan amount, where
4 ‘points and fees’ means points and fees as de-
5 fined by Section 103(aa)(4) of the Truth in
6 Lending Act (15 U.S.C. 1602(aa)(4));

7 “(J) for which the term of the loan does
8 not exceed 30 years, except as such term may
9 be extended under subsection (g); and

10 “(K) any reverse mortgage that is insured
11 by the Federal Housing Administration or com-
12 plies with the condition established in subpara-
13 graph (A)(iv).

14 “(4) AVERAGE PRIME OFFER RATE.—The term
15 ‘average prime offer rate’ means an annual percent-
16 age rate that is derived from average interest rates,
17 points, and other loan pricing terms currently of-
18 fered to consumers by a representative sample of
19 creditors for mortgage transactions that have low
20 risk pricing characteristics.

21 “(f) PUBLICATION OF AVERAGE PRIME OFFER RATE
22 AND APR THRESHOLDS.—The Board—

23 “(1) shall publish, and update at least weekly,
24 average prime offer rates;

1 “(2) may publish multiple rates based on vary-
2 ing types of mortgage transactions; and

3 “(3) shall adjust the thresholds of 1.50 percent-
4 age points in paragraph (e)(3)(E)(i), 2.50 percent-
5 age points in paragraph (e)(3)(E)(ii), and 3.50 per-
6 centage points in paragraph (e)(3)(E)(iii), as nec-
7 essary to reflect significant changes in market condi-
8 tions and to effectuate the purposes of this section.

9 “(g) REGULATIONS.—

10 “(1) IN GENERAL.—The Federal banking agen-
11 cies shall jointly prescribe regulations to carry out
12 the purposes of this subsection.

13 “(2) REVISION OF SAFE HARBOR CRITERIA.—

14 “(A) IN GENERAL.—The Federal banking
15 agencies may jointly prescribe regulations that
16 revise, add to, or subtract from the criteria that
17 define a qualified mortgage upon a finding that
18 such regulations are necessary or proper to en-
19 sure that responsible, affordable mortgage cred-
20 it remains available to consumers in a manner
21 consistent with the purposes of this section,
22 necessary and appropriate to effectuate the pur-
23 poses of this section, to prevent circumvention
24 or evasion thereof, or to facilitate compliance
25 with such section.

1237

1 “(B) LOAN DEFINITION.—The following
2 agencies shall, in consultation with the Federal
3 banking agencies, prescribe rules defining the
4 types of loans they insure, guarantee or admin-
5 ister, as the case may be, that are qualified
6 mortgages for purposes of section upon a find-
7 ing that such rules are consistent with the pur-
8 poses of this section, to prevent circumvention
9 or evasion thereof, or to facilitate compliance
10 with such sections—

11 “(i) the Department of Housing and
12 Urban Development, with regard to mort-
13 gages insured under title II of the National
14 Housing Act (12 U.S.C. 1707 et seq.);

15 “(ii) the Secretary of Veterans Af-
16 fairs, with regard to a loan made or guar-
17 anteed by the Secretary of Veterans Af-
18 fairs;

19 “(iii) the Secretary of Agriculture,
20 with regard loans guaranteed by the Sec-
21 retary of Agriculture pursuant to 42
22 U.S.C. 1472(h);

23 “(iv) the Federal Housing Finance
24 Agency, with regard to loans meeting the
25 conforming loan standards of the Federal

1238

1 National Mortgage Corporation or the
2 Federal Home Loan Mortgage Corpora-
3 tion; and

4 “(v) the Rural Housing Service, with
5 regard to loans insured by the Rural Hous-
6 ing Service.

7 “(3) IMPLEMENTATION.—Regulations required
8 or authorized to be prescribed under this section—

9 “(A) shall be prescribed in final form be-
10 fore the end of the 12-month period beginning
11 on the date of enactment of this section; and

12 “(B) shall take effect not later than 18
13 months after the date of the enactment of this
14 section.”.

15 (b) PREPAYMENT PENALTIES PROVISION.—Section
16 129(c)(2) of the Truth in Lending Act (15 U.S.C.
17 1639(c)(2)) is hereby repealed.

18 **Subtitle H—Conforming** 19 **Amendments**

20 **SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL** 21 **ACT.**

22 The Inspector General Act of 1978 (5 U.S.C. App.
23 3) is amended—

24 (1) in section 8G(a)(2), by inserting “and the
25 Bureau of Consumer Financial Protection” after

1 “Board of Governors of the Federal Reserve Sys-
2 tem”;

3 (2) in section 8G(c), by adding at the end the
4 following: “For purposes of implementing this sec-
5 tion, the Chairman of the Board of Governors of the
6 Federal Reserve System shall appoint the Inspector
7 General of the Board of Governors of the Federal
8 Reserve System and the Bureau of Consumer Finan-
9 cial Protection. The Inspector General of the Board
10 of Governors of the Federal Reserve System and the
11 Bureau of Consumer Financial Protection shall have
12 all of the authorities and responsibilities provided by
13 this Act with respect to the Bureau of Consumer Fi-
14 nancial Protection, as if the Bureau were part of the
15 Board of Governors of the Federal Reserve Sys-
16 tem.”; and

17 (3) in in section 8G(g)(3), by inserting “and
18 the Bureau of Consumer Financial Protection” after
19 “Board of Governors of the Federal Reserve Sys-
20 tem” the first place that term appears.

21 **SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

22 Effective on the date of enactment of this Act, section
23 552a of title 5, United States Code, is amended by adding
24 at the end the following:

1 “(w) APPLICABILITY TO BUREAU OF CONSUMER FI-
2 NANCIAL PROTECTION.—Except as provided in the Con-
3 sumer Financial Protection Act of 2010, this section shall
4 apply with respect to the Bureau of Consumer Financial
5 Protection.”.

6 **SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORT-**
7 **GAGE TRANSACTION PARITY ACT OF 1982.**

8 (a) IN GENERAL.—The Alternative Mortgage Trans-
9 action Parity Act of 1982 (12 U.S.C. 3801 et seq.) is
10 amended—

11 (1) in section 803 (12 U.S.C. 3802(1)), by
12 striking “1974” and all that follows through “de-
13 scribed and defined” and inserting the following:
14 “1974), in which the interest rate or finance charge
15 may be adjusted or renegotiated, described and de-
16 fined”; and

17 (2) in section 804 (12 U.S.C. 3803)—

18 (A) in subsection (a)—

19 (i) in each of paragraphs (1), (2), and
20 (3), by inserting after “transactions made”
21 each place that term appears “on or before
22 the designated transfer date, as deter-
23 mined under section 1062 of the Consumer
24 Financial Protection Act of 2010,”;

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

3 (iii) in paragraph (3), by striking the
4 period at the end and inserting “; and”;
5 and

6 (iv) by adding at the end the following
7 new paragraph:

8 “(4) with respect to transactions made after the
9 designated transfer date, only in accordance with
10 regulations governing alternative mortgage trans-
11 actions, as issued by the Bureau of Consumer Fi-
12 nancial Protection for federally chartered housing
13 creditors, in accordance with the rulemaking author-
14 ity granted to the Bureau of Consumer Financial
15 Protection with regard to federally chartered hous-
16 ing creditors under provisions of law other than this
17 section.”;

18 (B) by striking subsection (c) and insert-
19 ing the following:

20 “(c) PREEMPTION OF STATE LAW.—An alternative
21 mortgage transaction may be made by a housing creditor
22 in accordance with this section, notwithstanding any State
23 constitution, law, or regulation that prohibits an alter-
24 native mortgage transaction. For purposes of this sub-
25 section, a State constitution, law, or regulation that pro-

1 hibits an alternative mortgage transaction does not in-
2 clude any State constitution, law, or regulation that regu-
3 lates mortgage transactions generally, including any re-
4 striction on prepayment penalties or late charges.”; and

5 (C) by adding at the end the following:

6 “(d) BUREAU ACTIONS.—The Bureau of Consumer
7 Financial Protection shall—

8 “(1) review the regulations identified by the
9 Comptroller of the Currency and the National Credit
10 Union Administration, (as those rules exist on the
11 designated transfer date), as applicable under para-
12 graphs (1) through (3) of subsection (a);

13 “(2) determine whether such regulations are
14 fair and not deceptive and otherwise meet the objec-
15 tives of the Consumer Financial Protection Act of
16 2010; and

17 “(3) promulgate regulations under subsection
18 (a)(4) after the designated transfer date.

19 “(e) DESIGNATED TRANSFER DATE.—As used in
20 this section, the term ‘designated transfer date’ means the
21 date determined under section 1062 of the Consumer Fi-
22 nancial Protection Act of 2010.”.

23 (b) EFFECTIVE DATE.—This section and the amend-
24 ments made by this section shall become effective on the
25 designated transfer date.

1 (c) RULE OF CONSTRUCTION.—The amendments
2 made by subsection (a) shall not affect any transaction
3 covered by the Alternative Mortgage Transaction Parity
4 Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on
5 or before the designated transfer date.

6 **SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND**
7 **TRANSFER ACT.**

8 The Electronic Fund Transfer Act (15 U.S.C. 1693
9 et seq.) is amended—

10 (1) by striking “Board” each place that term
11 appears and inserting “Bureau”, except in section
12 918 (as so designated by the Credit Card Act of
13 2009) (15 U.S.C. 1693o);

14 (2) in section 903 (15 U.S.C. 1693a), by strik-
15 ing paragraph (3) and inserting the following:

16 “(3) the term ‘Bureau’ means the Bureau of
17 Consumer Financial Protection;”;

18 (3) in section 916(d) (as so designated by sec-
19 tion 401 of the Credit CARD Act of 2009) (15
20 U.S.C. 1693m)—

21 (A) by striking “FEDERAL RESERVE SYS-
22 TEM” and inserting “BUREAU OF CONSUMER
23 FINANCIAL PROTECTION”; and

1 (B) by striking “Federal Reserve System”
2 and inserting “Bureau of Consumer Financial
3 Protection”; and

4 (4) in section 918 (as so designated by the
5 Credit Card Act of 2009) (15 U.S.C. 1693o)—

6 (A) in subsection (a)—

7 (i) by striking “Compliance” and in-
8 serting “Except as otherwise provided by
9 subtitle B of the Consumer Financial Pro-
10 tection Act of 2010, compliance”; and

11 (ii) by striking paragraph (2) and in-
12 serting the following:

13 “(2) subtitle E of the Consumer Financial Pro-
14 tection Act of 2010, by the Bureau;”; and

15 (B) by striking subsection (c) and insert-
16 ing the following:

17 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
18 FEDERAL TRADE COMMISSION.—Except to the extent
19 that enforcement of the requirements imposed under this
20 title is specifically committed to some other Government
21 agency under subsection (a), and subject to subtitle B of
22 the Consumer Financial Protection Act of 2010, the Fed-
23 eral Trade Commission shall enforce such requirements.
24 For the purpose of the exercise by the Federal Trade
25 Commission of its functions and powers under the Federal

1 Trade Commission Act, a violation of any requirement im-
2 posed under this title shall be deemed a violation of a re-
3 quirement imposed under that Act. All of the functions
4 and powers of the Federal Trade Commission under the
5 Federal Trade Commission Act are available to the Fed-
6 eral Trade Commission to enforce compliance by any per-
7 son subject to the jurisdiction of the Federal Trade Com-
8 mission with the requirements imposed under this title,
9 irrespective of whether that person is engaged in com-
10 merce or meets any other jurisdictional tests under the
11 Federal Trade Commission Act.”.

12 **SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
13 **TUNITY ACT.**

14 The Equal Credit Opportunity Act (15 U.S.C. 1691
15 et seq.) is amended—

16 (1) by striking “Board” each place that term
17 appears and inserting “Bureau”;

18 (2) in section 702 (15 U.S.C. 1691a), by strik-
19 ing subsection (c) and inserting the following:

20 “(c) The term ‘Bureau’ means the Bureau of Con-
21 sumer Financial Protection.”;

22 (3) in section 703 (15 U.S.C. 1691b)—

23 (A) by striking the section heading and in-
24 serting the following:

1 **“SEC. 703. PROMULGATION OF REGULATIONS BY THE BU-**
2 **REAU.”;**

3 (B) by striking “(a) REGULATIONS.—”;

4 (C) by striking subsection (b);

5 (D) by redesignating paragraphs (1)
6 through (5) as subsections (a) through (e), re-
7 spectively; and

8 (E) in subsection (e), as so redesignated,
9 by striking “paragraph (2)” and inserting “sub-
10 section (b)”;

11 (4) in section 704 (15 U.S.C. 1691c)—

12 (A) in subsection (a)—

13 (i) by striking “Compliance” and in-
14 serting “Except as otherwise provided by
15 subtitle B of the Consumer Protection Fi-
16 nancial Protection Act of 2010”; and

17 (ii) by striking paragraph (2) and in-
18 serting the following:

19 “(2) Subtitle E of the Consumer Financial Pro-
20 tection Act of 2010, by the Bureau.”;

21 (B) by striking subsection (c) and insert-
22 ing the following:

23 “(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
24 ERAL TRADE COMMISSION.—Except to the extent that en-
25 forcement of the requirements imposed under this title is
26 specifically committed to some other Government agency

1 under subsection (a), the Federal Trade Commission shall
2 enforce such requirements. For the purpose of the exercise
3 by the Federal Trade Commission of its functions and
4 powers under the Federal Trade Commission Act (15
5 U.S.C. 41 et seq.), a violation of any requirement imposed
6 under this subchapter shall be deemed a violation of a re-
7 quirement imposed under that Act. All of the functions
8 and powers of the Federal Trade Commission under the
9 Federal Trade Commission Act are available to the Fed-
10 eral Trade Commission to enforce compliance by any per-
11 son with the requirements imposed under this title, irre-
12 spective of whether that person is engaged in commerce
13 or meets any other jurisdictional tests under the Federal
14 Trade Commission Act, including the power to enforce any
15 rule prescribed by the Bureau under this title in the same
16 manner as if the violation had been a violation of a Fed-
17 eral Trade Commission trade regulation rule.”; and

18 (C) in subsection (d) by striking “Board”
19 and inserting “Bureau”; and

20 (5) in section 706(e) (15 U.S.C. 1691e(e))—

21 (A) in the subsection heading—

22 (i) by striking “BOARD” each place
23 that term appears and inserting “BU-
24 REAU”; and

1 (ii) by striking “FEDERAL RESERVE
2 SYSTEM” and inserting “BUREAU OF CON-
3 SUMER FINANCIAL PROTECTION”; and
4 (B) by striking “Federal Reserve System”
5 and inserting “Bureau of Consumer Financial
6 Protection”.

7 **SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS**
8 **AVAILABILITY ACT.**

9 (a) AMENDMENT TO SECTION 603.—Section
10 603(d)(1) of the Expedited Funds Availability Act (12
11 U.S.C. 4002) is amended by inserting after “Board” the
12 following “, jointly with the Director of the Bureau of
13 Consumer Financial Protection,”.

14 (b) AMENDMENTS TO SECTION 604.—Section 604 of
15 the Expedited Funds Availability Act (12 U.S.C. 4003)
16 is amended—

17 (1) by inserting after “Board” each place that
18 term appears, other than in subsection (f), the fol-
19 lowing: “, jointly with the Director of the Bureau of
20 Consumer Financial Protection,”; and

21 (2) in subsection (f), by striking “Board.” each
22 place that term appears and inserting the following:
23 “Board, jointly with the Director of the Bureau of
24 Consumer Financial Protection.”.

1 (c) AMENDMENTS TO SECTION 605.—Section 605 of
2 the Expedited Funds Availability Act (12 U.S.C. 4004)
3 is amended—

4 (1) by inserting after “Board” each place that
5 term appears, other than in the heading for section
6 605(f)(1), the following: “, jointly with the Director
7 of the Bureau of Consumer Financial Protection,”;
8 and

9 (2) in subsection (f)(1), in the paragraph head-
10 ing, by inserting “AND BUREAU” after “BOARD”.

11 (d) AMENDMENTS TO SECTION 609.—Section 609 of
12 the Expedited Funds Availability Act (12 U.S.C. 4008)
13 is amended:

14 (1) in subsection (a), by inserting after
15 “Board” the following “, jointly with the Director of
16 the Bureau of Consumer Financial Protection,”; and

17 (2) by striking subsection (e) and inserting the
18 following:

19 “(e) CONSULTATIONS.—In prescribing regulations
20 under subsection (a) and (b) of this section, the Board
21 and the Director of the Bureau of Consumer Financial
22 Protection, in the case of subsection (a), and the Board,
23 in the case of subsection (b), shall consult with the Comp-
24 troller of the Currency, the Board of Directors of the Fed-

1 eral Deposit Insurance Corporation, and the National
2 Credit Union Administration Board.”.

3 **SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING**
4 **ACT.**

5 The Fair Credit Billing Act (15 U.S.C. 1666–1666j)
6 is amended by striking “Board” each place that term ap-
7 pears and inserting “Bureau”.

8 **SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING**
9 **ACT AND THE FAIR AND ACCURATE CREDIT**
10 **TRANSACTIONS ACT.**

11 (a) FAIR CREDIT REPORTING ACT.—The Fair Credit
12 Reporting Act (15 U.S.C. 1681 et seq.) is amended—

13 (1) in section 603 (15 U.S.C. 1681a)—

14 (A) by redesignating subsections (w) and
15 (x) as subsections (x) and (y), respectively; and

16 (B) by inserting after subsection (v) the
17 following:

18 “(w) The term ‘Bureau’ means the Bureau of Con-
19 sumer Financial Protection.”; and

20 (2) except as otherwise specifically provided in
21 this subsection—

22 (A) by striking “Federal Trade Commis-
23 sion” each place that term appears and insert-
24 ing “Bureau”;

1 (B) by striking “FTC” each place that
2 term appears and inserting “Bureau”;

3 (C) by striking “the Commission” each
4 place that term appears and inserting “the Bu-
5 reau”; and

6 (D) by striking “The Federal banking
7 agencies, the National Credit Union Adminis-
8 tration, and the Commission shall jointly” each
9 place that term appears and inserting “The Bu-
10 reau shall”;

11 (3) in section 603(k)(2) (15 U.S.C.
12 1681a(k)(2)), by striking “Board of Governors of
13 the Federal Reserve System” and inserting “Bu-
14 reau”;

15 (4) in section 604(g) (15 U.S.C.1681b(g))—

16 (A) in paragraph (3), by striking subpara-
17 graph (C) and inserting the following:

18 “(C) as otherwise determined to be nec-
19 essary and appropriate, by regulation or order,
20 by the Bureau (consistent with the enforcement
21 authorities prescribed under section 621(b)), or
22 the applicable State insurance authority (with
23 respect to any person engaged in providing in-
24 surance or annuities).”;

1 (B) by striking paragraph (5) and insert-
2 ing the following:

3 “(5) REGULATIONS AND EFFECTIVE DATE FOR
4 PARAGRAPH (2).—

5 “(A) REGULATIONS REQUIRED.—The Bu-
6 reau may, after notice and opportunity for com-
7 ment, prescribe regulations that permit trans-
8 actions under paragraph (2) that are deter-
9 mined to be necessary and appropriate to pro-
10 tect legitimate operational, transactional, risk,
11 consumer, and other needs (and which shall in-
12 clude permitting actions necessary for adminis-
13 trative verification purposes), consistent with
14 the intent of paragraph (2) to restrict the use
15 of medical information for inappropriate pur-
16 poses.”; and

17 (C) by striking paragraph (6);

18 (5) in section 611(e)(2) (15 U.S.C.1681i(e)), by
19 striking paragraph (2) and inserting the following:

20 “(2) EXCLUSION.—Complaints received or ob-
21 tained by the Bureau pursuant to its investigative
22 authority under the Consumer Financial Protection
23 Act of 2010 shall not be subject to paragraph (1).”;

1 (6) in section 615(h)(6) (15 U.S.C.
2 1681m(h)(6)), by striking subparagraph (A) and in-
3 serting the following:

4 “(A) RULES REQUIRED.—The Bureau
5 shall prescribe rules to carry out this sub-
6 section.”;

7 (7) in section 621 (15 U.S.C.1681s)—

8 (A) by striking subsection (a) and insert-
9 ing the following:

10 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
11 SION.—

12 “(1) IN GENERAL.—Except as otherwise pro-
13 vided by subtitle B of the Consumer Financial Pro-
14 tection Act of 2010, compliance with the require-
15 ments imposed under this title shall be enforced
16 under the Federal Trade Commission Act (15
17 U.S.C. 41 et seq.) by the Federal Trade Commis-
18 sion, with respect to consumer reporting agencies
19 and all other persons subject thereto, except to the
20 extent that enforcement of the requirements imposed
21 under this title is specifically committed to some
22 other Government agency under subsection (b). For
23 the purpose of the exercise by the Federal Trade
24 Commission of its functions and powers under the
25 Federal Trade Commission Act, a violation of any

1 requirement or prohibition imposed under this title
2 shall constitute an unfair or deceptive act or practice
3 in commerce, in violation of section 5(a) of the Fed-
4 eral Trade Commission Act (15 U.S.C. 45(a)), and
5 shall be subject to enforcement by the Federal Trade
6 Commission under section 5(b) of that Act with re-
7 spect to any consumer reporting agency or person
8 that is subject to enforcement by the Federal Trade
9 Commission pursuant to this subsection, irrespective
10 of whether that person is engaged in commerce or
11 meets any other jurisdictional tests under the Fed-
12 eral Trade Commission Act. The Federal Trade
13 Commission shall have such procedural, investiga-
14 tive, and enforcement powers (except as otherwise
15 provided by subtitle B of the Consumer Financial
16 Protection Act of 2010), including the power to
17 issue procedural rules in enforcing compliance with
18 the requirements imposed under this title and to re-
19 quire the filing of reports, the production of docu-
20 ments, and the appearance of witnesses, as though
21 the applicable terms and conditions of the Federal
22 Trade Commission Act were part of this title. Any
23 person violating any of the provisions of this title
24 shall be subject to the penalties and entitled to the
25 privileges and immunities provided in the Federal

1 Trade Commission Act as though the applicable
2 terms and provisions of such Act are part of this
3 title.

4 “(2) PENALTIES.—

5 “(A) KNOWING VIOLATIONS.—Except as
6 otherwise provided by subtitle B of the Con-
7 sumer Financial Protection Act of 2010, in the
8 event of a knowing violation, which constitutes
9 a pattern or practice of violations of this title,
10 the Federal Trade Commission may commence
11 a civil action to recover a civil penalty in a dis-
12 trict court of the United States against any
13 person that violates this title. In such action,
14 such person shall be liable for a civil penalty of
15 not more than \$2,500 per violation.

16 “(B) DETERMINING PENALTY AMOUNT.—

17 In determining the amount of a civil penalty
18 under subparagraph (A), the court shall take
19 into account the degree of culpability, any his-
20 tory of prior such conduct, ability to pay, effect
21 on ability to continue to do business, and such
22 other matters as justice may require.

23 “(C) LIMITATION.—Notwithstanding para-
24 graph (2), a court may not impose any civil
25 penalty on a person for a violation of section

1 623(a)(1), unless the person has been enjoined
2 from committing the violation, or ordered not to
3 commit the violation, in an action or proceeding
4 brought by or on behalf of the Federal Trade
5 Commission, and has violated the injunction or
6 order, and the court may not impose any civil
7 penalty for any violation occurring before the
8 date of the violation of the injunction or
9 order.”;

10 (8) by striking subsection (b) and inserting the
11 following:

12 “(b) ENFORCEMENT BY OTHER AGENCIES.—

13 “(1) IN GENERAL.—Except as otherwise pro-
14 vided by subtitle B of the Consumer Financial Pro-
15 tection Act of 2010, compliance with the require-
16 ments imposed under this title with respect to con-
17 sumer reporting agencies, persons who use consumer
18 reports from such agencies, persons who furnish in-
19 formation to such agencies, and users of information
20 that are subject to section 615(d) shall be enforced
21 under—

22 “(A) section 8 of the Federal Deposit In-
23 surance Act (12 U.S.C. 1818), in the case of—

24 “(i) any national bank, and any Fed-
25 eral branch or Federal agency of a foreign

1257

1 bank, by the Office of the Comptroller of
2 the Currency;

3 “(ii) any member bank of the Federal
4 Reserve System (other than a national
5 bank), a branch or agency of a foreign
6 bank (other than a Federal branch, Fed-
7 eral agency, or insured State branch of a
8 foreign bank), a commercial lending com-
9 pany owned or controlled by a foreign
10 bank, and any organization operating
11 under section 25 or 25A of the Federal
12 Reserve Act, by the Board of Governors of
13 the Federal Reserve System; and

14 “(iii) any bank insured by the Federal
15 Deposit Insurance Corporation (other than
16 a member of the Federal Reserve System)
17 and any insured State branch of a foreign
18 bank, by the Board of Directors of the
19 Federal Deposit Insurance Corporation;

20 “(B) subtitle E of the Consumer Financial
21 Protection Act of 2010, by the Bureau;

22 “(C) the Federal Credit Union Act (12
23 U.S.C. 1751 et seq.), by the Administrator of
24 the National Credit Union Administration with
25 respect to any Federal credit union;

1 “(D) subtitle IV of title 49, United States
2 Code, by the Secretary of Transportation, with
3 respect to all carriers subject to the jurisdiction
4 of the Surface Transportation Board;

5 “(E) the Federal Aviation Act of 1958 (49
6 U.S.C. App. 1301 et seq.), by the Secretary of
7 Transportation, with respect to any air carrier
8 or foreign air carrier subject to that Act;

9 “(F) the Packers and Stockyards Act,
10 1921 (7 U.S.C. 181 et seq.) (except as provided
11 in section 406 of that Act, by the Secretary of
12 Agriculture, with respect to any activities sub-
13 ject to that Act;

14 “(G) the Commodity Exchange Act, with
15 respect to a person subject to the jurisdiction of
16 the Commodity Futures Trading Commission;
17 and

18 “(H) the Federal securities laws, and any
19 other laws that are subject to the jurisdiction of
20 the Securities and Exchange Commission, with
21 respect to a person that subject to the jurisdic-
22 tion of the Securities and Exchange Commis-
23 sion.

24 “(2) INCORPORATED DEFINITIONS.—The terms
25 used in paragraph (1) that are not defined in this

1 title or otherwise defined in section 3(s) of the Fed-
2 eral Deposit Insurance Act (12 U.S.C. 1813(s)) have
3 the same meanings as in section 1(b) of the Inter-
4 national Banking Act of 1978 (12 U.S.C. 3101).”;

5 (9) by striking subsection (e) and inserting the
6 following:

7 “(e) REGULATORY AUTHORITY.—The Bureau shall
8 prescribe such regulations as are necessary to carry out
9 the purposes of this Act. The regulations prescribed by
10 the Bureau under this subsection shall apply to any person
11 that is subject to this Act, notwithstanding the enforce-
12 ment authorities granted to other agencies under this sec-
13 tion.”; and

14 (10) in section 623 (15 U.S.C.1681s-2)—

15 (A) in subsection (a)(7), by striking sub-
16 paragraph (D) and inserting the following:

17 “(D) MODEL DISCLOSURE.—

18 “(i) DUTY OF BUREAU.—The Bureau
19 shall prescribe a brief model disclosure
20 that a financial institution may use to
21 comply with subparagraph (A), which shall
22 not exceed 30 words.

23 “(ii) USE OF MODEL NOT RE-
24 QUIRED.—No provision of this paragraph
25 may be construed to require a financial in-

1 stitution to use any such model form pre-
2 scribed by the Bureau.

3 “(iii) COMPLIANCE USING MODEL.—A
4 financial institution shall be deemed to be
5 in compliance with subparagraph (A) if the
6 financial institution uses any model form
7 prescribed by the Bureau under this sub-
8 paragraph, or the financial institution uses
9 any such model form and rearranges its
10 format.”; and

11 (B) by striking subsection (e) and insert-
12 ing the following:

13 “(e) ACCURACY GUIDELINES AND REGULATIONS RE-
14 QUIRED.—

15 “(1) GUIDELINES.—The Bureau shall, with re-
16 spect to persons or entities that are subject to the
17 enforcement authority of the Bureau under section
18 621—

19 “(A) establish and maintain guidelines for
20 use by each person that furnishes information
21 to a consumer reporting agency regarding the
22 accuracy and integrity of the information relat-
23 ing to consumers that such entities furnish to
24 consumer reporting agencies, and update such
25 guidelines as often as necessary; and

1 “(B) prescribe regulations requiring each
2 person that furnishes information to a con-
3 sumer reporting agency to establish reasonable
4 policies and procedures for implementing the
5 guidelines established pursuant to subpara-
6 graph (A).

7 “(2) CRITERIA.—In developing the guidelines
8 required by paragraph (1)(A), the Bureau shall—

9 “(A) identify patterns, practices, and spe-
10 cific forms of activity that can compromise the
11 accuracy and integrity of information furnished
12 to consumer reporting agencies;

13 “(B) review the methods (including techno-
14 logical means) used to furnish information re-
15 lating to consumers to consumer reporting
16 agencies;

17 “(C) determine whether persons that fur-
18 nish information to consumer reporting agen-
19 cies maintain and enforce policies to ensure the
20 accuracy and integrity of information furnished
21 to consumer reporting agencies; and

22 “(D) examine the policies and processes
23 that persons that furnish information to con-
24 sumer reporting agencies employ to conduct re-
25 investigations and correct inaccurate informa-

1 tion relating to consumers that has been fur-
2 nished to consumer reporting agencies.”.

3 (b) FAIR AND ACCURATE CREDIT TRANSACTIONS
4 ACT OF 2003.—Section 214(b)(1) of the Fair and Accu-
5 rate Credit Transactions Act of 2003 (15 U.S.C. 1681s–
6 3 note) is amended by striking paragraph (1) and insert-
7 ing the following:

8 “(1) IN GENERAL.—Regulations to carry out
9 section 624 of the Fair Credit Reporting Act (15
10 U.S.C. 1681s–3), shall be prescribed, as described in
11 paragraph (2), by—

12 “(A) the Commodity Futures Trading
13 Commission, with respect to entities subject to
14 its enforcement authorities;

15 “(B) the Securities and Exchange Commis-
16 sion, with respect to entities subject to its en-
17 forcement authorities; and

18 “(C) the Bureau, with respect to other en-
19 tities subject to this Act.”.

20 **SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION**
21 **PRACTICES ACT.**

22 The Fair Debt Collection Practices Act (15 U.S.C.
23 1692 et seq.) is amended—

24 (1) by striking “Commission” each place that
25 term appears and inserting “Bureau”;

1 (2) in section 803 (15 U.S.C. 1692a)—

2 (A) by striking paragraph (1) and insert-
3 ing the following:

4 “(1) The term ‘Bureau’ means the Bureau of
5 Consumer Financial Protection.”;

6 (3) in section 814 (15 U.S.C. 1692l)—

7 (A) by striking subsection (a) and insert-
8 ing the following:

9 “(a) FEDERAL TRADE COMMISSION.—Except as oth-
10 erwise provided by subtitle B of the Consumer Financial
11 Protection Act of 2010, compliance with this title shall
12 be enforced by the Federal Trade Commission, except to
13 the extent that enforcement of the requirements imposed
14 under this title is specifically committed to another Gov-
15 ernment agency under subsection (b). For purpose of the
16 exercise by the Federal Trade Commission of its functions
17 and powers under the Federal Trade Commission Act (15
18 U.S.C. 41 et seq.), a violation of this title shall be deemed
19 an unfair or deceptive act or practice in violation of that
20 Act. All of the functions and powers of the Federal Trade
21 Commission under the Federal Trade Commission Act are
22 available to the Federal Trade Commission to enforce
23 compliance by any person with this title, irrespective of
24 whether that person is engaged in commerce or meets any
25 other jurisdictional tests under the Federal Trade Com-

1 mission Act, including the power to enforce the provisions
2 of this title, in the same manner as if the violation had
3 been a violation of a Federal Trade Commission trade reg-
4 ulation rule.”; and

5 (B) in subsection (b)—

6 (i) by striking “Compliance” and in-
7 serting “Except as otherwise provided by
8 subtitle B of the Consumer Financial Pro-
9 tection Act of 2010, compliance”; and

10 (ii) by striking paragraph (2) and in-
11 serting the following:

12 “(2) subtitle E of the Consumer Financial Pro-
13 tection Act of 2010, by the Bureau;” and

14 (4) in subsection (d), by striking “Neither the
15 Commission” and all that follows through the end of
16 the subsection and inserting the following: “The Bu-
17 reau may prescribe rules with respect to the collec-
18 tion of debts by debt collectors, as defined in this
19 Act.”.

20 **SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
21 **SURANCE ACT.**

22 The Federal Deposit Insurance Act (12 U.S.C. 1811
23 et seq.) is amended—

24 (1) in section 8(t) (12 U.S.C. 1818(t)), by add-
25 ing at the end the following:

1 “(6) REFERRAL TO BUREAU OF CONSUMER FI-
2 NANCIAL PROTECTION.—Subject to subtitle B of the
3 Consumer Financial Protection Act of 2010, each
4 appropriate Federal banking agency shall make a re-
5 ferral to the Bureau of Consumer Financial Protec-
6 tion when the Federal banking agency has a reason-
7 able belief that a violation of an enumerated con-
8 sumer law, as defined in the Consumer Financial
9 Protection Act of 2010, has been committed by any
10 insured depository institution or institution-affiliated
11 party within the jurisdiction of that appropriate
12 Federal banking agency.”; and

13 (2) in section 43 (2 U.S.C. 1831t)—

14 (A) in subsection (c), by striking “Federal
15 Trade Commission” and inserting “Bureau”;

16 (B) in subsection (d), by striking “Federal
17 Trade Commission” and inserting “Bureau”;

18 (C) in subsection (e)—

19 (i) in paragraph (2), by striking
20 “Federal Trade Commission” and insert-
21 ing “Bureau”; and

22 (ii) by adding at the end the following
23 new paragraph:

24 “(5) BUREAU.—The term ‘Bureau’ means the
25 Bureau of Consumer Financial Protection.”; and

1 (D) in subsection (f)—

2 (i) by striking paragraph (1) and in-
3 serting the following:

4 “(1) LIMITED ENFORCEMENT AUTHORITY.—
5 Compliance with the requirements of subsections (b),
6 (c) and (e), and any regulation prescribed or order
7 issued under such subsection, shall be enforced
8 under the Consumer Financial Protection Act of
9 2010, by the Bureau, subject to subtitle B of the
10 Consumer Financial Protection Act of 2010, and
11 under the Federal Trade Commission Act (15
12 U.S.C. 41 et seq.) by the Federal Trade Commis-
13 sion.”; and

14 (ii) in paragraph (2), by striking sub-
15 paragraph (C) and inserting the following:

16 “(C) LIMITATION ON STATE ACTION
17 WHILE FEDERAL ACTION PENDING.—If the Bu-
18 reau or Federal Trade Commission has insti-
19 tuted an enforcement action for a violation of
20 this section, no appropriate State supervisory
21 agency may, during the pendency of such ac-
22 tion, bring an action under this section against
23 any defendant named in the complaint of the
24 Bureau or Federal Trade Commission for any

1 violation of this section that is alleged in that
2 complaint.”.

3 **SEC. 1091. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
4 **ACT.**

5 Title V of the Gramm-Leach-Bliley Act (15 U.S.C.
6 6801 et seq.) is amended—

7 (1) in section 504(a)(1) (15 U.S.C.
8 6804(a)(1))—

9 (A) by striking “The Federal banking
10 agencies, the National Credit Union Adminis-
11 tration, the Secretary of the Treasury,” and in-
12 serting “The Bureau of Consumer Financial
13 Protection and”; and

14 (B) by striking “, and the Federal Trade
15 Commission”;

16 (2) in section 505(a) (15 U.S.C. 6805(a))—

17 (A) by striking “This subtitle” and all that
18 follows through “as follows:” and inserting
19 “Except as otherwise provided by subtitle B of
20 the Consumer Financial Protection Act of
21 2010, this subtitle and the regulations pre-
22 scribed thereunder shall be enforced by the Bu-
23 reau of Consumer Financial Protection, the
24 Federal functional regulators, the State insur-
25 ance authorities, and the Federal Trade Com-

1 mission with respect to financial institutions
2 and other persons subject to their jurisdiction
3 under applicable law, as follows:”;

4 (B) in paragraph (1)—

5 (i) in subparagraph (B), by inserting
6 “and” after the semicolon;

7 (ii) in subparagraph (C), by striking
8 “; and” and inserting a period; and

9 (iii) by striking subparagraph (D);
10 and

11 (C) by adding at the end the following:

12 “(8) Under the Consumer Financial Protection
13 Act of 2010, by the Bureau of Consumer Financial
14 Protection, in the case of any financial institution
15 and other covered person or service provider that is
16 subject to the jurisdiction of the Bureau under that
17 Act, but not with respect to the standards under sec-
18 tion 501.”; and

19 (3) in section 505(b)(1) (15 U.S.C.
20 6805(b)(1)), by inserting “, other than the Bureau
21 of Consumer Financial Protection,” after “sub-
22 section (a)”.

1 **SEC. 1092. AMENDMENTS TO THE HOME MORTGAGE DIS-**
2 **CLOSURE ACT.**

3 The Home Mortgage Disclosure Act of 1975 (12
4 U.S.C. 2801 et seq.) is amended—

5 (1) except as otherwise specifically provided in
6 this section, by striking “Board” each place that
7 term appears and inserting “Bureau”;

8 (2) in section 303 (12 U.S.C. 2802)—

9 (A) by redesignating paragraphs (1)
10 through (6) as paragraphs (2) through (7), re-
11 spectively; and

12 (B) by inserting before paragraph (2) the
13 following:

14 “(1) the term ‘Bureau’ means the Bureau of
15 Consumer Financial Protection;”;

16 (3) in section 304 (12 U.S.C. 2803)—

17 (A) in subsection (b)—

18 (i) in paragraph (4), by inserting
19 “age,” before “and gender”;

20 (ii) in paragraph (3), by striking
21 “and” at the end; and

22 (iii) in paragraph (4), by striking the
23 period at the end and inserting the fol-
24 lowing: “; and

25 “(5) the number and dollar amount of mort-
26 gage loans grouped according to measurements of—

1270

1 “(A) the total points and fees payable at
2 origination in connection with the mortgage as
3 determined by the Bureau, taking into account
4 15 U.S.C. 1602(aa)(4);

5 “(B) the difference between the annual
6 percentage rate associated with the loan and a
7 benchmark rate or rates for all loans;

8 “(C) the term in months of any prepay-
9 ment penalty or other fee or charge payable on
10 repayment of some portion of principal or the
11 entire principal in advance of scheduled pay-
12 ments; and

13 “(D) such other information as the Bureau
14 may require; and

15 “(6) the number and dollar amount of mort-
16 gage loans and completed applications grouped ac-
17 cording to measurements of—

18 “(A) the value of the real property pledged
19 or proposed to be pledged as collateral;

20 “(B) the actual or proposed term in
21 months of any introductory period after which
22 the rate of interest may change;

23 “(C) the presence of contractual terms or
24 proposed contractual terms that would allow the
25 mortgagor or applicant to make payments other

1 than fully amortizing payments during any por-
2 tion of the loan term;

3 “(D) the actual or proposed term in
4 months of the mortgage loan;

5 “(E) the channel through which applica-
6 tion was made, including retail, broker, and
7 other relevant categories;

8 “(F) as the Bureau may determine to be
9 appropriate, a unique identifier that identifies
10 the loan originator as set forth in Section 1503
11 of the S.A.F.E. Mortgage Licensing Act of
12 2008;

13 “(G) as the Bureau may determine to be
14 appropriate, a universal loan identifier;

15 “(H) as the Bureau may determine to be
16 appropriate, the parcel number that cor-
17 responds to the real property pledged or pro-
18 posed to be pledged as collateral;

19 “(I) the credit score of mortgage appli-
20 cants and mortgagors, in such form as the Bu-
21 reau may prescribe, except that the Bureau
22 shall modify or require modification of credit
23 score data that is or will be available to the
24 public to protect the compelling privacy interest
25 of the mortgage applicant or mortgagors; and

1 “(J) such other information as the Bureau
2 may require.”;

3 (B) in subsection (i), by striking “sub-
4 section (b)(4)” and inserting “subsections
5 (b)(4), (b)(5), and (b)(6)”;

6 (C) in subsection (j)—

7 (i) in paragraph (1), by striking “(as”
8 and inserting “(containing loan-level and
9 application-level information relating to
10 disclosures required under subsections (a)
11 and (b) and as otherwise”;

12 (ii) by striking paragraph (3) and in-
13 serting the following:

14 “(3) CHANGE OF FORM NOT REQUIRED.—A de-
15 pository institution meets the disclosure requirement
16 of paragraph (1) if the institution provides the infor-
17 mation required under such paragraph in such for-
18 mats as the Bureau may require”; and

19 (iii) in paragraph (2)(A), by striking
20 “in the format in which such information
21 is maintained by the institution” and in-
22 serting “in such formats as the Bureau
23 may require”;

24 (D) in subsection (m), by striking para-
25 graph (2) and inserting the following:

1 “(2) FORM OF INFORMATION.—In complying
2 with paragraph (1), a depository institution shall
3 provide the person requesting the information with
4 a copy of the information requested in such formats
5 as the Bureau may require”;

6 (E) by striking subsection (h) and insert-
7 ing the following:

8 “(h) SUBMISSION TO AGENCIES.—

9 “(1) IN GENERAL.—The data required to be
10 disclosed under subsection (b) shall be submitted to
11 the Bureau or to the appropriate agency for the in-
12 stitution reporting under this title, in accordance
13 with rules prescribed by the Bureau. Notwith-
14 standing the requirement of subsection (a)(2)(A) for
15 disclosure by census tract, the Bureau, in coopera-
16 tion with other appropriate regulators described in
17 paragraph (2), shall develop regulations that—

18 “(A) prescribe the format for such diselo-
19 cures, the method for submission of the data to
20 the appropriate regulatory agency, and the pro-
21 cedures for disclosing the information to the
22 public;

23 “(B) require the collection of data required
24 to be disclosed under subsection (b) with re-

1 spect to loans sold by each institution reporting
2 under this title;

3 “(C) require disclosure of the class of the
4 purchaser of such loans; and

5 “(D) permit any reporting institution to
6 submit in writing to the Bureau or to the ap-
7 propriate agency such additional data or expla-
8 nations as it deems relevant to the decision to
9 originate or purchase mortgage loans.

10 “(2) OTHER APPROPRIATE AGENCIES.—The ap-
11 propriate regulators described in this paragraph
12 are—

13 “(A) the Office of the Comptroller of the
14 Currency (hereafter referred to in this Act as
15 ‘Comptroller’) for national banks and Federal
16 branches, Federal agencies of foreign banks,
17 and savings associations;

18 “(B) the Federal Deposit Insurance Cor-
19 poration for banks insured by the Federal De-
20 posit Insurance Corporation (other than mem-
21 bers of the Federal Reserve System), mutual
22 savings banks, insured State branches of for-
23 eign banks, and any other depository institution
24 described in section 303(2)(A) which is not oth-
25 erwise referred to in this paragraph;

1 “(C) the National Credit Union Adminis-
2 tration Board for credit unions; and

3 “(D) the Secretary of Housing and Urban
4 Development for other lending institutions not
5 regulated by the agencies referred to in sub-
6 paragraphs (A) through (C).”; and

7 (F) by adding at the end the following:

8 “(n) TIMING OF CERTAIN DISCLOSURES.—The data
9 required to be disclosed under subsection (b) shall be sub-
10 mitted to the Bureau or to the appropriate agency for any
11 institution reporting under this title, in accordance with
12 regulations prescribed by the Bureau. Institutions shall
13 not be required to report new data under paragraphs (5)
14 or (6) of subsection (b) before the first January 1 that
15 occurs after the end of the 9-month period beginning on
16 the date on which regulations are issued by the Bureau
17 in final form with respect to such disclosures.”;

18 (4) in section 305 (12 U.S.C. 2804)—

19 (A) by striking subsection (b) and insert-
20 ing the following:

21 “(b) POWERS OF CERTAIN OTHER AGENCIES.—

22 “(1) IN GENERAL.—Except as otherwise pro-
23 vided by subtitle B of the Consumer Financial Pro-
24 tection Act of 2010, compliance with the require-
25 ments of this title shall be enforced under—

1 (C), by the Federal Deposit Insurance Cor-
2 poration;

3 “(B) subtitle E of the Consumer Financial
4 Protection Act of 2010, by the Bureau;

5 “(C) the Federal Credit Union Act, by the
6 Administrator of the National Credit Union Ad-
7 ministration with respect to any insured credit
8 union; and

9 “(D) other lending institutions, by the Sec-
10 retary of Housing and Urban Development.

11 “(2) INCORPORATED DEFINITIONS.—The terms
12 used in paragraph (1) that are not defined in this
13 title or otherwise defined in section 3(s) of the Fed-
14 eral Deposit Insurance Act (12 U.S.C. 1813(s))
15 shall have the same meanings as in section 1(b) of
16 the International Banking Act of 1978 (12 U.S.C.
17 3101).”; and

18 (B) by adding at the end the following:

19 “(d) OVERALL ENFORCEMENT AUTHORITY OF THE
20 BUREAU OF CONSUMER FINANCIAL PROTECTION.—Sub-
21 ject to subtitle B of the Consumer Financial Protection
22 Act of 2010, enforcement of the requirements imposed
23 under this title is committed to each of the agencies under
24 subsection (b). The Bureau may exercise its authorities
25 under the Consumer Financial Protection Act of 2010 to

1 exercise principal authority to examine and enforce com-
2 pliance by any person with the requirements of this title.”;

3 (5) in section 306 (12 U.S.C. 2805(b)), by
4 striking subsection (b) and inserting the following:

5 “(b) EXEMPTION AUTHORITY.—The Bureau may, by
6 regulation, exempt from the requirements of this title any
7 State chartered depository institution within any State or
8 subdivision thereof, if the agency determines that, under
9 the law of such State or subdivision, that institution is
10 subject to requirements that are substantially similar to
11 those imposed under this title, and that such law contains
12 adequate provisions for enforcement. Notwithstanding any
13 other provision of this subsection, compliance with the re-
14 quirements imposed under this subsection shall be en-
15 forced by the Office of the Comptroller of the Currency
16 under section 8 of the Federal Deposit Insurance Act, in
17 the case of national banks and savings association the de-
18 posits of which are insured by the Federal Deposit Insur-
19 ance Corporation.”; and

20 (6) by striking section 307 (12 U.S.C. 2806)
21 and inserting the following:

22 **“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.**

23 “(a) IN GENERAL.—

24 “(1) CONSULTATION REQUIRED.—The Director
25 of the Bureau of Consumer Financial Protection,

1 with the assistance of the Secretary, the Director of
2 the Bureau of the Census, the Board of Governors
3 of the Federal Reserve System, the Federal Deposit
4 Insurance Corporation, and such other persons, as
5 the Bureau deems appropriate, shall develop or as-
6 sist in the improvement of, methods of matching ad-
7 dresses and census tracts to facilitate compliance by
8 depository institutions in as economical a manner as
9 possible with the requirements of this title.

10 “(2) AUTHORIZATION OF APPROPRIATIONS.—

11 There are authorized to be appropriated, such sums
12 as may be necessary to carry out this subsection.

13 “(3) CONTRACTING AUTHORITY.—The Director
14 of the Bureau of Consumer Financial Protection is
15 authorized to utilize, contract with, act through, or
16 compensate any person or agency in order to carry
17 out this subsection.

18 “(b) RECOMMENDATIONS TO CONGRESS.—The Di-
19 rector of the Bureau of Consumer Financial Protection
20 shall recommend to the Committee on Banking, Housing,
21 and Urban Affairs of the Senate and the Committee on
22 Financial Services of the House of Representatives, such
23 additional legislation as the Director of the Bureau of
24 Consumer Financial Protection deems appropriate to
25 carry out the purpose of this title.”.

1 **SEC. 1093. AMENDMENTS TO THE HOME OWNERS PROTEC-**
2 **TION ACT OF 1998.**

3 Section 10 of the Homeowners Protection Act of
4 1998 (12 U.S.C. 4909) is amended—

5 (1) in subsection (a)—

6 (A) by striking “Compliance” and insert-
7 ing “Except as otherwise provided by subtitle B
8 of the Consumer Financial Protection Act of
9 2010, compliance”;

10 (B) in paragraph (2), by striking “and” at
11 the end;

12 (C) in paragraph (3), by striking the pe-
13 riod at the end and inserting “; and”; and

14 (D) by adding at the end the following:

15 “(4) subtitle E of title X of the Consumer Fi-
16 nancial Protection Act of 2010, by the Bureau of
17 Consumer Financial Protection.”; and

18 (2) in subsection (b)(2), by inserting before the
19 period at the end the following: “, subject to subtitle
20 B of the Consumer Financial Protection Act of
21 2010”.

22 **SEC. 1094. AMENDMENTS TO THE HOME OWNERSHIP AND**
23 **EQUITY PROTECTION ACT OF 1994.**

24 The Home Ownership and Equity Protection Act of
25 1994 (15 U.S.C. 1601 note) is amended—

1 (1) in section 158(a), by striking “Consumer
2 Advisory Council of the Board” and inserting “Advi-
3 sory Board to the Bureau”; and

4 (2) by striking “Board” each place that term
5 appears and inserting “Bureau”.

6 **SEC. 1095. AMENDMENTS TO THE OMNIBUS APPROPRIA-**
7 **TIONS ACT, 2009.**

8 Section 626 of the Omnibus Appropriations Act,
9 2009 (Public Law 111–8) is amended—

10 (1) in subsection (a), by striking paragraph (1)
11 and inserting the following:

12 “(1) The Bureau of Consumer Financial Pro-
13 tection shall have authority to prescribe rules with
14 respect to mortgage loans in accordance with section
15 553 of title 5, United States Code. Such rulemaking
16 shall relate to unfair or deceptive acts or practices
17 regarding mortgage loans, which may include unfair
18 or deceptive acts or practices involving loan modi-
19 fication and foreclosure rescue services. Any viola-
20 tion of a rule prescribed under this paragraph shall
21 be treated as a violation of a rule prohibiting unfair,
22 deceptive, or abusive acts or practices under the
23 Consumer Financial Protection Act of 2010.”;

24 (2) by striking paragraphs (2) through (4) and
25 inserting the following:

1 “(2) The Bureau of Consumer Financial Pro-
2 tection shall enforce the rules issued under para-
3 graph (1) in the same manner, by the same means,
4 and with the same jurisdiction, powers, and duties,
5 as though all applicable terms and provisions of the
6 Consumer Financial Protection Act of 2010 were in-
7 corporated into and made part of this subsection.”;
8 and

9 (3) in subsection (b)—

10 (A) by striking paragraph (1) and insert-
11 ing the following:

12 “(1) Except as provided in paragraph (6), in
13 any case in which the attorney general of a State
14 has reason to believe that an interest of the resi-
15 dents of the State has been or is threatened or ad-
16 versely affected by the engagement of any person
17 subject to a rule prescribed under subsection (a) in
18 a practices that violates such rule, the State, as
19 *parens patriae*, may bring a civil action on behalf of
20 its residents in an appropriate district court of the
21 United States or other court of competent jurisdic-
22 tion—

23 “(A) to enjoin that practice;

24 “(B) to enforce compliance with the rule;

1 “(C) to obtain damages, restitution, or
2 other compensation on behalf of the residents of
3 the State; or

4 “(D) to obtain penalties and relief provided
5 under the Consumer Financial Protection Act
6 of 2010, the Federal Trade Commission Act,
7 and such other relief as the court deems appro-
8 priate.”;

9 (B) in paragraphs (2) and (3), by striking
10 “the primary Federal regulator” each time the
11 term appears and inserting “the Bureau of
12 Consumer Financial Protection or the Commis-
13 sion, as appropriate”;

14 (C) in paragraph (3), by inserting “and
15 subject to subtitle B of the Consumer Financial
16 Protection Act of 2010” after “-paragraph
17 (2)”; and

18 (D) in paragraph (6), by striking “the pri-
19 mary Federal regulator” each time the term ap-
20 pears and inserting “the Bureau of Consumer
21 Financial Protection or the Commission”.

22 **SEC. 1096. AMENDMENTS TO THE REAL ESTATE SETTLE-**
23 **MENT PROCEDURES ACT.**

24 The Real Estate Settlement Procedures Act of 1974
25 (12 U.S.C. 2601 et seq.) is amended—

1 (1) in section 3 (12 U.S.C. 2602)—

2 (A) in paragraph (7), by striking “and” at
3 the end;

4 (B) in paragraph (8), by striking the pe-
5 riod at the end and inserting “; and”; and

6 (C) by adding at the end the following:

7 “(9) the term ‘Bureau’ means the Bureau of
8 Consumer Financial Protection.”;

9 (2) in section 4 (12 U.S.C. 2603)—

10 (A) in subsection (a), by striking the first
11 sentence and inserting the following: “The Bu-
12 reau shall publish a single, integrated disclosure
13 for mortgage loan transactions (including real
14 estate settlement cost statements) which in-
15 cludes the disclosure requirements of this title,
16 in conjunction with the disclosure requirements
17 of the Truth in Lending Act that, taken to-
18 gether, may apply to a transaction that is sub-
19 ject to both or either provisions of law. The
20 purpose of such model disclosure shall be to fa-
21 cilitate compliance with the disclosure require-
22 ments of this title and the Truth in Lending
23 Act, and to aid the borrower or lessee in under-
24 standing the transaction by utilizing readily un-

1 understandable language to simplify the technical
2 nature of the disclosures.”;

3 (B) by striking “Secretary” each place
4 that term appears and inserting “Bureau”; and

5 (C) by striking “form” each place that
6 term appears and inserting “forms”;

7 (3) in section 5 (12 U.S.C. 2604)—

8 (A) by striking “Secretary” each place that
9 term appears, and inserting “Bureau”; and

10 (B) in subsection (a), by striking the first
11 sentence and inserting the following: “The Bu-
12 reau shall prepare and distribute booklets joint-
13 ly addressing compliance with the requirements
14 of the Truth in Lending Act and the provisions
15 of this title, in order to help persons borrowing
16 money to finance the purchase of residential
17 real estate better to understand the nature and
18 costs of real estate settlement services.”;

19 (4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

20 (A) by striking “Secretary” and inserting
21 “Bureau”; and

22 (B) by striking “, by regulations that shall
23 take effect not later than April 20, 1991,”;

24 (5) in section 7(b) (12 U.S.C. 2606(b)) by
25 striking “Secretary” and inserting “Bureau”;

1286

1 (6) in section 8(d) (12 U.S.C. 2607(d))—

2 (A) in the subsection heading, by inserting

3 “BUREAU AND” before “SECRETARY”; and

4 (B) by striking paragraph (4), and insert-
5 ing the following:

6 “(4) The Bureau, the Secretary, or the attorney
7 general or the insurance commissioner of any State
8 may bring an action to enjoin violations of this sec-
9 tion. Except, to the extent that a person is subject
10 to the jurisdiction of the Bureau, the Secretary, or
11 the attorney general or the insurance commissioner
12 of any State, the Bureau shall have primary author-
13 ity to enforce or administer this section, subject to
14 subtitle B of the Consumer Financial Protection Act
15 of 2010.”.

16 (7) in section 10(c) (12 U.S.C. 2609(c) and
17 (d)), by striking “Secretary” and inserting “Bu-
18 reau”;

19 (8) in section 16 (12 U.S.C. 2614), by inserting
20 “the Bureau,” before “the Secretary”;

21 (9) in section 18 (12 U.S.C. 2616), by striking
22 “Secretary” each place that term appears and in-
23 serting “Bureau”; and

24 (10) in section 19 (12 U.S.C. 2617)—

1 (A) in the section heading by striking
2 “**SECRETARY**” and inserting “**BUREAU**”;

3 (B) by striking “Secretary” each place
4 that term appears and inserting “Bureau”;

5 (C) in subsection (b), by inserting “the
6 Bureau” before “the Secretary”; and

7 (D) in subsection (c), by inserting “or the
8 Bureau” after “the Secretary” each time that
9 term appears.

10 **SEC. 1097. AMENDMENTS TO THE RIGHT TO FINANCIAL**
11 **PRIVACY ACT OF 1978.**

12 The Right to Financial Privacy Act of 1978 (12
13 U.S.C. 3401 et seq.) is amended—

14 (1) in section 1101—

15 (A) in paragraph (6)—

16 (i) in subparagraph (A), by inserting
17 “and” after the semicolon;

18 (ii) in subparagraph (B), by striking
19 “and” at the end; and

20 (iii) by striking subparagraph (C);
21 and

22 (B) in paragraph (7), by striking subpara-
23 graph (E), and inserting the following:

24 “(E) the Bureau of Consumer Financial
25 Protection;”;

1 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
2 striking “and the Commodity Futures Trading Com-
3 mission is permitted” and inserting “the Commodity
4 Futures Trading Commission, and the Bureau of
5 Consumer Financial Protection is permitted”; and

6 (3) in section 1113 (12 U.S.C. 3413), by add-
7 ing at the end the following new subsection:

8 “(r) DISCLOSURE TO THE BUREAU OF CONSUMER
9 FINANCIAL PROTECTION.—Nothing in this title shall
10 apply to the examination by or disclosure to the Bureau
11 of Consumer Financial Protection of financial records or
12 information in the exercise of its authority with respect
13 to a financial institution.”.

14 **SEC. 1098. AMENDMENTS TO THE SECURE AND FAIR EN-**
15 **FORCEMENT FOR MORTGAGE LICENSING ACT**
16 **OF 2008.**

17 The S.A.F.E. Mortgage Licensing Act of 2008 (12
18 U.S.C. 5101 et seq.) is amended—

19 (1) by striking “a Federal banking agency”
20 each place that term appears, other than in para-
21 graphs (7) and (11) of section 1503 and section
22 1507(a)(1), and inserting “the Bureau”;

23 (2) by striking “Federal banking agencies”
24 each place that term appears and inserting “Bu-
25 reau”; and

1 (3) by striking “Secretary” each place that
2 term appears and inserting “Director”;

3 (4) in section 1503 (12 U.S.C. 5102)—

4 (A) by redesignating paragraphs (2)
5 through (12) as (3) through (13), respectively;

6 (B) by striking paragraph (1) and insert-
7 ing the following:

8 “(1) BUREAU.—The term ‘Bureau’ means the
9 Bureau of Consumer Financial Protection.

10 “(2) FEDERAL BANKING AGENCY.—The term
11 ‘Federal banking agency’ means the Board of Gov-
12 ernors of the Federal Reserve System, the Office of
13 the Comptroller of the Currency, the National Credit
14 Union Administration, and the Federal Deposit In-
15 surance Corporation.”; and

16 (C) by striking paragraph (10), as so re-
17 designated by this section, and inserting the fol-
18 lowing:

19 “(10) DIRECTOR.—The term ‘Director’ means
20 the Director of the Bureau of Consumer Financial
21 Protection.”; and

22 (5) in section 1507 (12 U.S.C. 5106)—

23 (A) in subsection (a)—

24 (i) by striking paragraph (1) and in-
25 serting the following:

1290

1 “(1) IN GENERAL.—The Bureau shall develop
2 and maintain a system for registering employees of
3 a depository institution, employees of a subsidiary
4 that is owned and controlled by a depository institu-
5 tion and regulated by a Federal banking agency, or
6 employees of an institution regulated by the Farm
7 Credit Administration, as registered loan originators
8 with the Nationwide Mortgage Licensing System and
9 Registry. The system shall be implemented before
10 the end of the 1-year period beginning on the date
11 of enactment of the Consumer Financial Protection
12 Act of 2010.”; and

13 (ii) in paragraph (2)—

14 (I) by striking “appropriate Fed-
15 eral banking agency and the Farm
16 Credit Administration” and inserting
17 “Bureau”; and

18 (II) by striking “employees’s
19 identity” and inserting “identity of
20 the employee”; and

21 (B) in subsection (b), by striking “through
22 the Financial Institutions Examination Council,
23 and the Farm Credit Administration”, and in-
24 serting “and the Bureau of Consumer Financial
25 Protection”;

1 (6) in section 1508 (12 U.S.C. 5107)—

2 (A) by striking the section heading and in-
3 serting the following:

4 **“SEC. 1508. BUREAU OF CONSUMER FINANCIAL PROTEC-**
5 **TION BACKUP AUTHORITY TO ESTABLISH**
6 **LOAN ORIGINATOR LICENSING SYSTEM.”; and**

7 (B) by adding at the end the following:

8 “(f) REGULATION AUTHORITY.—

9 “(1) IN GENERAL.—The Bureau is authorized
10 to promulgate regulations setting minimum net
11 worth or surety bond requirements for residential
12 mortgage loan originators and minimum require-
13 ments for recovery funds paid into by loan origina-
14 tors.

15 “(2) CONSIDERATIONS.—In issuing regulations
16 under paragraph (1), the Bureau shall take into ac-
17 count the need to provide originators adequate in-
18 centives to originate affordable and sustainable
19 mortgage loans, as well as the need to ensure a com-
20 petitive origination market that maximizes consumer
21 access to affordable and sustainable mortgage
22 loans.”;

23 (7) by striking section 1510 (12 U.S.C. 5109)
24 and inserting the following:

1 **“SEC. 1510. FEES.**

2 “The Bureau, the Farm Credit Administration, and
3 the Nationwide Mortgage Licensing System and Registry
4 may charge reasonable fees to cover the costs of maintain-
5 ing and providing access to information from the Nation-
6 wide Mortgage Licensing System and Registry, to the ex-
7 tent that such fees are not charged to consumers for ac-
8 cess to such system and registry.”;

9 (8) by striking section 1513 (12 U.S.C. 5112)
10 and inserting the following:

11 **“SEC. 1513. LIABILITY PROVISIONS.**

12 “The Bureau, any State official or agency, or any or-
13 ganization serving as the administrator of the Nationwide
14 Mortgage Licensing System and Registry or a system es-
15 tablished by the Director under section 1509, or any offi-
16 cer or employee of any such entity, shall not be subject
17 to any civil action or proceeding for monetary damages
18 by reason of the good faith action or omission of any offi-
19 cer or employee of any such entity, while acting within
20 the scope of office or employment, relating to the collec-
21 tion, furnishing, or dissemination of information con-
22 cerning persons who are loan originators or are applying
23 for licensing or registration as loan originators.”; and

24 (9) in section 1514 (12 U.S.C. 5113) in the
25 section heading, by striking “**UNDER HUD BACKUP**

1 **LICENSING SYSTEM**” and inserting “**BY THE BU-**
2 **REAU**”.

3 **SEC. 1099. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

4 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
5 is amended—

6 (1) in section 103 (5 U.S.C. 1602)—

7 (A) by redesignating subsections (b)
8 through (bb) as subsections (c) through (cc),
9 respectively; and

10 (B) by inserting after subsection (a) the
11 following:

12 “(b) BUREAU.—The term ‘Bureau’ means the Bu-
13 reau of Consumer Financial Protection.”;

14 (2) by striking “Board” each place that term
15 appears, other than in section 140(d) and section
16 108(a), as amended by this section, and inserting
17 “Bureau”;

18 (3) by striking “Federal Trade Commission”
19 each place that term appears, other than in section
20 108(c) and section 129(m), as amended by this Act,
21 and other than in the context of a reference to the
22 Federal Trade Commission Act, and inserting “Bu-
23 reau”;

24 (4) in section 105(a) (15 U.S.C. 1604(a)), in
25 the second sentence—

1 (A) by striking “Except in the case of a
2 mortgage referred to in section 103(aa), these
3 regulations may contain such” and inserting
4 “Except with respect to the provisions of sec-
5 tion 129 that apply to a mortgage referred to
6 in section 103(aa), such regulations may con-
7 tain such additional requirements,”; and

8 (B) by inserting “all or” after “exceptions
9 for”;

10 (5) in section 105(b) (15 U.S.C. 1604(b)), by
11 striking the first sentence and inserting the fol-
12 lowing: “The Bureau shall publish a single, inte-
13 grated disclosure for mortgage loan transactions (in-
14 cluding real estate settlement cost statements) which
15 includes the disclosure requirements of this title in
16 conjunction with the disclosure requirements of the
17 Real Estate Settlement Procedures Act of 1974
18 that, taken together, may apply to a transaction that
19 is subject to both or either provisions of law. The
20 purpose of such model disclosure shall be to facili-
21 tate compliance with the disclosure requirements of
22 this title and the Real Estate Settlement Procedures
23 Act of 1974, and to aid the borrower or lessee in un-
24 derstanding the transaction by utilizing readily un-

1 derstandable language to simplify the technical na-
2 ture of the disclosures.”;

3 (6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)),
4 by inserting “all or” after “from all or part of this
5 title”;

6 (7) in section 108 (15 U.S.C. 1607)—

7 (A) by striking subsection (a) and insert-
8 ing the following:

9 “(a) ENFORCING AGENCIES.—Except as otherwise
10 provided in subtitle B of the Consumer Financial Protec-
11 tion Act of 2010, compliance with the requirements im-
12 posed under this title shall be enforced under—

13 “(1) section 8 of the Federal Deposit Insurance
14 Act, in the case of—

15 “(A) any national bank, and Federal
16 branch or Federal agency of a foreign bank, by
17 the Office of the Comptroller of the Currency;

18 “(B) any member bank of the Federal Re-
19 serve System (other than a national bank), any
20 branch or agency of a foreign bank (other than
21 a Federal branch, Federal agency, or insured
22 State branch of a foreign bank), any commer-
23 cial lending company owned or controlled by a
24 foreign bank, and organizations operating

1 under section 25 or 25(a) of the Federal Re-
2 serve Act, by the Board; and

3 “(C) any bank insured by the Federal De-
4 posit Insurance Corporation (other than a
5 member of the Federal Reserve System) and an
6 insured State branch of a foreign bank, by the
7 Board of Directors of the Federal Deposit In-
8 surance Corporation;

9 “(2) subtitle E of the Consumer Financial Pro-
10 tection Act of 2010, by the Bureau;

11 “(3) the Federal Credit Union Act, by the Di-
12 rector of the National Credit Union Administration,
13 with respect to any Federal credit union;

14 “(4) the Federal Aviation Act of 1958, by the
15 Secretary of Transportation, with respect to any air
16 carrier or foreign air carrier subject to that Act;

17 “(5) the Packers and Stockyards Act, 1921 (ex-
18 cept as provided in section 406 of that Act), by the
19 Secretary of Agriculture, with respect to any activi-
20 ties subject to that Act; and

21 “(6) the Farm Credit Act of 1971, by the Farm
22 Credit Administration with respect to any Federal
23 land bank, Federal land bank association, Federal
24 intermediate credit bank, or production credit asso-
25 ciation.”; and

1 (B) by striking subsection (c) and insert-
2 ing the following:

3 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
4 FEDERAL TRADE COMMISSION.—Except to the extent
5 that enforcement of the requirements imposed under this
6 title is specifically committed to some other Government
7 agency under subsection (a), and subject to subtitle B of
8 the Consumer Financial Protection Act of 2010, the Fed-
9 eral Trade Commission shall enforce such requirements.
10 For the purpose of the exercise by the Federal Trade
11 Commission of its functions and powers under the Federal
12 Trade Commission Act, a violation of any requirement im-
13 posed under this title shall be deemed a violation of a re-
14 quirement imposed under that Act. All of the --functions
15 and powers of the Federal Trade Commission under the
16 Federal Trade Commission Act are available to the Com-
17 mission to enforce compliance by any person with the re-
18 quirements under this title, irrespective of whether that
19 person is engaged in commerce or meets any other juris-
20 dictional tests under the Federal Trade Commission Act.”;

21 (8) in section 129 (15 U.S.C. 1639), by striking
22 subsection (m) and inserting the following:

23 “(m) CIVIL PENALTIES IN FEDERAL TRADE COM-
24 MISSION ENFORCEMENT ACTIONS.—For purposes of en-
25 forcement by the Federal Trade Commission, any violation

1 of a regulation issued by the Bureau pursuant to sub-
2 section (1)(2) shall be treated as a violation of a rule pro-
3 mulgated under section 18 of the Federal Trade Commis-
4 sion Act (15 U.S.C. 57a) regarding unfair or deceptive
5 acts or practices.”; and

6 (9) in chapter 5 (15 U.S.C. 1667 et seq.)—

7 (A) by striking “the Board” each place
8 that term appears and inserting “the Bureau”;
9 and

10 (B) by striking “The Board” each place
11 that term appears and inserting “The Bureau”.

12 **SEC. 1100. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

13 The Truth in Savings Act (12 U.S.C. 4301 et seq.)
14 is amended—

15 (1) by striking “Board” each place that term
16 appears and inserting “Bureau”;

17 (2) in section 270(a) (12 U.S.C. 4309)—

18 (A) by striking “Compliance” and insert-
19 ing “Except as otherwise provided in subtitle B
20 of the Consumer Financial Protection Act of
21 2010, compliance”;

22 (B) in paragraph (1)—

23 (i) in subparagraph (B), by striking
24 “and” at the end; and

25 (ii) by striking subparagraph (C);

1 (C) in paragraph (2), by striking the pe-
2 riod at the end and inserting “; and”; and

3 (D) by adding at the end, the following:

4 “(3) subtitle E of the Consumer Financial Pro-
5 tection Act of 2010, by the Bureau.”;

6 (3) in section 272(b) (12 U.S.C. 4311(b)), by
7 striking “regulation prescribed by the Board” each
8 place that term appears and inserting “regulation
9 prescribed by the Bureau”; and

10 (4) in section 274 (12 U.S.C. 4313), by striking
11 paragraph (4) and inserting the following:

12 “(4) BUREAU.—The term ‘Bureau’ means the
13 Bureau of Consumer Financial Protection.”.

14 **SEC. 1101. AMENDMENTS TO THE TELEMARKETING AND**
15 **CONSUMER FRAUD AND ABUSE PREVENTION**
16 **ACT.**

17 (a) AMENDMENTS TO SECTION 3.—Section 3 of the
18 Telemarketing and Consumer Fraud and Abuse Preven-
19 tion Act (15 U.S.C. 6102) is amended by striking sub-
20 sections (b) and (c) and inserting the following:

21 “(b) RULEMAKING AUTHORITY.—The Commission
22 shall have authority to prescribe rules under subsection
23 (a), in accordance with section 553 of title 5, United
24 States Code. In prescribing a rule under this section that
25 relates to the provision of a consumer financial product

1 or service that is subject to the Consumer Financial Pro-
2 tection Act of 2010, including any enumerated consumer
3 law thereunder, the Commission shall consult with the Bu-
4 reau of Consumer Financial Protection regarding the con-
5 sistency of a proposed rule with standards, purposes, or
6 objectives administered by the Bureau of Consumer Fi-
7 nancial Protection.

8 “(c) VIOLATIONS.—Any violation of any rule pre-
9 scribed under subsection (a)—

10 “(1) shall be treated as a violation of a rule
11 under section 18 of the Federal Trade Commission
12 Act regarding unfair or deceptive acts or practices;
13 and

14 “(2) that is committed by a person subject to
15 the Consumer Financial Protection Act of 2010
16 shall be treated as a violation of a rule under section
17 1031 of that Act regarding unfair, deceptive, or abu-
18 sive acts or practices.”.

19 (b) AMENDMENTS TO SECTION 4.—Section 4(d) of
20 the Telemarketing and Consumer Fraud and Abuse Pre-
21 vention Act (15 U.S.C. 6103(d)) is amended by inserting
22 after “Commission” each place that term appears the fol-
23 lowing: “or the Bureau of Consumer Financial Protec-
24 tion”.

1301

1 (c) AMENDMENTS TO SECTION 5.—Section 5(c) of
2 the Telemarketing and Consumer Fraud and Abuse Pre-
3 vention Act (15 U.S.C. 6104(c)) is by inserting after
4 “Commission” each place that term appears the following:
5 “or the Bureau of Consumer Financial Protection”.

6 (d) AMENDMENT TO SECTION 6.—Section 6 of the
7 Telemarketing and Consumer Fraud and Abuse Preven-
8 tion Act (15 U.S.C. 6105) is amended by adding at the
9 end the following:

10 “(d) ENFORCEMENT BY BUREAU OF CONSUMER FI-
11 NANCIAL PROTECTION.—Except as otherwise provided in
12 sections 3(d), 3(e), 4, and 5, and subject to subtitle B
13 of the Consumer Financial Protection Act of 2010, this
14 Act shall be enforced by the Bureau of Consumer Finan-
15 cial Protection under subtitle E of title X of the Consumer
16 Financial Protection Act of 2010.”.

17 **SEC. 1102. AMENDMENTS TO THE PAPERWORK REDUCTION**
18 **ACT.**

19 (a) DESIGNATION AS AN INDEPENDENT AGENCY.—
20 Section 2(5) of the Paperwork Reduction Act (44 U.S.C.
21 3502(5)) is amended by inserting “the Bureau of Con-
22 sumer Financial Protection,” after “the Securities and
23 Exchange Commission,”.

1 (b) COMPARABLE TREATMENT.—Section 3513 of
2 title 44, United States Code, is amended by adding at the
3 end the following:

4 “(c) COMPARABLE TREATMENT.—Notwithstanding
5 any other provision of law, the Director shall treat or re-
6 view a rule or order prescribed or proposed by the Director
7 of the Bureau of Consumer Financial Protection on the
8 same terms and conditions as apply to any rule or order
9 prescribed or proposed by the Board of Governors of the
10 Federal Reserve System.”.

11 **SEC. 1103. EFFECTIVE DATE.**

12 The amendments made by sections 1083 through
13 1103 shall become effective on the designated transfer
14 date.

15 **TITLE XI—FEDERAL RESERVE**
16 **SYSTEM PROVISIONS**

17 **SEC. 1151. FEDERAL RESERVE ACT AMENDMENTS ON**
18 **EMERGENCY LENDING AUTHORITY.**

19 The third undesignated paragraph of section 13 of
20 the Federal Reserve Act (12 U.S.C. 343) (relating to
21 emergency lending authority) is amended—

22 (1) by inserting “(3)(A)” before “In unusual”;

23 (2) by striking “individual, partnership, or cor-
24 poration” the first place that term appears and in-
25 serting the following: “financial market utility that

1 the Financial Stability Oversight Council determines
2 is, or is likely to become, systemically important, or
3 any program or facility with broad-based eligibility”;

4 (3) by striking “exchange for an individual or
5 a partnership or corporation” and inserting “ex-
6 change,”;

7 (4) by striking “such individual, partnership, or
8 corporation” and inserting “such financial market
9 utility that the Financial Stability Oversight Council
10 determines is, or is likely to become, systemically im-
11 portant, or such participant in any program or facil-
12 ity with broad-based eligibility”;

13 (5) by striking “for individuals, partnerships,
14 corporations” and inserting “for any financial mar-
15 ket utility that the Financial Stability Oversight
16 Council determines is, or is likely to become, system-
17 ically important, or any program or facility with
18 broad-based eligibility”;

19 (6) by striking “may prescribe.” and inserting
20 the following: “may prescribe.

21 “(B)(i) As soon as is practicable after the
22 date of enactment of this subparagraph, the
23 Board shall establish, by regulation, in con-
24 sultation with the Secretary of the Treasury,
25 the policies and procedures governing emer-

1 agency lending under this paragraph. Such poli-
2 cies and procedures shall be designed to ensure
3 that any emergency lending program or facility
4 is for the purpose of providing liquidity to the
5 financial system, and not to aid a failing finan-
6 cial company, and that the collateral for emer-
7 gency loans is of sufficient quality to protect
8 taxpayers from losses.

9 “(ii) The Board may not establish any pro-
10 gram or facility under this paragraph without
11 the prior approval of the Secretary of the
12 Treasury.

13 “(C) The Board shall provide to the Com-
14 mittee on Banking, Housing, and Urban Affairs
15 of the Senate and the Committee on Financial
16 Services of the House of Representatives—

17 “(i) not later than 7 days after pro-
18 viding any loan or other financial assist-
19 ance under this paragraph, a report that
20 includes—

21 “(I) the justification for the exer-
22 cise of authority to provide such as-
23 sistance;

1305

1 “(II) the identity of the recipi-
2 ents of such assistance, subject to
3 subparagraph (D);

4 “(III) the date and amount of
5 the assistance, and form in which the
6 assistance was provided; and

7 “(IV) the material terms of the
8 assistance, including—

9 “(aa) duration;

10 “(bb) collateral pledged and
11 the value thereof;

12 “(cc) all interest, fees, and
13 other revenue or items of value to
14 be received in exchange for the
15 assistance;

16 “(dd) any requirements im-
17 posed on the recipient with re-
18 spect to employee compensation,
19 distribution of dividends, or any
20 other corporate decision in ex-
21 change for the assistance; and

22 “(ee) the expected costs to
23 the taxpayers of such assistance;
24 and

1 commenced under this paragraph after the
2 date of enactment of the Restoring Amer-
3 ican Financial Stability Act of 2010;

4 “(II) the amounts borrowed by each
5 participant in any such program or facility;
6 and

7 “(III) identifying details concerning
8 the assets or collateral held by, under, or
9 in connection with such a program or facil-
10 ity within 1 year of the date on which as-
11 sistance was first received under the pro-
12 gram or facility.

13 “(ii) If the Board determines not to make
14 the disclosures required in clause (i) within 1
15 year of the date on which a participant first re-
16 ceived under a program or facility, then the
17 Board shall—

18 “(I) provide to the Committee on
19 Banking, Housing and Urban Affairs and
20 the Committee on Financial Services a
21 written report explaining the reasons for
22 delaying the disclosures about such pro-
23 gram or facility within 30 days of making
24 such a determination; and

1 “(II) provide to the Committee on
2 Banking, Housing and Urban Affairs and
3 the Committee on Financial Services each
4 year thereafter a written report explaining
5 the reasons for continuing to delay disclo-
6 sure, until the disclosures are complete.

7 “(iii) The disclosures required in clause (i)
8 shall be made not later than 12 months after
9 the effective date of the termination of the facil-
10 ity by the Board.

11 “(iv) If the Board determines not to make
12 the disclosures required in clause (i), then the
13 Comptroller General shall issue a report to the
14 Committee on Banking, Housing and Urban
15 Affairs and the Committee on Financial Serv-
16 ices evaluating whether that determination is
17 reasonable.”.

18 **SEC. 1152. REVIEWS OF SPECIAL FEDERAL RESERVE CRED-**
19 **IT FACILITIES.**

20 (a) **REVIEWS.**—Section 714 of title 31, United States
21 Code, is amended by adding at the end the following:

22 “(f) **REVIEWS OF CREDIT FACILITIES OF THE FED-**
23 **ERAL RESERVE SYSTEM.**—

24 “(1) **DEFINITION.**—In this subsection, the term
25 ‘credit facility’ means any utility, facility, or pro-

1 gram authorized by the Board of Governors of the
2 Federal Reserve System under the third undesig-
3 nated paragraph of section 13 of the Federal Re-
4 serve Act (12 U.S.C. 343), including any special
5 purpose vehicle or other entity established by or on
6 behalf of the Board of Governors or a Federal re-
7 serve bank, that is not subject to audit under sub-
8 section (e), including—

9 “(A) the Asset-Backed Commercial Paper
10 Money Market Mutual Fund Liquidity Facility;

11 “(B) the Term Asset-Backed Securities
12 Loan Facility;

13 “(C) the Primary Dealer Credit Facility;

14 “(D) the Commercial Paper Funding Fa-
15 cility; and

16 “(E) the Term Securities Lending Facility.

17 “(2) AUTHORITY FOR REVIEWS AND EXAMINA-
18 TIONS.—Subject to paragraph (3), and notwith-
19 standing any limitation in subsection (b) on the au-
20 diting and oversight of certain functions of the
21 Board of Governors of the Federal Reserve System
22 or any Federal reserve bank, the Comptroller Gen-
23 eral of the United States may conduct reviews, in-
24 cluding onsite examinations, of the Board of Gov-
25 ernors, a Federal reserve bank, or a credit facility,

1310

1 if the Comptroller General determines that such re-
2 views are appropriate, solely for the purposes of as-
3 sessing, with respect to a credit facility—

4 “(A) the operational integrity, accounting,
5 financial reporting, and internal controls of the
6 credit facility;

7 “(B) the effectiveness of the collateral poli-
8 cies established for the facility in mitigating
9 risk to the relevant Federal reserve bank and
10 taxpayers;

11 “(C) whether the credit facility inappropri-
12 ately favors one or more specific participants
13 over other institutions eligible to utilize the fa-
14 cility; and

15 “(D) the policies governing the use, selec-
16 tion, or payment of third-party contractors by
17 or for any credit facility.

18 “(3) REPORTS AND DELAYED DISCLOSURE.—

19 “(A) REPORTS REQUIRED.—A report on
20 each review conducted under paragraph (2)
21 shall be submitted by the Comptroller General
22 to the Congress before the end of the 90-day
23 period beginning on the date on which such re-
24 view is completed.

1311

1 “(B) CONTENTS.—The report under sub-
2 paragraph (A) shall include a detailed descrip-
3 tion of the findings and conclusions of the
4 Comptroller General with respect to the matters
5 described in paragraph (2) that were reviewed
6 and are the subject of the report, together with
7 such recommendations for legislative or admin-
8 istrative action relating to such matters as the
9 Comptroller General may determine to be ap-
10 propriate.

11 “(C) DELAYED RELEASE OF CERTAIN IN-
12 FORMATION.—

13 “(i) IN GENERAL.—The Comptroller
14 General shall not disclose to any person or
15 entity, including to Congress, the names or
16 identifying details of specific participants
17 in any credit facility, the amounts bor-
18 rowed by specific participants in any credit
19 facility, or identifying details regarding as-
20 sets or collateral held by, under, or in con-
21 nection with any credit facility, and any re-
22 port provided under subparagraph (A)
23 shall be redacted to ensure that such
24 names and details are not disclosed.

1312

1 “(ii) DELAYED RELEASE.—The non-
2 disclosure obligation under clause (i) shall
3 expire with respect to any participant on
4 the date on which the Board of Governors,
5 directly or through a Federal reserve bank,
6 publicly discloses the identity of the subject
7 participant or the identifying details of the
8 subject assets or collateral.

9 “(iii) GENERAL RELEASE.—The
10 Comptroller General shall release a non-
11 redacted version of any report on a credit
12 facility 1 year after the effective date of
13 the termination by the Board of Governors
14 of the authorization for the credit facility.

15 “(iv) EXCEPTIONS.—The nondislo-
16 sure obligation under clause (i) shall not
17 apply to the credit facilities Maiden Lane,
18 Maiden Lane I, and Maiden Lane II.”.

19 (b) ACCESS TO RECORDS.—Section 714(d) of title
20 31, United States Code, is amended—

21 (1) in paragraph (2), by inserting “or any per-
22 son or entity described in paragraph (3)(A)” after
23 “used by an agency”;

24 (2) in paragraph (3), by inserting “or (f)” after
25 “subsection (e)” each place that term appears; and

1 (3) in paragraph (3)(B), by adding at the end
2 the following: “The Comptroller General may make
3 and retain copies of books, accounts, and other
4 records provided under subparagraph (A) as the
5 Comptroller General deems appropriate. The Comptroller
6 General shall provide to any person or entity
7 described in subparagraph (A) a current list of officers
8 and employees to whom, with proper identification,
9 records and property may be made available,
10 and who may make notes or copies necessary to
11 carry out a review or examination under this subsection.”.

13 **SEC. 1153. PUBLIC ACCESS TO INFORMATION.**

14 Section 2B of the Federal Reserve Act (12 U.S.C.
15 225b) is amended by adding at the end the following:

16 “(c) PUBLIC ACCESS TO INFORMATION.—The Board
17 shall place on its home Internet website, a link entitled
18 ‘Audit’, which shall link to a webpage that shall serve as
19 a repository of information made available to the public
20 for a reasonable period of time, not less than 6 months
21 following the date of release of the relevant information,
22 including—

23 “(1) the reports prepared by the Comptroller
24 General under section 714 of title 31, United States
25 Code;

1 “(2) the annual financial statements prepared
2 by an independent auditor for the Board in accord-
3 ance with section 11B;

4 “(3) the reports to the Committee on Banking,
5 Housing, and Urban Affairs of the Senate required
6 under the third undesignated paragraph of section
7 13 (relating to emergency lending authority); and

8 “(4) such other information as the Board rea-
9 sonably believes is necessary or helpful to the public
10 in understanding the accounting, financial reporting,
11 and internal controls of the Board and the Federal
12 reserve banks.”.

13 **SEC. 1154. LIQUIDITY EVENT DETERMINATION.**

14 (a) DETERMINATION AND WRITTEN RECOMMENDA-
15 TION.—

16 (1) DETERMINATION REQUEST.—The Secretary
17 may request the Council and the Board of Governors
18 to determine whether a liquidity event exists that
19 warrants use of the guarantee program authorized
20 under section 1155.

21 (2) REQUIREMENTS OF DETERMINATION.—Any
22 determination pursuant to paragraph (1) shall—

23 (A) be written; and

24 (B) contain an evaluation of the evidence
25 that—

1315

- 1 (i) a liquidity event exists;
- 2 (ii) failure to take action would have
- 3 serious adverse effects on financial stability
- 4 or economic conditions in the United
- 5 States; and
- 6 (iii) actions authorized under section
- 7 1155 are needed to avoid or mitigate po-
- 8 tential adverse effects on the United States
- 9 financial system or economic conditions.

10 (b) PROCEDURES.—Notwithstanding any other provi-

11 sion of Federal or State law, upon the determination of

12 both the Council (upon a vote of not fewer than $\frac{2}{3}$ of

13 the members of the Council then serving) and the Board

14 of Governors (upon a vote of not fewer than $\frac{2}{3}$ of the

15 members of the Board of Governors then serving) under

16 subsection (a) that a liquidity event exists that warrants

17 use of the guarantee program authorized under section

18 1155, and with the written consent of the Secretary—

19 (1) the Corporation shall take action in accord-

20 ance with section 1155(a); and

21 (2) the Secretary (in consultation with the

22 President) shall take action in accordance with sec-

23 tions 1155(c).

24 (c) DOCUMENTATION AND REVIEW.—

25 (1) DOCUMENTATION.—The Secretary shall—

1316

1 (A) maintain the written documentation
2 each determination of the Council and the
3 Board of Governors under this section; and

4 (B) provide the documentation for review
5 under paragraph (2).

6 (2) GAO REVIEW.—The Comptroller General of
7 the United States shall review and report to Con-
8 gress on any determination of the Council and the
9 Board of Governors under subsection (a), includ-
10 ing—

11 (A) the basis for the determination; and

12 (B) the likely effect of the actions taken.

13 (d) REPORT TO CONGRESS.—On the earlier of the
14 date of a submission made to Congress under section
15 1155(c), or within 30 days of the date of a determination
16 under subsection (a), the Secretary shall provide written
17 notice of the determination of the Council and the Board
18 of Governors to the Committee on Banking, Housing, and
19 Urban Affairs of the Senate and the Committee on Finan-
20 cial Services of the House of Representatives, including
21 a description of the basis for the determination.

22 **SEC. 1155. EMERGENCY FINANCIAL STABILIZATION.**

23 (a) IN GENERAL.—Upon the written determination
24 of the Council and the Board of Governors under section
25 1154, the Corporation shall create a widely available pro-

1 gram to guarantee obligations of solvent insured deposi-
2 tory institutions or solvent depository institution holding
3 companies (including any affiliates thereof) during times
4 of severe economic distress, except that a guarantee of ob-
5 ligations under this section may not include the provision
6 of equity in any form.

7 (b) RULEMAKING AND TERMS AND CONDITIONS.—

8 (1) POLICIES AND PROCEDURES.—As soon as is
9 practicable after the date of enactment of this Act,
10 the Corporation shall establish, by regulation, and
11 with the concurrence of the Secretary, policies and
12 procedures governing the issuance of guarantees au-
13 thorized by this section. Such policies and proce-
14 dures may include a requirement of collateral as a
15 condition of any such guarantee.

16 (2) TERMS AND CONDITIONS.—The terms and
17 conditions of any guarantee program shall be estab-
18 lished by the Corporation, with the concurrence of
19 the Secretary.

20 (c) DETERMINATION OF GUARANTEED AMOUNT.—

21 (1) IN GENERAL.—In connection with any pro-
22 gram established pursuant to subsection (a) and
23 subject to paragraph (2) of this subsection, the Sec-
24 retary (in consultation with the President), shall de-
25 termine the maximum amount of debt outstanding

1 that the Corporation may guarantee under this sec-
2 tion, and the President may transmit to Congress a
3 written report on the plan of the Corporation to ex-
4 ercise the authority under this section to issue guar-
5 antees up to that maximum amount. Upon the expi-
6 ration of the 5-calendar-day period beginning on the
7 date on which Congress receives the report on the
8 plan of the Corporation, the Corporation may exer-
9 cise the authority under this section to issue guaran-
10 tees up to that specified maximum amount, unless
11 there is enacted, within that 5-calendar-day-period, a
12 joint resolution disapproving such report, as pro-
13 vided in subsection (d).

14 (2) ADDITIONAL DEBT GUARANTEE AUTHOR-
15 ITY.—If the Secretary (in consultation with the
16 President) determines, after a submission to Con-
17 gress under paragraph (1), that the maximum guar-
18 antee amount should be raised, and the Council con-
19 curs with that determination, then the President
20 may transmit to Congress a written report on the
21 plan of the Corporation to exercise the authority
22 under this section to issue guarantees up to the in-
23 creased maximum debt guarantee amount. Upon the
24 expiration of the 5-calendar-day period beginning on
25 date on which Congress receives the report on the

1 plan of the Corporation, the Corporation may exer-
2 cise the authority under this section to issue guaran-
3 tees up to that specified maximum amount, unless
4 there is enacted, within that 5-calendar-day-period, a
5 joint resolution disapproving such report, as pro-
6 vided in subsection (d).

7 (d) JOINT RESOLUTION.—

8 (1) FAST TRACK CONSIDERATION IN HOUSE.—

9 (A) CONTENTS OF JOINT RESOLUTION.—

10 For the purpose of this section, the term “joint
11 resolution” means only a joint resolution—

12 (i) that is introduced not later than 3
13 calendar days after the date on which the
14 report of the Secretary referred to in sec-
15 tion 1154(d) is received by Congress;

16 (ii) which does not have a preamble;

17 (iii) the title of which is as follows:
18 “Joint resolution relating to the dis-
19 approval of a plan to guarantee obligations
20 under section 1155 of the Restoring Amer-
21 ican Financial Stability Act of 2010”; and

22 (iv) the matter after the resolving
23 clause of which is as follows: “That Con-
24 gress disapproves the obligation of any
25 amount described in 1205(a) of the Re-

1320

1 storing American Financial Stability Act of
2 2010.”.

3 (B) RECONVENING.—Upon receipt of a re-
4 port under subsection (c), the Speaker, if the
5 House would otherwise be adjourned, shall no-
6 tify the Members of the House that, pursuant
7 to this section, the House shall convene not
8 later than the second calendar day after receipt
9 of such report.

10 (C) REPORTING AND DISCHARGE.—Any
11 committee of the House of Representatives to
12 which a joint resolution is referred shall report
13 it to the House not later than 4 calendar days
14 after the date of receipt of the report under
15 subsection (c). If a committee fails to report the
16 joint resolution within that period, the com-
17 mittee shall be discharged from further consid-
18 eration of the joint resolution and the joint res-
19 olution shall be referred to the appropriate cal-
20 endar.

21 (D) PROCEEDING TO CONSIDERATION.—
22 After each committee authorized to consider a
23 joint resolution reports it to the House or has
24 been discharged from its consideration, it shall
25 be in order, not later than the 5th day after

1321

1 Congress receives the report under subsection
2 (c), to move to proceed to consider the joint res-
3 olution in the House. All points of order against
4 the motion are waived. Such a motion shall not
5 be in order after the House has disposed of a
6 motion to proceed on the joint resolution. The
7 previous question shall be considered as ordered
8 on the motion to its adoption without inter-
9 vening motion. The motion shall not be debat-
10 able. A motion to reconsider the vote by which
11 the motion is disposed of shall not be in order.

12 (E) CONSIDERATION.—The joint resolution
13 shall be considered as read. All points of order
14 against the joint resolution and against its con-
15 sideration are waived. The previous question
16 shall be considered as ordered on the joint reso-
17 lution to its passage without intervening motion
18 except 2 hours of debate equally divided and
19 controlled by the proponent and an opponent. A
20 motion to reconsider the vote on passage of the
21 joint resolution shall not be in order.

22 (2) FAST TRACK CONSIDERATION IN SENATE.—

23 (A) RECONVENING.—Upon receipt of a re-
24 port under subsection (c), if the Senate has ad-
25 journed or recessed for more than 2 days, the

1 majority leader of the Senate, after consultation
2 with the minority leader of the Senate, shall no-
3 tify the Members of the Senate that, pursuant
4 to this section, the Senate shall convene not
5 later than the second calendar day after receipt
6 of such message.

7 (B) PLACEMENT ON CALENDAR.—Upon in-
8 troduction in the Senate, the joint resolution
9 shall be placed immediately on the calendar.

10 (C) FLOOR CONSIDERATION.—

11 (i) IN GENERAL.—Notwithstanding
12 Rule XXII of the Standing Rules of the
13 Senate, it is in order at any time during
14 the period beginning on the 4th day after
15 the date on which Congress receives a re-
16 port under subsection (c), and ending on
17 the 5th day after the date on which Con-
18 gress receives a report under subsection (c)
19 (even though a previous motion to the
20 same effect has been disagreed to) to move
21 to proceed to the consideration of the joint
22 resolution, and all points of order against
23 the joint resolution (and against consider-
24 ation of the joint resolution) are waived.
25 The motion to proceed is not debatable.

1323

1 The motion is not subject to a motion to
2 postpone. A motion to reconsider the vote
3 by which the motion is agreed to or dis-
4 agreed to shall not be in order. If a motion
5 to proceed to the consideration of the reso-
6 lution is agreed to, the joint resolution
7 shall remain the unfinished business until
8 disposed of.

9 (ii) DEBATE.—Debate on the joint
10 resolution, and on all debatable motions
11 and appeals in connection therewith, shall
12 be limited to not more than 10 hours,
13 which shall be divided equally between the
14 majority and minority leaders or their des-
15 ignees. A motion further to limit debate is
16 in order and not debatable. An amendment
17 to, or a motion to postpone, or a motion to
18 proceed to the consideration of other busi-
19 ness, or a motion to recommit the joint
20 resolution is not in order.

21 (iii) VOTE ON PASSAGE.—The vote on
22 passage shall occur immediately following
23 the conclusion of the debate on a joint res-
24 olution, and a single quorum call at the

1 conclusion of the debate if requested in ac-
2 cordance with the rules of the Senate.

3 (iv) RULINGS OF THE CHAIR ON PRO-
4 CEDURE.—Appeals from the decisions of
5 the Chair relating to the application of the
6 rules of the Senate, as the case may be, to
7 the procedure relating to a joint resolution
8 shall be decided without debate.

9 (3) RULES RELATING TO SENATE AND HOUSE
10 OF REPRESENTATIVES.—

11 (A) COORDINATION WITH ACTION BY
12 OTHER HOUSE.—If, before the passage by one
13 House of a joint resolution of that House, that
14 House receives from the other House a joint
15 resolution, then the following procedures shall
16 apply:

17 (i) The joint resolution of the other
18 House shall not be referred to a com-
19 mittee.

20 (ii) With respect to a joint resolution
21 of the House receiving the resolution—

22 (I) the procedure in that House
23 shall be the same as if no joint resolu-
24 tion had been received from the other
25 House; but

1325

1 (II) the vote on passage shall be
2 on the joint resolution of the other
3 House.

4 (B) TREATMENT OF JOINT RESOLUTION
5 OF OTHER HOUSE.—If one House fails to intro-
6 duce or consider a joint resolution under this
7 section, the joint resolution of the other House
8 shall be entitled to expedited floor procedures
9 under this section.

10 (C) TREATMENT OF COMPANION MEAS-
11 URES.—If, following passage of the joint resolu-
12 tion in the Senate, the Senate then receives the
13 companion measure from the House of Rep-
14 resentatives, the companion measure shall not
15 be debatable.

16 (D) CONSIDERATION AFTER PASSAGE.—

17 (i) IN GENERAL.—If Congress passes
18 a joint resolution, the period beginning on
19 the date the President is presented with
20 the joint resolution and ending on the date
21 the President takes action with respect to
22 the joint resolution shall be disregarded in
23 computing the 5-day period described in
24 subsection (c).

1326

1 (ii) VETOES.—If the President vetoes
2 the joint resolution—

3 (I) the period beginning on the
4 date the President vetoes the joint
5 resolution and ending on the date the
6 Congress receives the veto message
7 with respect to the joint resolution
8 shall be disregarded in computing the
9 5-day period described in subsection
10 (c); and

11 (II) debate on a veto message in
12 the Senate under this section shall be
13 1 hour equally divided between the
14 majority and minority leaders or their
15 designees.

16 (E) RULES OF HOUSE OF REPRESENTA-
17 TIVES AND SENATE.—This subsection is en-
18 acted by Congress—

19 (i) as an exercise of the rulemaking
20 power of the Senate and House of Rep-
21 resentatives, respectively, and as such it is
22 deemed a part of the rules of each House,
23 respectively, but applicable only with re-
24 spect to the procedure to be followed in
25 that House in the case of a joint resolu-

1 issued under subsection (c), in the event
2 that the loan recipient defaults on the
3 guaranteed loan.

4 (B) COST OF GUARANTEES MEASURED AC-
5 CORDING TO CREDIT REFORM.—The cost of
6 guarantees authorized by this section and any
7 cash flows associated with the actions author-
8 ized in paragraphs (2) and (5) and in sub-
9 section (c) shall be determined as provided in
10 the Federal Credit Reform Act of 1990 (2
11 U.S.C. 661 et seq.).

12 (2) FEES AND OTHER CHARGES.—The Corpora-
13 tion shall charge fees and other assessments to all
14 participants in the program established pursuant to
15 this section, in such amounts as are necessary to off-
16 set projected losses and administrative expenses, in-
17 cluding amounts borrowed pursuant to paragraph
18 (4), and such amounts shall be available to the Cor-
19 poration.

20 (3) EXCESS FUNDS.—If, at the conclusion of
21 the program established under this section, there are
22 any excess funds collected from the fees associated
23 with such program, the funds shall be deposited in
24 the General Fund of the Treasury.

1 (4) AUTHORITY OF CORPORATION.—The Cor-
2 poration—

3 (A) may borrow funds from the Secretary
4 of the Treasury and issue obligations of the
5 Corporation to the Secretary for amounts bor-
6 rowed, and the amounts borrowed shall be
7 available to the Corporation for purposes of car-
8 rying out a program established pursuant to
9 this section, including the payment of reason-
10 able costs of administering the program, and
11 the obligations issued shall be repaid in full
12 with interest through fees and charges paid by
13 participants in accordance with paragraphs (2)
14 and (5), as applicable; and

15 (B) may not borrow funds from the De-
16 posit Insurance Fund established pursuant to
17 section 11(a)(4) of the Federal Deposit Insur-
18 ance Act.

19 (5) BACKUP SPECIAL ASSESSMENTS.—To the
20 extent that the funds collected pursuant to para-
21 graph (2) are insufficient to cover any losses or ex-
22 penses, including amounts borrowed pursuant to
23 paragraph (4), arising from a program established
24 pursuant to this section, the Corporation shall im-
25 pose a special assessment solely on participants in

1 the program, in amounts necessary to address such
2 insufficiency, and which shall be available to the
3 Corporation to cover such losses or expenses.

4 (6) AUTHORITY OF THE SECRETARY.—The Sec-
5 retary may purchase any obligations issued under
6 paragraph (4)(A). For such purpose, the Secretary
7 may use the proceeds of the sale of any securities
8 issued under chapter 31 of title 31, United States
9 Code, and the purposes for which securities may be
10 issued under that chapter 31 are extended to include
11 such purchases, and the amount of any securities
12 issued under that chapter 31 for such purpose shall
13 be treated in the same manner as securities issued
14 under section 208(n)(3)(B).

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

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

21 (1) DEPOSITORY INSTITUTION HOLDING COM-
22 PANY.—The term “depository institution holding
23 company” has the same meaning as in section 3 of
24 the Federal Deposit Insurance Act (12 U.S.C.
25 1813).

1 (2) INSURED DEPOSITORY INSTITUTION.—The
2 term “insured depository institution” has the same
3 meaning as in section 3 of the Federal Deposit In-
4 surance Act (12 U.S.C. 1813).

5 (3) SOLVENT.—The term “solvent” means that
6 the value of the assets of an entity exceed its obliga-
7 tions to creditors.

8 (4) LIQUIDITY EVENT.—The term “liquidity
9 event” means—

10 (A) a reduction in the usual ability of fi-
11 nancial market participants—

12 (i) to sell a type of financial asset,
13 without a significant reduction in price; or

14 (ii) to borrow using that type of asset
15 as collateral without a significant increase
16 in margin; or

17 (B) a significant reduction in the usual
18 ability of financial and nonfinancial market par-
19 ticipants to obtain unsecured credit.

20 (5) COMPANY.—The term “company” means
21 any entity other than a natural person that is incor-
22 porated or organized under Federal law or the laws
23 of any State.

1 **SEC. 1156. ADDITIONAL RELATED AMENDMENTS.**

2 (a) **SUSPENSION OF PARALLEL FEDERAL DEPOSIT**
3 **INSURANCE ACT AUTHORITY.**—Effective upon the date of
4 enactment of this section, the Corporation may not exer-
5 cise its authority under section 13(c)(4)(G)(i) of the Fed-
6 eral Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i))
7 to establish any widely available debt guarantee program
8 for which section 1155 would provide authority.

9 (b) **MITIGATION.**—Section 13(c)(4)(G)(i) of the Fed-
10 eral Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i))
11 is amended by striking “such effects.” and inserting “such
12 effects, provided the insured depository institution has
13 been placed in receivership.”.

14 (c) **EFFECT OF DEFAULT ON AN FDIC GUAR-**
15 **ANTEE.**—If an insured depository institution or depository
16 institution holding company (as those terms are defined
17 in section 3 of the Federal Deposit Insurance Act) partici-
18 pating in a program under section 1155, or any partici-
19 pant in a debt guarantee program established pursuant
20 to section 13(c)(4)(G)(i) of the Federal Deposit Insurance
21 Act defaults on any obligation guaranteed by the Corpora-
22 tion after the date of enactment of this Act, the Corpora-
23 tion may—

24 (1) appoint itself as receiver for the insured de-
25 pository institution that defaults;

1 (2) with respect to any other participating com-
2 pany that is not an insured depository institution
3 that defaults—

4 (A) require consideration of whether a de-
5 termination shall be made, as provided in sec-
6 tion 202 to resolve the company under section
7 203; and

8 (B) if the Corporation is not appointed re-
9 ceiver pursuant to section 203 within 30 days
10 of the date of default, require the company to
11 file a petition for bankruptcy under section 301
12 of title 11, United States Code; or

13 (C) file a petition for involuntary bank-
14 ruptcy on behalf of the company under section
15 303 of title 11, United States Code.

16 **SEC. 1157. FEDERAL RESERVE ACT AMENDMENTS ON FED-**
17 **ERAL RESERVE BANK GOVERNANCE.**

18 The Federal Reserve Act (12 U.S.C. 221 et seq.) is
19 amended in section 4 by adding at the end the following:

20 “(25) SELECTION OF THE PRESIDENT OF THE
21 FEDERAL RESERVE BANK OF NEW YORK.—Notwith-
22 standing any other provision of this section, after
23 the date of enactment of the Restoring American Fi-
24 nancial Stability Act of 2010, the president of the
25 Federal Reserve Bank of New York shall be ap-

1 pointed by the President, with the advice and con-
2 sent of the Senate, for terms of 5 years.

3 “(26) LIMITATION ON ELIGIBILITY TO VOTE
4 FOR OR SERVE AS A FEDERAL RESERVE BANK DI-
5 RECTOR.—Notwithstanding any other provision of
6 this section, after the date of enactment of the Re-
7 storing American Financial Stability Act of 2010, no
8 company, or subsidiary or affiliate of a company
9 that is supervised by the Board may vote for mem-
10 bers of the board of directors of a Federal Reserve
11 Bank no past or current officer, director, or em-
12 ployee of such company, or subsidiary or affiliate of
13 such company, may serve as a member of the board
14 of directors of a Federal Reserve Bank.”.

15 **SEC. 1158. AMENDMENTS TO THE FEDERAL RESERVE ACT**
16 **RELATING TO SUPERVISION AND REGULA-**
17 **TION POLICY.**

18 (a) ESTABLISHMENT OF THE POSITION OF VICE
19 CHAIRMAN FOR SUPERVISION.—

20 (1) POSITION ESTABLISHED.—The second un-
21 designated paragraph of section 10 of the Federal
22 Reserve Act (12 U.S.C. 242) (relating to the Chair-
23 man and Vice Chairman of the Board) is amended
24 by striking the third sentence and inserting the fol-
25 lowing: “Of the persons thus appointed, 1 shall be

1 designated by the President, by and with the advice
2 and consent of the Senate, to serve as Chairman of
3 the Board for a term of 4 years, and 2 shall be des-
4 ignated by the President, by and with the advice and
5 consent of the Senate, to serve as Vice Chairmen of
6 the Board, each for a term of 4 years, and 1 of
7 whom shall be designated Vice Chairman for Super-
8 vision. The Vice Chairman for Supervision shall de-
9 velop policy recommendations for the Board regard-
10 ing supervision and regulation of depository institu-
11 tion holding companies and other financial firms su-
12 pervised by the Board, and shall oversee the super-
13 vision and regulation of such firms.”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by subsection (a) takes effect on the date of enact-
16 ment of this title and applies to individuals who are
17 designated by the President on or after that date to
18 serve as Vice Chairman of Supervision.

19 (b) FINANCIAL STABILITY AS BOARD FUNCTION.—
20 Section 10 of the Federal Reserve Act (12 U.S.C. 241)
21 is amended by adding at the end the following:

22 “(11) FINANCIAL STABILITY FUNCTION.—The
23 Board of Governors shall identify, measure, monitor,
24 and mitigate risks to the financial stability of the
25 United States.”.

1 (c) APPEARANCES BEFORE CONGRESS.—Section 10
2 of the Federal Reserve Act (12 U.S.C. 241) is amended
3 by adding at the end the following:

4 “(12) APPEARANCES BEFORE CONGRESS.—The
5 Vice Chairman for Supervision shall appear before
6 the Committee on Financial Services of the House of
7 Representatives and the Committee on Banking,
8 Housing, and Urban Affairs of the Senate at semi-
9 annual hearings regarding the efforts, activities, ob-
10 jectives, and plans of the Board with respect to the
11 conduct of supervision and regulation of depository
12 institution holding companies and other financial
13 firms supervised by the Board.”.

14 (d) BOARD RESPONSIBILITY TO SET SUPERVISION
15 AND REGULATORY POLICY.—Section 11 of the Federal
16 Reserve Act (12 U.S.C. 248) (relating to enumerated pow-
17 ers of the Board) is amended by adding at the end of sub-
18 section (k) (relating to delegation) the following: “The
19 Board of Governors may not delegate to a Federal reserve
20 bank its functions for the establishment of policies for the
21 supervision and regulation of depository institution hold-
22 ing companies and other financial firms supervised by the
23 Board of Governors.”.