

## HOUSE PROPOSED AMENDMENT TO TITLE I

Strike page 23, line 20, and all that follows through page 124, line 2, and insert the following:

### 1 **TITLE I—FINANCIAL STABILITY**

#### 2 **SEC. 101. SHORT TITLE; DEFINITIONS.**

3 (a) **SHORT TITLE.**—This title may be cited as the  
4 “Financial Stability Improvement Act of 2010”.

5 (b) **DEFINITIONS.**—For purposes of this title, the fol-  
6 lowing definitions shall apply:

7 (1) The term “Board” means the Board of  
8 Governors of the Federal Reserve System.

9 (2) The term “Council” means the Financial  
10 Services Oversight Council established under section  
11 111.

12 (3) The term “Federal financial regulatory  
13 agency” means any agency that has a voting mem-  
14 ber of the Council as set forth in section 111(b)(1).

15 (4) The term “financial company” means a  
16 company or other entity—

17 (A) that is—

18 (i) incorporated or organized under  
19 the laws of the United States or any State,  
20 territory, or possession of the United

1 States, the District of Columbia, Common-  
2 wealth of Puerto Rico, Commonwealth of  
3 Northern Mariana Islands, Guam, Amer-  
4 ican Samoa, or the United States Virgin  
5 Islands; or

6 (ii) a company incorporated in or or-  
7 ganized in a country other than the United  
8 States that has significant operations in  
9 the United States (hereafter in this title  
10 referred to as a “foreign financial parent”)  
11 after through—

12 (I) a Federal or State branch or  
13 agency of a foreign bank as such  
14 terms are defined in the International  
15 Banking Act of 1978 (12 U.S.C. 3101  
16 et seq.); or

17 (II) a United States affiliate or  
18 other United States operating entity;

19 (B) that is, in whole or in part, directly or  
20 indirectly, engaged in financial activities; and

21 (C) that is not a Farm Credit System in-  
22 stitution chartered under and subject to the  
23 provisions of the Farm Credit Act of 1971, as  
24 amended (12 U.S.C. 2001 et seq.).

1           (5) FINANCIAL HOLDING COMPANY SUBJECT TO  
2           STRICTER STANDARDS.—The term “financial holding  
3           company subject to stricter standards” means—

4                   (A) a financial company that has been sub-  
5                   jected to stricter prudential standards under  
6                   subtitle B; or

7                   (B) in the case of a financial company de-  
8                   scribed in subparagraph (A) that is required to  
9                   establish an intermediate holding company, the  
10                  intermediate holding company through which  
11                  the financial company is required to conduct its  
12                  financial activities.

13           (6) The term “primary financial regulatory  
14           agency” means the following:

15                   (A) The Comptroller of the Currency, with  
16                   respect to any national bank, any Federal  
17                   branch or Federal agency of a foreign bank,  
18                   and, after the date on which the functions of  
19                   the Office of Thrift Supervision and the Direc-  
20                   tor of the Office of Thrift Supervision are  
21                   transferred under title III, a Federal savings  
22                   association.

23                   (B) The Board, with respect to—

24                           (i) any State member bank;

1           (ii) any bank holding company and  
2           any subsidiary of such company (as such  
3           terms are defined in the Bank Holding  
4           Company Act), other than a subsidiary  
5           that is described in any other subpara-  
6           graph of this paragraph to the extent that  
7           the subsidiary is engaged in an activity de-  
8           scribed in such subparagraph;

9           (iii) any financial holding company  
10          subject to stricter standards and any sub-  
11          sidiary (as such term is defined in the  
12          Bank Holding Company Act) of such com-  
13          pany, other than a subsidiary that is de-  
14          scribed in any other subparagraph of this  
15          paragraph to the extent that the subsidiary  
16          is engaged in an activity described in such  
17          subparagraph;

18          (iv) after the date on which the func-  
19          tions of the Office of Thrift Supervision  
20          are transferred under title III, any savings  
21          and loan holding company (as defined in  
22          section 10(a)(1)(D) of the Home Owners'  
23          Loan Act) and any subsidiary (as such  
24          term is defined in the Bank Holding Com-  
25          pany Act of 1956) of such company, other

1 than a subsidiary that is described in any  
2 other subparagraph of this paragraph, to  
3 the extent that the subsidiary is engaged  
4 in an activity described in such subpara-  
5 graph;

6 (v) any organization organized and  
7 operated under section 25 or 25A of the  
8 Federal Reserve Act (12 U.S.C. 601 et  
9 seq. or 611 et seq.); and

10 (vi) any foreign bank or company that  
11 is treated as a bank holding company  
12 under subsection (a) of section 8 of the  
13 International Banking Act of 1978 and  
14 any subsidiary (other than a bank or other  
15 subsidiary that is described in any other  
16 subparagraph of this paragraph) of any  
17 such foreign bank or company.

18 (C) The Federal Deposit Insurance Cor-  
19 poration, with respect to any State nonmember  
20 bank, any insured State branch of a foreign  
21 bank (as such terms are defined in section 3 of  
22 the Federal Deposit Insurance Act), and, after  
23 the date on which the functions of the Office of  
24 Thrift Supervision are transferred under title  
25 III, any State savings association.

1 (D) The National Credit Union Adminis-  
2 tration, with respect to any insured credit union  
3 under the Federal Credit Union Act (12 U.S.C.  
4 1751 et seq.).

5 (E) The Securities and Exchange Commis-  
6 sion, with respect to—

7 (i) any broker or dealer registered  
8 with the Securities and Exchange Commis-  
9 sion under the Securities Exchange Act of  
10 1934 (15 U.S.C. 78a et seq.);

11 (ii) any investment company reg-  
12 istered with the Securities and Exchange  
13 Commission under the Investment Com-  
14 pany Act of 1940 (15 U.S.C. 80a–1 et  
15 seq.);

16 (iii) any investment adviser registered  
17 with the Securities and Exchange Commis-  
18 sion under the Investment Advisers Act of  
19 1940 (15 U.S.C. 80b–1 et seq.) with re-  
20 spect to the investment advisory activities  
21 of such company and activities incidental  
22 to such advisory activities;

23 (iv) any clearing agency (as defined in  
24 section 3(a)(23) of the Securities Ex-  
25 change Act of 1934);

1 (v) a securities-based swap execution  
2 facility that is registered with the Securi-  
3 ties and Exchange Commission under the  
4 Securities Exchange Act of 1934 (15  
5 U.S.C. 78a et seq.);

6 (vi) any exchange registered as a na-  
7 tional securities exchange with the Securi-  
8 ties and Exchange Commission under the  
9 Securities Exchange Act of 1934 (15  
10 U.S.C. 78a et seq.);

11 (vii) any credit rating agency reg-  
12 istered with the Securities and Exchange  
13 Commission under the Securities Exchange  
14 Act of 1934 (15 U.S.C. 78a et seq.);

15 (viii) any securities information proc-  
16 essor registered with the Securities and  
17 Exchange Commission under the Securities  
18 Exchange Act of 1934 (15 U.S.C. 78a et  
19 seq.); and

20 (ix) any transfer agent registered with  
21 the Securities and Exchange Commission  
22 under the Securities Exchange Act of 1934  
23 (15 U.S.C. 78a et seq.).

24 (F) The Commodity Futures Trading  
25 Commission, with respect to—

1 (i) any futures commission merchant,  
2 any commodity trading adviser, any retail  
3 foreign exchange dealer, and any com-  
4modity pool operator registered with the  
5 Commodity Futures Trading Commission  
6 under the Commodity Exchange Act (7  
7 U.S.C. 1 et seq.) with respect to the com-  
8modities activities of such entity and ac-  
9tivities incidental to such commodities ac-  
10tivities; and

11 (ii) any derivatives clearing organiza-  
12tion, designated contract market, or swap  
13execution facility (as defined in the Com-  
14modity Exchange Act).

15 (G) The Federal Housing Finance Agency  
16with respect to the Federal National Mortgage  
17Association, the Federal Home Loan Mortgage  
18Corporation, and the Federal home loan banks.

19 (H) The State insurance authority of the  
20State in which an insurance company is domi-  
21ciled, with respect to the insurance activities  
22and activities incidental to such insurance ac-  
23tivities of an insurance company that is subject  
24to supervision by the State insurance authority  
25under State insurance law.



1 (I) The Office of Thrift Supervision, with  
2 respect to any Federal savings association,  
3 State savings association, or savings and loan  
4 holding company, until the date on which the  
5 functions of the Office of Thrift Supervision are  
6 transferred under title III.

7 (7) TERMS DEFINED IN OTHER LAWS.—

8 (A) AFFILIATE.—The term “affiliate” has  
9 the meaning given such term in section 2(k) of  
10 the Bank Holding Company Act of 1956.

11 (B) STATE MEMBER BANK, STATE NON-  
12 MEMBER BANK.—The terms “State member  
13 bank” and “State nonmember bank” have the  
14 same meanings as in subsections (d)(2) and  
15 (e)(2), respectively, of section 3 of the Federal  
16 Deposit Insurance Act.

17 **Subtitle A—The Financial Services**  
18 **Oversight Council**

19 **SEC. 111. FINANCIAL SERVICES OVERSIGHT COUNCIL ES-**  
20 **TABLISHED.**

21 (a) ESTABLISHMENT.—Immediately upon enactment  
22 of this title, there is established a Financial Services Over-  
23 sight Council.

24 (b) MEMBERSHIP.—The Council shall consist of the  
25 following:

1           (1) VOTING MEMBERS.—Voting members, who  
2 shall each have one vote on the Council, as follows:

3           (A) The Secretary of the Treasury, who  
4 shall serve as the Chairman of the Council.

5           (B) The Chairman of the Board of Gov-  
6 ernors of the Federal Reserve System.

7           (C) The Comptroller of the Currency.

8           (D) The Director of the Office of Thrift  
9 Supervision, until the functions of the Director  
10 of the Office of Thrift Supervision are trans-  
11 ferred pursuant to title III.

12           (E) The Chairman of the Securities and  
13 Exchange Commission.

14           (F) The Chairman of the Commodity Fu-  
15 tures Trading Commission.

16           (G) The Chairperson of the Federal De-  
17 posit Insurance Corporation.

18           (H) The Director of the Federal Housing  
19 Finance Agency.

20           (I) The Chairman of the National Credit  
21 Union Administration.

22           (J) The head of the Consumer Financial  
23 Protection Agency.

24           (2) NONVOTING MEMBERS.—Nonvoting mem-  
25 bers, who shall serve in an advisory capacity and

1 shall not be excluded from any of the Council's pro-  
2 ceedings, meetings, discussions, and deliberations:

3 (A) The Director of the Federal Insurance  
4 Office.

5 (B) A State insurance commissioner, to be  
6 designated by a selection process determined by  
7 the State insurance commissioners, provided  
8 that the term for which a State insurance com-  
9 missioner may serve shall last no more than the  
10 2-year period beginning on the date that the  
11 commissioner is selected.

12 (C) A State banking supervisor, to be des-  
13 igned by a selection process determined by  
14 the State bank supervisors, provided that the  
15 term for which a State banking supervisor may  
16 serve shall last no more than the 2-year period  
17 beginning on the date that the supervisor is se-  
18 lected.

19 (D) A State securities commissioner (or an  
20 officer performing like functions), to be des-  
21 igned by a selection process determined by  
22 such State securities commissioners, provided  
23 that the term for which a State securities com-  
24 missioner may serve shall last no more than the

1           2-year period beginning on the date that the  
2           commissioner is selected.

3           (c) DUTIES.—The Council shall have the following  
4 duties:

5           (1) To advise the Congress on financial domes-  
6 tic and international regulatory developments, in-  
7 cluding insurance and accounting developments, and  
8 make recommendations that will enhance the integ-  
9 rity, efficiency, competitiveness, and stability of the  
10 United States financial markets.

11           (2) To monitor the financial services market-  
12 place to identify potential threats to the stability of  
13 the United States financial system.

14           (3) To identify potential threats to the stability  
15 of the United States financial system that do not  
16 arise out of the financial services marketplace.

17           (4) To develop strategies (and conduct exercises  
18 in furtherance of those strategies) to prepare for po-  
19 tential threats identified under paragraphs (2) and  
20 (3). In doing so, the Council shall collaborate with  
21 participants in the financial sector, financial sector  
22 coordinating councils, and any other parties the  
23 Council determines to be appropriate.

24           (5) To subject financial companies and financial  
25 activities to stricter prudential standards in order to

1 promote financial stability and mitigate systemic  
2 risk in accordance with subtitle B.

3 (6) To issue formal recommendations that a  
4 Council member agency adopt stricter prudential  
5 standards for firms it regulates to mitigate systemic  
6 risk in accordance with subtitle B of this title.

7 (7) To monitor international regulatory develop-  
8 ments, including both insurance and accounting de-  
9 velopments, and to identify those developments that  
10 may conflict with the policies of the United States  
11 or place United States financial services firms or  
12 United States financial markets at a competitive dis-  
13 advantage.

14 (8) To facilitate information sharing and co-  
15 ordination among the members of the Council re-  
16 garding financial services policy development,  
17 rulemakings, examinations, reporting requirements,  
18 and enforcement actions.

19 (9) To provide a forum for discussion and anal-  
20 ysis of emerging market developments and financial  
21 regulatory issues among its members.

22 (10) At the request of an agency that is a  
23 Council member, to resolve a jurisdictional dispute  
24 between that agency and another agency that is a  
25 Council member in accordance with section 112.

1           (11) To review and submit comments to the Se-  
2           curities and Exchange Commission and any stand-  
3           ards setting body with respect to an existing or pro-  
4           posed accounting principle, standard, or procedure.

5   **SEC. 112. RESOLUTION OF DISPUTES AMONG FEDERAL FI-**  
6                           **NANCIAL REGULATORY AGENCIES.**

7           (a) **REQUEST FOR DISPUTE RESOLUTION.**—The  
8           Council shall resolve a dispute among 2 or more Federal  
9           financial regulatory agencies if—

10           (1) a Federal financial regulatory agency has a  
11           dispute with another Federal financial regulatory  
12           agency about the agencies' respective jurisdiction  
13           over a particular financial company or financial ac-  
14           tivity or product (excluding matters for which a dis-  
15           pute mechanism specifically has been provided under  
16           title VII or title X);

17           (2) the disputing agencies cannot, after a dem-  
18           onstrated good faith effort, resolve the dispute  
19           among themselves; and

20           (3) any of the Federal financial regulatory  
21           agencies involved in the dispute—

22                   (A) provides all other disputants prior no-  
23                   tice of its intent to request dispute resolution  
24                   by the Council; and

1 (B) requests in writing, no earlier than 14  
2 days after providing the notice described in  
3 paragraph (A), that the Council resolve the dis-  
4 pute.

5 (b) COUNCIL DECISION.—The Council shall decide  
6 the dispute—

7 (1) within a reasonable time after receiving the  
8 dispute resolution request;

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

11 (3) by agreeing with 1 of the disputants regard-  
12 ing the entirety of the matter or by determining a  
13 compromise position.

14 (c) FORM AND BINDING EFFECT.—A Council deci-  
15 sion under this section shall be in writing and include an  
16 explanation and shall be binding on all Federal financial  
17 regulatory agencies that are parties to the dispute.

18 **SEC. 113. TECHNICAL AND PROFESSIONAL ADVISORY COM-**  
19 **MITTEES.**

20 The Council is authorized to appoint—

21 (1) subsidiary working groups composed of  
22 Council members and their staff, Council staff, or a  
23 combination; and

24 (2) such temporary special advisory, technical,  
25 or professional committees as may be useful in car-

1       rying out its functions, which may be composed of  
2       Council members and their staff, other persons, or  
3       a combination.

4       **SEC. 114. FINANCIAL SERVICES OVERSIGHT COUNCIL**  
5                               **MEETINGS AND COUNCIL GOVERNANCE.**

6       (a) MEETINGS.—The Council shall meet as fre-  
7       quently as the Chairman deems necessary, but not less  
8       than quarterly.

9       (b) VOTING.—Unless otherwise provided, the Council  
10      shall make all decisions the Council is required or author-  
11      ized to make by a majority of the total voting membership  
12      of the Council under section 111(b)(1).

13      **SEC. 115. COUNCIL STAFF AND FUNDING.**

14      (a) VOTING MEMBERS OF THE COUNCIL.—The Sec-  
15      retary of the Treasury shall and all other voting members  
16      of the Council may, with the approval of the Council—

17               (1) detail permanent staff from the Department  
18               of the Treasury to provide the Council (and any  
19               temporary special advisory, technical, or professional  
20               committees appointed by the Council) with profes-  
21               sional and expert support; and

22               (2) provide such other services and facilities  
23               necessary for the performance of the Council's func-  
24               tions and fulfillment of the duties and mission of the  
25      Council.



1 (b) OTHER DEPARTMENTS AND AGENCIES.—In addi-  
2 tion to the assistance prescribed in subsection (a), depart-  
3 ments and agencies of the United States may, with the  
4 approval of the Council—

5 (1) detail department or agency staff on a tem-  
6 porary basis to provide additional support to the  
7 Council (and any special advisory, technical, or pro-  
8 fessional committees appointed by the Council); and

9 (2) provide such services, and facilities as the  
10 other departments or agencies may determine advis-  
11 able.

12 (c) STAFF STATUS; COUNCIL FUNDING.—

13 (1) STATUS.—Staff detailed to the Council by  
14 the Secretary of the Treasury and other United  
15 States departments or agencies shall—

16 (A) report to and be subject to oversight  
17 by the Council during their assignment to the  
18 Council; and

19 (B) be compensated by the department of  
20 agency from which the staff was detailed.

21 (2) FUNDING.—The administrative expense of  
22 the Council shall be paid by the departments and  
23 agencies represented by voting members of the  
24 Council on an equal basis.

1 **SEC. 116. REPORTS TO THE CONGRESS.**

2 (a) IN GENERAL.—Semiannually the Council shall  
3 submit a report to the Committee on Ways and Means,  
4 the Committee on Agriculture, and the Committee on Fi-  
5 nancial Services of the House of Representatives and the  
6 Committee on Finance, the Committee on Agriculture,  
7 and the Committee on Banking, Housing, and Urban Af-  
8 fairs of the Senate, and the Comptroller General of the  
9 United States that—

10 (1) describes significant financial and regu-  
11 latory developments, including insurance and ac-  
12 counting regulations and standards, and assesses the  
13 impact of those developments on the stability of the  
14 financial system;

15 (2) recommends actions that will improve finan-  
16 cial stability;

17 (3) details the size, scale, scope, concentration,  
18 activities, and interconnectedness of the 50 largest  
19 financial institutions, by total assets, in the United  
20 States;

21 (4) describes strategies developed by the Coun-  
22 cil to respond to potential threats to the stability of  
23 the United States financial system and the outcome  
24 of exercises conducted in furtherance of those strate-  
25 gies;

1           (5) describes the nature and scope of any com-  
2           pany or activities identified under subtitle B and  
3           steps taken to address them; and

4           (6) describes any dispute resolutions under-  
5           taken under section 112 and the result of such reso-  
6           lutions.

7           (b) EVALUATION OF ANNUAL REPORT BY GAO.—

8           Not later than 120 days after receiving the report required  
9           by subsection (a), the Comptroller General of the United  
10          States shall submit an evaluation of such report to the  
11          Committee on Ways and Means, the Committee on Agri-  
12          culture, and the Committee on Financial Services of the  
13          House of Representatives and the Committee on Finance,  
14          the Committee on Agriculture, and the Committee on  
15          Banking, Housing, and Urban Affairs of the Senate.

16          (c) STATEMENTS BY VOTING MEMBERS OF THE  
17          COUNCIL.—At the time each report is submitted under  
18          subsection (a), each voting member of the Council shall—

19               (1) if such member believes that the Council,  
20               the Government, and the private sector are taking  
21               all reasonable steps to ensure financial stability and  
22               to prevent systemic risk that would negatively affect  
23               the economy, submit a signed statement to the Com-  
24               mittee on Ways and Means, the Committee on Agri-  
25               culture, and the Committee on Financial Services of

1 the House of Representatives and the Committee on  
2 Finance, the Committee on Agriculture, and the  
3 Committee on Banking, Housing, and Urban Affairs  
4 of the Senate stating such belief; or

5 (2) if such member does not believe that all rea-  
6 sonable steps described under paragraph (1) are  
7 being taken, submit a signed statement to the Com-  
8 mittee on Ways and Means, the Committee on Agri-  
9 culture, and the Committee on Financial Services of  
10 the House of Representatives and the Committee on  
11 Finance, the Committee on Agriculture, and the  
12 Committee on Banking, Housing, and Urban Affairs  
13 of the Senate stating what actions such member be-  
14 lieves need to be taken in order to ensure that all  
15 reasonable steps described under paragraph (1) are  
16 taken.

17 (d) TESTIMONY BY THE CHAIRMAN.—The Chairman  
18 of the Council shall appear before the Committee on Fi-  
19 nancial Services of the House of Representatives and the  
20 Committee on Banking, Housing, and Urban Affairs of  
21 the Senate at a semi-annual hearing, after the report is  
22 submitted under subsection (a)—

23 (1) to discuss the efforts, activities, objectives,  
24 and plans of the Council; and

1           (2) to discuss and answer questions concerning  
2           such report.

3           (e) STUDY OF EFFECTS CONSUMER FINANCIAL PRO-  
4           TECTION AGENCY REGULATIONS AND STANDARDS.—

5           (1) STUDY REQUIRED.—The Council shall con-  
6           duct a study of the effects that regulations and  
7           standards of the Consumer Financial Protection  
8           Agency will have on all covered persons (as such  
9           term is defined in section 1002(6)), including non-  
10          depository institution covered persons. The Director  
11          of the Consumer Financial Protection Agency shall  
12          take the findings of the study into account when  
13          issuing regulations.

14          (2) VALUE OF NONBANK PRODUCTS.—The  
15          study shall include an evaluation and assessment of  
16          the appropriateness of using “APR” as a true meas-  
17          ure of the value of all nonbank products.

18          (3) SUBMISSION.—Not later than 240 days  
19          after the date of the enactment of this Act, the Di-  
20          rector of the Consumer Financial Protection Agency  
21          shall submit the study to Congress and include any  
22          recommendations the Director may have for changes  
23          in law and regulations to improve consumer protec-  
24          tions and maintain access to credit.

1 **SEC. 117. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

2 (a) The Federal Advisory Committee Act shall not  
3 apply to the Financial Services Oversight Council, or any  
4 special advisory, technical, or professional committees ap-  
5 pointed by the Council (except that, if an advisory, tech-  
6 nical, or professional committee has one or more members  
7 who are not employees of or affiliated with the United  
8 States government, the Council shall publish a list of the  
9 names of the members of such committee).

10 (b) The Council shall not be deemed an “agency” for  
11 purposes of any State or Federal law.

12 **SEC. 118. OVERSIGHT BY GAO.**

13 (a) **AUTHORITY TO AUDIT.**—The Comptroller Gen-  
14 eral of the United States may audit the activities and fi-  
15 nancial transactions of—

16 (1) the Council; and

17 (2) any person or entity acting on behalf of or  
18 under the authority of the Council, to the extent  
19 such activities and financial transactions relate to  
20 such person’s or entity’s work for the Council.

21 (b) **ACCESS TO INFORMATION.**—

22 (1) **IN GENERAL.**—Notwithstanding any other  
23 provision of law, the Comptroller General of the  
24 United States shall have access, upon request and at  
25 such reasonable time and in such reasonable form as  
26 the Comptroller General may request, to—

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

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

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

14 (2) CERTAIN INFORMATION SPECIFIED.—Access  
15 under paragraph (1) includes access to—

16 (A) information provided to the Council by  
17 its voting and nonvoting members under section  
18 122; and

19 (B) the identity of each financial holding  
20 company subject to stricter standards.

21 (3) COPIES.—Comptroller General may make  
22 and retain copies of such books, accounts, and other  
23 records access to which is granted under this provi-  
24 sion as the Comptroller General considers appro-  
25 priate.

1 (c) PERIODIC EVALUATIONS.—The Comptroller Gen-  
2 eral of the United States shall periodically evaluate the  
3 processes and activities of the Council and the extent to  
4 which the Council is fulfilling its duties under this title.  
5 The Comptroller General shall submit to the Committee  
6 on Financial Services of the House of Representatives and  
7 the Committee on Banking, Housing, and Urban Affairs  
8 of the Senate a report on the results of each such evalua-  
9 tion.

10 **Subtitle B—Prudential Regulation**  
11 **of Companies and Activities for**  
12 **Financial Stability Purposes**

13 **SEC. 121. FEDERAL RESERVE BOARD AUTHORITY THAT OF**  
14 **AGENT ACTING ON BEHALF OF COUNCIL.**

15 For purposes of this subtitle, the Board of Governors  
16 of the Federal Reserve System shall act in the capacity  
17 of agent for the Council, acting on behalf of the Council.

18 **SEC. 122. COUNCIL AND BOARD AUTHORITY TO OBTAIN IN-**  
19 **FORMATION.**

20 (a) IN GENERAL.—The Council and the Board are  
21 authorized to receive, and may request the production of,  
22 any data or information from members of the Council, as  
23 necessary—



1           (1) to monitor the financial services market-  
2           place to identify potential threats to the stability of  
3           the United States financial system;

4           (2) to identify global trends and developments  
5           that could pose systemic risks to the stability of the  
6           economy of the United States or other economies; or

7           (3) to otherwise carry out any of the provisions  
8           of this title, including to ascertain a primary finan-  
9           cial regulatory agency's implementation of rec-  
10          ommended prudential standards under this subtitle.

11          (b) SUBMISSION BY COUNCIL MEMBERS.—Notwith-  
12          standing any provision of law, any voting or nonvoting  
13          member of the Council is authorized to provide informa-  
14          tion to the Council, and the members of the Council shall  
15          maintain the confidentiality of such information.

16          (c) FINANCIAL COMPANY DATA COLLECTION.—

17           (1) IN GENERAL.—The Council or the Board  
18           may require the submission of periodic and other re-  
19           ports from any financial company solely for the pur-  
20           pose of assessing the extent to which a financial ac-  
21           tivity or financial market in which the financial com-  
22           pany participates, or the company itself, poses a  
23           threat to financial stability.

24           (2) MITIGATION OF REPORT BURDEN.—Before  
25           requiring the submission of reports from financial

1 companies that are regulated by the primary finan-  
2 cial regulatory agencies, the Council or the Board  
3 shall coordinate with such agencies and shall, when-  
4 ever possible, rely on information already being col-  
5 lected by such agencies.

6 (3) MITIGATION REQUIREMENTS IN CASE OF  
7 FOREIGN FINANCIAL PARENTS.—Before requiring  
8 the submission of reports from a company that is a  
9 foreign financial parent, the Council or the Board  
10 shall, to the extent appropriate, coordinate with any  
11 appropriate foreign regulator of such company and  
12 any appropriate multilateral organization and, when-  
13 ever possible, rely on information already being col-  
14 lected by such foreign regulator or multilateral orga-  
15 nizational with English translation.

16 (d) CONSULTATION WITH AGENCIES AND ENTI-  
17 TIES.—The Council or the Board, as appropriate, may  
18 consult with Federal and State agencies and other entities  
19 (including the Federal Insurance Office) to carry out any  
20 of the provisions of this subtitle.

21 (e) ADDITIONAL PROVISIONS.—

22 (1) DATA AND INFORMATION SHARING.—The  
23 Chairman of the Council, in consultation with the  
24 other members of the Council, may—

1 (A) establish procedures to share data and  
2 information collected by the Council under this  
3 section with the members of the Council;

4 (B) develop an electronic process for shar-  
5 ing all information collected by the Council with  
6 the Chairman of the Board on a real-time basis;

7 (C) issue any regulations necessary to  
8 carry out this subsection; and

9 (D) designate the format in which re-  
10 quested data and information must be sub-  
11 mitted to the Council, including any electronic,  
12 digital, or other format that facilitates the use  
13 of such data by the Council in its analysis.

14 (2) APPLICABLE PRIVILEGES NOT WAIVED.—A  
15 Federal financial regulator, State financial regu-  
16 lator, United States financial company, foreign fi-  
17 nancial company operating in the United States, fi-  
18 nancial market utility, or other person shall not be  
19 compelled to waive and shall not be deemed to have  
20 waived any privilege otherwise applicable to any data  
21 or information by transferring the data or informa-  
22 tion to, or permitting that data or information to be  
23 used by—

24 (A) the Council;

1 (B) any Federal financial regulator or  
2 State financial regulator, in any capacity; or

3 (C) any other agency of the Federal Gov-  
4 ernment (as defined in section 6 of title 18,  
5 United States Code).

6 (3) DISCLOSURE EXEMPTION.—Any informa-  
7 tion obtained by the Council under this section shall  
8 be exempt from the disclosure requirements under  
9 section 552 of title 5, United States Code.

10 (4) CONSULTATION WITH FOREIGN GOVERN-  
11 MENTS.—Under the supervision of the President,  
12 and in a manner consistent with section 207 of the  
13 Foreign Service Act of 1980 (22 U.S.C. 3927), the  
14 Chairman of the Council, in consultation with the  
15 other members of the Council, shall regularly consult  
16 with the financial regulatory entities and other ap-  
17 propriate organizations of foreign governments or  
18 international organizations on matters relating to  
19 systemic risk to the international financial system.

20 (5) REPORT.—Not later than 6 months after  
21 the date of the enactment of this title, the Chairman  
22 of the Council shall report to the Financial Services  
23 Committee of the House of Representatives and the  
24 Banking, Housing, and Urban Affairs Committee of  
25 the Senate the opinion of the Council as to whether

1 setting up an electronic database as described in  
2 paragraph (1)(B) would aid the Council in carrying  
3 out this section.

4 **SEC. 123. COUNCIL PRUDENTIAL REGULATION REC-**  
5 **COMMENDATIONS TO FEDERAL FINANCIAL**  
6 **REGULATORY AGENCIES; AGENCY AUTHOR-**  
7 **ITY.**

8 (a) IN GENERAL.—The Council is authorized to issue  
9 formal recommendations, publicly or privately, that a Fed-  
10 eral financial regulatory agency adopt stricter prudential  
11 standards for firms it regulates to mitigate systemic risk.

12 (b) AGENCY AUTHORITY TO IMPLEMENT STAND-  
13 ARDS.—

14 (1) A Federal financial regulatory agency spe-  
15 cifically may, in response to a Council recommenda-  
16 tion under this section or otherwise, impose, require  
17 reports regarding, examine for compliance with, and  
18 enforce stricter prudential standards and safeguards  
19 for the firms it regulates to mitigate systemic risk.  
20 This authority is in addition to and does not limit  
21 any other authority of the Federal financial regu-  
22 latory agencies. Compliance by an entity with ac-  
23 tions taken by a Federal financial regulatory agency  
24 under this section shall be enforceable in accordance  
25 with the statutes governing the respective Federal fi-

1       nancial regulatory agency's jurisdiction over the en-  
2       tity as if the agency action were taken under those  
3       statutes.

4               (2) APPLYING STANDARDS TO FOREIGN FINAN-  
5       CIAL PARENTS.—In applying standards under para-  
6       graph (1) to any foreign financial parent, or to any  
7       branch of, subsidiary of, or other operating entity  
8       related to such foreign financial parent that operates  
9       within the United States, the Federal financial regu-  
10      latory agency shall—

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

14               (B) take into account the extent to which  
15      the foreign financial parent is subject to com-  
16      parable standards on a consolidated basis in the  
17      home country of such foreign financial parent  
18      that are administered by a comparable foreign  
19      supervisory authority.

20               (c) AGENCY NOTICE TO COUNCIL.—A Federal finan-  
21      cial regulatory agency shall, within 60 days of receiving  
22      a Council recommendation under this section, notify the  
23      Council in writing regarding—

24               (1) the actions the Federal financial regulatory  
25      agency has taken in response to the Council's rec-

1           ommendation, additional actions contemplated, and  
2           timetables therefore; or

3           (2) the reason the Federal financial regulatory  
4           agency has failed to respond to the Council's re-  
5           quest.

6   **SEC. 124. SUBJECTING FINANCIAL COMPANIES TO STRICT-**  
7                           **ER PRUDENTIAL STANDARDS FOR FINANCIAL**  
8                           **STABILITY PURPOSES.**

9           (a) IN GENERAL.—The Council shall, in consultation  
10          with the Board and any other primary financial regulatory  
11          agency that regulates the financial company or a sub-  
12          sidiary of such company, and, in the case of a financial  
13          holding company subject to stricter standards that is an  
14          insurance company, the Federal Insurance Office, subject  
15          a financial company to stricter prudential standards under  
16          this subtitle if the Council determines that—

17                  (1) material financial distress at the company  
18                  could pose a threat to financial stability or the econ-  
19                  omy; or

20                  (2) the nature, scope, size, scale, concentration,  
21                  and interconnectedness, or mix of the company's ac-  
22                  tivities could pose a threat to financial stability or  
23                  the economy.

1 (b) CRITERIA.—In making a determination under  
2 subsection (a), the Council shall consider the following cri-  
3 teria:

4 (1) The extent of the company's leverage.

5 (2) The extent and nature of the company's off-  
6 balance sheet exposures.

7 (3) The extent and nature of the company's  
8 transactions and relationships with other financial  
9 companies.

10 (4) The company's importance as a source of  
11 credit for households, businesses, and State and  
12 local governments and as a source of liquidity for  
13 the financial system.

14 (5) The importance of the company as a source  
15 of credit for low-income, minority, or underserved  
16 communities and the impact the failure of such com-  
17 pany would have on the availability of credit in such  
18 communities.

19 (6) The extent to which assets are simply man-  
20 aged and not owned by the financial company and  
21 the extent to which ownership of assets under man-  
22 agement is diffuse.

23 (7) The nature, scope, and mix of the com-  
24 pany's activities.



1           (8) The degree to which the company is already  
2 regulated by one or more Federal financial regu-  
3 latory agencies or, in the case of a foreign financial  
4 parent, the extent to which such foreign parent is  
5 subject to prudential standards on a consolidated  
6 basis in the home country of such financial parent  
7 that are administered and enforced by a comparable  
8 foreign supervisory authority.

9           (9) The amount and nature of the company's fi-  
10 nancial assets.

11           (10) The amount and nature of the company's  
12 liabilities, including the degree of reliance on short-  
13 term funding.

14           (11) Any other factors that the Council deems  
15 appropriate.

16           (c) NOTIFICATION OF DECISION.—The Board, in an  
17 executive capacity on behalf of the Council, shall imme-  
18 diately upon the Council's decision notify the financial  
19 company by order, which shall be public, that the financial  
20 company is subject to stricter prudential standards, as  
21 prescribed by the Board in accordance with section 125.

22           (d) PERIODIC REVIEW AND RESCISSION OF FIND-  
23 INGS.—

24           (1) SUBMISSION OF ASSESSMENT.—The Board  
25 shall periodically submit a report to the Council con-

1       taining an assessment of whether each company sub-  
2       jected to stricter prudential standards should con-  
3       tinue to be subject to such standards.

4           (2) REVIEW AND RESCISSION.—The Council  
5       shall—

6           (A) review the assessment submitted pur-  
7       suant to paragraph (1) and any information or  
8       recommendation submitted by members of the  
9       Council regarding whether a financial holding  
10      company subject to stricter standards continues  
11      to merit stricter prudential standards; and

12          (B) rescind the action subjecting a com-  
13      pany to stricter prudential standards if the  
14      Council determines that the company no longer  
15      meets the conditions for being subjected to  
16      stricter prudential standards in subsections (a)  
17      and (b).

18      (e) APPEAL.—

19          (1) ADMINISTRATIVE.—The Council and the  
20      Board, in an executive capacity on behalf of the  
21      Council, shall establish a procedure through which a  
22      financial company that has been subjected to stricter  
23      prudential standards in accordance with this section  
24      may appeal being subjected to stricter prudential  
25      standards.

1           (2) JUDICIAL REVIEW.—Any financial company  
2           which has been subjected to stricter prudential  
3           standards may seek judicial review by filing a peti-  
4           tion for such review in the United States Court of  
5           Appeals for the District of Columbia.

6           (f) EFFECT OF COUNCIL DECISION.—

7           (1) APPLICATION OF FEDERAL LAWS.—

8           (A) APPLICATION OF BANK HOLDING COM-  
9           PANY ACT AND FEDERAL DEPOSIT INSURANCE  
10          ACT.—A financial company subject to stricter  
11          standards that does not own a bank (as defined  
12          in section 2 of the Bank Holding Company Act  
13          of 1956) and that is not a foreign bank or com-  
14          pany that is treated as a bank holding company  
15          under section 8 of the International Banking  
16          Act of 1978 shall be subject to section 4, sub-  
17          sections (b), (c), (d), (e), (f), and (g) of section  
18          5, and section 8 of the Bank Holding Company  
19          Act of 1956, and section 8 of the Federal De-  
20          posit Insurance Act in the same manner and to  
21          the same extent as if such financial holding  
22          company subject to stricter standards were a  
23          bank holding company that has elected to be a  
24          financial holding company (as such terms are  
25          defined in the Bank Holding Company Act of

1           1956), its subsidiaries were subsidiaries of a  
2           bank holding company, and the Board was its  
3           appropriate Federal banking agency (as such  
4           term is defined under the Federal Deposit In-  
5           surance Act).

6           (B) BOARD AUTHORITY.—For purposes of  
7           administering and enforcing the provisions of  
8           this title, the Board may take any action with  
9           respect to a financial holding company subject  
10          to stricter standards described in subparagraph  
11          (A) or its subsidiaries under the authorities de-  
12          scribed in subparagraph (A) as if such financial  
13          holding company subject to stricter standards  
14          were a bank holding company that has elected  
15          to be a financial holding company (as such  
16          terms are defined in the Bank Holding Com-  
17          pany Act of 1956), its subsidiaries were subsidi-  
18          aries of a bank holding company, and the  
19          Board was its appropriate Federal banking  
20          agency (as such term is defined under the Fed-  
21          eral Deposit Insurance Act).

22          (2) APPLICATION OF ACTIVITY RESTRICTIONS  
23          AND INTERMEDIATE HOLDING COMPANY REQUIRE-  
24          MENTS.—

1 (A) IN GENERAL.—Except as provided in  
2 subparagraphs (B), (C), (K), and (M)—

3 (i) a financial holding company sub-  
4 ject to stricter standards that conducts ac-  
5 tivities that do not comply with section 4  
6 of the Bank Holding Company Act shall be  
7 required to establish or designate an inter-  
8 mediate holding company through which it  
9 conducts activities of the company that are  
10 determined to be financial in nature or in-  
11 cidental thereto under section 4(k) of such  
12 Act; and

13 (ii) such intermediate holding com-  
14 pany shall be the financial holding com-  
15 pany subject to stricter standards for pur-  
16 poses of this title.

17 (B) EXCEPTIONS FROM INTERMEDIATE  
18 HOLDING COMPANY REQUIREMENTS.—

19 (i) GENERAL REQUIREMENT FOR  
20 BOARD TO CONSIDER EXCEPTIONS.—Be-  
21 fore such time as a financial holding com-  
22 pany subject to stricter standards is re-  
23 quired to establish or designate an inter-  
24 mediate holding company, and in consulta-  
25 tion with the financial holding company

1 subject to stricter standards and any ap-  
2 appropriate Federal or State financial regu-  
3 lators (and, in the case of a financial hold-  
4 ing company subject to stricter standards  
5 that is an insurance company, the Federal  
6 Insurance Office)—

7 (I) the Board shall consider  
8 whether to grant any of the exemp-  
9 tions described under subparagraph  
10 (C), in accordance with that provision;  
11 and

12 (II) the Board, at the request of  
13 a financial holding company subject to  
14 stricter standards that is predomi-  
15 nantly engaged in activities that are  
16 determined to be financial in nature  
17 or incidental thereto under section  
18 4(k) of the Bank Holding Company  
19 Act, shall consider whether to exempt  
20 the financial holding company subject  
21 to stricter standards from the require-  
22 ment to establish an intermediate  
23 holding company, taking into consid-  
24 eration paragraph (2)(L), and the ex-  
25 tent to which the exemption would: fa-

1 cilitate the extension of credit to indi-  
2 viduals, households and businesses;  
3 improve efficiency or customer service  
4 or result in other public benefits; po-  
5 tentially threaten the safety and  
6 soundness of the financial holding  
7 company or any of its subsidiaries; po-  
8 tentially increase systemic risk or  
9 threaten the stability of the overall fi-  
10 nancial system; potentially result in  
11 unfair competition; and potentially  
12 have anticompetitive effects that  
13 would not be outweighed by public  
14 benefits.

15 (ii) BOARD DETERMINATION NOT TO  
16 EXEMPT.—

17 (I) IN GENERAL.—If the Board  
18 determines not to exempt the financial  
19 holding company subject to stricter  
20 standards from the requirement to es-  
21 tablish an intermediate holding com-  
22 pany, the financial holding company  
23 subject to stricter standards shall es-  
24 tablish such intermediate holding

1 company within 90 days after the  
2 Board's determination.

3 (II) EXTENSION OF PERIOD.—

4 The Board may extend the time by  
5 which the financial holding company  
6 subject to stricter standards is re-  
7 quired to establish an intermediate  
8 holding company for an additional  
9 reasonable period of time, not to ex-  
10 ceed 180 days.

11 (iii) BOARD DETERMINATION TO EX-  
12 EMPT.—

13 (I) IN GENERAL.—If the Board  
14 grants the requested exemption from  
15 the requirement to establish an inter-  
16 mediate holding company, the finan-  
17 cial holding company subject to strict-  
18 er standards shall at all times remain  
19 predominantly engaged in activities  
20 that are determined to be financial in  
21 nature or incidental thereto under sec-  
22 tion 4(k) of the Bank Holding Com-  
23 pany Act of 1956, and shall be the fi-  
24 nancial holding company subject to



1 stricter standards for purposes of this  
2 title.

3 (II) SUBSEQUENT LOSS OF EX-  
4 EMPTION.—Upon a determination by  
5 the Board, in consultation with any  
6 relevant Federal or State regulators  
7 of the financial holding company sub-  
8 ject to stricter standards, and, in the  
9 case of a financial holding company  
10 subject to stricter standards that is an  
11 insurance company, the Federal In-  
12 surance Office, that the financial  
13 holding company subject to stricter  
14 standards fails to comply with this  
15 subsection, the financial holding com-  
16 pany subject to stricter standards  
17 shall lose the exemption from the in-  
18 termediate holding company require-  
19 ment and shall establish an inter-  
20 mediate holding company within the  
21 time periods described in clause  
22 (ii)(I).

23 (C) RULES AND EXEMPTIONS.—In addi-  
24 tion to any other authority of the Board, the  
25 Board shall prescribe rules and regulations or

1 issue orders providing for the establishment and  
2 registration of intermediate holding companies  
3 and shall provide exemptions from the require-  
4 ments of this Act (including an order in re-  
5 sponse to a request from an affected company),  
6 including, but not limited to, exemptions—

7 (i) with respect to the requirement to  
8 conduct such activities which are financial  
9 in nature, as determined under section  
10 4(k) of the Bank Holding Company Act of  
11 1956, other than financial activities con-  
12 ducted for such company or any affiliate,  
13 including any financial activity engaged in  
14 for both the company or an affiliate and a  
15 nonaffiliate as permitted under section  
16 4(f)(2)(D) of the Bank Holding Company  
17 Act of 1956 and financial activities involv-  
18 ing the provision of credit for the purchase  
19 or lease of products or services from an af-  
20 filiate or for the purchase or lease of prod-  
21 ucts produced by an affiliate of such inter-  
22 mediate holding company that is not a sub-  
23 sidiary of such intermediate holding com-  
24 pany, through such intermediate holding

1 company, if the Board makes a finding  
2 that such exemption—

3 (I)(aa) would facilitate the exten-  
4 sion of credit to individuals, house-  
5 holds, and businesses; or

6 (bb) would allow for greater effi-  
7 ciency, improved customer service, or  
8 other public benefits in the conduct of  
9 financial activities by affected compa-  
10 nies;

11 (II) would not threaten the safety  
12 and soundness of the intermediate  
13 holding company, or of any insured  
14 depository institution or other sub-  
15 sidiary of the intermediate holding  
16 company;

17 (III) would not increase systemic  
18 risk or threaten the stability of the  
19 overall financial system;

20 (IV) would not, as applied to the  
21 activities that are the subject of the  
22 rule, order or request, result in sub-  
23 stantially lessening competition, or to  
24 tend to create a monopoly, or which in  
25 any other manner would be in re-

1           strait of trade, unless the Board  
2           finds that the anticompetitive effects  
3           are outweighed in the public interest  
4           by the probable effect of the exemp-  
5           tion in meeting the convenience and  
6           needs of the community to be served;  
7           and

8                         (V) would meet the financial and  
9                         managerial standards for financial  
10                        holding companies described in sub-  
11                        paragraphs (A) and (B) of section  
12                        4(j)(4) of the Bank Holding Company  
13                        Act of 1956; and

14                       (ii) from the affiliate transaction re-  
15                        quirements of paragraph (F), including but  
16                        not limited to exemptions that would facili-  
17                        tate extensions of credit to unaffiliated  
18                        persons for the personal, household, or  
19                        business purposes of such unaffiliated per-  
20                        sons, unless the Board makes a finding  
21                        that such exemption—

22                        (I) is not consistent with the pur-  
23                        poses of section 23A and section 23B  
24                        of the Federal Reserve Act;

1 (II) would threaten the safety  
2 and soundness of the intermediate  
3 holding company, or any insured de-  
4 pository institution or other subsidiary  
5 of the intermediate holding company;

6 (III) would increase systemic risk  
7 or threaten the stability of the overall  
8 financial system;

9 (IV) would not, as applied to the  
10 activities that are the subject of the  
11 rule, order or request result in sub-  
12 stantially lessening competition, or to  
13 tend to create a monopoly, or which in  
14 any other manner would be in re-  
15 straint of trade, unless the Board  
16 finds that the anticompetitive effects  
17 are outweighed in the public interest  
18 by the probable effect of the exemp-  
19 tion in meeting the convenience and  
20 needs of the community to be served;  
21 or

22 (V) would permit an unfair, de-  
23 ceptive, abusive, or unsafe-and-un-  
24 sound act or practice.

1           (D) PARENT COMPANY REPORTS.—The  
2 Board may, from time to time, require reports  
3 under oath from a company that controls an in-  
4 termediate holding company, and appropriate  
5 officers or directors of such company, solely for  
6 purposes of ensuring compliance with the provi-  
7 sions of this section (including assessing the  
8 company's ability to serve as a source of finan-  
9 cial strength pursuant to paragraph (J)) and  
10 enforcing such compliance.

11           (E) LIMITED PARENT COMPANY ENFORCE-  
12 MENT.—

13           (i) IN GENERAL.—In addition to any  
14 other power of the Board, the Board may  
15 enforce compliance with the provisions of  
16 this subsection which are applicable to any  
17 company described in paragraph (1) under  
18 section 8 of the Federal Deposit Insurance  
19 Act and such company or bank shall be  
20 subject to such section (for such purposes)  
21 in the same manner and to the same ex-  
22 tent as if such company were a bank hold-  
23 ing company.

24           (ii) APPLICATION OF OTHER ACT.—  
25 Any violation of this subsection by any

1 company that controls an intermediate  
2 holding company may also be treated as a  
3 violation of the Federal Deposit Insurance  
4 Act for purposes of clause (i).

5 (iii) NO EFFECT ON OTHER AUTHOR-  
6 ITY.—No provision of this subparagraph  
7 shall be construed as limiting any author-  
8 ity of the Board or any other Federal  
9 agency under any other provision of law.

10 (F) RESTRICTIONS ON AFFILIATE TRANS-  
11 ACTIONS.—

12 (i) SECTION 23A AND 23B APPLICA-  
13 BILITY.—

14 (I) IN GENERAL.—Transactions  
15 between an intermediate holding com-  
16 pany (or any nonbank subsidiary  
17 thereof) and any affiliate not con-  
18 trolled by the intermediate holding  
19 company shall be subject to the re-  
20 strictions and limitations contained in  
21 section 23A and section 23B of the  
22 Federal Reserve Act as if the inter-  
23 mediate holding company were a  
24 member bank, provided, that a trans-  
25 action that otherwise would be a cov-

1           ered transaction shall not be a covered  
2           transaction if the transaction is in  
3           connection with the bona fide acquisi-  
4           tion or lease by an unaffiliated person  
5           of assets, goods or services but shall  
6           be subject to review under section  
7           23A(f)(1) of such Act.

8                       (II) COVERED TRANSACTIONS.—  
9           A depository institution controlled by  
10          an intermediate holding company may  
11          not engage in a covered transaction  
12          (as defined in section 23A(b)(7) of the  
13          Federal Reserve Act) with any affil-  
14          iate that is not the intermediate hold-  
15          ing company or a subsidiary of the in-  
16          termediate holding company; provided  
17          that, for purposes of the prohibition, a  
18          transaction that otherwise would be a  
19          covered transaction shall not be a cov-  
20          ered transaction if the transaction is  
21          in connection with the bona fide ac-  
22          quisition or lease by an unaffiliated  
23          person of assets, goods or services,  
24          but shall be subject to review under



1 section 23A(f)(1) of the Federal Re-  
2 serve Act.

3 (ii) RULE OF CONSTRUCTION.—No  
4 provision of this subsection shall be con-  
5 strued as exempting any subsidiary insured  
6 depository institution of an intermediate  
7 holding company from compliance with sec-  
8 tion 23A or 23B of the Federal Reserve  
9 Act with respect to each affiliate of such  
10 institution (as defined in section 23A or  
11 23B of the Federal Reserve Act), including  
12 any affiliate that is the intermediate hold-  
13 ing company or subsidiary of the inter-  
14 mediate holding company.

15 (G) TYING PROVISIONS.—A company that  
16 directly or indirectly controls an intermediate  
17 holding company shall be—

18 (i) treated as a bank holding company  
19 for purposes of section 106 of the Bank  
20 Holding Company Act Amendments of  
21 1970 and section 22(h) of the Federal Re-  
22 serve Act and any regulation prescribed  
23 under any such section; and

24 (ii) subject to the restrictions of sec-  
25 tion 106 of the Bank Holding Company

1 Act Amendments of 1970, in connection  
2 with any transaction involving the products  
3 or services of such company or affiliate  
4 and those of a bank affiliate, treated as if  
5 such company or affiliate were a bank  
6 holding company and such bank were a  
7 subsidiary of a bank holding company.

8 (H) FINANCIAL HOLDING COMPANY RE-  
9 QUIREMENTS.—An intermediate holding com-  
10 pany shall be subject to—

11 (i) the conditions for engaging in ex-  
12 panded financial activities in section 4(l) of  
13 the Bank Holding Company Act of 1956;  
14 and

15 (ii) the provisions applicable to finan-  
16 cial holding companies that fail to meet  
17 certain requirements in section 4(m) of the  
18 Bank Holding Company Act of 1956.

19 (I) INDEPENDENCE OF INTERMEDIATE  
20 HOLDING COMPANY.—

21 (i) No less than 25 percent of the  
22 members of the board of directors of an in-  
23 termediate holding company, and each sub-  
24 sidiary of an intermediate holding com-  
25 pany, shall be independent of the parent

1 company of the intermediate holding com-  
2 pany and any subsidiary of such parent  
3 company. For purposes of this subsection,  
4 a director shall be independent of the par-  
5 ent company if such person is not cur-  
6 rently serving, and has not within the pre-  
7 vious 2-year period served, as a director,  
8 officer, or employee of any affiliate of the  
9 intermediate holding company that is not a  
10 subsidiary of the intermediate holding com-  
11 pany.

12 (ii) No executive officer of an inter-  
13 mediate holding company or any subsidiary  
14 of an intermediate holding company may  
15 serve as a director, officer, or employee of  
16 an affiliate of the intermediate holding  
17 company that is not a subsidiary of the in-  
18 termediate holding company.

19 (iii) The Board shall issue regulations  
20 that require effective legal and operational  
21 separation of the functions of an inter-  
22 mediate holding company from its affiliates  
23 that are not subsidiaries of such inter-  
24 mediate holding company, provided, how-  
25 ever that such rules shall not require oper-

1           ational separation of internal functions in-  
2           cluding, but not limited to, human re-  
3           sources management, employee benefit  
4           plans, and information technology.

5           (J) SOURCE OF STRENGTH.—A company  
6           that directly or indirectly controls an inter-  
7           mediate holding company shall serve as a  
8           source of financial strength to its subsidiary in-  
9           termediate holding company.

10          (K) ACTIVITIES CONDUCTED ABROAD.—  
11          Section 4 of the Bank Holding Company Act of  
12          1956 shall not apply to any activities that a for-  
13          eign financial holding company subject to strict-  
14          er standards conducts solely outside the United  
15          States if such activities are conducted solely by  
16          a company or other entity that is located out-  
17          side the United States.

18          (L) FLEXIBLE APPLICATION.—In applying  
19          the activity restrictions and ownership limita-  
20          tions of section 4 of the Bank Holding Com-  
21          pany Act of 1956 to financial holding compa-  
22          nies subject to stricter standards described in  
23          paragraph (1)(A), the Board shall flexibly  
24          adapt such requirements taking into account  
25          the usual and customary practices in the busi-

1           ness sector of the financial company subject to  
2           stricter standards so as to avoid unnecessary  
3           burden and expense.

4           (M) CONDUCT OF ACTIVITIES.—A com-  
5           pany that is required to form an intermediate  
6           holding company shall conduct all such activi-  
7           ties which are permissible for a financial hold-  
8           ing company, as determined under section 4(k)  
9           of the Bank Holding Company Act of 1956,  
10          through such intermediate holding company,  
11          other than—

12           (i) internal financial activities con-  
13           ducted for such company or any affiliate,  
14           including, but not limited to internal treas-  
15           ury, investment, and employee benefit  
16           functions, provided that with respect to  
17           any internal financial activity engaged in  
18           for the company or an affiliate and a non-  
19           affiliate during the year prior to date of  
20           enactment, the company (or an affiliate  
21           not a subsidiary of the intermediate com-  
22           pany) may continue to engage in that ac-  
23           tivity so long as at least  $\frac{2}{3}$  of the assets  
24           or  $\frac{2}{3}$  of the revenues generated from the  
25           activity are from or attributable to the

1 company or an affiliate, subject to review  
2 by the Board to determine whether engag-  
3 ing in such activity presents undue risk to  
4 the intermediate company or undue sys-  
5 temic risk; and

6 (ii) financial activities involving the  
7 provision of credit for the purchase or  
8 lease of products or services from an affil-  
9 iate or for the purchase or lease of prod-  
10 ucts produced by an affiliate of such inter-  
11 mediate holding company that is not a sub-  
12 sidiary of such intermediate holding com-  
13 pany, in accordance with regulations pre-  
14 scribed by or orders issued by the Board,  
15 pursuant to this paragraph.

16 (N) PROHIBITION ON CERTAIN ACTIVI-  
17 TIES.—An intermediate holding company shall  
18 be prohibited from conducting any nonbanking  
19 activities or investing in any nonbank compa-  
20 nies other than those permissible for a financial  
21 holding company under sections 3 and 4 of the  
22 Bank Holding Company Act of 1956, unless the  
23 Board specifically determines otherwise in ac-  
24 cordance with subparagraph (C), and provided  
25 that, for purposes of this paragraph, a company

1 designated as an intermediate holding company  
2 and described under subparagraph (P) (or any  
3 permitted successor) is not prohibited from con-  
4 tinuing to engage in any impermissible activity  
5 in which it was engaged continuously during the  
6 6 months prior to the date of enactment, from  
7 owning any shares or types of assets related to  
8 such activity, or continuing to own such other  
9 shares or assets that it owned on the date of  
10 enactment.

11 (O) RULE OF CONSTRUCTION.—For pur-  
12 poses of this paragraph, designation of an al-  
13 ready established intermediate company that  
14 will serve as the intermediate holding company  
15 shall satisfy the requirement to establish an in-  
16 termediate holding company, provided that such  
17 existing intermediate holding company complies  
18 with all other provisions applicable to an inter-  
19 mediate holding company.

20 (P) LIMITATIONS ON AUTHORITY OF COM-  
21 MERCIAL PARENT.—A company that is not a  
22 bank holding company or treated as a bank  
23 holding company pursuant to section 8(a) of  
24 the International Bank Act of 1978 that has  
25 been notified that it is a financial holding com-

1           pany subject to stricter standards, pursuant to  
2           section 124 of the Financial Stability Improve-  
3           ment Act of 2010, shall—

4                   (i) not be deemed to be, or treated as,  
5                   a bank holding company, solely because of  
6                   its ownership or control of an intermediate  
7                   holding company; and

8                   (ii) not be subject to the Bank Hold-  
9                   ing Company Act of 1956, except for such  
10                  provisions as are explicitly made applicable  
11                  in this paragraph.

12           (3) LEVERAGE LIMITATION.—

13                   (A) IN GENERAL.—The Board shall re-  
14                   quire each financial holding company subject to  
15                   stricter standards to maintain a debt to equity  
16                   ratio of no more than 15 to 1, and the Board  
17                   shall issue regulations containing procedures  
18                   and timelines for how a financial holding com-  
19                   pany subject to stricter standards with a debt  
20                   to equity ratio of more than 15 to 1 at the time  
21                   such company becomes a financial holding com-  
22                   pany subject to stricter standards shall reduce  
23                   such ratio.



1 (B) EXEMPTION.—The provisions of sub-  
2 paragraph (A) shall not apply to any Federal  
3 home loan bank.

4 **SEC. 125. STRICTER PRUDENTIAL STANDARDS FOR CER-**  
5 **TAIN FINANCIAL HOLDING COMPANIES FOR**  
6 **FINANCIAL STABILITY PURPOSES.**

7 (a) STRICTER PRUDENTIAL STANDARDS.—

8 (1) IN GENERAL.—To mitigate risks to finan-  
9 cial stability and the economy posed by a financial  
10 holding company that has been subjected to stricter  
11 prudential standards in accordance with section 124,  
12 the Board, as agent of the Council, shall impose  
13 stricter prudential standards on such company. Such  
14 standards shall be designed to maximize financial  
15 stability taking costs to long-term financial and eco-  
16 nomic growth into account, be heightened when com-  
17 pared to the standards that otherwise would apply to  
18 financial holding companies that are not subjected to  
19 stricter prudential standards pursuant to this sub-  
20 title (including by addressing additional or different  
21 types of risks than otherwise applicable standards),  
22 and reflect the potential risk posed to financial sta-  
23 bility by the financial holding company subject to  
24 stricter standards.

25 (2) STANDARDS.—

1 (A) REQUIRED STANDARDS.—The stricter  
2 standards imposed by the Board under this sec-  
3 tion shall include—

4 (i) risk-based capital requirements  
5 and leverage limits, unless the Board de-  
6 termines that such requirements are not  
7 appropriate for a financial holding com-  
8 pany subject to stricter standards because  
9 of such company's activities (such as in-  
10 vestment company activities or assets  
11 under management) or structure, in which  
12 case the Board shall apply other standards  
13 that result in appropriately stringent con-  
14 trols.

15 (ii) liquidity requirements;

16 (iii) concentration requirements (as  
17 specified in subsection (c));

18 (iv) prompt corrective action require-  
19 ments (as specified in subsection (e));

20 (v) resolution plan requirements (as  
21 specified in subsection (f)); and

22 (vi) overall risk management require-  
23 ments.

24 (B) ADDITIONAL STANDARDS.—The  
25 heightened standards imposed by the Board

1 under this section also may include short-term  
2 debt limits prescribed in accordance with sub-  
3 section (d) and any other prudential standards  
4 that the Board deems advisable, including tak-  
5 ing actions to mitigate systemic risk.

6 (C) CONSULTATION WITH FEDERAL FI-  
7 NANCIAL REGULATORY AGENCIES AND THE  
8 FEDERAL INSURANCE OFFICE.—The Board, in  
9 developing stricter prudential standards under  
10 this subsection, shall consult with other Federal  
11 financial regulatory agencies with respect to  
12 any standard that is likely to have a significant  
13 impact on a functionally regulated subsidiary,  
14 or a subsidiary depository institution, of a fi-  
15 nancial holding company that is subject to  
16 stricter prudential standards under this title.  
17 With respect to a financial holding company  
18 subject to stricter standards that is an insur-  
19 ance company or any insurance company sub-  
20 sidiary of such a financial holding company  
21 subject to stricter standards, the Board shall  
22 also consult with the Federal Insurance Office.

23 (3) APPLICATION OF REQUIRED STANDARDS.—  
24 In imposing prudential standards under this section,  
25 the Board—

1 (A) may differentiate among financial  
2 holding companies subject to stricter standards  
3 on an individual basis or by category, taking  
4 into consideration their capital structure, risk,  
5 complexity, financial activities, the financial ac-  
6 tivities of their subsidiaries, and any other fac-  
7 tors that the Board deems appropriate; and

8 (B) shall take into consideration whether  
9 and to what extent a financial holding company  
10 subject to stricter standards that is not a bank  
11 holding company or treated as a bank holding  
12 company owns or controls a depository institu-  
13 tion and shall adapt the prudential standards  
14 applied to such company as appropriate in light  
15 of any predominant line of business of such  
16 company, including assets under management  
17 or other activities for which capital require-  
18 ments are not appropriate.

19 (4) WELL CAPITALIZED AND WELL MAN-  
20 AGED.—A financial holding company subject to  
21 stricter standards shall at all times after it is subject  
22 to such standards be well capitalized and well man-  
23 aged as defined by the Board.

24 (5) APPLICATION TO FOREIGN FINANCIAL COM-  
25 PANIES.—The Board shall prescribe regulations re-

1        regarding the application of stricter prudential stand-  
2        ards to a foreign financial parent and to a Federal  
3        or State branch, subsidiary, or operating entity that  
4        is owned or controlled by a foreign financial parent,  
5        giving due regard to principles of national treatment  
6        and equality of competitive opportunity and taking  
7        into account the extent to which the foreign financial  
8        parent is subject on a consolidated basis to home  
9        country standards comparable to those applied to fi-  
10       nancial holding companies in the United States.

11            (6) INCLUSION OF OFF BALANCE SHEET AC-  
12        TIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

13            (A) IN GENERAL.—In the case of any fi-  
14        nancial holding company subject to stricter  
15        standards, the computation of capital require-  
16        ments shall take into account off balance sheet  
17        activities for such a company.

18            (B) EXEMPTION.—If the Board determines  
19        that an exemption from the requirements under  
20        subparagraph (A) is appropriate, the Board  
21        may exempt a financial holding company sub-  
22        ject to stricter standards from the requirements  
23        under subparagraph (A) or any transaction or  
24        transactions engaged in by such a company.

1 (C) OFF BALANCE SHEET ACTIVITIES DE-  
2 FINED.—For purposes of this paragraph, the  
3 term “off balance sheet activities” means a li-  
4 ability that is not currently a balance sheet li-  
5 ability but may become one upon the happening  
6 of some future event, including the following  
7 transactions, to the extent they may create a li-  
8 ability:

9 (i) Direct credit substitutes in which a  
10 bank substitutes its own credit for a third  
11 party, including standby letters of credit.

12 (ii) Irrevocable letters of credit that  
13 guarantee repayment of commercial paper  
14 or tax-exempt securities.

15 (iii) Risk participation in bankers’ ac-  
16 ceptances.

17 (iv) Sale and repurchase agreements.

18 (v) Asset sales with recourse against  
19 the seller.

20 (vi) Interest rate swaps.

21 (vii) Credit swaps.

22 (viii) Commodity contracts.

23 (ix) Forward contracts.

24 (x) Securities contracts.

1 (xi) Such other activities or trans-  
2 actions as the Board may, by rule, define.

3 (b) PRUDENTIAL STANDARDS AT FUNCTIONALLY  
4 REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSI-  
5 TORY INSTITUTIONS.—

6 (1) BOARD AUTHORITY TO RECOMMEND STAND-  
7 ARDS.—With respect to a functionally regulated sub-  
8 sidiary (as such term is defined in section 5 of the  
9 Bank Holding Company Act) or a subsidiary deposi-  
10 tory institution of a financial holding company sub-  
11 ject to stricter standards, the Board may rec-  
12 ommend that the relevant Federal financial regu-  
13 latory agency for such functionally regulated sub-  
14 sidiary or subsidiary depository institution prescribe  
15 stricter prudential standards on such functionally  
16 regulated subsidiary or subsidiary depository institu-  
17 tion. Any standards recommended by the Board  
18 under this section shall be of the same type as those  
19 described in subsection (a)(2) that the Board is re-  
20 quired or authorized to impose directly on the finan-  
21 cial holding company subject to stricter standards.

22 (2) AGENCY AUTHORITY TO IMPLEMENT  
23 HEIGHTENED STANDARDS AND SAFEGUARDS.—Each  
24 Federal financial regulatory agency that receives a  
25 Board recommendation under paragraph (1) is au-

1       thorized to impose, require reports regarding, exam-  
2       ine for compliance with, and enforce standards  
3       under this subsection with respect to the entities  
4       such agency regulates as described in section  
5       116(b)(6). This authority is in addition to and does  
6       not limit any other authority of the Federal financial  
7       regulatory agencies. Compliance by an entity with  
8       actions taken by a Federal financial regulatory agen-  
9       cy under this section shall be enforceable in accord-  
10      ance with the statutes governing the respective agen-  
11      cy's jurisdiction over the entity as if the agency ac-  
12      tion were taken under those statutes.

13           (3) IMPOSITION OF STANDARDS.—Standards  
14      imposed by a Federal financial regulatory agency  
15      under this subsection shall be the standards rec-  
16      ommended by the Board in accordance with para-  
17      graph (1) or any other similar standards that the  
18      Board deems acceptable after consultation between  
19      the Board and the primary financial regulatory  
20      agency and, with respect to an insurance company,  
21      the Federal Insurance Office.

22           (4) FEDERAL FINANCIAL REGULATORY AGENCY  
23      RESPONSE; NOTICE TO COUNCIL AND BOARD.—A  
24      Federal financial regulatory agency shall notify the  
25      Council and the Board in writing on whether and to



1        what extent the agency has imposed the stricter pru-  
2        dential standards described in paragraph (3) within  
3        60 days of the Board's recommendation under para-  
4        graph (1). A Federal financial regulatory agency  
5        that fails to impose such standards shall provide  
6        specific justification for such failure to act in the  
7        written notice from the agency to the Council and  
8        Board.

9        (c) CONCENTRATION LIMITS FOR FINANCIAL HOLD-  
10        ING COMPANIES SUBJECT TO STRICTER STANDARDS.—

11            (1) STANDARDS.—In order to limit the risks  
12            that the failure of any company could pose to a fi-  
13            nancial holding company subject to stricter stand-  
14            ards and to the stability of the United States finan-  
15            cial system, the Board, by regulation, shall prescribe  
16            standards that limit the risks posed by the exposure  
17            of a financial holding company subject to stricter  
18            standards to any other company.

19            (2) LIMITATION ON CREDIT EXPOSURE.—The  
20            regulations prescribed by the Board shall prohibit  
21            each financial holding company subject to stricter  
22            standards from having credit exposure to any unaf-  
23            filiated company that exceeds 25 percent of capital  
24            stock and surplus of the financial holding company  
25            subject to stricter standards, or such lower amount

1 as the Board may determine by regulation to be nec-  
2 essary to mitigate risks to financial stability.

3 (3) CREDIT EXPOSURE.—For purposes of this  
4 subsection and with respect to a financial holding  
5 company subject to stricter standards, the term  
6 “credit exposure” to a company means—

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

9 (B) all repurchase agreements and reverse  
10 repurchase agreement with the company;

11 (C) all securities borrowing and lending  
12 transactions with the company to the extent  
13 that such transactions create credit exposure of  
14 the financial holding company subject to strict-  
15 er standards to the company;

16 (D) all guarantees, acceptances, or letters  
17 of credit (including endorsement or standby let-  
18 ters of credit) issued on behalf of the company;

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

21 (F) counterparty credit exposure to the  
22 company in connection with a derivative trans-  
23 action between the financial holding company  
24 subject to stricter standards and the company;  
25 and

1 (G) any other similar transactions that the  
2 Board by regulation determines to be a credit  
3 exposure for purposes of this section.

4 (4) **ATTRIBUTION RULE.**—For purposes of this  
5 subsection, any transaction by a financial holding  
6 company subject to stricter standards with any per-  
7 son is deemed a transaction with a company to the  
8 extent that the proceeds of the transaction are used  
9 for the benefit of, or transferred to, that company.

10 (5) **RULEMAKING.**—The Board may issue such  
11 regulations and orders, including definitions con-  
12 sistent with this subsection, as may be necessary to  
13 administer and carry out the purpose of this sub-  
14 section.

15 (6) **EXEMPTIONS.**—

16 (A) **IN GENERAL.**—

17 (i) **FEDERAL HOME LOAN BANKS.**—  
18 This subsection shall not apply to any Fed-  
19 eral home loan bank, but Federal home  
20 loan banks are not exempt from any other  
21 provision of this title except as specifically  
22 provided in this title.

23 (ii) **APPLICABILITY TO OTHER ENTI-**  
24 **TIES.**—The Federal National Mortgage As-  
25 sociation and the Federal Home Loan

1 Mortgage Corporation are not exempt from  
2 any provision of this title except as specifi-  
3 cally provided in this title.

4 (B) REGULATIONS.—The Board may, by  
5 regulation or order, exempt transactions, in  
6 whole or in part, from the definition of credit  
7 exposure if it finds that the exemption is in the  
8 public interest and consistent with the purpose  
9 of this subsection.

10 (7) TRANSITION PERIOD.—This subsection and  
11 any regulations and orders of the Board under the  
12 authority of this subsection shall not take effect  
13 until the date that is 3 years from the date of the  
14 enactment of this subsection. The Board may extend  
15 the effective date for up to 2 additional years to pro-  
16 mote financial stability.

17 (d) SHORT-TERM DEBT LIMITS FOR CERTAIN FI-  
18 NANCIAL HOLDING COMPANIES.—

19 (1) IN GENERAL.—In order to limit the risks  
20 that an overaccumulation of short-term debt could  
21 pose to financial holding companies and to the sta-  
22 bility of the United States financial system, the  
23 Board may by regulation prescribe a limit on the  
24 amount of short-term debt, including off-balance  
25 sheet exposures, that may be accumulated by any fi-

1       nancial holding company subject to stricter stand-  
2       ards for purposes of this title.

3           (2) BASIS OF LIMIT.—Any limit prescribed  
4       under paragraph (1) shall be based on a financial  
5       holding company’s short-term debt as a percentage  
6       of its capital stock and surplus or on such other  
7       measure as the Board considers appropriate.

8           (3) SHORT-TERM DEBT DEFINED.—For pur-  
9       poses of this subsection, the term “short-term debt”  
10      means such liabilities with short-dated maturity that  
11      the Board identifies by regulation, except that such  
12      term does not include insured deposits.

13          (4) RULEMAKING AUTHORITY.—In addition to  
14      prescribing regulations under paragraphs (1) and  
15      (3), the Board may prescribe such regulations, in-  
16      cluding definitions consistent with this subsection,  
17      and issue such orders as may be necessary to carry  
18      out this subsection.

19          (5) AUTHORITY TO ISSUE EXEMPTIONS AND  
20      ADJUSTMENTS.—Notwithstanding the Bank Holding  
21      Company Act of 1956 (12 U.S.C. 1841 et seq.), the  
22      Board may, if it determines such action is necessary  
23      to ensure appropriate heightened prudential super-  
24      vision, with respect to a financial holding company  
25      that does not control an insured depository institu-

1           tion, issue to such company an exemption from or  
2           adjustment to the limit prescribed under paragraph  
3           (1).

4           (e) PROMPT CORRECTIVE ACTION FOR FINANCIAL  
5 HOLDING COMPANIES SUBJECT TO STRICTER STAND-  
6 ARDS.—

7           (1) PROMPT CORRECTIVE ACTION REQUIRED.—

8           The Board shall take prompt corrective action to re-  
9           solve the problems of financial holding companies  
10          subject to stricter standards. Except as specifically  
11          provided otherwise, this subsection shall apply only  
12          to financial holding companies that are incorporated  
13          or organized under United States laws.

14          (2) DEFINITIONS.—For purposes of this sec-  
15          tion—

16                 (A) CAPITAL CATEGORIES.—

17                         (i) WELL CAPITALIZED.—A financial  
18                         holding company subject to stricter stand-  
19                         ards is “well capitalized” if it exceeds the  
20                         required minimum level for each relevant  
21                         capital measure.

22                         (ii) UNDERCAPITALIZED.—A financial  
23                         holding company subject to stricter stand-  
24                         ards is “undercapitalized” if it fails to

1 meet the required minimum level for any  
2 relevant capital measure.

3 (iii) SIGNIFICANTLY UNDERCAPITAL-  
4 IZED.—A financial holding company sub-  
5 ject to stricter standards is “significantly  
6 undercapitalized” if it is significantly below  
7 the required minimum level for any rel-  
8 evant capital measure. The Board shall de-  
9 fine by rule or regulation the term “signifi-  
10 cantly undercapitalized” at a threshold the  
11 Board determines to be prudent for the ef-  
12 fective monitoring, management and over-  
13 sight of the financial system.

14 (iv) CRITICALLY UNDERCAPITAL-  
15 IZED.—A financial holding company sub-  
16 ject to stricter standards is “critically  
17 undercapitalized” if it fails to meet any  
18 level specified in paragraph (4)(C)(i).

19 (3) OTHER DEFINITIONS.—

20 (A) AVERAGE.—The “average” of an ac-  
21 counting item (such as total assets or tangible  
22 equity) during a given period means the sum of  
23 that item at the close of business on each busi-  
24 ness day during that period divided by the total  
25 number of business days in that period.

1 (B) CAPITAL DISTRIBUTION.—The term  
2 “capital distribution” means—

3 (i) a distribution of cash or other  
4 property by a financial holding company  
5 subject to stricter standards to its owners  
6 made on account of that ownership, but  
7 not including any dividend consisting only  
8 of shares of the financial holding company  
9 subject to stricter standards or rights to  
10 purchase such shares;

11 (ii) a payment by a financial holding  
12 company subject to stricter standards to  
13 repurchase, redeem, retire, or otherwise ac-  
14 quire any of its shares or other ownership  
15 interests, including any extension of credit  
16 to finance any person’s acquisition of those  
17 shares or interests; and

18 (iii) a transaction that the Board de-  
19 termines, by order or regulation, to be in  
20 substance a distribution of capital to the  
21 owners of the financial holding company  
22 subject to stricter standards.

23 (C) CAPITAL RESTORATION PLAN.—The  
24 term “capital restoration plan” means a plan  
25 submitted under paragraph (6)(B).



1 (D) COMPENSATION.—The term “com-  
2 pensation” includes any payment of money or  
3 provision of any other thing of value in consid-  
4 eration of employment.

5 (E) RELEVANT CAPITAL MEASURE.—The  
6 term “relevant capital measure” means the  
7 measures described in paragraph (4).

8 (F) REQUIRED MINIMUM LEVEL.—The  
9 term “required minimum level” means, with re-  
10 spect to each relevant capital measure, the min-  
11 imum acceptable capital level specified by the  
12 Board by regulation.

13 (G) SENIOR EXECUTIVE OFFICER.—The  
14 term “senior executive officer” has the same  
15 meaning as the term “executive officer” in sec-  
16 tion 22(h) of the Federal Reserve Act (12  
17 U.S.C. 375b).

18 (4) CAPITAL STANDARDS.—

19 (A) RELEVANT CAPITAL MEASURES.—

20 (i) IN GENERAL.—Except as provided  
21 in clause (ii)(II), the capital standards pre-  
22 scribed by the Board under section  
23 125(a)(2) shall include—

24 (I) a leverage limit; and

1 (II) a risk-based capital require-  
2 ment.

3 (ii) OTHER CAPITAL MEASURES.—The  
4 Board may by regulation—

5 (I) establish any additional rel-  
6 evant capital measures to carry out  
7 this section; or

8 (II) rescind any relevant capital  
9 measure required under clause (i)  
10 upon determining that the measure is  
11 no longer an appropriate means for  
12 carrying out this section.

13 (B) CAPITAL CATEGORIES GENERALLY.—  
14 The Board shall, by regulation, specify for each  
15 relevant capital measure the levels at which a  
16 financial holding company subject to stricter  
17 standards is well capitalized, undercapitalized,  
18 and significantly undercapitalized.

19 (C) CRITICAL CAPITAL.—

20 (i) BOARD TO SPECIFY LEVEL.—

21 (I) LEVERAGE LIMIT.—The  
22 Board shall, by regulation, specify the  
23 ratio of tangible equity to total assets  
24 at which a financial holding company

1 subject to stricter standards is criti-  
2 cally undercapitalized.

3 (II) OTHER RELEVANT CAPITAL  
4 MEASURES.—The Board may, by reg-  
5 ulation, specify for 1 or more other  
6 relevant capital measures, the level at  
7 which a financial holding company  
8 subject to stricter standards is criti-  
9 cally undercapitalized.

10 (ii) LEVERAGE LIMIT RANGE.—The  
11 level specified under clause (i)(I) shall re-  
12 quire tangible equity in an amount—

13 (I) not less than 2 percent of  
14 total assets; and

15 (II) except as provided in sub-  
16 clause (I), not more than 65 percent  
17 of the required minimum level of cap-  
18 ital under the leverage limit.

19 (5) CAPITAL DISTRIBUTIONS RESTRICTED.—

20 (A) IN GENERAL.—A financial holding  
21 company subject to stricter standards shall  
22 make no capital distribution if, after making  
23 the distribution, the financial holding company  
24 subject to stricter standards would be under-  
25 capitalized.

1 (B) EXCEPTION.—Notwithstanding sub-  
2 paragraph (A), the Board may permit a finan-  
3 cial holding company subject to stricter stand-  
4 ards to repurchase, redeem, retire, or otherwise  
5 acquire shares or ownership interests if the re-  
6 purchase, redemption, retirement, or other ac-  
7 quisition—

8 (i) is made in connection with the  
9 issuance of additional shares or obligations  
10 of the financial holding company subject to  
11 stricter standards in at least an equivalent  
12 amount; and

13 (ii) will reduce the financial obliga-  
14 tions of the financial holding company sub-  
15 ject to stricter standards or otherwise im-  
16 prove the financial condition of the finan-  
17 cial holding company subject to stricter  
18 standards.

19 (6) PROVISIONS APPLICABLE TO UNDER-  
20 CAPITALIZED FINANCIAL HOLDING COMPANY SUB-  
21 JECT TO STRICTER STANDARDS.—

22 (A) MONITORING REQUIRED.—The Board  
23 shall—

1 (i) closely monitor the condition of  
2 any undercapitalized financial holding com-  
3 pany subject to stricter standards;

4 (ii) closely monitor compliance by any  
5 undercapitalized financial holding company  
6 subject to stricter standards with capital  
7 restoration plans, restrictions, and require-  
8 ments imposed under this section; and

9 (iii) periodically review the plan, re-  
10 strictions, and requirements applicable to  
11 any undercapitalized financial holding com-  
12 pany subject to stricter standards to deter-  
13 mine whether the plan, restrictions, and  
14 requirements are effective.

15 (B) CAPITAL RESTORATION PLAN RE-  
16 QUIRED.—

17 (i) IN GENERAL.—Any undercapital-  
18 ized financial holding company subject to  
19 stricter standards shall submit an accept-  
20 able capital restoration plan to the Board  
21 within the time allowed by the Board  
22 under clause (iv).

23 (ii) CONTENTS OF PLAN.—The capital  
24 restoration plan shall—

25 (I) specify—

1 (aa) the steps the financial  
2 holding company subject to  
3 stricter standards will take to be-  
4 come well capitalized;

5 (bb) the levels of capital to  
6 be attained by the financial hold-  
7 ing company subject to stricter  
8 standards during each year in  
9 which the plan will be in effect;

10 (cc) how the financial hold-  
11 ing company subject to stricter  
12 standards will comply with the  
13 restrictions or requirements then  
14 in effect under this section; and

15 (dd) the types and levels of  
16 activities in which the financial  
17 holding company subject to  
18 stricter standards will engage;  
19 and

20 (II) contain such other informa-  
21 tion that the Board may require.

22 (iii) CRITERIA FOR ACCEPTING  
23 PLAN.—The Board shall not accept a cap-  
24 ital restoration plan unless it determines  
25 that the plan—

1 (I) complies with clause (ii);

2 (II) is based on realistic assump-  
3 tions, and is likely to succeed in re-  
4 storing the capital of the financial  
5 holding company subject to stricter  
6 standards; and

7 (III) would not appreciably in-  
8 crease the risk (including credit risk,  
9 interest-rate risk, and other types of  
10 risk) to which the financial holding  
11 company subject to stricter standards  
12 is exposed.

13 (iv) DEADLINES FOR SUBMISSION AND  
14 REVIEW OF PLANS.—The Board shall, by  
15 regulation, establish deadlines that—

16 (I) provide financial holding com-  
17 panies subject to stricter standards  
18 with reasonable time to submit capital  
19 restoration plans, and generally re-  
20 quire a financial holding company  
21 subject to stricter standards to submit  
22 a plan not later than 45 days after it  
23 becomes undercapitalized; and

24 (II) require the Board to act on  
25 capital restoration plans expeditiously,

1 and generally not later than 60 days  
2 after the plan is submitted.

3 (C) ASSET GROWTH RESTRICTED.—An  
4 undercapitalized financial holding company sub-  
5 ject to stricter standards shall not permit its  
6 average total assets during any calendar quar-  
7 ter to exceed its average total assets during the  
8 preceding calendar quarter unless—

9 (i) the Board has accepted the capital  
10 restoration plan of the financial holding  
11 company subject to stricter standards;

12 (ii) any increase in total assets is con-  
13 sistent with the plan; and

14 (iii) the ratio of tangible equity to  
15 total assets of the financial holding com-  
16 pany subject to stricter standards increases  
17 during the calendar quarter at a rate suffi-  
18 cient to enable it to become well capitalized  
19 within a reasonable time.

20 (D) PRIOR APPROVAL REQUIRED FOR AC-  
21 QUISSIONS AND NEW LINES OF BUSINESS.—An  
22 undercapitalized financial holding company sub-  
23 ject to stricter standards shall not, directly or  
24 indirectly, acquire any interest in any company



1 or insured depository institution, or engage in  
2 any new line of business, unless—

3 (i) the Board has accepted the capital  
4 restoration plan of the financial holding  
5 company subject to stricter standards, the  
6 financial holding company subject to strict-  
7 er standards is implementing the plan, and  
8 the Board determines that the proposed  
9 action is consistent with and will further  
10 the achievement of the plan;

11 (ii) the Board determines that the  
12 specific proposed action is appropriate; or

13 (iii) the Board has exempted the fi-  
14 nancial holding company subject to stricter  
15 standards from the requirements of this  
16 paragraph with respect to the class of ac-  
17 quisitions that includes the proposed ac-  
18 tion.

19 (E) DISCRETIONARY SAFEGUARDS.—The  
20 Board may, with respect to any undercapital-  
21 ized financial holding company subject to strict-  
22 er standards, take actions described in any  
23 clause of paragraph (7)(B) if the Board deter-  
24 mines that those actions are necessary. The  
25 Board, in determining whether to impose any

1 requirement under this subparagraph that is  
2 likely to have a significant effect on a function-  
3 ally regulated subsidiary, subsidiary depository  
4 institution, or insurance company subsidiary of  
5 a financial holding company subject to stricter  
6 standards, shall consult with the primary finan-  
7 cial regulatory agency for such subsidiary. In  
8 the case of an insurance company subsidiary of  
9 a financial holding company subject to stricter  
10 standards, the Board shall consult with the  
11 Federal Insurance Office.

12 (7) PROVISIONS APPLICABLE TO SIGNIFICANTLY  
13 UNDERCAPITALIZED FINANCIAL HOLDING COMPA-  
14 NIES SUBJECT TO STRICTER STANDARDS AND  
15 UNDERCAPITALIZED FINANCIAL HOLDING COMPA-  
16 NIES SUBJECT TO STRICTER STANDARDS THAT FAIL  
17 TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION  
18 PLANS.—

19 (A) IN GENERAL.—This paragraph shall  
20 apply with respect to any financial holding com-  
21 pany subject to stricter standards that—

22 (i) is significantly undercapitalized; or  
23 (ii) is undercapitalized and—

24 (I) fails to submit an acceptable  
25 capital restoration plan within the

1 time allowed by the Board under  
2 paragraph (6)(B)(iv); or

3 (II) fails in any material respect  
4 to implement a capital restoration  
5 plan accepted by the Board.

6 (B) SPECIFIC ACTIONS AUTHORIZED.—The  
7 Board shall carry out this paragraph by taking  
8 1 or more of the following actions:

9 (i) REQUIRING RECAPITALIZATION.—  
10 Doing one or more of the following:

11 (I) Requiring the financial hold-  
12 ing company subject to stricter stand-  
13 ards to sell enough shares or obliga-  
14 tions of the financial holding company  
15 subject to stricter standards so that  
16 the financial holding company subject  
17 to stricter standards will be well cap-  
18 italized after the sale.

19 (II) Further requiring that in-  
20 struments sold under subclause (I) be  
21 voting shares.

22 (III) Requiring the financial  
23 holding company subject to stricter  
24 standards to be acquired by or com-  
25 bine with another company.

1 (ii) RESTRICTING TRANSACTIONS  
2 WITH AFFILIATES.—

3 (I) Requiring the financial hold-  
4 ing company subject to stricter stand-  
5 ards to comply with section 23A of  
6 the Federal Reserve Act (12 U.S.C.  
7 371e), as if it were a member bank.

8 (II) Further restricting the  
9 transactions of the financial holding  
10 company subject to stricter standards  
11 with affiliates and insiders.

12 (iii) RESTRICTING ASSET GROWTH.—  
13 Restricting the asset growth of the finan-  
14 cial holding company subject to stricter  
15 standards more stringently than paragraph  
16 (6)(C), or requiring the financial holding  
17 company subject to stricter standards to  
18 reduce its total assets.

19 (iv) RESTRICTING ACTIVITIES.—Re-  
20 quiring the financial holding company sub-  
21 ject to stricter standards or any of its sub-  
22 sidiaries to alter, reduce, or terminate any  
23 activity that the Board determines poses  
24 excessive risk to the financial holding com-  
25 pany subject to stricter standards.

1 (v) IMPROVING MANAGEMENT.—Doing  
2 one or more of the following:

3 (I) NEW ELECTION OF DIREC-  
4 TORS.—Ordering a new election for  
5 the board of directors of the financial  
6 holding company subject to stricter  
7 standards.

8 (II) DISMISSING DIRECTORS OR  
9 SENIOR EXECUTIVE OFFICERS.—Re-  
10 quiring the financial holding company  
11 subject to stricter standards to dis-  
12 miss from office any director or senior  
13 executive officer who had held office  
14 for more than 180 days immediately  
15 before the financial holding company  
16 subject to stricter standards became  
17 undercapitalized. Dismissal under this  
18 clause shall not be construed to be a  
19 removal under section 8 of the Fed-  
20 eral Deposit Insurance Act (12 U.S.C.  
21 1818).

22 (III) EMPLOYING QUALIFIED  
23 SENIOR EXECUTIVE OFFICERS.—Re-  
24 quiring the financial holding company  
25 subject to stricter standards to employ

1 qualified senior executive officers  
2 (who, if the Board so specifies, shall  
3 be subject to approval by the Board).

4 (vi) REQUIRING DIVESTITURE.—Re-  
5 quiring the financial holding company sub-  
6 ject to stricter standards to divest itself of  
7 or liquidate any subsidiary if the Board de-  
8 termines that the subsidiary is in danger  
9 of becoming insolvent, poses a significant  
10 risk to the financial holding company sub-  
11 ject to stricter standards, or is likely to  
12 cause a significant dissipation of the assets  
13 or earnings of the financial holding com-  
14 pany subject to stricter standards.

15 (vii) REQUIRING OTHER ACTION.—Re-  
16 quiring the financial holding company sub-  
17 ject to stricter standards to take any other  
18 action that the Board determines will bet-  
19 ter carry out the purpose of this section  
20 than any of the actions described in this  
21 subparagraph.

22 (C) PRESUMPTION IN FAVOR OF CERTAIN  
23 ACTIONS.—In complying with subparagraph  
24 (B), the Board shall take the following actions,

1 unless the Board determines that the actions  
2 would not be appropriate:

3 (i) The action described in subclause  
4 (I) or (III) of subparagraph (B)(i) (relat-  
5 ing to requiring the sale of shares or obli-  
6 gations, or requiring the financial holding  
7 company subject to stricter standards to be  
8 acquired by or combine with another com-  
9 pany).

10 (ii) The action described in subpara-  
11 graph (B)(ii) (relating to restricting trans-  
12 actions with affiliates).

13 (D) SENIOR EXECUTIVE OFFICERS' COM-  
14 PENSATION RESTRICTED.—

15 (i) IN GENERAL.—The financial hold-  
16 ing company subject to stricter standards  
17 shall not do any of the following without  
18 the prior written approval of the Board:

19 (I) Pay any bonus to any senior  
20 executive officer.

21 (II) Provide compensation to any  
22 senior executive officer at a rate ex-  
23 ceeding that officer's average rate of  
24 compensation (excluding bonuses,  
25 stock options, and profit-sharing) dur-

1                   ing the 12 calendar months preceding  
2                   the calendar month in which the fi-  
3                   nancial holding company subject to  
4                   stricter standards became under-  
5                   capitalized.

6                   (ii) FAILING TO SUBMIT PLAN.—The  
7                   Board shall not grant any approval under  
8                   clause (i) with respect to a financial hold-  
9                   ing company subject to stricter standards  
10                  that has failed to submit an acceptable  
11                  capital restoration plan.

12                  (E) CONSULTATION WITH OTHER REGU-  
13                  LATORS.—Before the Board makes a deter-  
14                  mination under subparagraph (B)(vi) with re-  
15                  spect to a subsidiary that is a broker, dealer,  
16                  government securities broker, government secu-  
17                  rities dealer, investment company, or invest-  
18                  ment adviser, the Board shall consult with the  
19                  Securities and Exchange Commission and, in  
20                  the case of any other subsidiary which is sub-  
21                  ject to any financial responsibility or capital re-  
22                  quirement, any other appropriate regulator of  
23                  such subsidiary with respect to the proposed de-  
24                  termination of the Board and actions pursuant  
25                  to such determination.



1           (8) MORE STRINGENT TREATMENT BASED ON  
2 OTHER SUPERVISORY CRITERIA.—

3           (A) IN GENERAL.—If the Board deter-  
4 mines (after notice and an opportunity for  
5 hearing) that a financial holding company sub-  
6 ject to stricter standards is in an unsafe or un-  
7 sound condition or, pursuant to section 8(b)(8)  
8 of the Federal Deposit Insurance Act (12  
9 U.S.C. 1818(b)(8)), deems the financial holding  
10 company subject to stricter standards to be en-  
11 gaging in an unsafe or unsound practice, the  
12 Board may—

13           (i) if the financial holding company  
14 subject to stricter standards is well capital-  
15 ized, require the financial holding company  
16 subject to stricter standards to comply  
17 with one or more provisions of paragraphs  
18 (6) and (7), as if the institution were  
19 undercapitalized; or

20           (ii) if the financial holding company  
21 subject to stricter standards is under-  
22 capitalized, take any one or more actions  
23 authorized under paragraph (7)(B) as if  
24 the financial holding company subject to  
25 stricter standards were significantly under-

1 capitalized, after consultation with the pri-  
2 mary financial regulatory agency for any  
3 functionally regulated subsidiary, sub-  
4 sidiary depository institution, or insurance  
5 company subsidiary that is likely to be sig-  
6 nificantly affected by such actions. In the  
7 case of an insurance company subsidiary of  
8 a financial holding company subject to  
9 stricter standards, the Board shall consult  
10 with the Federal Insurance Office.

11 (B) CONTENTS OF PLAN.—A plan that  
12 may be required pursuant to subparagraph  
13 (A)(i) shall specify the steps that the financial  
14 holding company subject to stricter standards  
15 will take to correct the unsafe or unsound con-  
16 dition or practice.

17 (9) IMPLEMENTATION.—The Board shall pre-  
18 scribe such regulations, issue such orders, and take  
19 such other actions the Board determines to be nec-  
20 essary to carry out this subsection.

21 (10) OTHER AUTHORITY NOT AFFECTED.—This  
22 section does not limit any authority of the Board,  
23 any other Federal regulatory agency, or a State to  
24 take action in addition to (but not in derogation of)  
25 that required under this section.

1           (11) CONSULTATION.—The Board and the Sec-  
2           retary of the Treasury shall consult with their for-  
3           eign counterparts and through appropriate multilat-  
4           eral organizations to reach agreement to extend  
5           comprehensive and robust prudential supervision and  
6           regulation to all highly leveraged and substantially  
7           interconnected financial companies.

8           (12) ADMINISTRATIVE REVIEW OF DISMISSAL  
9           ORDERS.—

10           (A) TIMELY PETITION REQUIRED.—A di-  
11           rector or senior executive officer dismissed pur-  
12           suant to an order under paragraph  
13           (7)(B)(v)(II) may obtain review of that order  
14           by filing a written petition for reinstatement  
15           with the Board not later than 10 days after re-  
16           ceiving notice of the dismissal.

17           (B) PROCEDURE.—

18           (i) HEARING REQUIRED.—The Board  
19           shall give the petitioner an opportunity  
20           to—

21                   (I) submit written materials in  
22                   support of the petition; and

23                   (II) appear, personally or  
24                   through counsel, before 1 or more

1 members of the Board or designated  
2 employees of the Board.

3 (ii) DEADLINE FOR HEARING.—The  
4 Board shall—

5 (I) schedule the hearing referred  
6 to in clause (i)(II) promptly after the  
7 petition is filed; and

8 (II) hold the hearing not later  
9 than 30 days after the petition is  
10 filed, unless the petitioner requests  
11 that the hearing be held at a later  
12 time.

13 (iii) DEADLINE FOR DECISION.—Not  
14 later than 60 days after the date of the  
15 hearing, the Board shall—

16 (I) by order, grant or deny the  
17 petition;

18 (II) if the order is adverse to the  
19 petitioner, set forth the basis for the  
20 order; and

21 (III) notify the petitioner of the  
22 order.

23 (C) STANDARD FOR REVIEW OF DISMISSAL  
24 ORDERS.—The petitioner shall bear the burden  
25 of proving that the petitioner’s continued em-

1           ployment would materially strengthen the abil-  
2           ity of the financial holding company subject to  
3           stricter standards—

4                   (i) to become well capitalized, to the  
5                   extent that the order is based on the cap-  
6                   ital level of the financial holding company  
7                   subject to stricter standards or such com-  
8                   pany's failure to submit or implement a  
9                   capital restoration plan; and

10                   (ii) to correct the unsafe or unsound  
11                   condition or unsafe or unsound practice, to  
12                   the extent that the order is based on para-  
13                   graph (8)(A).

14           (13) ENFORCEMENT AUTHORITY FOR FOREIGN  
15           FINANCIAL HOLDING COMPANY SUBJECT TO STRICT-  
16           ER STANDARDS.—

17                   (A) TERMINATION AUTHORITY.—If the  
18                   Board believes that a condition, practice, or ac-  
19                   tivity of a foreign financial holding company  
20                   subject to stricter standards does not comply  
21                   with this title or the rules or orders prescribed  
22                   by the Board under this title or otherwise poses  
23                   a threat to financial stability, the Board may,  
24                   after notice and opportunity for a hearing, take  
25                   such actions as necessary to mitigate such risk,

1 including ordering a foreign financial holding  
2 company subject to stricter standards in the  
3 United States to terminate the activities of such  
4 branch, agency, or subsidiary.

5 (B) DISCRETION TO DENY HEARING.—The  
6 Board may issue an order under paragraph (1)  
7 without providing for an opportunity for a hear-  
8 ing if the Board determines that expeditious ac-  
9 tion is necessary in order to protect the public  
10 interest.

11 (f) REPORTS REGARDING RAPID AND ORDERLY RES-  
12 OLUTION AND CREDIT EXPOSURE.—

13 (1) IN GENERAL.—The Board shall require  
14 each financial holding company subject to stricter  
15 standards incorporated or organized in the United  
16 States to report periodically to the Board on—

17 (A) its plan for rapid and orderly resolu-  
18 tion in the event of severe financial distress;

19 (B) the nature and extent to which the fi-  
20 nancial holding company subject to stricter  
21 standards has credit exposure to other signifi-  
22 cant financial companies; and

23 (C) the nature and extent to which other  
24 significant financial companies have credit ex-

1           posure to the financial holding company subject  
2           to stricter standards.

3           (2) NO LIMITING EFFECT.—A rapid resolution  
4           plan submitted in accordance with this subsection  
5           shall not be binding on a receiver appointed under  
6           title II, a bankruptcy court, or any other authority  
7           that is authorized or required to resolve the financial  
8           holding company subject to stricter standards or any  
9           of its subsidiaries or affiliates.

10          (3) REPORTING TRIGGERED BY STRESS TEST  
11          RESULTS.—

12                 (A) FINANCIAL HOLDING COMPANIES SUB-  
13                 JECT TO STRICTER STANDARDS.—Each time  
14                 the results of a quarterly stress test under base-  
15                 line or adverse conditions conducted by a finan-  
16                 cial holding company subject to stricter stand-  
17                 ards under section 132(a) or the results of a  
18                 stress test of that financial holding company  
19                 subject to stricter standards conducted by the  
20                 Board under subsection (g) indicate that the fi-  
21                 nancial holding company subject to stricter  
22                 standards is, in the determination of the Board,  
23                 significantly or critically undercapitalized, that  
24                 financial holding company subject to stricter  
25                 standards shall submit a rapid resolution plan

1 in accordance with this subsection that has  
2 been revised to address the causes of those re-  
3 sults.

4 (B) FINANCIAL COMPANIES THAT ARE NOT  
5 FINANCIAL HOLDING COMPANIES SUBJECT TO  
6 STRICTER STANDARDS.—Each time the results  
7 of a semiannual stress test under baseline or  
8 adverse conditions conducted by a financial  
9 company under section 132(b) indicate that the  
10 financial company is, in the determination of  
11 the Board, significantly or critically under-  
12 capitalized, that financial company shall be re-  
13 quired to report under this subsection. The  
14 Board shall prescribe regulations establishing  
15 expedited procedures for such reporting.

16 (C) TRANSPARENCY.—Any rapid resolution  
17 plan submitted pursuant to this paragraph shall  
18 be subject to any restrictions regarding the dis-  
19 closure of any other rapid resolution plan sub-  
20 mitted pursuant to this subsection.

21 (g) STRESS TESTS.—

22 (1) The Board, in coordination with the appro-  
23 priate primary financial regulatory agency, shall  
24 conduct annual stress tests of each financial holding  
25 company subject to stricter standards. The Board



1       may, as the Board determines appropriate, conduct  
2       stress tests of financial companies that are not fi-  
3       nancial holding companies subject to stricter stand-  
4       ards. The Board shall publish a summary of the re-  
5       sults of such stress tests.

6               (2) The Board shall issue regulations to define  
7       the term “stress test” for purposes of this sub-  
8       section. Such a definition shall provide for not less  
9       than 3 different sets of conditions under which a  
10      stress test should be conducted: baseline, adverse,  
11      and severely adverse scenarios.

12      (h) AVOIDING DUPLICATION.—The Board shall take  
13      any action the Board deems appropriate to avoid imposing  
14      duplicative requirements under this subtitle for financial  
15      holding companies subject to stricter standards that are  
16      also bank holding companies.

17      (i) RESOLUTION PLANS REQUIRED.—

18               (1) IN GENERAL.—The Corporation and the  
19      Board, after consultation with the Council, shall  
20      jointly issue regulations requiring financial holding  
21      companies subject to stricter standards to develop  
22      plans designed to assist in the rapid and orderly res-  
23      olution of the company.

24               (2) STANDARDS FOR RESOLUTION PLANS.—The  
25      regulations required by paragraph (1) shall—

1 (A) define the scope of financial holding  
2 companies subject to stricter standards covered  
3 by these requirements and may exempt finan-  
4 cial holding companies subject to stricter stand-  
5 ards from the requirements of this subsection if  
6 the Corporation and the Board jointly deter-  
7 mine that exemption is consistent with the pur-  
8 poses of this title;

9 (B) require each plan to demonstrate that  
10 any insured depository institution affiliated  
11 with a financial holding company subject to  
12 stricter standards is adequately insulated from  
13 the activities of any non-bank subsidiary of the  
14 institution or financial holding companies sub-  
15 ject to stricter standards;

16 (C) require that each plan include informa-  
17 tion detailing—

18 (i) the nature and extent to which the  
19 financial holding company subject to strict-  
20 er standards has credit exposure to other  
21 significant financial companies;

22 (ii) the nature and extent to which  
23 other significant financial companies have  
24 credit exposure to the financial holding  
25 company subject to stricter standards;

1 (iii) full descriptions of the financial  
2 holding company subject to stricter stand-  
3 ards' ownership structure, assets, liabil-  
4 ities, and contractual obligations; and

5 (iv) the cross-guarantees tied to dif-  
6 ferent securities, a list of major  
7 counterparties, and a process for deter-  
8 mining where the financial holding com-  
9 pany subject to stricter standards' collat-  
10 eral is pledged; and

11 (D) establish such other standards as the  
12 Corporation and the Board may jointly deem  
13 necessary to carry out this subsection.

14 (3) REVIEW OF PLANS.—

15 (A) SUBMISSION OF PLANS.—Each finan-  
16 cial holding company subject to stricter stand-  
17 ards that is subject to the requirement under  
18 paragraph (1) shall submit its plan to the Cor-  
19 poration and the Board.

20 (B) REVIEW.—Upon the submission of a  
21 plan pursuant to subparagraph (A), and not  
22 less often than annually thereafter, the Cor-  
23 poration and the Board, after consultation with  
24 any Federal financial regulatory agencies with  
25 jurisdiction over the financial holding company

1 subject to stricter standards (and, if the finan-  
2 cial holding company subject to stricter stand-  
3 ards is an insurance company, the Federal In-  
4 surance Office), shall jointly review such plan  
5 and may require a financial holding company  
6 subject to stricter standards to revise its plan  
7 consistent with the standards established pursu-  
8 ant to paragraph (2).

9 (4) ENFORCEMENT.—

10 (A) IN GENERAL.—The Corporation, after  
11 consultation with the Board, shall have the au-  
12 thority to take any enforcement action in sec-  
13 tion 8 of the Federal Deposit Insurance Act (12  
14 U.S.C. 1818) against any financial holding  
15 company subject to stricter standards that fails  
16 to comply with the requirements of this section  
17 or any regulations issued pursuant to this sec-  
18 tion.

19 (B) NO LIMITATION ON BOARD AUTHOR-  
20 ITY.—Nothing under this subsection shall be  
21 construed as limiting any enforcement authority  
22 available to the Board under any other provi-  
23 sion of law.

24 (5) NO LIMITING EFFECT ON RECEIVER.—A  
25 rapid resolution plan submitted under this section

1 shall not be binding on a receiver appointed under  
2 title II, a bankruptcy court, or any other authority  
3 that is authorized or required to resolve the financial  
4 holding company subject to stricter standards or any  
5 of its subsidiaries or affiliates.

6 (6) NO PRIVATE RIGHT OF ACTION.—No pri-  
7 vate right of action may be based on any resolution  
8 plan submitted under this section.

9 (j) RULE OF CONSTRUCTION REGARDING CONSUMER  
10 PROTECTION STANDARDS.—The prudential standards im-  
11 posed or recommended by the Board or the Council under  
12 this section shall not be construed as superseding—

13 (1) any consumer protection standards promul-  
14 gated under a State or Federal consumer protection  
15 law, including the Consumer Financial Protection  
16 Agency Act and the Federal Trade Commission Act;  
17 or

18 (2) any investor protection standard that pro-  
19 tects consumers (including public reporting require-  
20 ments) imposed under State or Federal securities  
21 laws, including the Securities Act of 1933, the Secu-  
22 rities Exchange Act of 1934, the Investment Com-  
23 pany Act of 1944, and the Investment Advisors Act  
24 of 1944.

1 (k) RULEMAKING AUTHORITY.—The Board may pre-  
2 scribe such regulations and issue such orders as the  
3 Board, in consultation with the Council, determines to be  
4 necessary to carry out the provisions of this subtitle.

5 **SEC. 126. MITIGATION OF SYSTEMIC RISK.**

6 (a) COUNCIL AUTHORITY TO RESTRICT OPERATIONS  
7 AND ACTIVITIES.—If the Council determines, after notice  
8 and an opportunity for hearing, that despite the higher  
9 prudential standards imposed pursuant to section  
10 125(a)(2), the size of a financial holding company subject  
11 to stricter standards or the scope, nature, scale, concentra-  
12 tion, interconnectedness, or mix of activities directly or in-  
13 directly conducted by a financial holding company subject  
14 to stricter standards poses a grave threat to the financial  
15 stability or economy of the United States, the Council  
16 shall require the company to undertake 1 or more mitiga-  
17 tory actions described in subsection (d).

18 (b) CONSULTATION WITH FEDERAL FINANCIAL  
19 REGULATORY AGENCIES.—The Council, in determining  
20 whether to impose any requirement under this section that  
21 is likely to have a significant impact on a functionally reg-  
22 ulated subsidiary, or a subsidiary depository institution,  
23 of a financial holding company subject to stricter stand-  
24 ards under this title, shall consult with the Federal finan-  
25 cial regulatory agency for any such subsidiary. With re-

1 spect to any requirements under this section that is likely  
2 to have a significant effect on an insurance company, the  
3 Council shall consult with the Federal Insurance Office.

4 (c) FACTORS FOR CONSIDERATION.—In reaching a  
5 determination described in subsection (a), the Council  
6 shall take into consideration the following factors, as ap-  
7 propriate—

8 (1) the amount and nature of the company's fi-  
9 nancial assets;

10 (2) the amount and nature of the company's li-  
11 abilities, including the degree of reliance on short-  
12 term funding;

13 (3) the extent and nature of the company's off-  
14 balance sheet exposures;

15 (4) the company's reliance on leverage;

16 (5) the extent and nature of the company's  
17 transactions, relationships, and interconnectedness  
18 with other financial and non-financial companies;

19 (6) the company's importance as a source of  
20 credit for households, businesses, and State and  
21 local governments and as a source of liquidity for  
22 the financial system;

23 (7) the scope, nature, size, scale, concentration,  
24 interconnectedness and mix of the company's activi-  
25 ties;

1 (8) the extent to which prudential regulations  
2 mitigate the risk posed; and

3 (9) any other factors identified that the Council  
4 determines appropriate.

5 (d) MITIGATORY ACTIONS.—

6 (1) IN GENERAL.—Mitigatory action may in-  
7 clude—

8 (A) modifying the stricter prudential  
9 standards imposed pursuant to section 125(a);

10 (B) terminating 1 or more activities;

11 (C) imposing conditions on the manner in  
12 which a financial holding company subject to  
13 stricter standards conducts 1 or more activities;

14 (D) limiting the ability to merge with, ac-  
15 quire, consolidate with, or otherwise become af-  
16 filiated with another company;

17 (E) restricting the ability to offer a finan-  
18 cial product or products; and

19 (F) in the event the Council deems sub-  
20 paragraphs (A) through (E) inadequate as a  
21 means to address the identified risks, selling,  
22 divesting, or otherwise transferring business  
23 units, branches, assets, or off-balance sheet  
24 items to unaffiliated companies.



1           (2) INTERNATIONAL COMPETITIVENESS CON-  
2           SIDERATIONS.—In making any decision pursuant to  
3           paragraph (1), the Council shall consider—

4                   (A) the need to maintain the international  
5                   competitiveness of the United States financial  
6                   services industry; and

7                   (B) the extent to which other countries  
8                   with a significant financial services industry  
9                   have established corresponding regimes to miti-  
10                  gate threats to financial stability or the econ-  
11                  omy posed by financial companies.

12          (e) DUE PROCESS.—

13                  (1) NOTICE AND HEARING.—The Council shall  
14                  give notice to a financial holding company subject to  
15                  stricter standards, and opportunity for hearing if re-  
16                  quested, that the financial holding company subject  
17                  to stricter standards is being considered for mitiga-  
18                  tory action pursuant to subsection (a). The hearing  
19                  shall occur no later than 30 days after the financial  
20                  company receives notice of the proposed action from  
21                  the Council.

22                  (2) NOTICE.—The Council shall notify the fi-  
23                  nancial holding company subject to stricter stand-  
24                  ards of the Council's determination, and, if the  
25                  Council determines that mitigatory action is appro-

1        appropriate, require the company to submit a plan to the  
2        Council to implement the required mitigatory action.

3            (3) SUBMISSION OF PLAN.—The financial hold-  
4        ing company subject to stricter standards shall sub-  
5        mit its proposed plan to implement the required  
6        mitigatory action or actions to the Council within 60  
7        days from the date it receives notice under para-  
8        graph (2) or such shorter timeframe as the Council  
9        may require, if the Council determines an emergency  
10       situation merits expeditious implementation.

11           (4) APPROVAL OR AMENDMENT OF THE  
12        PLAN.—The Council shall review the plan submitted  
13        pursuant to paragraph (3) and determine whether  
14        the plan achieves the goal of mitigating a grave  
15        threat to the financial stability or the economy of  
16        the United States. The Council may approve or dis-  
17        approve the plan with or without amendment.

18           (5) EFFECT OF PLAN APPROVAL.—The Council  
19        shall—

20            (A) notify a financial holding company  
21        subject to stricter standards by order, which  
22        shall be public, that the Council has approved  
23        the plan with or without amendment; and

24            (B) direct the Board to require a financial  
25        holding company subject to stricter standards

1 to comply with the plan to implement mitiga-  
2 tory action or actions within a reasonable time-  
3 frame after the Council's approval and in ac-  
4 cordance with such deadlines established in the  
5 plan.

6 (f) TREASURY SECRETARY CONCURRENCE.—Mitiga-  
7 tory action imposed by the Council involving the sale, di-  
8 vestiture, or transfer of more than \$10,000,000,000 in  
9 total assets by a financial holding company subject to  
10 stricter standards shall require the Secretary of the Treas-  
11 ury's concurrence before the issuance of the notice in sub-  
12 section (e)(5)(A). If the sale, divestiture, or transfer of  
13 total assets by a financial holding company subject to  
14 stricter standards exceeds \$100,000,000,000, the Sec-  
15 retary of the Treasury shall consult with the President be-  
16 fore concurrence. The aforementioned amounts shall be in-  
17 dexed to inflation.

18 (g) FAILURE TO IMPLEMENT THE PLAN.—If a finan-  
19 cial holding company subject to stricter standards fails to  
20 implement a plan for mitigatory action imposed pursuant  
21 to this section within a reasonable timeframe, the Council  
22 shall direct the Board to take such actions as necessary  
23 to ensure compliance with the plan.

24 (h) JUDICIAL REVIEW.—For any plan required under  
25 this section, a financial holding company subject to strict-

1 er standards may, not later than 30 days after receipt of  
2 the Council's notice under subsection (e)(2), bring an ac-  
3 tion in the United States district court for the judicial dis-  
4 trict in which the home office of such company is located,  
5 or in the United States District Court for the District of  
6 Columbia, for an order requiring that the requirement for  
7 a mitigatory action be rescinded. Judicial review under  
8 this section shall be limited to the imposition of a mitiga-  
9 tory action pursuant to subsection (e)(5). In reviewing the  
10 Council's imposition of a mitigatory action, the court shall  
11 rescind or dismiss only those mitigatory actions it finds  
12 to be imposed in an arbitrary and capricious manner.

13 (i) **RULE OF CONSTRUCTION.**—Nothing in subsection  
14 (h) shall be construed as limiting the authority of a Fed-  
15 eral financial regulatory agency to take action with respect  
16 to a financial company subject to the jurisdiction of such  
17 agency pursuant to applicable law other than this section.

18 **SEC. 127. SUBJECTING ACTIVITIES OR PRACTICES TO**  
19 **STRICTER PRUDENTIAL STANDARDS FOR FI-**  
20 **NANCIAL STABILITY PURPOSES.**

21 (a) **IN GENERAL.**—The Council may subject a finan-  
22 cial activity or practice to stricter prudential standards  
23 under this subtitle if the Council determines that the con-  
24 duct, scope, nature, size, scale, concentration, or inter-  
25 connectedness of such activity or practice could create or

1 increase the risk of significant liquidity, credit, or other  
2 problems spreading among financial institutions or mar-  
3 kets and local, minority, or underserved communities, and  
4 thereby threaten the stability of the financial system or  
5 economy.

6 (b) PERIODIC REVIEW OF ACTIVITY IDENTIFICA-  
7 TIONS.—

8 (1) SUBMISSION OF ASSESSMENT.—The Board  
9 shall periodically submit a report to the Council con-  
10 taining an assessment of whether each activity or  
11 practice subjected to stricter prudential standards  
12 should continue to be subject to such standards.

13 (2) REVIEW AND RECISION.—The Council  
14 shall—

15 (A) review the assessment submitted pur-  
16 suant to paragraph (1) and any information or  
17 recommendation submitted by members of the  
18 Council regarding whether a financial activity  
19 subjected to stricter prudential standards con-  
20 tinues to merit stricter prudential standards;  
21 and

22 (B) rescind the action subjecting an activ-  
23 ity to heightened prudential supervision if the  
24 Council determines that the activity no longer  
25 meets the criteria in subsection (a).

1 (c) PROCEDURE FOR SUBJECTING OR CEASING TO  
2 SUBJECT AN ACTIVITY OR PRACTICE TO STRICTER PRU-  
3 DENTIAL STANDARDS.—

4 (1) COUNCIL AND BOARD COORDINATION.—The  
5 Council shall inform the Board if the Council is con-  
6 sidering whether to subject or cease to subject an  
7 activity to stricter prudential standards in accord-  
8 ance with this section.

9 (2) NOTICE AND OPPORTUNITY FOR CONSIDER-  
10 ATION OF WRITTEN MATERIALS.—

11 (A) IN GENERAL.—The Board shall, in an  
12 executive capacity on behalf of the Council, pro-  
13 vide notice to financial companies that the  
14 Council is considering whether to subject an ac-  
15 tivity or practice to heightened prudential regu-  
16 lation, and shall provide a financial company  
17 engaged in such activity or practice 30 days to  
18 submit written materials to inform the Coun-  
19 cil's decision. The Council shall decide, and the  
20 Board shall provide notice of the Council's deci-  
21 sion, within 60 days of the due date for such  
22 written materials.

23 (B) EMERGENCY EXCEPTION.—The Coun-  
24 cil may waive or modify the requirements of  
25 subparagraph (A) if the Council determines

1           that such waiver or modification is necessary or  
2           appropriate to prevent or mitigate threats posed  
3           by an activity to financial stability. The Board  
4           shall, in an executive capacity on behalf of the  
5           Council, provide notice of such waiver or modi-  
6           fication to financial companies as soon as prac-  
7           ticable, which shall be no later than 24 hours  
8           after the waiver or modification.

9           (3) FORM OF DECISION.—The Board shall pro-  
10          vide all notices required under this subsection by  
11          posting a notice on the Board’s web site and pub-  
12          lishing a notice in the Federal Register.

13 **SEC. 128. STRICTER REGULATION OF ACTIVITIES AND**  
14                   **PRACTICES FOR FINANCIAL STABILITY PUR-**  
15                   **POSES.**

16          (a) PRUDENTIAL STANDARDS.—

17                  (1) BOARD AUTHORITY TO RECOMMEND.—

18                          (A) IN GENERAL.—To mitigate the risks to  
19                          United States financial stability and the United  
20                          States economy posed by financial activities and  
21                          practices that the Council identifies for stricter  
22                          prudential standards under section 127 the  
23                          Board, as agent of the Council, shall rec-  
24                          ommend prudential standards to the appro-

1           priate primary financial regulatory agencies to  
2           apply to such identified activities and practices.

3           (B) CONSULTATION WITH PRIMARY FINAN-  
4           CIAL REGULATORY AGENCIES.—The Board, in  
5           developing recommendations under this sub-  
6           section, shall consult with the relevant primary  
7           financial regulatory agencies with respect to  
8           any standard that is likely to have a significant  
9           effect on entities described in section 101(b)(6).  
10          With respect to any standard that is likely to  
11          have a significant effect on insurance compa-  
12          nies, the Board also shall consult with the Fed-  
13          eral Insurance Office.

14          (2) CRITERIA.—The actions recommended  
15          under paragraph (1)—

16                (A) shall be designed to maximize financial  
17                stability, taking costs to long-term financial and  
18                economic growth into account; and

19                (B) may include prescribing the conduct of  
20                the activity or practice in specific ways (such as  
21                by limiting its scope, nature, size, scale, con-  
22                centration, or interconnectedness, or applying  
23                particular capital or risk-management require-  
24                ments to the conduct of the activity) or prohib-  
25                iting the activity or practice altogether.



1           (3) EXCEPTION.—The standards recommended  
2           by the Board and adopted by a primary financial  
3           regulatory agency pursuant to this section shall not  
4           apply to activities that a foreign financial parent  
5           conducts solely outside the United States if such ac-  
6           tivities are conducted solely by a company or other  
7           operating entity that is located outside the United  
8           States.

9           (b) IMPLEMENTATION OF RECOMMENDED STAND-  
10          ARDS.—

11           (1) ROLE OF PRIMARY FINANCIAL REGULATORY  
12          AGENCY.—Each primary financial regulatory agency  
13          is authorized to impose, require reports regarding,  
14          examine for compliance with, and enforce standards  
15          in accordance with this section with respect to those  
16          entities described in section 101(b)(6) for which it is  
17          the primary financial regulatory agency. This au-  
18          thority is in addition to and does not limit any other  
19          authority of the primary financial regulatory agen-  
20          cies. Compliance by an entity with actions taken by  
21          a primary financial regulatory agency under this sec-  
22          tion shall be enforceable in accordance with the stat-  
23          utes governing the respective primary financial regu-  
24          latory agency's jurisdiction over the entity as if the  
25          agency action were taken under those statutes.

1           (2) IMPOSITION OF STANDARDS.—Standards  
2           imposed under this subsection shall be the standards  
3           recommended by the Board in accordance with sub-  
4           section (a) or any other similar standards that the  
5           Board deems acceptable after consultation between  
6           the Board and the primary financial regulatory  
7           agency.

8           (3) PRIMARY FINANCIAL REGULATORY AGENCY  
9           RESPONSE.—A primary financial regulatory agency  
10          shall notify the Council and the Board in writing on  
11          whether and to what extent the agency has imposed  
12          the stricter prudential standards described in para-  
13          graph (2) within 60 days of the Board’s rec-  
14          ommendation. A primary financial regulatory agency  
15          that fails to impose such standards shall provide  
16          specific justification for such failure to act in the  
17          written notice from the agency to the Council and  
18          Board.

19 **SEC. 129. EFFECT OF RESCISSION OF IDENTIFICATION.**

20          (a) NOTICE.—When the Council determines that a  
21          company or activity or practice no longer is subject to  
22          heightened prudential scrutiny, the Board shall inform the  
23          relevant primary financial regulatory agency or agencies  
24          (if different from the Board) of that finding.

1 (b) DETERMINATION OF PRIMARY FINANCIAL REGU-  
2 LATORY AGENCY TO CONTINUE.—A primary financial  
3 regulatory agency that has imposed stricter prudential  
4 standards for financial stability purposes under this sub-  
5 title shall determine whether standards that it has im-  
6 posed under this subtitle should remain in effect.

7 **SEC. 130. EXAMINATIONS AND ENFORCEMENT ACTIONS**  
8 **FOR INSURANCE AND RESOLUTIONS PUR-**  
9 **POSES.**

10 (a) EXAMINATIONS FOR INSURANCE AND RESOLU-  
11 TIONS PURPOSES.—Section 10(b)(3) of the Federal De-  
12 posit Insurance Act (12 U.S.C. 1820(b)(3)) is amended  
13 by striking “whenever the Board of Directors determines”  
14 and all that follows through the period and inserting “or  
15 financial holding company subject to stricter standards (as  
16 defined in section 101(b)(5) of the Financial Stability Im-  
17 provement Act of 2010) whenever the Board of Directors  
18 determines a special examination of any such depository  
19 institution is necessary to determine the condition of such  
20 depository institution for insurance or such financial hold-  
21 ing company subject to stricter standards for resolution  
22 purposes.”.

23 (b) ENFORCEMENT AUTHORITY.—Section 8(t) of the  
24 Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is  
25 amended—

1 (1) in paragraph (2)—

2 (A) at the end of subparagraph (B), by  
3 striking “or”;

4 (B) at the end of subparagraph (C), by  
5 striking the period and inserting “; or”; and

6 (C) by inserting at the end the following  
7 new subparagraph:

8 “(D) the conduct or threatened conduct  
9 (including any acts or omissions) of the deposi-  
10 tory institution holding company poses a risk to  
11 the Deposit Insurance Fund.”; and

12 (2) by adding at the end the following new  
13 paragraph:

14 “(6) For purposes of this subsection:

15 “(A) The Corporation shall have the same  
16 powers with respect to a depository institution  
17 holding company and its affiliates as the appro-  
18 priate Federal banking agency has with respect  
19 to the holding company and its affiliates; and

20 “(B) the holding company and its affiliates  
21 shall have the same duties and obligations with  
22 respect to the Corporation as the holding com-  
23 pany and its affiliates have with respect to the  
24 appropriate Federal banking agency.”.

1 **SEC. 131. STUDY OF THE EFFECTS OF SIZE AND COM-**  
2 **PLEXITY OF FINANCIAL INSTITUTIONS ON**  
3 **CAPITAL MARKET EFFICIENCY AND ECO-**  
4 **NOMIC GROWTH.**

5 (a) **STUDY REQUIRED.**—The Chairman of the Coun-  
6 cil shall carry out a study of the economic impact of pos-  
7 sible financial services regulatory limitations intended to  
8 reduce systemic risk. Such study shall estimate the effect  
9 on the efficiency of capital markets, costs imposed on the  
10 financial sector, and on national economic growth, of—

11 (1) explicit or implicit limits on the maximum  
12 size of banks, bank holding companies, and other  
13 large financial institutions;

14 (2) limits on the organizational complexity and  
15 diversification of large financial institutions;

16 (3) requirements for operational separation be-  
17 tween business units of large financial institutions in  
18 order to expedite resolution in case of failure;

19 (4) limits on risk transfer between business  
20 units of large financial institutions;

21 (5) requirements to carry contingent capital or  
22 similar mechanisms;

23 (6) limits on commingling of commercial and fi-  
24 nancial activities by large financial institutions;

1           (7) segregation requirements between tradi-  
2           tional financial activities and trading or other high-  
3           risk operations in large financial institutions; and

4           (8) other limitations on the activities or struc-  
5           ture of large financial institutions that may be use-  
6           ful to limit systemic risk.

7 The study shall include recommendations for the optimal  
8 structure of any limits considered in paragraphs (1)  
9 through (5) in order to maximize their effectiveness and  
10 minimize their economic impact.

11       (b) REPORT.—Not later than the end of the 180-day  
12 period beginning on the date of the enactment of this title,  
13 the Chairman shall issue a report to the Congress con-  
14 taining any findings and determinations made in carrying  
15 out the study required under subsection (a).

16 **SEC. 132. STRESS TESTS.**

17       (a) A financial holding company subject to stricter  
18 standards shall—

19           (1) conduct quarterly stress tests; and

20           (2) submit a report on its quarterly stress test  
21 to the head of the primary financial regulatory agen-  
22 cy and to the Board at such time, in such form, and  
23 containing such information as the head of the pri-  
24 mary financial regulatory agency may require.

1 (b) A financial company that has more than  
2 \$10,000,000,000 in total assets and is not a financial  
3 holding company subject to stricter standards shall—

4 (1) conduct semiannual stress tests; and

5 (2) submit a report on its semiannual stress  
6 test to the head of the primary financial regulatory  
7 agency and to the Board at such time, in such form,  
8 and containing such information as the head of the  
9 primary financial regulatory agency may require.

10 (c) A stress test under this section shall provide for  
11 testing under each of the following sets of conditions:

12 (1) Baseline.

13 (2) Adverse.

14 (3) Severely adverse.

15 (d) The head of each primary financial regulatory  
16 agency, in coordination with the Board, shall issue regula-  
17 tions to define the term “stress test” for purposes of this  
18 section.

19 **SEC. 133. CONTINGENT CAPITAL.**

20 (a) IN GENERAL.—The Board, in coordination with  
21 the appropriate primary financial regulatory agency, may,  
22 after notice and opportunity for comment, promulgate reg-  
23 ulations that require a financial holding company subject  
24 to stricter standards to maintain a minimum amount of  
25 long-term hybrid debt that is convertible to equity when—

1           (1) the Board determines that a specified finan-  
2           cial company fails to meet prudential standards es-  
3           tablished by the Board; or

4           (2) the Board has determined that threats to  
5           United States financial system stability make such a  
6           conversion necessary.

7           (b) FACTORS TO CONSIDER.—In establishing regula-  
8           tions under this section, the Board shall consider—

9           (1) an appropriate transition period for imple-  
10          mentation of a conversion under this section;

11          (2) capital requirements applicable to the speci-  
12          fied financial company and its subsidiaries; and

13          (3) any other factor that the Board deems ap-  
14          propriate.

15          (c) STUDY REQUIRED.—The Chairman of the Coun-  
16          cil shall carry out a study to determine an optimal imple-  
17          mentation of contingent capital requirements to maximize  
18          financial stability, minimize the probability of drawing on  
19          the Orderly Liquidation Fund established under section  
20          210(n) in a financial crisis, and minimize costs for finan-  
21          cial holding companies subject to stricter standards. To  
22          the extent practicable, the study shall take place with  
23          input from industry participants and international finan-  
24          cial regulators. Such study shall include—



1           (1) an evaluation of the characteristics and  
2 amounts of convertible debt that should be required,  
3 including possible tranche structure;

4           (2) an analysis of possible trigger mechanisms  
5 for debt conversion, including violation of regulatory  
6 capital requirements, failure of stress tests, declara-  
7 tion of systemic emergency by regulators, market-  
8 based triggers and other trigger mechanisms;

9           (3) an estimate of the costs of carrying contin-  
10 gent capital;

11           (4) an estimate of the effectiveness of contin-  
12 gent capital requirements in reducing losses to the  
13 systemic resolution fund in cases of single-firm or  
14 systemic failure; and

15           (5) recommendations for implementing legisla-  
16 tion.

17       (d) REPORT.—Not later than the end of the 180-day  
18 period beginning on the date of the enactment of this title,  
19 the Chairman of Council shall issue a report to the Con-  
20 gress containing any findings and determinations made in  
21 carrying out the study required under subsection (c).

1 **SEC. 134. RESTRICTION ON PROPRIETARY TRADING BY**  
2 **DESIGNATED FINANCIAL HOLDING COMPA-**  
3 **NIES.**

4 (a) **IN GENERAL.**—If the Board determines that pro-  
5 priety trading by a financial holding company subject to  
6 stricter standards poses an existing or foreseeable threat  
7 to the safety and soundness of such company or to the  
8 financial stability of the United States, the Board may  
9 prohibit such company from engaging in propriety trading.

10 (b) **EXCEPTIONS PERMITTED.**—The Board may ex-  
11 empt from the prohibition of subsection (a) propriety  
12 trading that the Board determines to be ancillary to other  
13 operations of such company and not to pose a threat to  
14 the safety and soundness of such company or to the finan-  
15 cial stability of the United States, including—

16 (1) making a market in securities issued by  
17 such company;

18 (2) hedging or managing risk;

19 (3) determining the market value of assets of  
20 such company; and

21 (4) propriety trading for such other purposes  
22 allowed by the Board by rule.

23 (c) **RULEMAKING AUTHORITY.**—The primary finan-  
24 cial regulatory agencies of banks and bank holding compa-  
25 nies shall jointly issue regulations to carry out this section.

1 (d) EFFECTIVE DATE.—The provisions of this sec-  
2 tion shall take effect after the end of the 180-day period  
3 beginning on the date of the enactment of this title.

4 (e) PROPRIETARY TRADING DEFINED.—For pur-  
5 poses of this section and with respect to a company, the  
6 term “proprietary trading” means the trading of stocks,  
7 bonds, options, commodities, derivatives, or other financial  
8 instruments with the company’s own money and for the  
9 company’s own account.

10 **SEC. 135. RULE OF CONSTRUCTION.**

11 (a) CONSTRUCTION.—The authorities granted to  
12 agencies under this subtitle are in addition to any rule-  
13 making, report-related, examination, enforcement, or  
14 other authority that such agencies may have under other  
15 law and in no way shall be construed to limit such other  
16 authority, except that any standards imposed for financial  
17 stability purposes under this subtitle shall supersede any  
18 conflicting less stringent requirements of the primary fi-  
19 nancial regulatory agency but only the extent of the con-  
20 flict.

21 (b) AGENT RESPONSIBILITIES.—For purposes of this  
22 subtitle, the term “agent” means the Board acting under  
23 section 124(c) and coordinating with the Council in exer-  
24 cising authority under sections 125 and 128.

1 **SEC. 136. ANTITRUST SAVINGS CLAUSE.**

2 Nothing in this subtitle shall be construed to modify,  
3 impair, or supercede the operation of any of the antitrust  
4 laws. For purposes of the preceding sentence, the term  
5 “antitrust laws” has the meaning given such term in sub-  
6 section (a) of the first section of the Clayton Act, except  
7 that such term includes section 5 of the Federal Trade  
8 Commission Act to the extent that such section relates to  
9 unfair methods of competition.

10 **Subtitle C—International Policy**  
11 **Coordination**

12 **SEC. 141. INTERNATIONAL POLICY COORDINATION.**

13 The President of the United States, or a designee of  
14 the President, shall coordinate through all available inter-  
15 national policy channels similar policies as found in United  
16 States law related to limiting the scope, nature, size, scale,  
17 concentration, and interconnectedness of financial compa-  
18 nies in order to protect financial stability and the global  
19 economy.

20 **Subtitle D—Access by Foreign**  
21 **Institutions**

22 **SEC. 151. ACCESS TO UNITED STATES FINANCIAL MARKET**  
23 **BY FOREIGN INSTITUTIONS.**

24 (a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN  
25 THE UNITED STATES.—Subsection 7(d)(3) of the Inter-

1 national Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is  
2 amended—

3 (1) by striking “and” at the end of subpara-  
4 graph (C);

5 (2) by striking the period at the end of sub-  
6 paragraph (D) and inserting “; and”; and

7 (3) by adding at the end the following new sub-  
8 paragraph:

9 “(E) for a foreign bank that presents a  
10 systemic risk to the United States, whether the  
11 home country of the foreign bank has adopted,  
12 or is making demonstrable progress toward  
13 adopting, an appropriate system of financial  
14 regulation for the financial system of such  
15 home country to mitigate such systemic risk.”.

16 (b) TERMINATION OF FOREIGN BANK OFFICES IN  
17 THE UNITED STATES.—Subsection 7(e)(1) of the Inter-  
18 national Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is  
19 amended—

20 (1) by striking “or” at the end of subparagraph  
21 (A);

22 (2) by striking the period at the end of sub-  
23 paragraph (B) and inserting “; or”; and

24 (3) by inserting after subparagraph (B), the  
25 following new subparagraph:

1           “(C) for a foreign bank that presents a  
2           systemic risk to the United States, the home  
3           country of the foreign bank has not adopted or  
4           made demonstrable progress toward adopting  
5           an appropriate system of financial regulation to  
6           mitigate such systemic risk.”.

7           (c) REGISTRATION OR SUCCESSION TO UNITED  
8           STATES BROKERAGE OR DEALER AND TERMINATION OF  
9           SUCH REGISTRATION.—Section 15 of the Securities Ex-  
10          change Act of 1934 (15 U.S.C. 78o) is amended by adding  
11          at the end the following new subsections:

12          “(k) REGISTRATION OR SUCCESSION TO A UNITED  
13          STATES BROKER OR DEALER.—In determining whether  
14          to permit a foreign person or an affiliate of a foreign per-  
15          son to register as a United States broker or dealer, or  
16          succeed to the registration of a United States broker or  
17          dealer, the Securities and Exchange Commission may con-  
18          sider whether, for a foreign person, or an affiliate of a  
19          foreign person that presents a systemic risk to the United  
20          States, the home country of the foreign person has adopt-  
21          ed or made demonstrable progress toward adopting an ap-  
22          propriate system of financial regulation to mitigate such  
23          systemic risk.

24          “(l) TERMINATION OF A UNITED STATES BROKER  
25          OR DEALER.—For a foreign person or an affiliate of a

1 foreign person that presents such a systemic risk to the  
2 United States, the Securities and Exchange Commission  
3 may determine to terminate the registration of such for-  
4 eign person or an affiliate of such foreign person as a  
5 broker or dealer in the United States if the Commission  
6 determines that the home country of the foreign person  
7 has not adopted, or made demonstrable progress toward  
8 adopting, an appropriate system of financial regulation to  
9 mitigate such systemic risk.”.

Page 124, after line 2, insert the following:

10 **Subtitle E—Additional**  
11 **Requirements**

Page 125, after line 14, insert the following new  
paragraph:

12 (3) DEPOSITORY INSTITUTION HOLDING COM-  
13 PANY.—The term “depository institution holding  
14 company” has the meaning given such term under  
15 section 3(w) of the Federal Deposit Insurance Act.

Page 126, after line 20, insert the following new  
paragraphs (and redesignate the subsequent paragraph  
accordingly):

16 (3) INVESTMENTS IN FINANCIAL SUBSIDI-  
17 ARIES.—For purposes of this section, investments in

1 financial subsidiaries that insured depository institu-  
2 tions must deduct from regulatory capital under sec-  
3 tion 5136A of the Revised Statutes or section  
4 46(a)(2) of the Federal Deposit Insurance Act need  
5 not be deducted from regulatory capital by deposi-  
6 tory institution holding companies or nonbank finan-  
7 cial companies identified under section 113, unless  
8 such capital deduction is required by the Board of  
9 Governors of the Federal Reserve System or the pri-  
10 mary financial regulatory agency in the case of  
11 nonbank financial companies identified under section  
12 113.

13 (4) EFFECTIVE DATE AND PHASE-IN PERI-  
14 ODS.—

15 (A) For debt or equity instruments issued  
16 on or after May 19, 2010, by depository institu-  
17 tion holding companies, or by nonbank financial  
18 companies identified under section 113, this  
19 section is effective as of May 19, 2010.

20 (B) In general, and other than as provided  
21 for in paragraph (5), for debt or equity instru-  
22 ments issued before May 19, 2010, by deposi-  
23 tory institution holding companies, or by  
24 nonbank financial companies identified under  
25 section 113, any regulatory capital deductions



1 required under this section will be phased in in-  
2 crementally over a period of three years, with  
3 the phase-in period to begin on January 1,  
4 2013, except in the situations described in sub-  
5 paragraph (C).

6 (C) For any other depository institution  
7 holding company that was not supervised by the  
8 Board of Governors of the Federal Reserve Sys-  
9 tem as of May 19, 2010, the requirements of  
10 this section, except the requirements in sub-  
11 paragraphs (A) and (B), shall be effective five  
12 years from the date of the enactment of this  
13 title.

14 (D) For bank holding company subsidi-  
15 aries, organized under the laws of any State, of  
16 foreign banking organizations that have relied  
17 on Supervision and Regulation Letter SR-01-1  
18 issued by the Board of Governors of the Fed-  
19 eral Reserve System (as in effect on May 19,  
20 2010), the requirements of this section, except  
21 the requirements in subparagraph (A), shall be  
22 effective five years from the date of the enact-  
23 ment of this title.

24 (5) EXCEPTIONS.—This section shall not—

25 (A) apply to any Federal home loan bank;

1           (B) affect small bank holding companies  
2 subject to the Small Bank Holding Company  
3 Policy Statement of the Board of Governors of  
4 the Federal Reserve System as in effect on May  
5 19, 2010;

6           (C) affect the capital treatment of any  
7 debt or equity security issued on or before May  
8 19, 2010 for depository institution holding com-  
9 panies with total consolidated assets of less  
10 than \$15 billion as of the date of the enactment  
11 of this title, and for organizations that were  
12 mutual holding companies on May 19, 2010;

13           (D) be construed as preventing the appro-  
14 priate Federal banking agency from amending  
15 its capital adequacy guidelines or regulations in  
16 a way that would affect the capital treatment of  
17 any debt or equity security;

18           (E) apply to any depository institution  
19 holding company or financial holding companies  
20 subject to stricter standards under section 125  
21 if—

22                   (i) the company is predominantly en-  
23 gaged in insurance, investment company  
24 activities, or asset management; and

1                   (ii) the Board of Governors of the  
2                   Federal Reserve System determines that  
3                   risk-based capital requirements and lever-  
4                   age limits are not appropriate for such  
5                   company because of such company's activi-  
6                   ties (such as investment company activities  
7                   or asset management) or structure, pro-  
8                   vided that the Board of Governors of the  
9                   Federal Reserve System shall in such case  
10                  apply other standards that result in appro-  
11                  priately stringent controls.

