

**** Senate Counteroffer ****

REVISED

June 22, 2010

Title: Title X

Matter: Bureau of Consumer Financial Protection

The Senate accepts the following House proposals for amendments to the Base text:

1. Recede to Senate on provisions relating to the structure of the Consumer Financial Protection Bureau (Bureau). House offer #1.
2. With modifications, amend Senate provision funding the Bureau with funds from the Federal Reserve System. House offer #2.
3. With modification, add House provision providing for authorization of appropriations of the Bureau for 2010-2015. House offer #2.
4. Add House provision directing Consumer Advisory Board to include experts in civil rights. House offer #3.
5. With modifications, add new provision to subject pay day lenders, money remitters, check cashers and private student loan providers to supervision by the Bureau. House offer #4.
6. With modification, add provisions excluding auto dealers. House offer #8.
7. With modification, amend Senate provisions excluding attorneys. House offer #8.
8. Amend Senate provision requiring Federal Reserve Board regulations relating to interchange transaction fees for electronic debit transactions and imposing limits on payment card network restrictions with a technical correction. House offer #10.
9. With modification, amend Senate provision requiring disclosures and regulation of remittance transfers. House offer #11.
10. Add House provision with revisions directing Bureau to issue regulations on reverse mortgages. House offer #12.
11. With modification, amend Senate provisions relating to Energy & Commerce Committee. House offer #13.
12. Amend Senate provisions relating to Judiciary Committee jurisdictions. House offer #13.

13. With modification, add new provision relating to compensation, benefits and protections of Bureau employees, including employees transferred from existing agencies. House offer #14.
14. With modification, add House provision creating an ombudsperson at the Bureau. House offer #15b.
15. Add House provisions directing Bureau to regulate exchange facilitators. House offer #15d.

The Senate does not accept the following House proposals for amendments to the Base text:

1. Add House provisions authorizing the Bureau to participate in examinations and take enforcement actions against insured depository institutions and credit unions with assets of \$10 billion or less. House offer #5.
2. Strike Senate provision requiring additional Regulatory Flexibility Act analyses prior to proposed rulemakings of the Bureau. House offer #6.
3. Add House provision streamlining the authorities of the Federal Trade Commission in issuing regulations, administering and enforcing the Federal Trade Commission Act. House offer #7.
4. Add House provisions excluding pawnbrokers and employee benefit and compensation plans. House offer #8.
5. Add House provisions setting the standard the Comptroller of the Currency or a court must use in preempting State consumer laws and requiring the Comptroller or a court to find that a substantive federal consumer protection standard is in place before preempting a state law. House offer #9.
6. Add House provisions requiring private student loan providers to obtain mandatory certifications from institutions of higher learning. House offer #15a.
7. Add House provisions requiring the Federal Reserve Board to retain a Consumer Advisory Council. House offer #15c.
8. Add House provision directing Bureau to regulate person-to-person lending. House offer #15e.

The Senate proposes the following amendment to the Base text:

1. This amendment would further clarify a provision in the merchant's exemption in the base text to make clear that small, non-financial businesses who finance the sale of their own products or services are not subject to the CFPB's rule-writing or enforcement. The base text does this by drawing a bright line based on revenues. However, some small businesses aren't categorized by revenues; rather, they are deemed to be small businesses based on the number of employees. This amendment adds the latter group to the

exemption, as long as they are non-financial and legitimately financing their own products or services.

HOUSE PROPOSED AMENDMENT TO TITLE X

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

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

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

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

Page 1385 strike line 23 and all that follows through page 1386, line 15 and insert the following new paragraphs:

1 (2) COMPENSATION.—Notwithstanding any oth-
2 erwise applicable provision of title 5, United States
3 Code, concerning compensation, including the provi-
4 sions of chapter 51 ^{and} ~~or subchapter III of~~ chapter 53,
5 the following provisions shall apply with respect to
6 employees of the Bureau:

7 (A) The rates of basic pay for all employ-
8 ees of the Bureau may be set and adjusted by
9 the Director.

10 (B) The Director shall at all times provide
11 compensation (including benefits) to each class
12 of employees that, at a minimum, are equiva-
13 lent to the compensation and benefits then
14 being provided by the Board of Governors for
15 the corresponding class of employees.

16 (C) All such employees shall be com-
17 pensated (including benefits) on terms and con-
18 ditions that are consistent with the terms and
19 conditions set forth in section 11(l) of the Fed-
20 eral Reserve Act (12 U.S.C. 248(l)).

1 (3) LABOR-MANAGEMENT RELATIONS.—Chapter
2 ter 71 of title 5, United States Code, shall apply to
3 the Bureau and the employees of the Bureau.

4 ~~(4) CONSULTATION.—The Bureau shall consult~~
5 ~~with the Office of Personnel Management in the im-~~
6 ~~plementation of the compensation authorities pro-~~
7 ~~vided under paragraph (2).~~

8 (5) OMBUDSMAN.—The Director shall appoint
9 an Ombudsperson, who shall—

10 (A) develop and maintain expertise in and
11 understanding of the law relating to consumer
12 financial products;

13 (B) at the request of a Federal agency or
14 a State agency, and with the prior approval of
15 the Director, advise such agency with respect to
16 actions that may affect consumers;

17 (C) advise consumers who may have a le-
18 gitimate potential or actual claim against a
19 Federal agency involving the provision of con-
20 sumer financial products regarding their rights
21 under this title;

22 (D) identify Federal agency actions that
23 have potential implications for consumers and,
24 if appropriate, and with the prior approval of

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1 the Director, advise the relevant Federal agen-
2 cies with respect to those implications;

3 (E) provide information to private citizens,
4 civic groups, Federal agencies, State agencies,
5 and other interested parties regarding the
6 rights of those parties under this title;

7 (F) develop, maintain, and provide exper-
8 tise designed to assist covered persons, espe-
9 cially smaller depository institutions and other
10 smaller entities to comply with regulations and
11 other requirements issued to implement the pro-
12 visions of this title, and where such assistance
13 for smaller depository institutions shall be pro-
14 vided jointly by the Agency and the appropriate
15 Federal banking agency;

16 (G) develop procedures to assist covered
17 persons, especially smaller depository institu-
18 tions and other smaller entities, in responding
19 to or challenging actions taken by the Director
20 or the Agency to implement the provisions of
21 this title and to ensure that safeguards exist to
22 preserve the confidentiality of covered persons
23 using those procedures; and

24 (H) perform such other duties as the Di-
25 rector may delegate to the Ombudsperson.

Page 1396, line 14, insert "and civil rights," after "lending".

~~Page 1398, line 1, insert "and the Committee on Energy and Commerce" after "Services".~~

¹⁰ Page 1398, line 8, insert "and the Committee on such report to the Senate Committee, on Commerce, Science and Transportation and the Energy and Commerce" after "Services".

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

The Bureau may also submit such report to the Senate Committee, on Commerce, Science and Transportation and the Committee on Energy and Commerce of the House of Representatives.

1 (B) ADJUSTMENT OF AMOUNT.—The dol-
2 lar amount referred to in subparagraph (A)(iii)
3 shall be adjusted annually, using the average of
4 the percentages by which the operating ex-
5 penses of each comparative financial regulatory
6 agency, as reported in their annual financial
7 statements, differ from the operating expenses
8 of that agency from the prior year.

9 (C) DEFINITION.—For the purposes of
10 this section the term "comparative financial
11 regulatory agency" means—

- 12 (i) the Board of Governors;
- 13 (ii) the Commission;
- 14 (iii) the Federal Deposit Insurance
15 Corporation; and
- 16 (iv) the Comptroller of the Currency.

Replace with Insert

1 (D) REVIEWABILITY.—Notwithstanding
2 any other provision in this title, the funds de-
3 rived from the Federal System pursuant to this
4 subsection shall not be subject to review by the
5 Committees on Appropriations of the House of
6 Representatives and the Senate.

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

7 (e) AUTHORIZATION OF APPROPRIATIONS.—For the
8 purposes of carrying out the authorities granted in this
9 title, under the enumerated consumer laws, and the laws
10 and authorities transferred under subtitles F and H, there
11 are authorized to be appropriated to the Director
12 \$200,000,000 for each of fiscal years 2010, 2011, 2012,
13 2013, and 2014.

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

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

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

Page 1426, after line 8, insert the following new subparagraph:

insert

insert

- 1 (D) offers or provides to a consumer—
2 (i) any payday loan;
3 (ii) any payment instrument, foreign
4 exchange service, or any service for trans-
5 mitting monetary value;
6 (iii) any private education loan, as de-
7 fined in section 140 of the Truth in Lend-
8 ing Act (15 U.S.C. 1650); or
9 (iv) any check cashing service.

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

10 (e) EXAMINATIONS.—

11 (1) IN GENERAL.—The appropriate agency
12 shall on a periodic basis examine, or require reports
13 from, an institution referred to in subsection (a) for
14 purposes of ensuring compliance with the require-
15 ments of this title, the enumerated consumer laws,
16 and any regulation prescribed by the Director under
17 this title or pursuant to the authorities transferred
18 under subtitles F and H, and enforcing compliance
19 with such requirements.

20 (2) AGENCY ROLE IN EXAMINATIONS.—

21 (A) The appropriate agency shall provide
22 all reports, records, and documentation related

1 to the examination process to the Agency on a
2 timely and ongoing basis.

3 (B) The Director and Agency may, at its
4 discretion, include an examiner on any examina-
5 tion conducted under paragraph (1). The ap-
6 propriate agency shall involve such Agency ex-
7 aminer in the entire examination process, in-
8 cluding setting the scope of an examination,
9 participating in the examination, and providing
10 input on the examination report, matters re-
11 quiring attention and examination ratings.

12 (d) ENFORCEMENT.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of this title other than this subsection, the
15 appropriate agency shall have primary authority to
16 enforce violations identified at institutions referred
17 to in subsection (a) of any of the requirements of
18 this title, the enumerated consumers laws, and any
19 regulation prescribed by the Director under this title
20 or pursuant to the authorities transferred under
21 subtitles F and H.

22 (2) COORDINATION WITH APPROPRIATE AGEN-

23 cy.—

24 (A) REFERRAL.—

1 (i) IN GENERAL.—The Agency may
2 recommend in writing to the appropriate
3 agency that the appropriate agency initiate
4 an enforcement proceeding to the extent
5 the appropriate agency is authorized by
6 that Federal law or by this title.

7 (ii) EXPLANATION.—Any rec-
8 ommendation under clause (i) shall be ac-
9 companied by a written explanation of the
10 concerns giving rise to the recommenda-
11 tion.

12 (B) BACKSTOP ENFORCEMENT AUTHORITY
13 OF AGENCY.—If the appropriate agency does
14 not, before the end of the 120-day period begin-
15 ning on the date on which the appropriate
16 agency receives a recommendation under sub-
17 paragraph (A), initiate an enforcement pro-
18 ceeding, the Agency may initiate an enforce-
19 ment proceeding as permitted by Federal law.

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

20 (c) EXCLUSION FOR PRACTICE OF LAW.—

21 (1) IN GENERAL.— Except as provided under
22 paragraph (2), nothing in this title shall apply with
the Bureau may not exercise any supervisory or enforcement authority

1 respect to an activity engaged in by an attorney, ~~or~~
 2 ~~engaged in under the direction of an attorney,~~ as
 3 part of the practice of law under the laws of a State
 4 in which the attorney is licensed to practice law.

5 (2) RULE OF CONSTRUCTION.—

6 (A) IN GENERAL.—Paragraph (1) shall not
 7 be construed so as to limit the exercise by the
 8 Director ^{Bureau} and the Agency of any rulemaking, su-
 9 pervisory, enforcement, or other authority, in-
 10 cluding authority to order assessments, regard-
 11 ~~ing any activity that is a financial activity de-~~ ^{the offering or provision of a consumer financial product or}
 12 ~~scribed in any subparagraph of section~~ ^{service}
 13 ~~4002(19) and is not engaged in as—~~ ^{1002(5) that offered or provided}
 14 (i) part of the practice of law; or
 15 (ii) incidental to the practice of law,
 16 to the extent that such ^{incidental} activity is ^{occurs} provided, ex-
 17 clusively within the scope of the attorney-client
 18 relationship and ^{the attorney does} is not otherwise ^{offer or provide} provided by or ^{such consumer}
 19 ~~under the direction of the attorney~~ ^{financial products or} to any con-
 20 sumer who is not receiving legal advice or serv-
 21 ices from the attorney in connection with such
 22 activity. ^{services} ~~financial product or service~~

23 (B) EXISTING AUTHORITY.—Paragraph
 24 (1) shall not be construed so as to limit the au-
 25 thority of the Director ^{Bureau} and the Agency with re-

1 spect to any ¹¹ ~~activity~~ ^{attorney} to the extent that such ~~ac~~
2 ~~tivity~~ ^{attorney} is otherwise subject to any of the enumer-
3 ated consumer laws or the authorities trans-
4 ferred under subtitle F or H.

Insert
(Language from House-
passed bill, 0930-731)

5 (3) EXCEPTION.—Notwithstanding paragraph
6 (1), an attorney's activities related to assisting an-
7 other person in preventing a foreclosure shall be
8 subject to this title except to the extent such activi-
9 ties constitute, or are incidental to, the provision of
10 legal services to a client of the attorney

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

11 (A) REGULATORY COORDINATION.—In the
12 implementation of appropriate consumer protec-
13 tion standards for consumer financial products
14 and services under this title that address the
15 provision of services specifically pertaining to
16 the administration and maintenance of any
17 specified plan or arrangement, the Director
18 shall coordinate with the Secretary of Labor
19 and the Secretary of the Treasury, as appro-
20 priate.

Page 1469, after line 24, insert the following new subsection:

1 (t) EXCLUSION FOR PAWNBROKERS.—

2 (1) IN GENERAL.—The Director and the Bu-
3 reau may not exercise any rulemaking, supervisory,
4 enforcement, or other authority, including authority
5 to order assessments, under this title with respect to
6 any pawnbroker licensed by a State or political sub-
7 division thereof, a territory of the United States, or
8 the District of Columbia, but only to the extent that
9 such person acts in such capacity and provides ei-
10 ther—

11 (A) non-recourse credit secured by a
12 possessory security interest in tangible goods
13 physically delivered by the consumer to the
14 pawnbroker for which the consumer does not
15 provide a written or electronic promise, order or
16 authorization to pay, or in any other manner
17 authorize a debit of a deposit account, prior to
18 or contemporaneously with the disbursement of
19 the original proceeds; or

20 (B) credit or any other financial activity
21 issued directly by a pawnbroker to a consumer,
22 in a case in which the good or service being
23 provided is not itself a consumer financial prod-

1 net or service, exclusively for the purpose of en-
2 abling that consumer to purchase goods or serv-
3 ices directly from the pawnbroker.

4 (2) RULE OF CONSTRUCTION.—

5 (A) FTC AUTHORITY PRESERVED.—Ex-
6 cept as provided in subparagraph (B), no provi-
7 sion of this title shall be construed as modi-
8 fying, limiting, or superseding the authority of
9 the Federal Trade Commission with respect to
10 the activities described under paragraph (1).

11 (B) EXERCISE OF RULEMAKING AUTHOR-
12 ITY.—The Director may exercise any rule-
13 making authority regarding the activities de-
14 scribed in paragraph (1) only as may be author-
15 ized by the enumerated consumer laws or any
16 law or authority transferred under subtitle F or
17 H.

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

18 **SEC. 1029. EXCLUSION FOR AUTO DEALERS.**

19 (a) IN GENERAL.—The Director and the Bureau may
20 not exercise any rulemaking, supervisory, enforcement, or
21 any other authority, including authority to order assess-
22 ments over a motor vehicle dealer that is predominantly

*Replace this
section with
Insert*

1 engaged in the sale and servicing of motor vehicles, the
2 leasing and servicing of motor vehicles, or both.

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

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

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

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

14 (B) the contract governing such extension
15 of retail credit or retail leases is not predomi-
16 nantly assigned to a third-party finance or leas-
17 ing source; or

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

24 (c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in
25 this section shall be construed to modify, limit, or super-

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1 sede the rulemaking or enforcement authority over motor
2 vehicle dealers that could be exercised by any Federal de-
3 partment or agency on the day before the date of enact-
4 ment of this Act.

5 (d) NO TRANSFER OF CERTAIN AUTHORITY.—Not-
6 withstanding any other provision of this Act, the consumer
7 financial protection functions of the Board of Governors
8 and the Federal Trade Commission shall not be trans-
9 ferred to the Director or the Bureau to the extent such
10 functions are with respect to a person described under
11 subsection (a).

12 (e) COORDINATION WITH OFFICE OF SERVICE MEM-
13 BER AFFAIRS.—The Board of Governors and the Federal
14 Trade Commission shall coordinate with the Office of
15 Service Member Affairs, to ensure that—

16 (1) service members and their families are edu-
17 cated and empowered to make better informed deci-
18 sions regarding consumer financial products and
19 services offered by motor vehicle dealers, with a
20 focus on motor vehicle dealers in the proximity of
21 military installations; and

22 (2) complaints by service members and their
23 families concerning such motor vehicle dealers are
24 effectively monitored and responded to, and where

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1 appropriate, enforcement action is pursued by the
2 authorized agencies.

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

5 (1) MOTOR VEHICLE.—The term “motor vehi-
6 cle” means—

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

10 (B) recreational boats and marine equip-
11 ment;

12 (C) motorcycles;

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

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

20 (2) MOTOR VEHICLE DEALER.—The term
21 “motor vehicle dealer” means any person or resident
22 in the United States, or any territory of the United
23 States, who is licensed by a State, a territory of the
24 United States, or the District of Columbia to engage
25 in the sale of motor vehicles.

Replace

Page 1485, after line 16, insert the following new section (and redesignate the subsequent section accordingly and strike section 989F in title IX):

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

2 (a) **SCOPE OF EXEMPTION FROM FEDERAL SECURI-**
3 **TIES REGULATION.**—Section 3(a) of the Securities Act of
4 1933 (15 U.S.C. 77e(a)) is amended by adding at the end
5 the following new paragraph:

6 “(15) **PERSON-TO-PERSON LENDING.**—

7 “(A) **IN GENERAL.**—Any consumer loan,
8 and any note representing a whole or fractional
9 interest in any such loan, funded or sold
10 through a person-to-person lending platform.

11 “(B) **DEFINITIONS.**— For purposes of this
12 paragraph:

13 “(i) **CONSUMER LOAN.**—The term
14 ‘consumer loan’ means a loan made to a
15 natural person, the proceeds of which are
16 intended primarily for personal, family,
17 educational, household, or business use.

18 “(ii) **PERSON-TO-PERSON LENDING**
19 **PLATFORM.**—

20 “(I) **IN GENERAL.**—The term
21 ‘person-to-person lending platform’
22 means an Internet website, the pri-

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mary purpose of which is to provide a transaction platform for the funding or sale of individual consumer loans, or the sale of notes representing whole or fractional interests in individual consumer loans, by matching natural persons who wish to obtain such loans with persons who wish to fund them, or by matching persons who wish to sell such loans or notes with persons who wish to purchase them.

“(II) PROHIBITION ON MULTIPLE LOANS IN A SINGLE TRANSACTION.— The term ‘person-to-person lending platform’ does not include any platform on which multiple loans may be funded or sold in a single transaction, or on which a note representing an interest in multiple loans or other debt obligations may be sold.”.

(b) REGULATION BY THE AGENCY.—

(1) IN GENERAL.—Primary jurisdiction for the regulation of the lending activities of person-to-person lending and person-to-person lending platforms is hereby vested in the Bureau.

1 (2) INTERIM REQUIREMENTS.—Until the Direc-
2 tor issues and adopts disclosure requirements with
3 respect to the sale of consumer loans, or notes rep-
4 resenting whole or fractional interests therein, on
5 person-to-person lending platforms, a person-to-per-
6 son lending platform that registers the offer and sale
7 of any such notes under the Securities Act of 1933
8 shall, with respect to such registered offer and sale,
9 provide the disclosure required under the Securities
10 Act of 1933 to be contained in the registration
11 statement and prospectus and provide such disclo-
12 sure required in any periodic reports required to be
13 filed by such person-to-person lender pursuant to
14 section 13 or section 15(d) of the Securities Ex-
15 change Act of 1934.

16 (3) DEFINITIONS.—For purposes of this sub-
17 section, the terms “consumer loan”, “person-to-per-
18 son lending platform”, “prospectus”, and “registra-
19 tion statement” shall have the meaning given such
20 term under the Securities Act of 1933.

21 (c) RULEMAKING.—The Director may prescribe such
22 regulations and issue such orders as the Director con-
23 siders necessary or appropriate to implement the provi-
24 sions of this section and to provide borrower protection,

1 lender protection, consumer choice, and expanded con-
2 sumer access to fair and reasonable credit choices.

3 (d) ~~EFFESTIVE DATE~~.—Notwithstanding any other
4 provision of this Act, this section shall take effect on the
5 date of the enactment of this Act.

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

6 “(B) the State consumer financial law pre-
7 vents, significantly interferes with, or materially
8 impairs the ability of an institution chartered as
9 a national bank to engage in the business of
10 banking. Any preemption determination under
11 this subparagraph may be made by a court or
12 by regulation or order of the Comptroller of the
13 Currency in accordance with applicable law, on
14 a case-by-case basis. Any such determination by
15 a court shall comply with the standards set
16 forth in subsection (d) of this section, with the
17 court making the subsection (d) finding de
18 novo; or”.

Page 1499, after line 18, insert the following new
subsection (and redesignate subsequent subsections ac-
cordingly):

1 “(d) OTHER FEDERAL LAWS.—Notwithstanding any
2 other provision of law, the Comptroller of the Currency
3 may not prescribe a regulation or order pursuant to sub-
4 section (b)(1)(B) until the Comptroller of the Currency,
5 after consultation with the Consumer Financial Protection
6 Bureau, makes a finding, in writing, that a Federal law
7 provides a substantive standard, applicable to a national
8 bank, which regulates the particular conduct, activity, or
9 authority that is subject to such provision of the State
10 consumer financial law.”.

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

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

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

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

11 (i) OATH AND RECORDATION.—The
12 examination of any person pursuant to a
13 demand for oral testimony served under
14 this subsection shall be taken before an of-
15 ficer authorized to administer oaths and
16 affirmations by the laws of the United

1 States or of the place where the examina-
2 tion is held. The officer before whom oral
3 testimony is to be taken shall put the wit-
4 ness on oath or affirmation and shall per-
5 sonally, or by any individual acting under
6 the direction of and in the presence of the
7 officer, record the testimony of the witness.

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

Page 1515, line 21, strike "of" and insert "for".

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

Page 1539, line 2, strike "have the power to".

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

8 (C) RETENTION OF CONSUMER ADVISORY
9 COUNCIL.—
10 (i) RETENTION AND CONTINU-
11 ATION.—Notwithstanding the transfer of
12 functions under subparagraph (A), the
13 Consumer Advisory Council established by
14 the Board of Governors pursuant to sec-
15 tion 703(b) of Public Law 90-321 (15

1 U.S.C. 1691b(b)) shall continue as an enti-
2 ty within the Federal Reserve System.

3 (ii) **ADDITIONAL FUNCTIONS.**—In ad-
4 dition to the functions performed by the
5 Consumer Advisory Council as of the des-
6 signated transfer date, the Consumer Advi-
7 sory Council shall—

8 (I) submit to the Director (and
9 make available to the public) an an-
10 nual set of recommendations for con-
11 sumer protection regulations and meet
12 with the Director to discuss the an-
13 nual recommendations;

14 (II) meet with the Board of Gov-
15 ernors of the Federal Reserve System
16 at least once a year and provide oral
17 or written representations concerning
18 matters within the jurisdiction of the
19 Board; and

20 (III) call for information and
21 make recommendations in regard to
22 consumer protection regulations.

23 (iii) **RESPONSE TO RECOMMENDA-**
24 **TIONS.**—When the Chair of the Federal
25 Reserve testifies before Congress, the

1 Chair shall also testify about the rec-
2 ommendations of the Consumer Advisory
3 Council under clause (ii)(II) and its rec-
4 ommendations for consumer protection
5 regulations.

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

6 **SEC. 1071. AMENDMENTS TO THE FEDERAL TRADE COM-**
7 **MISSION ACT.**

8 (a) Section 5(m)(1)(A) of the Federal Trade Com-
9 mission Act (15 U.S.C. 45(m)(1)(A)) is amended—

10 (1) by inserting “this Act or” after “violates”
11 the first place such term appears,

12 (2) by inserting a comma after “under this
13 Act”;

14 (3) by inserting a comma after “subsection
15 (a)(1)”;

16 (4) by inserting “a violation of this Act or is”
17 before “prohibited”.

18 (b) Section 5 of the Federal Trade Commission Act
19 (15 U.S.C. 45) is amended by adding at the end thereof
20 the following new subsection:

21 “(o) UNLAWFUL ASSISTANCE.—It is unlawful for any
22 person, partnership, or corporation, knowingly or reck-
23 lessly, to provide substantial assistance to another in vio-

1 lating any provision of this Act or of any other Act en-
2 forceable by the Commission that relates to unfair or de-
3 ceptive acts or practices. Any such violation shall con-
4 stitute an unfair or deceptive act or practice described in
5 section 5(a)(1) of this Act. Nothing in this section shall
6 be construed as limiting or superseding the protection pro-
7 vided to any provider or user qualifying for protection
8 under section 230(e)(1) of the Communications Act of
9 1934 (47 U.S.C. 230(e)(1)).”.

10 (c) Section 18 of the Federal Trade Commission Act
11 (15 U.S.C. 57a) is amended—

12 (1) in subsection (a)(1), by striking “(h)” and
13 inserting “(f)”;

14 (2) by amending subsection (b) to read as fol-
15 lows:

16 “(b) PROCEDURE APPLICABLE.—When prescribing a
17 rule under subsection (a)(1)(B) of this section, the Com-
18 mission shall proceed in accordance with section 553 of
19 title 5.”;

20 (3) by striking subsection (c);

21 (4) in subsection (d), by striking “(d)(1) The
22 Commission’s” and all that follows through the end
23 of paragraph (2) and by redesignating paragraph (3)
24 of such subsection as subsection (e);

1 (5) In such subsection (c) (as so redesignated),
2 by inserting “prescribed” after “any rule”;

3 (6) by striking subsections (f), (i), and (j) and
4 redesignating subsections (e), (g), and (h) as sub-
5 sections (d), (e), and (f), respectively;

6 (7) in subsection (c) (as redesignated), by in-
7 serting “prescribed” after “rule”; and

8 (8) in subsection (d) (as redesignated)—

9 (A) in paragraph (1)(A) by striking “pro-
10 mulgated” and inserting “prescribed”;

11 (B) in paragraph (1)(B), by striking “the
12 transcript required by subsection (c)(5),”;

13 (C) in paragraph (3), by striking “The
14 court shall hold unlawful” and all that follows
15 through the end of the paragraph; and

16 (D) by striking paragraphs (4) and (5)
17 and inserting the following:

18 “(4) The procedure set forth in this subsection for
19 judicial review of a rule prescribed under subsection
20 (a)(1)(B) is the exclusive means for such review, other
21 than in an enforcement proceeding.”; and

22 (9) in subsection (e)(2) (as so redesignated), by
23 striking “class or persons” and inserting “class of
24 persons”.

1 (d) Section 16(a)(2) of the Federal Trade Commis-
2 sion Act (15 U.S.C. 56(a)(2)) is amended—

3 (1) in subparagraph (D), by striking “; or” and
4 inserting a semicolon; and

5 (2) by inserting after subparagraph (E) the fol-
6 lowing:

7 “(F) to obtain a civil penalty authorized
8 under any provision of law enforced by the
9 Commission.”

10 (e) Section 5(l) of the Federal Trade Commission Act
11 (15 U.S.C. 45(l)) is amended in the first sentence by in-
12 sserting “the Commission or” after “brought by”.

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

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

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

16 “(iii) any exchange rate to be used by
17 the remittance transfer provider for the re-

1 remittance transfer to the nearest 1/100th of
 2 a point; and”.

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

Insert

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

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

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

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

OK

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

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

OK

Page 1631, line 16, strike “The Electronic Fund Transfer Act” and insert “(a) IN GENERAL.—The Electronic Fund Transfer Act”.

interchange

Page1632, strike line 1 and all that follows through page 1637, line 19, and insert the following:

1 “(1) REGULATORY AUTHORITY OVER INTER-
2 CHANGE TRANSACTION FEES.—The Board may pre-
3 scribe regulations, pursuant to section 553 of title 5,
4 United States Code, regarding any interchange
5 transaction fee that an issuer may receive or charge
6 with respect to an electronic debit transaction, to
7 implement this subsection (including related defini-
8 tions), and to prevent circumvention or evasion of
9 this subsection.

10 “(2) REASONABLE INTERCHANGE TRANSACTION
11 FEES.—The amount of any interchange transaction
12 fee that an issuer may receive or charge with respect
13 to an electronic debit transaction shall be reasonable
14 and proportional to the cost incurred by the issuer
15 with respect to the transaction.

16 “(3) RULEMAKING REQUIRED.—

17 “(A) IN GENERAL.—The Board shall pre-
18 scribe regulations in final form not later than
19 9 months after the date of enactment of the
20 Consumer Financial Protection Act of 2010, to
21 establish standards for assessing whether the
22 amount of any interchange transaction fee de-
23 scribed in paragraph (2) is reasonable and pro-

1 portional to the cost incurred by the issuer with
2 respect to the transaction.

3 “(B) INFORMATION COLLECTION.—The
4 Board may require any issuer (or agent of an
5 issuer) or payment card network to provide the
6 Board with such information as may be nec-
7 essary to carry out the provisions of this sub-
8 section and the Board, in issuing rules under
9 subparagraph (A) and on at least a bi-annual
10 basis thereafter, shall disclose such aggregate
11 or summary information concerning the costs
12 incurred, and interchange transaction fees
13 charged or received, by issuers or payment card
14 networks in connection with the authorization,
15 clearance or settlement of electronic debit
16 transactions as the Board considers appropriate
17 and in the public interest.

18 “(4) CONSIDERATIONS.—In prescribing regula-
19 tions under paragraph (3)(A), the Board shall—

20 “(A) consider the functional similarity be-
21 tween—

22 “(i) electronic debit transactions; and

23 “(ii) checking transactions that are
24 required within the Federal Reserve bank
25 system to clear at par;

1 “(B) distinguish between—

2 “(i) the incremental cost incurred by
3 an issuer for the role of the issuer in the
4 authorization, clearance, or settlement of a
5 particular electronic debit transaction,
6 which cost shall be considered under para-
7 graph (2); and

8 “(ii) other costs incurred by an issuer
9 which are not specific to a particular elec-
10 tronic debit transaction, which costs shall
11 not be considered under paragraph (2);
12 and

13 “(C) consult, as appropriate, with the
14 Comptroller of the Currency, the Board of Di-
15 rectors of the Federal Deposit Insurance Cor-
16 poration, the Director of the Office of Thrift
17 Supervision, the National Credit Union Admin-
18 istration Board, the Administrator of the Small
19 Business Administration, and the Director of
20 the Bureau of Consumer Financial Protection.

21 “(5) ADJUSTMENTS TO INTERCHANGE TRANS-
22 ACTION FEES FOR FRAUD PREVENTION COSTS.—

23 “(A) ADJUSTMENTS.—The Board may
24 allow for an adjustment to the fee amount re-

1 received or charged by an issuer under paragraph
2 (2) if—

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

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

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

22 “(II) require issuers to take ef-
23 fective steps to reduce the occurrence
24 of, and costs from, fraud in relation
25 to electronic debit transactions, in-

1 cluding through the development and
2 implementation of cost-effective fraud
3 prevention technology.

4 “(B) RULEMAKING REQUIRED.—

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

11 “(ii) FACTORS FOR CONSIDER-
12 ATION.—In issuing the standards and pre-
13 scribing regulations under this paragraph,
14 the Board shall consider the following fac-
15 tors:

16 “(I) The nature, type, and occur-
17 rence of fraud in electronic debit
18 transactions.

19 “(II) The extent to which the oc-
20 currence of fraud depends on whether
21 authorization in an electronic debit
22 transaction is based on signature,
23 PIN, or other means.

24 “(III) The available and economi-
25 cal means by which fraud on elec-

1 tronic debit transactions may be re-
2 duced.

3 “(IV) The fraud prevention and
4 data security costs expended by each
5 party involved in electronic debit
6 transactions (including consumers,
7 persons who accept debit cards as a
8 form of payment, financial institu-
9 tions, retailers and payment card net-
10 works).

11 “(V) The costs of fraudulent
12 transactions absorbed by each party
13 involved in such transactions (includ-
14 ing consumers, persons who accept
15 debit cards as a form of payment, fi-
16 nancial institutions, retailers and pay-
17 ment card networks).

18 “(VI) The extent to which inter-
19 change transaction fees have in the
20 past reduced or increased incentives
21 for parties involved in electronic debit
22 transactions to reduce fraud on such
23 transactions.

24 “(VII) Such other factors as the
25 Board considers appropriate.

1 “(6) EXEMPTION FOR SMALL ISSUERS.—

2 “(A) IN GENERAL.—This subsection shall
3 not apply to any issuer that, together with its
4 affiliates, has assets of less than
5 \$10,000,000,000, and the Board shall exempt
6 such issuers from regulations prescribed under
7 paragraph (3)(A).

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

12 “(7) EXEMPTION FOR GOVERNMENT-ADMINIS-
13 TERED PAYMENT PROGRAMS AND RELOADABLE PRE-
14 PAID CARDS.—

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

19 “(i) a debit card or general-use pre-
20 paid card that has been provided to a per-
21 son pursuant to a Federal, State or local
22 government-administered payment pro-
23 gram, in which the person may only use
24 the debit card or general-use prepaid card
25 to transfer or debit funds, monetary value,

1 or other assets that have been provided
2 pursuant to such program; or

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

5 “(I) linked to such funds, mone-
6 tary value, or assets which are pur-
7 chased or loaded on a prepaid basis;

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

15 “(III) redeemable at multiple,
16 unaffiliated merchants or service pro-
17 viders, or automated teller machines;

18 “(IV) used to transfer or debit
19 funds, monetary value, or other as-
20 sets; and

21 “(V) reloadable and not mar-
22 keted or labeled as a gift card or gift
23 certificate.

24 “(B) EXCEPTION.—Notwithstanding sub-
25 paragraph (A), after the end of the 1-year pe-

1 riod beginning on the effective date provided in
2 paragraph (9), this subsection shall apply to an
3 interchange transaction fee charged or received
4 with respect to an electronic debit transaction
5 described in subparagraph (A)(i) in which a
6 person uses a general-use prepaid card, or an
7 electronic debit transaction described in sub-
8 paragraph (A)(ii), if any of the following fees
9 may be charged to a person with respect to the
10 card:

11 “(i) A fee for an overdraft, including
12 a shortage of funds or a transaction pro-
13 cessed for an amount exceeding the account
14 balance.

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

20 “(C) DEFINITION.—For purposes of sub-
21 paragraph (B), the term ‘designated automated
22 teller machine network’ means either—

23 “(i) all automated teller machines
24 identified in the name of the issuer; or

1 “(ii) any network of automated teller
2 machines identified by the issuer that pro-
3 vides reasonable and convenient access to
4 the issuer’s customers.

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

10 “(i) the prevalence of the use of gen-
11 eral-use prepaid cards in Federal, State or
12 local government-administered payment
13 programs; and

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

18 “(8) REGULATORY AUTHORITY OVER NETWORK
19 FEES.—

20 “(A) IN GENERAL.—The Board may pre-
21 scribe regulations, pursuant to section 553 of
22 title 5, United States Code, regarding any net-
23 work fee.

1 “(B) LIMITATION.—The authority under
2 subparagraph (A) to prescribe regulations shall
3 be limited to regulations to ensure that—

4 “(i) a network fee is not used to di-
5 rectly or indirectly compensate an issuer
6 with respect to an electronic debit trans-
7 action; and

8 “(ii) a network fee is not used to cir-
9 cumvent or evade the restrictions of this
10 subsection and regulations prescribed
11 under such subsection.

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

19 “(D) EFFECTIVE DATE.—Paragraph (2)
20 shall take effect at the end of the 12-month pe-
21 riod beginning on the date of the enactment of
22 the Consumer Financial Protection Act of
23 2010.

24 “(b) LIMITATION ON PAYMENT CARD NETWORK RE-
25 STRICTIONS.—

1 “(1) PROHIBITIONS AGAINST EXCLUSIVITY AR-
2 RANGEMENTS.—

3 “(A) NO EXCLUSIVE NETWORK.—The
4 Board shall, before the end of the 1-year period
5 beginning on the date of the enactment of the
6 Consumer Financial Protection Act of 2010,
7 prescribe regulations providing that an issuer or
8 payment card network shall not directly or
9 through any agent, processor, or licensed mem-
10 ber of a payment card network, by contract, re-
11 quirement, condition, penalty, or otherwise, re-
12 strict the number of payment card networks on
13 which an electronic debit transaction may be
14 processed to—

15 “(i) 1 such network; or

16 “(ii) 2 or more such networks which
17 are owned, controlled, or otherwise oper-
18 ated by —

19 “(I) affiliated persons; or

20 “(II) networks affiliated with
21 such issuer.

22 “(B) NO ROUTING RESTRICTIONS.—The
23 Board shall, before the end of the 1-year period
24 beginning on the date of the enactment of the
25 Consumer Financial Protection Act of 2010,

1 prescribe regulations providing that an issuer or
2 payment card network shall not, directly or
3 through any agent, processor, or licensed mem-
4 ber of the network, by contract, requirement,
5 condition, penalty, or otherwise, inhibit the abil-
6 ity of any person who accepts debit cards for
7 payments to direct the routing of electronic
8 debit transactions for processing over any pay-
9 ment card network that may process such
10 transactions.

11 “(2) LIMITATION ON RESTRICTIONS ON OFFER-
12 ING DISCOUNTS FOR USE OF A FORM OF PAY-
13 MENT.—

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

22 “(i) in the case of a discount or in-
23 kind incentive for payment by the use of
24 debit cards, the discount or in-kind incen-

1 tive does not differentiate on the basis of
2 the issuer or the payment card network;

3 “(ii) in the case of a discount or in-
4 kind incentive for payment by the use of
5 credit cards, the discount or in-kind incen-
6 tive does not differentiate on the basis of
7 the issuer or the payment card network;
8 and

9 “(iii) to the extent required by Fed-
10 eral law and applicable State law, such dis-
11 count or in-kind incentive is offered to all
12 prospective buyers and disclosed clearly
13 and conspicuously.

14 “(B) **LAWFUL DISCOUNTS.**—For purposes
15 of this paragraph, the network may not penalize
16 any person for the providing of a discount that
17 is in compliance with Federal law and applica-
18 ble State law.

19 “(3) **LIMITATION ON RESTRICTIONS ON SET-**
20 **TING TRANSACTION MINIMUMS OR MAXIMUMS.**—

21 “(A) **IN GENERAL.**—A payment card net-
22 work shall not, directly or through any agent,
23 processor, or licensed member of the network,
24 by contract, requirement, condition, penalty, or
25 otherwise, inhibit the ability—

1 “(i) of any person to set a minimum
2 dollar value for the acceptance by that per-
3 son of credit cards, to the extent that —

4 “(I) such minimum dollar value
5 does not differentiate between issuers
6 or between payment card networks;
7 and

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

10 “(ii) of any Federal agency or institu-
11 tion of higher education to set a maximum
12 dollar value for the acceptance by that
13 Federal agency or institution of higher
14 education of credit cards, to the extent
15 that such maximum dollar value does not
16 differentiate between issuers or between
17 payment card networks.

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

23 “(4) RULE OF CONSTRUCTION.—No provision
24 of this subsection shall be construed to authorize
25 any person—

1 “(A) to discriminate between debit cards
2 within a payment card network on the basis of
3 the issuer that issued the debit card; or

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

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

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

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

13 “(A) means any card, or other payment
14 code or device, issued or approved for use
15 through a payment card network to debit an
16 asset account (regardless of the purpose for
17 which the account is established), whether au-
18 thorization is based on signature, PIN, or other
19 means;

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

23 “(C) does not include paper checks.

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

1 “(4) DISCOUNT.—The term ‘discount’—

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

5 “(B) does not include any means of in-
6 creasing the price that customers are informed
7 is the regular price.

8 “(5) ELECTRONIC DEBIT TRANSACTION.—The
9 term ‘electronic debit transaction’ means a trans-
10 action in which a person uses a debit card.

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

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

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

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

21 “(8) INTERCHANGE TRANSACTION FEE.—The
22 term ‘interchange transaction fee’ means any fee es-
23 tablished, charged or received by a payment card
24 network for the purpose of compensating an issuer
25 for its involvement in an electronic debit transaction.

1 “(9) ISSUER.—The term ‘issuer’ means any
2 person who issues a debit card, or credit card, or the
3 agent of such person with respect to such card.

4 “(10) NETWORK FEE.—The term ‘network fee’
5 means any fee charged and received by a payment
6 card network with respect to an electronic debit
7 transaction, other than an interchange transaction
8 fee.

9 “(11) PAYMENT CARD NETWORK.—The term
10 ‘payment card network’ means an entity that di-
11 rectly, or through licensed members, processors, or
12 agents, provides the proprietary services, infrastruc-
13 ture, and software that route information and data
14 to conduct debit card or credit card transaction au-
15 thorization, clearance, and settlement, and that a
16 person uses in order to accept as a form of payment
17 a brand of debit card, credit card or other device
18 that may be used to carry out debit or credit trans-
19 actions.

20 “(d) ENFORCEMENT.—

21 “(1) IN GENERAL.—Compliance with the re-
22 quirements imposed under this section shall be en-
23 forced under section 918.

1 “(2) EXCEPTION.—Sections 916 and 917 shall
2 not apply with respect to this section or the require-
3 ments imposed pursuant to this section.”.

4 (b) AMENDMENT TO THE FOOD AND NUTRITION ACT
5 OF 2008.—Section 7(h)(10) of the Food and Nutrition
6 Act of 2008 (7 U.S.C. 2016(h)(10)) is amended to read
7 as follows:

8 “10 FEDERAL LAW NOT APPLICABLE.—Section
9 920 of the Electronic Fund Transfer Act shall not
10 apply to electronic benefit transfer or reimbursement
11 systems under this Act.”.

12 (c) AMENDMENT TO THE FARM SECURITY AND
13 RURAL INVESTMENT ACT OF 2002.—Section 4402 of the
14 Farm Security and Rural Investment Act of 2002 (7
15 U.S.C. 3007) is amended by adding at the end the fol-
16 lowing new subsection:

17 “(f) FEDERAL LAW NOT APPLICABLE.—Section 920
18 of the Electronic Fund Transfer Act shall not apply to
19 electronic benefit transfer systems established under this
20 section.”.

21 (d) AMENDMENT TO THE CHILD NUTRITION ACT OF
22 1966.—Section 11 of the Child Nutrition Act of 1966 (42
23 U.S.C. 1780) is amended by adding at the end the fol-
24 lowing:

1 “(c) FEDERAL LAW NOT APPLICABLE.—Section 920
2 of the Electronic Fund Transfer Act shall not apply to
3 electronic benefit transfer systems established under this
4 Act or the Richard B. Russell National School Lunch Act
5 (42 U.S.C. 1751 et seq.).”

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

6 **SEC. 1078. REVERSE MORTGAGE STUDY AND REGULATIONS.**

7 (a) STUDY.—Not later than 1 year after the des-
8 ignated transfer date, the Bureau shall conduct a study
9 on reverse mortgage transactions.

10 (b) REGULATIONS.—

11 (1) IN GENERAL.—If the Bureau determines
12 through the study required under subsection (a) that
13 conditions or limitations on the reverse mortgage
14 transactions are necessary or appropriate for accom-
15 plishing the purposes and objectives of this title, in-
16 cluding protecting borrowers with respect to the ob-
17 taining of reverse mortgage loans for the purpose of
18 funding investments, annuities, and other investment
19 products and the suitability of a borrower in obtain-
20 ing a reverse mortgage for such purpose.

21 (2) IDENTIFIED PRACTICES AND INTEGRATED
22 DISCLOSURES.—The regulations prescribed under

1 paragraph (1) may, as the Bureau may so deter-
2 mine—

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

6 (B) provide for an integrated disclosure
7 standard and model disclosures for reverse
8 mortgage transactions, consistent with section
9 4302(d), that combines the relevant disclosures
10 required under the Truth in Lending Act (15
11 U.S.C. 1601 et seq.) and the Real Estate Set-
12 tlement Procedures Act, with the disclosures re-
13 quired to be provided to consumers for Home
14 Equity Conversion Mortgages under section 255
15 of the National Housing Act.

16 (c) **RULE OF CONSTRUCTION.**—This section shall not
17 be construed as limiting the authority of the Bureau to
18 issue regulations, orders, or guidance that apply to reverse
19 mortgages prior to the completion of the study required
20 under subsection (a).

Page 1642, after line 21, insert the following new
section:

1 **SEC. 1079A REVIEW, REPORT, AND PROGRAM WITH RE-**
2 **SPECT TO EXCHANGE FACILITATORS.**

3 (a) **REVIEW.**—The Director shall review all Federal
4 laws and regulations relating to the protection of con-
5 sumers who use exchange facilitators for transactions pri-
6 marily for personal, family, or household purposes.

7 (b) **REPORT.**—Not later than 1 year after the des-
8 ignated transfer date of this subtitle, the Director shall
9 submit to Congress a report describing—

10 (1) recommendations for legislation to ensure
11 the appropriate protection of consumers who use ex-
12 change facilitators for transactions primarily for per-
13 sonal, family, or household purposes;

14 (2) recommendations for updating the regula-
15 tions of Federal departments and agencies to ensure
16 the appropriate protection of such consumers; and

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

19 (c) **PROGRAM.**—Not later than 2 years after the date
20 of the submission of the report under subsection (b), the
21 Bureau shall, consistent with subtitle B, propose regula-
22 tions or otherwise establish a program to protect con-
23 sumers who use exchange facilitators.

24 (d) **EXCHANGE FACILITATOR DEFINED.**—In this sec-
25 tion, the term “exchange facilitator” means a person
26 that—

1 (1) facilitates, for a fee, an exchange of like
2 kind property by entering into an agreement with a
3 taxpayer by which the exchange facilitator acquires
4 from the taxpayer the contractual rights to sell the
5 taxpayer's relinquished property and transfers a re-
6 placement property to the taxpayer as a qualified
7 intermediary (within the meaning of Treasury Regu-
8 lations section 1.1031(k)-1(g)(4)) or enters into an
9 agreement with the taxpayer to take title to a prop-
10 erty as an exchange accommodation titleholder
11 (within the meaning of Revenue Procedure 2000-37)
12 or enters into an agreement with a taxpayer to act
13 as a qualified trustee or qualified escrow holder
14 (within the meaning of Treasury Regulations section
15 1.1031(k)-1(g)(3));

16 (2) maintains an office for the purpose of solici-
17 ting business to perform the services described in
18 paragraph (1); or

19 (3) advertises any of the services described in
20 paragraph (1) or solicits clients in printed publica-
21 tions, direct mail, television or radio advertisements,
22 telephone calls, facsimile transmissions, or other
23 electronic communications directed to the general
24 public for purposes of providing any such services.

Page 1647, line 22, insert “and section 920 (as added by section 1076)”.

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

- 1 (3) in section 904 (15 U.S.C. 1693b)—
- 2 (A) in subsection (a), by striking “(a)
- 3 PRESCRIPTION BY BOARD.—The Board shall
- 4 prescribe regulations to carry out the purposes
- 5 of this title.” and inserting the following:
- 6 “(a) PRESCRIPTION BY THE BUREAU AND THE
- 7 BOARD.—The Bureau and the Board shall prescribe regu-
- 8 lations to carry out the purposes of this title, except that
- 9 the Board shall have sole authority to prescribe regula-
- 10 tions to carry out the purposes of section 920.”; and
- 11 (B) by adding at the end the following new
- 12 subsection:
- 13 “(c) DEFERENCE.—No provision of this title may be
- 14 construed as altering, limiting, or otherwise affecting the
- 15 deference that a court affords to—
- 16 “(1) the Bureau in making determinations re-
- 17 garding the meaning or interpretation of any provi-
- 18 sion of this title for which the Bureau has authority
- 19 to prescribe regulations; or

1 “(2) the Board in making determinations re-
2 garding the meaning or interpretation of section
3 920.”

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

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

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

4 (b) INSTITUTIONAL CERTIFICATION REQUIRED.—

5 Section 128(e) of the Truth in Lending Act is amended—

6 (1) by striking paragraph (3) and inserting the
7 following new paragraph (3):

8 “(3) INSTITUTIONAL CERTIFICATION RE-
9 QUIRED.—

10 “(A) IN GENERAL.—Except as provided in

11 subparagraph (B), before a creditor may issue

12 any funds with respect to an extension of credit

13 described in paragraph (1), the creditor shall

14 obtain from the relevant institution of higher

15 education such institution’s certification—

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“(i) of the enrollment status of the borrower;

“(ii) of the borrower’s cost of attendance at the institution as determined by the institution under part F of title IV of the Higher Education Act of 1965;

“(iii) of the difference between the borrower’s cost of attendance and the borrower’s estimated financial assistance received under title IV of the Higher Education Act of 1965 and other assistance known to the institution, as applicable; and

“(iv) that the institution has—

“(I) informed the borrower—

“(aa) about the availability of, and the borrower’s potential eligibility for, Federal financial assistance under this title, including disclosing the terms, conditions, and interest rates of Federal student loans;

“(bb) of the borrower’s ability to select a private educational lender of the borrower’s choice;

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“(cc) about the impact of a proposed private education loan on the borrowers’ potential eligibility for other financial assistance, including Federal financial assistance under the Higher Education Act of 1965; and

“(dd) about a borrower’s right to accept or reject a private education loan within the 30-day period following a private educational lender’s approval of a borrower’s application and about a borrower’s 3-day right to cancel altogether;

“(II) determined whether the borrower has applied for and exhausted the Federal financial assistance available to the borrower under the Higher Education Act of 1965 and informed the borrower accordingly; and

“(III) counseled the borrower on the borrower’s financial aid options.

1 “(B) FAILURE TO PROVIDE TIMELY CER-
2 TIFICATION.—A creditor may issue funds with
3 respect to an extension of credit described in
4 paragraph (1) without obtaining from the rel-
5 evant institution of higher education such insti-
6 tution’s certification if such institution fails to
7 provide such certification within 21 calendar
8 days or 15 business days, whichever comes first,
9 of the creditor’s request for such certification.”;

10 (2) by redesignating paragraphs (9), (10), and
11 (11) as paragraphs (10), (11), and (12), respec-
12 tively; and

13 (3) by inserting after paragraph (8) the fol-
14 lowing new paragraph (9):

15 “(9) PROVISION OF INFORMATION.—On or be-
16 fore the date a creditor issues any funds with re-
17 spect to an extension of credit described in para-
18 graph (1), the creditor shall notify the relevant insti-
19 tution of higher education, in writing, of the amount
20 of the extension of credit and the student on whose
21 behalf credit is extended. The form of such written
22 notification shall be subject to the regulations of the
23 Agency.”.

24 (c) REGULATIONS.—

1 (1) DEADLINE FOR REGULATIONS.—Not later
2 than 365 days after the date of enactment of this
3 Act, the Agency shall issue regulations in final form
4 to implement paragraphs (3) and (9) of section
5 128(e) of the Truth in Lending Act, as amended by
6 subsection (b). Such regulations shall become effec-
7 tive not later than 6 months after their date of
8 issuance.

9 (2) EFFECTIVE DATE.—The regulations in ef-
10 fect pursuant to section 128(e) of the Truth in
11 Lending Act as of the date of the enactment of this
12 Act shall remain in effect until the effective date of
13 the regulations issued under paragraph (1).

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



insert A
P #3

(d) Agency Ombudsman.

(1) Establishment required. Not later than 180 days after the designated transfer date, the Bureau shall appoint an ombudsman.

(2) Duties of ombudsman. The ombudsman appointed in accordance with paragraph (1) for any agency shall –

(A) act as a liaison between the Bureau and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and

(B) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

June 21, 2010 (2)

Senate Counteroffer Title X

Insert

Technical Assistance to Title X: Revisions to the House Offer

Funding of the Bureau under Section 1017

P5

(1) Adjustment of Amount

Revision to subsection (a)(2)(B) to modify the index by which the funding cap on the amount transferred from the Board of Governors may be increased. Instead of the Consumer Price Index (CPI), the "employment cost index for total compensation for State and local government workers" (ECI) should be used. The CPI does not reflect the rate of inflation of personnel expenses, and, over time, funding for the Bureau would not keep pace with growth in compensation levels. ECI is a more stable index than operating expenses of the other federal banking regulators, which may change for reasons other than growth in personnel expenses.

On page 5, line 3, after "annually" strike all that follows through line 16, and insert the following:

"using the percent increase, if any, in the employment cost index for total compensation for State and local government workers published by the Federal government, or the successor index thereto, for the 12-month period ending September 30 of the year preceding the transfer."

(2) Appropriations of Funds; Annual Report

Revision to add subsection (e) to provide a mechanism for authorizing appropriations for the Bureau when the Director determines that the funding needs of the Bureau are anticipated to exceed the level of amount that may be transferred from the Board of Governors.

In addition, this subsection would require the Director to submit an annual report to the House Committee on Appropriations and Senate Committee on Appropriations.

Page 6, strike lines 7 through 13 and insert the following:

"(e) AUTHORIZATION OF APPROPRIATIONS; ANNUAL REPORT.—

"(1) DETERMINATION REGARDING NEED FOR APPROPRIATED FUNDS.—

"(A) IN GENERAL.—The Director is authorized to determine that sums available to the Bureau under this section will not be sufficient to carry out the authorities of the Bureau under Federal consumer financial law for the upcoming year.

“(B) REPORT REQUIRED.—When making a determination under subparagraph (A), the Director shall prepare a report regarding the funding of the Bureau, including the assets and liabilities of the Bureau, and the extent to which the funding needs of the Bureau are anticipated to exceed the level of amount set forth in subsection (a)(2). The Director shall submit the report to the President and to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives.

“(2) AUTHORIZATION OF APPROPRIATIONS.—If the Director makes the determination and submits the report pursuant to paragraph (1), there are hereby authorized to be appropriated to the Bureau, for the purposes of carrying out the authorities granted in federal consumer financial law, \$200,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.

“(3) APPORTIONMENT.—Notwithstanding any other provision of law, such amounts in paragraph (2) shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

“(4) ANNUAL REPORT.—The Director shall prepare and submit a report, on an annual basis, to the House Committee on Appropriations and Senate Committee on Appropriations regarding the financial operating plans and forecasts of the Director, the financial condition and results of operations of the Bureau, and the sources and application of funds of the Bureau, including any funds appropriated under this subsection.”.

insert
PB

Registration of all nonbanks

Provides for registration of all nonbanks; essential for determining which nonbanks are larger participants subject to bureau supervision.

Page 1416, after line 25, insert the following:

“(6) REGISTRATION.—

“(A) IN GENERAL.—The Bureau shall prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

“(B) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau shall publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.

“(C) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.”.

Page 1429, line 14, strike “Registration,”.

Page 1429, line 20, strike “(B)” and all that follows through page 1430, line 12.

Page 1430, line 13, strike “(C)” and insert “(B)”.

Page 1430, line 19, strike “(D)” and insert “(C)”.

Page 1431, line 3, strike “(E)” and insert “(D)”.

June 19, 2010 8:00pm

insert
p 7

Section 1024 - Regulation of Private Student Loans

Authorizes the Bureau to supervise all providers of private student loans, notwithstanding the merchant exemption.

Page 1425, line 23, strike "or".

Page 1426, line 8, strike the period and insert the following:

"; or

"(D) offers or provides to a consumer any private education loan, as defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650), notwithstanding section 1027(a)(2)(A) and subject to section 1027(a)(2)(C)."

Senate Counteroffer - Title X Insert
P.11

ATTORNEY EXCEPTION

- (3) EXCEPTION.—Notwithstanding paragraph (1), an individual who provides legal advice or services related to preventing a foreclosure shall be subject to this title unless such individual provides foreclosure prevention services in connection with—
- (A) the preparation and filing of a bankruptcy petition; or
 - (B) court proceedings to avoid a foreclosure.

Senate Counteroffer - Title X

Insert

Auto dealer-lender
Revision to House Proposed Amendment to Title X

P. 13

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

SEC. 1029. EXCLUSION FOR AUTO DEALERS.

(a) SALE, SERVICING, AND LEASING OF MOTOR VEHICLES EXCLUDED.—

(1) IN GENERAL.—Except as permitted in paragraph (2) and subsection (b), the Director and the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(2) DESCRIPTION OF ACTIVITIES.—Notwithstanding paragraph (1), the Bureau may exercise rulemaking authority with respect to a person described in paragraph (1) when such person is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(3) TRUTH IN LENDING ACT.— Paragraph (2) shall not apply with respect to the authority to prescribe rules under the Truth in Lending Act (15 U.S.C. 1601 et seq.).

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

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

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

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

(B) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or

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

(c) NO IMPACT ON PRIOR AUTHORITY.—

(1) In General.—Except as provided in subsection (a)(2), nothing in this subsection shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(2) Uniform Rules.—Whenever the Bureau prescribes a rule under the Truth in Lending Act (15 U.S.C. 1601 et seq.) that applies to a lease of or credit secured by a motor vehicle, then within 60 days after such rule takes effect the Board shall promulgate substantially similar regulations under that Act, which regulations provide substantially similar requirements for persons described under subsection (a)(1), unless the Board—

(A) finds that such regulations are not consistent with the purposes of that Act.

(B) publishes any such finding, and the reasons therefor, in the Federal Register.

(d) FEDERAL TRADE COMMISSION AUTHORITY.—Notwithstanding section 18 of the Federal Trade Commission Act, the Federal Trade Commission is authorized to prescribe rules under sections 5 and 18(a)(1)(B) of the Federal Trade Commission Act in accordance with section 553 of title 5, United States Code, with respect to a person described under paragraph (1)(A).

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

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

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

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

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

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

(B) recreational boats and marine equipment;

(C) motorcycles;

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

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

(2) MOTOR VEHICLE DEALER.—The term “motor vehicle dealer” means any person or resident in the United States, or any territory of the United States, who—

(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and

(B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.

Page 1468, line 16, strike “and (l)” and insert “, (l), and section 1029.

Page 1710, beginning on line 13, strike “and section 108(a)” and insert “and sections 105(i) and 108(a)”.

Page 1712, line 4, strike “(7)” and insert the following:

“(7) in section 105 (15 U.S.C. 1604), by adding at the end the following:

“(i) Limited authority of the Board to prescribe rules.—

“(1) In general.—Notwithstanding subsection (a), the Board shall have authority to prescribe rules with respect to a person described in section 1029(a)(1) of the Consumer Financial Protection Act of 2010, but only with respect to and to the extent permitted under section 1029 of that Act. These regulations may contain such classifications, differentiations, or other provisions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subtitle, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

“(2) Savings clause.—Nothing in this subsection or in section 1029 of the Consumer Financial Protection Act of 2010 shall be construed to limit the authority of the Board from adopting terms, standards, or rules that the Bureau adopts under this title.”;

“(8)”.

insert
P 28

Senate counteroffer

Remittance modification

June 22, 2010

Page 1616, line 9, after "charged." Insert the following:

"Subject to paragraph (B), the Board may establish requirements or standards for the notice prescribed under this subparagraph that address:

"(I) disclosures regarding the total fees charged by the remittance transfer provider for the remittance transfer; or

"(II) any exchange rate to be used by the remittance transfer provider to the nearest 100th of a point (meaning 0.00).".

June 21, 2010 7:40 pm

Senate Counteroffer Title X
Amend #1

Clarify standard for small business credit sale exemption where the SBA does not provide size thresholds based on revenue.

Page 1453, after line 19, insert a new clause as follows:

“(iv) OTHER STANDARD FOR SMALL BUSINESS.—With respect to a merchant, retailer, or seller of nonfinancial goods or services that is classified on a basis other than annual receipts for the purposes of section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder, such merchant, retailer, or seller shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) if such merchant, retailer, or seller meets the relevant industry size threshold to be a small business concern based on the number of employees, or other such applicable measure, established under that Act.”.

*Amendment Approved
by UC*

Bipartisan Amendment to Ensure Criminal Accountability and Deter Fraud
Section-by-Section Analysis

Senator Leahy's amendment will bolster vital criminal prosecutions of securities fraud and financial institution fraud and will protect whistleblowers. To deter the kind of reckless and outrageous conduct that can bring down financial institutions and harm so many Americans, we must ensure that those who commit these crimes go to jail. This amendment will protect and enhance the government's ability to investigate and prosecute these cases. It contains the following provisions.

Part 1: Securities and Financial Institution Fraud Sentences

This first part of the amendment directs the United States Sentencing Commission to review and amend the federal sentencing guidelines and policy statements for offenses related to securities fraud and financial institution fraud to reflect the intent of Congress that penalties for the offenses appropriately account for the potential and actual harm to the public and the financial markets from the offenses.

Part 2: Securities Fraud Statute of Limitations

This section of the amendment increases the statute of limitations for securities fraud violations from five years to six years, which aligns it with the current statute of limitations in tax fraud cases.

Part 3: False Claims Act Fixes

The amendment makes two adjustments to existing law related to the False Claims Act. First, it clarifies current language to ensure protection of whistleblowers who face retaliation as a result of reporting waste, fraud or abuse. Second, it establishes a three-year statute of limitations on claims by whistleblowers alleging retaliation.

Part 4: Protecting Criminal Prosecutions

The last section of the amendment requires the newly-created Consumer Financial Protection Bureau to develop an agreement with the Department of Justice for coordination of investigations and proceedings in order to avoid conflicts and ensure that regulatory actions do not interfere with a criminal investigation.

Restoring American Financial Stability Conference Amendment

1 On page 1533 of the conference text of H.R. 4173,
2 line 6, strike “When” and insert the following:

3 (1) IN GENERAL.—When

4 On page 1533 of the conference text of H.R. 4173,
5 between lines 11 and 12, insert the following:

6 (2) NOTICE AND COORDINATION.—

7 (A) NOTICE OF OTHER ACTIONS.—In addi-
8 tion to any notice required under paragraph
9 (1), the Bureau shall notify the Attorney Gen-
10 eral concerning any action, suit, or proceeding
11 to which the Bureau is a party, except an ac-
12 tion, suit, or proceeding that involves the offer-
13 ing or provision of consumer financial products
14 or services.

15 (B) COORDINATION.—In order to avoid
16 conflicts and promote consistency regarding liti-
17 gation of matters under Federal law, the Attor-
18 ney General and the Bureau shall consult re-
19 garding the coordination of investigations and
20 proceedings, including by negotiating an agree-

1 ment for coordination by not later than 180
2 days after the designated transfer date. The
3 agreement under this subparagraph shall in-
4 clude provisions to ensure that parallel inves-
5 tigations and proceedings involving the Federal
6 consumer financial laws are conducted in a
7 manner that avoids conflicts and does not im-
8 pede the ability of the Attorney General to
9 prosecute violations of Federal criminal laws.

10 (C) RULE OF CONSTRUCTION.—Nothing in
11 this paragraph shall be construed to limit the
12 authority of the Bureau under this title, includ-
13 ing the authority to interpret Federal consumer
14 financial law.

15 On page 1642 of the conference text of H.R. 4173,
16 after line 21, add the following:

17 **SEC. 1079A. FINANCIAL FRAUD PROVISIONS.**

18 (a) SENTENCING GUIDELINES.—

19 (1) SECURITIES FRAUD.—

20 (A) DIRECTIVE.—Pursuant to its authority
21 under section 994 of title 28, United States
22 Code, and in accordance with this paragraph,
23 the United States Sentencing Commission shall
24 review and, if appropriate, amend the Federal

1 Sentencing Guidelines and policy statements
2 applicable to persons convicted of offenses relat-
3 ing to securities fraud or any other similar pro-
4 vision of law, in order to reflect the intent of
5 Congress that penalties for the offenses under
6 the guidelines and policy statements appro-
7 priately account for the potential and actual
8 harm to the public and the financial markets
9 from the offenses.

10 (B) REQUIREMENTS.—In making any
11 amendments to the Federal Sentencing Guide-
12 lines and policy statements under subparagraph
13 (A), the United States Sentencing Commission
14 shall—

15 (i) ensure that the guidelines and pol-
16 icy statements, particularly section
17 2B1.1(b)(14) and section 2B1.1(b)(17)
18 (and any successors thereto), reflect—

19 (I) the serious nature of the of-
20 fenses described in subparagraph (A);

21 (II) the need for an effective de-
22 terrent and appropriate punishment
23 to prevent the offenses; and

1 (III) the effectiveness of incarceration
2 ation in furthering the objectives de-
3 scribed in subclauses (I) and (II);

4 (ii) consider the extent to which the
5 guidelines appropriately account for the
6 potential and actual harm to the public
7 and the financial markets resulting from
8 the offenses;

9 (iii) ensure reasonable consistency
10 with other relevant directives and guide-
11 lines and Federal statutes;

12 (iv) make any necessary conforming
13 changes to guidelines; and

14 (v) ensure that the guidelines ade-
15 quately meet the purposes of sentencing,
16 as set forth in section 3553(a)(2) of title
17 18, United States Code.

18 (2) FINANCIAL INSTITUTION FRAUD.—

19 (A) DIRECTIVE.—Pursuant to its authority
20 under section 994 of title 28, United States
21 Code, and in accordance with this paragraph,
22 the United States Sentencing Commission shall
23 review and, if appropriate, amend the Federal
24 Sentencing Guidelines and policy statements
25 applicable to persons convicted of fraud offenses

1 relating to financial institutions or federally re-
2 lated mortgage loans and any other similar pro-
3 visions of law, to reflect the intent of Congress
4 that the penalties for the offenses under the
5 guidelines and policy statements ensure appro-
6 priate terms of imprisonment for offenders in-
7 volved in substantial bank frauds or other
8 frauds relating to financial institutions.

9 (B) REQUIREMENTS.—In making any
10 amendments to the Federal Sentencing Guide-
11 lines and policy statements under subparagraph
12 (A), the United States Sentencing Commission
13 shall—

14 (i) ensure that the guidelines and pol-
15 icy statements reflect—

16 (I) the serious nature of the of-
17 fenses described in subparagraph (A);

18 (II) the need for an effective de-
19 terrent and appropriate punishment
20 to prevent the offenses; and

21 (III) the effectiveness of incarcer-
22 ation in furthering the objectives de-
23 scribed in subclauses (I) and (II);

24 (ii) consider the extent to which the
25 guidelines appropriately account for the

1 potential and actual harm to the public
2 and the financial markets resulting from
3 the offenses;

4 (iii) ensure reasonable consistency
5 with other relevant directives and guide-
6 lines and Federal statutes;

7 (iv) make any necessary conforming
8 changes to guidelines; and

9 (v) ensure that the guidelines ade-
10 quately meet the purposes of sentencing,
11 as set forth in section 3553(a)(2) of title
12 18, United States Code.

13 (b) EXTENSION OF STATUTE OF LIMITATIONS FOR
14 SECURITIES FRAUD VIOLATIONS.—

15 (1) IN GENERAL.—Chapter 213 of title 18,
16 United States Code, is amended by adding at the
17 end the following:

18 **“§ 3301. Securities fraud offenses**

19 “(a) DEFINITION.—In this section, the term ‘securi-
20 ties fraud offense’ means a violation of, or a conspiracy
21 or an attempt to violate—

22 “(1) section 1348;

23 “(2) section 32(a) of the Securities Exchange
24 Act of 1934 (15 U.S.C. 78ff(a));

1 action under this section or other efforts to stop 1
2 or more violations of this subchapter"; and

3 (2) by adding at the end the following:

4 "(3) LIMITATION ON BRINGING CIVIL AC-
5 TION.—A civil action under this subsection may not
6 be brought more than 3 years after the date when
7 the retaliation occurred."

6/22/10
Amendment passed
as modified by UC

**FINANCIAL REFORM CONFERENCE (HR 4173):
AMENDMENTS TO TITLE X (BY MR. CHAMBLISS)**

[Page and line numbers refer to Conference Base Text]

On page 1450, line 8, insert "significantly" after
"extended".

~~On page 1450, line 10, strike "or the" and insert
"and the".~~

~~On page 1450, beginning on line 14, strike "or" and
all that follows through line 18 and insert a period.~~