

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

April 27, 2012

The Honorable Paul Ryan
Chairman
Committee on Budget
309 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Ryan:

Pursuant to section 201 (a) of the Concurrent Resolution on the Budget for Fiscal Year 2013 (H. Con. Res. 112), I hereby transmit to the Committee on the Budget the recommendations which were approved by vote of the Committee on Financial Services on April 18, 2012, and the appropriate accompanying material including dissenting views. This submission is for the purpose of complying with the reconciliation directives included in H. Con. Res. 112, and is consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

If you have any questions, please do not hesitate to have your staff contact Natalie McGarry of my staff at extension 5-7502. Thank you for your attention to this matter.

Sincerely,



SPENCER BACHUS
Chairman

STB:nm

cc: The Honorable Chris Van Hollen
The Honorable Barney Frank

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PURPOSE AND SUMMARY

On March 29, 2012, the House passed the concurrent resolution on the budget for fiscal year 2013, H. Con. Res. 112, by a vote of 228 yeas to 191 nays. That budget resolution instructed the Committee on Financial Services to submit legislative recommendations to the Committee on the Budget that reduce the deficit by \$3 billion for fiscal years 2012 and 2013, \$16.7 billion for fiscal years 2012 through 2017, and \$29.8 billion for fiscal years 2012 through 2022. To fulfill the instructions set forth in H. Con. Res. 112, the Committee on Financial Services recommends the following legislation, set forth in Title III, to the Budget Committee:

Subtitle A – Orderly Liquidation Fund

Subtitle A would repeal Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (P.L. 111-203). The Congressional Budget Office (CBO) estimates that Subtitle A would reduce direct spending by \$3.383 billion for fiscal years 2012 and 2013, \$13.585 billion for fiscal years 2012 through 2017, and \$22 billion for fiscal years 2012 through 2022.

Subtitle B – Home Affordable Modification Program

Subtitle B—previously introduced as H.R. 839, the HAMP Termination Act, and passed by the House—would terminate the authority of the Treasury Department to provide any new assistance to homeowners under the Home Affordable Modification Program (HAMP) authorized under Title I of the Emergency Economic Stabilization Act (12 U.S.C. 5230), while preserving any assistance already provided to HAMP participants on a permanent or trial basis. Subtitle B also provides for a study by the Treasury Department to identify best practices for making existing mortgage assistance programs available to veterans, active duty military personnel, and their relatives. The CBO estimates that Subtitle B would reduce direct spending by \$617 million for fiscal years 2012 and 2013, \$2.624 billion for fiscal years 2012 through 2017, and \$2.838 billion for fiscal years 2012 through 2022.

Subtitle C – Bureau of Consumer Financial Protection

Subtitle C would eliminate the direct funding of the Consumer Financial Protection Bureau (CFPB) by the Federal Reserve and instead fund the CFPB through Congressional appropriations. Subtitle C would authorize the appropriation of \$200 million to fund the CFPB for fiscal years 2012 and 2013, and would repeal the Consumer Financial Protection Fund and the Consumer Financial Civil Penalty Fund. The CBO estimates that Subtitle C would reduce direct spending by \$381 million for fiscal years 2012 and 2013, \$2.435 billion for fiscal years 2012 through 2017, and \$5.387 billion for fiscal years 2012 through 2022.

Subtitle D – Flood Insurance Reform

Subtitle D—previously introduced as H.R. 1309, the Flood Insurance Reform Act of 2011 and passed by the House—would reauthorize the National Flood Insurance Program

(NFIP) through September 30, 2016, and amend the National Flood Insurance Act to ensure the immediate and near-term fiscal and administrative health of the NFIP. Subtitle D would ensure the NFIP's continued viability by encouraging broader participation in the program, increasing financial accountability, eliminating unnecessary rate subsidies, and updating the program to meet the needs of the 21st century. The key provisions of Subtitle D include: (1) a five-year reauthorization of the NFIP; (2) a three-year delay in the mandatory purchase requirement for certain properties in newly designated Special Flood Hazard Areas (SFHAs); (3) a phase-in of full-risk, actuarial rates for areas newly designated as Special Flood Hazard; (4) a reinstatement of the Technical Mapping Advisory Council; and (5) an emphasis on greater private sector participation in providing flood insurance coverage. The CBO estimates that Subtitle D would reduce direct spending by \$880 million for fiscal years 2012 through 2017, and \$4.9 billion for fiscal years 2012 through 2022.

Subtitle E – Office of Financial Research

Subtitle E would eliminate the Office of Financial Research (OFR), an office within the Department of the Treasury which was established by the Dodd-Frank Act. The CBO estimates that Subtitle E would reduce direct spending by \$270 million over the next ten years.

BACKGROUND AND NEED FOR LEGISLATION

Subtitle A – Orderly Liquidation Fund

Title II of the Dodd-Frank Act establishes a so-called Orderly Liquidation Authority (OLA) that grants the Federal Deposit Insurance Corporation (FDIC) the authority to resolve large non-bank financial institutions. Title II authorizes the FDIC to act as the receiver for the failing institution. Title II further authorizes the FDIC to borrow from the Treasury an amount equal to up to 10% of the institution's total assets in the 30 days immediately following the FDIC's appointment as receiver, and after 30 days, the FDIC can borrow up to 90% of the firm's total assets. The FDIC can then use those funds to pay off the creditors of a failed firm. Proponents of Title II have asserted that taxpayer funds would not be used to liquidate a failed firm, pointing to provisions that contemplate recouping the costs of the liquidation from large financial institutions through *post hoc* assessments. Despite these assertions, CBO has estimated that Title II will cost taxpayers \$22 billion between 2012 and 2022. Repealing Title II thus relieves taxpayers of the burden of bailing out the creditors of large financial institutions, thereby reducing moral hazard by making it clear that creditors—rather than taxpayers—will bear the costs of failure. Repealing Title II would not only restore market discipline, according to the CBO it would also achieve savings for the purposes of deficit reduction of \$3.383 billion in FY 2012-13, \$13.585 billion in FY 2012-17, and \$22 billion in FY 2012-22.

Subtitle B – Home Affordable Modification Program

The standalone version of Subtitle B, H.R. 839, the HAMP Termination Act, was introduced by Congressman Patrick McHenry and Chairman Bachus to terminate new mortgage modification activities under the HAMP. Created under the auspices of Section 109 of the Troubled Asset Relief Program (TARP) enacted in 2008 (P.L. 110-343), HAMP is a federally-

funded mortgage modification program that provides financial incentives to participating mortgage servicers to modify the mortgages of eligible homeowners.

As the signature piece of the Administration's overall Making Home Affordable initiative on foreclosure prevention, HAMP has been both costly and ineffective. According to the Treasury Department, as of March 1, 2012, the Administration has obligated \$29.88 billion to HAMP, although thus far it has only disbursed \$2.54 billion. Overall, the Administration has obligated \$45.60 billion of TARP dollars to the Making Home Affordable initiative, which also includes the Hardest Hit Fund and the FHA Refinance program.

By any objective measure, HAMP and these other programs have failed to produce their promised results. The Administration originally projected that Making Home Affordable would help 7 to 9 million homeowners, yet foreclosures have remained elevated and the number of families assisted by the program—approximately 1.8 million—has fallen far short of projections. There were roughly 1.1 million completed foreclosures in 2010 and 830,000 more completed foreclosures in 2011. As of February 2012, more than 1.3 million mortgages in the United States were 90 days or more delinquent and around 12 percent of the loans outstanding in the market were delinquent in some way.

HAMP itself, which was initially projected to modify 3 to 4 million loans, has begun only 1.99 million cumulative trial modifications according to program performance data through February 2012. Of those trial modifications, only 782,609 (39 percent) have transitioned to active permanent modifications along with only 68,539 active trial loans. Meanwhile, nearly half of the trial modifications started (957,677) were cancelled in the trial or permanent modification stage.

Additional concerns have been raised about the benefit to participants of a mortgage modification program that gives borrowers a false sense of hope as they struggle to keep their homes. The Special Inspector General for the Troubled Asset Relief Program (SIGTARP) has testified before Congress that HAMP is a program that “benefits only a small portion of distressed homeowners, offers others little more than false hope, and in certain cases causes more harm than good.” In those cases, HAMP harms those borrowers who provisionally make reduced loan payments during a trial period but do not qualify for permanent modifications. When they are rejected from the program, these borrowers are told that they owe back payments, interest, and fees; sometimes they are asked to make up these deficiencies in a lump-sum payment. For some borrowers, that reversal constitutes their last gasp, as their increased indebtedness and tarnished credit rating preclude them from qualifying for a private-sector proprietary loan modification program which might have helped them retain their home.

In addition to its high cost and poor track record, HAMP has also been plagued by poor administration and resistance to proper oversight since its inception, placing taxpayers at risk. For example, the Government Accountability Office (GAO) has cited the Treasury Department for not having “fully implemented all of our prior recommendations to increase the transparency, accountability, and consistency of the program.” The Congressional Oversight Panel for TARP has noted that “despite repeated urgings from the Panel, Treasury has failed to collect and analyze data that would explain HAMP's shortcomings, and it does not even have a way to

collect data for many of HAMP's add-on programs." The SIGTARP has added that HAMP "has been beset by problems from the outset and, despite frequent retooling, continues to fall dramatically short of any meaningful standard of success."

HAMP, for all its good intentions, has thus far impeded the recovery of the housing market and prolonged economic uncertainty. Enacting Subtitle B would not only end this costly, ineffective, injurious, and poorly run program, according to the CBO it would also achieve savings for the purposes of deficit reduction of \$617 million in FY 2012-13, \$2.624 billion in FY 2012-17, and \$2.838 billion in FY 2012-22.

Subtitle C – Bureau of Consumer Financial Protection

Title X of the Dodd-Frank Act created the CFPB as an independent agency housed within the Federal Reserve System, and charged it with regulating "the offering and provision of consumer financial products or services" under the federal consumer financial laws. The Dodd-Frank Act authorizes the CFPB to fund itself by drawing money from the Federal Reserve to the extent the CFPB's Director deems "necessary." The Federal Reserve does not oversee the agency or exercise any authority over it, but the Federal Reserve must transfer to the CFPB whatever funds its Director requests, up to the following fixed percentages of the Federal Reserve's 2009 operating expenses: 11 percent in fiscal year 2012, or \$547.8 million; 12 percent in fiscal year 2013, or \$597.6 million; and 12 percent each fiscal year thereafter, subject to annual adjustments for inflation. These funds—diverted from the Federal Reserve to the CFPB—would otherwise have been forwarded from the Federal Reserve to the Treasury, where they could have been used to pay for other expenditures or to reduce the debt.

Given that the CFPB's funding is not appropriated by Congress, many observers have raised concerns about the lack of transparency in the CFPB's funding and expenditures and Congress's ability to exercise oversight of the CFPB. In light of these concerns, Subtitle C would end the direct funding of the CFPB by the Federal Reserve and repealing the Consumer Financial Protection Fund and the Consumer Financial Civil Penalty Fund. Subtitle C would subject the CFPB to regular appropriations and authorize an appropriation of \$200 million to fund the CFPB for fiscal years 2012 and 2013. Subtitle C would thus make the CFPB accountable to Congress and make its funding transparent. Moreover, Subtitle C would achieve savings for the purposes of deficit reduction of \$381 million in FY 2012-13, \$2.435 billion in FY 2012-17, and \$5.387 billion in FY 2012-22, according to CBO.

Subtitle D – Flood Insurance Reform

Recognizing that the private sector lacked the capacity to manage flood risk, in 1968 Congress created the NFIP to address that risk and ease the burden on taxpayers for flood losses paid out in the form of post-disaster relief following annual flooding and severe flooding following hurricanes. The NFIP is administered by the Federal Emergency Management Agency (FEMA), which is housed in the Department of Homeland Security. The NFIP manages the risk posed by floods in three ways: (i) identifying flood hazards (ii) managing the use of land in floodplains (*e.g.*, by establishing land use controls and setting building codes); and (iii) providing insurance protection. The NFIP plays a crucial role: without the flood insurance provided by the

NFIP, homebuyers or businesses cannot close real estate transactions on properties located in areas that have been designated as Special Flood Hazard Areas (SFHAs).

Although the NFIP generated premium income of approximately \$3.3 billion in 2010, those premiums cannot make up for losses that the NFIP sustained in earlier years. The 2005 hurricane season resulted in significant claims against the NFIP, and annual premium income could not cover them. To pay these claims, the NFIP borrowed from the U.S. Treasury. Before 2005, the NFIP's borrowing authority was limited by statute to \$1.5 billion. To make up the shortfall that resulted from the 2005 hurricane season, Congress increased the NFIP's borrowing authority three times between September 2005 and January 2007, raising it from \$1.5 billion to \$20.8 billion. As of February 29, 2012, the NFIP owed \$17.775 billion to the U.S. Treasury.

Notwithstanding the importance of the NFIP to those that live and do business in SFHAs, Congress has not passed a long-term NFIP reauthorization and reform bill since 2004 (P.L. 108-264). During the 110th Congress, the House and Senate each passed significant reform measures but could not agree on final legislation. Since September 2008, the NFIP has been extended on a short-term basis 16 times. During that same time period, the NFIP's authorization has lapsed three times. In 2011, after several short-term extensions and three temporary lapses, Congress extended the NFIP through May 31, 2012. These short-term extensions and lapses have created needless uncertainty in the residential and commercial real estate sectors in communities across the country. Private insurance companies that voluntarily participate in the NFIP find it difficult to continue participating, given the uncertainty of the NFIP authorization.

Since 2006, the GAO has identified the NFIP as "high-risk" because of inadequate management and insufficient funds. To reauthorize this much-need program while addressing the weaknesses that make it difficult for the NFIP to return to solvency, Subtitle D institutes reforms that will improve the NFIP's financial stability, reduce the burden on taxpayers, and facilitate the creation of a private market that eliminates taxpayer risk over the long-term. In addition, the CBO estimates that Subtitle D would achieve savings for the purposes of deficit reduction of \$880 million in FY 2012-17 and \$4.9 billion in FY 2012-22.

Subtitle E – Office of Financial Research

The Dodd-Frank Act established the OFR as an office within the Department of the Treasury and charged the OFR with supporting the Financial Stability Oversight Council (FSOC) by collecting information; standardizing the types and formats of data reported and collected; performing applied research and long-term research; developing tools for risk measurement and monitoring; and making the results of its activities available to financial regulatory agencies.

Congress does not appropriate the OFR's funding. Through July 2012, the OFR is funded by the Federal Reserve. Following that, the OFR will fund itself and the FSOC by levying assessments on bank holding companies with total consolidated assets of \$50 billion or more and nonbank financial companies supervised by the Federal Reserve. In FY 2011, the OFR's total expenses were \$14,249,000. In FY 2012, the OFR's expenses are projected to total \$122,626,000, funded from both transfers from the Federal Reserve and assessments on financial

institutions: \$91,742,000 in transfers and \$119,000,000 in assessments. In FY 2013, the OFR is expected to spend \$157,745,000 and bring in \$168,000,000 in assessments.

The Dodd-Frank Act empowers the OFR to demand “all data necessary” from financial companies, including banks, hedge funds, private equity firms, and brokerages. Such data would include sensitive, non-public information such as the identities of counterparties for credit default swaps, as well as information about individual loans such as interest rate and maturity. Because much of the information collected by the OFR is likely to be duplicative of information requested by other financial regulatory agencies, it will drive up compliance costs, which could further reduce the availability of credit and increase the cost of financial services for businesses and consumers. The CBO has estimated that Subtitle E would reduce direct spending by \$270 million over the next ten years.

HEARINGS

Subtitle A – Orderly Liquidation Fund

On June 14, 2011, the Subcommittee on Financial Institutions and Consumer Credit held a hearing titled “Does the Dodd-Frank Act End ‘Too Big to Fail’?” This was a two-panel hearing, and the following witnesses testified:

Panel One

- Mr. Michael H. Krimminger, General Counsel, Federal Deposit Insurance Corporation
- Ms. Christy Romero, Acting Special Inspector General, Office of the Special Inspector General, Troubled Asset Relief Program

Panel Two

- Mr. Stephen J. Lubben, Daniel J. Moore Professor of Law, Seton Hall University School of Law
- The Honorable Michael Barr, Professor of Law, University of Michigan Law School

Subtitle B – Home Affordable Modification Program

On March 2, 2011, the Subcommittee on Insurance, Housing and Community Opportunity held a hearing titled “Legislative Proposals to End Taxpayer Funding for Ineffective Foreclosure Mitigation Programs.” This was a one-panel hearing, and the following witnesses testified:

- The Honorable Neil M. Barofsky, Special Inspector General for the Troubled Asset Relief Program, Office of the Special Inspector General
- The Honorable David Stevens, Assistant Secretary for Housing and Commissioner of the Federal Housing Administration, Department of Housing and Urban Development

- The Honorable Mercedes M. Márquez, Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development
- Mr. Matthew J. Scirè, Director, Financial Markets and Community Investment, U.S. Government Accountability Office
- Ms. Katie Jones, Analyst in Housing Policy, Congressional Research Service, Library of Congress

Subtitle C – Bureau of Consumer Financial Protection

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on March 16, 2011, titled “Oversight of the Consumer Financial Protection Bureau.” The sole witness at this hearing was:

- Ms. Elizabeth Warren, Special Advisor to the Secretary of the Treasury for the Consumer Financial Protection Bureau, Department of the Treasury

On April 6, 2011, the Subcommittee on Financial Institutions and Consumer Credit held a hearing titled “Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau.” This was a one-panel hearing, and the following witnesses testified:

- Ms. Leslie R. Andersen, President and Chief Executive Officer, Bank of Bennington on behalf of the American Bankers Association
- Ms. Lynette W. Smith, President and Chief Executive Officer, Washington Gas Light FCU on behalf of the National Association of Federal Credit Unions
- Mr. Jess Sharp, Executive Director, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce
- Mr. Hilary Shelton, Director, NAACP Washington Bureau and Senior VP for Advocacy and Policy, NAACP
- Mr. Noah H. Wilcox, President and Chief Executive Officer, Grand Rapids State Bank on behalf of the Independent Community Bankers of America
- Mr. Rod Staatz, President and Chief Executive Officer, SECU of Maryland on behalf of the Credit Union National Association
- Mr. Richard Hunt, President, Consumer Bankers Association
- Prof. Adam J. Levitin, Georgetown University Law Center

On November 2, 2011, the Subcommittee on Financial Institutions and Consumer Credit held a hearing titled “The Consumer Financial Protection Bureau: The First 100 Days.” The sole witness at this hearing was:

- Mr. Raj Date, Special Advisor to the Secretary of the Treasury, The Consumer Financial Protection Bureau

On February 8, 2012, the Subcommittee on Financial Institutions and Consumer Credit held a hearing titled “Legislative Proposals to Promote Accountability and Transparency at the Consumer Financial Protection Bureau.” This was a one-panel hearing and the following witnesses testified:

- Mr. Michael J. Hunter, Chief Operating Officer, American Bankers Association
- Mr. Andrew J. Pincus, Partner, Mayer Brown LLP, on behalf of the US Chamber of Commerce
- Mr. Chris Stinebert, President and Chief Executive Officer, American Financial Services Association
- Mr. Arthur E. Wilmarth, Jr., Professor of Law, The George Washington University

On February 15, 2012, the Subcommittee on Oversight and Investigations held a hearing titled “Budget Hearing—Consumer Financial Protection Bureau.” The sole witness at this hearing was:

- The Honorable Richard Cordray, The Consumer Financial Protection Bureau

On March 29, 2012, the Committee on Financial Services held a hearing titled “The Semi-Annual Report of the Consumer Financial Protection Bureau.” The sole witness at this hearing was:

- The Honorable Richard Cordray, The Consumer Financial Protection Bureau

Subtitle D – Flood Insurance Reform

On March 11, 2011, the Subcommittee on Insurance, Housing and Community Opportunity held a hearing titled “Legislative Proposals to Reform the National Flood Insurance Program.” This was a two-panel hearing, and the following witnesses testified:

Panel One

- Ms. Orice Williams Brown, Managing Director, Government Accountability Office
- Ms. Sally McConkey, Vice Chair, Association of State Flood Plain Managers and Manager, Coordinated Hazard Assessment and Mapping Program, Illinois State Water Survey

Panel Two

- Mr. Stephen Ellis, on behalf of the SmarterSafer Coalition, and Vice President, Taxpayers for Common Sense, Washington, D.C.
- Mr. Terry Sullivan, Chair, Committee on Flood Insurance, National Association of REALTORS® and Owner, Sullivan Realty, Spokane, Washington

- Mr. Spencer Houldin, Chair, Government Affairs Committee, Independent Insurance Agents and Brokers of America and President, Ericson Insurance Services, Washington Depot, Connecticut
- Mr. Franklin Nutter, President, Reinsurance Association of America, Washington, D.C.
- Ms. Sandra G. Parrillo, Chair, National Association of Mutual Insurance Companies and President and CEO of Providence Mutual Fire Insurance Company, Warwick, Rhode Island
- Ms. Donna Jallick, on behalf of the Property Casualty Insurers Association of America, and Vice President, Flood Operations, Harleysville Insurance, Harleysville, Pennsylvania
- Mr. Barry Rutenberg, First Vice Chairman, National Association of Home Builders, Washington, D.C.

On April 1, 2011, the Subcommittee on Insurance, Housing and Community Opportunity held a hearing titled “Legislative Proposals to Reform the National Flood Insurance Program, Part II.” The sole witness at this hearing was:

- The Honorable W. Craig Fugate, Administrator, Federal Emergency Management Agency.

Subtitle E – Office of Financial Research

On July 14, 2011, the Subcommittee on Oversight and Investigations Credit held a hearing titled “Oversight of the Office of Financial Research and the Financial Stability Oversight Council.” This was a two-panel hearing and the following witnesses testified:

Panel One

- The Honorable Richard Berner, Counselor to the Secretary of the Treasury

Panel Two

- Dr. Nassim N. Taleb, Distinguished Professor, New York University Polytechnic Institute;
- Mr. Dilip Krishna, Vice President of Financial Services, Teradata Corporation;
- Mr. Alan Paller, Director of Research, SANS Institute;
- Dr. John Lietchy, Professor of Marketing and Statistics, Director of the Center for the Study of Global Financial Stability, Pennsylvania State University

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 18, 2012, and ordered the Committee Print of budget reconciliation legislative recommendations of the Committee on Financial Services, as amended, transmitted to the Committee on the Budget by a record vote of 31 yeas and 26 nays (Record vote no. FC-76).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Chairman Bachus to order the Committee Print, as amended, transmitted to the Committee on the Budget was agreed to by a record vote of 31 yeas and 26 nays (Record vote no. FC-76). The names of Members voting for and against follow:

Record vote no. FC-76							
Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus	X			Mr. Frank (MA)		X	
Mr. Hensarling	X			Ms. Waters		X	
Mr. King (NY)	X			Mrs. Maloney		X	
Mr. Royce	X			Mr. Gutierrez		X	
Mr. Lucas	X			Ms. Velázquez		X	
Mr. Paul				Mr. Watt		X	
Mr. Manzullo				Mr. Ackerman		X	
Mr. Jones				Mr. Sherman		X	
Mrs. Biggert	X			Mr. Meeks		X	
Mr. Gary G. Miller (CA)	X			Mr. Capuano		X	
Mrs. Capito	X			Mr. Hinojosa		X	
Mr. Garrett	X			Mr. Clay		X	
Mr. Neugebauer	X			Mrs. McCarthy (NY)		X	
Mr. McHenry	X			Mr. Baca		X	
Mr. Campbell	X			Mr. Lynch			
Mrs. Bachmann	X			Mr. Miller (NC)		X	
Mr. McCotter	X			Mr. David Scott (GA)		X	
Mr. McCarthy (CA)	X			Mr. Al Green (TX)		X	
Mr. Pearce	X			Mr. Cleaver		X	
Mr. Posey	X			Ms. Moore		X	
Mr. Fitzpatrick	X			Mr. Ellison		X	
Mr. Westmoreland	X			Mr. Perlmutter		X	
Mr. Luetkemeyer	X			Mr. Donnelly		X	
Mr. Huizenga	X			Mr. Carson		X	
Mr. Duffy	X			Mr. Himes		X	
Ms. Hayworth	X			Mr. Peters		X	
Mr. Renacci	X			Mr. Carney		X	
Mr. Hurt	X						
Mr. Dold	X						
Mr. Schweikert	X						
Mr. Grimm	X						
Mr. Canseco	X						
Mr. Stivers	X						
Mr. Fincher	X						

During consideration of the Committee Print by the Committee, the following amendments were considered:

1. An amendment offered by Ms. Moore, no. 1, to strike Subtitle A, was not agreed to by a record vote of 23 yeas and 29 nays (Record vote no. FC-69).

Record vote no. FC-69

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo				Mr. Ackerman	X		
Mr. Jones				Mr. Sherman			
Mrs. Biggert		X		Mr. Meeks			
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry				Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch			
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison			
Mr. Westmoreland				Mr. Perlmutter	X		
Mr. Luetkemeyer		X		Mr. Donnelly	X		
Mr. Huizenga		X		Mr. Carson	X		
Mr. Duffy		X		Mr. Himes	X		
Ms. Hayworth		X		Mr. Peters	X		
Mr. Renacci		X		Mr. Carney	X		
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers		X					
Mr. Fincher		X					

2. An amendment offered by Mr. Frank and Mr. Gutierrez, no. 2, to impose a \$30 billion special assessment on certain financial institutions to be deposited in a Taxpayer Protection and Financial Stability Fund, was not agreed to by a record vote of 22 yeas and 33 nays (Record vote no. FC-70).

Record vote no. FC-70

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo				Mr. Ackerman	X		
Mr. Jones				Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		

Record vote no. FC-70

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry				Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch			
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison	X		
Mr. Westmoreland				Mr. Perlmutter		X	
Mr. Luetkemeyer		X		Mr. Donnelly		X	
Mr. Huizenga		X		Mr. Carson	X		
Mr. Duffy		X		Mr. Himes		X	
Ms. Hayworth		X		Mr. Peters	X		
Mr. Renacci		X		Mr. Carney		X	
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers		X					
Mr. Fincher		X					

3. An amendment offered by Mrs. Maloney, no. 3, to strike Subtitle C, was not agreed to by a record vote of 26 yeas and 29 nays (Record vote no. FC-71).

Record vote no. FC-71

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manullo				Mr. Ackerman	X		
Mr. Jones				Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry				Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch			
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison	X		
Mr. Westmoreland				Mr. Perlmutter	X		
Mr. Luetkemeyer		X		Mr. Donnelly	X		
Mr. Huizenga		X		Mr. Carson	X		
Mr. Duffy		X		Mr. Himes	X		

Record vote no. FC-71

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Hayworth		X		Mr. Peters	X		
Mr. Renacci		X		Mr. Carney	X		
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers		X					
Mr. Fincher		X					

4. An amendment offered by Mr. Frank, no. 4, to fund the Federal Reserve's non-monetary policy functions through Congressional appropriations, was not agreed to by a record vote of 24 yeas and 33 nays (Record vote no. FC-72).

Record vote no. FC-72

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manullo				Mr. Ackerman	X		
Mr. Jones				Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry		X		Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch			
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison	X		
Mr. Westmoreland	X			Mr. Perlmutter	X		
Mr. Luetkemeyer		X		Mr. Donnelly		X	
Mr. Huizenga		X		Mr. Carson	X		
Mr. Duffy		X		Mr. Himes		X	
Ms. Hayworth		X		Mr. Peters		X	
Mr. Renacci		X		Mr. Carney		X	
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers	X						
Mr. Fincher		X					

5. An amendment offered by Mr. Miller of N.C., no. 5, to fund the Office of the Comptroller of the Currency through Congressional appropriations, was not agreed to by a record vote of 22 yeas and 35 nays (Record vote no. FC-73).

Record vote no. FC-73

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt		X	
Mr. Manzano				Mr. Ackerman	X		
Mr. Jones				Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry		X		Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch			
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore		X	
Mr. Fitzpatrick		X		Mr. Ellison	X		
Mr. Westmoreland	X			Mr. Perlmutter		X	
Mr. Luetkemeyer		X		Mr. Donnelly		X	
Mr. Huizenga	X			Mr. Carson	X		
Mr. Duffy		X		Mr. Himes		X	
Ms. Hayworth		X		Mr. Peters		X	
Mr. Renacci		X		Mr. Carney		X	
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers	X						
Mr. Fincher		X					

6. An amendment offered by Mr. Miller of N.C., no. 8, to establish a fund, paid for by certain financial institutions, to cover costs that Fannie Mae and Freddie Mac may incur in connection with mortgages they own or guarantee and which they purchased from an “underperforming” servicer, was not agreed to by a record vote of 21 yeas and 36 nays (Record vote no. FC-74).

Record vote no. FC-74

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez	X		

Record vote no. FC-74

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo				Mr. Ackerman	X		
Mr. Jones				Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry		X		Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch			
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore		X	
Mr. Fitzpatrick		X		Mr. Ellison		X	
Mr. Westmoreland		X		Mr. Perlmutter		X	
Mr. Luetkemeyer		X		Mr. Donnelly		X	
Mr. Huizenga		X		Mr. Carson		X	
Mr. Duffy		X		Mr. Himes	X		
Ms. Hayworth		X		Mr. Peters	X		
Mr. Renacci		X		Mr. Carney	X		
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers		X					
Mr. Fincher		X					

7. An amendment offered by Mr. Miller of N.C., no. 12, to define breaches of representations and warranties made in connection with the sale of a mortgage asset to Fannie Mae and Freddie Mac as violations of the False Claims Act, was not agreed to by a record vote of 26 yeas and 31 nays (Record vote no. FC-75).

Record vote no. FC-75

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo				Mr. Ackerman	X		
Mr. Jones				Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry		X		Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch			

Record vote no. FC-75

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mrs. Bachmann.....		X		Mr. Miller (NC).....	X		
Mr. McCotter.....		X		Mr. David Scott (GA).....	X		
Mr. McCarthy (CA).....		X		Mr. Al Green (TX).....	X		
Mr. Pearce.....		X		Mr. Cleaver.....	X		
Mr. Posey.....		X		Ms. Moore.....	X		
Mr. Fitzpatrick.....		X		Mr. Ellison.....	X		
Mr. Westmoreland.....		X		Mr. Perlmutter.....	X		
Mr. Luetkemeyer.....		X		Mr. Donnelly.....	X		
Mr. Huizenga.....		X		Mr. Carson.....	X		
Mr. Duffy.....		X		Mr. Himes.....	X		
Ms. Hayworth.....		X		Mr. Peters.....	X		
Mr. Renacci.....		X		Mr. Carney.....	X		
Mr. Hurt.....		X					
Mr. Dold.....		X					
Mr. Schweikert.....		X					
Mr. Grimm.....		X					
Mr. Canseco.....		X					
Mr. Stivers.....		X					
Mr. Fincher.....		X					

The following amendments were also considered by the Committee:

1. An amendment offered by Mr. Perlmutter and Mrs. McCarthy, no. 6, to reauthorize the Export-Import Bank of the United States, was offered and withdrawn.
2. An amendment offered by Mr. Canseco, no. 7, to repeal Title I, Subtitle B of the Dodd-Frank Act, which established the Office of Financial Research, was agreed to by voice vote.
3. An amendment offered by Mr. Miller of N.C., no. 9, to prohibit mortgage servicers and their affiliates from owning or holding interests in mortgage loans secured by the same property that is subject to the mortgage loan serviced by the servicer, was ruled non-germane.
4. An amendment offered by Mr. Perlmutter, no. 10, to legalize, license, and regulate Internet gambling, was offered and withdrawn.
5. An amendment offered by Mr. Miller of N.C., no. 11, to authorize the Federal Housing Finance Authority to acquire certain second mortgages by right of eminent domain, was offered and withdrawn.

CONSTITUTIONAL AUTHORITY STATEMENT

Subtitle A – Orderly Liquidation Fund

Congress has the power to enact this legislation pursuant to the following: Clause 3 of Section 8 of Article I of the Constitution, under which Congress has the power to regulate commerce among the states.

Subtitle B – Home Affordable Modification Program

Congress has the power to enact this legislation pursuant to the following: Clause 3 of Section 8 of Article I of the Constitution, under which Congress has the power to regulate commerce among the states.

Subtitle C – Bureau of Consumer Financial Protection

Congress has the power to enact this legislation pursuant to the following: Clause 3 of Section 8 of Article I of the Constitution, under which Congress has the power to regulate commerce among the states.

Subtitle D – Flood Insurance Reform

Congress has the power to enact this legislation pursuant to the following: Clause 3 of Section 8 of Article I of the Constitution, under which Congress has the power to regulate commerce among the states; and Clause 1 of Section 8 of Article I of the Constitution, under which Congress has the power relating to the general welfare of the United States.

Subtitle E – Office of Financial Research

Congress has the power to enact this legislation pursuant to the following: Clause 3 of Section 8 of Article I of the Constitution, under which Congress has the power to regulate commerce among the states.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Subtitle A – Orderly Liquidation Fund

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objective of this Subtitle is to repeal the Title II of the Dodd-Frank Act, which would reduce direct spending by \$22 billion, according to CBO.

Subtitle B – Home Affordable Modification Program

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objective of this Subtitle is to terminate the authority of the Treasury Department to provide new assistance to homeowners under HAMP under Title I of the Emergency Economic Stabilization Act (12 U.S.C. 5230), while preserving any assistance already provided to HAMP participants on a permanent or trial basis. Enactment of these provisions would reduce direct spending by \$2.838 billion over ten years, according to CBO.

Subtitle C – Bureau of Consumer Financial Protection

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objective of this Subtitle is to eliminate direct funding of the CFPB by the Federal Reserve and instead recommend that the CFPB be subjected to the annual Congressional appropriations process. The provisions of this Subtitle would also authorize \$200 million to be appropriated to fund the CFPB for fiscal years 2012 and 2013, and would repeal the Consumer Financial Protection Fund and the Consumer Financial Civil Penalty Fund. Enactment of these provisions would reduce direct spending by \$5.387 billion over ten years, according to CBO.

Subtitle D – Flood Insurance Reform

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objective of this Subtitle is to reauthorize the NFIP through September 30, 2016, and amend the National Flood Insurance Act to ensure the immediate and near-term fiscal and administrative health of the NFIP. The provisions of this Subtitle also ensure the NFIP's continued viability by encouraging broader participation in the program, increasing financial accountability, eliminating unnecessary rate subsidies, and updating the program to meet the needs of the 21st century. The key provisions of Subtitle D include: (1) a five-year reauthorization of the NFIP; (2) a three-year delay in the mandatory purchase requirement for certain properties in newly designated Special Flood Hazard Areas (SFHAs); (3) a phase-in of full-risk, actuarial rates for areas newly designated as Special Flood Hazard; (4) a reinstatement of the Technical Mapping Advisory Council; and (5) an emphasis on greater private sector participation in providing flood insurance coverage. Enactment of these provisions would reduce direct spending by \$4.9 billion over ten years, according to CBO.

Subtitle E – Office of Financial Research

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objective of this Subtitle is to eliminate the OFR, an office within the Department of the Treasury established by the Dodd-Frank Act. According to CBO, eliminating the OFR would reduce direct spending by approximately \$270 million over the next ten years.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

[Please see attached CBO Estimate]



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

April 24, 2012

Reconciliation Recommendations of the House Committee on Financial Services

As approved by the House Committee on Financial Services on April 18, 2012

SUMMARY

H. Con. Res. 112, the Concurrent Budget Resolution for fiscal year 2013, as passed by the House of Representatives on March 29, 2012, instructed several committees of the House to recommend legislative changes that would reduce deficits over the 2012-2022 period. As part of this process, the House Committee on Financial Services was instructed to recommend changes to current law that would reduce the deficit by \$29.8 billion for fiscal years 2012 through 2022.

CBO estimates that the reconciliation recommendations approved by the Committee on Financial Services on April 18, 2012, would reduce direct spending by \$40.9 billion and revenues by \$10.6 billion over the over the 2012-2022 period, assuming enactment on or near October 1, 2012. Taken together, CBO estimates that enacting the recommendations would reduce budget deficits by \$30.4 billion over the 2012-2022 period, assuming enactment on or near October 1, 2012.

In addition, the Chairman of the House Committee on the Budget has directed CBO to prepare estimates assuming a July 1, 2012, enactment date for this year's reconciliation proposals. If the legislation were enacted by that earlier date, some of the Financial Services Committee's recommendations would result in greater budgetary savings than those estimated assuming an October 1 enactment date. Under the alternative assumption of a July 1 enactment date, CBO estimates that the Financial Services proposals would reduce deficits by \$4.4 billion over the 2012-2013 period and \$31.1 billion over the 2012-2022 period.

The committee's recommendations would make the following changes:

- Subtitle A would repeal the authority provided to the Federal Deposit Insurance Corporation (FDIC) in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) to liquidate large, systemically important financial companies in default or in danger of default.

- Subtitle B would terminate the authority of the Secretary of the Treasury to provide new assistance under the Home Affordable Modification Program (HAMP).
- Subtitle C would terminate transfers of funds from the Federal Reserve for expenses of the Bureau of Consumer Financial Protection (CFPB) and authorize appropriations for the CFPB for fiscal years 2012 and 2013.
- Subtitle D would reauthorize the National Flood Insurance Program (NFIP) of the Federal Emergency Management Agency (FEMA) through 2016 and amend the program to increase premiums charged to certain policyholders.
- Subtitle E would eliminate the Office of Financial Research (OFR), established in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

In addition to the changes in direct spending and revenues, CBO estimates that implementing the committee's recommendations would cost \$766 million over the 2012-2017 period, assuming appropriation of the necessary amounts. That estimate includes funding for the CFPB, the Financial Stability Oversight Council, and flood mapping and mitigation efforts under the National Flood Insurance Program (NFIP).

The legislation would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on public and private mortgage lenders. Because the mandates would require only small changes in existing industry practice, CBO expects the cost to comply with the mandates would be small relative to the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$73 million and \$146 million in 2012, respectively, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated impact on direct spending and revenues of the recommendations of the House Committee on Financial Services is shown in the following tables. Table 1 summarizes those effects assuming that the committee recommendations are enacted around October 1, 2012, and Table 2 displays the budgetary impact assuming those recommendations are enacted by July 1, 2012. (Potential effects on discretionary spending are not shown in Tables 1 and 2, but those effects are mentioned in a footnote in each table.) The spending effects of this legislation fall within budget functions 370 (commerce and housing credit) and 450 (community and regional development).

Table 1. Effects on Direct Spending and Revenues for Reconciliation Recommendations of the House Committee on Financial Services, as approved by the Committee on April 18, 2012, assuming enactment around October 1, 2012

	By Fiscal Year, in Millions of Dollars													
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-2017	2012-2022	
CHANGES IN DIRECT SPENDING ASSUMING ENACTMENT AROUND OCTOBER 1, 2012 ^a														
Orderly Liquidation Authority														
Estimated Budget Authority	0	-2,350	-3,365	-3,725	-3,360	-2,745	-2,985	-3,180	-3,370	-3,536	-3,704	-15,545	-32,320	
Estimated Outlays	0	-2,350	-3,365	-3,725	-3,360	-2,745	-2,985	-3,180	-3,370	-3,536	-3,704	-15,545	-32,320	
Home Affordable Modification Program														
Estimated Budget Authority	0	-414	-573	-428	-351	-297	-202	-6	0	0	0	-2,063	-2,271	
Estimated Outlays	0	-414	-573	-428	-351	-297	-202	-6	0	0	0	-2,063	-2,271	
Bureau of Consumer Financial Protection														
Estimated Budget Authority	0	-448	-495	-509	-524	-539	-557	-575	-593	-611	-631	-2,515	-5,482	
Estimated Outlays	0	-381	-488	-507	-522	-537	-554	-572	-590	-608	-628	-2,435	-5,387	
National Flood Insurance Program														
Estimated Budget Authority	0	0	-60	-150	210	0	0	0	0	0	0	0	0	
Estimated Outlays	0	0	-60	-150	210	0	0	0	0	0	0	0	0	
Office of Financial Research														
Estimated Budget Authority	0	-71	-93	-95	-97	-99	-101	-103	-105	-107	-108	-455	-979	
Estimated Outlays	0	-62	-93	-95	-97	-99	-101	-103	-105	-107	-108	-446	-970	
Total Changes														
Estimated Budget Authority	0	-3,283	-4,586	-4,907	-4,122	-3,680	-3,845	-3,864	-4,068	-4,254	-4,443	-20,578	-41,052	
Estimated Outlays	0	-3,207	-4,579	-4,905	-4,120	-3,678	-3,842	-3,861	-4,065	-4,251	-4,440	-20,489	-40,948	
CHANGES IN REVENUES ASSUMING ENACTMENT AROUND OCTOBER 1, 2012														
Orderly Liquidation Authority	0	0	-180	-405	-645	-905	-1,135	-1,355	-1,570	-1,770	-1,905	-2,135	-9,870	
Office of Financial Research	0	-67	-68	-69	-70	-71	-72	-73	-74	-75	-76	-345	-715	
Total Changes	0	-67	-248	-474	-715	-976	-1,207	-1,428	-1,644	-1,845	-1,981	-2,480	-10,585	
NET DEFICIT REDUCTION (-) ASSUMING ENACTMENT OF DIRECT SPENDING AND REVENUE CHANGES AROUND OCTOBER 1, 2012														
Net Effect on Deficit	0	-3,140	-4,331	-4,431	-3,405	-2,702	-2,635	-2,433	-2,421	-2,406	-2,459	-18,009	-30,363	
Memorandum:														
Change in Net Income to the National Flood Insurance Program ^b														
Estimated Budget Authority	0	0	60	150	265	405	580	775	830	890	945	880	4,900	
Estimated Outlays	0	0	60	150	265	405	580	775	830	890	945	880	4,900	

Note: Estimates are relative to CBO's March 2012 baseline; components may not sum to totals because of rounding.

- a. In addition, CBO estimates that implementing the Financial Services Committee's recommendations would cost \$766 million over the 2012-2017 period, assuming appropriation of the necessary amounts. That estimate includes funding for the Bureau of Consumer Financial Protection, the Financial Stability Oversight Council, and for mapping and mitigation efforts under the National Flood Insurance Program.
- b. The proposed language would raise premiums for certain subsidized flood insurance policies, increasing net income to the National Flood Insurance Program by \$4.9 billion. However, because many policies would continue to be subsidized and the program would continue to face significant interest costs for borrowing over the past decade, CBO expects that additional receipts collected under this legislation would be spent to cover future program shortfalls, resulting in no net effect on the budget over the 2012-2022 period.

Table 2. Effects on Direct Spending and Revenues from Reconciliation Recommendations of the House Committee on Financial Services, as approved by the Committee on April 18, 2012, assuming enactment by July 1, 2012, as directed by the Chairman of the House Committee on the Budget

	By Fiscal Year, in Millions of Dollars											2012-	2012-
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2017	2022
CHANGES IN DIRECT SPENDING ASSUMING ENACTMENT BY JULY 1, 2012 ^a													
Orderly Liquidation Authority													
Estimated Budget Authority	-585	-2,838	-3,046	-3,550	-3,270	-2,756	-2,990	-3,185	-3,375	-3,540	-3,705	-16,045	-32,840
Estimated Outlays	-585	-2,838	-3,046	-3,550	-3,270	-2,756	-2,990	-3,185	-3,375	-3,540	-3,705	-16,045	-32,840
Home Affordable Modification Program													
Estimated Budget Authority	0	-617	-687	-522	-427	-371	-209	-6	0	0	0	-2,624	-2,839
Estimated Outlays	0	-617	-687	-522	-427	-371	-209	-6	0	0	0	-2,624	-2,839
Bureau of Consumer Financial Protection													
Estimated Budget Authority	0	-448	-495	-509	-524	-539	-557	-575	-593	-611	-631	-2,515	-5,482
Estimated Outlays	0	-381	-488	-507	-522	-537	-554	-572	-590	-608	-628	-2,435	-5,387
National Flood Insurance Program													
Estimated Budget Authority	0	0	-60	-150	210	0	0	0	0	0	0	0	0
Estimated Outlays	0	0	-60	-150	210	0	0	0	0	0	0	0	0
Office of Financial Research													
Estimated Budget Authority	0	-91	-93	-95	-97	-99	-101	-103	-105	-107	-108	-475	-999
Estimated Outlays	0	-74	-93	-95	-97	-99	-101	-103	-105	-107	-108	-458	-982
Total Changes													
Estimated Budget Authority	-585	-3,994	-4,381	-4,826	-4,108	-3,765	-3,857	-3,869	-4,073	-4,258	-4,444	-21,659	-42,160
Estimated Outlays	-585	-3,910	-4,374	-4,824	-4,106	-3,763	-3,854	-3,866	-4,070	-4,255	-4,441	-21,562	-42,048
CHANGES IN REVENUES ASSUMING ENACTMENT BY JULY 1, 2012													
Orderly Liquidation Authority	0	-35	-230	-455	-690	-940	-1,175	-1,390	-1,600	-1,785	-1,920	-2,350	-10,220
Office of Financial Research	-15	-67	-68	-69	-70	-71	-72	-73	-74	-75	-76	-360	-730
Total Changes	-15	-102	-298	-524	-760	-1,011	-1,247	-1,463	-1,674	-1,860	-1,996	-2,710	-10,950
NET DEFICIT REDUCTIONS (-) ASSUMING ENACTMENT OF DIRECT SPENDING AND REVENUE CHANGES BY JULY 1, 2012													
Net Effect on Deficit	-570	-3,808	-4,076	-4,300	-3,346	-2,752	-2,607	-2,403	-2,396	-2,395	-2,445	-18,852	-31,098
Memorandum:													
Change in Net Income to the National Flood Insurance Program ^b													
Estimated Budget Authority	0	0	60	150	265	405	580	775	830	890	945	880	4,900
Estimated Outlays	0	0	60	150	265	405	580	775	830	890	945	880	4,900

Note: Components may not sum to totals because of rounding.

- In addition, CBO estimates that implementing the Financial Services Committee's recommendations would cost \$766 million over the 2012-2017 period, assuming appropriation of the necessary amounts. That estimate includes funding for the Bureau of Consumer Financial Protection, the Financial Stability Oversight Council, and for mapping and mitigation efforts under the National Flood Insurance Program.
- The proposed language would raise premiums for certain subsidized flood insurance policies, increasing net income to the National Flood Insurance Program by \$4.9 billion. However, because many policies would continue to be subsidized and the program would continue to face significant interest costs for borrowing over the past decade, CBO expects that additional receipts collected under this legislation would be spent to cover future program shortfalls, resulting in no net effect on the budget over the 2012-2022 period.

BASIS OF ESTIMATE

For the purposes of this estimate, CBO assumes the recommendations will be enacted on or near October 1, 2012, as shown in Table 1. As directed by the Chairman of the House Committee on the Budget, CBO has also prepared a set of estimates based on the assumption that the recommendations are enacted by July 1, 2012. Those estimates are shown in Table 2.

Changes in Direct Spending and Revenues

Five provisions in the committee's recommendations would reduce direct spending by \$40.9 billion over the over the 2012-2022 period, assuming enactment around October 1, 2012, and by \$42.0 billion over that period, assuming enactment by July 1, 2012.

Orderly Liquidation Authority. Subtitle A would repeal the authority of the FDIC to liquidate large, systemically important financial companies (excluding insured depository institutions, which can be resolved using other authorities of the agency) that are in default or in danger of default.

Under current law, if a financial company is determined to be in default or in danger of default and if its liquidation under applicable federal and state bankruptcy laws would have a significant impact on the nation's financial stability, the FDIC may be appointed as receiver of the failing company. As receiver, the FDIC would liquidate the company in an orderly manner with the goal of minimizing both losses to the receivership and disruption to the financial system. Any losses incurred by the receivership, including administrative costs, would be recouped through proceeds from asset sales and assessments on large bank holding companies and other nonbank financial companies supervised by the Federal Reserve. All of these transactions would be recorded in the federal budget on a cash basis through the Orderly Liquidation Fund (OLF).

CBO's most recent baseline estimates for the cash flows of the OLF project net outlays of more than \$30 billion to resolve failing companies and revenues from assessments of nearly \$15 billion over the 2012-2022 period to begin the recovery of those costs; under current law, the remainder of the costs would be recovered after 2022. Those baseline projections reflect expected values of the estimated net costs of liquidating one or more financial companies and the subsequent assessments collected to begin to recoup those costs over that period. CBO expects that the probability that the federal government would have to liquidate a financial institution in any given year is relatively small;¹ however, the potential cash flows if the orderly liquidation authority is used would probably be large. As

1. CBO does not alter the probabilities used to calculate the expected values based on the current or expected future status of the financial system. Recognizing that certain economic and financial events are inherently unpredictable, those probabilities reflect CBO's best judgment on the basis of historical experience and do not vary from year to year.

such, actual outlays and revenues will probably vary significantly from the above estimates (in fact, in many years, it is likely that no spending or revenues will be recorded in the budget).

Because CBO assumes some small probability of a large financial event in every year of the projection period and because the majority of spending for an orderly liquidation would precede the recoupment of expenses, a snapshot of projected cash flows in any given 10-year period will reflect net *increases* in the federal deficit under current law. For that reason, the proposed repeal of the orderly liquidation authority would result in *decreases* in the deficit, on a cash basis, over the same period. (As noted above, the recoupment of expenses will ultimately equal the expenses, but not within the 10-year period.)

In addition, any assessments levied under current law to offset costs of the OLF will become additional business expenses for the large financial companies required to pay them. Those additional expenses would result in decreases in taxable income elsewhere in the economy, which would produce a loss of government revenue from payroll and income taxes (estimated to vary between 24 percent and 30 percent of the additional expenses during the 2013-2022 period²). By eliminating the orderly liquidation authority (and thus, any assessments that would be collected), expected taxable incomes of large financial companies would increase, resulting in additional revenues from payroll and income taxes. (CBO's estimates do not incorporate any effects of the elimination of the orderly liquidation authority on the probability of a financial crisis or economic slump—both because the agency is unable to assess those effects, and because standard estimating conventions for legislation hold aggregate economic conditions unchanged.)

Assuming enactment around October 1, 2012, CBO estimates that eliminating the FDIC's orderly liquidation authority would result in a net decrease in the federal deficit of \$22.5 billion over the 2012-2022 period (or \$22.6 billion if enacted by July 1, 2012).

Home Affordable Modification Program. Subtitle B of the committee's recommendations would terminate the Department of Treasury's Home Affordable Modification Program (HAMP) that aims to help homeowners facing the possibility of foreclosure by subsidizing loan modifications as well as other foreclosure alternatives.

HAMP funds are used to cover costs incurred to modify mortgages that are not owned or guaranteed by the government-sponsored enterprises (GSEs) Fannie Mae or Freddie Mac. Generally, the program provides incentive payments to mortgage servicers, investors, and eligible homeowners to either reduce a homeowner's mortgage payment to 31 percent of their monthly income or to sell their house outside of foreclosure. Through February 29, 2012, approximately 974,000 mortgages have been modified through HAMP. Servicers

2. Percentages used to estimate income and payroll tax offsets can be found at: Joint Committee on Taxation, *The Income and Payroll Tax Offset to Changes in Excise Tax Revenues for 2012-2022* (JCX-23-12), March 6, 2012.

and borrowers currently have until December 31, 2013, to modify mortgages through the program.

CBO estimates that the committee's recommendation would prevent the Treasury from making payments for approximately 150,000 new modifications of non-GSE mortgages assuming an October 1, 2012, effective date. (The cost of modifications entered into prior to enactment would continue to be paid by the Treasury.) Based on data provided by the Office of the Special Inspector General for the Troubled Asset Relief Program, CBO estimates that such modifications cost about \$15,000 on average. As a result, CBO estimates that the provisions would reduce direct spending by \$2.3 billion over the 2012-2022 period, assuming an October 1, 2012, effective date (or \$2.8 billion assuming enactment by July 1, 2012).

National Flood Insurance Program. Subtitle D would authorize the NFIP to enter into and renew flood insurance policies through fiscal year 2016. The committee's recommendations also would make a number of changes that would affect the financial status of the program, including: increasing premiums for some subsidized policyholders, offering temporary discounted premiums for properties that are newly mapped into a flood plain, and requiring the capitalization of a reserve fund for use during higher-than-average loss years.

The changes made by the bill would improve the financial condition of the NFIP and reduce its need to borrow from the Treasury—a source of direct spending—by a total of \$210 million in 2014 and 2015, CBO estimates. Because the NFIP would continue to operate with insurance premiums that are not sufficient, in the aggregate, to cover all expected costs after the committee's recommendations were enacted, CBO estimates that reduced borrowing in 2014 and 2015 would be offset by increased borrowing in 2016 (when we expect the program would exhaust its remaining borrowing authority under this proposal), resulting in no net effect on direct spending over the next 10 years.

Section 507(b) of H. Con. Res. 112 requires that CBO estimate the change in net income to the NFIP if the committee's recommendations were enacted. CBO estimates that the proposed changes in subtitle D would increase net income to the NFIP by \$4.9 billion over the 2012-2022 period (as shown in the memorandum to tables 1 and 2), mostly because of increases in premiums for subsidized policyholders (some of which would be retained by private insurers which sell the insurance policies). Increased premiums to the program would not result in a net reduction in CBO's estimate of the deficit, however, because we expect that this additional income would be used to fulfill obligations to policyholders that would otherwise be delayed, resulting in no net impact on direct spending over the five- and ten-year projection periods.

Bureau of Consumer Financial Protection. The Dodd-Frank Wall Street Reform and Consumer Financial Protection Act established the Bureau of Consumer Financial

Protection (CFPB) to enforce certain federal laws. The annual operating costs of the CFPB, an autonomous agency within the Federal Reserve, are paid through transfers from the earnings of the Federal Reserve and are recorded as expenditures in the federal budget. Subtitle C would change that funding mechanism by terminating the transfers from the Federal Reserve and authorizing the appropriation of \$200 million for each of fiscal years 2012 and 2013 for the agency's operations. CBO estimates that the CFPB will spend \$310 million in fiscal year 2012, and that outlays will average about \$545 million per year over the 2013-2022 period.

CBO estimates that enacting this change to the method of funding the agency would reduce direct spending by \$5.4 billion over the 2012-2022 period, assuming enactment at any point between July 1, 2012, and October 1, 2012.

Office of Financial Research. Subtitle E would eliminate the Office of Financial Research (OFR), which was established to support the Financial Stability Oversight Council (FSOC) by collecting information on financial markets and providing independent research on financial stability issues.

Under current law, the OFR is authorized to collect fees to offset its expenses, which also include the operating costs of the FSOC and certain costs incurred by the FDIC to implement the orderly liquidation authority. Those fees are recorded in the budget as revenues. Subtitle E would terminate the authority to collect those fees as well as spending for all of the activities associated with the OFR. Based on information from the OFR, CBO estimates that spending by the OFR will average about \$100 million per year over the 2013-2022 period, and that fee collections will average about \$72 million per year over the same period, net of effects on payroll and income taxes.

Thus, enacting this provision would reduce budget deficits by \$255 million over the 2012-2022 period if enacted around October 1, 2012 (or \$252 million if enacted by July 1, 2012), CBO estimates.

Spending Subject to Appropriation

CBO estimates that implementing the committee recommendations would have a discretionary cost of \$766 million over the 2013-2017 period, assuming appropriation of the necessary amounts, to fund activities of the CFPB and the FSOC, as well as mapping and mitigation efforts under the NFIP.

Bureau of Consumer Financial Protection. Subtitle C would change the method for funding the CFPB. Under current law, the bureau's operating costs are covered by amounts transferred from the earnings of the Federal Reserve; the recommendation would terminate those transfers and authorize the appropriation of \$200 million each year for 2012 and 2013.

Based on information from the CFPB as well as historical spending patterns, CBO estimates that \$325 million, an amount similar to what CBO estimates the agency will spend in 2012, would be sufficient for the CFPB to execute its statutory oversight and enforcement activities in 2013. CBO believes that the agency could not continue its mission with an appropriation of only \$200 million in 2013, because the committee recommendations would not diminish the agency's responsibilities. Therefore, CBO estimates that implementing subtitle C would cost \$325 million over the 2013-2017 period, assuming appropriation of the necessary amounts for 2013 and assuming enactment anytime between July 1, 2012, and October 1, 2012.

Financial Stability Oversight Council. Under current law, the activities of the FSOC are funded through the Office of Financial Research, which, as noted earlier, would be eliminated under subtitle E. Based on information from the OFR, CBO estimates that continuing the activities of the FSOC would cost about \$10 million per year. Therefore, implementing subtitle E would cost \$49 million over the 2013-2017 period, assuming appropriation of the necessary amounts and assuming enactment anytime between July 1, 2012, and October 1, 2012.

Flood Mapping and Mitigation Programs. The committee recommendations would direct FEMA to implement new standards for flood insurance rate maps. The agency would have 10 years to incorporate the new standards, subject to the availability of appropriated funds. Based on the costs of FEMA's current map modernization program and the estimated costs of new updates, CBO estimates that implementing this provision would cost \$254 million over the next five years.

Subtitle D also would authorize the appropriation of \$40 million a year above amounts already authorized in current law for grants to mitigate future flood damages. Such amounts would come from the National Flood Insurance Fund, but would be subject to future appropriation actions. Based on historical expenditure patterns of FEMA's flood mitigation programs, CBO estimates that implementing this provision would cost \$138 million over the next five years.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The legislation would impose intergovernmental and private-sector mandates, as defined in UMRA, on public and private mortgage lenders. Because the mandates would require only small changes in existing industry practice, CBO expects that the cost to comply with the mandates would be small relative to the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$73 million and \$146 million in 2012, respectively, adjusted annually for inflation).

Flood Insurance

Current law prohibits lenders from making loans for real estate in areas at high risk for flood damage unless the property is covered by flood insurance. This bill would require lenders to accept flood insurance from a private company if the policy fulfills all federal requirements for flood insurance. Under current law, lenders also are required to purchase flood insurance on behalf of the homeowner if, at any time during the life of a loan, they determine that a homeowner does not have a current policy in place. The bill would require lenders to terminate those policies within 30 days of being notified that the homeowner has purchased another policy. Lenders also would have to refund any premium payments and fees made by the homeowner for the time when both policies were in effect. Based on information from industry sources and on current industry practice, CBO estimates that the cost to public and private mortgage lenders of complying with those mandates would be small.

Disclosure Requirements

Current law requires mortgage lenders that make federally related mortgages (as defined in 12 U.S.C. 2602) to provide a good-faith estimate of the amount or range of charges the borrower is likely to incur for specific settlement services. The bill would require those lenders to include specific information about the availability of flood insurance in each good-faith estimate. The mandate would require small changes in existing disclosure requirements. Consequently, CBO estimates that the cost of the mandate to public and private mortgage lenders would be small.

Other Impacts

State, local, and tribal governments would benefit if funds authorized to be appropriated for mitigation and outreach activities related to flood hazards were made available. Any costs to those governments, including matching funds, would be incurred voluntarily.

PREVIOUS CBO ESTIMATES

On March 11, 2011, CBO transmitted a cost estimate for H.R. 839, the HAMP Termination Act of 2011, as ordered reported by the House Committee on Financial Services on March 9, 2011. Differences in the estimated costs of subtitle B and H.R. 839 reflect differences in effective dates and administrative changes that have been made to the HAMP programs.

On June 8, 2011, CBO transmitted a cost estimate for H.R. 1309, the Flood Insurance Reform Modernization Act, as ordered reported by the House Committee on Financial Services on May 13, 2011. Differences in the estimates costs of subtitle D and H.R. 1309

reflect differences in the effective dates as well as the requirement that the NFIP establish a reserve fund, which was included in the recommendation, but not in the committee-reported version of H.R. 1309.

ESTIMATE PREPARED BY:

Federal Costs:

Orderly Liquidation Authority and the NFIP: Daniel Hoople

Bureau of Consumer Financial Protection and Office of Financial Research: Susan Willie

Home Affordable Modification Program: Chad Chirico

Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle and Melissa Merrell

Impact on the Private Sector: Vi Nguyen and Paige Piper/Bach

ESTIMATE APPROVED BY:

Theresa Gullo

Deputy Assistant Director for Budget Analysis

April 24, 2012

Honorable Spencer Bachus
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for the Reconciliation Recommendations of the House Committee on Financial Services.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople, who can be reached at 226-2860.

Sincerely,

Douglas W. Elmendorf

Enclosure

cc: Honorable Barney Frank
Ranking Member

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

Subtitle A – Orderly Liquidation Fund

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this Subtitle.

Subtitle B – Home Affordable Modification Program

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this Subtitle.

Subtitle C – Bureau of Consumer Financial Protection

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this Subtitle.

Subtitle D – Flood Insurance Reform

Section 346 of Subtitle D creates a new Technical Mapping Advisory Council within the meaning of section 5(b) of the Federal Advisory Committee Act.

Subtitle E – Office of Financial Research

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this Subtitle.

APPLICABILITY TO LEGISLATIVE BRANCH

Subtitle A – Orderly Liquidation Fund

The Committee finds that Subtitle A does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

Subtitle B – Home Affordable Modification Program

The Committee finds that Subtitle B does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

Subtitle C – Bureau of Consumer Financial Protection

The Committee finds that Subtitle C does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

Subtitle D – Flood Insurance Reform

The Committee finds that Subtitle D does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

Subtitle E – Office of Financial Research

The Committee finds that Subtitle E does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

Subtitle A – Orderly Liquidation Fund

Subtitle A does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Subtitle B – Home Affordable Modification Program

Subtitle B does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Subtitle C – Bureau of Consumer Financial Protection

Subtitle C does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Subtitle D – Flood Insurance Reform

Subtitle D does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Subtitle E – Office of Financial Research

Subtitle E does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Subtitle A – Orderly Liquidation Fund

Section 311. Repeal of Liquidation Authority.

Section 311 repeals Title II of the Dodd-Frank Act, and makes conforming amendments to the Dodd-Frank Act and the Federal Deposit Insurance Act.

Subtitle B – Home Affordable Modification Program

Section 321. Short title.

This section establishes the short title of the Subtitle, the “The HAMP Termination Act of 2012.”

Section 322. Congressional Findings.

This section sets forth several Congressional findings regarding HAMP, including the purpose of the program, the number of active permanent mortgage modifications made under the program, the harms sustained by homeowners as a result of HAMP modification cancellations, the cost of the program, and the savings that will be achieved by terminating the program.

Section 323. Termination of authority.

This section amends Section 120 of the Emergency Economic Stabilization Act of 2008 to terminate the authority of the Treasury Department to provide new assistance to homeowners under the HAMP. It also preserves the Treasury Department's authority to continue to provide assistance to homeowners who have already been extended an offer to participate in HAMP on a permanent or trial basis.

Further, this section directs the Treasury Secretary to conduct a study to determine the extent to which “covered homeowners” use HAMP. “Covered homeowners” are defined as individuals who are active duty members of the U.S. armed forces and their spouses or parents, veterans of the U.S. armed forces, and individuals eligible to receive a Gold Star lapel button under 10 U.S.C. 1126 as the widow, parent, or next of kin of a fallen member of the U.S. armed forces. The Treasury Secretary is then required to report to Congress on the study and to identify any best practices that could be applied to existing mortgage assistance programs available to covered homeowners within 90 days of enactment of this Subtitle.

Finally, this section requires the Treasury Secretary to publish in a prominent location on the Treasury Department's website, in a noticeable font, a statement that HAMP has been terminated and inviting borrowers who are having trouble paying their mortgages and who need help in communicating with their lenders or servicers to contact their Member of Congress for assistance in reaching the lender or servicer for the purpose of negotiating or acquiring a loan modification.

Section 324. Sense of Congress.

This section establishes the sense of Congress that banks should be encouraged to work with homeowners to provide loan modifications to those that are eligible, as well as to work and to assist homeowners and prospective homeowners with foreclosure prevention programs and information on loan modifications.

Subtitle C – Bureau of Consumer Financial Protection

Section 331. Bringing the Bureau of Consumer Financial Protection into the Regular Appropriations Process.

Section 331 amends Section 1017 of the Dodd-Frank Act by terminating the CFPB's authority to determine its own budget and draw that amount from the Federal Reserve System. This section authorizes \$200 million in appropriations to fund the CFPB for fiscal years 2012 and 2013. This section also eliminates the Consumer Financial Protection Fund and the Consumer Financial Civil Penalty Fund.

Subtitle D – Flood Insurance Reform

Section 341 – Short Title and Table of Contents.

This section establishes the short title of the Subtitle, the "Flood Insurance Reform Act of 2012."

Section 342 – Extensions.

This section reauthorizes the NFIP and its financing through September 30, 2016.

Section 343 – Mandatory Purchase.

Temporary Mandatory Purchase Suspensions—Under the NFIP, federally regulated lenders are obligated to require flood insurance on any mortgage issued or guaranteed by the federal government in a Special Flood Hazard Area in a community that participates in the NFIP. This section allows the mandatory purchase requirement to be suspended on a community-by-community basis for one year at the request of a local governing authority if FEMA finds at least one of the following conditions apply to the community: (1) it has never been mapped as a high-risk area; (2) it is taking specific steps to rebuild or repair a dam or levee that has been decertified and is making adequate progress in securing financial commitments and completing

that work; or (3) it has filed a formal appeal of the accuracy of a dam or levee decertification or flood risk map revision. This suspension could be extended for a maximum of two additional one-year periods (for a total of three years) for all qualifying communities at FEMA's discretion. For certain qualifying communities determined by FEMA to be making more than adequate progress in the construction of their flood protection systems, FEMA may, at its discretion, further extend the suspension of the mandatory purchase requirement for existing mortgages for a maximum of two additional one-year periods (for a total of five years).

Termination of Force-Placed Insurance—Mortgage lenders and servicers must terminate any force-placed insurance and refund any premiums paid for coverage overlap periods once property owners have obtained their required flood insurance.

Equal Treatment of Private Flood Insurance—To encourage greater private sector participation, this section requires lenders to accept non-NFIP backed flood insurance coverage provided by a private entity if that coverage meets the same requirements as NFIP-backed flood insurance.

Section 344 – Reforms of Coverage Terms.

Minimum Deductibles—Minimum deductibles are set at \$1,000 for properties with full-risk rates and at \$2,000 for properties with discounted rates.

Maximum Coverage Limits—Limits would be indexed for inflation, starting in 2012.

Optional Coverage for Additional Living Expenses/Business Interruption (ALE/BI)—FEMA would be authorized to offer optional coverage for additional living expenses (\$5,000 maximum) and coverage for the interruption of business operations (\$20,000 maximum) if FEMA: (1) charges full-risk rates for such coverage; (2) finds that a competitive private market for such coverage does not exist; and (3) certifies that the NFIP can offer such coverage without borrowing additional funds from the Treasury.

Installment Payments—Policyholders would be allowed to pay their premiums for one-year policies in installments.

Flood in Progress Protections—New policyholders would not have their coverage limited by a FEMA-determined flood-in-progress exclusion if they have not sustained any actual damage or loss to their property within the initial 30-day waiting period required under a standard flood insurance policy before flood coverage can go into effect.

Section 345 – Reforms of Premium Rates.

Annual Limit on Premium Rate Increases—The annual cap on premium rate increases would be increased from 10 percent to 20 percent.

Five Year Phase-in of Full-Risk Rates for Newly-Mapped Areas—For primary residence properties mapped into a mandatory purchase area, initial rates would be set at 20 percent of full-risk rates and increase by 20 percent each year for four years thereafter.

Full-Risk Rates for Certain Subsidized Properties—Full actuarial rates would be phased-in for roughly 350,000 properties currently receiving NFIP subsidies including: commercial properties, second and vacation homes, homes sold to new owners, homes substantially damaged or improved, Severe Repetitive Loss Properties (SRLPs) with multiple flood claims, and property owners who allowed their policies to lapse by choice.

Use of State and Local Funding Considerations in Setting Flood Rates—FEMA would be required to update its standards for evaluating eligibility for special flood insurance rates by considering several factors, including state and local funding of flood control projects and other flood control reconstruction and improvement projects.

Section 346 – Technical Mapping Advisory Council.

This section establishes a new Technical Mapping Advisory Council made up of federal, state, and local experts, with an adequate number of representatives from states at a high-risk for flooding, to review flood hazard risk mapping standards and propose new mapping standards to FEMA. The Council has 12 months to develop and submit to FEMA and Congress its proposed new mapping standards, during which time FEMA is prohibited from making effective any new or updated flood insurance rate maps based on its current mapping standards.

Section 347 – FEMA Incorporation of New Mapping Protocols.

This section requires FEMA to update its flood maps according to the Technical Mapping Advisory Council’s recommendations within six months of receiving those recommendations, or report to Congress why it rejected them.

Section 348 – Treatment of Levees.

This section prohibits FEMA from issuing or updating flood insurance maps that do not factor in the actual protection afforded by existing levees regardless of their FEMA accreditation status (*i.e.*, FEMA’s maps must award partial credit to existing dams and levees).

Section 349 – Privatization Initiatives.

This section requires FEMA and the GAO to report on various privatization initiatives, including options to begin privatizing the NFIP over time; determining the capacity of private insurers, reinsurers, and financial markets to underwrite NFIP flood risk; and assessing new ways to strengthen the NFIP’s ability to pay claims without having to borrow from the Treasury.

Section 350 – FEMA Annual Report on Insurance Program.

This section requires FEMA to report annually to Congress on the status of the NFIP with detailed information about the financial status of the program.

Section 351 – Mitigation Assistance.

This section amends the current planning assistance grants program to authorize \$90 million in financial assistance for FEMA to (1) make assistance grants available to states and communities for flood mitigation activities, particularly activities that reduce flood damage to severe repetitive loss structures; and (2) make direct grants available to property owners for flood mitigation activities. To become eligible for mitigation assistance, states must develop a new multi-hazard mitigation plan that examines the reduction of flood losses, including the demolition and rebuilding of properties, and requires states and communities to use mitigation assistance in a manner that is consistent with activities outlined in their mitigation plan. In awarding grants, FEMA may approve only mitigation activities that it determines are technically feasible, cost-effective and represent savings to the NFIP, with a priority given to mitigation activities that will result in savings for the NFIP.

Section 352 – Notification to Homeowners Regarding Mandatory Purchase Requirement Applicability and Rate Phase-Ins.

This section establishes an annual notification process to inform individuals who reside in an area having special flood hazards that they are subject to the mandatory purchase requirement and provide estimates of what other homeowners in similar areas pay for their flood insurance.

Section 353 – Notification of Congress Regarding the Establishment of Flood Map Changes.

This section requires FEMA to notify Members of the House and Senate whose districts or states are affected when it changes or updates floodplain areas or flood risk zones.

Section 354 – Notification and Appeals Process for Map Changes Based on Flood Elevations.

This section requires FEMA, when establishing new flood maps based on elevation, to provide written notification by first class mail of the proposed change and the appeals process to each effected property owner with, copies of the new maps to the chief executive officer of each community affected, and to publish notice of the proposed change and the appeals process in the Federal Register and a prominent local newspaper.

Section 355 – Notification to Tenants of the Availability of Contents Insurance.

This section requires FEMA to develop a notice to landlords to inform tenants if they live in an area having special flood hazards and details about NFIP insurance for the contents of their apartment.

Section 356 – Notification to Policy Holders Regarding Direct Management of Policy by FEMA.

This section requires FEMA to annually notify all holders of policies transferred to the NFIP Direct program of their options to purchase flood insurance directly from another WYO insurance company.

Section 357 – Notice of the Availability of Flood Insurance and Escrow in RESPA Good Faith Estimate.

This section amends the Real Estate Settlement Procedures Act (RESPA) to disclose as part of RESPA's good faith estimate that flood insurance is generally available from the NFIP for all homes, and that the escrowing of flood insurance payments is required for many loans and may be an option available under other loans.

Section 358 – Reimbursement for Costs Incurred by Homeowners and Communities Obtaining Letters of Map Amendment or Revision.

This section allows homeowners or communities to be reimbursed for certain costs associated with a successful challenge to a bona fide mapping error made by FEMA resulting in a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR), not including legal fees.

Section 359 – Enhanced Communication to Communities with Non-Updated Flood Maps.

This section requires FEMA, when establishing new flood maps, to communicate with communities whose flood insurance rate maps that have not been updated in 20 or more years to help resolve outstanding flooding issues, provide technical assistance, and disseminate information to reduce the prevalence of outdated maps in flood-prone areas.

Section 360 – Notification to Residents Newly Included in Flood Hazard Areas.

This section requires FEMA to provide to each property owner newly mapped into a special flood hazard area with a copy of the revised or updated flood insurance map that affects that owner's property, as well as the appeals process to challenge that mapping determination.

Section 361 – Treatment of Swimming Pool Enclosures Outside of Hurricane Season.

This section allows certain properties with swimming pools that are enclosed with non-supporting breakaway walls outside of hurricane season (November 20 through June 1) to be eligible for participation in the NFIP.

Section 362 – Information Regarding Multiple Perils Claims.

This section allows NFIP policyholders who also have non-NFIP wind or other homeowners insurance coverage and sustain damage to property covered under both policies to request the damage estimate, proofs of loss, and any expert or engineering reports used to determine the cause of the damage from FEMA and their NFIP-participating WYO insurance company.

Section 363 – FEMA Authority to Reject the Transfer of Policies to NFIP Direct.

This section authorizes FEMA to refuse to accept the future transfer of any flood insurance policies from a WYO company to its NFIP Direct policy servicing program.

Section 364 – Media Notification of Proposed Map Changes and Extended Appeals Process.

This section requires FEMA to notify local television and radio stations of proposed changes to flood maps. This section also requires FEMA to grant property owners a 90-day extension of the existing appeals process period if their community certifies to FEMA that there are affected property owners who were unaware of the expiration of the appeals process period and that the community will use that 90-day period to inform affected property owners about the availability of the appeals process.

Section 365 – Establishment of a Reserve Fund for the NFIP.

This section establishes a National Flood Insurance Reserve Fund within the Treasury Department where the NFIP would be required to maintain a reserve ratio balance of at least 1 percent of the sum of the total potential loss exposure of all outstanding flood insurance policies in force the prior fiscal year. FEMA is authorized to establish and adjust the amount of aggregate annual insurance premiums it collects to maintain or achieve that reserve ratio. Starting in 2012, FEMA would be required to transfer to the Fund at least 7.5 percent of the amount needed to achieve its 1 percent reserve ratio balance each year until the full 1 percent reserve ratio is achieved. FEMA would also be required to submit a report to Congress for any year in which it cannot achieve a 1 percent reserve ratio.

Section 366 – CDBG Eligibility for Flood Insurance Outreach Activities and Community Building Code Administration Grants.

This section allows communities to use Community Development Block Grant (CDBG) funds for local building code enforcement, as long as local matching funds are provided. It also allows CDBG funds to be used by local governments for flood risk outreach and education activities.

Section 367 – Technical Corrections.

This section makes a technical correction to the underlying National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 to update references in those statutes to the head of FEMA as its “Administrator” rather than its “Director.”

Section 368 – Requiring Competition for NFIP Policies.

To address the rapid increase in the number of policies administered under FEMA’s NFIP Direct policy servicing program, FEMA would be required to report to Congress within 90 days on the procedures and policies it can implement to limit the size of NFIP Direct to no more than 10 percent of all flood insurance policies, and then implement those size reduction

procedures and policies—without preventing agents handling policies transitioned out of the NFIP Direct from continuing to sell or service those policies—within one year of issuing that report.

Section 369 – Studies of Voluntary Community-Based Flood Insurance Options.

This section directs FEMA and GAO to conduct a study to assess options, methods, and strategies for offering voluntary community-based flood insurance policies, and to report their findings to Congress within 18 months of enactment of this subtitle.

Section 370 – Report on Inclusion of Building Codes in Floodplain Management Criteria.

This section directs FEMA to study the impact, effectiveness, and feasibility of including widely used and nationally recognized building codes as part of its floodplain management criteria, and report its findings to Congress within 6 months of enactment of this subtitle.

Section 371 – Study on Graduated Risk.

This section requires the National Academy of Sciences to study methods for understanding graduated risk for properties and residential and commercial structures behind levees and report its findings to Congress within one year of enactment of this subtitle.

Section 372 – Report on Flood-In-Progress Determination.

This section directs FEMA to review its processes and procedures for issuing a flood-in-progress determination and providing public notification of that determination, and report the results of that review to Congress within 6 months of enactment of this subtitle.

Section 373 – Study on Repaying Flood Insurance Debt.

This section requires FEMA to report to Congress within 6 months of enactment of this subtitle on its plan to repay all outstanding sums previously borrowed from the Treasury, with interest, over the next 10 years.

Section 374 – No Cause of Action.

This section specifies that no cause of action against the federal government exists for failure to comply with any notification requirement under this Act.

Section 375 – State and Local Requests for the Corps of Engineers to Evaluate Corps-Constructed Levees.

This section permits state and local governments to request the Army Corps of Engineers to evaluate their locally-operated levee systems, provided that the levee was constructed by the Corps and that the requesting state or local government agrees to fully reimburse the Corps for all costs associated with the evaluation.

Subtitle E – Office of Financial Research

Section 381. Repeal of the Office of Financial Research.

Section 381 repeals Title I, Subtitle B of the Dodd-Frank Act, which establishes the OFR as an office within the Department of the Treasury.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED
(Please see attached)

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. Short title; table of contents.

* * * * *

TITLE I—FINANCIAL STABILITY

* * * * *

SUBTITLE A—FINANCIAL STABILITY OVERSIGHT COUNCIL

* * * * *

[Sec. 118. Council funding.]

* * * * *

[SUBTITLE B—OFFICE OF FINANCIAL RESEARCH

[Sec. 151. Definitions.

[Sec. 152. Office of Financial Research established.

[Sec. 153. Purpose and duties of the Office.

[Sec. 154. Organizational structure; responsibilities of primary programmatic units.

[Sec. 155. Funding.

[Sec. 156. Transition oversight.]

* * * * *

[TITLE II—ORDERLY LIQUIDATION AUTHORITY

[Sec. 201. Definitions.

[Sec. 202. Judicial review.

[Sec. 203. Systemic risk determination.

[Sec. 204. Orderly liquidation of covered financial companies.

[Sec. 205. Orderly liquidation of covered brokers and dealers.

[Sec. 206. Mandatory terms and conditions for all orderly liquidation actions.

[Sec. 207. Directors not liable for acquiescing in appointment of receiver.

[Sec. 208. Dismissal and exclusion of other actions.

[Sec. 209. Rulemaking; non-conflicting law.

[Sec. 210. Powers and duties of the Corporation.

[Sec. 211. Miscellaneous provisions.

[Sec. 212. Prohibition of circumvention and prevention of conflicts of interest.

[Sec. 213. Ban on certain activities by senior executives and directors.

[Sec. 214. Prohibition on taxpayer funding.

[Sec. 215. Study on secured creditor haircuts.

[Sec. 216. Study on bankruptcy process for financial and nonbank financial institutions

[Sec. 217. Study on international coordination relating to bankruptcy process for nonbank financial institutions]

* * * * *

TITLE I—FINANCIAL STABILITY

* * * * *

SEC. 102. DEFINITIONS.

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

(1) * * *

* * * * *

[(5) **OFFICE OF FINANCIAL RESEARCH.**—The term “Office of Financial Research” means the office established under section 152.]

* * * * *

Subtitle A—Financial Stability Oversight Council

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) * * *

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

(1) * * *

(2) **NONVOTING MEMBERS.**—The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council, shall be—

[(A) the Director of the Office of Financial Research;]

[(B) (A) the Director of the Federal Insurance Office;

[(C) (B) a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners;

[(D) (C) a State banking supervisor, to be designated by a selection process determined by the State banking supervisors; and

[(E) (D) a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners.

* * * * *

(c) **TERMS; VACANCY.**—

(1) **TERMS.**—The independent member of the Council shall serve for a term of 6 years, and each nonvoting member described in [subparagraphs (C), (D), and (E)] *subparagraphs (B), (C), and (D)* of subsection (b)(2) shall serve for a term of 2 years.

* * * * *

SEC. 112. COUNCIL AUTHORITY.

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

(1) * * *

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

(A) collect information from member agencies, other Federal and State financial regulatory agencies, the Federal Insurance Office and, if necessary to assess risks to the United States financial system, [direct the Office of Financial Research to] collect information from bank holding companies and nonbank financial companies;

[(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;]

[(C) (B) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

[(D) (C) to monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;

[(E) (D) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

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

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

[(H) (G) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities pursuant to section 113;

[(I) (H) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

[(J) (I) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII);

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

[(L) (K) review and, as appropriate, may submit comments to the Commission and any standard-setting body

with respect to an existing or proposed accounting principle, standard, or procedure;

[(M)] (L) provide a forum for—

(i) * * *

* * * * *

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

(i) * * *

* * * * *

(d) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from [the Office of Financial Research, member agencies, and] member agencies and the Federal Insurance Office, as necessary—

(A) * * *

* * * * *

(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law, [the Office of Financial Research, any member agency, and] any member agency and the Federal Insurance Office, are authorized to submit information to the Council.

(3) FINANCIAL DATA COLLECTION.—

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

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

(C) MITIGATION IN CASE OF FOREIGN FINANCIAL COMPANIES.—Before requiring the submission of reports from a company that is a foreign nonbank financial company or foreign-based bank holding company, the Council shall[, acting through the Office of Financial Research,] to the extent appropriate, consult with the appropriate foreign regulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

* * * * *

(5) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council[, the Office of Financial Research,] and the other member agencies shall maintain

the confidentiality of any data, information, and reports submitted under this title.

* * * * *

SEC. 116. REPORTS.

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

(1) * * *

* * * * *

(b) USE OF EXISTING REPORTS.—

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

(A) * * *

* * * * *

[SEC. 118. COUNCIL FUNDING.

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

* * * * *

[Subtitle B—Office of Financial Research

[SEC. 151. DEFINITIONS.

For purposes of this subtitle—

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

[(2) the term “financial company” has the same meaning as in title II, and includes an insured depository institution and an insurance company;

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

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

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

[(6) the term “position data”—

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

[(B) includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position;

[(7) the term “financial contract” means a legally binding agreement between 2 or more counterparties, describing rights and obligations relating to the future delivery of items of intrinsic or extrinsic value among the counterparties; and

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

[SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.

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

[(b) DIRECTOR.—

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

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

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

[(4) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of Director may not, during such service, also serve as the head of any financial regulatory agency.

[(5) RESPONSIBILITIES, DUTIES, AND AUTHORITY.—The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercises the authorities described in this subtitle.

[(c) BUDGET.—The Director, in consultation with the Chairperson, shall establish the annual budget of the Office.

[(d) OFFICE PERSONNEL.—

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

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

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

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

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

[(4) SENIOR EXECUTIVES.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by striking “and the National Credit Union Administration;” and inserting “the National

Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;”.

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

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

[(g) POST-EMPLOYMENT PROHIBITIONS.—The Secretary, with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the Director and any employee of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office. For employees whose access to business confidential information was limited, the regulations may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

[(h) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Office, in consultation with the Chairperson, may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office, and the members of such committees may be staff of the Office, or other persons, or both.

[(i) FELLOWSHIP PROGRAM.—The Office, in consultation with the Chairperson, may establish and maintain an academic and professional fellowship program, under which qualified academics and professionals shall be invited to spend not longer than 2 years at the Office, to perform research and to provide advanced training for Office personnel.

[(j) EXECUTIVE SCHEDULE COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item: Director of the Office of Financial Research.”.

[SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.]

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

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

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

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

[(4) developing tools for risk measurement and monitoring;

[(5) performing other related services;

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

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

[(b) ADMINISTRATIVE AUTHORITY.—The Office may—

[(1) share data and information, including software developed by the Office, with the Council, member agencies, and the Bureau of Economic Analysis, which shared data, information, and software—

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

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

[(2) sponsor and conduct research projects; and

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

[(c) RULEMAKING AUTHORITY.—

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

[(2) STANDARDIZATION.—Member agencies, in consultation with the Office, shall implement regulations promulgated by the Office under paragraph (1) to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2). If a member agency fails to implement such regulations prior to the expiration of the 3-year period following the date of publication of final regulations, the Office, in consultation with the Chairperson, may implement such regulations with respect to the financial entities under the jurisdiction of the member agency. This paragraph shall not supersede or interfere with the independent authority of a member agency under other law to collect data, in such format and manner as the member agency requires.

[(d) TESTIMONY.—

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

[(2) NO PRIOR REVIEW.—No officer or agency of the United States shall have any authority to require the Director to sub-

mit the testimony required under paragraph (1) or other congressional testimony to any officer or agency of the United States for approval, comment, or review prior to the submission of such testimony. Any such testimony to Congress shall include a statement that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

[(e) **ADDITIONAL REPORTS.**—The Director may provide additional reports to Congress concerning the financial stability of the United States. The Director shall notify the Council of any such additional reports provided to Congress.

[(f) **SUBPOENA.**—

[(1) **IN GENERAL.**—The Director may require from a financial company, by subpoena, the production of the data requested under subsection (a)(1) and section 154(b)(1), but only upon a written finding by the Director that—

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

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

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

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

[SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBILITIES OF PRIMARY PROGRAMMATIC UNITS.

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

[(1) the Data Center; and

[(2) the Research and Analysis Center.

[(b) **DATA CENTER.**—

[(1) **GENERAL DUTIES.**—

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

[(B) **AUTHORITY.**—

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

[(ii) MITIGATION OF REPORT BURDEN.—Before requiring the submission of a report from any financial company that is regulated by a member agency, any primary financial regulatory agency, a foreign supervisory authority, or the Office shall coordinate with such agencies or authority, and shall, whenever possible, rely on information available from such agencies or authority.

[(iii) COLLECTION OF FINANCIAL TRANSACTION AND POSITION DATA.—The Office shall collect, on a schedule determined by the Director, in consultation with the Council, financial transaction data and position data from financial companies.

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

[(2) RESPONSIBILITIES.—

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

[(i) a financial company reference database;

[(ii) a financial instrument reference database;

and

[(iii) formats and standards for Office data, including standards for reporting financial transaction and position data to the Office.

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

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

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

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

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

[(c) RESEARCH AND ANALYSIS CENTER.—

[(1) GENERAL DUTIES.—The Research and Analysis Center, on behalf of the Council, shall develop and maintain independent analytical capabilities and computing resources—

[(A) to develop and maintain metrics and reporting systems for risks to the financial stability of the United States;

[(B) to monitor, investigate, and report on changes in systemwide risk levels and patterns to the Council and Congress;

[(C) to conduct, coordinate, and sponsor research to support and improve regulation of financial entities and markets;

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

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

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

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

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

[(d) REPORTING RESPONSIBILITIES.—

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

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

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

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

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

[SEC. 155. FUNDING.

[(a) FINANCIAL RESEARCH FUND.—

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

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

[(3) INVESTMENTS AUTHORIZED.—

[(A) AMOUNTS IN FUND MAY BE INVESTED.—The Director may request the Secretary to invest the portion of the Financial Research Fund that is not, in the judgment of the Director, required to meet the needs of the Office.

[(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the

needs of the Financial Research Fund, as determined by the Director.

[(4) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Financial Research Fund shall be credited to and form a part of the Financial Research Fund.

[(b) USE OF FUNDS.—

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

[(2) FEES, ASSESSMENTS, AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall not be construed to be Government funds or appropriated moneys.

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

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

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

[SEC. 156. TRANSITION OVERSIGHT.]

[(a) PURPOSE.—The purpose of this section is to ensure that the Office—

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

[(b) REPORTING REQUIREMENT.—

[(1) IN GENERAL.—The Office shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

[(2) PLANS.—The plans described in this paragraph are as follows:

[(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Office shall submit a training and workforce development plan that includes, to the extent practicable—

- [(i) identification of skill and technical expertise needs and actions taken to meet those requirements;
- [(ii) steps taken to foster innovation and creativity;
- [(iii) leadership development and succession planning; and
- [(iv) effective use of technology by employees.

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

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

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

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

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

[(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

- [(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or
- [(2) the rights of employees under chapter 71 of title 5, United States Code.]

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

* * * * *

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) * * *

* * * * *

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) * * *

* * * * *

(6) NO LIMITING EFFECT.—A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court[, a receiver appointed under title II,] or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

* * * * *

[TITLE II—ORDERLY LIQUIDATION AUTHORITY

[SEC. 201. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

[(B) is a member of SIPC.

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

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

[(B) does not include an insured depository institution.

[(9) COVERED SUBSIDIARY.—The term “covered subsidiary” means a subsidiary of a covered financial company, other than—

[(A) an insured depository institution;

[(B) an insurance company; or

[(C) a covered broker or dealer.

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

[(11) FINANCIAL COMPANY.—The term “financial company” means any company that—

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

[(B) is—

[(i) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

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

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

[(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) (other than a subsidiary that is an insured depository institution or an insurance company); and

[(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), a governmental entity, or a regulated entity, as defined under sec-

tion 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)).

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

[(13) INSURANCE COMPANY.—The term “insurance company” means any entity that is—

[(A) engaged in the business of insurance;

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

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

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

[(15) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term “nonbank financial company supervised by the Board of Governors” has the same meaning as in section 102(a)(4)(D).

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

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

[SEC. 202. JUDICIAL REVIEW.

[(a) COMMENCEMENT OF ORDERLY LIQUIDATION.—

[(1) PETITION TO DISTRICT COURT.—

[(A) DISTRICT COURT REVIEW.—

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

[(ii) FORM AND CONTENT OF ORDER.—The Secretary shall present all relevant findings and the recommendation made pursuant to section 203(a) to the Court. The petition shall be filed under seal.

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

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

[(I) is not arbitrary and capricious, the Court shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company; or

[(II) is arbitrary and capricious, the Court shall immediately provide to the Secretary a written statement of each reason supporting its determination, and afford the Secretary an immediate opportunity to amend and refile the petition under clause (i).

[(v) PETITION GRANTED BY OPERATION OF LAW.—If the Court does not make a determination within 24 hours of receipt of the petition—

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

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

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

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

[(C) CRIMINAL PENALTIES.—A person who recklessly discloses a determination of the Secretary under section 203(b) or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for

under subparagraph (A), shall be fined not more than 250,000, or imprisoned for not more than 5 years, or both.

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

[(A) APPEAL TO COURT OF APPEALS.—

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

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

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

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

[(B) APPEAL TO THE SUPREME COURT.—

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

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

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

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

[(b) ESTABLISHMENT AND TRANSMITTAL OF RULES AND PROCEDURES.—

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

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

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

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

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

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

[(c) PROVISIONS APPLICABLE TO FINANCIAL COMPANIES.—

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

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

[(d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

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

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

[(A) to—

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

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

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

[(3) SECOND EXTENSION OF TIME LIMIT.—

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

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

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

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

[(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

[(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

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

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

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

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

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

[(1) STUDY.—

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

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

【(i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;

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

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

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

【(f) STUDY OF INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR FINANCIAL COMPANIES.—

【(1) STUDY.—

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

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

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

【(ii) current mechanisms and structures for facilitating international cooperation;

【(iii) barriers to effective international coordination; and

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

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

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

【(1) STUDY.—The Comptroller General of the United States shall conduct a study regarding the implementation of

prompt corrective action by the appropriate Federal banking agencies.

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

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

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

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

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

ISEC. 203. SYSTEMIC RISK DETERMINATION.

[(a) WRITTEN RECOMMENDATION AND DETERMINATION.—

[(1) VOTE REQUIRED.—

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

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

[(C) CASES INVOLVING INSURANCE COMPANIES.—In the case of an insurance company, or in which the largest United States subsidiary (as measured by total assets as

of the end of the previous calendar quarter) of a financial company is an insurance company, the Director of the Federal Insurance Office and the Board of Governors, at the request of the Secretary or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than $\frac{2}{3}$ of the Board of Governors then serving and the affirmative approval of the Director of the Federal Insurance Office, and in consultation with the Corporation.

[(2) RECOMMENDATION REQUIRED.—Any written recommendation pursuant to paragraph (1) shall contain—

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

[(B) a description of the effect that the default of the financial company would have on financial stability in the United States;

[(C) a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities;

[(D) a recommendation regarding the nature and the extent of actions to be taken under this title regarding the financial company;

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

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

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

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

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

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

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

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

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

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

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

[(7) the company satisfies the definition of a financial company under section 201.

[(c) DOCUMENTATION AND REVIEW.—

[(1) IN GENERAL.—The Secretary shall—

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

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

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

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

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

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

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

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

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

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

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

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

[(I) whether resolution of the covered financial company under other applicable insolvency law would cause banks or other financial companies to experience severe liquidity distress.

[(3) REPORTS TO CONGRESS AND THE PUBLIC.—

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

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

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

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

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

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

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

[(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

[(B) AMENDMENTS.—The Corporation shall, on a timely basis, not less frequently than quarterly, amend or revise and resubmit the reports prepared under this paragraph, as necessary.

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

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

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

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

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

[(D) the financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

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

[(A) the basis for the determination;

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

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

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

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

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

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

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

[(3) BACKUP AUTHORITY.—Notwithstanding paragraph (1), with respect to a covered financial company described in paragraph (1), if, after the end of the 60-day period beginning on the date on which a determination is made under section 202(a) with respect to such company, the appropriate regu-

latory agency has not filed the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State.

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

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

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

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

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

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

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

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

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

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

[(4) shall consult with the Commission and the Securities Investor Protection Corporation in the case of any covered financial company for which the Corporation has been appointed as receiver that is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) and is a member of the Securities In-

vestor Protection Corporation, for the purpose of determining whether to transfer to a bridge financial company organized by the Corporation as receiver, without consent of any customer, customer accounts of the covered financial company.

[(d) FUNDING FOR ORDERLY LIQUIDATION.—Upon its appointment as receiver for a covered financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or appropriate, the Corporation may make available to the receivership, subject to the conditions set forth in section 206 and subject to the plan described in section 210(n)(9), funds for the orderly liquidation of the covered financial company. All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for—

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

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

[(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

[(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

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

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

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

[(a) APPOINTMENT OF SIPC AS TRUSTEE.—

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

[(2) ACTIONS BY SIPC.—

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

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

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

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

[(b) POWERS AND DUTIES OF SIPC.—

[(1) IN GENERAL.—Except as provided in this section, upon its appointment as trustee for the liquidation of a covered broker or dealer, SIPC shall have all of the powers and duties provided by the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), including, without limitation, all rights of action against third parties, and shall conduct such liquidation in accordance with the terms of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), except that SIPC shall have no powers or duties with respect to assets and liabilities transferred by the Corporation from the covered broker or dealer to any bridge financial company established in accordance with this title.

[(2) LIMITATION OF POWERS.—The exercise by SIPC of powers and functions as trustee under subsection (a) shall not impair or impede the exercise of the powers and duties of the Corporation with regard to—

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

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

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

[(iii) to transfer assets and liabilities;

[(iv) to enforce or repudiate contracts; or

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

[(B) determining claims under subsection (e).

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

[(4) QUALIFIED FINANCIAL CONTRACTS.—Notwithstanding any provision of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) to the contrary (including section

5(b)(2)(C) of that Act (15 U.S.C. 78eee(b)(2)(C))), the rights and obligations of any party to a qualified financial contract (as that term is defined in section 210(c)(8)) to which a covered broker or dealer for which the Corporation has been appointed receiver is a party shall be governed exclusively by section 210, including the limitations and restrictions contained in section 210(c)(10)(B).

[(c) LIMITATION ON COURT ACTION.—Except as otherwise provided in this title, no court may take any action, including any action pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or the Bankruptcy Code, to restrain or affect the exercise of powers or functions of the Corporation as receiver for a covered broker or dealer and any claims against the Corporation as such receiver shall be determined in accordance with subsection (e) and such claims shall be limited to money damages.

[(d) ACTIONS BY CORPORATION AS RECEIVER.—

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

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

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

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

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

[(e) CLAIMS AGAINST THE CORPORATION AS RECEIVER.—Any claim against the Corporation as receiver for a covered broker or dealer for assets transferred to a bridge financial company established with respect to such covered broker or dealer—

[(1) shall be determined in accordance with section 210(a)(2); and

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

[(f) SATISFACTION OF CUSTOMER CLAIMS.—

[(1) OBLIGATIONS TO CUSTOMERS.—Notwithstanding any other provision of this title, all obligations of a covered broker or dealer or of any bridge financial company established with respect to such covered broker or dealer to a customer relating to, or net equity claims based upon, customer property or customer name securities shall be promptly discharged by SIPC, the Corporation, or the bridge financial company, as applicable, by the delivery of securities or the making of payments to or for the account of such customer, in a manner and in an amount at least as beneficial to the customer as would have been the case had the actual proceeds realized from the liquidation of the covered broker or dealer under this title been distributed in a proceeding under the Securities Investor Pro-

tection Act of 1970 (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver and without any transfer of assets or liabilities to a bridge financial company, and with a filing date as of the date on which the Corporation is appointed as receiver.

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

[(g) PRIORITIES.—

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

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

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

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

[In taking action under this title, the Corporation shall—

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

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

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

[(4) ensure that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time at which the Corporation is appointed receiver);

[(5) ensure that the members of the board of directors (or body performing similar functions) responsible for the failed condition of the covered financial company are removed, if such members have not already been removed at the time the Corporation is appointed as receiver; and

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

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

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

[SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.

【(a) IN GENERAL.—Effective as of the date of the appointment of the Corporation as receiver for the covered financial company under section 202 or the appointment of SIPC as trustee for a covered broker or dealer under section 205, as applicable, any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code or the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) shall be dismissed, upon notice to the bankruptcy court (with respect to a case commenced under the Bankruptcy Code), and upon notice to SIPC (with respect to a covered broker or dealer) and no such case or proceeding may be commenced with respect to a covered financial company at any time while the orderly liquidation is pending.

【(b) REVESTING OF ASSETS.—Effective as of the date of appointment of the Corporation as receiver, the assets of a covered financial company shall, to the extent they have vested in any entity other than the covered financial company as a result of any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code, the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), or any similar provision of State liquidation or insolvency law applicable to the covered financial company, revert in the covered financial company.

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

[SEC. 209. RULEMAKING; NON-CONFLICTING LAW.

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

[SEC. 210. POWERS AND DUTIES OF THE CORPORATION.

【(a) POWERS AND AUTHORITIES.—

【(1) GENERAL POWERS.—

【(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as receiver for a covered financial company under this title, succeed to—

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

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

【(B) OPERATION OF THE COVERED FINANCIAL COMPANY DURING THE PERIOD OF ORDERLY LIQUIDATION.—The Corporation, as receiver for a covered financial company, may—

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

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

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

【(iv) manage the assets and property of the covered financial company, consistent with maximization of the value of the assets in the context of the orderly liquidation; and

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

【(C) FUNCTIONS OF COVERED FINANCIAL COMPANY OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this title.

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

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

【(i) IN GENERAL.—In any case in which a receiver is appointed for a covered financial company under

section 202, the Corporation may appoint itself as receiver of any covered subsidiary of the covered financial company that is organized under Federal law or the laws of any State, if the Corporation and the Secretary jointly determine that—

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

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

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

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

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

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

[(i) IN GENERAL.—Subject to clauses (ii) and (iii), the Corporation, as receiver for a covered financial company, may—

[(I) merge the covered financial company with another company; or

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

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

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

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

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

【(iii) SETOFF.—Subject to the other provisions of this title, any transferee of assets from a receiver, including a bridge financial company, shall be subject to such claims or rights as would prevail over the rights of such transferee in such assets under applicable non-insolvency law.

【(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver for a covered financial company, shall, to the extent that funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver, in accordance with the prescriptions and limitations of this title.

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

【(J) SUBPOENA AUTHORITY.—

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

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

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

【(L) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from the covered financial company, the Corpora-

tion, as receiver for a covered financial company, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector, and the Corporation determines that utilization of such services is practicable, efficient, and cost effective.

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

[(N) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation, as receiver for a covered financial company, shall coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the orderly liquidation of any covered financial company that has assets or operations in a country other than the United States.

[(O) RESTRICTION ON TRANSFERS.—

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

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

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

[(ii) TRANSFER OF PROPERTY.—SIPC, as trustee for the liquidation of the covered broker or dealer, and the Commission shall provide any and all reasonable as-

sistance necessary to complete such transfers by the Corporation.

[(iii) CUSTOMER CONSENT AND COURT APPROVAL NOT REQUIRED.—Neither customer consent nor court approval shall be required to transfer any customer accounts or associated customer name securities or customer property to a bridge financial company in accordance with this section.

[(iv) NOTIFICATION OF SIPC AND SHARING OF INFORMATION.—The Corporation shall identify to SIPC the customer accounts and associated customer name securities and customer property transferred to the bridge financial company. The Corporation and SIPC shall cooperate in the sharing of any information necessary for each entity to discharge its obligations under this title and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) including by providing access to the books and records of the covered financial company and any bridge financial company established in accordance with this title.

[(2) DETERMINATION OF CLAIMS.—

[(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, shall report on claims, as set forth in section 203(c)(3). Subject to paragraph (4) of this subsection, the Corporation, as receiver for a covered financial company, shall determine claims in accordance with the requirements of this subsection and regulations prescribed under section 209.

[(B) NOTICE REQUIREMENTS.—The Corporation, as receiver for a covered financial company, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

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

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

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

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

[(ii) in any claim filed by the claimant; or

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

[(3) PROCEDURES FOR RESOLUTION OF CLAIMS.—

[(A) DECISION PERIOD.—

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

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

[(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any decision with respect to any claim is mailed to the last address of the claimant which appears—

[(I) on the books, records, or both of the covered financial company;

[(II) in the claim filed by the claimant; or

[(III) in documents submitted in proof of the claim.

[(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If the Corporation as receiver disallows any claim filed under clause (i), the notice to the claimant shall contain—

[(I) a statement of each reason for the disallowance; and

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

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

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

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

[(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by a claimant after the date specified in the notice published under paragraph (2)(B)(i), and such claim may be considered by the receiver under subparagraph (B), if—

[(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

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

[(D) AUTHORITY TO DISALLOW CLAIMS.—

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

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

[(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim; and

[(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

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

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

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

[(E) LEGAL EFFECT OF FILING.—

[(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

[(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of appointment of the receiver for the covered financial company.

[(4) JUDICIAL DETERMINATION OF CLAIMS.—

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

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

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

[(ii) the date of any notice of disallowance of such claim pursuant to paragraph (3)(A)(i).

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

[(5) EXPEDITED DETERMINATION OF CLAIMS.—

[(A) PROCEDURE REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the claims process established under paragraph (3), for any claimant that alleges—

[(i) having a legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver; and

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

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

[(i) determine—

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

[(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (3);

[(ii) notify the claimant of the determination; and

[(iii) if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

[(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file suit (or continue a suit filed before the date of appointment of the Corporation as receiver seeking a determination of the rights of the claimant with respect

to such security interest (or such security entitlement) after the earlier of—

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

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

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

【(E) LEGAL EFFECT OF FILING.—

【(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

【(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

【(6) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver, unless such agreement—

【(A) is in writing;

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

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

【(7) PAYMENT OF CLAIMS.—

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

【(i) allowed by the receiver;

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

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

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

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

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

[(8) SUSPENSION OF LEGAL ACTIONS.—

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

[(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A), the court shall grant such stay as to all parties.

[(9) ADDITIONAL RIGHTS AND DUTIES.—

[(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final, non-appealable judgment of any court of competent jurisdiction that was rendered before the appointment of the Corporation as receiver.

[(B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable judgment, the Corporation as receiver shall—

[(i) have all the rights and remedies available to the covered financial company (before the date of appointment of the Corporation as receiver under section 202) and the Corporation, including removal to Federal court and all appellate rights; and

[(ii) not be required to post any bond in order to pursue such remedies.

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

[(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this title, no court shall have jurisdiction over—

[(i) any claim or action for payment from, or any action seeking a determination of rights with respect

to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

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

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

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

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

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

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

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

[(10) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

[(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver for a covered financial company shall be—

[(i) in the case of any contract claim, the longer of—

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

[(II) the period applicable under State law; and

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

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

[(II) the period applicable under State law.

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

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

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

[(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

[(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the applicable statute of limitations under State law has expired not more than 5 years before the date of appointment of the Corporation as receiver for a covered financial company, the Corporation may bring an action as receiver

on such claim without regard to the expiration of the statute of limitations.

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

[(11) AVOIDABLE TRANSFERS.—

[(A) FRAUDULENT TRANSFERS.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of the covered financial company in property, or any obligation incurred by the covered financial company, that was made or incurred at or within 2 years before the date on which the Corporation was appointed receiver, if—

[(i) the covered financial company voluntarily or involuntarily—

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

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

[(ii) the covered financial company voluntarily or involuntarily—

[(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

[(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the covered financial company was an unreasonably small capital;

[(III) intended to incur, or believed that the covered financial company would incur, debts that would be beyond the ability of the covered financial company to pay as such debts matured; or

[(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

[(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property—

[(i) to or for the benefit of a creditor;

[(ii) for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

[(iii) that was made while the covered financial company was insolvent;

[(iv) that was made—

[(I) 90 days or less before the date on which the Corporation was appointed receiver; or

[(II) more than 90 days, but less than 1 year before the date on which the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider; and

[(v) that enables the creditor to receive more than the creditor would receive if—

[(I) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code;

[(II) the transfer had not been made; and

[(III) the creditor received payment of such debt to the extent provided by the provisions of chapter 7 of the Bankruptcy Code.

[(C) POST-RECEIVERSHIP TRANSACTIONS.—The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that was not authorized under this title by the Corporation as receiver.

[(D) RIGHT OF RECOVERY.—To the extent that a transfer is avoided under subparagraph (A), (B), or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

[(i) the initial transferee of such transfer or the person for whose benefit such transfer was made; or

[(ii) any immediate or mediate transferee of any such initial transferee.

[(E) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (D)(ii) from—

[(i) any transferee that takes for value, including in satisfaction of or to secure a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

[(ii) any immediate or mediate good faith transferee of such transferee.

[(F) DEFENSES.—Subject to the other provisions of this title—

[(i) a transferee or obligee from which the Corporation seeks to recover a transfer or to avoid an obligation under subparagraph (A), (B), (C), or (D) shall have the same defenses available to a transferee or obligee from which a trustee seeks to recover a transfer or avoid an obligation under sections 547, 548, and 549 of the Bankruptcy Code; and

[(ii) the authority of the Corporation to recover a transfer or avoid an obligation shall be subject to sub-

sections (b) and (c) of section 546, section 547(c), and section 548(c) of the Bankruptcy Code.

[(G) RIGHTS UNDER THIS SECTION.—The rights of the Corporation as receiver under this section shall be superior to any rights of a trustee or any other party (other than a Federal agency) under the Bankruptcy Code.

[(H) RULES OF CONSTRUCTION; DEFINITIONS.—For purposes of—

[(i) subparagraphs (A) and (B)—

[(I) the term “insider” has the same meaning as in section 101(31) of the Bankruptcy Code;

[(II) a transfer is made when such transfer is so perfected that a bona fide purchaser from the covered financial company against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the date on which the Corporation is appointed as receiver for the covered financial company, such transfer is made immediately before the date of such appointment; and

[(III) the term “value” means property, or satisfaction or securing of a present or antecedent debt of the covered financial company, but does not include an unperformed promise to furnish support to the covered financial company; and

[(ii) subparagraph (B)—

[(I) the covered financial company is presumed to have been insolvent on and during the 90-day period immediately preceding the date of appointment of the Corporation as receiver; and

[(II) the term “insolvent” has the same meaning as in section 101(32) of the Bankruptcy Code.

[(12) SETOFF.—

[(A) GENERALLY.—Except as otherwise provided in this title, any right of a creditor to offset a mutual debt owed by the creditor to any covered financial company that arose before the Corporation was appointed as receiver for the covered financial company against a claim of such creditor may be asserted if enforceable under applicable noninsolvency law, except to the extent that—

[(i) the claim of the creditor against the covered financial company is disallowed;

[(ii) the claim was transferred, by an entity other than the covered financial company, to the creditor—

[(I) after the Corporation was appointed as receiver of the covered financial company; or

[(II)(aa) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company; and

[(bb) while the covered financial company was insolvent (except for a setoff in connection with a qualified financial contract); or

[(iii) the debt owed to the covered financial company was incurred by the covered financial company—

[(I) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company;

[(II) while the covered financial company was insolvent; and

[(III) for the purpose of obtaining a right of setoff against the covered financial company (except for a setoff in connection with a qualified financial contract).

[(B) INSUFFICIENCY.—

[(i) IN GENERAL.—Except with respect to a setoff in connection with a qualified financial contract, if a creditor offsets a mutual debt owed to the covered financial company against a claim of the covered financial company on or within the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company, the Corporation may recover from the creditor the amount so offset, to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

[(I) the date that is 90 days before the date on which the Corporation is appointed as receiver for the covered financial company; or

[(II) the first day on which there is an insufficiency during the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company.

[(ii) DEFINITION OF INSUFFICIENCY.—In this subparagraph, the term “insufficiency” means the amount, if any, by which a claim against the covered financial company exceeds a mutual debt owed to the covered financial company by the holder of such claim.

[(C) INSOLVENCY.—The term “insolvent” has the same meaning as in section 101(32) of the Bankruptcy Code.

[(D) PRESUMPTION OF INSOLVENCY.—For purposes of this paragraph, the covered financial company is presumed to have been insolvent on and during the 90-day period preceding the date of appointment of the Corporation as receiver.

[(E) LIMITATION.—Nothing in this paragraph (12) shall be the basis for any right of setoff where no such right exists under applicable noninsolvency law.

[(F) PRIORITY CLAIM.—Except as otherwise provided in this title, the Corporation as receiver for the covered financial company may sell or transfer any assets free and clear of the setoff rights of any party, except that such party shall be entitled to a claim, subordinate to the claims payable under subparagraphs (A), (B), (C), and (D) of subsection (b)(1), but senior to all other unsecured liabilities defined in subsection (b)(1)(E), in an amount equal to the value of such setoff rights.

[(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation as receiver for a covered financial company, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

[(14) STANDARDS.—

[(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13), without regard to the requirement that the applicant show that the injury, loss, or damage is irreparable and immediate.

[(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of the State provide substantially similar protections of the right of the parties to due process as provided under Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

[(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this title, any final and non-appealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

[(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

[(A) IN GENERAL.—The Corporation as receiver for a covered financial company shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

[(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation is appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

[(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) and section 203(c)(3) shall be made available to the public by the Corporation.

[(D) RECORDKEEPING REQUIREMENT.—

[(i) IN GENERAL.—The Corporation shall prescribe such regulations and establish such retention schedules as are necessary to maintain the documents and records of the Corporation generated in exercising the

authorities of this title and the records of a covered financial company for which the Corporation is appointed receiver, with due regard for—

[(I) the avoidance of duplicative record retention; and

[(II) the expected evidentiary needs of the Corporation as receiver for a covered financial company and the public regarding the records of covered financial companies.

[(ii) RETENTION OF RECORDS.—Unless otherwise required by applicable Federal law or court order, the Corporation may not, at any time, destroy any records that are subject to clause (i).

[(iii) RECORDS DEFINED.—As used in this subparagraph, the terms “records” and “records of a covered financial company” mean any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by the covered financial company in the course of and necessary to its transaction of business.

[(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

[(1) IN GENERAL.—Unsecured claims against a covered financial company, or the Corporation as receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

[(A) Administrative expenses of the receiver.

[(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

[(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of 11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

[(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by 11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

[(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F), (G), or (H)).

[(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G) or (H)).

[(G) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, owed to

senior executives and directors of the covered financial company.

[(H) Any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company.

[(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation, as receiver for a covered financial company, is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company, which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

[(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

[(4) CREDITORS SIMILARLY SITUATED.—All claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subsection, if—

[(A) the Corporation determines that such action is necessary—

[(i) to maximize the value of the assets of the covered financial company;

[(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

[(iii) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

[(iv) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

[(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in paragraphs (2) and (3) of subsection (d).

[(5) SECURED CLAIMS UNAFFECTED.—This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security.

[(6) PRIORITY OF EXPENSES AND UNSECURED CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC MEMBER.—Where the Corporation is appointed as receiver for a covered broker or dealer, unsecured claims against such covered broker or dealer, or the Corporation as receiver for such covered broker or dealer under this section, that are proven to the satisfaction of the receiver

under section 205(e), shall have the priority prescribed in paragraph (1), except that—

【(A) SIPC shall be entitled to recover administrative expenses incurred in performing its responsibilities under section 205 on an equal basis with the Corporation, in accordance with paragraph (1)(A);

【(B) the Corporation shall be entitled to recover any amounts paid to customers or to SIPC pursuant to section 205(f), in accordance with paragraph (1)(B);

【(C) SIPC shall be entitled to recover any amounts paid out of the SIPC Fund to meet its obligations under section 205 and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), which claim shall be subordinate to the claims payable under subparagraphs (A) and (B) of paragraph (1), but senior to all other claims; and

【(D) the Corporation may, after paying any proven claims to customers under section 205 and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), and as provided above, pay dividends on other proven claims, in its discretion, and to the extent that funds are available, in accordance with the priorities set forth in paragraph (1).

【(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF RECEIVER.—

【(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights that a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

【(A) to which the covered financial company is a party;

【(B) the performance of which the Corporation as receiver, in the discretion of the Corporation, determines to be burdensome; and

【(C) the disaffirmance or repudiation of which the Corporation as receiver determines, in the discretion of the Corporation, will promote the orderly administration of the affairs of the covered financial company.

【(2) TIMING OF REPUDIATION.—The Corporation, as receiver for any covered financial company, shall determine whether or not to exercise the rights of repudiation under this section within a reasonable period of time.

【(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

【(A) IN GENERAL.—Except as provided in paragraphs (4), (5), and (6) and in subparagraphs (C), (D), and (E) of this paragraph, the liability of the Corporation as receiver for a covered financial company for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

【(i) limited to actual direct compensatory damages; and

【(ii) determined as of—

【(I) the date of the appointment of the Corporation as receiver; or

[(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

[(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include—

[(i) punitive or exemplary damages;

[(ii) damages for lost profits or opportunity; or

[(iii) damages for pain and suffering.

[(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

[(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

[(ii) paid in accordance with this paragraph and subsection (d), except as otherwise specifically provided in this subsection.

[(D) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF DEBT OBLIGATION.—In the case of any debt for borrowed money or evidenced by a security, actual direct compensatory damages shall be no less than the amount lent plus accrued interest plus any accreted original issue discount as of the date the Corporation was appointed receiver of the covered financial company and, to the extent that an allowed secured claim is secured by property the value of which is greater than the amount of such claim and any accrued interest through the date of repudiation or disaffirmance, such accrued interest pursuant to paragraph (1).

[(E) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF CONTINGENT OBLIGATION.—In the case of any contingent obligation of a covered financial company consisting of any obligation under a guarantee, letter of credit, loan commitment, or similar credit obligation, the Corporation may, by rule or regulation, prescribe that actual direct compensatory damages shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based on the likelihood that such contingent claim would become fixed and the probable magnitude thereof.

[(4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

[(A) IN GENERAL.—If the Corporation as receiver disaffirms or repudiates a lease under which the covered financial company is the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

【(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which subparagraph (A) would otherwise apply shall—

【(i) be entitled to the contractual rent accruing before the later of the date on which—

【(I) the notice of disaffirmance or repudiation is mailed; or

【(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

【(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

【(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this paragraph and subsection (d).

【(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

【(A) IN GENERAL.—If the Corporation as receiver for a covered financial company repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

【(i) treat the lease as terminated by such repudiation; or

【(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

【(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of subparagraph (A)—

【(i) the lessee—

【(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

【(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

【(ii) the Corporation as receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

【(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

【(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(6)) for the sale of real property, and the purchaser of such real property under such contract is in possession and is not,

as of the date of such repudiation, in default, such purchaser may either—

【(i) treat the contract as terminated by such repudiation; or

【(ii) remain in possession of such real property.

【(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of subparagraph (A)—

【(i) the purchaser—

【(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

【(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

【(ii) the Corporation as receiver shall—

【(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

【(II) deliver title to the purchaser in accordance with the provisions of the contract; and

【(III) have no obligation under the contract other than the performance required under subclause (II).

【(C) ASSIGNMENT AND SALE ALLOWED.—

【(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the Corporation as receiver to assign the contract described in subparagraph (A) and sell the property, subject to the contract and the provisions of this paragraph.

【(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the Corporation as receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

【(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

【(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the date of appointment shall be—

【(i) a claim to be paid in accordance with subsections (a), (b), and (d); and

【(ii) deemed to have arisen as of the date on which the receiver was appointed.

【(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for

services described in subparagraph (A), the Corporation as receiver accepts performance by the other person before making any determination to exercise the right of repudiation of such contract under this section—

[(i) the other party shall be paid under the terms of the contract for the services performed; and

[(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

[(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the Corporation as receiver for services referred to in subparagraph (B) in connection with a contract described in subparagraph (B) shall not affect the right of the Corporation as receiver to repudiate such contract under this section at any time after such performance.

[(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

[(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to subsection (a)(8) and paragraphs (9) and (10) of this subsection, and notwithstanding any other provision of this section, any other provision of Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

[(i) any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the date of appointment of the Corporation as receiver for such covered financial company or at any time after such appointment;

[(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

[(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts or agreements described in clause (i), including any master agreement for such contracts or agreements.

[(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(8) shall apply in the case of any judicial action or proceeding brought against the Corporation as receiver referred to in subparagraph (A), or the subject covered financial company, by any party to a contract or agreement described in subparagraph (A)(i) with such covered financial company.

[(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

[(i) IN GENERAL.—Notwithstanding subsection (a)(11), (a)(12), or (c)(12), section 542 of the Revised Statutes of the United States, or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as the Corporation or as receiver for a covered financial company, may not avoid any transfer of money or other property in connection with any

qualified financial contract with a covered financial company.

【(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or the Corporation as receiver appointed for such company.

【(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

【(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

【(ii) SECURITIES CONTRACT.—The term “securities contract”—

【(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v));

【(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

【(III) means any option entered into on a national securities exchange relating to foreign currencies;

【(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or an option on any of the foregoing, including any

option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

[(V) means any margin loan;

[(VI) means any extension of credit for the clearance or settlement of securities transactions;

[(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

[(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

[(IX) means any combination of the agreements or transactions referred to in this clause;

[(X) means any option to enter into any agreement or transaction referred to in this clause;

[(XI) means a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (X), other than subclause (II), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (X), other than subclause (II); and

[(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

[(iii) COMMODITY CONTRACT.—The term “commodity contract” means—

[(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

[(II) with respect to a foreign futures commission merchant, a foreign future;

[(III) with respect to a leverage transaction merchant, a leverage transaction;

[(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a

contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

[(V) with respect to a commodity options dealer, a commodity option;

[(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

[(VII) any combination of the agreements or transactions referred to in this clause;

[(VIII) any option to enter into any agreement or transaction referred to in this clause;

[(IX) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (VIII); or

[(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

[(iv) FORWARD CONTRACT.—The term “forward contract” means—

[(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date that is more than 2 days after the date on which the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

[(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

[(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

[(IV) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

[(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

[(v) REPURCHASE AGREEMENT.—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

[(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities (which, for purposes of this clause, means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the Board of Governors), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

[(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Corporation determines, by regulation, resolution, or order to include any such participation within the meaning of such term;

【(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

【(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

【(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

【(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

【(vi) SWAP AGREEMENT.—The term “swap agreement” means—

【(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

【(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future,

option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

【(III) any combination of agreements or transactions referred to in this clause;

【(IV) any option to enter into any agreement or transaction referred to in this clause;

【(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

【(VI) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in any of subclauses (I) through (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such clause.

【(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraphs (9) and (10)—

【(I) the term “default” means, with respect to a covered financial company, any adjudication or other official decision by any court of competent jurisdiction, or other public authority pursuant to which the Corporation has been appointed receiver; and

【(II) the term “in danger of default” means a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

【(aa) in the opinion of the Corporation or such authority—

【(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

【(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

[(bb) in the opinion of the Corporation or such authority—

[(AA) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

[(BB) there is no reasonable prospect that the capital will be replenished without Federal assistance.

[(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any of clauses (i) through (vi) (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

[(ix) TRANSFER.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the covered financial company.

[(x) PERSON.—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

[(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract or to disaffirm or repudiate any such contract in accordance with this subsection.

[(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

[(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

[(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

【(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

【(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

【(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of the status of such party as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by the Corporation as receiver for such covered financial company, and not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

【(G) CERTAIN OBLIGATIONS TO CLEARING ORGANIZATIONS.—In the event that the Corporation has been appointed as receiver for a covered financial company which is a party to any qualified financial contract cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D)), the receiver shall use its best efforts to meet all margin, collateral, and settlement obligations of the covered financial company that arise under qualified financial contracts (other than any margin, collateral, or settlement obligation that is not enforceable against the receiver under paragraph (8)(F)(i) or paragraph (10)(B)), as required by the rules of the clearing organization when due. Notwithstanding any other provision of this title, if the receiver fails to satisfy any such margin, collateral, or settlement obligations under the rules of the clearing organization, the clearing organization shall have the immediate right to exercise, and shall not be stayed from exercising, all of its rights and remedies under its rules and applicable law with respect to any qualified financial contract of the covered financial company, including, without limitation, the right to liquidate all positions and collateral of such covered financial company under the company’s qualified financial contracts, and suspend or cease to act for such covered financial company, all in accordance with the rules of the clearing organization.

【(H) RECORDKEEPING.—

【(i) JOINT RULEMAKING.—The Federal primary financial regulatory agencies shall jointly prescribe regulations requiring that financial companies maintain such records with respect to qualified financial contracts (including market valuations) that the Federal primary financial regulatory agencies determine to be necessary or appropriate in order to assist the Cor-

poration as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

[(ii) TIME FRAME.—The Federal primary financial regulatory agencies shall prescribe joint final or interim final regulations not later than 24 months after the date of enactment of this Act.

[(iii) BACK-UP RULEMAKING AUTHORITY.—If the Federal primary financial regulatory agencies do not prescribe joint final or interim final regulations within the time frame in clause (ii), the Chairperson of the Council shall prescribe, in consultation with the Corporation, the regulations required by clause (i).

[(iv) CATEGORIZATION AND TIERING.—The joint regulations prescribed under clause (i) shall, as appropriate, differentiate among financial companies by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of qualified financial contracts, interconnectedness to the financial system, and any other factors deemed appropriate.

[(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

[(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default, which includes any qualified financial contract, the Corporation as receiver for such covered financial company shall either—

[(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

[(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

[(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

[(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

[(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

[(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

[(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and

property under subparagraph (A)(i), the Corporation as receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

[(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that the Corporation as receiver for a financial institution transfers any qualified financial contract and related claims, property, or credit enhancement pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

[(D) DEFINITIONS.—For purposes of this paragraph—

[(i) the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation, by regulation, to be a financial institution; and

[(ii) the term “clearing organization” has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

[(10) NOTIFICATION OF TRANSFER.—

[(A) IN GENERAL.—

[(i) NOTICE.—The Corporation shall provide notice in accordance with clause (ii), if—

[(I) the Corporation as receiver for a covered financial company in default or in danger of default transfers any assets or liabilities of the covered financial company; and

[(II) the transfer includes any qualified financial contract.

[(ii) TIMING.—The Corporation as receiver for a covered financial company shall notify any person who is a party to any contract described in clause (i) of such transfer not later than 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

[(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

[(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) solely by reason of or incidental to

the appointment under this section of the Corporation as receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the Corporation has been appointed as receiver)—

[(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment; or

[(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

[(ii) NOTICE.—For purposes of this paragraph, the Corporation as receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company, if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

[(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

[(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

[(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of the Corporation as receiver with respect to any qualified financial contract to which a covered financial company is a party, the Corporation shall either—

[(A) disaffirm or repudiate all qualified financial contracts between—

[(i) any person or any affiliate of such person; and

[(ii) the covered financial company in default; or

[(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

[(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

[(A) legally enforceable or perfected security interest in any of the assets of any covered financial company, except in accordance with subsection (a)(11); or

[(B) legally enforceable interest in customer property, security entitlements in respect of assets or property held by the covered financial company for any security entitlement holder.

[(13) AUTHORITY TO ENFORCE CONTRACTS.—

[(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, may enforce any contract, other

than a liability insurance contract of a director or officer, a financial institution bond entered into by the covered financial company, notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency, the appointment of or the exercise of rights or powers by the Corporation as receiver, the filing of the petition pursuant to section 202(a)(1), or the issuance of the recommendations or determination, or any actions or events occurring in connection therewith or as a result thereof, pursuant to section 203.

[(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the Corporation as receiver to enforce or recover under a liability insurance contract of a director or officer or financial institution bond under other applicable law.

[(C) CONSENT REQUIREMENT AND IPSO FACTO CLAUSES.—

[(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party (and no provision in any such contract providing for such default, termination, or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the Corporation as receiver for the covered financial company during the 90 day period beginning from the appointment of the Corporation as receiver.

[(ii) EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the Corporation as receiver to fail to comply with otherwise enforceable provisions of such contract.

[(D) CONTRACTS TO EXTEND CREDIT.—Notwithstanding any other provision in this title, if the Corporation as receiver enforces any contract to extend credit to the covered financial company or bridge financial company, any valid and enforceable obligation to repay such debt shall be paid by the Corporation as receiver, as an administrative expense of the receivership.

[(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

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

[(B) any security interest in the assets of the covered financial company securing any such extension of credit.

[(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

[(16) ENFORCEMENT OF CONTRACTS GUARANTEED BY THE COVERED FINANCIAL COMPANY.—

[(A) IN GENERAL.—The Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution) shall have the power to enforce contracts of subsidiaries or affiliates of the covered financial company, the obligations under which are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of the covered financial company, if—

[(i) such guaranty or other support and all related assets and liabilities are transferred to and assumed by a bridge financial company or a third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding) within the same period of time as the Corporation is entitled to transfer the qualified financial contracts of such covered financial company; or

[(ii) the Corporation, as receiver, otherwise provides adequate protection with respect to such obligations.

[(B) RULE OF CONSTRUCTION.—For purposes of this paragraph, a bridge financial company shall not be considered to be a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

[(d) VALUATION OF CLAIMS IN DEFAULT.—

[(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method utilized by the Corporation for a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of any such covered financial company.

[(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver for a covered financial company or in any other capacity, to any person having a claim against the Corporation as receiver or the covered financial company for which the Corporation is appointed shall equal the amount that such claimant would have received if—

[(A) the Corporation had not been appointed receiver with respect to the covered financial company; and

[(B) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code, or any similar provision of State insolvency law applicable to the covered financial company.

[(3) SPECIAL PROVISION FOR ORDERLY LIQUIDATION BY SIPC.—The maximum liability of the Corporation, acting as receiver or in its corporate capacity for any covered broker or dealer to any customer of such covered broker or dealer, with respect to customer property of such customer, shall be—

[(A) equal to the amount that such customer would have received with respect to such customer property in a case initiated by SIPC under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

[(B) determined as of the close of business on the date on which the Corporation is appointed as receiver.

[(4) ADDITIONAL PAYMENTS AUTHORIZED.—

[(A) IN GENERAL.—Subject to subsection (o)(1)(D)(i), the Corporation, with the approval of the Secretary, may make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of the covered financial company, if the Corporation determines that such payments or credits are necessary or appropriate to minimize losses to the Corporation as receiver from the orderly liquidation of the covered financial company under this section.

[(B) LIMITATIONS.—

[(i) PROHIBITION.—The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any claim that is proven to the satisfaction of the Corporation.

[(ii) NO OBLIGATION.—Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

[(C) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established

with respect thereto in order to induce such other company to accept liability for such claims.

[(e) **LIMITATION ON COURT ACTION.**—Except as provided in this title, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder, and any remedy against the Corporation or receiver shall be limited to money damages determined in accordance with this title.

[(f) **LIABILITY OF DIRECTORS AND OFFICERS.**—

[(1) **IN GENERAL.**—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

[(A) acting as receiver for such covered financial company;

[(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by the Corporation as receiver; or

[(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under this title.

[(2) **ACTIONS COVERED.**—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

[(3) **SAVINGS CLAUSE.**—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

[(g) **DAMAGES.**—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the covered financial company shall include principal losses and appropriate interest.

[(h) **BRIDGE FINANCIAL COMPANIES.**—

[(1) **ORGANIZATION.**—

[(A) **PURPOSE.**—The Corporation, as receiver for one or more covered financial companies or in anticipation of being appointed receiver for one or more covered financial companies, may organize one or more bridge financial companies in accordance with this subsection.

[(B) **AUTHORITIES.**—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

[(i) assume such liabilities (including liabilities associated with any trust or custody business, but ex-

cluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

[(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

[(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

[(2) CHARTER AND ESTABLISHMENT.—

[(A) ESTABLISHMENT.—Except as provided in subparagraph (H), where the covered financial company is a covered broker or dealer, the Corporation, as receiver for a covered financial company, may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies, with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

[(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

[(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

[(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—

[(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities, and privileges of a bridge financial company granted by the charter or as an incident thereto; and

[(ii) provide for, and establish the terms and conditions governing, the management (including the by-laws and the number of directors of the board of directors) and operations of the bridge financial company.

[(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

[(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities, or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities, and privileges.

[(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities, or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

[(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations, or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures that are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

[(G) CAPITAL.—

[(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

[(ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

[(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

[(iv) OPERATING FUNDS IN LIEU OF CAPITAL AND IMPLEMENTATION PLAN.—Upon the organization of a bridge financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge financial company, subject to the plan described in subsection (n)(9), funds for the operation of the bridge financial company in lieu of capital.

[(H) BRIDGE BROKERS OR DEALERS.—

[(i) IN GENERAL.—The Corporation, as receiver for a covered broker or dealer, may approve articles of association for one or more bridge financial companies with respect to such covered broker or dealer, which bridge financial company or companies shall, by operation of law and immediately upon approval of its articles of association—

[(I) be established and deemed registered with the Commission under the Securities Exchange Act of 1934 and a member of SIPC;

[(II) operate in accordance with such articles and this section; and

[(III) succeed to any and all registrations and memberships of the covered financial company with or in any self-regulatory organizations.

[(ii) OTHER REQUIREMENTS.—Except as provided in clause (i), and notwithstanding any other provision of this section, the bridge financial company shall be subject to the Federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission, as is necessary or appropriate in the public interest or for the protection of investors.

[(iii) TREATMENT OF CUSTOMERS.—Except as otherwise provided by this title, any customer of the covered broker or dealer whose account is transferred to a bridge financial company shall have all the rights, privileges, and protections under section 205(f) and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), that such customer would have had if the account were not transferred from the covered financial company under this subparagraph.

[(iv) OPERATION OF BRIDGE BROKERS OR DEALERS.—Notwithstanding any other provision of this title, the Corporation shall not operate any bridge financial company created by the Corporation under this title with respect to a covered broker or dealer in such a manner as to adversely affect the ability of customers to promptly access their customer property in accordance with applicable law.

[(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraph (1) or (2) or any other provision of law—

[(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

[(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which the Corporation has been appointed receiver may have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

[(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company

shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

[(5) TRANSFER OF ASSETS AND LIABILITIES.—

[(A) AUTHORITY OF CORPORATION.—The Corporation, as receiver for a covered financial company, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies, in accordance with and subject to the restrictions of paragraph (1).

[(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

[(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

[(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company, to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

[(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1), in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subparagraph, if—

[(i) the Corporation determines that such action is necessary—

[(I) to maximize the value of the assets of the covered financial company;

[(II) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

[(III) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

[(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided under paragraphs (2) and (3) of subsection (d).

【(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

【(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of not longer than 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

【(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company, unless such agreement—

【(A) is in writing;

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

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

【(8) NO FEDERAL STATUS.—

【(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

【(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

【(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

【(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are

obtained through employment with the Corporation or such Federal instrumentality.

[(9) FUNDING AUTHORIZED.—The Corporation may, subject to the plan described in subsection (n)(9), provide funding to facilitate any transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13) with respect to any bridge financial company, or facilitate the acquisition by a bridge financial company of any assets, or the assumption of any liabilities, of a covered financial company for which the Corporation has been appointed receiver.

[(10) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

[(11) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a notification is required under section 7A of the Clayton Act with respect to such transaction, the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under section 7A(b)(2) of the Clayton Act, or extended under section 7A(e)(2) of that Act.

[(12) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date on which it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for no more than 3 additional 1-year periods.

[(13) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

[(A) the date of the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

[(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

[(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other

than the Corporation and other than another bridge financial company;

【(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

【(E) the expiration of the period provided in paragraph (12), or the earlier dissolution of the bridge financial company, as provided in paragraph (15).

【(14) EFFECT OF TERMINATION EVENTS.—

【(A) MERGER OR CONSOLIDATION.—A merger or consolidation, described in paragraph (13)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

【(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company, as provided in paragraph (13)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, such State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers, and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

【(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company, as provided in paragraph (13)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and inter-

ests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

[(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (13)(D), at the election of the Corporation, the bridge financial company may retain its status as such for the period provided in paragraph (12) or may be dissolved at the election of the Corporation.

[(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

[(15) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

[(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if the status of a bridge financial company as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (13)—

[(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

[(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date on which the bridge financial company was chartered, or any extension thereof, as provided in paragraph (12).

[(B) PROCEDURES.—The Corporation shall remain the receiver for a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as receiver for a bridge financial company shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies under this title. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to the Corporation as receiver for a covered financial company under this title and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

[(16) AUTHORITY TO OBTAIN CREDIT.—

[(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

[(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue

unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

【(i) with priority over any or all of the obligations of the bridge financial company;

【(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

【(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

【(C) LIMITATIONS.—

【(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien, only if—

【(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

【(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

【(ii) HEARING.—The hearing required pursuant to this subparagraph shall be before a court of the United States, which shall have jurisdiction to conduct such hearing and to authorize a bridge financial company to obtain secured credit under clause (i).

【(D) BURDEN OF PROOF.—In any hearing under this paragraph, the Corporation has the burden of proof on the issue of adequate protection.

【(E) QUALIFIED FINANCIAL CONTRACTS.—No credit or debt obtained or issued by a bridge financial company may contain terms that impair the rights of a counterparty to a qualified financial contract upon a default by the bridge financial company, other than the priority of such counterparty's unsecured claim (after the exercise of rights) relative to the priority of the bridge financial company's obligations in respect of such credit or debt, unless such counterparty consents in writing to any such impairment.

【(17) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

【(i) SHARING RECORDS.—If the Corporation has been appointed as receiver for a covered financial company, other Federal regulators shall make all records relating to the covered financial com-

pany available to the Corporation, which may be used by the Corporation in any manner that the Corporation determines to be appropriate.

[(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

[(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of the covered financial company, or any other person employed by or providing services to a covered financial company, shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

[(2) SCHEDULING.—The court shall expedite the consideration of any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

[(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

[(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver for any covered financial company, and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

[(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act, as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company, and any foreign financial authority were the foreign banking authority; and

[(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

[(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

[(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

[(1) IN GENERAL.—Except as specifically provided in this section, and notwithstanding any other provision of law, the

Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

[(A) in the case of any covered financial company or bridge financial company that is a stockbroker, but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of the Bankruptcy Code, in respect of the distribution to any customer of all customer name security and customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

[(B) in the case of any covered financial company or bridge financial company that is a commodity broker, apply the provisions of subchapter IV of chapter 7 of the Bankruptcy Code, in respect of the distribution to any customer of all customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

[(2) DEFINITIONS.—For purposes of this subsection—

[(A) the terms “customer”, “customer name security”, and “customer property and member property” have the same meanings as in sections 741 and 761 of title 11, United States Code; and

[(B) the terms “commodity broker” and “stockbroker” have the same meanings as in section 101 of the Bankruptcy Code.

[(n) ORDERLY LIQUIDATION FUND.—

[(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate fund to be known as the “Orderly Liquidation Fund”, which shall be available to the Corporation to carry out the authorities contained in this title, for the cost of actions authorized by this title, including the orderly liquidation of covered financial companies, payment of administrative expenses, the payment of principal and interest by the Corporation on obligations issued under paragraph (5), and the exercise of the authorities of the Corporation under this title.

[(2) PROCEEDS.—Amounts received by the Corporation, including assessments received under subsection (o), proceeds of obligations issued under paragraph (5), interest and other earnings from investments, and repayments to the Corporation by covered financial companies, shall be deposited into the Fund.

[(3) MANAGEMENT.—The Corporation shall manage the Fund in accordance with this subsection and the policies and procedures established under section 203(d).

[(4) INVESTMENTS.—At the request of the Corporation, the Secretary may invest such portion of amounts held in the Fund that are not, in the judgment of the Corporation, required to meet the current needs of the Corporation, in obligations of the United States having suitable maturities, as determined by the Corporation. The interest on and the proceeds from the sale or redemption of such obligations shall be credited to the Fund.

[(5) AUTHORITY TO ISSUE OBLIGATIONS.—

[(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—Upon appointment by the Secretary of the Corporation as receiver for a covered financial company, the Corporation is authorized to issue obligations to the Secretary.

[(B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary may, under such terms and conditions as the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purchases.

[(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus an interest rate surcharge to be determined by the Secretary, which shall be greater than the difference between—

[(i) the current average rate on an index of corporate obligations of comparable maturity; and

[(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.

[(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may sell, upon such terms and conditions as the Secretary shall determine, any of the obligations acquired under this paragraph.

[(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

[(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

[(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

[(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

[(7) RULEMAKING.—The Corporation and the Secretary shall jointly, in consultation with the Council, prescribe regulations governing the calculation of the maximum obligation limitation defined in this paragraph.

[(8) RULE OF CONSTRUCTION.—

[(A) IN GENERAL.—Nothing in this section shall be construed to affect the authority of the Corporation under subsection (a) or (b) of section 14 or section 15(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1824, 1825(c)(5)), the management of the Deposit Insurance Fund by the Corporation, or the resolution of insured depository institutions, provided that—

[(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

[(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

[(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

[(B) VALUATION.—For purposes of determining the amount of obligations under this subsection—

[(i) the Corporation shall include as an obligation any contingent liability of the Corporation pursuant to this title; and

[(ii) the Corporation shall value any contingent liability at its expected cost to the Corporation.

[(9) ORDERLY LIQUIDATION AND REPAYMENT PLANS.—

[(A) ORDERLY LIQUIDATION PLAN.—Amounts in the Fund shall be available to the Corporation with regard to a covered financial company for which the Corporation is appointed receiver after the Corporation has developed an orderly liquidation plan that is acceptable to the Secretary with regard to such covered financial company, including the provision and use of funds, including taking any actions specified under section 204(d) and subsection (h)(2)(G)(iv) and (h)(9) of this section, and payments to third parties. The orderly liquidation plan shall take into account actions to avoid or mitigate potential adverse effects on low income, minority, or underserved communities affected by the failure of the covered financial company, and shall provide for coordination with the primary financial regulatory agencies, as appropriate, to ensure that such actions are taken. The Corporation may, at any time, amend any orderly liquidation plan approved by the Secretary with the concurrence of the Secretary.

[(B) MANDATORY REPAYMENT PLAN.—

[(i) IN GENERAL.—No amount authorized under paragraph (6)(B) may be provided by the Secretary to the Corporation under paragraph (5), unless an agreement is in effect between the Secretary and the Corporation that—

[(I) provides a specific plan and schedule to achieve the repayment of the outstanding amount of any borrowing under paragraph (5); and

[(II) demonstrates that income to the Corporation from the liquidated assets of the covered financial company and assessments under subsection (o) will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance within the time provided in subsection (o)(1)(B).

[(ii) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary and the Corporation shall—

[(I) consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the terms of any repayment schedule agreement; and

[(II) submit a copy of the repayment schedule agreement to the Committees described in subclause (I) before the end of the 30-day period beginning on the date on which any amount is provided by the Secretary to the Corporation under paragraph (5).

[(10) IMPLEMENTATION EXPENSES.—

[(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

[(B) REQUESTS FOR REIMBURSEMENT.—The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

[(C) DEFINITION.—As used in this paragraph, the term “implementation expenses”—

[(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

[(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

[(o) ASSESSMENTS.—**[(1) RISK-BASED ASSESSMENTS.—**

[(A) ELIGIBLE FINANCIAL COMPANIES DEFINED.—For purposes of this subsection, the term “eligible financial

company” means any bank holding company with total consolidated assets equal to or greater than \$50,000,000,000 and any nonbank financial company supervised by the Board of Governors.

[(B) ASSESSMENTS.—The Corporation shall charge one or more risk-based assessments in accordance with the provisions of subparagraph (D), if such assessments are necessary to pay in full the obligations issued by the Corporation to the Secretary under this title within 60 months of the date of issuance of such obligations.

[(C) EXTENSIONS AUTHORIZED.—The Corporation may, with the approval of the Secretary, extend the time period under subparagraph (B), if the Corporation determines that an extension is necessary to avoid a serious adverse effect on the financial system of the United States.

[(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (B), the Corporation shall—

[(i) impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

[(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

[(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

[(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (B), after taking into account the considerations set forth in paragraph (4), impose assessments on—

[(I) eligible financial companies; and

[(II) financial companies with total consolidated assets equal to or greater than \$50,000,000,000 that are not eligible financial companies.

[(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (D)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

[(2) GRADUATED ASSESSMENT RATE.—The Corporation shall impose assessments on a graduated basis, with financial companies having greater assets and risk being assessed at a higher rate.

[(3) NOTIFICATION AND PAYMENT.—The Corporation shall notify each financial company of that company's assessment under this subsection. Any financial company subject to assessment under this subsection shall pay such assessment in accordance with the regulations prescribed pursuant to paragraph (6).

[(4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under paragraph (1)(D)(ii), the Corporation shall use a risk matrix. The Council shall make a recommendation to the Corporation on the risk matrix to be used in imposing such assessments, and the Corporation shall take into account any such recommendation in the establishment of the risk matrix to be used to impose such assessments. In recommending or establishing such risk matrix, the Council and the Corporation, respectively, shall take into account—

[(A) economic conditions generally affecting financial companies so as to allow assessments to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

[(B) any assessments imposed on a financial company or an affiliate of a financial company that—

[(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

[(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd);

[(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1782(c)(1)(A)(i)); or

[(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation, or other State insolvency proceeding with respect to 1 or more insurance companies;

[(C) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the orderly liquidation of a financial company under this title, including—

[(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

[(ii) the activities of the financial company and its affiliates;

[(iii) the relevant market share of the financial company and its affiliates;

[(iv) the extent to which the financial company is leveraged;

[(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

[(vi) the amount, maturity, volatility, and stability of the company's financial obligations to, and relationship with, other financial companies;

[(vii) the amount, maturity, volatility, and stability of the liabilities of the company, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company's risk-based capital;

[(viii) the stability and variety of the company's sources of funding;

[(ix) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

[(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and

[(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the financial company and its affiliates;

[(D) any risks presented by the financial company during the 10-year period immediately prior to the appointment of the Corporation as receiver for the covered financial company that contributed to the failure of the covered financial company; and

[(E) such other risk-related factors as the Corporation, or the Council, as applicable, may determine to be appropriate.

[(5) COLLECTION OF INFORMATION.—The Corporation may impose on covered financial companies such collection of information requirements as the Corporation deems necessary to carry out this subsection after the appointment of the Corporation as receiver under this title.

[(6) RULEMAKING.—

[(A) IN GENERAL.—The Corporation shall prescribe regulations to carry out this subsection. The Corporation shall consult with the Secretary in the development and finalization of such regulations.

[(B) EQUITABLE TREATMENT.—The regulations prescribed under subparagraph (A) shall take into account the differences in risks posed to the financial stability of the United States by financial companies, the differences in the liability structures of financial companies, and the different bases for other assessments that such financial companies may be required to pay, to ensure that assessed financial companies are treated equitably and that assessments under this subsection reflect such differences.

[(p) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

[(1) IN GENERAL.—No provision described in paragraph (2) shall be enforceable against or impose any liability on any per-

son, as such enforcement or liability shall be contrary to public policy.

[(2) PROHIBITED PROVISIONS.—A provision described in this paragraph is any term contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

[(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire;

[(B) prohibits any person from offering to acquire or acquiring; or

[(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any covered financial company, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under this title.

[(q) OTHER EXEMPTIONS.—

[(1) IN GENERAL.—When acting as a receiver under this title—

[(A) the Corporation, including its franchise, its capital, reserves and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed;

[(B) no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation; and

[(C) the Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due; and

[(D) the Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by the covered financial company, or persons acting on behalf of the covered financial company, prior to the appointment of the Corporation as receiver.

[(2) LIMITATION.—Paragraph (1) shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

[(r) CERTAIN SALES OF ASSETS PROHIBITED.—

[(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, COVERED FINANCIAL COMPANIES.—The

Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a covered financial company by the Corporation to—

[(A) any person who—

[(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations, the aggregate amount of which exceeds \$1,000,000, to such covered financial company;

[(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

[(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any covered financial company;

[(B) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or

[(C) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company.

[(2) CONVICTED DEBTORS.—Except as provided in paragraph (3), a person may not purchase any asset of such institution from the receiver, if that person—

[(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit such an offense, affecting any covered financial company; and

[(B) is in default on any loan or other extension of credit from such covered financial company which, if not paid, will cause substantial loss to the Fund or the Corporation.

[(3) SETTLEMENT OF CLAIMS.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any covered financial company to any person, if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of 1 or more claims that have been, or could have been, asserted by the Corporation against the person.

[(4) DEFINITION OF DEFAULT.—For purposes of this subsection, the term “default” means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

[(s) RECOUPMENT OF COMPENSATION FROM SENIOR EXECUTIVES AND DIRECTORS.—

[(1) IN GENERAL.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date

on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

[(2) COST CONSIDERATIONS.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

[(3) RULEMAKING.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term “compensation” to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

[SEC. 211. MISCELLANEOUS PROVISIONS.]

[(a) CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING AGENT.—Section 1032(1) of title 18, United States Code, is amended by inserting “the Federal Deposit Insurance Corporation acting as receiver for a covered financial company, in accordance with title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act,” before “or the National Credit”.

[(b) CONFORMING AMENDMENT.—Section 1032 of title 18, United States Code, is amended in the section heading, by striking “OF FINANCIAL INSTITUTION”.

[(c) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting “section 210(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)),” after “section 11(e) of the Federal Deposit Insurance Act,”.

[(d) FDIC INSPECTOR GENERAL REVIEWS.—

[(1) SCOPE.—The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing—

[(A) a description of actions taken by the Corporation as receiver;

[(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

[(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 203(d) and orderly liquidation plan under section 210(n)(14);

[(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

[(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company,

including administrative costs, timeliness of liquidation process, and impact on the financial system.

[(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

[(3) REPORTS AND TESTIMONY.—The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

[(4) FUNDING.—

[(A) INITIAL FUNDING.—The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

[(B) ADDITIONAL FUNDING.—If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

[(5) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

[(e) TREASURY INSPECTOR GENERAL REVIEWS.—

[(1) SCOPE.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this title, including collecting and summarizing—

[(A) a description of actions taken by the Secretary under this title;

[(B) an analysis of the approval by the Secretary of the policies and procedures of the Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

[(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

[(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

[(3) REPORTS AND TESTIMONY.—The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before

the appropriate committees of Congress, if requested, to present each such report.

[(4) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 210 are fully redeemed.

[(f) PRIMARY FINANCIAL REGULATORY AGENCY INSPECTOR GENERAL REVIEWS.—

[(1) SCOPE.—Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 165, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

[(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

[(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

[(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

[(D) recommend appropriate administrative or legislative action.

[(2) REPORTS AND TESTIMONY.—Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

[SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

[(a) NO OTHER FUNDING.—Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

[(b) LIMIT ON GOVERNMENTAL ACTIONS.—No governmental entity may take any action to circumvent the purposes of this title.

[(c) CONFLICT OF INTEREST.—In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver

for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

[(SEC. 213. BAN ON CERTAIN ACTIVITIES BY SENIOR EXECUTIVES AND DIRECTORS.

[(a) PROHIBITION AUTHORITY.—The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

[(b) AUTHORITY TO ISSUE ORDER.—The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

[(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

[(A) violated—

[(i) any law or regulation;

[(ii) any cease-and-desist order which has become final;

[(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

[(iv) any written agreement between such company and such agency;

[(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

[(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

[(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

[(3) such violation, practice, or breach—

[(A) involves personal dishonesty on the part of such senior executive or director; or

[(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

[(c) AUTHORIZED ACTIONS.—

[(1) IN GENERAL.—The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

[(2) PROCEDURES.—The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

[(d) REGULATIONS.—The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

[SEC. 214. PROHIBITION ON TAXPAYER FUNDING.

[(a) LIQUIDATION REQUIRED.—All financial companies put into receivership under this title shall be liquidated. No taxpayer funds shall be used to prevent the liquidation of any financial company under this title.

[(b) RECOVERY OF FUNDS.—All funds expended in the liquidation of a financial company under this title shall be recovered from the disposition of assets of such financial company, or shall be the responsibility of the financial sector, through assessments.

[(c) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear no losses from the exercise of any authority under this title.

[SEC. 215. STUDY ON SECURED CREDITOR HAIRCUTS.

[(a) STUDY REQUIRED.—The Council shall conduct a study evaluating the importance of maximizing United States taxpayer protections and promoting market discipline with respect to the treatment of fully secured creditors in the utilization of the orderly liquidation authority authorized by this Act. In carrying out such study, the Council shall—

[(1) not be prejudicial to current or past laws or regulations with respect to secured creditor treatment in a resolution process;

[(2) study the similarities and differences between the resolution mechanisms authorized by the Bankruptcy Code, the Federal Deposit Insurance Corporation Improvement Act of 1991, and the orderly liquidation authority authorized by this Act;

[(3) determine how various secured creditors are treated in such resolution mechanisms and examine how a haircut (of various degrees) on secured creditors could improve market discipline and protect taxpayers;

[(4) compare the benefits and dynamics of prudent lending practices by depository institutions in secured loans for consumers and small businesses to the lending practices of secured creditors to large, interconnected financial firms;

[(5) consider whether credit differs according to different types of collateral and different terms and timing of the extension of credit; and

[(6) include an examination of stakeholders who were unsecured or under-collateralized and seek collateral when a firm is failing, and the impact that such behavior has on financial

stability and an orderly resolution that protects taxpayers if the firm fails.

[(b) REPORT.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Council shall issue a report to the Congress containing all findings and conclusions made by the Council in carrying out the study required under subsection (a).

[SEC. 216. STUDY ON BANKRUPTCY PROCESS FOR FINANCIAL AND NONBANK FINANCIAL INSTITUTIONS.

[(a) STUDY.—

[(1) IN GENERAL.—Upon enactment of this Act, the Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding the resolution of financial companies under the Bankruptcy Code, under chapter 7 or 11 thereof.

[(2) ISSUES TO BE STUDIED.—Issues to be studied under this section include—

[(A) the effectiveness of chapter 7 and chapter 11 of the Bankruptcy Code in facilitating the orderly resolution or reorganization of systemic financial companies;

[(B) whether a special financial resolution court or panel of special masters or judges should be established to oversee cases involving financial companies to provide for the resolution of such companies under the Bankruptcy Code, in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

[(C) whether amendments to the Bankruptcy Code should be adopted to enhance the ability of the Code to resolve financial companies in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

[(D) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to address the manner in which qualified financial contracts of financial companies are treated; and

[(E) the implications, challenges, and benefits to creating a new chapter or subchapter of the Bankruptcy Code to deal with financial companies.

[(b) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and in each successive year until the fifth year after the date of enactment of this Act, the Administrative Office of the United States courts shall submit to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).

[SEC. 217. STUDY ON INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR NONBANK FINANCIAL INSTITUTIONS.

[(a) STUDY.—

[(1) IN GENERAL.—The Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding international coordination re-

lating to the resolution of systemic financial companies under the United States Bankruptcy Code and applicable foreign law.

[(2) ISSUES TO BE STUDIED.—With respect to the bankruptcy process for financial companies, issues to be studied under this section include—

[(A) the extent to which international coordination currently exists;

[(B) current mechanisms and structures for facilitating international cooperation;

[(C) barriers to effective international coordination; and

[(D) ways to increase and make more effective international coordination of the resolution of financial companies, so as to minimize the impact on the financial system without creating moral hazard.

[(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Administrative office of the United States Courts shall submit to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).]

* * * * *

**TITLE VII—WALL STREET
TRANSPARENCY AND ACCOUNTABILITY**

* * * * *

Subtitle A—Regulation of Over-the-Counter Swaps Markets

PART I—REGULATORY AUTHORITY

* * * * *

SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT BAILOUTS OF SWAPS ENTITIES.

(a) * * *

* * * * *

(g) EXCLUDED ENTITIES.—For purposes of this section, the term “swaps entity” shall not include any insured depository institution under the Federal Deposit Insurance Act [or a covered financial company under title II] which is in a conservatorship, receivership, or a bridge bank operated by the Federal Deposit Insurance Corporation.

* * * * *

TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

* * * * *

SEC. 1100D. AMENDMENTS TO THE PAPERWORK REDUCTION ACT.

[(a) DESIGNATION AS AN INDEPENDENT AGENCY.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) is amended by inserting “the Bureau of Consumer Financial Protection, the Office of Financial Research,” after “the Securities and Exchange Commission.”.]

(a) DESIGNATION AS AN INDEPENDENT AGENCY.—Section 3502(5) of subchapter I of chapter 35 of title 44, United States Code (commonly known as the Paperwork Reduction Act) is amended by inserting “the Bureau of Consumer Financial Protection,” after “the Securities and Exchange Commission.”.

* * * * *

SEC. 1105. EMERGENCY FINANCIAL STABILIZATION.

(a) * * *

* * * * *

(e) FUNDING.—

(1) * * *

* * * * *

(5) AUTHORITY OF THE SECRETARY.—The Secretary may purchase any obligations issued under paragraph (3)(A). For such purpose, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under that chapter 31 are extended to include such purchases, and the [amount of any securities issued under that chapter 31 for such purpose shall be treated in the same manner as securities issued under section 208(n)(5)(E)] issuances of such securities under that chapter 31 for such purpose shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

* * * * *

SEC. 1106. ADDITIONAL RELATED AMENDMENTS.

(a) * * *

* * * * *

(c) EFFECT OF DEFAULT ON AN FDIC GUARANTEE.—If an insured depository institution or depository institution holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) participating in a program under section 1105, or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation shall—

(1) * * *

(2) with respect to any other participating company that is not an insured depository institution that defaults—

[(A) require—

[(i) consideration of whether a determination shall be made, as provided in section 203 to resolve the company under section 202; and

[(ii) the company to file a petition for bankruptcy under section 301 of title 11, United States Code, if the Corporation is not appointed receiver pursuant to section 202 within 30 days of the date of default; or]

(A) require the company to file a petition for bankruptcy under section 301 of title 11, United States Code; or

* * * * *

FEDERAL DEPOSIT INSURANCE ACT

* * * * *
SEC. 10. (a) * * *
(b) EXAMINATIONS.—
(1) * * *

* * * * *
(3) SPECIAL EXAMINATION OF ANY INSURED DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—In addition to the examinations authorized under paragraph (2), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make any special examination of any insured depository institution or nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, whenever the Board of Directors determines that a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes[, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010, for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act], provided that such authority may not be used with respect to any such company that is in a generally sound condition.

* * * * *

FEDERAL RESERVE ACT

* * * * *

POWERS OF FEDERAL RESERVE BANKS.

SEC. 13. Any Federal reserve bank may receive from any of its member banks or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation or other items, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: *Provided*, Such nonmember bank or trust company or other depository institution maintains with the Federal reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve bank, and other factors as the Board may deem appropriate: *Provided further*, That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank or other depository institution from making reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per \$100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice and protest by such bank as to its own indorsement exclusively, any Federal reserve bank may discount notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Board of Governors of the Federal Reserve System to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act. Nothing in this Act contained shall be construed to prohibit such notes, drafts, and bills of exchange, secured by staple agricultural products, or other goods, wares, or merchandise from being eligible for such discount, and the notes, drafts, and bills of exchange of factors issued as such making advances exclusively to producers of staple agricultural products in their raw state shall be eligible for such discount; but such definition shall not include notes, drafts, or bills covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States. Notes, drafts, and bills admitted to dis-

count under the terms of this paragraph must have a maturity at the time of discount of not more than 90 days, exclusive of grace.

(3)(A) * * *

(B)(i) * * *

(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy[, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or] *or is subject to resolution under any other Federal or State insolvency proceeding.*

(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy[, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or] *or resolution under any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.*

* * * * *

[(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under section 210(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.]

* * * * *

EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

DIVISION A—EMERGENCY ECONOMIC STABILIZATION

* * * * *

TITLE I—TROUBLED ASSETS RELIEF PROGRAM

* * * * *

SEC. 120. TERMINATION OF AUTHORITY.

(a) * * *

* * * * *

(c) TERMINATION OF AUTHORITY TO PROVIDE NEW ASSISTANCE UNDER THE HOME AFFORDABLE MODIFICATION PROGRAM.—

(1) IN GENERAL.—Except as provided under paragraph (2), after the date of the enactment of this subsection the Secretary may not provide any assistance under the Home Affordable Modification Program under the Making Home Affordable initiative of the Secretary, authorized under this Act, on behalf of any homeowner.

(2) PROTECTION OF EXISTING OBLIGATIONS ON BEHALF OF HOMEOWNERS ALREADY EXTENDED AN OFFER TO PARTICIPATE IN THE PROGRAM.—Paragraph (1) shall not apply with respect to assistance provided on behalf of a homeowner who, before the date of the enactment of this subsection, was extended an offer to participate in the Home Affordable Modification Program on a trial or permanent basis.

(3) DEFICIT REDUCTION.—

(A) USE OF UNOBLIGATED FUNDS.—Notwithstanding any other provision of this title, the amounts described in subparagraph (B) shall not be available after the date of the enactment of this subsection for obligation or expenditure under the Home Affordable Modification Program of the Secretary, but should be covered into the General Fund of the Treasury and should be used only for reducing the budget deficit of the Federal Government.

(B) IDENTIFICATION OF UNOBLIGATED FUNDS.—The amounts described in this subparagraph are any amounts made available under title I of the Emergency Economic Stabilization Act of 2008 that—

(i) have been allocated for use, but not yet obligated as of the date of the enactment of this subsection, under the Home Affordable Modification Program of the Secretary; and

(ii) are not necessary for providing assistance under such Program on behalf of homeowners who, pursuant to paragraph (2), may be provided assistance after the date of the enactment of this subsection.

(4) STUDY OF USE OF PROGRAM BY MEMBERS OF THE ARMED FORCES, VETERANS, AND GOLD STAR RECIPIENTS.—

(A) STUDY.—The Secretary shall conduct a study to determine the extent of usage of the Home Affordable Modification Program by, and the impact of such Program on, covered homeowners.

(B) REPORT.—Not later than the expiration of the 90-day period beginning on the date of the enactment of this subsection, the Secretary shall submit to the Congress a re-

port setting forth the results of the study under subparagraph (A) and identifying best practices, derived from studying the Home Affordable Modification Program, that could be applied to existing mortgage assistance programs available to covered homeowners.

(C) COVERED HOMEOWNER.—For purposes of this subsection, the term “covered homeowner” means a homeowner who is—

(i) a member of the Armed Forces of the United States on active duty or the spouse or parent of such a member;

(ii) a veteran, as such term is defined in section 101 of title 38, United States Code; or

(iii) eligible to receive a Gold Star lapel pin under section 1126 of title 10, United States Code, as a widow, parent, or next of kin of a member of the Armed Forces person who died in a manner described in subsection (a) of such section.

(5) PUBLICATION OF MEMBER AVAILABILITY FOR ASSISTANCE.—Not later than 5 days after the date of the enactment of this subsection, the Secretary of the Treasury shall publish to its Website on the World Wide Web in a prominent location, large point font, and boldface type the following statement: “The Home Affordable Modification Program (HAMP) has been terminated. If you are having trouble paying your mortgage and need help contacting your lender or servicer for purposes of negotiating or acquiring a loan modification, please contact your Member of Congress to assist you in contacting your lender or servicer for the purpose of negotiating or acquiring a loan modification.”

(6) NOTIFICATION TO HAMP APPLICANTS REQUIRED.—Not later than 30 days after the date of the enactment of this subsection, the Secretary of the Treasury shall inform each individual who applied for the Home Affordable Modification Program and will not be considered for a modification under such Program due to termination of such Program under this subsection—

(A) that such Program has been terminated;

(B) that loan modifications under such Program are no longer available;

(C) of the name and contact information of such individual’s Member of Congress; and

(D) that the individual should contact his or her Member of Congress to assist the individual in contacting the individual’s lender or servicer for the purpose of negotiating or acquiring a loan modification.

* * * * *

CONSUMER FINANCIAL PROTECTION ACT OF 2010

* * * * *

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

* * * * *

Subtitle A—Bureau of Consumer Financial Protection

* * * * *

SEC. 1017. FUNDING; PENALTIES AND FINES.—

(a) **TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—** *BUDGET, FINANCIAL MANAGEMENT, AND AUDIT.—*

[(1) IN GENERAL.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

[(2) FUNDING CAP.—

[(A) IN GENERAL.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

[(i) 10 percent of such expenses in fiscal year 2011;

[(ii) 11 percent of such expenses in fiscal year 2012; and

[(iii) 12 percent of such expenses in fiscal year 2013, and in each year thereafter.

[(B) ADJUSTMENT OF AMOUNT.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted annually, using the percent increase, if any, in the employment cost index for total compensation for State and local government workers published by the Federal Government, or the successor index thereto, for the 12-month period ending on September 30 of the year preceding the transfer.

[(C) REVIEWABILITY.—Notwithstanding any other provision in this title, the funds derived from the Federal Reserve System pursuant to this subsection shall not be subject to review by the Committees on Appropriations of the House of Representatives and the Senate.

[(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law,

from the date of enactment of this Act until the designated transfer date.]

[(4)] (1) BUDGET AND FINANCIAL MANAGEMENT.—

(A) * * *

* * * * *

[(E) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in subparagraph (A) or any jurisdiction or oversight over the affairs or operations of the Bureau.

[(F) FINANCIAL STATEMENTS.—The financial statements of the Bureau shall not be consolidated with the financial statements of either the Board of Governors or the Federal Reserve System.]

[(5)] (2) AUDIT OF THE BUREAU.—

(A) * * *

* * * * *

[(b) CONSUMER FINANCIAL PROTECTION FUND.—

[(1) SEPARATE FUND IN FEDERAL RESERVE ESTABLISHED.—There is established in the Federal Reserve a separate fund, to be known as the “Bureau of Consumer Financial Protection Fund” (referred to in this section as the “Bureau Fund”). The Bureau Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose.

[(2) FUND RECEIPTS.—All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

[(3) INVESTMENT AUTHORITY.—

[(A) AMOUNTS IN BUREAU FUND MAY BE INVESTED.—

The Bureau may request the Board of Governors to direct the investment of the portion of the Bureau Fund that is not, in the judgment of the Bureau, required to meet the current needs of the Bureau.

[(B) ELIGIBLE INVESTMENTS.—Investments authorized by this paragraph shall be made in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Bureau Fund, as determined by the Bureau.

[(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Bureau Fund shall be credited to the Bureau Fund.

[(c) USE OF FUNDS.—

[(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Bureau Fund shall be immediately available to the Bureau and under the control of the Director, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities. The com-

pendation of the Director and other employees of the Bureau and all other expenses thereof may be paid from, obtained by, transferred to, or credited to the Bureau Fund under this section.

[(2) FUNDS THAT ARE NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies.

[(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Bureau Fund and in the Civil Penalty Fund established under subsection (d) shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.

[(d) PENALTIES AND FINES.—

[(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Federal Reserve a separate fund, to be known as the “Consumer Financial Civil Penalty Fund” (referred to in this section as the “Civil Penalty Fund”). The Civil Penalty Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose. If the Bureau obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws, the Bureau shall deposit into the Civil Penalty Fund, the amount of the penalty collected.

[(2) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.]

[(e)] (b) AUTHORIZATION OF APPROPRIATIONS; ANNUAL REPORT.—

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

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

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

[(2) AUTHORIZATION OF APPROPRIATIONS.—If the Director makes the determination and submits the report pursuant to

paragraph (1), there are hereby authorized to be appropriated to the Bureau, for the purposes of carrying out the authorities granted in Federal consumer financial law, \$200,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.

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

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$200,000,000 to carry out this title for each of fiscal years 2012 and 2013.

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

* * * * *

NATIONAL FLOOD INSURANCE ACT OF 1968

TITLE XIII—NATIONAL FLOOD INSURANCE

SHORT TITLE

SEC. 1301. This title may be cited as the “National Flood Insurance Act of 1968”.

* * * * *

CHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

BASIC AUTHORITY

SEC. 1304. (a) To carry out the purposes of this title, the [Director] Administrator of the Federal Emergency Management Agency is authorized to establish and carry out a national flood insurance program which will enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real property or personal property related thereto arising from any flood occurring in the United States.

(b) ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES.—The national flood insurance program established pursuant to subsection (a) shall enable the purchase of insurance to cover the cost of implementing measures that are consistent with land use and control measures established by the community under section 1361 for—

(1) * * *

* * * * *

(3) properties that have sustained flood damage on multiple occasions, if the [Director] Administrator determines that

it is cost-effective and in the best interests of the National Flood Insurance Fund to require compliance with the land use and control measures.

(4) properties for which an offer of mitigation assistance is made under—

(A) * * *

[(B) section 1368 (Repetitive Loss Priority Program and Individual Priority Property Program);]

[(C)] (B) the Hazard Mitigation Grant Program authorized under section 404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5170c);

[(D)] (C) the Predisaster Hazard Mitigation Program under section 203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5133); and

[(E)] (D) any programs authorized or for which funds are appropriated to address any unmet needs or for which supplemental funds are made available.

The [Director] Administrator shall impose a surcharge on each insured of not more than \$75 per policy to provide cost of compliance coverage in accordance with the provisions of this subsection.

(c) In carrying out the flood insurance program the [Director] Administrator shall, to the maximum extent practicable, encourage and arrange for—

(1) * * *

* * * * *

SCOPE OF PROGRAM AND PRIORITIES

SEC. 1305. (a) In carrying out the flood insurance program the [Director] Administrator shall afford a priority to making flood insurance available to cover residential properties which are designed for the occupancy of from one to four families, church properties, and business properties which are owned or leased and operated by small business concerns.

(b) If on the basis of—

(1) * * *

* * * * *

the [Director] Administrator determines that it would be feasible to extend the flood insurance program to cover other properties, he may take such action under this title as from time to time may be necessary in order to make flood insurance available to cover, on such basis as may be feasible, any types and classes of—

(A) * * *

* * * * *

and any such extensions of the program to any types and classes of these properties shall from time to time be prescribed in regulations.

(c) The [Director] Administrator shall make flood insurance available in only those States or areas (or subdivisions thereof) which he has determined have—

(1) * * *

* * * * *

NATURE AND LIMITATION OF INSURANCE COVERAGE

SEC. 1306. (a) The [Director] Administrator shall from time to time, after consultation with the advisory committee authorized under section 1318, appropriate representatives of the pool formed or otherwise created under section 1331, and appropriate representatives of the insurance authorities of the respective States, provide by regulation for general terms and conditions of insurability which shall be applicable to properties eligible for flood insurance coverage under section 1305, including—

(1) * * *

* * * * *

(b) In addition to any other terms and conditions under subsection (a), such regulations shall provide that—

(1) any flood insurance coverage based on chargeable premium rates under section 1308 which are less than the estimated premium rates under section 1307(a)(1) shall not exceed—

(A) * * *

(B) in the case of business properties which are owned or leased and operated by small business concerns, an aggregate liability with respect to any single structure, including any contents thereof related to premises of small business occupants (as term is defined by the [Director] Administrator), which shall be equal to (i) \$100,000 plus (ii) \$100,000 multiplied by the number of such occupants and shall be allocated among such occupants (or among the occupant or occupants and the owner) under regulations prescribed by the [Director] Administrator; except that the aggregate liability for the structure itself may in no case exceed \$100,000; and

* * * * *

(2) [in the case of any residential property] in the case of any residential building designed for the occupancy of from one to four families for which the risk premium rate is determined in accordance with the provisions of section 1307(a)(1), additional flood insurance in excess of the limits specified in clause (i) of subparagraph (A) of paragraph (1) [shall be made available to every insured upon renewal and every applicant for insurance so as to enable such insured or applicant to receive coverage up to a total amount (including such limits specified in paragraph (1)(A)(i)) of \$250,000] shall be made available, with respect to any single such building, up to an aggregate liability (including such limits specified in paragraph (1)(A)(i)) of \$250,000;

* * * * *

(4) [in the case of any nonresidential property, including churches,] in the case of any nonresidential building, including a church, for which the risk premium rate is determined in accordance with the provisions of section 1307(a)(1), additional flood insurance in excess of the limits specified in subparagraphs (B) and (C) of paragraph (1) [shall be made available to every insured upon renewal and every applicant for insur-

ance, in respect to any single structure, up to a total amount (including such limit specified in subparagraph (B) or (C) of paragraph (1), as applicable) of \$500,000 for each structure and \$500,000 for any contents related to each structure] *shall be made available with respect to any single such building, up to an aggregate liability (including such limits specified in subparagraph (B) or (C) of paragraph (1), as applicable) of \$500,000, and coverage shall be made available up to a total of \$500,000 aggregate liability for contents owned by the building owner and \$500,000 aggregate liability for each unit within the building for contents owned by the tenant; [and]*

(5) the Administrator may provide that, in the case of any residential property, each renewal or new contract for flood insurance coverage may provide not more than \$5,000 aggregate liability per dwelling unit for any necessary increases in living expenses incurred by the insured when losses from a flood make the residence unfit to live in, except that—

(A) purchase of such coverage shall be at the option of the insured;

(B) any such coverage shall be made available only at chargeable rates that are not less than the estimated premium rates for such coverage determined in accordance with section 1307(a)(1); and

(C) the Administrator may make such coverage available only if the Administrator makes a determination and causes notice of such determination to be published in the Federal Register that—

(i) a competitive private insurance market for such coverage does not exist; and

(ii) the national flood insurance program has the capacity to make such coverage available without borrowing funds from the Secretary of the Treasury under section 1309 or otherwise;

(6) the Administrator may provide that, in the case of any commercial property or other residential property, including multifamily rental property, coverage for losses resulting from any partial or total interruption of the insured's business caused by damage to, or loss of, such property from a flood may be made available to every insured upon renewal and every applicant, up to a total amount of \$20,000 per property, except that—

(A) purchase of such coverage shall be at the option of the insured;

(B) any such coverage shall be made available only at chargeable rates that are not less than the estimated premium rates for such coverage determined in accordance with section 1307(a)(1); and

(C) the Administrator may make such coverage available only if the Administrator makes a determination and causes notice of such determination to be published in the Federal Register that—

(i) a competitive private insurance market for such coverage does not exist; and

(ii) the national flood insurance program has the capacity to make such coverage available without borrowing funds from the Secretary of the Treasury under section 1309 or otherwise;

[(5)] (7) any flood insurance coverage which may be made available in excess of the limits specified in subparagraph (A), (B), or (C) of paragraph (1), shall be based only on chargeable premium rates under section 1308 which are not less than the estimated premium rates under section 1307(a)(1), and the amount of such excess coverage shall not in any case exceed an amount equal to the applicable limit so specified (or allocated) under paragraph (1)(C), (2), (3), or (4), as applicable[.]; and

(8) each of the dollar amount limitations under paragraphs (2), (3), (4), (5), and (6) shall be adjusted effective on the date of the enactment of the Flood Insurance Reform Act of 2012, such adjustments shall be calculated using the percentage change, over the period beginning on September 30, 1994, and ending on such date of enactment, in such inflationary index as the Administrator shall, by regulation, specify, and the dollar amount of such adjustment shall be rounded to the next lower dollar; and the Administrator shall cause to be published in the Federal Register the adjustments under this paragraph to such dollar amount limitations; except that in the case of coverage for a property that is made available, pursuant to this paragraph, in an amount that exceeds the limitation otherwise applicable to such coverage as specified in paragraph (2), (3), (4), (5), or (6), the total of such coverage shall be made available only at chargeable rates that are not less than the estimated premium rates for such coverage determined in accordance with section 1307(a)(1).

(c) EFFECTIVE DATE OF POLICIES.—

(1) WAITING PERIOD.—Except as provided in paragraph (2), coverage under a new contract for flood insurance coverage under this title entered into after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, and any modification to coverage under an existing flood insurance contract made after such date, shall become effective upon the expiration of the 30-day period beginning on the date that all obligations for such coverage (including completion of the application and payment of any initial premiums owed) are satisfactorily completed. *With respect to any flood that has commenced or is in progress before the expiration of such 30-day period, such flood insurance coverage for a property shall take effect upon the expiration of such 30-day period and shall cover damage to such property occurring after the expiration of such period that results from such flood, but only if the property has not suffered damage or loss as a result of such flood before the expiration of such 30-day period.*

* * * * *

(d) PAYMENT OF PREMIUMS IN INSTALLMENTS FOR RESIDENTIAL PROPERTIES.—

(1) AUTHORITY.—In addition to any other terms and conditions under subsection (a), such regulations shall provide that, in the case of any residential property, premiums for flood in-

insurance coverage made available under this title for such property may be paid in installments.

(2) LIMITATIONS.—In implementing the authority under paragraph (1), the Administrator may establish increased chargeable premium rates and surcharges, and deny coverage and establish such other sanctions, as the Administrator considers necessary to ensure that insureds purchase, pay for, and maintain coverage for the full term of a contract for flood insurance coverage or to prevent insureds from purchasing coverage only for periods during a year when risk of flooding is comparatively higher or canceling coverage for periods when such risk is comparatively lower.

ESTIMATES OF PREMIUM RATES

SEC. 1307. (a) The [Director] Administrator is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to estimate, and shall from time to time estimate, on an area, subdivision, or other appropriate basis—

(1) * * *

* * * * *

(b) In carrying out subsection (a), the [Director] Administrator shall, to the maximum extent feasible and on a reimbursable basis, utilize the services of the Department of the Army, the Department of the Interior, The Department of Agriculture, the Department of Commerce, and the Tennessee Valley Authority, and, as appropriate, other Federal departments or agencies, and for such purposes may enter into agreements or other appropriate arrangements with any persons.

(c) The [Director] Administrator shall give priority to conducting studies and investigations and making estimates under this section in those States or areas (or subdivisions thereof) which he has determined have evidenced a positive interest in securing flood insurance coverage under the flood insurance program.

(d) Notwithstanding any other provision of law, any structure existing on the date of enactment of the Flood Disaster Protection Act of 1973 and located within Avoyelles, Evangeline, Rapides, or Saint Landry Parish in the State of Louisiana, which the [Director] Administrator determines is subject to additional flood hazards as a result of the construction or operation of the Atchafalaya Basin Levee System, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions of this title) at premium rates that shall not exceed those which would be applicable if such additional hazards did not exist.

(e) Notwithstanding any other provision of law, any community that has made adequate progress, acceptable to the [Director] Administrator, on the [construction of a flood protection system] construction, reconstruction, or improvement of a flood protection system (without respect to the level of Federal investment or participation) which will afford flood protection for the one-hundred-year frequency flood as determined by the [Director] Administrator, shall be eligible for flood insurance under this title (if and to the

extent it is eligible for such insurance under the other provisions of this title) at premium rates not exceeding those which would be applicable under this section if such flood protection system had been completed. The **[Director]** *Administrator* shall find that adequate progress on the **[construction of a flood protection system]** *construction, reconstruction, or improvement of a flood protection system* as required herein has been only if (1) 100 percent of the project cost of the system has been authorized, (2) at least 60 percent of the project cost of the system has been appropriated, (3) at least 50 percent of the project cost of the system has been expended *based on the present value of the completed system*, and (4) the system is at least 50 percent completed.

(f) Notwithstanding any other provision of law, this subsection shall only apply in a community which has been determined by the **[Director]** *Administrator* of the Federal Emergency Management Agency to be in the process of restoring flood protection afforded by a flood protection system that had been previously accredited on a Flood Insurance Rate Map as providing 100-year frequency flood protection but no longer does so (*without respect to the level of Federal investment or participation*). Except as provided in this subsection, in such a community, flood insurance shall be made available to those properties impacted by the disaccreditation of the flood protection system at premium rates that do not exceed those which would be applicable to any property located in an area of special flood hazard, the construction of which was started prior to the effective date of the initial Flood Insurance Rate Map published by the **[Director]** *Administrator* for the community in which such property is located. A revised Flood Insurance Rate Map shall be prepared for the community to delineate as Zone AR the areas of special flood hazard, *whether coastal or riverine*, that result from the disaccreditation of the flood protection system. A community will be considered to be in the process of restoration if—

- (1) the flood protection system has been deemed restorable by **[a Federal agency in consultation with the local project sponsor]** *the entity or entities that own, operate, maintain, or repair such system;*

* * * * *

Communities that the **[Director]** *Administrator* of the Federal Emergency Management Agency determines to meet the criteria set forth in paragraphs (1) and (2) as of January 1, 1992, shall not be subject to revised Flood Insurance Rate Maps that contravene the intent of this subsection. Such communities shall remain eligible for C zone rates for properties located in zone AR for any policy written prior to promulgation of final regulations for this section. Floodplain management criteria for such communities shall not require the elevation of improvements to existing structures and shall not exceed 3 feet above existing grade for new construction, provided the base flood elevation based on the disaccredited flood control system does not exceed five feet above existing grade, or the remaining new construction in such communities is limited to infill sites, rehabilitation of existing structures, or redevelopment of previously developed areas.

The **[Director]** *Administrator* of the Federal Emergency Management Agency shall develop and promulgate regulations to imple-

ment this subsection, including minimum floodplain management criteria, within 24 months after the date of enactment of this subsection.

ESTABLISHMENT OF CHARGEABLE PREMIUM RATES

SEC. 1308. (a) On the basis of estimates made under section 1307 and such other information as may be necessary, the [Director] Administrator shall from time to time, after consultation with the advisory committee authorized under section 1318, appropriate representatives of the pool formed or otherwise created under section 1331, and appropriate representatives of the insurance authorities of the respective States, prescribe by regulation or notice—

(1) * * *

* * * * *

(c) ACTUARIAL RATE PROPERTIES.—Subject only to [the limitations provided under paragraphs (1) and (2)] subsection (e) and subsection (g), the chargeable rate shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 1307(a)(1) with respect to the following properties:

(1) POST-FIRM PROPERTIES.—Any property the construction or substantial improvement of which the [Director] Administrator determines has been started after December 31, 1974, or started after the effective date of the initial rate map published by the [Director] Administrator under paragraph (2) of section 1360 for the area in which such property is located, whichever is later[, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e)].

(2) COMMERCIAL PROPERTIES.—Any nonresidential property.

(3) SECOND HOMES AND VACATION HOMES.—Any residential property that is not the primary residence of any individual.

(4) HOMES SOLD TO NEW OWNERS.—Any single family property that—

(A) has been constructed or substantially improved and for which such construction or improvement was started, as determined by the Administrator, before December 31, 1974, or before the effective date of the initial rate map published by the Administrator under paragraph (2) of section 1360(a) for the area in which such property is located, whichever is later; and

(B) is purchased after the effective date of this paragraph, pursuant to section 345(c)(3)(A) of the Flood Insurance Reform Act of 2012.

(5) HOMES DAMAGED OR IMPROVED.—Any property that, on or after the date of the enactment of the Flood Insurance Reform Act of 2012, has experienced or sustained—

(A) substantial flood damage exceeding 50 percent of the fair market value of such property; or

(B) substantial improvement exceeding 30 percent of the fair market value of such property.

(6) *HOMES WITH MULTIPLE CLAIMS.*—Any severe repetitive loss property (as such term is defined in section 1366(j)).

[(2)] (7) CERTAIN LEASED COASTAL AND RIVER PROPERTIES.—Any property leased from the Federal Government (including residential and nonresidential properties) that the [Director] Administrator determines is located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.

(d) With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 1307(a) or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the [Director] Administrator. The [Director] Administrator shall deposit the sum in the National Flood Insurance Fund established under section 1310.

(e) ANNUAL LIMITATION ON PREMIUM INCREASES.—Except with respect to properties described under [paragraph (2) or (3)] paragraph (7) of subsection (c) or subsection (h), and notwithstanding any other provision of this title, the chargeable risk premium rates for flood insurance under this title for any properties within any single risk classification may not be increased by an amount that would result in the average of such rate increases for properties within the risk classification during any 12-month period exceeding [10 percent] 20 percent of the average of the risk premium rates for properties within the risk classification upon the commencement of such 12-month period.

(f) ADJUSTMENT OF PREMIUM.—Notwithstanding any other provision of law, if the [Director] Administrator determines that the holder of a flood insurance policy issued under this Act is paying a lower premium than is required under this section due to an error in the flood plain determination, the [Director] Administrator may only prospectively charge the higher premium rate.

(g) 5-YEAR PHASE-IN OF FLOOD INSURANCE RATES FOR CERTAIN PROPERTIES IN NEWLY MAPPED AREAS.—

(1) 5-YEAR PHASE-IN PERIOD.—Notwithstanding subsection (c) or any other provision of law relating to chargeable risk premium rates for flood insurance coverage under this title, in the case of any area that was not previously designated as an area having special flood hazards and that, pursuant to any issuance, revision, updating, or other change in flood insurance maps, becomes designated as such an area, during the 5-year period that begins, except as provided in paragraph (2), upon the date that such maps, as issued, revised, updated, or otherwise changed, become effective, the chargeable premium rate for flood insurance under this title with respect to any covered property that is located within such area shall be the rate described in paragraph (3).

(2) APPLICABILITY TO PREFERRED RISK RATE AREAS.—In the case of any area described in paragraph (1) that consists of or includes an area that, as of date of the effectiveness of the flood insurance maps for such area referred to in paragraph (1) as

so issued, revised, updated, or changed, is eligible for any reason for preferred risk rate method premiums for flood insurance coverage and was eligible for such premiums as of the enactment of the Flood Insurance Reform Act of 2012, the 5-year period referred to in paragraph (1) for such area eligible for preferred risk rate method premiums shall begin upon the expiration of the period during which such area is eligible for such preferred risk rate method premiums.

(3) **PHASE-IN OF FULL ACTUARIAL RATES.**—With respect to any area described in paragraph (1), the chargeable risk premium rate for flood insurance under this title for a covered property that is located in such area shall be—

(A) for the first year of the 5-year period referred to in paragraph (1), the greater of—

(i) 20 percent of the chargeable risk premium rate otherwise applicable under this title to the property; and

(ii) in the case of any property that, as of the beginning of such first year, is eligible for preferred risk rate method premiums for flood insurance coverage, such preferred risk rate method premium for the property;

(B) for the second year of such 5-year period, 40 percent of the chargeable risk premium rate otherwise applicable under this title to the property;

(C) for the third year of such 5-year period, 60 percent of the chargeable risk premium rate otherwise applicable under this title to the property;

(D) for the fourth year of such 5-year period, 80 percent of the chargeable risk premium rate otherwise applicable under this title to the property; and

(E) for the fifth year of such 5-year period, 100 percent of the chargeable risk premium rate otherwise applicable under this title to the property.

(4) **COVERED PROPERTIES.**—For purposes of the subsection, the term “covered property” means any residential property occupied by its owner or a bona fide tenant as a primary residence.

(h) **PROHIBITION OF EXTENSION OF SUBSIDIZED RATES TO LAPSED POLICIES.**—Notwithstanding any other provision of law relating to chargeable risk premium rates for flood insurance coverage under this title, the Administrator shall not provide flood insurance coverage under this title for any property for which a policy for such coverage for the property has previously lapsed in coverage as a result of the deliberate choice of the holder of such policy, at a rate less than the applicable estimated risk premium rates for the area (or subdivision thereof) in which such property is located.

SEC. 1308A. NOTIFICATION TO TENANTS OF AVAILABILITY OF CONTENTS INSURANCE.

(a) **IN GENERAL.**—The Administrator shall, upon entering into a contract for flood insurance coverage under this title for any property—

(1) provide to the insured sufficient copies of the notice developed pursuant to subsection (b); and

(2) require the insured to provide a copy of the notice, or otherwise provide notification of the information under subsection (b) in the manner that the manager or landlord deems most appropriate, to each such tenant and to each new tenant upon commencement of such a tenancy.

(b) NOTICE.—Notice to a tenant of a property in accordance with this subsection is written notice that clearly informs a tenant—

(1) whether the property is located in an area having special flood hazards;

(2) that flood insurance coverage is available under the national flood insurance program under this title for contents of the unit or structure leased by the tenant;

(3) of the maximum amount of such coverage for contents available under this title at that time; and

(4) of where to obtain information regarding how to obtain such coverage, including a telephone number, mailing address, and Internet site of the Administrator where such information is available.

FINANCING

SEC. 1309. (a) All authority which was vested in the Housing and Home Finance Administrator by virtue of section 15(e) of the Federal Flood Insurance Act of 1956 (70 Stat. 1084) (pertaining to the issue of notes or other obligations or the Secretary of the Treasury), as amended by subsections (a) and (b) of section 1303 of this Act, shall be available to the **[Director]** Administrator for the purpose of carrying out the flood insurance program under this title; except that the total amount of notes and obligations which may be issued by the **[Director]** Administrator pursuant to such authority (1) without the approval of the President, may not exceed \$500,000,000, and (2) with the approval of the President, may not exceed \$1,500,000,000 through the date specified in section 1319, and \$1,000,000,000 thereafter; except that, through **[the earlier of the date of the enactment into law of an Act that specifically amends the date specified in this section or May 31, 2012]** *September 30, 2016*, clause (2) of this sentence shall be applied by substituting “\$20,725,000,000” for “\$1,500,000,000”. The **[Director]** Administrator shall report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at any time when he requests the approval of the President in accordance with the preceding sentence.

(b) Any funds borrowed by the **[Director]** Administrator under this authority shall, from time to time, be deposited in the National Flood Insurance Fund established under section 1310.

NATIONAL FLOOD INSURANCE FUND

SEC. 1310. (a) To carry out the flood insurance program authorized by this title, the **[Director]** Administrator shall establish in the Treasury of the United States a National Flood Insurance Fund (hereinafter referred to as the “fund”) which shall be an account separate from any other accounts or funds available to the **[Director]** Administrator and shall be available as described in

subsection (f), without fiscal year limitation (except as otherwise provided in this section)—

(1) * * *

* * * * *

(6) for carrying out the program under section 1315(b);
(7) for transfers to the National Flood Mitigation Fund, but only to the extent provided in section 1367(b)(1) [;]; and

[(8) for financial assistance under section 1361A to States and communities for taking actions under such section with respect to severe repetitive loss properties, but only to the extent provided in section 1361A(i); and

[(9) for funding, not to exceed \$10,000,000 in any fiscal year, for mitigation actions under section 1323, except that, notwithstanding any other provision of this title, amounts made available pursuant to this paragraph shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.]

(8) for transfers to the National Flood Insurance Reserve Fund under section 1310A, in accordance with such section.

(b) The fund shall be credited with—

(1) * * *

* * * * *

(5) such sums as are required to be paid to the [Director] Administrator under section 1308(d); and

* * * * *

(c) If, after—

(1) * * *

* * * * *

the [Director] Administrator determines that the moneys of the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

(d) In the event the [Director] Administrator makes a determination in accordance with the provisions of section 1340 that operation of the flood insurance program, in whole or in part, should be carried out through the facilities of the Federal Government, the fund shall be available for all purposes incident thereto, including—

(1) * * *

* * * * *

for so long as the program is so carried out, and in such event any premiums paid shall be deposited by the [Director] Administrator to the credit of the fund.

* * * * *

SEC. 1310A. RESERVE FUND.

(a) ESTABLISHMENT OF RESERVE FUND.—In carrying out the flood insurance program authorized by this title, the Administrator shall establish in the Treasury of the United States a National Flood Insurance Reserve Fund (in this section referred to as the “Reserve Fund”) which shall—

(1) be an account separate from any other accounts or funds available to the Administrator; and

(2) be available for meeting the expected future obligations of the flood insurance program.

(b) *RESERVE RATIO.*—Subject to the phase-in requirements under subsection (d), the Reserve Fund shall maintain a balance equal to—

(1) 1 percent of the sum of the total potential loss exposure of all outstanding flood insurance policies in force in the prior fiscal year; or

(2) such higher percentage as the Administrator determines to be appropriate, taking into consideration any circumstance that may raise a significant risk of substantial future losses to the Reserve Fund.

(c) *MAINTENANCE OF RESERVE RATIO.*—

(1) *IN GENERAL.*—The Administrator shall have the authority to establish, increase, or decrease the amount of aggregate annual insurance premiums to be collected for any fiscal year necessary—

(A) to maintain the reserve ratio required under subsection (b); and

(B) to achieve such reserve ratio, if the actual balance of such reserve is below the amount required under subsection (b).

(2) *CONSIDERATIONS.*—In exercising the authority under paragraph (1), the Administrator shall consider—

(A) the expected operating expenses of the Reserve Fund;

(B) the insurance loss expenditures under the flood insurance program;

(C) any investment income generated under the flood insurance program; and

(D) any other factor that the Administrator determines appropriate.

(3) *LIMITATIONS.*—In exercising the authority under paragraph (1), the Administrator shall be subject to all other provisions of this Act, including any provisions relating to chargeable premium rates and annual increases of such rates.

(d) *PHASE-IN REQUIREMENTS.*—The phase-in requirements under this subsection are as follows:

(1) *IN GENERAL.*—Beginning in fiscal year 2012 and not ending until the fiscal year in which the ratio required under subsection (b) is achieved, in each such fiscal year the Administrator shall place in the Reserve Fund an amount equal to not less than 7.5 percent of the reserve ratio required under subsection (b).

(2) *AMOUNT SATISFIED.*—As soon as the ratio required under subsection (b) is achieved, and except as provided in paragraph (3), the Administrator shall not be required to set aside any amounts for the Reserve Fund.

(3) *EXCEPTION.*—If at any time after the ratio required under subsection (b) is achieved, the Reserve Fund falls below the required ratio under subsection (b), the Administrator shall place in the Reserve Fund for that fiscal year an amount equal

to not less than 7.5 percent of the reserve ratio required under subsection (b).

(e) *LIMITATION ON RESERVE RATIO.*—In any given fiscal year, if the Administrator determines that the reserve ratio required under subsection (b) cannot be achieved, the Administrator shall submit a report to the Congress that—

(1) describes and details the specific concerns of the Administrator regarding such consequences;

(2) demonstrates how such consequences would harm the long-term financial soundness of the flood insurance program; and

(3) indicates the maximum attainable reserve ratio for that particular fiscal year.

(f) *AVAILABILITY OF AMOUNTS.*—The reserve ratio requirements under subsection (b) and the phase-in requirements under subsection (d) shall be subject to the availability of amounts in the National Flood Insurance Fund for transfer under section 1310(a)(10), as provided in section 1310(f).

OPERATING COSTS AND ALLOWANCES

SEC. 1311. (a) The [Director] Administrator shall from time to time negotiate with appropriate representatives of the insurance industry for the purpose of establishing—

(1) * * *

* * * * *

(b) For purposes of subsection (a)—

(1) the term “operating costs” shall (without limiting such term) include—

(A) * * *

* * * * *

(D) other direct, actual, and necessary expenses which the [Director] Administrator finds are incurred in connection with selling or servicing flood insurance coverage; and

(2) the term “operating allowances” shall (without limiting such term) include amounts for profit and contingencies which the [Director] Administrator finds reasonable and necessary to carry out the purposes of this title.

PAYMENT OF CLAIMS

SEC. 1312. [The Director is] (a) *IN GENERAL.*—The Administrator is authorized to prescribe regulations establishing the general method or methods by which proved and approved claims for losses may be adjusted and paid for any damage to or loss of property which is covered by flood insurance made available under the provisions of this title.

(b) *MINIMUM ANNUAL DEDUCTIBLES.*—

(1) *SUBSIDIZED RATE PROPERTIES.*—For any structure that is covered by flood insurance under this title, and for which the chargeable rate for such coverage is less than the applicable estimated risk premium rate under section 1307(a)(1) for the area (or subdivision thereof) in which such structure is located, the minimum annual deductible for damage to or loss of such structure shall be \$2,000.

(2) *ACTUARIAL RATE PROPERTIES.*—For any structure that is covered by flood insurance under this title, for which the chargeable rate for such coverage is not less than the applicable estimated risk premium rate under section 1307(a)(1) for the area (or subdivision thereof) in which such structure is located, the minimum annual deductible for damage to or loss of such structure shall be \$1,000.

DISSEMINATION OF FLOOD INSURANCE INFORMATION

SEC. 1313. The [Director] Administrator shall from time to time take such action as may be necessary in order to make information and data available to the public, and to any State or local agency or official, with regard to—

(1) * * *

* * * * *

STATE AND LOCAL LAND USE CONTROLS

SEC. 1315. (a) REQUIREMENT FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.—

(1) *IN GENERAL.*—After December 31, 1971, no new flood insurance coverage shall be provided under this title in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate land use and control measures (with effective enforcement provisions) which the [Director] Administrator finds are consistent with the comprehensive criteria for land management and use under section 1361.

(2) *AGRICULTURAL STRUCTURES.*—

(A) * * *

(B) *PREMIUM RATES AND COVERAGE.*—To the extent applicable, an agricultural structure repaired or restored pursuant to subparagraph (A) shall pay chargeable premium rates established under section 1308 at the estimated risk premium rates under section 1307(a)(1). If resources are available, the [Director] Administrator shall provide technical assistance and counseling, upon request of the owner of the structure, regarding wet flood-proofing and other flood damage reduction measures for agricultural structures. The [Director] Administrator shall not be required to make flood insurance coverage available for such an agricultural structure unless the structure is wet flood-proofed through permanent or contingent measures applied to the structure or its contents that prevent or provide resistance to damage from flooding by allowing flood waters to pass through the structure, as determined by the [Director] Administrator.

(C) *PROHIBITION ON DISASTER RELIEF.*—Notwithstanding any other provision of law, any agricultural structure repaired or restored pursuant to subparagraph (A) shall not be eligible for disaster relief assistance under any program administered by the [Director] Administrator or any other Federal agency.

* * * * *

(b) COMMUNITY RATING SYSTEM AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT.—

(1) AUTHORITY AND GOALS.—The [Director] Administrator shall carry out a community rating system program, under which communities participate voluntarily—

(A) * * *

* * * * *

(2) INCENTIVES.—The program shall provide incentives in the form of credits on premium rates for flood insurance coverage in communities that the [Director] Administrator determines have adopted and enforced measures that reduce the risk of flood and erosion damage that exceed the criteria set forth in section 1361. In providing incentives under this paragraph, the [Director] Administrator may provide for credits to flood insurance premium rates in communities that the [Director] Administrator determines have implemented measures that protect natural and beneficial floodplain functions.

(3) CREDITS.—The credits on premium rates for flood insurance coverage shall be based on the estimated reduction in flood and erosion damage risks resulting from the measures adopted by the community under this program. If a community has received mitigation assistance under section 1366, the credits shall be phased in a manner, determined by the [Director] Administrator, to recover the amount of such assistance provided for the community.

(4) REPORTS.—Not later than 2 years after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 and not less than every 2 years thereafter, the [Director] Administrator shall submit a report to the Congress regarding the program under this subsection. Each report shall include an analysis of the cost-effectiveness of the program, any other accomplishments or shortcomings of the program, and any recommendations of the [Director] Administrator for legislation regarding the program.

PROPERTIES IN VIOLATION OF STATE AND LOCAL LAW

SEC. 1316. No new flood insurance coverage shall be provided under this title for any property which the [Director] Administrator finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

COORDINATION WITH OTHER PROGRAMS

SEC. 1317. In carrying out this title, the [Director] Administrator shall consult with other departments and agencies of the Federal Government, and with interstate, State, and local agencies having responsibilities for flood control, flood forecasting, or flood damage prevention, in order to assure that the programs of such agencies and the flood insurance program authorized under this title are mutually consistent.

ADVISORY COMMITTEE

SEC. 1318. (a) The **[Director]** *Administrator* shall appoint a flood insurance advisory committee without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and such committee shall advise the **[Director]** *Administrator* in the preparation of any regulations prescribed in accordance with this title and with respect to policy matters arising in the administration of this title, and shall perform such other responsibilities as the **[Director]** *Administrator* may, from time to time, assign to such committee.

* * * * *

(c) Members of the committee shall, while attending conferences or meetings thereof, be entitled to receive compensation at a rate fixed by the **[Director]** *Administrator* but not exceeding \$100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

PROGRAM EXPIRATION

SEC. 1319. No new contract for flood insurance under this title shall be entered into after **[the earlier of the date of the enactment into law of an Act that specifically amends the date specified in this section or May 31, 2012]** *September 30, 2016*.

[REPORT TO THE PRESIDENT] ANNUAL REPORT TO CONGRESS

SEC. 1320. (a) **IN GENERAL.**—The **[Director]** *Administrator* shall **[biennially]** submit a report of operations under this title to **[the President for submission to]** the Congress *not later than June 30 of each year*.

(b) **EFFECTS OF FLOOD INSURANCE PROGRAM.**—The **[Director]** *Administrator* shall include, as part of the **[biennial]** *annual* report submitted under subsection (a), a chapter reporting on the effects on the flood insurance program observed through implementation of requirements under the Riegle Community Development and Regulatory Improvement Act of 1994.

(c) **FINANCIAL STATUS OF PROGRAM.**—*The report under this section for each year shall include information regarding the financial status of the national flood insurance program under this title, including a description of the financial status of the National Flood Insurance Fund and current and projected levels of claims, premium receipts, expenses, and borrowing under the program.*

* * * * *

[SEC. 1323. GRANTS FOR REPETITIVE INSURANCE CLAIMS PROPERTIES.

[(a) IN GENERAL.—The Director may provide funding for mitigation actions that reduce flood damages to individual properties for which 1 or more claim payments for losses have been made under flood insurance coverage under this title, but only if the Director determines that—

[(1) such activities are in the best interest of the National Flood Insurance Fund; and

[(2) such activities cannot be funded under the program under section 1366 because—

[(A) the requirements of section 1366(g) are not being met by the State or community in which the property is located; or

[(B) the State or community does not have the capacity to manage such activities.

[(b) PRIORITY FOR WORST-CASE PROPERTIES.—In determining the properties for which funding is to be provided under this section, the Director shall consult with the States in which such properties are located and provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time.]

* * * * *

SEC. 1325. TREATMENT OF SWIMMING POOL ENCLOSURES OUTSIDE OF HURRICANE SEASON.

In the case of any property that is otherwise in compliance with the coverage and building requirements of the national flood insurance program, the presence of an enclosed swimming pool located at ground level or in the space below the lowest floor of a building after November 30 and before June 1 of any year shall have no effect on the terms of coverage or the ability to receive coverage for such building under the national flood insurance program established pursuant to this title, if the pool is enclosed with non-supporting breakaway walls.

CHAPTER II—ORGANIZATION AND ADMINISTRATION OF THE FLOOD INSURANCE PROGRAM

ORGANIZATION AND ADMINISTRATION

SEC. 1330. Following such consultation with representatives of the insurance industry as may be necessary, the [Director] Administrator shall implement the flood insurance program authorized under chapter I in accordance with the provision of part A of this chapter and, if a determination is made by him under section 1340, under part B of this chapter.

PART A—INDUSTRY PROGRAM WITH FEDERAL FINANCIAL ASSISTANCE

INDUSTRY FLOOD INSURANCE POOL

SEC. 1331. (a) The [Director] Administrator is authorized to encourage and otherwise assist any insurance companies and other insurers which meet the requirements prescribed under subsection (b) to form, as associate, or otherwise join together in a pool—

(1) * * *

(2) for the purpose of assuming, including as reinsurance of insurance coverage provided by the flood insurance program, on such terms and conditions as may be agreed upon, such financial responsibility as will enable such companies and other insurers, with the Federal financial and other assistance avail-

able under this title, to assure a reasonable proportion of responsibility for the adjustment and payment of claims for losses under the flood insurance program.

(b) In order to promote the effective administration of the flood insurance program under this part, and to assure that the objectives of this title are furthered, the [Director] Administrator is authorized to prescribe appropriate requirements for insurance companies and other insurers participating in such pool including, but not limited to, minimum requirements for capital or surplus or assets.

AGREEMENTS WITH FLOOD INSURANCE POOL

SEC. 1332. (a) The [Director] Administrator is authorized to enter into such agreements with the pool formed or otherwise created under this part as he deems necessary to carry out the purposes of this title.

(b) Such agreements shall specify—

(1) * * *

* * * * *

(3) the maximum amount of profit, established by the [Director] Administrator and set forth in the schedules prescribed under section 1311, which may be realized by such pool (and the companies and other insurers participating therein),

* * * * *

(c) In addition, such agreements shall contain such provisions as the [Director] Administrator finds necessary to assure that—

(1) * * *

(2) the insurance companies and other insurers participating in the pool will take whatever action may be necessary to provide continuity of flood insurance coverage or reinsurance by the pool, and

* * * * *

PREMIUM EQUALIZATION PAYMENTS

SEC. 1334. (a) The [Director] Administrator, on such terms and conditions as he may from time to time prescribe, shall make periodic payments to the pool formed or otherwise created under section 1331, in recognition of such reductions in chargeable premium rates under section 1308 below estimated premium rates under section 1307(a)(1) as are required in order to make flood insurance available on reasonable terms and conditions.

(b) Designated periods under this section and the methods for determining the sum of premiums paid or payable during such periods shall be established by the [Director] Administrator.

REINSURANCE COVERAGE

SEC. 1335. (a)(1) The [Director] Administrator is authorized to take such action as may be necessary in order to make available, to the pool formed or otherwise created under section 1331, reinsurance for losses (due to claims for proved and approved losses covered by flood insurance) which are in excess of losses assumed

by such pool in accordance with the excess loss agreement entered into under subsection (c).

(2) *The Administrator is authorized to secure reinsurance coverage of coverage provided by the flood insurance program from private market insurance, reinsurance, and capital market sources at rates and on terms determined by the Administrator to be reasonable and appropriate in an amount sufficient to maintain the ability of the program to pay claims and that minimizes the likelihood that the program will utilize the borrowing authority provided under section 1309.*

(b) Such reinsurance shall be made available pursuant to contract, agreement, or any other arrangement, in consideration of such payment of a premium, fee, or other charge as the [Director] Administrator finds necessary to cover anticipated losses and other costs of providing such reinsurance.

(c) The [Director] Administrator is authorized to negotiate an excess loss agreement, from time to time, under which the amount of flood insurance retained by the pool, after ceding reinsurance, shall be adequate to further the purposes of this title, consistent with the objective of maintaining appropriate financial participation and risk sharing to the maximum extent practicable on the part of participating insurance companies and other insurers.

(d) All reinsurance claims for losses in excess of losses assumed by the pool shall be submitted on a portfolio basis by such pool in accordance with terms and conditions established by the [Director] Administrator.

EMERGENCY IMPLEMENTATION OF PROGRAM

SEC. 1336. (a) Notwithstanding any other provisions of this title, for the purpose of providing flood insurance coverage at the earliest possible time, the [Director] Administrator shall carry out the flood insurance program authorized under chapter I during the period ending on the date specified in section 1319, in accordance with the provisions of this part and the other provision of this title insofar as they relate to this part but subject to the modifications made by or under subsection (b).

(b) In carrying out the flood insurance program pursuant to subsection (a), the [Director] Administrator—

(1) * * *

* * * * *

PART B—GOVERNMENT PROGRAM WITH INDUSTRY ASSISTANCE

FEDERAL OPERATION OF THE PROGRAM

SEC. 1340. (a) If at any time, after consultation with representatives of the insurance industry, the [Director] Administrator determines that operation of the flood insurance program as provided under part A cannot be carried out, or that such operation, in itself, would be assisted materially by the Federal Government's assumption, in whole or in part, of the operational responsibility for flood insurance under this title (on a temporary or other basis) he shall promptly undertake any necessary arrangements to carry out the program of flood insurance authorized under chapter I

through the facilities of the Federal Government, utilizing, for purposes of providing flood insurance coverage, either—

(1) * * *

(2) such other officers and employees of any executive agency (as defined in section 105 of title 5 of the United States Code) as the [Director] Administrator and the head of any such agency may from time to time, agree upon, on a reimbursement or other basis, or

* * * * *

(b) Upon making the determination referred to in subsection (a), the [Director] Administrator shall make a report to the Congress and, at the same time, to the private insurance companies participating in the National Flood Insurance Program pursuant to section 1310 of this Act. Such report shall—

(1) * * *

* * * * *

(4) contain such recommendations as the [Director] Administrator deems advisable.

The [Director] Administrator shall not implement the program of flood insurance authorized under chapter I through the facilities of the Federal Government until 9 months after the date of submission of the report under this subsection unless it would be impossible to continue to effectively carry out the National Flood Insurance Program operations during this time.

ADJUSTMENT AND PAYMENT OF CLAIMS AND JUDICIAL REVIEW

SEC. 1341. In the event the program is carried out as provided in section 1340, the [Director] Administrator shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, and upon the disallowance by the [Director] Administrator of any such claims, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance by the [Director] Administrator, may institute an action against the [Director] Administrator on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

PART C—PROVISIONS OF GENERAL APPLICABILITY

SERVICES BY INSURANCE INDUSTRY

SEC. 1345. (a) In administering the flood insurance program under this chapter, the [Director] Administrator is authorized to enter into any contracts, agreements, or other appropriate arrangements which may, from time to time, be necessary for the purpose of utilizing, on such terms and conditions as may be agreed upon, the facilities and services of any insurance companies or other insurers, insurance agents and brokers, or insurance adjustment organizations; and such contracts, agreements, or arrangements may include provision for payment of applicable operating costs and al-

lowances for such facilities and services as set forth in the schedules prescribed under section 1311.

* * * * *

(c) The **Director** *Administrator* of the Federal Emergency Management Agency shall hold any agent or broker selling or undertaking to sell flood insurance under this title harmless from any judgment for damages against such agent or broker as a result of any court action by a policyholder or applicant arising out of an error or omission on the part of the Federal Emergency Management Agency, and shall provide any such agent or broker with indemnification, including court costs and reasonable attorney fees, arising out of and caused by an error or omission on the part of the Federal Emergency Management Agency and its contractors. The **Director** *Administrator* of the Federal Emergency Management Agency may not hold harmless or indemnify an agent or broker for his or her error or omission.

(d) *INFORMATION REGARDING MULTIPLE PERILS CLAIMS.—*

(1) *IN GENERAL.—Subject to paragraph (2), if an insured having flood insurance coverage under a policy issued under the program under this title by the Administrator or a company, insurer, or entity offering flood insurance coverage under such program (in this subsection referred to as a “participating company”) has wind or other homeowners coverage from any company, insurer, or other entity covering property covered by such flood insurance, in the case of damage to such property that may have been caused by flood or by wind, the Administrator and the participating company, upon the request of the insured, shall provide to the insured, within 30 days of such request—*

(A) *a copy of the estimate of structure damage;*

(B) *proofs of loss;*

(C) *any expert or engineering reports or documents commissioned by or relied upon by the Administrator or participating company in determining whether the damage was caused by flood or any other peril; and*

(D) *the Administrator’s or the participating company’s final determination on the claim.*

(2) *TIMING.—Paragraph (1) shall apply only with respect to a request described in such paragraph made by an insured after the Administrator or the participating company, or both, as applicable, have issued a final decision on the flood claim involved and resolution of all appeals with respect to such claim.*

(e) *FEMA AUTHORITY TO REJECT TRANSFER OF POLICIES.—Notwithstanding any other provision of this Act, the Administrator may, at the discretion of the Administrator, refuse to accept the transfer of the administration of policies for coverage under the flood insurance program under this title that are written and administered by any insurance company or other insurer, or any insurance agent or broker.*

USE OF INSURANCE POOL, COMPANIES, OR OTHER PRIVATE ORGANIZATIONS FOR CERTAIN PAYMENTS

SEC. 1346. (a) In order to provide for maximum efficiency in the administration of the flood insurance program and in order to facilitate the expeditious payment of any Federal funds under such program, the [Director] Administrator may enter into contracts with a pool formed or otherwise created under section 1331, or any insurance company or other private organization, for the purpose of securing performance by such pool, company, or organization, or for purposes of securing reinsurance of insurance coverage provided by the program, of any or all of the following responsibilities:

- (1) [estimating] *Estimating* and later determining any amounts of payments to be made[;].
- (2) [receiving] *Receiving* from the [Director] Administrator, disbursing, and accounting for funds in making such payments[;].
- (3) [making] *Making* such audits of the records of any insurance company or other insurer, insurance agent or broker, or insurance adjustment organization as may be necessary to assure that proper payments are made[; and].
- (4) *Placing reinsurance coverage on insurance provided by such program.*

[4) otherwise] (5) *Otherwise* assisting in such manner as the contract may provide to further the purposes of this title.

(b) Any contract with the pool or an insurance company or other private organization under this section may contain such terms and conditions at the [Director] Administrator finds necessary or appropriate for carrying out responsibilities under subsection (a), and may provide for payment of any costs which the [Director] Administrator determines are incidental to carrying out such responsibilities which are covered by the contract.

* * * * *

(d) No contract may be entered into under this section unless the [Director] Administrator finds that the pool, company, or organization will perform its obligations under the contract efficiently and effectively, and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(e)(1) Any such contract may require the pool, company, or organization or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the [Director] Administrator may deem appropriate.

* * * * *

(f) Any contract entered into under this section shall be for a term of one year, and may be made automatically renewable from term to term in the absence of notice by either party of an intention to terminate at the end of the current term; except that the [Director] Administrator may terminate any such contract at any

time (after reasonable notice to the pool, company, or organization involved) if he finds that the pool, company, or organization has failed substantially to carry out the contract, or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the flood insurance program authorized under this title.

SETTLEMENT AND ARBITRATION

SEC. 1347. (a) The [Director] *Administrator* is authorized to make final settlement of any claims or demands which may arise as a result of any financial transactions which he is authorized to carry out under this chapter, and may, to assist him in making any such settlement, refer any disputes relating to such claims or demands to arbitration, with the consent of the parties concerned.

(b) Such arbitration shall be advisory in nature, and any award, decision, or recommendation which may be made shall become final only upon the approval of the [Director] *Administrator*.

RECORDS AND AUDITS

SEC. 1348. (a) The flood insurance pool formed or otherwise created under part A of this chapter, and any insurance company or other private organization executing any contract, agreement, or other appropriate arrangement with the [Director] *Administrator* under part B of this chapter or this part, shall keep such records as the [Director] *Administrator* shall prescribe, including records which fully disclose the total costs of the program undertaken or the services being rendered, and such other records as will facilitate an effective audit.

(b) The [Director] *Administrator* and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers and any such insurance company or other private organization that are pertinent to the costs of the program undertaken or the services being rendered.

SEC. 1349. NOTIFICATION TO POLICY HOLDERS REGARDING DIRECT MANAGEMENT OF POLICY BY FEMA.

(a) *NOTIFICATION.*—Not later than 60 days before the date on which a transferred flood insurance policy expires, and annually thereafter until such time as the Federal Emergency Management Agency is no longer directly administering such policy, the Administrator shall notify the holder of such policy that—

(1) *the Federal Emergency Management Agency is directly administering the policy;*

(2) *such holder may purchase flood insurance that is directly administered by an insurance company; and*

(3) *purchasing flood insurance offered under the National Flood Insurance Program that is directly administered by an insurance company will not alter the coverage provided or the premiums charged to such holder that otherwise would be provided or charged if the policy was directly administered by the Federal Emergency Management Agency.*

(b) *DEFINITION.*—In this section, the term “transferred flood insurance policy” means a flood insurance policy that—

(1) was directly administered by an insurance company at the time the policy was originally purchased by the policy holder; and

(2) at the time of renewal of the policy, direct administration of the policy was or will be transferred to the Federal Emergency Management Agency.

CHAPTER III—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

IDENTIFICATION OF FLOOD-PRONE AREAS

SEC. 1360. (a) The [Director] Administrator is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms, in order that he may—

(1) * * *

* * * * *

(b) The [Director] Administrator is directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of this section, in order to make known the degree of hazard within each such zone at the earliest possible date. To accomplish this objective, the [Director] Administrator is authorized, without regard to subsections (a) and (b) of section 3324 of title 31, United States Code, and section 3709 of the Revised Statutes (41 U.S.C. 5), to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms as he may deem appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.

(c) The Secretary of Defense (through the Army Corps of Engineers), the Secretary of the Interior (through the United States Geological Survey), the Secretary of Agriculture (through the Soil Conservation Service), the Secretary of Commerce (through the National Oceanic and Atmospheric Administration), the head of the Tennessee Valley Authority, and the heads of all other Federal agencies engaged in the identification or delineation of flood-risk zones within the several States shall, in consultation with the [Director] Administrator, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones, in order to assist the [Director] Administrator to meet the deadline established by this section.

(d) The [Director] Administrator shall, not later than September 30, 1984, submit to the Congress a plan for bringing all communities containing flood-risk zones into full program status by September 30, 1987.

(e) REVIEW OF FLOOD MAPS.—Once during each 5-year period (the 1st such period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of

1994) or more often as the **[Director]** *Administrator* determines necessary, the **[Director]** *Administrator* shall assess the need to revise and update all floodplain areas and flood risk zones identified, delineated, or established under this section, based on an analysis of all natural hazards affecting flood risks.

(f) **UPDATING FLOOD MAPS.**—The **[Director]** *Administrator* shall revise and update any floodplain areas and flood-risk zones—

(1) upon the determination of the **[Director]** *Administrator*, according to the assessment under subsection (e), that revision and updating are necessary for the areas and zones; or

(2) upon the request from any State or local government stating that specific floodplain areas or flood-risk zones in the State or locality need revision or updating, if sufficient technical data justifying the request is submitted and the unit of government making the request agrees to provide funds in an amount determined by the **[Director]** *Administrator*, but which may not exceed 50 percent of the cost of carrying out the requested revision or update.

(g) **AVAILABILITY OF FLOOD MAPS.**—To promote compliance with the requirements of this title, the **[Director]** *Administrator* shall make flood insurance rate maps and related information available free of charge to the Federal entities for lending regulation, Federal agency lenders, State agencies directly responsible for coordinating the national flood insurance program, and appropriate representatives of communities participating in the national flood insurance program, and at a reasonable cost to all other persons. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 1310(b)(6).

(h) **NOTIFICATION OF FLOOD MAP CHANGES.**—The **[Director]** *Administrator* shall cause notice to be published in the Federal Register (or shall provide notice by another comparable method) of any change to flood insurance map panels and any change to flood insurance map panels issued in the form of a letter of map amendment or a letter of map revision. Such notice shall be published or otherwise provided not later than 30 days after the map change or revision becomes effective. Notice by any method other than publication in the Federal Register shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as notice in the Federal Register. All notices under this subsection shall include information on how to obtain copies of the changes or revisions.

(i) **COMPENDIA OF FLOOD MAP CHANGES.**—Every 6 months, the **[Director]** *Administrator* shall publish separately in their entirety within a compendium, all changes and revisions to flood insurance map panels and all letters of map amendment and letters of map revision for which notice was published in the Federal Register or otherwise provided during the preceding 6 months. The **[Director]** *Administrator* shall make such compendia available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the national flood insurance program pursuant to section 1310 and at cost to all other parties. Any receipts resulting from this subsection shall be depos-

ited in the National Flood Insurance Fund, pursuant to section 1310(b)(6).

(j) **PROVISION OF INFORMATION.**—In the implementation of revisions to and updates of flood insurance rate maps, the **[Director]** *Administrator* shall share information, to the extent appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs.

(k) **TREATMENT OF LEVEES.**—*The Administrator may not issue flood insurance maps, or make effective updated flood insurance maps, that omit or disregard the actual protection afforded by an existing levee, floodwall, pump or other flood protection feature, regardless of the accreditation status of such feature.*

(l) **NOTIFICATION TO MEMBERS OF CONGRESS OF MAP MODERNIZATION.**—*Upon any revision or update of any floodplain area or flood-risk zone pursuant to subsection (f), any decision pursuant to subsection (f)(1) that such revision or update is necessary, any issuance of preliminary maps for such revision or updating, or any other significant action relating to any such revision or update, the Administrator shall notify the Senators for each State affected, and each Member of the House of Representatives for each congressional district affected, by such revision or update in writing of the action taken.*

(m) **REIMBURSEMENT.**—

(1) **REQUIREMENT UPON BONA FIDE ERROR.**—*If an owner of any property located in an area described in section 102(i)(3) of the Flood Disaster Protection Act of 1973, or a community in which such a property is located, obtains a letter of map amendment, or a letter of map revision, due to a bona fide error on the part of the Administrator of the Federal Emergency Management Agency, the Administrator shall reimburse such owner, or such entity or jurisdiction acting on such owner's behalf, or such community, as applicable, for any reasonable costs incurred in obtaining such letter.*

(2) **REASONABLE COSTS.**—*The Administrator shall, by regulation or notice, determine a reasonable amount of costs to be reimbursed under paragraph (1), except that such costs shall not include legal or attorneys fees. In determining the reasonableness of costs, the Administrator shall only consider the actual costs to the owner or community, as applicable, of utilizing the services of an engineer, surveyor, or similar services.*

(n) **ENHANCED COMMUNICATION WITH CERTAIN COMMUNITIES DURING MAP UPDATING PROCESS.**—*In updating flood insurance maps under this section, the Administrator shall communicate with communities located in areas where flood insurance rate maps have not been updated in 20 years or more and the appropriate State emergency agencies to resolve outstanding issues, provide technical assistance, and disseminate all necessary information to reduce the prevalence of outdated maps in flood-prone areas.*

(o) **NOTIFICATION TO RESIDENTS NEWLY INCLUDED IN FLOOD HAZARD AREA.**—*In revising or updating any areas having special flood hazards, the Administrator shall provide to each owner of a property to be newly included in such a special flood hazard area, at the time of issuance of such proposed revised or updated flood in-*

insurance maps, a copy of the proposed revised or updated flood insurance maps together with information regarding the appeals process under section 1363 (42 U.S.C. 4104).

CRITERIA FOR LAND MANAGEMENT AND USE

SEC. 1361. (a) The [Director] Administrator is authorized to carry out studies and investigations, utilizing to the maximum extent practicable the existing facilities and services of other Federal departments or agencies, and State and local governmental agencies, and any other organizations, with respect to the adequacy of State and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention, and may enter into any contracts, agreements or other appropriate arrangements to carry out such authority.

* * * * *

(c) On the basis of such studies and investigations, and such other information as he deems necessary, the [Director] Administrator shall from time to time develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures which, to the maximum extent feasible, will—

(1) * * *

* * * * *

and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures.

[SEC. 1361A. PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

[(a) AUTHORITY.—To the extent amounts are made available for use under this section, the Director may, subject to the limitations of this section, provide financial assistance to States and communities that decide to participate in the pilot program established under this section for taking actions with respect to severe repetitive loss properties (as such term is defined in subsection (b)) to mitigate flood damage to such properties and losses to the National Flood Insurance Fund from such properties.

[(b) SEVERE REPETITIVE LOSS PROPERTY.—For purposes of this section, the term “severe repetitive loss property” has the following meaning:

[(1) SINGLE-FAMILY PROPERTIES.—In the case of a property consisting of 1 to 4 residences, such term means a property that—

[(A) is covered under a contract for flood insurance made available under this title; and

[(B) has incurred flood-related damage—

[(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this title, with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

[(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumu-

lative amount of such claims exceeding the value of the property.

[(2) MULTIFAMILY PROPERTIES.—In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director shall by regulation provide.

[(c) ELIGIBLE ACTIVITIES.—Amounts provided under this section to a State or community may be used only for the following activities:

[(1) MITIGATION ACTIVITIES.—To carry out mitigation activities that reduce flood damages to severe repetitive loss properties, including elevation, relocation, demolition, and floodproofing of structures, and minor physical localized flood control projects, and the demolition and rebuilding of properties to at least Base Flood Elevation or greater, if required by any local ordinance.

[(2) PURCHASE.—To purchase severe repetitive loss properties, subject to subsection (g).

[(d) MATCHING REQUIREMENT.—

[(1) IN GENERAL.—Except as provided in paragraph (2), in any fiscal year the Director may not provide assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds for carrying out the eligible activities to be funded with such assistance amounts.

[(2) REDUCED COMMUNITY MATCH.—With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

[(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

[(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.

[(3) NON-FEDERAL FUNDS.—For purposes of this subsection, the term “non-Federal funds” includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the eligible activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

[(e) NOTICE OF MITIGATION PROGRAM.—

[(1) IN GENERAL.—Upon selecting a State or community to receive assistance under subsection (a) to carry out eligible activities, the Director shall notify the owners of a severe repet-

itive loss property, in plain language, within that State or community—

[(A) that their property meets the definition of a severe repetitive loss property under this section;

[(B) that they may receive an offer of assistance under this section;

[(C) of the types of assistance potentially available under this section;

[(D) of the implications of declining such offer of assistance under this section; and

[(E) that there is a right to appeal under this section.

[(2) IDENTIFICATION OF SEVERE REPETITIVE LOSS PROPERTIES.—The Director shall take such steps as are necessary to identify severe repetitive loss properties, and submit that information to the relevant States and communities.

[(f) STANDARDS FOR MITIGATION OFFERS.—The program under this section for providing assistance for eligible activities for severe repetitive loss properties shall be subject to the following limitations:

[(1) PRIORITY.—In determining the properties for which to provide assistance for eligible activities under subsection (c), the Director shall provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time, in a manner consistent with the allocation formula under paragraph (5).

[(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties to take eligible activities under subsection (c) as soon as practicable.

[(3) CONSULTATION.—In determining for which eligible activities under subsection (c) to provide assistance with respect to a severe repetitive loss property, the relevant States and communities shall consult, to the extent practicable, with the owner of the property.

[(4) DEFERENCE TO LOCAL MITIGATION DECISIONS.—The Director shall not, by rule, regulation, or order, establish a priority for funding eligible activities under this section that gives preference to one type or category of eligible activity over any other type or category of eligible activity.

[(5) ALLOCATION.—

[(A) IN GENERAL.—Subject to subparagraphs (B) and (C), of the total amount made available for assistance under this section in any fiscal year, the Director shall allocate assistance to a State, and the communities located within that State, based upon the percentage of the total number of severe repetitive loss properties located within that State.

[(B) REDISTRIBUTION.—Any funds allocated to a State, and the communities within the State, under subparagraph (A) that have not been obligated by the end of each fiscal year shall be redistributed by the Director to other States and communities to carry out eligible activities in accordance with this section.

[(C) EXCEPTION.—Of the total amount made available for assistance under this section in any fiscal year, 10 percent shall be made available to communities that—

[(i) contain one or more severe repetitive loss properties; and

[(ii) are located in States that receive little or no assistance, as determined by the Director, under the allocation formula under subparagraph (A).

[(6) NOTICE.—Upon making an offer to provide assistance with respect to a property for any eligible activity under subsection (c), the State or community shall notify each holder of a recorded interest on the property of such offer and activity.

[(g) PURCHASE OFFERS.—A State or community may take action under subsection (c)(2) to purchase a severe repetitive loss property only if the following requirements are met:

[(1) USE OF PROPERTY.—The State or community enters into an agreement with the Director that provides assurances that the property purchased will be used in a manner that is consistent with the requirements of section 404(b)(2)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(b)(2)(B)) for properties acquired, accepted, or from which a structure will be removed pursuant to a project provided property acquisition and relocation assistance under such section 404(b).

[(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties and of associated land to engage in eligible activities as soon as possible.

[(3) PURCHASE PRICE.—The amount of purchase offer is not less than the greatest of—

[(A) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;

[(B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property; and

[(C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property, or an amount equal to the current fair market value of the property.

[(4) COMPARABLE HOUSING PAYMENT.—If a purchase offer made under paragraph (2) is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the flood hazard area in the same community, the Director shall make available an additional relocation payment to the homeowner-occupant to apply to the difference.

[(h) INCREASED PREMIUMS IN CASES OF REFUSAL TO MITIGATE.—

[(1) IN GENERAL.—In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property, the Director shall—

[(A) notify each holder of a recorded interest on the property of such refusal; and

[(B) notwithstanding subsections (a) through (c) of section 1308, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to paragraph (2) and subject to the limitation under paragraph (3).

[(2) INCREASED PREMIUMS UPON SUBSEQUENT FLOOD DAMAGE.—Notwithstanding subsections (a) through (c) of section 1308, if the owner of a severe repetitive loss property does not accept an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property and a claim payment exceeding \$1,500 is made under flood insurance coverage under this title for damage to the property caused by a flood event occurring after such offer is made, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time of such flood event, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to this paragraph and subject to the limitation under paragraph (3).

[(3) LIMITATION ON INCREASED PREMIUMS.—In no case may the chargeable premium rate for a severe repetitive loss property be increased pursuant to this subsection to an amount exceeding the applicable estimated risk premium rate for the area (or subdivision thereof) under section 1307(a)(1).

[(4) TREATMENT OF DEDUCTIBLES.—Any increase in chargeable premium rates required under this subsection for a severe repetitive loss property may be carried out, to the extent appropriate, as determined by the Director, by adjusting any deductible charged in connection with flood insurance coverage under this title for the property.

[(5) NOTICE OF CONTINUED OFFER.—Upon each renewal or modification of any flood insurance coverage under this title for a severe repetitive loss property, the Director shall notify the owner that the offer made pursuant to subsection (c) is still open.

[(6) APPEALS.—

[(A) IN GENERAL.—Any owner of a severe repetitive loss property may appeal a determination of the Director to take action under paragraph (1)(B) or (2) with respect to such property, based only upon the following grounds:

[(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

[(ii) Based on independent information, such as contractor estimates or appraisals, the property owner believes that the price offered for purchasing the property is not an accurate estimation of the value of the property, or the amount of Federal funds offered for mitigation activities, when combined with funds from

non-Federal sources, will not cover the actual cost of mitigation.

【(iii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places will be interfered with, impaired, or disrupted.

【(iv) The flooding that resulted in the flood insurance claims described in subsection (b)(2) for the property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

【(v) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

【(vi) The owner of the property, based on independent information, such as contractor estimates or other appraisals, demonstrates that an alternative eligible activity under subsection (c) is at least as cost effective as the initial offer of assistance.

【(B) PROCEDURE.—An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1)(B) or (2), as applicable.

【(C) EFFECT OF FINAL DETERMINATION.—In an appeal under this paragraph—

【(i) if a final determination is made in favor of the property owner under subparagraph (A) exist, the third party hearing such appeal shall require the Director to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1)(B) or (2) to the amount paid prior to the offer to take action under paragraph (1) or (2) of subsection (c); and

【(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1)(B) or (2), as applicable, and shall collect from the property owner the amount nec-

essary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

[(D) COSTS.—If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

[(i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and

[(ii) by the National Flood Insurance Fund, if such final determination is that the grounds under subparagraph (A) do exist.

[(E) REPORT.—Not later than 6 months after the date of the enactment of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, the Director shall submit a report describing the rules, procedures, and administration for appeals under this paragraph to—

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

[(ii) the Committee on Financial Services of the House of Representatives.

[(i) DISCRETIONARY ACTIONS IN CASES OF FRAUDULENT CLAIMS.—If the Director determines that a fraudulent claim was made under flood insurance coverage under this title for a severe repetitive loss property, the Director may—

[(1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this title for the property; or

[(2) refuse to renew the policy with such policyholder upon expiration and deny the provision of any new flood insurance coverage under this title to such policyholder for the property.

[(j) RULES.—

[(1) IN GENERAL.—The Director shall, by rule—

[(A) subject to subsection (f)(4), develop procedures for the distribution of funds to States and communities to carry out eligible activities under this section; and

[(B) ensure that the procedures developed under paragraph (1)—

[(i) require the Director to notify States and communities of the availability of funding under this section, and that participation in the pilot program under this section is optional;

[(ii) provide that the Director may assist States and communities in identifying severe repetitive loss properties within States or communities;

[(iii) allow each State and community to select properties to be the subject of eligible activities, and the appropriate eligible activity to be performed with respect to each severe repetitive loss property; and

[(iv) require each State or community to submit a list of severe repetitive loss properties to the Director that the State or community would like to be the subject of eligible activities under this section.

[(2) CONSULTATION.—Not later than 90 days after the date of enactment of this Act, the Director shall consult with State

and local officials in carrying out paragraph (1)(A), and provide an opportunity for an oral presentation, on the record, of data and arguments from such officials.

[(k) FUNDING.—

[(1) IN GENERAL.—Pursuant to section 1310(a)(8), the Director may use amounts from the National Flood Insurance Fund to provide assistance under this section in each of fiscal years 2005, 2006, 2007, 2008, and 2009, except that the amount so used in each such fiscal year may not exceed \$40,000,000 and shall remain available until expended. Notwithstanding any other provision of this title, amounts made available pursuant to this subsection shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

[(2) ADMINISTRATIVE EXPENSES.—Of the amounts made available under this subsection, the Director may use up to 5 percent for expenses associated with the administration of this section.

[(1) TERMINATION.—The Director may not provide assistance under this section to any State or community after September 30, 2009.]

* * * * *

APPEALS

[SEC. 1363. (a) In establishing projected flood elevations for land use purposes with respect to any community pursuant to section 1361, the Director shall first propose such determinations by publication for comment in the Federal Register, by direct notification to the chief executive officer of the community, and by publication in a prominent local newspaper.]

SEC. 1363. (a) *In establishing projected flood elevations for land use purposes with respect to any community pursuant to section 1361, the Administrator shall first propose such determinations—*

(1) by providing the chief executive officer of each community affected by the proposed elevations, by certified mail, with a return receipt requested, notice of the elevations, including a copy of the maps for the elevations for such community and a statement explaining the process under this section to appeal for changes in such elevations;

(2) by causing notice of such elevations to be published in the Federal Register, which notice shall include information sufficient to identify the elevation determinations and the communities affected, information explaining how to obtain copies of the elevations, and a statement explaining the process under this section to appeal for changes in the elevations;

(3) by publishing in a prominent local newspaper the elevations, a description of the appeals process for flood determinations, and the mailing address and telephone number of a person the owner may contact for more information or to initiate an appeal;

(4) by providing written notification, by first class mail, to each owner of real property affected by the proposed elevations of—

(A) *the status of such property, both prior to and after the effective date of the proposed determination, with respect to flood zone and flood insurance requirements under this Act and the Flood Disaster Protection Act of 1973;*

(B) *the process under this section to appeal a flood elevation determination; and*

(C) *the mailing address and phone number of a person the owner may contact for more information or to initiate an appeal; and*

(5) *by notifying a local television and radio station.*

[(b) The Director] (b)(1) *The Administrator shall publish notification of flood elevation determinations in a prominent local newspaper at least twice during the ten-day period following notification to the local government and shall notify a local television and radio station at least once during the same 10-day period. During the ninety-day period following the second publication, any owner or lessee of real property within the community who believes his property rights to be adversely affected by the [Director's] Administrator's proposed determination may appeal such determination to the local government. The sole basis for such appeal shall be the possession of knowledge or information indicating that elevations being proposed by the [Director] Administrator with respect to an identified area having special flood hazards are scientifically or technically incorrect, and the sole relief which shall be granted under the authority of this section in the event that such appeal is sustained in accordance with subsection (e) or (f) is a modification of the [Director's] Administrator's proposed determination accordingly.*

(2) *The Administrator shall grant an extension of the 90-day period for appeals referred to in paragraph (1) for 90 additional days if an affected community certifies to the Administrator, after the expiration of at least 60 days of such period, that the community—*

(A) *believes there are property owners or lessees in the community who are unaware of such period for appeals; and*

(B) *will utilize the extension under this paragraph to notify property owners or lessees who are affected by the proposed flood elevation determinations of the period for appeals and the opportunity to appeal the determinations proposed by the Administrator.*

(c) *Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate or contradict the [Director's] Administrator's finding in such form as the chief executive officer may specify. The community shall review and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal the [Director's] Administrator's determination, copies of individual appeals shall be sent to the [Director] Administrator as they are received by the community, and the community's appeal or a copy of its decision not to appeal shall be filed with the [Director] Administrator not*

later than ninety days after the date of the second newspaper publication of the **[Director's]** *Administrator's* notification.

(d) In the event the **[Director]** *Administrator* does not receive an appeal from the community within the ninety days provided he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (e), the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The **[Director's]** *Administrator's* decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.

(e) Upon appeal by any community, as provided by this section, the **[Director]** *Administrator* shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The **[Director]** *Administrator* shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice. Until the conflict in data is resolved, and the **[Director]** *Administrator* makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The **[Director]** *Administrator* shall make his determination within a reasonable time. The community shall be given a reasonable time after the **[Director's]** *Administrator's* final determination in which to adopt local land use and control measures consistent with the **[Director's]** *Administrator's* determination. The reports and other information used by the **[Director]** *Administrator* in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.

(f) When, incident to any appeal under subsection (b) or (c), the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or in part, the **[Director]** *Administrator* shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the **[Director]** *Administrator* in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection, not to exceed \$250,000.

(g) Any appellant aggrieved by any final determination of the **[Director]** *Administrator* upon administrative appeal, as provided by this section, may appeal such determination to the United

States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5, United States Code. During the pendency of any such litigation, all final determinations of the **[Director]** *Administrator* shall be effective for the purposes of this title unless stayed by the court for good cause shown.

NOTICE REQUIREMENTS

SEC. 1364. (a) NOTIFICATION OF SPECIAL FLOOD HAZARDS.—

(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home that the regulated lending institution determines is located or is to be located in an area that has been identified by the **[Director]** *Administrator* under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) and the servicer of the loan of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. The regulations shall also require that the regulated lending institution retain a record of the receipt of the notices by the purchaser or lessee and the servicer.

(2) FEDERAL AGENCY LENDERS.—Each Federal agency lender shall by regulation require notification in the manner provided under paragraph (1) with respect to any loan that is made by the Federal agency lender and secured by improved real estate or a mobile home located or to be located in an area that has been identified by the **[Director]** *Administrator* under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) CONTENTS OF NOTICE.—Written notification required under this subsection shall include—

(A) a warning, in a form to be established by the **[Director]** *Administrator*, stating that the building on the improved real estate securing the loan is located, or the mobile home securing the loan is or is to be located, in an area having special flood hazards;

* * * * *

(D) any other information that the **[Director]** *Administrator* considers necessary to carry out the purposes of the national flood insurance program.

(b) NOTIFICATION OF CHANGE OF SERVICER.—

(1) LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation

require regulated lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subsection (a)(1), to notify the **[Director] Administrator** (or the designee of the **[Director] Administrator**) in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the **[Director] Administrator** (or such designee) of any change in the servicer of the loan, not later than 60 days after the effective date of such change. The regulations under this subsection shall provide that upon any change in the servicing of a loan, the duty to provide notification under this subsection shall transfer to the transferee servicer of the loan.

* * * * *

(c) NOTIFICATION OF EXPIRATION OF INSURANCE.—The **[Director] Administrator** (or the designee of the **[Director] Administrator**) shall, not less than 45 days before the expiration of any contract for flood insurance under this title, issue notice of such expiration by first class mail to the owner of the property covered by the contract, the servicer of any loan secured by the property covered by the contract, and (if known to the **[Director] Administrator**) the owner of the loan.

STANDARD HAZARD DETERMINATION FORMS

SEC. 1365. (a) DEVELOPMENT.—The **[Director] Administrator**, in consultation with representatives of the mortgage and lending industry, the Federal entities for lending regulation, the Federal agency lenders, and any other appropriate individuals, shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the **[Director] Administrator** as an area having special flood hazards and in which flood insurance under this title is available. The form shall be established by regulations issued not later than 270 days after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(b) DESIGN AND CONTENTS.—

(1) * * *

(2) CONTENTS.—The form shall require identification of the type of flood-risk zone in which the building or mobile home is located, the complete map and panel numbers for the improved real estate or property on which the mobile home is located, the community identification number and community participation status (for purposes of the national flood insurance program) of the community in which the improved real estate or such property is located, and the date of the map used for the determination, with respect to flood hazard information on file with the **[Director] Administrator**. If the building or mobile home is not located in an area having special flood hazards the form shall require a statement to such effect and shall indicate the complete map and panel numbers of the improved real estate or property on which the mobile home is located. If the complete map and panel numbers are not available because the building or mobile home is not located in a community that

is participating in the national flood insurance program or because no map exists for the relevant area, the form shall require a statement to such effect. The form shall provide for inclusion or attachment of any relevant documents indicating revisions or amendments to maps.

* * * * *

(e) RELIANCE ON PREVIOUS DETERMINATION.—Any person increasing, extending, renewing, or purchasing a loan secured by improved real estate or a mobile home may rely on a previous determination of whether the building or mobile home is located in an area having special flood hazards (and shall not be liable for any error in such previous determination), if the previous determination was made not more than 7 years before the date of the transaction and the basis for the previous determination has been set forth on a form under this section, unless—

(1) * * *

(2) the person contacts the [Director] Administrator to determine when the most recent map revisions or updates affecting such property occurred and such revisions and updates have occurred after such previous determination.

* * * * *

MITIGATION ASSISTANCE

SEC. 1366. (a) AUTHORITY.—The [Director] Administrator shall carry out a program to provide financial assistance to States and communities, using amounts made available from the National Flood Mitigation Fund under section 1367, for planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance under this title. [Such financial assistance shall be made available to States and communities in the form of grants under subsection (b) for planning assistance and in the form of grants under this section for carrying out mitigation activities.] *Such financial assistance shall be made available—*

(1) *to States and communities in the form of grants under this section for carrying out mitigation activities;*

(2) *to States and communities in the form of grants under this section for carrying out mitigation activities that reduce flood damage to severe repetitive loss structures; and*

(3) *to property owners in the form of direct grants under this section for carrying out mitigation activities that reduce flood damage to individual structures for which 2 or more claim payments for losses have been made under flood insurance coverage under this title if the Administrator, after consultation with the State and community, determines that neither the State nor community in which such a structure is located has the capacity to manage such grants.*

[(b) PLANNING ASSISTANCE GRANTS.—

[(1) IN GENERAL.—The Director may make grants under this subsection to States and communities to assist in developing mitigation plans under subsection (c).

[(2) FUNDING.—Of any amounts made available from the National Flood Mitigation Fund for use under this section in

any fiscal year, the Director may use not more than 7.5 percent of the available funds under this section to provide planning assistance grants under this subsection.

[(3) LIMITATIONS.—

[(A) TIMING.—A grant under this subsection may be awarded to a State or community not more than once every 5 years and each grant may cover a period of 1 to 3 years.

[(B) SINGLE GRANTEE AMOUNT.—A grant for planning assistance may not exceed—

[(i) \$150,000, to any State; or

[(ii) \$50,000, to any community.]

[(C) CUMULATIVE STATE GRANT AMOUNT.—The sum of the amounts of grants made under this subsection in any fiscal year to any one State and all communities located in such State may not exceed \$300,000.]

[(c)] (b) ELIGIBILITY FOR MITIGATION ASSISTANCE.—To be eligible to receive financial assistance under this section for mitigation activities, a State or community shall develop, and have approved by the **[Director] Administrator**, a **[flood risk] multi-hazard** mitigation plan (in this section referred to as a “mitigation plan”), that describes the mitigation activities to be carried out with assistance provided under this section, is consistent with the criteria established by the **[Director] Administrator** under section 1361, and **[provides protection against] examines reduction of** flood losses to structures for which contracts for flood insurance are available under this title. The mitigation plan shall be consistent with a comprehensive strategy for mitigation activities for the area affected by the mitigation plan, that has been adopted by the State or community following a public hearing.

[(d) NOTIFICATION OF APPROVAL AND GRANT AWARD.—

[(1) IN GENERAL.—The Director shall notify a State or community submitting a mitigation plan of the approval or disapproval of the plan not later than 120 days after submission of the plan.

[(2) NOTIFICATION OF DISAPPROVAL.—If the Director does not approve a mitigation plan submitted under this subsection, the Director shall notify, in writing, the State or community submitting the plan of the reasons for such disapproval.]

[(e)] (c) ELIGIBLE MITIGATION ACTIVITIES.—

[(1) USE OF AMOUNTS.—Amounts provided under this section (other than under subsection (b)) may be used only for mitigation activities specified in a mitigation plan approved by the Director under subsection (d).]

(1) REQUIREMENT OF CONSISTENCY WITH APPROVED MITIGATION PLAN.—Amounts provided under this section may be used only for mitigation activities that are consistent with mitigation plans that are approved by the Administrator and identified under subparagraph (4). The **[Director] Administrator** shall provide assistance under this section to the extent amounts are available in the National Flood Mitigation Fund pursuant to appropriation Acts, subject only to the absence of approvable mitigation plans.

[(2) DETERMINATION OF ELIGIBLE PLANS.—The Director may approve only mitigation plans that specify mitigation activities that the Director determines are technically feasible and cost-effective and only such plans that propose activities that are cost-beneficial to the National Flood Mitigation Fund.

[(3) STANDARD FOR APPROVAL.—The Director shall approve mitigation plans meeting the requirements for approval under paragraph (1) that will be most cost-beneficial to the National Flood Mitigation Fund. The Director may approve only mitigation plans that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.

[(4) PRIORITY FOR MITIGATION ASSISTANCE.—In providing grants under this subsection for mitigation activities, the Director shall give first priority for funding to such properties, or to such subsets of such properties as the Director may establish, that the Director determines are in the best interests of the National Flood Insurance Fund and for which matching amounts under subsection (f) are available.]

(2) REQUIREMENTS OF TECHNICAL FEASIBILITY, COST EFFECTIVENESS, AND INTEREST OF NFIF.—The Administrator may approve only mitigation activities that the Administrator determines are technically feasible and cost-effective and in the interest of, and represent savings to, the National Flood Insurance Fund. In making such determinations, the Administrator shall take into consideration recognized benefits that are difficult to quantify.

(3) PRIORITY FOR MITIGATION ASSISTANCE.—In providing grants under this section for mitigation activities, the Administrator shall give priority for funding to activities that the Administrator determines will result in the greatest savings to the National Flood Insurance Fund, including activities for—

- (A) severe repetitive loss structures;
- (B) repetitive loss structures; and
- (C) other subsets of structures as the Administrator may establish.

[(5) ELIGIBLE ACTIVITIES.—The Director shall determine whether mitigation activities described in a mitigation plan submitted under subsection (d) comply with the requirements under paragraph (1). Such activities may include—]

(4) ELIGIBLE ACTIVITIES.—Eligible activities may include—
(A) * * *

* * * * *
(C) acquisition by States and communities of properties (including public properties) located in areas having special flood hazards or other areas of flood risk and properties substantially damaged by flood, for public use, as the [Director] Administrator determines is consistent with sound land management and use in such area;

(D) elevation, relocation, and floodproofing of utilities (including equipment that serve structures);

[(D)] (E) minor physical mitigation efforts that do not duplicate the flood prevention activities of other Federal agencies and that lessen the frequency or severity of flood-

ing and decrease predicted flood damages, which shall not include major flood control projects such as dikes, levees, seawalls, groins, and jetties unless the **[Director]** *Administrator* specifically determines in approving a mitigation plan that such activities are the most cost-effective mitigation activities for the National Flood Mitigation Fund;

[(E)] beach nourishment activities;

(F) the development or update of State, local, or Indian tribal mitigation plans which meet the planning criteria established by the Administrator, except that the amount from grants under this section that may be used under this subparagraph may not exceed \$50,000 for any mitigation plan of a State or \$25,000 for any mitigation plan of a local government or Indian tribe;

[(F)] (G) the provision of technical assistance by States to communities and individuals to conduct eligible mitigation activities;

[(G)] (H) other activities that the **[Director]** *Administrator* considers appropriate and specifies in regulation; **[and]**

[(H)] other mitigation activities not described in subparagraphs (A) through (F) or the regulations issued under subparagraph (G), that are described in the mitigation plan of a State or community.

(I) other mitigation activities not described in subparagraphs (A) through (G) or the regulations issued under subparagraph (H), that are described in the mitigation plan of a State, community, or Indian tribe; and

(J) personnel costs for State staff that provide technical assistance to communities to identify eligible activities, to develop grant applications, and to implement grants awarded under this section, not to exceed \$50,000 per State in any Federal fiscal year, so long as the State applied for and was awarded at least \$1,000,000 in grants available under this section in the prior Federal fiscal year; the requirements of subsections (d)(1) and (d)(2) shall not apply to the activity under this subparagraph.

(6) ELIGIBILITY OF DEMOLITION AND REBUILDING OF PROPERTIES.—The **[Director]** *Administrator* shall consider as an eligible activity the demolition and rebuilding of properties to at least base flood levels or higher, if required by the **[Director]** *Administrator* or if required by any State or local ordinance, and in accordance with project implementation criteria established by the **[Director]** *Administrator*.

(6) ELIGIBILITY OF DEMOLITION AND REBUILDING OF PROPERTIES.—*The Administrator shall consider as an eligible activity the demolition and rebuilding of properties to at least base flood elevation or greater, if required by the Administrator or if required by any State regulation or local ordinance, and in accordance with criteria established by the Administrator.*

[(f) LIMITATIONS ON AMOUNT OF ASSISTANCE.—

[(1) AMOUNT.—The sum of the amounts of mitigation assistance provided under this section during any 5-year period may not exceed—

- [(A) \$10,000,000, to any State; or
- [(B) \$3,300,000, to any community.

[(2) GEOGRAPHIC.—The sum of the amounts of mitigation assistance provided under this section during any 5-year period to any one State and all communities located in such State may not exceed \$20,000,000.

[(3) WAIVER.—The Director may waive the dollar amount limitations under paragraphs (1) and (2) for any State or community for any 5-year period during which a major disaster or emergency declared by the President (pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act) as a result of flood conditions is in effect with respect to areas in the State or community.

[(g) MATCHING REQUIREMENT.—

[(1) IN GENERAL.—The Director may not provide mitigation assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds to develop a mitigation plan under subsection (c) and to carry out mitigation activities under the approved mitigation plan. In no case shall any in-kind contribution by any State or community exceed one-half of the amount of non-Federal funds contributed by the State or community.

[(2) REDUCED COMMUNITY MATCH.—With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

[(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

[(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.

[(3) NON-FEDERAL FUNDS.—For purposes of this subsection, the term “non-Federal funds” includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the mitigation activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

[(h) OVERSIGHT OF MITIGATION PLANS.—The Director shall conduct oversight of recipients of mitigation assistance under this section to ensure that the assistance is used in compliance with the approved mitigation plans of the recipients and that matching funds certified under subsection (g) are used in accordance with such certification.]

(d) *MATCHING REQUIREMENT.*—The Administrator may provide grants for eligible mitigation activities as follows:

(1) *SEVERE REPETITIVE LOSS STRUCTURES.*—In the case of mitigation activities to severe repetitive loss structures, in an amount up to 100 percent of all eligible costs.

(2) *REPETITIVE LOSS STRUCTURES.*—In the case of mitigation activities to repetitive loss structures, in an amount up to 90 percent of all eligible costs.

(3) *OTHER MITIGATION ACTIVITIES.*— In the case of all other mitigation activities, in an amount up to 75 percent of all eligible costs.

[(i)] (e) *RECAPTURE.*—

(1) *NONCOMPLIANCE WITH PLAN.*—If the [Director] Administrator determines that a State or community that has received mitigation assistance under this section has not carried out the mitigation activities as set forth in the mitigation plan, the [Director] Administrator shall recapture any unexpended amounts and deposit the amounts in the National Flood Mitigation Fund under section 1367.

(2) *FAILURE TO PROVIDE MATCHING FUNDS.*—If the [Director] Administrator determines that a State or community that has received mitigation assistance under this section has not provided matching funds in the amount [certified under subsection (g)] *required under subsection (d)*, the [Director] Administrator shall recapture any unexpended amounts of mitigation assistance exceeding [3 times the amount] *the amount* of such matching funds actually provided and deposit the amounts in the National Flood Mitigation Fund under section 1367.

[(j)] (f) *REPORTS.*—Not later than 1 year after the date of enactment of the [Riegle Community Development and Regulatory Improvement Act of 1994] *Flood Insurance Reform Act of 2012* and biennially thereafter, the [Director] Administrator shall submit a report to the Congress describing the status of mitigation activities carried out with assistance provided under this section.

[(k)] *DEFINITION OF COMMUNITY.*—For purposes of this section, the term “community” means—

[(1)] a political subdivision that (A) has zoning and building code jurisdiction over a particular area having special flood hazards, and (B) is participating in the national flood insurance program; or

[(2)] a political subdivision of a State, or other authority, that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of paragraph (1).

[(m)] *COORDINATION WITH STATES AND COMMUNITIES.*—The Director shall, in consultation and coordination with States and communities take such actions as are appropriate to encourage and improve participation in the national flood insurance program of owners of properties, including owners of properties that are not located in areas having special flood hazards (the 100-year floodplain), but are located within flood prone areas.]

(g) *FAILURE TO MAKE GRANT AWARD WITHIN 5 YEARS.*—For any application for a grant under this section for which the Admin-

istrator fails to make a grant award within 5 years of the date of application, the grant application shall be considered to be denied and any funding amounts allocated for such grant applications shall remain in the National Flood Mitigation Fund under section 1367 of this title and shall be made available for grants under this section.

(h) LIMITATION ON FUNDING FOR MITIGATION ACTIVITIES FOR SEVERE REPETITIVE LOSS STRUCTURES.—The amount used pursuant to section 1310(a)(8) in any fiscal year may not exceed \$40,000,000 and shall remain available until expended.

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

(1) COMMUNITY.—The term “community” means—

(A) a political subdivision that—

(i) has zoning and building code jurisdiction over a particular area having special flood hazards, and

(ii) is participating in the national flood insurance program; or

(B) a political subdivision of a State, or other authority, that is designated by political subdivisions, all of which meet the requirements of subparagraph (A), to administer grants for mitigation activities for such political subdivisions.

(2) REPETITIVE LOSS STRUCTURE.—The term “repetitive loss structure” has the meaning given such term in section 1370.

(3) SEVERE REPETITIVE LOSS STRUCTURE.—The term “severe repetitive loss structure” means a structure that—

(A) is covered under a contract for flood insurance made available under this title; and

(B) has incurred flood-related damage—

(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this title, with the amount of each such claim exceeding \$15,000, and with the cumulative amount of such claims payments exceeding \$60,000; or

(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the insured structure.

NATIONAL FLOOD MITIGATION FUND

SEC. 1367. (a) ESTABLISHMENT AND AVAILABILITY.—The [Director] Administrator shall establish in the Treasury of the United States a fund to be known as the National Flood Mitigation Fund, which shall be credited with amounts described in subsection (b) and shall be available, to the extent provided in appropriation Acts, for providing assistance under section 1366.

(b) CREDITS.—The National Flood Mitigation Fund shall be credited with—

[(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding \$40,000,000, to remain available until expended;]

(1) in each fiscal year, from the National Flood Insurance Fund in amounts not exceeding \$90,000,000 to remain available until expended, of which—

(A) not more than \$40,000,000 shall be available pursuant to subsection (a) of this section only for assistance described in section 1366(a)(1);

(B) not more than \$40,000,000 shall be available pursuant to subsection (a) of this section only for assistance described in section 1366(a)(2); and

(C) not more than \$10,000,000 shall be available pursuant to subsection (a) of this section only for assistance described in section 1366(a)(3).

* * * * *

(3) any amounts recaptured under [section 1366(i)] section 1366(e).

(c) ADMINISTRATIVE EXPENSES.—The [Director] Administrator may use not more than 5 percent of amounts made available under subsection (b) to cover salaries, expenses, and other administrative costs incurred by the [Director] Administrator to make grants and provide assistance under [sections 1366 and 1323] section 1366.

(d) PROHIBITION ON OFFSETTING COLLECTIONS.—Notwithstanding any other provision of this title, amounts made available pursuant to this section shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

(e) CONTINUED AVAILABILITY AND REALLOCATION.—Any amounts made available pursuant to subparagraph (A), (B), or (C) of subsection (b)(1) that are not used in any fiscal year shall continue to be available for the purposes specified in such subparagraph of subsection (b)(1) pursuant to which such amounts were made available, unless the Administrator determines that reallocation of such unused amounts to meet demonstrated need for other mitigation activities under section 1366 is in the best interest of the National Flood Insurance Fund.

[(d)] (f) INVESTMENT.—If the [Director] Administrator determines that the amounts in the National Flood Mitigation Fund are in excess of amounts needed under subsection (a), the [Director] Administrator may invest any excess amounts the [Director] Administrator determines advisable in interest-bearing obligations issued or guaranteed by the United States.

[(e)] (g) REPORT.—The [Director] Administrator shall submit a report to the Congress not later than the expiration of the 1-year period beginning on the date of enactment of this Act and not less than once during each successive 2-year period thereafter. The report shall describe the status of the Fund and any activities carried out with amounts from the Fund.

CHAPTER IV—APPROPRIATIONS AND MISCELLANEOUS PROVISIONS

DEFINITIONS

SEC. 1370. (a) As used in this title—

(1) the term “flood” shall have such meaning as may be prescribed in regulations of the [Director] Administrator, and

may include inundation from rising waters or from the overflow of streams, rivers, or other bodies of water, or from tidal surges, abnormally high tidal water, tidal waves, tsunamis, hurricanes, or other severe storms or deluge;

* * * * *

(3) the terms "insurance company", "other insurer" and "insurance agent or broker" include any organizations and persons authorized to engage in the insurance business under the laws of any State, *is subject to the reporting requirements of the Securities Exchange Act of 1934, pursuant to section 13(a) or 15(d) of such Act (15 U.S.C. 78m(a), 78o(d)), or is authorized by the Administrator to assume reinsurance on risks insured by the flood insurance program;*

* * * * *

(6) the term "[Director] Administrator" means the [Director] Administrator of the Federal Emergency Management Agency;

* * * * *

(15) the term "substantially damaged structure" means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in any regulation promulgated by the [Director] Administrator, or by a community ordinance, whichever is lower.

(b) The term "flood" shall also include inundation from mudslides which are proximately caused by accumulations of water on or under the ground; and all of the provisions of this title shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the [Director] Administrator may prescribe to achieve (with respect to such mudslides) the purposes of this title and the objectives of the program.

(c) The term "flood" shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this title shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the [Director] Administrator may prescribe to achieve (with respect to such collapse or subsidence) the purposes of this title and the objectives of the program.

STUDIES OF OTHER NATURAL DISASTERS

SEC. 1371. (a) The [Director] Administrator is authorized to undertake such studies as may be necessary for the purpose of determining the extent to which insurance protection against earth-

quakes or any other natural disaster perils, other than flood, is not available from public or private sources, and the feasibility of such insurance protection being made available.

(b) Studies under this section shall be carried out, to the maximum extent practicable, with the cooperation of other Federal departments and agencies and State and local agencies, and the [Director] Administrator is authorized to consult with, receive information from, and enter into any necessary agreements or other arrangements with such other Federal departments and agencies (on a reimbursement basis) and such State and local agencies.

PAYMENTS

SEC. 1372. Any payments under this title may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the [Director] Administrator may determine.

* * * * *

EFFECTIVE DATE

SEC. 1377. This title shall take effect one hundred and twenty days following the date of its enactment, except that the [Director] Administrator on the basis of a finding that conditions exist necessitating the prescribing of an additional period, may prescribe a later effective date which in no event shall be more than one hundred and eighty days following such date of enactment.

FLOOD DISASTER PROTECTION ACT OF 1973

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Flood Disaster Protection Act of 1973".

* * * * *

DEFINITIONS

SEC. 3. (a) As used in this Act, unless the context otherwise requires, the term—

(1) * * *

* * * * *

(6) "[Director] Administrator" means the [Director] Administrator of the Federal Emergency Management Agency;

* * * * *

(b) The [Director] Administrator is authorized to define or redefine, by rules and regulations, any scientific or technical term used in this Act, insofar as such definition is not inconsistent with the purposes of this Act.

TITLE I—EXPANSION OF NATIONAL FLOOD INSURANCE PROGRAM

* * * * *

FLOOD INSURANCE PURCHASE AND COMPLIANCE REQUIREMENTS AND
ESCROW ACCOUNTS

SEC. 102. (a) After the expiration of sixty days following the date of enactment of this Act, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the [Director] *Administrator* as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: *Provided*, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

(b) REQUIREMENT FOR MORTGAGE LOANS.—

(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974) shall by regulation direct regulated [lending institutions not to make] *lending institutions*—

(A) *not to make*, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the [Director] *Administrator* as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less[.]; and

(B) *to accept private flood insurance as satisfaction of the flood insurance coverage requirement under subparagraph (A) if the coverage provided by such private flood insurance meets the requirements for coverage under such subparagraph.*

(2) FEDERAL AGENCY LENDERS.—A Federal agency lender may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the [Director] *Administrator* as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile

home and any personal property securing such loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1). *Each Federal agency lender shall accept private flood insurance as satisfaction of the flood insurance coverage requirement under the preceding sentence if the flood insurance coverage provided by such private flood insurance meets the requirements for coverage under such sentence.* Each Federal agency lender shall issue any regulations necessary to carry out this paragraph. Such regulations shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) GOVERNMENT-SPONSORED ENTERPRISES FOR HOUSING.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall implement procedures reasonably designed to ensure that, for any loan that is—

(A) secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the [Director] Administrator as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and

* * * * *
the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1). *The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall accept private flood insurance as satisfaction of the flood insurance coverage requirement under the preceding sentence if the flood insurance coverage provided by such private flood insurance meets the requirements for coverage under such sentence.*

* * * * *
(5) PRIVATE FLOOD INSURANCE DEFINED.—*In this subsection, the term “private flood insurance” means a contract for flood insurance coverage allowed for sale under the laws of any State.*

(c) EXCEPTIONS TO PURCHASE REQUIREMENTS.—

(1) STATE-OWNED PROPERTY.—Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the [Director] Administrator. The [Director] Administrator shall publish and periodically revise the list of States to which this subsection applies.

* * * * *
(d) ESCROW OF FLOOD INSURANCE PAYMENTS.—

(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require that, if a regulated lending institution requires the escrowing of taxes, insurance premiums, fees, or any

other charges for a loan secured by residential improved real estate or a mobile home, then all premiums and fees for flood insurance under the National Flood Insurance Act of 1968 for the real estate or mobile home shall be paid to the regulated lending institution or other servicer for the loan in a manner sufficient to make payments as due for the duration of the loan. Upon receipt of the premiums, the regulated lending institution or servicer of the loan shall deposit the premiums in an escrow account on behalf of the borrower. Upon receipt of a notice from the [Director] *Administrator* or the provider of the insurance that insurance premiums are due, the regulated lending institution or servicer shall pay from the escrow account to the provider of the insurance the amount of insurance premiums owed.

* * * * *

(e) PLACEMENT OF FLOOD INSURANCE BY LENDER.—

(1) NOTIFICATION TO BORROWER OF LACK OF COVERAGE.— If, at the time of origination or at any time during the term of a loan secured by improved real estate or by a mobile home located in an area that has been identified by the [Director] *Administrator* (at the time of the origination of the loan or at any time during the term of the loan) as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, the lender or servicer for the loan determines that the building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by such insurance in an amount less than the amount required for the property pursuant to paragraph (1), (2), or (3) of subsection (b), the lender or servicer shall notify the borrower under the loan that the borrower should obtain, at the borrower's expense, an amount of flood insurance for the building or mobile home and such personal property that is not less than the amount under subsection (b)(1), for the term of the loan.

(2) PURCHASE OF COVERAGE ON BEHALF OF BORROWER.— If the borrower fails to purchase such flood insurance within 45 days after notification under paragraph (1), the lender or servicer for the loan shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer for the loan in purchasing the [insurance.] *insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.*

(3) TERMINATION OF FORCE-PLACED INSURANCE.— *Within 30 days of receipt by the lender or servicer of a confirmation of a borrower's existing flood insurance coverage, the lender or servicer shall—*

(A) terminate the force-placed insurance; and

(B) refund to the borrower all force-placed insurance premiums paid by the borrower during any period during which the borrower's flood insurance coverage and the force-placed flood insurance coverage were each in effect,

and any related fees charged to the borrower with respect to the force-placed insurance during such period.

(4) SUFFICIENCY OF DEMONSTRATION.—For purposes of confirming a borrower’s existing flood insurance coverage, a lender or servicer for a loan shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

[(3)] (5) REVIEW OF DETERMINATION REGARDING REQUIRED PURCHASE.—

(A) IN GENERAL.—The borrower and lender for a loan secured by improved real estate or a mobile home may jointly request the **[Director] Administrator** to review a determination of whether the building or mobile home is located in an area having special flood hazards. Such request shall be supported by technical information relating to the improved real estate or mobile home. Not later than 45 days after the **[Director] Administrator** receives the request, the **[Director] Administrator** shall review the determination and provide to the borrower and the lender with a letter stating whether or not the building or mobile home is in an area having special flood hazards. The determination of the **[Director] Administrator** shall be final.

(B) EFFECT OF DETERMINATION.—Any person to whom a borrower provides a letter issued by the **[Director] Administrator** pursuant to subparagraph (A), stating that the building or mobile home securing the loan of the borrower is not in an area having special flood hazards, shall have no obligation under this title to require the purchase of flood insurance for such building or mobile home during the period determined by the **[Director] Administrator**, which shall be specified in the letter and shall begin on the date on which such letter is provided.

(C) EFFECT OF FAILURE TO RESPOND.—If a request under subparagraph (A) is made in connection with the origination of a loan and the **[Director] Administrator** fails to provide a letter under subparagraph (A) before the later of (i) the expiration of the 45-day period under such subparagraph, or (ii) the closing of the loan, no person shall have an obligation under this title to require the purchase of flood insurance for the building or mobile home securing the loan until such letter is provided.

[(4)] (6) APPLICABILITY.—This subsection shall apply to all loans outstanding on or after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

* * * * *

(h) FEE FOR DETERMINING LOCATION.—Notwithstanding any other Federal or State law, any person who makes a loan secured by improved real estate or a mobile home or any servicer for such a loan may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area having special flood hazards, but only in accordance with the following requirements:

(1) BORROWER FEE.—The borrower under such a loan may be charged the fee, but only if the determination—

(A) * * *

(B) is made pursuant to a revision or updating under section 1360(f) of the floodplain areas and flood-risk zones or publication of a notice or compendia under subsection (h) or (i) of section 1360 that affects the area in which the improved real estate or mobile home securing the loan is located or that, in the determination of the **[Director]** Administrator, may reasonably be considered to require a determination under this subsection; or

* * * * *

(i) *AUTHORITY TO TEMPORARILY SUSPEND MANDATORY PURCHASE REQUIREMENT.*—

(1) *FINDING BY ADMINISTRATOR THAT AREA IS AN ELIGIBLE AREA.*—For any area, upon a request submitted to the Administrator by a local government authority having jurisdiction over any portion of the area, the Administrator shall make a finding of whether the area is an eligible area under paragraph (3). If the Administrator finds that such area is an eligible area, the Administrator shall, in the discretion of the Administrator, designate a period during which such finding shall be effective, which shall not be longer in duration than 12 months.

(2) *SUSPENSION OF MANDATORY PURCHASE REQUIREMENT.*—If the Administrator makes a finding under paragraph (1) that an area is an eligible area under paragraph (3), during the period specified in the finding, the designation of such eligible area as an area having special flood hazards shall not be effective for purposes of subsections (a), (b), and (e) of this section, and section 202(a) of this Act. Nothing in this paragraph may be construed to prevent any lender, servicer, regulated lending institution, Federal agency lender, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, at the discretion of such entity, from requiring the purchase of flood insurance coverage in connection with the making, increasing, extending, or renewing of a loan secured by improved real estate or a mobile home located or to be located in such eligible area during such period or a lender or servicer from purchasing coverage on behalf of a borrower pursuant to subsection (e).

(3) *ELIGIBLE AREAS.*—An eligible area under this paragraph is an area that is designated or will, pursuant to any issuance, revision, updating, or other change in flood insurance maps that takes effect on or after the date of the enactment of the Flood Insurance Reform Act of 2012, become designated as an area having special flood hazards and that meets any one of the following 3 requirements:

(A) *AREAS WITH NO HISTORY OF SPECIAL FLOOD HAZARDS.*—The area does not include any area that has ever previously been designated as an area having special flood hazards.

(B) *AREAS WITH FLOOD PROTECTION SYSTEMS UNDER IMPROVEMENTS.*—The area was intended to be protected by a flood protection system—

(i) that has been decertified, or is required to be certified, as providing protection for the 100-year frequency flood standard;

(ii) that is being improved, constructed, or reconstructed; and

(iii) for which the Administrator has determined measurable progress toward completion of such improvement, construction, reconstruction is being made and toward securing financial commitments sufficient to fund such completion.

(C) *AREAS FOR WHICH APPEAL HAS BEEN FILED.*—An area for which a community has appealed designation of the area as having special flood hazards in a timely manner under section 1363.

(4) *EXTENSION OF DELAY.*—Upon a request submitted by a local government authority having jurisdiction over any portion of the eligible area, the Administrator may extend the period during which a finding under paragraph (1) shall be effective, except that—

(A) each such extension under this paragraph shall not be for a period exceeding 12 months; and

(B) for any area, the cumulative number of such extensions may not exceed 2.

(5) *ADDITIONAL EXTENSION FOR COMMUNITIES MAKING MORE THAN ADEQUATE PROGRESS ON FLOOD PROTECTION SYSTEM.*—

(A) *EXTENSION.*—

(i) *AUTHORITY.*—Except as provided in subparagraph (B), in the case of an eligible area for which the Administrator has, pursuant to paragraph (4), extended the period of effectiveness of the finding under paragraph (1) for the area, upon a request submitted by a local government authority having jurisdiction over any portion of the eligible area, if the Administrator finds that more than adequate progress has been made on the construction of a flood protection system for such area, as determined in accordance with the last sentence of section 1307(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(e)), the Administrator may, in the discretion of the Administrator, further extend the period during which the finding under paragraph (1) shall be effective for such area for an additional 12 months.

(ii) *LIMIT.*— For any eligible area, the cumulative number of extensions under this subparagraph may not exceed 2.

(B) *EXCLUSION FOR NEW MORTGAGES.*—

(i) *EXCLUSION.*—Any extension under subparagraph (A) of this paragraph of a finding under paragraph (1) shall not be effective with respect to any excluded property after the origination, increase, extension, or renewal of the loan referred to in clause (ii)(II) for the property.

(ii) *EXCLUDED PROPERTIES.*—For purposes of this subparagraph, the term “excluded property” means any improved real estate or mobile home—

(I) that is located in an eligible area; and

(II) for which, during the period that any extension under subparagraph (A) of this paragraph of a finding under paragraph (1) is otherwise in effect for the eligible area in which such property is located—

(aa) a loan that is secured by the property is originated; or

(bb) any existing loan that is secured by the property is increased, extended, or renewed.

(6) *RULE OF CONSTRUCTION.*—Nothing in this subsection may be construed to affect the applicability of a designation of any area as an area having special flood hazards for purposes of the availability of flood insurance coverage, criteria for land management and use, notification of flood hazards, eligibility for mitigation assistance, or any other purpose or provision not specifically referred to in paragraph (2).

(7) *REPORTS.*—The Administrator shall, in each annual report submitted pursuant to section 1320, include information identifying each finding under paragraph (1) by the Administrator during the preceding year that an area is an area having special flood hazards, the basis for each such finding, any extensions pursuant to paragraph (4) of the periods of effectiveness of such findings, and the reasons for such extensions.

TITLE II—DISASTER MITIGATION REQUIREMENTS

NOTIFICATION TO FLOOD-PRONE AREAS

SEC. 201. (a) Not later than six months following the enactment of this title, the [Director] Administrator shall publish information in accordance with subsection 1360(1) of the National Flood Insurance Act of 1968, and shall notify the chief executive officer of each known flood-prone community not already participating in the national flood insurance program of its tentative identification as a community containing one or more areas having special flood hazards.

(b) After such notification, each tentatively identified community shall either (1) promptly make proper application to participate in the national flood insurance program or (2) within six months submit technical data sufficient to establish to the satisfaction of the [Director] Administrator that the community either is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The [Director] Administrator may, in his discretion, grant a public hearing to any community with respect to which conflicting data exist as to the nature and extent of a flood hazard. If the [Director] Administrator decides not to hold a hearing, the community shall be given an opportunity to submit written and documentary evidence. Whether or not such hearing is granted, the [Director's] Administrator's final determination as to the existence

or extent of a flood hazard area in a particular community shall be deemed conclusive for the purposes of this Act if supported by substantial evidence in the record considered as a whole.

(c) As information becomes available to the [Director] Administrator, concerning the existence of flood hazards in communities not known to be flood prone at the time of the initial notification provided for by subsection (a) of this section he shall provide similar notifications to the chief executive officers of such additional communities, which shall then be subject to the requirements of subsection (b) of this section.

* * * * *

(e) The [Director] Administrator is authorized to establish administrative procedures whereby the identification under this section of one or more areas in the community as having special flood hazards may be appealed to the [Director] Administrator by the community or any owner or lessee of real property within the community who believes his property has been inadvertently included in a special flood hazard area by the identification. When, incident to any appeal under this subsection, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the [Director] Administrator shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the [Director] Administrator in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection not to exceed \$250,000.

(f) ANNUAL NOTIFICATION.—The Administrator, in consultation with affected communities, shall establish and carry out a plan to notify residents of areas having special flood hazards, on an annual basis—

- (1) that they reside in such an area;
- (2) of the geographical boundaries of such area;
- (3) of whether section 1308(g) of the National Flood Insurance Act of 1968 applies to properties within such area;
- (4) of the provisions of section 102 requiring purchase of flood insurance coverage for properties located in such an area, including the date on which such provisions apply with respect to such area, taking into consideration section 102(i); and
- (5) of a general estimate of what similar homeowners in similar areas typically pay for flood insurance coverage, taking into consideration section 1308(g) of the National Flood Insurance Act of 1968.

EFFECT OF NONPARTICIPATION IN FLOOD INSURANCE PROGRAM

SEC. 202. (a) No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by

the **[Director]** *Administrator* as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

* * * * *

AUTHORITY TO ISSUE REGULATIONS

SEC. 205. (a) The **[Director]** *Administrator* is authorized to issue such regulations as may be necessary to carry out the purpose of this Act.

(b) The head of each Federal agency that administers a program of financial assistance relating to the acquisition, construction, reconstruction, repair, or improvement of publicly or privately owned land or facilities, and each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions, shall, in cooperation with the **[Director]** *Administrator*, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act.

CONSULTATION WITH LOCAL OFFICIALS

SEC. 206. In carrying out his responsibilities under the provisions of this title and the National Flood Insurance Act of 1968 which relate to notification to and identification of flood-prone areas and the application of criteria for land management and use, including criteria derived from data reflecting new developments that may indicate the desirability of modifying elevations based on previous flood studies, the **[Director]** *Administrator* shall establish procedures assuring adequate consultation with the appropriate elected officials of general purpose local governments, including but not limited to those local governments whose prior eligibility under the program has been suspended. Such consultations shall include, but not be limited to, fully informing local officials at the commencement of any flood elevation study or investigation undertaken by any agency on behalf of the **[Director]** *Administrator* concerning the nature and purpose of the study, the areas involved, the manner in which the study is to be undertaken, the general principles to be applied, and the use to be made of the data obtained. The **[Director]** *Administrator* shall encourage local officials to disseminate information concerning such study widely within the community, so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency during the course of the study.

* * * * *

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

* * * * *

SPECIAL INFORMATION BOOKLETS

SEC. 5. (a) * * *

* * * * *

(c) Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Bureau. Each such good faith estimate shall include the following conspicuous statements and information: (1) that flood insurance coverage for residential real estate is generally available under the national flood insurance program whether or not the real estate is located in an area having special flood hazards and that, to obtain such coverage, a home owner or purchaser should contact the national flood insurance program; (2) a telephone number and a location on the Internet by which a home owner or purchaser can contact the national flood insurance program; and (3) that the escrowing of flood insurance payments is required for many loans under section 102(d) of the Flood Disaster Protection Act of 1973, and may be a convenient and available option with respect to other loans.

* * * * *

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

TITLE I—COMMUNITY DEVELOPMENT

* * * * *

ELIGIBLE ACTIVITIES

SEC. 105. (a) Activities assisted under this title may include only—

(1) * * *

* * * * *

(24) the construction or improvement of tornado-safe shelters for residents of manufactured housing, and the provision of assistance (including loans and grants) to nonprofit and for-profit entities (including owners of manufactured housing parks) for such construction or improvement, except that—

(A) * * *

* * * * *

(D) amounts may not be used for a shelter as provided under this paragraph unless there is located, within the neighborhood in which the shelter is located (or, in the case of a shelter located in a manufactured housing park, within 1,500 feet of such park), a warning siren that is operated in accordance with such local, regional, or national disaster warning programs or systems as the Secretary, after consultation with the Director of the Federal Emergency Management Agency, considers appropriate to ensure adequate notice of occupants of manufactured housing located in such neighborhood or park of a tornado; [and]

(25) lead-based paint hazard evaluation and reduction, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992[.];

(26) *supplementing existing State or local funding for administration of building code enforcement by local building code enforcement departments, including for increasing staffing, providing staff training, increasing staff competence and professional qualifications, and supporting individual certification or departmental accreditation, and for capital expenditures specifically dedicated to the administration of the building code enforcement department, except that, to be eligible to use amounts as provided in this paragraph—*

(A) *a building code enforcement department shall provide matching, non-Federal funds to be used in conjunction with amounts used under this paragraph in an amount—*

(i) *in the case of a building code enforcement department serving an area with a population of more than 50,000, equal to not less than 50 percent of the total amount of any funds made available under this title that are used under this paragraph;*

(ii) *in the case of a building code enforcement department serving an area with a population of between 20,001 and 50,000, equal to not less than 25 percent of the total amount of any funds made available under this title that are used under this paragraph; and*

(iii) *in the case of a building code enforcement department serving an area with a population of less than 20,000, equal to not less than 12.5 percent of the total amount of any funds made available under this title that are used under this paragraph,*

except that the Secretary may waive the matching fund requirements under this subparagraph, in whole or in part, based upon the level of economic distress of the jurisdiction in which is located the local building code enforcement department that is using amounts for purposes under this paragraph, and shall waive such matching fund requirements in whole for any recipient jurisdiction that has dedicated all building code permitting fees to the conduct of local building code enforcement; and

(B) *any building code enforcement department using funds made available under this title for purposes under this paragraph shall empanel a code administration and enforcement team consisting of at least 1 full-time building code enforcement officer, a city planner, and a health planner or similar officer; and*

(27) *provision of assistance to local governmental agencies responsible for floodplain management activities (including such agencies of Indians tribes, as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)) in communities that participate in the national flood insurance program under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), only for carrying out outreach activities to encourage and facilitate the purchase of flood insurance protection under such Act*

by owners and renters of properties in such communities and to promote educational activities that increase awareness of flood risk reduction; except that—

(A) amounts used as provided under this paragraph shall be used only for activities designed to—

(i) identify owners and renters of properties in communities that participate in the national flood insurance program, including owners of residential and commercial properties;

(ii) notify such owners and renters when their properties become included in, or when they are excluded from, an area having special flood hazards and the effect of such inclusion or exclusion on the applicability of the mandatory flood insurance purchase requirement under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) to such properties;

(iii) educate such owners and renters regarding the flood risk and reduction of this risk in their community, including the continued flood risks to areas that are no longer subject to the flood insurance mandatory purchase requirement;

(iv) educate such owners and renters regarding the benefits and costs of maintaining or acquiring flood insurance, including, where applicable, lower-cost preferred risk policies under this title for such properties and the contents of such properties;

(v) encourage such owners and renters to maintain or acquire such coverage;

(vi) notify such owners of where to obtain information regarding how to obtain such coverage, including a telephone number, mailing address, and Internet site of the Administrator of the Federal Emergency Management Agency (in this paragraph referred to as the “Administrator”) where such information is available; and

(vii) educate local real estate agents in communities participating in the national flood insurance program regarding the program and the availability of coverage under the program for owners and renters of properties in such communities, and establish coordination and liaisons with such real estate agents to facilitate purchase of coverage under the National Flood Insurance Act of 1968 and increase awareness of flood risk reduction;

(B) in any fiscal year, a local governmental agency may not use an amount under this paragraph that exceeds 3 times the amount that the agency certifies, as the Secretary, in consultation with the Administrator, shall require, that the agency will contribute from non-Federal funds to be used with such amounts used under this paragraph only for carrying out activities described in subparagraph (A); and for purposes of this subparagraph, the term “non-Federal funds” includes State or local government agency

amounts, in-kind contributions, any salary paid to staff to carry out the eligible activities of the local governmental agency involved, the value of the time and services contributed by volunteers to carry out such services (at a rate determined by the Secretary), and the value of any donated material or building and the value of any lease on a building;

(C) a local governmental agency that uses amounts as provided under this paragraph may coordinate or contract with other agencies and entities having particular capacities, specialties, or experience with respect to certain populations or constituencies, including elderly or disabled families or persons, to carry out activities described in subparagraph (A) with respect to such populations or constituencies; and

(D) each local government agency that uses amounts as provided under this paragraph shall submit a report to the Secretary and the Administrator, not later than 12 months after such amounts are first received, which shall include such information as the Secretary and the Administrator jointly consider appropriate to describe the activities conducted using such amounts and the effect of such activities on the retention or acquisition of flood insurance coverage.

* * * * *

FEDERAL FLOOD INSURANCE ACT OF 1956

* * * * *

FUNDS AND TREASURY BORROWING

SEC. 15. * * *

(e) The **Director** Administrator of the Federal Emergency Management Agency is authorized to issue to the Secretary of the Treasury from time to time and have outstanding at any one time, in an amount not exceeding \$500,000,000 (or such greater amount as may be approved by the President) notes or other obligations in such forms and denominations bearing such maturities, and subject to such terms and conditions as may be prescribed by the **Director** Administrator of the Federal Emergency Management Agency, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such notes and obligations.

The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

* * * * *

DISSENTING VIEWS

[Please see attached Dissenting views]

DISSENTING VIEWS ON BUDGET RECONCILIATION

We are very disappointed by the partisan, non-substantive approach taken by the Republican majority to the important issue of deficit reduction.

The Republicans have simply used the reconciliation vehicle as a means of achieving what they have been unable to do through the regular legislative process, namely repeal the section of the Financial Reform bill – urged on us by Bush administration appointees after their experience with the crisis of 2008 – that provide for a way to deal with large financial institutions that have become too indebted to exist. The legislation that was adopted requires that such institutions be put out of existence, with the shareholders wiped out and the officers and directors abolished. The law then mandates that the government – as recommended, we note, by Secretary of the Treasury Paulson – be given the authority to make some payments if necessary to prevent contagion from the unpaid debts of this now defunct institution, but also mandates the Secretary of the Treasury to recover any expenditure so made from large financial institutions. Because of the very specific timeframe Congress has imposed on the CBO, they were required to rule that there would be a \$22 billion shortfall, again not because there would not be reimbursement, but because the reimbursement would lag the expenditure as a result of the way the law is written, Thus, CBO estimates that \$22 billion would be owed to the government at the end of the ten year period. It should be noted again that this is not an argument by CBO that the federal government would lose money. It is simply an assertion that at the end of an arbitrary ten year period, money that would eventually be repaid would be owed.

The Democratic response to this scoring quirk was to simply move up the period within which institutions with \$50 billion dollars or more would have to pay in the funding. Since CBO estimated that the cost of this would be \$30 billion -- \$22 billion in reimbursements and an \$8 billion tax reduction in consequence for the paying financial institutions -- we proposed that \$30 billion be collected over a ten year period. The Republicans, expressing great sympathy for the banks which they believe, apparently, to be overtaxed, and thinking that these banks should not have to contribute to paying the cost of the financial crisis they caused, voted this down on a party line vote. Instead they responded by voting to repeal the entire orderly liquidation authority, which would put us back where we were in 2008, when the failure of Lehman Brothers triggered a crisis.

In other words, rather than assess financial institutions at \$50 billion dollars in assets and more, a total of \$3 billion a year collectively to provide some backup in case we needed to respond to a potential crisis, the Republicans repealed the entire mechanism that had been set up -- and we note again, in response to the requests of Treasury Secretary Paulson, Federal Reserve Chairman Bernanke, and FDIC Chairman Bair -- all three of them Bush appointees.

The Republicans further used reconciliation for their ideological purposes by singling out the Consumer Financial Protection Bureau of all banking regulatory agencies to be subject to appropriations, rather than to have its own revenue stream guaranteed. When Democrats argue that if this was to be the model, it should apply also to the Federal Reserve System and the Comptroller of the Currency, the Republicans, with great inconsistency, voted us down. That is, of all the federal regulatory agencies that are not subject to the appropriations process,

only the Consumer Financial Protection Bureau was singled out for this treatment, and the Republicans did so noting that if they had their way, they would thus be able to reduce the funding for this important consumer agency by billions of dollars over a ten year period. In addition to refusing to apply this principle to the Comptroller of the Currency or the Federal Reserve, the Republicans also neglected to apply it to the Federal Housing Financing Administration, which governs Fannie Mae and Freddie Mac, and when the Republicans were asked why they were not doing that, the result was an embarrassed silence.

Finally, the Republicans seek once again to repeal the HAMP Program which has resulted in the prevention of hundreds of thousands of foreclosures. This is in line with the Republican philosophy that the federal government should do nothing to deal with the crisis in housing, that is not only a terrible problem for individuals, but has a negative effect on the economy as a whole.

The last part of the reconciliation was the adoption in the bill of the bipartisan flood insurance bill that has been worked on equally by Democrats and Republicans and we are supportive of this provision.

Dissenting Views on Budget Reconciliation

Bamford

Joe Brown

Sven Johann

Ernest Klein

Doug Peters

Wm. Lucy Clay

Carolyn K. Maloney

Ed Schultz

Maxine Waters

Mr. Calk

Michael E. Cogan

Les V. Ostar

Mehri L. Watt

Rubin Hernandez

Alphonso

Gary L. Ackerman

Alan

Kerth Ellin

Carolyn McCarty

**COMMITTEE ON FINANCIAL SERVICES BUDGET RECONCILIATION
LEGISLATIVE RECOMMENDATIONS**

[Please see attached]

**[Budget reconciliation legislative recommendations of the
Committee on Financial Services]**

1 TITLE III—FINANCIAL SERVICES

2 SEC. 301. TABLE OF CONTENTS.

3 The table of contents for this title is as follows:

TITLE III—FINANCIAL SERVICES

Sec. 301. Table of contents.

Subtitle A—Orderly Liquidation Fund

Sec. 311. Repeal of liquidation authority.

Subtitle B—Home Affordable Modification Program

Sec. 321. Short title.

Sec. 322. Congressional findings.

Sec. 323. Termination of authority.

Sec. 324. Sense of Congress.

Subtitle C—Bureau of Consumer Financial Protection

Sec. 331. Bringing the Bureau of Consumer Financial Protection into the regular appropriations process.

Subtitle D—Flood Insurance Reform

Sec. 341. Short title.

Sec. 342. Extensions.

Sec. 343. Mandatory purchase.

Sec. 344. Reforms of coverage terms.

Sec. 345. Reforms of premium rates.

Sec. 346. Technical Mapping Advisory Council.

Sec. 347. FEMA incorporation of new mapping protocols.

Sec. 348. Treatment of levees.

Sec. 349. Privatization initiatives.

Sec. 350. FEMA annual report on insurance program.

Sec. 351. Mitigation assistance.

Sec. 352. Notification to homeowners regarding mandatory purchase requirement applicability and rate phase-ins.

Sec. 353. Notification to members of congress of flood map revisions and updates.

Sec. 354. Notification and appeal of map changes; notification to communities of establishment of flood elevations.

Sec. 355. Notification to tenants of availability of contents insurance.

- Sec. 356. Notification to policy holders regarding direct management of policy by FEMA.
- Sec. 357. Notice of availability of flood insurance and escrow in RESPA good faith estimate.
- Sec. 358. Reimbursement for costs incurred by homeowners and communities obtaining letters of map amendment or revision.
- Sec. 359. Enhanced communication with certain communities during map updating process.
- Sec. 360. Notification to residents newly included in flood hazard areas.
- Sec. 361. Treatment of swimming pool enclosures outside of hurricane season.
- Sec. 362. Information regarding multiple perils claims.
- Sec. 363. FEMA authority to reject transfer of policies.
- Sec. 364. Appeals.
- Sec. 365. Reserve fund.
- Sec. 366. CDBG eligibility for flood insurance outreach activities and community building code administration grants.
- Sec. 367. Technical corrections.
- Sec. 368. Requiring competition for national flood insurance program policies.
- Sec. 369. Studies of voluntary community-based flood insurance options.
- Sec. 370. Report on inclusion of building codes in floodplain management criteria.
- Sec. 371. Study on graduated risk.
- Sec. 372. Report on flood-in-progress determination.
- Sec. 373. Study on repaying flood insurance debt.
- Sec. 374. No cause of action.
- Sec. 375. Authority for the corps of engineers to provide specialized or technical services.

Subtitle E—Repeal of the Office of Financial Research

- Sec. 381. Repeal of the Office of Financial Research.

1 **Subtitle A—Orderly Liquidation**
2 **Fund**

3 **SEC. 311. REPEAL OF LIQUIDATION AUTHORITY.**

4 (a) IN GENERAL.—Title II of the Dodd-Frank Wall
5 Street Reform and Consumer Protection Act is hereby re-
6 pealed and any Federal law amended by such title shall,
7 on and after the effective date of this Act, be effective
8 as if title II of the Dodd-Frank Wall Street Reform and
9 Consumer Protection Act had not been enacted.

10 (b) CONFORMING AMENDMENTS.—

1 (1) DODD-FRANK WALL STREET REFORM AND
2 CONSUMER PROTECTION ACT.—The Dodd-Frank
3 Wall Street Reform and Consumer Protection Act is
4 amended—

5 (A) in the table of contents for such Act,
6 by striking all items relating to title II;

7 (B) in section 165(d)(6), by striking “, a
8 receiver appointed under title II,”;

9 (C) in section 716(g), by striking “or a
10 covered financial company under title II”;

11 (D) in section 1105(e)(5), by striking
12 “amount of any securities issued under that
13 chapter 31 for such purpose shall be treated in
14 the same manner as securities issued under sec-
15 tion 208(n)(5)(E)” and inserting “issuances of
16 such securities under that chapter 31 for such
17 purpose shall by treated as public debt trans-
18 actions of the United States, and the proceeds
19 from the sale of any obligations acquired by the
20 Secretary under this paragraph shall be depos-
21 ited into the Treasury of the United States as
22 miscellaneous receipts”; and

23 (E) in section 1106(c)(2), by amending
24 subparagraph (A) to read as follows:

1 “(A) require the company to file a petition
2 for bankruptcy under section 301 of title 11,
3 United States Code; or”.

4 (2) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
5 tion 10(b)(3) of the Federal Deposit Insurance Act
6 (12 U.S.C. 1820(b)(3)) is amended by striking “, or
7 of such nonbank financial company supervised by
8 the Board of Governors or bank holding company
9 described in section 165(a) of the Financial Stability
10 Act of 2010, for the purpose of implementing its au-
11 thority to provide for orderly liquidation of any such
12 company under title II of that Act”.

13 (3) FEDERAL RESERVE ACT.—Section 13(3) of
14 the Federal Reserve Act is amended—

15 (A) in subparagraph (B)—

16 (i) in clause (ii), by striking “, resolu-
17 tion under title II of the Dodd-Frank Wall
18 Street Reform and Consumer Protection
19 Act, or” and inserting “or is subject to
20 resolution under”; and

21 (ii) in clause (iii), by striking “, reso-
22 lution under title II of the Dodd-Frank
23 Wall Street Reform and Consumer Protec-
24 tion Act, or” and inserting “or resolution
25 under”; and

1 (B) by striking subparagraph (E).

2 **Subtitle B—Home Affordable**
3 **Modification Program**

4 **SEC. 321. SHORT TITLE.**

5 This subtitle may be cited as the “HAMP Termi-
6 nation Act of 2012”.

7 **SEC. 322. CONGRESSIONAL FINDINGS.**

8 The Congress finds the following:

9 (1) According to the Department of the Treas-
10 ury—

11 (A) the Home Affordable Modification Pro-
12 gram (HAMP) is designed to “help as many as
13 3 to 4 million financially struggling homeowners
14 avoid foreclosure by modifying loans to a level
15 that is affordable for borrowers now and sus-
16 tainable over the long term”; and

17 (B) as of February 2012, only 782,609 ac-
18 tive permanent mortgage modifications were
19 made under HAMP.

20 (2) Many homeowners whose HAMP modifica-
21 tions were canceled suffered because they made fu-
22 tile payments and some of those homeowners were
23 even forced into foreclosure.

24 (3) The Special Inspector General for TARP
25 reported that HAMP “benefits only a small portion

1 of distressed homeowners, offers others little more
2 than false hope, and in certain cases causes more
3 harm than good”.

4 (4) Approximately \$30 billion was obligated by
5 the Department of the Treasury to HAMP, however,
6 approximately only \$2.54 billion has been disbursed.

7 (5) Terminating HAMP would save American
8 taxpayers approximately \$2.84 billion, according to
9 the Congressional Budget Office.

10 **SEC. 323. TERMINATION OF AUTHORITY.**

11 Section 120 of the Emergency Economic Stabilization
12 Act of 2008 (12 U.S.C. 5230) is amended by adding at
13 the end the following new subsection:

14 “(c) TERMINATION OF AUTHORITY TO PROVIDE
15 NEW ASSISTANCE UNDER THE HOME AFFORDABLE
16 MODIFICATION PROGRAM.—

17 “(1) IN GENERAL.—Except as provided under
18 paragraph (2), after the date of the enactment of
19 this subsection the Secretary may not provide any
20 assistance under the Home Affordable Modification
21 Program under the Making Home Affordable initia-
22 tive of the Secretary, authorized under this Act, on
23 behalf of any homeowner.

24 “(2) PROTECTION OF EXISTING OBLIGATIONS
25 ON BEHALF OF HOMEOWNERS ALREADY EXTENDED

1 AN OFFER TO PARTICIPATE IN THE PROGRAM.—
2 Paragraph (1) shall not apply with respect to assist-
3 ance provided on behalf of a homeowner who, before
4 the date of the enactment of this subsection, was ex-
5 tended an offer to participate in the Home Afford-
6 able Modification Program on a trial or permanent
7 basis.

8 “(3) DEFICIT REDUCTION.—

9 “(A) USE OF UNOBLIGATED FUNDS.—Not-
10 withstanding any other provision of this title,
11 the amounts described in subparagraph (B)
12 shall not be available after the date of the en-
13 actment of this subsection for obligation or ex-
14 penditure under the Home Affordable Modifica-
15 tion Program of the Secretary, but should be
16 covered into the General Fund of the Treasury
17 and should be used only for reducing the budg-
18 et deficit of the Federal Government.

19 “(B) IDENTIFICATION OF UNOBLIGATED
20 FUNDS.—The amounts described in this sub-
21 paragraph are any amounts made available
22 under title I of the Emergency Economic Sta-
23 bilization Act of 2008 that—

24 “(i) have been allocated for use, but
25 not yet obligated as of the date of the en-

1 actment of this subsection, under the
2 Home Affordable Modification Program of
3 the Secretary; and

4 “(ii) are not necessary for providing
5 assistance under such Program on behalf
6 of homeowners who, pursuant to para-
7 graph (2), may be provided assistance
8 after the date of the enactment of this sub-
9 section.

10 “(4) STUDY OF USE OF PROGRAM BY MEMBERS
11 OF THE ARMED FORCES, VETERANS, AND GOLD
12 STAR RECIPIENTS.—

13 “(A) STUDY.—The Secretary shall conduct
14 a study to determine the extent of usage of the
15 Home Affordable Modification Program by, and
16 the impact of such Program on, covered home-
17 owners.

18 “(B) REPORT.—Not later than the expira-
19 tion of the 90-day period beginning on the date
20 of the enactment of this subsection, the Sec-
21 retary shall submit to the Congress a report
22 setting forth the results of the study under sub-
23 paragraph (A) and identifying best practices,
24 derived from studying the Home Affordable
25 Modification Program, that could be applied to

1 existing mortgage assistance programs available
2 to covered homeowners.

3 “(C) COVERED HOMEOWNER.—For pur-
4 poses of this subsection, the term ‘covered
5 homeowner’ means a homeowner who is—

6 “(i) a member of the Armed Forces of
7 the United States on active duty or the
8 spouse or parent of such a member;

9 “(ii) a veteran, as such term is de-
10 fined in section 101 of title 38, United
11 States Code; or

12 “(iii) eligible to receive a Gold Star
13 lapel pin under section 1126 of title 10,
14 United States Code, as a widow, parent, or
15 next of kin of a member of the Armed
16 Forces person who died in a manner de-
17 scribed in subsection (a) of such section.

18 “(5) PUBLICATION OF MEMBER AVAILABILITY
19 FOR ASSISTANCE.—Not later than 5 days after the
20 date of the enactment of this subsection, the Sec-
21 retary of the Treasury shall publish to its Website
22 on the World Wide Web in a prominent location,
23 large point font, and boldface type the following
24 statement: ‘The Home Affordable Modification Pro-
25 gram (HAMP) has been terminated. If you are hav-

1 ing trouble paying your mortgage and need help con-
2 tacting your lender or servicer for purposes of nego-
3 tiating or acquiring a loan modification, please con-
4 tact your Member of Congress to assist you in con-
5 tacting your lender or servicer for the purpose of ne-
6 gotiating or acquiring a loan modification.’.

7 “(6) NOTIFICATION TO HAMP APPLICANTS RE-
8 QUIRED.—Not later than 30 days after the date of
9 the enactment of this subsection, the Secretary of
10 the Treasury shall inform each individual who ap-
11 plied for the Home Affordable Modification Program
12 and will not be considered for a modification under
13 such Program due to termination of such Program
14 under this subsection—

15 “(A) that such Program has been termi-
16 nated;

17 “(B) that loan modifications under such
18 Program are no longer available;

19 “(C) of the name and contact information
20 of such individual’s Member of Congress; and

21 “(D) that the individual should contact his
22 or her Member of Congress to assist the indi-
23 vidual in contacting the individual’s lender or
24 servicer for the purpose of negotiating or ac-
25 quiring a loan modification.”.

1 **SEC. 324. SENSE OF CONGRESS.**

2 The Congress encourages banks to work with home-
3 owners to provide loan modifications to those that are eli-
4 gible. The Congress also encourages banks to work and
5 assist homeowners and prospective homeowners with fore-
6 closure prevention programs and information on loan
7 modifications.

8 **Subtitle C—Bureau of Consumer**
9 **Financial Protection**

10 **SEC. 331. BRINGING THE BUREAU OF CONSUMER FINAN-**
11 **CIAL PROTECTION INTO THE REGULAR AP-**
12 **PROPRIATIONS PROCESS.**

13 Section 1017 of the Consumer Financial Protection
14 Act of 2010 is amended—

15 (1) in subsection (a)—

16 (A) by amending the heading of such sub-
17 section to read as follows: “BUDGET, FINAN-
18 CIAL MANAGEMENT, AND AUDIT.—”;

19 (B) by striking paragraphs (1), (2), and
20 (3);

21 (C) by redesignating paragraphs (4) and
22 (5) as paragraphs (1) and (2), respectively; and

23 (D) by striking subparagraphs (E) and (F)
24 of paragraph (1), as so redesignated;

25 (2) by striking subsections (b), (c), and (d);

1 (3) by redesignating subsection (e) as sub-
2 section (b); and

3 (4) in subsection (b), as so redesignated—

4 (A) by striking paragraphs (1), (2), and
5 (3) and inserting the following:

6 “(1) AUTHORIZATION OF APPROPRIATIONS.—

7 There is authorized to be appropriated
8 \$200,000,000 to carry out this title for each of fiscal
9 years 2012 and 2013.”; and

10 (B) by redesignating paragraph (4) as
11 paragraph (2).

12 **Subtitle D—Flood Insurance** 13 **Reform**

14 **SEC. 341. SHORT TITLE.**

15 This subtitle may be cited as the “Flood Insurance
16 Reform Act of 2012”.

17 **SEC. 342. EXTENSIONS.**

18 (a) EXTENSION OF PROGRAM.—Section 1319 of the
19 National Flood Insurance Act of 1968 (42 U.S.C. 4026)
20 is amended by striking “the earlier of the date of the en-
21 actment into law of an Act that specifically amends the
22 date specified in this section or May 31, 2012” and insert-
23 ing “September 30, 2016”.

24 (b) EXTENSION OF FINANCING.—Section 1309(a) of
25 such Act (42 U.S.C. 4016(a)) is amended by striking “the

1 earlier of the date of the enactment into law of an Act
2 that specifically amends the date specified in this section
3 or May 31, 2012” and inserting “September 30, 2016”.

4 **SEC. 343. MANDATORY PURCHASE.**

5 (a) AUTHORITY TO TEMPORARILY SUSPEND MANDA-
6 TORY PURCHASE REQUIREMENT.—

7 (1) IN GENERAL.—Section 102 of the Flood
8 Disaster Protection Act of 1973 (42 U.S.C. 4012a)
9 is amended by adding at the end the following new
10 subsection:

11 “(i) AUTHORITY TO TEMPORARILY SUSPEND MAN-
12 DATORY PURCHASE REQUIREMENT.—

13 “(1) FINDING BY ADMINISTRATOR THAT AREA
14 IS AN ELIGIBLE AREA.—For any area, upon a re-
15 quest submitted to the Administrator by a local gov-
16 ernment authority having jurisdiction over any por-
17 tion of the area, the Administrator shall make a
18 finding of whether the area is an eligible area under
19 paragraph (3). If the Administrator finds that such
20 area is an eligible area, the Administrator shall, in
21 the discretion of the Administrator, designate a pe-
22 riod during which such finding shall be effective,
23 which shall not be longer in duration than 12
24 months.

1 “(2) SUSPENSION OF MANDATORY PURCHASE
2 REQUIREMENT.—If the Administrator makes a find-
3 ing under paragraph (1) that an area is an eligible
4 area under paragraph (3), during the period speci-
5 fied in the finding, the designation of such eligible
6 area as an area having special flood hazards shall
7 not be effective for purposes of subsections (a), (b),
8 and (e) of this section, and section 202(a) of this
9 Act. Nothing in this paragraph may be construed to
10 prevent any lender, servicer, regulated lending insti-
11 tution, Federal agency lender, the Federal National
12 Mortgage Association, or the Federal Home Loan
13 Mortgage Corporation, at the discretion of such enti-
14 ty, from requiring the purchase of flood insurance
15 coverage in connection with the making, increasing,
16 extending, or renewing of a loan secured by im-
17 proved real estate or a mobile home located or to be
18 located in such eligible area during such period or
19 a lender or servicer from purchasing coverage on be-
20 half of a borrower pursuant to subsection (e).

21 “(3) ELIGIBLE AREAS.—An eligible area under
22 this paragraph is an area that is designated or will,
23 pursuant to any issuance, revision, updating, or
24 other change in flood insurance maps that takes ef-
25 fect on or after the date of the enactment of the

1 Flood Insurance Reform Act of 2012, become des-
2 ignated as an area having special flood hazards and
3 that meets any one of the following 3 requirements:

4 “(A) AREAS WITH NO HISTORY OF SPE-
5 CIAL FLOOD HAZARDS.—The area does not in-
6 clude any area that has ever previously been
7 designated as an area having special flood haz-
8 ards.

9 “(B) AREAS WITH FLOOD PROTECTION
10 SYSTEMS UNDER IMPROVEMENTS.—The area
11 was intended to be protected by a flood protec-
12 tion system—

13 “(i) that has been decertified, or is re-
14 quired to be certified, as providing protec-
15 tion for the 100-year frequency flood
16 standard;

17 “(ii) that is being improved, con-
18 structed, or reconstructed; and

19 “(iii) for which the Administrator has
20 determined measurable progress toward
21 completion of such improvement, construc-
22 tion, reconstruction is being made and to-
23 ward securing financial commitments suffi-
24 cient to fund such completion.

1 “(C) AREAS FOR WHICH APPEAL HAS
2 BEEN FILED.—An area for which a community
3 has appealed designation of the area as having
4 special flood hazards in a timely manner under
5 section 1363.

6 “(4) EXTENSION OF DELAY.—Upon a request
7 submitted by a local government authority having
8 jurisdiction over any portion of the eligible area, the
9 Administrator may extend the period during which a
10 finding under paragraph (1) shall be effective, ex-
11 cept that—

12 “(A) each such extension under this para-
13 graph shall not be for a period exceeding 12
14 months; and

15 “(B) for any area, the cumulative number
16 of such extensions may not exceed 2.

17 “(5) ADDITIONAL EXTENSION FOR COMMU-
18 NITIES MAKING MORE THAN ADEQUATE PROGRESS
19 ON FLOOD PROTECTION SYSTEM.—

20 “(A) EXTENSION.—

21 “(i) AUTHORITY.—Except as provided
22 in subparagraph (B), in the case of an eli-
23 gible area for which the Administrator has,
24 pursuant to paragraph (4), extended the
25 period of effectiveness of the finding under

1 paragraph (1) for the area, upon a request
2 submitted by a local government authority
3 having jurisdiction over any portion of the
4 eligible area, if the Administrator finds
5 that more than adequate progress has been
6 made on the construction of a flood protec-
7 tion system for such area, as determined in
8 accordance with the last sentence of sec-
9 tion 1307(e) of the National Flood Insur-
10 ance Act of 1968 (42 U.S.C. 4014(e)), the
11 Administrator may, in the discretion of the
12 Administrator, further extend the period
13 during which the finding under paragraph
14 (1) shall be effective for such area for an
15 additional 12 months.

16 “(ii) LIMIT.— For any eligible area,
17 the cumulative number of extensions under
18 this subparagraph may not exceed 2.

19 “(B) EXCLUSION FOR NEW MORTGAGES.—

20 “(i) EXCLUSION.—Any extension
21 under subparagraph (A) of this paragraph
22 of a finding under paragraph (1) shall not
23 be effective with respect to any excluded
24 property after the origination, increase, ex-

1 tension, or renewal of the loan referred to
2 in clause (ii)(II) for the property.

3 “(ii) EXCLUDED PROPERTIES.—For
4 purposes of this subparagraph, the term
5 ‘excluded property’ means any improved
6 real estate or mobile home—

7 “(I) that is located in an eligible
8 area; and

9 “(II) for which, during the period
10 that any extension under subpara-
11 graph (A) of this paragraph of a find-
12 ing under paragraph (1) is otherwise
13 in effect for the eligible area in which
14 such property is located—

15 “(aa) a loan that is secured
16 by the property is originated; or

17 “(bb) any existing loan that
18 is secured by the property is in-
19 creased, extended, or renewed.

20 “(6) RULE OF CONSTRUCTION.—Nothing in
21 this subsection may be construed to affect the appli-
22 cability of a designation of any area as an area hav-
23 ing special flood hazards for purposes of the avail-
24 ability of flood insurance coverage, criteria for land
25 management and use, notification of flood hazards,

1 eligibility for mitigation assistance, or any other pur-
2 pose or provision not specifically referred to in para-
3 graph (2).

4 “(7) REPORTS.—The Administrator shall, in
5 each annual report submitted pursuant to section
6 1320, include information identifying each finding
7 under paragraph (1) by the Administrator during
8 the preceding year that an area is an area having
9 special flood hazards, the basis for each such find-
10 ing, any extensions pursuant to paragraph (4) of the
11 periods of effectiveness of such findings, and the
12 reasons for such extensions.”.

13 (2) NO REFUNDS.—Nothing in this subsection
14 or the amendments made by this subsection may be
15 construed to authorize or require any payment or re-
16 fund for flood insurance coverage purchased for any
17 property that covered any period during which such
18 coverage is not required for the property pursuant to
19 the applicability of the amendment made by para-
20 graph (1).

21 (b) TERMINATION OF FORCE-PLACED INSURANCE.—
22 Section 102(e) of the Flood Disaster Protection Act of
23 1973 (42 U.S.C. 4012a(e)) is amended—

24 (1) in paragraph (2), by striking “insurance.”
25 and inserting “insurance, including premiums or

1 fees incurred for coverage beginning on the date on
2 which flood insurance coverage lapsed or did not
3 provide a sufficient coverage amount.”;

4 (2) by redesignating paragraphs (3) and (4) as
5 paragraphs (5) and (6), respectively; and

6 (3) by inserting after paragraph (2) the fol-
7 lowing new paragraphs:

8 “(3) TERMINATION OF FORCE-PLACED INSUR-
9 ANCE.—Within 30 days of receipt by the lender or
10 servicer of a confirmation of a borrower’s existing
11 flood insurance coverage, the lender or servicer
12 shall—

13 “(A) terminate the force-placed insurance;
14 and

15 “(B) refund to the borrower all force-
16 placed insurance premiums paid by the bor-
17 rower during any period during which the bor-
18 rower’s flood insurance coverage and the force-
19 placed flood insurance coverage were each in ef-
20 fect, and any related fees charged to the bor-
21 rower with respect to the force-placed insurance
22 during such period.

23 “(4) SUFFICIENCY OF DEMONSTRATION.—For
24 purposes of confirming a borrower’s existing flood
25 insurance coverage, a lender or servicer for a loan

1 shall accept from the borrower an insurance policy
2 declarations page that includes the existing flood in-
3 surance policy number and the identity of, and con-
4 tact information for, the insurance company or
5 agent.”.

6 (c) USE OF PRIVATE INSURANCE TO SATISFY MAN-
7 DATORY PURCHASE REQUIREMENT.—Section 102(b) of
8 the Flood Disaster Protection Act of 1973 (42 U.S.C.
9 4012a(b)) is amended—

10 (1) in paragraph (1)—

11 (A) by striking “lending institutions not to
12 make” and inserting “lending institutions—

13 “(A) not to make”;

14 (B) in subparagraph (A), as designated by
15 subparagraph (A) of this paragraph, by striking
16 “less.” and inserting “less; and”; and

17 (C) by adding at the end the following new
18 subparagraph:

19 “(B) to accept private flood insurance as
20 satisfaction of the flood insurance coverage re-
21 quirement under subparagraph (A) if the cov-
22 erage provided by such private flood insurance
23 meets the requirements for coverage under such
24 subparagraph.”;

1 (2) in paragraph (2), by inserting after “pro-
2 vided in paragraph (1).” the following new sentence:
3 “Each Federal agency lender shall accept private
4 flood insurance as satisfaction of the flood insurance
5 coverage requirement under the preceding sentence
6 if the flood insurance coverage provided by such pri-
7 vate flood insurance meets the requirements for cov-
8 erage under such sentence.”;

9 (3) in paragraph (3), in the matter following
10 subparagraph (B), by adding at the end the fol-
11 lowing new sentence: “The Federal National Mort-
12 gage Association and the Federal Home Loan Mort-
13 gage Corporation shall accept private flood insurance
14 as satisfaction of the flood insurance coverage re-
15 quirement under the preceding sentence if the flood
16 insurance coverage provided by such private flood in-
17 surance meets the requirements for coverage under
18 such sentence.”; and

19 (4) by adding at the end the following new
20 paragraph:

21 “(5) PRIVATE FLOOD INSURANCE DEFINED.—
22 In this subsection, the term ‘private flood insurance’
23 means a contract for flood insurance coverage al-
24 lowed for sale under the laws of any State.”.

1 **SEC. 344. REFORMS OF COVERAGE TERMS.**

2 (a) MINIMUM DEDUCTIBLES FOR CLAIMS.—Section
3 1312 of the National Flood Insurance Act of 1968 (42
4 U.S.C. 4019) is amended—

5 (1) by striking “The Director is” and inserting
6 the following: “(a) IN GENERAL.—The Adminis-
7 trator is”; and

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

9 “(b) MINIMUM ANNUAL DEDUCTIBLES.—

10 “(1) SUBSIDIZED RATE PROPERTIES.—For any
11 structure that is covered by flood insurance under
12 this title, and for which the chargeable rate for such
13 coverage is less than the applicable estimated risk
14 premium rate under section 1307(a)(1) for the area
15 (or subdivision thereof) in which such structure is
16 located, the minimum annual deductible for damage
17 to or loss of such structure shall be \$2,000.

18 “(2) ACTUARIAL RATE PROPERTIES.—For any
19 structure that is covered by flood insurance under
20 this title, for which the chargeable rate for such cov-
21 erage is not less than the applicable estimated risk
22 premium rate under section 1307(a)(1) for the area
23 (or subdivision thereof) in which such structure is
24 located, the minimum annual deductible for damage
25 to or loss of such structure shall be \$1,000.”.

1 (b) CLARIFICATION OF RESIDENTIAL AND COMMERCIAL
2 COVERAGE LIMITS.—Section 1306(b) of the Na-
3 tional Flood Insurance Act of 1968 (42 U.S.C. 4013(b))
4 is amended—

5 (1) in paragraph (2)—

6 (A) by striking “in the case of any residen-
7 tial property” and inserting “in the case of any
8 residential building designed for the occupancy
9 of from one to four families”; and

10 (B) by striking “shall be made available to
11 every insured upon renewal and every applicant
12 for insurance so as to enable such insured or
13 applicant to receive coverage up to a total
14 amount (including such limits specified in para-
15 graph (1)(A)(i)) of \$250,000” and inserting
16 “shall be made available, with respect to any
17 single such building, up to an aggregate liability
18 (including such limits specified in paragraph
19 (1)(A)(i)) of \$250,000”; and

20 (2) in paragraph (4)—

21 (A) by striking “in the case of any nonresi-
22 dential property, including churches,” and in-
23 serting “in the case of any nonresidential build-
24 ing, including a church,”; and

1 (B) by striking “shall be made available to
2 every insured upon renewal and every applicant
3 for insurance, in respect to any single structure,
4 up to a total amount (including such limit spec-
5 ified in subparagraph (B) or (C) of paragraph
6 (1), as applicable) of \$500,000 for each struc-
7 ture and \$500,000 for any contents related to
8 each structure” and inserting “shall be made
9 available with respect to any single such build-
10 ing, up to an aggregate liability (including such
11 limits specified in subparagraph (B) or (C) of
12 paragraph (1), as applicable) of \$500,000, and
13 coverage shall be made available up to a total
14 of \$500,000 aggregate liability for contents
15 owned by the building owner and \$500,000 ag-
16 gregate liability for each unit within the build-
17 ing for contents owned by the tenant”.

18 (c) INDEXING OF MAXIMUM COVERAGE LIMITS.—

19 Subsection (b) of section 1306 of the National Flood In-
20 surance Act of 1968 (42 U.S.C. 4013(b)) is amended—

21 (1) in paragraph (4), by striking “and” at the
22 end;

23 (2) in paragraph (5), by striking the period at
24 the end and inserting “; and”;

1 (3) by redesignating paragraph (5) as para-
2 graph (7); and

3 (4) by adding at the end the following new
4 paragraph:

5 “(8) each of the dollar amount limitations
6 under paragraphs (2), (3), (4), (5), and (6) shall be
7 adjusted effective on the date of the enactment of
8 the Flood Insurance Reform Act of 2012, such ad-
9 justments shall be calculated using the percentage
10 change, over the period beginning on September 30,
11 1994, and ending on such date of enactment, in
12 such inflationary index as the Administrator shall,
13 by regulation, specify, and the dollar amount of such
14 adjustment shall be rounded to the next lower dollar;
15 and the Administrator shall cause to be published in
16 the Federal Register the adjustments under this
17 paragraph to such dollar amount limitations; except
18 that in the case of coverage for a property that is
19 made available, pursuant to this paragraph, in an
20 amount that exceeds the limitation otherwise appli-
21 cable to such coverage as specified in paragraph (2),
22 (3), (4), (5), or (6), the total of such coverage shall
23 be made available only at chargeable rates that are
24 not less than the estimated premium rates for such

1 coverage determined in accordance with section
2 1307(a)(1).”.

3 (d) OPTIONAL COVERAGE FOR LOSS OF USE OF PER-
4 SONAL RESIDENCE AND BUSINESS INTERRUPTION.—Sub-
5 section (b) of section 1306 of the National Flood Insur-
6 ance Act of 1968 (42 U.S.C. 4013(b)), as amended by
7 the preceding provisions of this section, is further amend-
8 ed by inserting after paragraph (4) the following new
9 paragraphs:

10 “(5) the Administrator may provide that, in the
11 case of any residential property, each renewal or new
12 contract for flood insurance coverage may provide
13 not more than \$5,000 aggregate liability per dwell-
14 ing unit for any necessary increases in living ex-
15 penses incurred by the insured when losses from a
16 flood make the residence unfit to live in, except
17 that—

18 “(A) purchase of such coverage shall be at
19 the option of the insured;

20 “(B) any such coverage shall be made
21 available only at chargeable rates that are not
22 less than the estimated premium rates for such
23 coverage determined in accordance with section
24 1307(a)(1); and

1 “(C) the Administrator may make such
2 coverage available only if the Administrator
3 makes a determination and causes notice of
4 such determination to be published in the Fed-
5 eral Register that—

6 “(i) a competitive private insurance
7 market for such coverage does not exist;
8 and

9 “(ii) the national flood insurance pro-
10 gram has the capacity to make such cov-
11 erage available without borrowing funds
12 from the Secretary of the Treasury under
13 section 1309 or otherwise;

14 “(6) the Administrator may provide that, in the
15 case of any commercial property or other residential
16 property, including multifamily rental property, cov-
17 erage for losses resulting from any partial or total
18 interruption of the insured’s business caused by
19 damage to, or loss of, such property from a flood
20 may be made available to every insured upon re-
21 newal and every applicant, up to a total amount of
22 \$20,000 per property, except that—

23 “(A) purchase of such coverage shall be at
24 the option of the insured;

1 “(B) any such coverage shall be made
2 available only at chargeable rates that are not
3 less than the estimated premium rates for such
4 coverage determined in accordance with section
5 1307(a)(1); and

6 “(C) the Administrator may make such
7 coverage available only if the Administrator
8 makes a determination and causes notice of
9 such determination to be published in the Fed-
10 eral Register that—

11 “(i) a competitive private insurance
12 market for such coverage does not exist;
13 and

14 “(ii) the national flood insurance pro-
15 gram has the capacity to make such cov-
16 erage available without borrowing funds
17 from the Secretary of the Treasury under
18 section 1309 or otherwise;”.

19 (e) PAYMENT OF PREMIUMS IN INSTALLMENTS FOR
20 RESIDENTIAL PROPERTIES.—Section 1306 of the Na-
21 tional Flood Insurance Act of 1968 (42 U.S.C. 4013) is
22 amended by adding at the end the following new sub-
23 section:

24 “(d) PAYMENT OF PREMIUMS IN INSTALLMENTS FOR
25 RESIDENTIAL PROPERTIES.—

1 “(1) **AUTHORITY.**—In addition to any other
2 terms and conditions under subsection (a), such reg-
3 ulations shall provide that, in the case of any resi-
4 dential property, premiums for flood insurance cov-
5 erage made available under this title for such prop-
6 erty may be paid in installments.

7 “(2) **LIMITATIONS.**—In implementing the au-
8 thority under paragraph (1), the Administrator may
9 establish increased chargeable premium rates and
10 surcharges, and deny coverage and establish such
11 other sanctions, as the Administrator considers nec-
12 essary to ensure that insureds purchase, pay for,
13 and maintain coverage for the full term of a contract
14 for flood insurance coverage or to prevent insureds
15 from purchasing coverage only for periods during a
16 year when risk of flooding is comparatively higher or
17 canceling coverage for periods when such risk is
18 comparatively lower.”.

19 **(f) EFFECTIVE DATE OF POLICIES COVERING PROP-**
20 **ERTIES AFFECTED BY FLOODS IN PROGRESS.**—Para-
21 graph (1) of section 1306(c) of the National Flood Insur-
22 ance Act of 1968 (42 U.S.C. 4013(c)) is amended by add-
23 ing after the period at the end the following: “With respect
24 to any flood that has commenced or is in progress before
25 the expiration of such 30-day period, such flood insurance

1 coverage for a property shall take effect upon the expira-
2 tion of such 30-day period and shall cover damage to such
3 property occurring after the expiration of such period that
4 results from such flood, but only if the property has not
5 suffered damage or loss as a result of such flood before
6 the expiration of such 30-day period.”.

7 **SEC. 345. REFORMS OF PREMIUM RATES.**

8 (a) INCREASE IN ANNUAL LIMITATION ON PREMIUM
9 INCREASES.—Section 1308(e) of the National Flood In-
10 surance Act of 1968 (42 U.S.C. 4015(e)) is amended by
11 striking “10 percent” and inserting “20 percent”.

12 (b) PHASE-IN OF RATES FOR CERTAIN PROPERTIES
13 IN NEWLY MAPPED AREAS.—

14 (1) IN GENERAL.—Section 1308 of the Na-
15 tional Flood Insurance Act of 1968 (42 U.S.C.
16 4015) is amended—

17 (A) in subsection (a), in the matter pre-
18 ceding paragraph (1), by inserting “or notice”
19 after “prescribe by regulation”;

20 (B) in subsection (c), by inserting “and
21 subsection (g)” before the first comma; and

22 (C) by adding at the end the following new
23 subsection:

1 “(g) 5-YEAR PHASE-IN OF FLOOD INSURANCE
2 RATES FOR CERTAIN PROPERTIES IN NEWLY MAPPED
3 AREAS.—

4 “(1) 5-YEAR PHASE-IN PERIOD.—Notwith-
5 standing subsection (c) or any other provision of law
6 relating to chargeable risk premium rates for flood
7 insurance coverage under this title, in the case of
8 any area that was not previously designated as an
9 area having special flood hazards and that, pursuant
10 to any issuance, revision, updating, or other change
11 in flood insurance maps, becomes designated as such
12 an area, during the 5-year period that begins, except
13 as provided in paragraph (2), upon the date that
14 such maps, as issued, revised, updated, or otherwise
15 changed, become effective, the chargeable premium
16 rate for flood insurance under this title with respect
17 to any covered property that is located within such
18 area shall be the rate described in paragraph (3).

19 “(2) APPLICABILITY TO PREFERRED RISK RATE
20 AREAS.—In the case of any area described in para-
21 graph (1) that consists of or includes an area that,
22 as of date of the effectiveness of the flood insurance
23 maps for such area referred to in paragraph (1) as
24 so issued, revised, updated, or changed, is eligible
25 for any reason for preferred risk rate method pre-

1 miums for flood insurance coverage and was eligible
2 for such premiums as of the enactment of the Flood
3 Insurance Reform Act of 2012, the 5-year period re-
4 ferred to in paragraph (1) for such area eligible for
5 preferred risk rate method premiums shall begin
6 upon the expiration of the period during which such
7 area is eligible for such preferred risk rate method
8 premiums.

9 “(3) PHASE-IN OF FULL ACTUARIAL RATES.—
10 With respect to any area described in paragraph (1),
11 the chargeable risk premium rate for flood insurance
12 under this title for a covered property that is located
13 in such area shall be—

14 “(A) for the first year of the 5-year period
15 referred to in paragraph (1), the greater of—

16 “(i) 20 percent of the chargeable risk
17 premium rate otherwise applicable under
18 this title to the property; and

19 “(ii) in the case of any property that,
20 as of the beginning of such first year, is el-
21 igible for preferred risk rate method pre-
22 miums for flood insurance coverage, such
23 preferred risk rate method premium for
24 the property;

1 “(B) for the second year of such 5-year pe-
2 riod, 40 percent of the chargeable risk premium
3 rate otherwise applicable under this title to the
4 property;

5 “(C) for the third year of such 5-year pe-
6 riod, 60 percent of the chargeable risk premium
7 rate otherwise applicable under this title to the
8 property;

9 “(D) for the fourth year of such 5-year pe-
10 riod, 80 percent of the chargeable risk premium
11 rate otherwise applicable under this title to the
12 property; and

13 “(E) for the fifth year of such 5-year pe-
14 riod, 100 percent of the chargeable risk pre-
15 mium rate otherwise applicable under this title
16 to the property.

17 “(4) COVERED PROPERTIES.—For purposes of
18 the subsection, the term ‘covered property’ means
19 any residential property occupied by its owner or a
20 bona fide tenant as a primary residence.”.

21 (2) REGULATION OR NOTICE.—The Adminis-
22 trator of the Federal Emergency Management Agen-
23 cy shall issue an interim final rule or notice to im-
24 plement this subsection and the amendments made

1 by this subsection as soon as practicable after the
2 date of the enactment of this Act.

3 (c) PHASE-IN OF ACTUARIAL RATES FOR CERTAIN
4 PROPERTIES.—

5 (1) IN GENERAL.—Section 1308(c) of the Na-
6 tional Flood Insurance Act of 1968 (42 U.S.C.
7 4015(e)) is amended—

8 (A) by redesignating paragraph (2) as
9 paragraph (7); and

10 (B) by inserting after paragraph (1) the
11 following new paragraphs:

12 “(2) COMMERCIAL PROPERTIES.—Any nonresi-
13 dential property.

14 “(3) SECOND HOMES AND VACATION HOMES.—
15 Any residential property that is not the primary res-
16 idence of any individual.

17 “(4) HOMES SOLD TO NEW OWNERS.—Any sin-
18 gle family property that—

19 “(A) has been constructed or substantially
20 improved and for which such construction or
21 improvement was started, as determined by the
22 Administrator, before December 31, 1974, or
23 before the effective date of the initial rate map
24 published by the Administrator under para-
25 graph (2) of section 1360(a) for the area in

1 which such property is located, whichever is
2 later; and

3 “(B) is purchased after the effective date
4 of this paragraph, pursuant to section
5 345(c)(3)(A) of the Flood Insurance Reform
6 Act of 2012.

7 “(5) HOMES DAMAGED OR IMPROVED.—Any
8 property that, on or after the date of the enactment
9 of the Flood Insurance Reform Act of 2012, has ex-
10 perienced or sustained—

11 “(A) substantial flood damage exceeding
12 50 percent of the fair market value of such
13 property; or

14 “(B) substantial improvement exceeding
15 30 percent of the fair market value of such
16 property.

17 “(6) HOMES WITH MULTIPLE CLAIMS.—Any se-
18 vere repetitive loss property (as such term is defined
19 in section 1366(j)).”.

20 (2) TECHNICAL AMENDMENTS.—Section 1308
21 of the National Flood Insurance Act of 1968 (42
22 U.S.C. 4015) is amended—

23 (A) in subsection (c)—

24 (i) in the matter preceding paragraph

25 (1), by striking “the limitations provided

1 under paragraphs (1) and (2)” and insert-
2 ing “subsection (e)”;

3 (ii) in paragraph (1), by striking “,
4 except” and all that follows through “sub-
5 section (e)”;

6 (B) in subsection (e), by striking “para-
7 graph (2) or (3)” and inserting “paragraph
8 (7)”.

9 (3) EFFECTIVE DATE AND TRANSITION.—

10 (A) EFFECTIVE DATE.—The amendments
11 made by paragraphs (1) and (2) shall apply be-
12 ginning upon the expiration of the 12-month
13 period that begins on the date of the enactment
14 of this Act, except as provided in subparagraph
15 (B) of this paragraph.

16 (B) TRANSITION FOR PROPERTIES COV-
17 ERED BY FLOOD INSURANCE UPON EFFECTIVE
18 DATE.—

19 (i) INCREASE OF RATES OVER TIME.—

20 In the case of any property described in
21 paragraph (2), (3), (4), (5), or (6) of sec-
22 tion 1308(c) of the National Flood Insur-
23 ance Act of 1968, as amended by para-
24 graph (1) of this subsection, that, as of the
25 effective date under subparagraph (A) of

1 this paragraph, is covered under a policy
2 for flood insurance made available under
3 the national flood insurance program for
4 which the chargeable premium rates are
5 less than the applicable estimated risk pre-
6 mium rate under section 1307(a)(1) of
7 such Act for the area in which the prop-
8 erty is located, the Administrator of the
9 Federal Emergency Management Agency
10 shall increase the chargeable premium
11 rates for such property over time to such
12 applicable estimated risk premium rate
13 under section 1307(a)(1).

14 (ii) AMOUNT OF ANNUAL INCREASE.—
15 Such increase shall be made by increasing
16 the chargeable premium rates for the prop-
17 erty (after application of any increase in
18 the premium rates otherwise applicable to
19 such property), once during the 12-month
20 period that begins upon the effective date
21 under subparagraph (A) of this paragraph
22 and once every 12 months thereafter until
23 such increase is accomplished, by 20 per-
24 cent (or such lesser amount as may be nec-
25 essary so that the chargeable rate does not

1 exceed such applicable estimated risk pre-
2 mium rate or to comply with clause (iii)).

3 (iii) PROPERTIES SUBJECT TO PHASE-
4 IN AND ANNUAL INCREASES.—In the case
5 of any pre-FIRM property (as such term is
6 defined in section 578(b) of the National
7 Flood Insurance Reform Act of 1974), the
8 aggregate increase, during any 12-month
9 period, in the chargeable premium rate for
10 the property that is attributable to this
11 subparagraph or to an increase described
12 in section 1308(e) of the National Flood
13 Insurance Act of 1968 may not exceed 20
14 percent.

15 (iv) FULL ACTUARIAL RATES.—The
16 provisions of paragraphs (2), (3), (4), (5),
17 and (6) of such section 1308(c) shall apply
18 to such a property upon the accomplish-
19 ment of the increase under this subpara-
20 graph and thereafter.

21 (d) PROHIBITION OF EXTENSION OF SUBSIDIZED
22 RATES TO LAPSED POLICIES.—Section 1308 of the Na-
23 tional Flood Insurance Act of 1968 (42 U.S.C. 4015), as
24 amended by the preceding provisions of this subtitle, is
25 further amended—

1 (1) in subsection (e), by inserting “or sub-
2 section (h)” after “subsection (c)”; and

3 (2) by adding at the end the following new sub-
4 section:

5 “(h) PROHIBITION OF EXTENSION OF SUBSIDIZED
6 RATES TO LAPSED POLICIES.—Notwithstanding any
7 other provision of law relating to chargeable risk premium
8 rates for flood insurance coverage under this title, the Ad-
9 ministrator shall not provide flood insurance coverage
10 under this title for any property for which a policy for
11 such coverage for the property has previously lapsed in
12 coverage as a result of the deliberate choice of the holder
13 of such policy, at a rate less than the applicable estimated
14 risk premium rates for the area (or subdivision thereof)
15 in which such property is located.”.

16 (e) RECOGNITION OF STATE AND LOCAL FUNDING
17 FOR CONSTRUCTION, RECONSTRUCTION, AND IMPROVE-
18 MENT OF FLOOD PROTECTION SYSTEMS IN DETERMINA-
19 TION OF RATES.—

20 (1) IN GENERAL.—Section 1307 of the Na-
21 tional Flood Insurance Act of 1968 (42 U.S.C.
22 4014) is amended—

23 (A) in subsection (e)—

24 (i) in the first sentence, by striking
25 “construction of a flood protection system”

1 and inserting “construction, reconstruc-
2 tion, or improvement of a flood protection
3 system (without respect to the level of Fed-
4 eral investment or participation)”; and

5 (ii) in the second sentence—

6 (I) by striking “construction of a
7 flood protection system” and inserting
8 “construction, reconstruction, or im-
9 provement of a flood protection sys-
10 tem”; and

11 (II) by inserting “based on the
12 present value of the completed sys-
13 tem” after “has been expended”; and

14 (B) in subsection (f)—

15 (i) in the first sentence in the matter
16 preceding paragraph (1), by inserting
17 “(without respect to the level of Federal
18 investment or participation)” before the
19 period at the end;

20 (ii) in the third sentence in the matter
21 preceding paragraph (1), by inserting “,
22 whether coastal or riverine,” after “special
23 flood hazard”; and

24 (iii) in paragraph (1), by striking “a
25 Federal agency in consultation with the

1 local project sponsor” and inserting “the
2 entity or entities that own, operate, main-
3 tain, or repair such system”.

4 (2) REGULATIONS.—The Administrator of the
5 Federal Emergency Management Agency shall pro-
6 mulgate regulations to implement this subsection
7 and the amendments made by this subsection as
8 soon as practicable, but not more than 18 months
9 after the date of the enactment of this Act. Para-
10 graph (3) may not be construed to annul, alter, af-
11 fect, authorize any waiver of, or establish any excep-
12 tion to, the requirement under the preceding sen-
13 tence.

14 **SEC. 346. TECHNICAL MAPPING ADVISORY COUNCIL.**

15 (a) ESTABLISHMENT.—There is established a council
16 to be known as the Technical Mapping Advisory Council
17 (in this section referred to as the “Council”).

18 (b) MEMBERSHIP.—

19 (1) IN GENERAL.—The Council shall consist
20 of—

21 (A) the Administrator of the Federal
22 Emergency Management Agency (in this section
23 referred to as the “Administrator”), or the des-
24 ignee thereof;

1 (B) the Director of the United States Geo-
2 logical Survey of the Department of the Inte-
3 rior, or the designee thereof;

4 (C) the Under Secretary of Commerce for
5 Oceans and Atmosphere, or the designee there-
6 of;

7 (D) the commanding officer of the United
8 States Army Corps of Engineers, or the des-
9 ignedee thereof;

10 (E) the chief of the Natural Resources
11 Conservation Service of the Department of Ag-
12 riculture, or the designee thereof;

13 (F) the Director of the United States Fish
14 and Wildlife Service of the Department of the
15 Interior, or the designee thereof;

16 (G) the Assistant Administrator for Fish-
17 eries of the National Oceanic and Atmospheric
18 Administration of the Department of Com-
19 merce, or the designee thereof; and

20 (H) 14 additional members to be appointed
21 by the Administrator of the Federal Emergency
22 Management Agency, who shall be—

23 (i) an expert in data management;

24 (ii) an expert in real estate;

25 (iii) an expert in insurance;

1 (iv) a member of a recognized regional
2 flood and storm water management organi-
3 zation;

4 (v) a representative of a State emer-
5 gency management agency or association
6 or organization for such agencies;

7 (vi) a member of a recognized profes-
8 sional surveying association or organiza-
9 tion;

10 (vii) a member of a recognized profes-
11 sional mapping association or organization;

12 (viii) a member of a recognized pro-
13 fessional engineering association or organi-
14 zation;

15 (ix) a member of a recognized profes-
16 sional association or organization rep-
17 resenting flood hazard determination firms;

18 (x) a representative of State national
19 flood insurance coordination offices;

20 (xi) representatives of two local gov-
21 ernments, at least one of whom is a local
22 levee flood manager or executive, des-
23 ignated by the Federal Emergency Man-
24 agement Agency as Cooperating Technical
25 Partners; and

1 (xii) representatives of two State gov-
2 ernments designated by the Federal Emer-
3 gency Management Agency as Cooperating
4 Technical States.

5 (2) QUALIFICATIONS.—Members of the Council
6 shall be appointed based on their demonstrated
7 knowledge and competence regarding surveying, car-
8 tography, remote sensing, geographic information
9 systems, or the technical aspects of preparing and
10 using flood insurance rate maps. In appointing
11 members under paragraph (1)(H), the Administrator
12 shall ensure that the membership of the Council has
13 a balance of Federal, State, local, and private mem-
14 bers, and includes an adequate number of represent-
15 atives from the States with coastline on the Gulf of
16 Mexico and other States containing areas identified
17 by the Administrator of the Federal Emergency
18 Management Agency as at high-risk for flooding or
19 special flood hazard areas.

20 (c) DUTIES.—

21 (1) NEW MAPPING STANDARDS.—Not later than
22 the expiration of the 12-month period beginning
23 upon the date of the enactment of this Act, the
24 Council shall develop and submit to the Adminis-
25 trator and the Congress proposed new mapping

1 standards for 100-year flood insurance rate maps
2 used under the national flood insurance program
3 under the National Flood Insurance Act of 1968. In
4 developing such proposed standards the Council
5 shall—

6 (A) ensure that the flood insurance rate
7 maps reflect true risk, including graduated risk
8 that better reflects the financial risk to each
9 property; such reflection of risk should be at
10 the smallest geographic level possible (but not
11 necessarily property-by-property) to ensure that
12 communities are mapped in a manner that
13 takes into consideration different risk levels
14 within the community;

15 (B) ensure the most efficient generation,
16 display, and distribution of flood risk data,
17 models, and maps where practicable through
18 dynamic digital environments using spatial
19 database technology and the Internet;

20 (C) ensure that flood insurance rate maps
21 reflect current hydrologic and hydraulic data,
22 current land use, and topography, incorporating
23 the most current and accurate ground and
24 bathymetric elevation data;

1 (D) determine the best ways to include in
2 such flood insurance rate maps levees, decerti-
3 fied levees, and areas located below dams, in-
4 cluding determining a methodology for ensuring
5 that decertified levees and other protections are
6 included in flood insurance rate maps and their
7 corresponding flood zones reflect the level of
8 protection conferred;

9 (E) consider how to incorporate restored
10 wetlands and other natural buffers into flood
11 insurance rate maps, which may include wet-
12 lands, groundwater recharge areas, erosion
13 zones, meander belts, endangered species habi-
14 tat, barrier islands and shoreline buffer fea-
15 tures, riparian forests, and other features;

16 (F) consider whether to use vertical posi-
17 tioning (as defined by the Administrator) for
18 flood insurance rate maps;

19 (G) ensure that flood insurance rate maps
20 differentiate between a property that is located
21 in a flood zone and a structure located on such
22 property that is not at the same risk level for
23 flooding as such property due to the elevation
24 of the structure;

1 (H) ensure that flood insurance rate maps
2 take into consideration the best scientific data
3 and potential future conditions (including pro-
4 jections for sea level rise); and

5 (I) consider how to incorporate the new
6 standards proposed pursuant to this paragraph
7 in existing mapping efforts.

8 (2) ONGOING DUTIES.—The Council shall, on
9 an ongoing basis, review the mapping protocols de-
10 veloped pursuant to paragraph (1), and make rec-
11 ommendations to the Administrator when the Coun-
12 cil determines that mapping protocols should be al-
13 tered.

14 (3) MEETINGS.—In carrying out its duties
15 under this section, the Council shall consult with
16 stakeholders through at least 4 public meetings an-
17 nually, and shall seek input of all stakeholder inter-
18 ests including State and local representatives, envi-
19 ronmental and conservation organizations, insurance
20 industry representatives, advocacy groups, planning
21 organizations, and mapping organizations.

22 (d) PROHIBITION ON COMPENSATION.—Members of
23 the Council shall receive no additional compensation by
24 reason of their service on the Council.

1 (e) CHAIRPERSON.—The Administrator shall serve as
2 the Chairperson of the Council.

3 (f) STAFF.—

4 (1) FEMA.—Upon the request of the Council,
5 the Administrator may detail, on a nonreimbursable
6 basis, personnel of the Federal Emergency Manage-
7 ment Agency to assist the Council in carrying out its
8 duties.

9 (2) OTHER FEDERAL AGENCIES.—Upon request
10 of the Council, any other Federal agency that is a
11 member of the Council may detail, on a non-reim-
12 bursable basis, personnel to assist the Council in
13 carrying out its duties.

14 (g) POWERS.—In carrying out this section, the Coun-
15 cil may hold hearings, receive evidence and assistance, pro-
16 vide information, and conduct research, as the Council
17 considers appropriate.

18 (h) TERMINATION.—The Council shall terminate
19 upon the expiration of the 5-year period beginning on the
20 date of the enactment of this Act.

21 (i) MORATORIUM ON FLOOD MAP CHANGES.—

22 (1) MORATORIUM.—Except as provided in para-
23 graph (2) and notwithstanding any other provision
24 of this subtitle, the National Flood Insurance Act of
25 1968, or the Flood Disaster Protection Act of 1973,

1 during the period beginning upon the date of the en-
2 actment of this Act and ending upon the submission
3 by the Council to the Administrator and the Con-
4 gress of the proposed new mapping standards re-
5 quired under subsection (e)(1), the Administrator
6 may not make effective any new or updated rate
7 maps for flood insurance coverage under the na-
8 tional flood insurance program that were not in ef-
9 fect for such program as of such date of enactment,
10 or otherwise revise, update, or change the flood in-
11 surance rate maps in effect for such program as of
12 such date.

13 (2) LETTERS OF MAP CHANGE.—During the pe-
14 riod described in paragraph (1), the Administrator
15 may revise, update, and change the flood insurance
16 rate maps in effect for the national flood insurance
17 program only pursuant to a letter of map change
18 (including a letter of map amendment, letter of map
19 revision, and letter of map revision based on fill).

20 **SEC. 347. FEMA INCORPORATION OF NEW MAPPING PROTO-**
21 **COLS.**

22 (a) NEW RATE MAPPING STANDARDS.—Not later
23 than the expiration of the 6-month period beginning upon
24 submission by the Technical Mapping Advisory Council
25 under section 346 of the proposed new mapping standards

1 for flood insurance rate maps used under the national
2 flood insurance program developed by the Council pursu-
3 ant to section 346(c), the Administrator of the Federal
4 Emergency Management Agency (in this section referred
5 to as the “Administrator”) shall establish new standards
6 for such rate maps based on such proposed new standards
7 and the recommendations of the Council.

8 (b) REQUIREMENTS.—The new standards for flood
9 insurance rate maps established by the Administrator pur-
10 suant to subsection (a) shall—

11 (1) delineate and include in any such rate
12 maps—

13 (A) all areas located within the 100-year
14 flood plain; and

15 (B) areas subject to graduated and other
16 risk levels, to the maximum extent possible;

17 (2) ensure that any such rate maps—

18 (A) include levees, including decertified lev-
19 ees, and the level of protection they confer;

20 (B) reflect current land use and topog-
21 raphy and incorporate the most current and ac-
22 curate ground level data;

23 (C) take into consideration the impacts
24 and use of fill and the flood risks associated
25 with altered hydrology;

1 (D) differentiate between a property that
2 is located in a flood zone and a structure lo-
3 cated on such property that is not at the same
4 risk level for flooding as such property due to
5 the elevation of the structure;

6 (E) identify and incorporate natural fea-
7 tures and their associated flood protection bene-
8 fits into mapping and rates; and

9 (F) identify, analyze, and incorporate the
10 impact of significant changes to building and
11 development throughout any river or costal
12 water system, including all tributaries, which
13 may impact flooding in areas downstream; and

14 (3) provide that such rate maps are developed
15 on a watershed basis.

16 (c) REPORT.—If, in establishing new standards for
17 flood insurance rate maps pursuant to subsection (a) of
18 this section, the Administrator does not implement all of
19 the recommendations of the Council made under the pro-
20 posed new mapping standards developed by the Council
21 pursuant to section 346(c), upon establishment of the new
22 standards the Administrator shall submit a report to the
23 Committee on Financial Services of the House of Rep-
24 resentatives and the Committee on Banking, Housing, and
25 Urban Affairs of the Senate specifying which such rec-

1 ommendations were not adopted and explaining the rea-
2 sons such recommendations were not adopted.

3 (d) IMPLEMENTATION.—The Administrator shall, not
4 later than the expiration of the 6-month period beginning
5 upon establishment of the new standards for flood insur-
6 ance rate maps pursuant to subsection (a) of this section,
7 commence use of the new standards and updating of flood
8 insurance rate maps in accordance with the new stand-
9 ards. Not later than the expiration of the 10-year period
10 beginning upon the establishment of such new standards,
11 the Administrator shall complete updating of all flood in-
12 surance rate maps in accordance with the new standards,
13 subject to the availability of sufficient amounts for such
14 activities provided in appropriation Acts.

15 (e) TEMPORARY SUSPENSION OF MANDATORY PUR-
16 CHASE REQUIREMENT FOR CERTAIN PROPERTIES.—

17 (1) SUBMISSION OF ELEVATION CERTIFI-
18 CATE.—Subject to paragraphs (2) and (3) of this
19 subsection, subsections (a), (b), and (e) of section
20 102 of the Flood Disaster Protection Act of 1973
21 (42 U.S.C. 4012a), and section 202(a) of such Act,
22 shall not apply to a property located in an area des-
23 ignated as having a special flood hazard if the owner
24 of such property submits to the Administrator an
25 elevation certificate for such property showing that

1 the lowest level of the primary residence on such
2 property is at an elevation that is at least three feet
3 higher than the elevation of the 100-year flood plain.

4 (2) REVIEW OF CERTIFICATE.—The Adminis-
5 trator shall accept as conclusive each elevation cer-
6 tificate submitted under paragraph (1) unless the
7 Administrator conducts a subsequent elevation sur-
8 vey and determines that the lowest level of the pri-
9 mary residence on the property in question is not at
10 an elevation that is at least three feet higher than
11 the elevation of the 100-year flood plain. The Ad-
12 ministrator shall provide any such subsequent ele-
13 vation survey to the owner of such property.

14 (3) DETERMINATIONS FOR PROPERTIES ON
15 BORDERS OF SPECIAL FLOOD HAZARD AREAS.—

16 (A) EXPEDITED DETERMINATION.—In the
17 case of any survey for a property submitted to
18 the Administrator pursuant to paragraph (1)
19 showing that a portion of the property is lo-
20 cated within an area having special flood haz-
21 ards and that a structure located on the prop-
22 erty is not located within such area having spe-
23 cial flood hazards, the Administrator shall expe-
24 ditiously process any request made by an owner
25 of the property for a determination pursuant to

1 paragraph (2) or a determination of whether
2 the structure is located within the area having
3 special flood hazards.

4 (B) PROHIBITION OF FEE.—If the Admin-
5 istrator determines pursuant to subparagraph
6 (A) that the structure on the property is not lo-
7 cated within the area having special flood haz-
8 ards, the Administrator shall not charge a fee
9 for reviewing the flood hazard data and shall
10 not require the owner to provide any additional
11 elevation data.

12 (C) SIMPLIFICATION OF REVIEW PROC-
13 ESS.—The Administrator shall collaborate with
14 private sector flood insurers to simplify the re-
15 view process for properties described in sub-
16 paragraph (A) and to ensure that the review
17 process provides for accurate determinations.

18 (4) TERMINATION OF AUTHORITY.—This sub-
19 section shall cease to apply to a property on the date
20 on which the Administrator updates the flood insur-
21 ance rate map that applies to such property in ac-
22 cordance with the requirements of subsection (d).

1 **SEC. 348. TREATMENT OF LEVEES.**

2 Section 1360 of the National Flood Insurance Act of
3 1968 (42 U.S.C. 4101) is amended by adding at the end
4 the following new subsection:

5 “(k) TREATMENT OF LEVEES.—The Administrator
6 may not issue flood insurance maps, or make effective up-
7 dated flood insurance maps, that omit or disregard the
8 actual protection afforded by an existing levee, floodwall,
9 pump or other flood protection feature, regardless of the
10 accreditation status of such feature.”.

11 **SEC. 349. PRIVATIZATION INITIATIVES.**

12 (a) FEMA AND GAO REPORTS.—Not later than the
13 expiration of the 18-month period beginning on the date
14 of the enactment of this Act, the Administrator of the
15 Federal Emergency Management Agency and the Comp-
16 troller General of the United States shall each conduct a
17 separate study to assess a broad range of options, meth-
18 ods, and strategies for privatizing the national flood insur-
19 ance program and shall each submit a report to the Com-
20 mittee on Financial Services of the House of Representa-
21 tives and the Committee on Banking, Housing, and Urban
22 Affairs of the Senate with recommendations for the best
23 manner to accomplish such privatization.

24 (b) PRIVATE RISK-MANAGEMENT INITIATIVES.—

25 (1) AUTHORITY.—The Administrator of the
26 Federal Emergency Management Agency may carry

1 out such private risk-management initiatives under
2 the national flood insurance program as the Admin-
3 istrator considers appropriate to determine the ca-
4 pacity of private insurers, reinsurers, and financial
5 markets to assist communities, on a voluntary basis
6 only, in managing the full range of financial risks
7 associated with flooding.

8 (2) ASSESSMENT.—Not later than the expira-
9 tion of the 12-month period beginning on the date
10 of the enactment of this Act, the Administrator shall
11 assess the capacity of the private reinsurance, cap-
12 ital, and financial markets by seeking proposals to
13 assume a portion of the program’s insurance risk
14 and submit to the Congress a report describing the
15 response to such request for proposals and the re-
16 sults of such assessment.

17 (3) PROTOCOL FOR RELEASE OF DATA.—The
18 Administrator shall develop a protocol to provide for
19 the release of data sufficient to conduct the assess-
20 ment required under paragraph (2).

21 (c) REINSURANCE.—The National Flood Insurance
22 Act of 1968 is amended—

23 (1) in section 1331(a)(2) (42 U.S.C.
24 4051(a)(2)), by inserting “, including as reinsurance

1 of insurance coverage provided by the flood insur-
2 ance program” before “, on such terms”;

3 (2) in section 1332(c)(2) (42 U.S.C.
4 4052(c)(2)), by inserting “or reinsurance” after
5 “flood insurance coverage”;

6 (3) in section 1335(a) (42 U.S.C. 4055(a))—

7 (A) by inserting “(1)” after “(a)”; and

8 (B) by adding at the end the following new
9 paragraph:

10 “(2) The Administrator is authorized to secure rein-
11 surance coverage of coverage provided by the flood insur-
12 ance program from private market insurance, reinsurance,
13 and capital market sources at rates and on terms deter-
14 mined by the Administrator to be reasonable and appro-
15 priate in an amount sufficient to maintain the ability of
16 the program to pay claims and that minimizes the likeli-
17 hood that the program will utilize the borrowing authority
18 provided under section 1309.”;

19 (4) in section 1346(a) (12 U.S.C. 4082(a))—

20 (A) in the matter preceding paragraph (1),
21 by inserting “, or for purposes of securing rein-
22 surance of insurance coverage provided by the
23 program,” before “of any or all of”;

24 (B) in paragraph (1)—

1 (i) by striking “estimating” and in-
2 serting “Estimating”; and

3 (ii) by striking the semicolon at the
4 end and inserting a period;

5 (C) in paragraph (2)—

6 (i) by striking “receiving” and insert-
7 ing “Receiving”; and

8 (ii) by striking the semicolon at the
9 end and inserting a period;

10 (D) in paragraph (3)—

11 (i) by striking “making” and inserting
12 “Making”; and

13 (ii) by striking “; and” and inserting
14 a period;

15 (E) in paragraph (4)—

16 (i) by striking “otherwise” and insert-
17 ing “Otherwise”; and

18 (ii) by redesignating such paragraph
19 as paragraph (5); and

20 (F) by inserting after paragraph (3) the
21 following new paragraph:

22 “(4) Placing reinsurance coverage on insurance
23 provided by such program.”; and

24 (5) in section 1370(a)(3) (42 U.S.C.
25 4121(a)(3)), by inserting before the semicolon at the

1 end the following: “, is subject to the reporting re-
2 quirements of the Securities Exchange Act of 1934,
3 pursuant to section 13(a) or 15(d) of such Act (15
4 U.S.C. 78m(a), 78o(d)), or is authorized by the Ad-
5 ministrator to assume reinsurance on risks insured
6 by the flood insurance program”.

7 (d) ASSESSMENT OF CLAIMS-PAYING ABILITY.—

8 (1) ASSESSMENT.—Not later than September
9 30 of each year, the Administrator of the Federal
10 Emergency Management Agency shall conduct an
11 assessment of the claims-paying ability of the na-
12 tional flood insurance program, including the pro-
13 gram’s utilization of private sector reinsurance and
14 reinsurance equivalents, with and without reliance
15 on borrowing authority under section 1309 of the
16 National Flood Insurance Act of 1968 (42 U.S.C.
17 4016). In conducting the assessment, the Adminis-
18 trator shall take into consideration regional con-
19 centrations of coverage written by the program, peak
20 flood zones, and relevant mitigation measures.

21 (2) REPORT.—The Administrator shall submit
22 a report to the Congress of the results of each such
23 assessment, and make such report available to the
24 public, not later than 30 days after completion of
25 the assessment.

1 **SEC. 350. FEMA ANNUAL REPORT ON INSURANCE PRO-**
2 **GRAM.**

3 Section 1320 of the National Flood Insurance Act of
4 1968 (42 U.S.C. 4027) is amended—

5 (1) in the section heading, by striking “REPORT
6 TO THE PRESIDENT” and inserting “ANNUAL RE-
7 PORT TO CONGRESS”;

8 (2) in subsection (a)—

9 (A) by striking “biennially”;

10 (B) by striking “the President for submis-
11 sion to”; and

12 (C) by inserting “not later than June 30
13 of each year” before the period at the end;

14 (3) in subsection (b), by striking “biennial” and
15 inserting “annual”; and

16 (4) by adding at the end the following new sub-
17 section:

18 “(c) **FINANCIAL STATUS OF PROGRAM.**—The report
19 under this section for each year shall include information
20 regarding the financial status of the national flood insur-
21 ance program under this title, including a description of
22 the financial status of the National Flood Insurance Fund
23 and current and projected levels of claims, premium re-
24 ceipts, expenses, and borrowing under the program.”.

1 **SEC. 351. MITIGATION ASSISTANCE.**

2 (a) MITIGATION ASSISTANCE GRANTS.—Section
3 1366 of the National Flood Insurance Act of 1968 (42
4 U.S.C. 4104c) is amended—

5 (1) in subsection (a), by striking the last sen-
6 tence and inserting the following: “Such financial
7 assistance shall be made available—

8 “(1) to States and communities in the form of
9 grants under this section for carrying out mitigation
10 activities;

11 “(2) to States and communities in the form of
12 grants under this section for carrying out mitigation
13 activities that reduce flood damage to severe repet-
14 itive loss structures; and

15 “(3) to property owners in the form of direct
16 grants under this section for carrying out mitigation
17 activities that reduce flood damage to individual
18 structures for which 2 or more claim payments for
19 losses have been made under flood insurance cov-
20 erage under this title if the Administrator, after con-
21 sultation with the State and community, determines
22 that neither the State nor community in which such
23 a structure is located has the capacity to manage
24 such grants.”.

25 (2) by striking subsection (b);

26 (3) in subsection (c)—

1 (A) by striking “flood risk” and inserting
2 “multi-hazard”;

3 (B) by striking “provides protection
4 against” and inserting “examines reduction of”;
5 and

6 (C) by redesignating such subsection as
7 subsection (b);

8 (4) by striking subsection (d);

9 (5) in subsection (e)—

10 (A) in paragraph (1), by striking the para-
11 graph designation and all that follows through
12 the end of the first sentence and inserting the
13 following:

14 “(1) REQUIREMENT OF CONSISTENCY WITH AP-
15 PROVED MITIGATION PLAN.—Amounts provided
16 under this section may be used only for mitigation
17 activities that are consistent with mitigation plans
18 that are approved by the Administrator and identi-
19 fied under subparagraph (4).”;

20 (B) by striking paragraphs (2), (3), and
21 (4) and inserting the following new paragraphs:

22 “(2) REQUIREMENTS OF TECHNICAL FEASI-
23 BILITY, COST EFFECTIVENESS, AND INTEREST OF
24 NFIF.—The Administrator may approve only mitiga-
25 tion activities that the Administrator determines are

1 technically feasible and cost-effective and in the in-
2 terest of, and represent savings to, the National
3 Flood Insurance Fund. In making such determina-
4 tions, the Administrator shall take into consideration
5 recognized benefits that are difficult to quantify.

6 “(3) PRIORITY FOR MITIGATION ASSISTANCE.—
7 In providing grants under this section for mitigation
8 activities, the Administrator shall give priority for
9 funding to activities that the Administrator deter-
10 mines will result in the greatest savings to the Na-
11 tional Flood Insurance Fund, including activities
12 for—

13 “(A) severe repetitive loss structures;

14 “(B) repetitive loss structures; and

15 “(C) other subsets of structures as the Ad-
16 ministrator may establish.”;

17 (C) in paragraph (5)—

18 (i) by striking all of the matter that
19 precedes subparagraph (A) and inserting
20 the following:

21 “(4) ELIGIBLE ACTIVITIES.—Eligible activities
22 may include—”;

23 (ii) by striking subparagraphs (E) and
24 (H);

1 (iii) by redesignating subparagraphs
2 (D), (F), and (G) as subparagraphs (E),
3 (G), and (H);

4 (iv) by inserting after subparagraph
5 (C) the following new subparagraph:

6 “(D) elevation, relocation, and
7 floodproofing of utilities (including equipment
8 that serve structures);”;

9 (v) by inserting after subparagraph
10 (E), as so redesignated by clause (iii) of
11 this subparagraph, the following new sub-
12 paragraph:

13 “(F) the development or update of State,
14 local, or Indian tribal mitigation plans which
15 meet the planning criteria established by the
16 Administrator, except that the amount from
17 grants under this section that may be used
18 under this subparagraph may not exceed
19 \$50,000 for any mitigation plan of a State or
20 \$25,000 for any mitigation plan of a local gov-
21 ernment or Indian tribe;”;

22 (vi) in subparagraph (H); as so redesi-
23 gnated by clause (iii) of this subpara-
24 graph, by striking “and” at the end; and

1 (vii) by adding at the end the fol-
2 lowing new subparagraphs:

3 “(I) other mitigation activities not de-
4 scribed in subparagraphs (A) through (G) or
5 the regulations issued under subparagraph (H),
6 that are described in the mitigation plan of a
7 State, community, or Indian tribe; and

8 “(J) personnel costs for State staff that
9 provide technical assistance to communities to
10 identify eligible activities, to develop grant ap-
11 plications, and to implement grants awarded
12 under this section, not to exceed \$50,000 per
13 State in any Federal fiscal year, so long as the
14 State applied for and was awarded at least
15 \$1,000,000 in grants available under this sec-
16 tion in the prior Federal fiscal year; the re-
17 quirements of subsections (d)(1) and (d)(2)
18 shall not apply to the activity under this sub-
19 paragraph.”;

20 (D) by adding at the end the following new
21 paragraph:

22 “(6) ELIGIBILITY OF DEMOLITION AND RE-
23 BUILDING OF PROPERTIES.—The Administrator
24 shall consider as an eligible activity the demolition
25 and rebuilding of properties to at least base flood

1 elevation or greater, if required by the Administrator
2 or if required by any State regulation or local ordi-
3 nance, and in accordance with criteria established by
4 the Administrator.”; and

5 (E) by redesignating such subsection as
6 subsection (c);

7 (6) by striking subsections (f), (g), and (h) and
8 inserting the following new subsection:

9 “(d) MATCHING REQUIREMENT.—The Administrator
10 may provide grants for eligible mitigation activities as fol-
11 lows:

12 “(1) SEVERE REPETITIVE LOSS STRUCTURES.—
13 In the case of mitigation activities to severe repet-
14 itive loss structures, in an amount up to 100 percent
15 of all eligible costs.

16 “(2) REPETITIVE LOSS STRUCTURES.—In the
17 case of mitigation activities to repetitive loss struc-
18 tures, in an amount up to 90 percent of all eligible
19 costs.

20 “(3) OTHER MITIGATION ACTIVITIES.— In the
21 case of all other mitigation activities, in an amount
22 up to 75 percent of all eligible costs.”;

23 (7) in subsection (i)—

24 (A) in paragraph (2)—

1 (i) by striking “certified under sub-
2 section (g)” and inserting “required under
3 subsection (d)”; and

4 (ii) by striking “3 times the amount”
5 and inserting “the amount”; and

6 (B) by redesignating such subsection as
7 subsection (e);

8 (8) in subsection (j)—

9 (A) by striking “Riegle Community Devel-
10 opment and Regulatory Improvement Act of
11 1994” and inserting “Flood Insurance Reform
12 Act of 2012”;

13 (B) by redesignating such subsection as
14 subsection (f); and

15 (9) by striking subsections (k) and (m) and in-
16 serting the following new subsections:

17 “(g) FAILURE TO MAKE GRANT AWARD WITHIN 5
18 YEARS.—For any application for a grant under this sec-
19 tion for which the Administrator fails to make a grant
20 award within 5 years of the date of application, the grant
21 application shall be considered to be denied and any fund-
22 ing amounts allocated for such grant applications shall re-
23 main in the National Flood Mitigation Fund under section
24 1367 of this title and shall be made available for grants
25 under this section.

1 “(h) LIMITATION ON FUNDING FOR MITIGATION AC-
2 TIVITIES FOR SEVERE REPETITIVE LOSS STRUCTURES.—

3 The amount used pursuant to section 1310(a)(8) in any
4 fiscal year may not exceed \$40,000,000 and shall remain
5 available until expended.

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

8 “(1) COMMUNITY.—The term ‘community’
9 means—

10 “(A) a political subdivision that—

11 “(i) has zoning and building code ju-
12 risdiction over a particular area having
13 special flood hazards, and

14 “(ii) is participating in the national
15 flood insurance program; or

16 “(B) a political subdivision of a State, or
17 other authority, that is designated by political
18 subdivisions, all of which meet the requirements
19 of subparagraph (A), to administer grants for
20 mitigation activities for such political subdivi-
21 sions.

22 “(2) REPETITIVE LOSS STRUCTURE.—The term
23 ‘repetitive loss structure’ has the meaning given
24 such term in section 1370.

1 “(3) SEVERE REPETITIVE LOSS STRUCTURE.—

2 The term ‘severe repetitive loss structure’ means a
3 structure that—

4 “(A) is covered under a contract for flood
5 insurance made available under this title; and

6 “(B) has incurred flood-related damage—

7 “(i) for which 4 or more separate
8 claims payments have been made under
9 flood insurance coverage under this title,
10 with the amount of each such claim ex-
11 ceeding \$15,000, and with the cumulative
12 amount of such claims payments exceeding
13 \$60,000; or

14 “(ii) for which at least 2 separate
15 claims payments have been made under
16 such coverage, with the cumulative amount
17 of such claims exceeding the value of the
18 insured structure.”.

19 (b) ELIMINATION OF GRANTS PROGRAM FOR REPET-
20 ITIVE INSURANCE CLAIMS PROPERTIES.—Chapter I of
21 the National Flood Insurance Act of 1968 is amended by
22 striking section 1323 (42 U.S.C. 4030).

23 (c) ELIMINATION OF PILOT PROGRAM FOR MITIGA-
24 TION OF SEVERE REPETITIVE LOSS PROPERTIES.—Chap-

1 ter III of the National Flood Insurance Act of 1968 is
2 amended by striking section 1361A (42 U.S.C. 4102a).

3 (d) NATIONAL FLOOD INSURANCE FUND.—Section
4 1310(a) of the National Flood Insurance Act of 1968 (42
5 U.S.C. 4017(a)) is amended—

6 (1) in paragraph (7), by inserting “and” after
7 the semicolon; and

8 (2) by striking paragraphs (8) and (9).

9 (e) NATIONAL FLOOD MITIGATION FUND.—Section
10 1367 of the National Flood Insurance Act of 1968 (42
11 U.S.C. 4104d) is amended—

12 (1) in subsection (b)—

13 (A) by striking paragraph (1) and insert-
14 ing the following new paragraph:

15 “(1) in each fiscal year, from the National
16 Flood Insurance Fund in amounts not exceeding
17 \$90,000,000 to remain available until expended, of
18 which—

19 “(A) not more than \$40,000,000 shall be
20 available pursuant to subsection (a) of this sec-
21 tion only for assistance described in section
22 1366(a)(1);

23 “(B) not more than \$40,000,000 shall be
24 available pursuant to subsection (a) of this sec-

1 tion only for assistance described in section
2 1366(a)(2); and

3 “(C) not more than \$10,000,000 shall be
4 available pursuant to subsection (a) of this sec-
5 tion only for assistance described in section
6 1366(a)(3).”.

7 (B) in paragraph (3), by striking “section
8 1366(i)” and inserting “section 1366(e”;

9 (2) in subsection (c), by striking “sections 1366
10 and 1323” and inserting “section 1366”;

11 (3) by redesignating subsections (d) and (e) as
12 subsection (f) and (g), respectively; and

13 (4) by inserting after subsection (c) the fol-
14 lowing new subsections:

15 “(d) PROHIBITION ON OFFSETTING COLLECTIONS.—
16 Notwithstanding any other provision of this title, amounts
17 made available pursuant to this section shall not be sub-
18 ject to offsetting collections through premium rates for
19 flood insurance coverage under this title.

20 “(e) CONTINUED AVAILABILITY AND REALLOCA-
21 TION.—Any amounts made available pursuant to subpara-
22 graph (A), (B), or (C) of subsection (b)(1) that are not
23 used in any fiscal year shall continue to be available for
24 the purposes specified in such subparagraph of subsection
25 (b)(1) pursuant to which such amounts were made avail-

1 able, unless the Administrator determines that realloca-
2 tion of such unused amounts to meet demonstrated need
3 for other mitigation activities under section 1366 is in the
4 best interest of the National Flood Insurance Fund.”.

5 (f) INCREASED COST OF COMPLIANCE COVERAGE.—
6 Section 1304(b)(4) of the National Flood Insurance Act
7 of 1968 (42 U.S.C. 4011(b)(4)) is amended—

8 (1) by striking subparagraph (B); and

9 (2) by redesignating subparagraphs (C), (D),
10 and (E) as subparagraphs (B), (C), and (D), respec-
11 tively.

12 **SEC. 352. NOTIFICATION TO HOMEOWNERS REGARDING**
13 **MANDATORY PURCHASE REQUIREMENT AP-**
14 **PLICABILITY AND RATE PHASE-INS.**

15 Section 201 of the Flood Disaster Protection Act of
16 1973 (42 U.S.C. 4105) is amended by adding at the end
17 the following new subsection:

18 “(f) ANNUAL NOTIFICATION.—The Administrator, in
19 consultation with affected communities, shall establish and
20 carry out a plan to notify residents of areas having special
21 flood hazards, on an annual basis—

22 “(1) that they reside in such an area;

23 “(2) of the geographical boundaries of such
24 area;

1 “(3) of whether section 1308(g) of the National
2 Flood Insurance Act of 1968 applies to properties
3 within such area;

4 “(4) of the provisions of section 102 requiring
5 purchase of flood insurance coverage for properties
6 located in such an area, including the date on which
7 such provisions apply with respect to such area, tak-
8 ing into consideration section 102(i); and

9 “(5) of a general estimate of what similar
10 homeowners in similar areas typically pay for flood
11 insurance coverage, taking into consideration section
12 1308(g) of the National Flood Insurance Act of
13 1968.”.

14 **SEC. 353. NOTIFICATION TO MEMBERS OF CONGRESS OF**
15 **FLOOD MAP REVISIONS AND UPDATES.**

16 Section 1360 of the National Flood Insurance Act of
17 1968 (42 U.S.C. 4101), as amended by the preceding pro-
18 visions of this subtitle, is further amended by adding at
19 the end the following new subsection:

20 “(1) NOTIFICATION TO MEMBERS OF CONGRESS OF
21 MAP MODERNIZATION.—Upon any revision or update of
22 any floodplain area or flood-risk zone pursuant to sub-
23 section (f), any decision pursuant to subsection (f)(1) that
24 such revision or update is necessary, any issuance of pre-
25 liminary maps for such revision or updating, or any other

1 significant action relating to any such revision or update,
2 the Administrator shall notify the Senators for each State
3 affected, and each Member of the House of Representa-
4 tives for each congressional district affected, by such revi-
5 sion or update in writing of the action taken.”.

6 **SEC. 354. NOTIFICATION AND APPEAL OF MAP CHANGES;**
7 **NOTIFICATION TO COMMUNITIES OF ESTAB-**
8 **LISHMENT OF FLOOD ELEVATIONS.**

9 Section 1363 of the National Flood Insurance Act of
10 1968 (42 U.S.C. 4104) is amended by striking the section
11 designation and all that follows through the end of sub-
12 section (a) and inserting the following:

13 “SEC. 1363. (a) In establishing projected flood ele-
14 vations for land use purposes with respect to any commu-
15 nity pursuant to section 1361, the Administrator shall
16 first propose such determinations—

17 “(1) by providing the chief executive officer of
18 each community affected by the proposed elevations,
19 by certified mail, with a return receipt requested,
20 notice of the elevations, including a copy of the maps
21 for the elevations for such community and a state-
22 ment explaining the process under this section to ap-
23 peal for changes in such elevations;

24 “(2) by causing notice of such elevations to be
25 published in the Federal Register, which notice shall

1 include information sufficient to identify the ele-
2 vation determinations and the communities affected,
3 information explaining how to obtain copies of the
4 elevations, and a statement explaining the process
5 under this section to appeal for changes in the ele-
6 vations;

7 “(3) by publishing in a prominent local news-
8 paper the elevations, a description of the appeals
9 process for flood determinations, and the mailing ad-
10 dress and telephone number of a person the owner
11 may contact for more information or to initiate an
12 appeal;

13 “(4) by providing written notification, by first
14 class mail, to each owner of real property affected by
15 the proposed elevations of—

16 “(A) the status of such property, both
17 prior to and after the effective date of the pro-
18 posed determination, with respect to flood zone
19 and flood insurance requirements under this
20 Act and the Flood Disaster Protection Act of
21 1973;

22 “(B) the process under this section to ap-
23 peal a flood elevation determination; and

1 “(C) the mailing address and phone num-
2 ber of a person the owner may contact for more
3 information or to initiate an appeal; and”.

4 **SEC. 355. NOTIFICATION TO TENANTS OF AVAILABILITY OF**
5 **CONTENTS INSURANCE.**

6 The National Flood Insurance Act of 1968 is amend-
7 ed by inserting after section 1308 (42 U.S.C. 4015) the
8 following new section:

9 **“SEC. 1308A. NOTIFICATION TO TENANTS OF AVAILABILITY**
10 **OF CONTENTS INSURANCE.**

11 “(a) IN GENERAL.—The Administrator shall, upon
12 entering into a contract for flood insurance coverage under
13 this title for any property—

14 “(1) provide to the insured sufficient copies of
15 the notice developed pursuant to subsection (b); and

16 “(2) require the insured to provide a copy of
17 the notice, or otherwise provide notification of the
18 information under subsection (b) in the manner that
19 the manager or landlord deems most appropriate, to
20 each such tenant and to each new tenant upon com-
21 mencement of such a tenancy.

22 “(b) NOTICE.—Notice to a tenant of a property in
23 accordance with this subsection is written notice that
24 clearly informs a tenant—

1 “(1) whether the property is located in an area
2 having special flood hazards;

3 “(2) that flood insurance coverage is available
4 under the national flood insurance program under
5 this title for contents of the unit or structure leased
6 by the tenant;

7 “(3) of the maximum amount of such coverage
8 for contents available under this title at that time;
9 and

10 “(4) of where to obtain information regarding
11 how to obtain such coverage, including a telephone
12 number, mailing address, and Internet site of the
13 Administrator where such information is available.”.

14 **SEC. 356. NOTIFICATION TO POLICY HOLDERS REGARDING**
15 **DIRECT MANAGEMENT OF POLICY BY FEMA.**

16 Part C of chapter II of the National Flood Insurance
17 Act of 1968 (42 U.S.C. 4081 et seq.) is amended by add-
18 ing at the end the following new section:

19 **“SEC. 1349. NOTIFICATION TO POLICY HOLDERS REGARD-**
20 **ING DIRECT MANAGEMENT OF POLICY BY**
21 **FEMA.**

22 “(a) NOTIFICATION.—Not later than 60 days before
23 the date on which a transferred flood insurance policy ex-
24 pires, and annually thereafter until such time as the Fed-
25 eral Emergency Management Agency is no longer directly

1 administering such policy, the Administrator shall notify
2 the holder of such policy that—

3 “(1) the Federal Emergency Management
4 Agency is directly administering the policy;

5 “(2) such holder may purchase flood insurance
6 that is directly administered by an insurance com-
7 pany; and

8 “(3) purchasing flood insurance offered under
9 the National Flood Insurance Program that is di-
10 rectly administered by an insurance company will
11 not alter the coverage provided or the premiums
12 charged to such holder that otherwise would be pro-
13 vided or charged if the policy was directly adminis-
14 tered by the Federal Emergency Management Agen-
15 cy.

16 “(b) DEFINITION.—In this section, the term ‘trans-
17 ferred flood insurance policy’ means a flood insurance pol-
18 icy that—

19 “(1) was directly administered by an insurance
20 company at the time the policy was originally pur-
21 chased by the policy holder; and

22 “(2) at the time of renewal of the policy, direct
23 administration of the policy was or will be trans-
24 ferred to the Federal Emergency Management Agen-
25 cy.”.

1 **SEC. 357. NOTICE OF AVAILABILITY OF FLOOD INSURANCE**
2 **AND ESCROW IN RESPA GOOD FAITH ESTI-**
3 **MATE.**

4 Subsection (c) of section 5 of the Real Estate Settle-
5 ment Procedures Act of 1974 (12 U.S.C. 2604(c)) is
6 amended by adding at the end the following new sentence:
7 “Each such good faith estimate shall include the following
8 conspicuous statements and information: (1) that flood in-
9 surance coverage for residential real estate is generally
10 available under the national flood insurance program
11 whether or not the real estate is located in an area having
12 special flood hazards and that, to obtain such coverage,
13 a home owner or purchaser should contact the national
14 flood insurance program; (2) a telephone number and a
15 location on the Internet by which a home owner or pur-
16 chaser can contact the national flood insurance program;
17 and (3) that the escrowing of flood insurance payments
18 is required for many loans under section 102(d) of the
19 Flood Disaster Protection Act of 1973, and may be a con-
20 venient and available option with respect to other loans.”.

21 **SEC. 358. REIMBURSEMENT FOR COSTS INCURRED BY**
22 **HOMEOWNERS AND COMMUNITIES OBTAIN-**
23 **ING LETTERS OF MAP AMENDMENT OR REVI-**
24 **SION.**

25 (a) IN GENERAL.—Section 1360 of the National
26 Flood Insurance Act of 1968 (42 U.S.C. 4101), as amend-

1 ed by the preceding provisions of this subtitle, is further
2 amended by adding at the end the following new sub-
3 section:

4 “(m) REIMBURSEMENT.—

5 “(1) REQUIREMENT UPON BONA FIDE
6 ERROR.—If an owner of any property located in an
7 area described in section 102(i)(3) of the Flood Dis-
8 aster Protection Act of 1973, or a community in
9 which such a property is located, obtains a letter of
10 map amendment, or a letter of map revision, due to
11 a bona fide error on the part of the Administrator
12 of the Federal Emergency Management Agency, the
13 Administrator shall reimburse such owner, or such
14 entity or jurisdiction acting on such owner’s behalf,
15 or such community, as applicable, for any reasonable
16 costs incurred in obtaining such letter.

17 “(2) REASONABLE COSTS.—The Administrator
18 shall, by regulation or notice, determine a reasonable
19 amount of costs to be reimbursed under paragraph
20 (1), except that such costs shall not include legal or
21 attorneys fees. In determining the reasonableness of
22 costs, the Administrator shall only consider the ac-
23 tual costs to the owner or community, as applicable,
24 of utilizing the services of an engineer, surveyor, or
25 similar services.”.

1 (b) REGULATIONS.—Not later than 90 days after the
2 date of the enactment of this Act, the Administrator of
3 the Federal Emergency Management Agency shall issue
4 the regulations or notice required under section
5 1360(m)(2) of the National Flood Insurance Act of 1968,
6 as added by the amendment made by subsection (a) of
7 this section.

8 **SEC. 359. ENHANCED COMMUNICATION WITH CERTAIN**
9 **COMMUNITIES DURING MAP UPDATING**
10 **PROCESS.**

11 Section 1360 of the National Flood Insurance Act of
12 1968 (42 U.S.C. 4101), as amended by the preceding pro-
13 visions of this subtitle, is further amended by adding at
14 the end the following new subsection:

15 “(n) ENHANCED COMMUNICATION WITH CERTAIN
16 COMMUNITIES DURING MAP UPDATING PROCESS.—In
17 updating flood insurance maps under this section, the Ad-
18 ministrator shall communicate with communities located
19 in areas where flood insurance rate maps have not been
20 updated in 20 years or more and the appropriate State
21 emergency agencies to resolve outstanding issues, provide
22 technical assistance, and disseminate all necessary infor-
23 mation to reduce the prevalence of outdated maps in flood-
24 prone areas.”.

1 **SEC. 360. NOTIFICATION TO RESIDENTS NEWLY INCLUDED**
2 **IN FLOOD HAZARD AREAS.**

3 Section 1360 of the National Flood Insurance Act of
4 1968 (42 U.S.C. 4101), as amended by the preceding pro-
5 visions of this subtitle, is further amended by adding at
6 the end the following new subsection:

7 “(o) NOTIFICATION TO RESIDENTS NEWLY IN-
8 CLUDED IN FLOOD HAZARD AREA.—In revising or updat-
9 ing any areas having special flood hazards, the Adminis-
10 trator shall provide to each owner of a property to be
11 newly included in such a special flood hazard area, at the
12 time of issuance of such proposed revised or updated flood
13 insurance maps, a copy of the proposed revised or updated
14 flood insurance maps together with information regarding
15 the appeals process under section 1363 (42 U.S.C.
16 4104).”.

17 **SEC. 361. TREATMENT OF SWIMMING POOL ENCLOSURES**
18 **OUTSIDE OF HURRICANE SEASON.**

19 Chapter I of the National Flood Insurance Act of
20 1968 (42 U.S.C. 4001 et seq.) is amended by adding at
21 the end the following new section:

22 **“SEC. 1325. TREATMENT OF SWIMMING POOL ENCLOSURES**
23 **OUTSIDE OF HURRICANE SEASON.**

24 “In the case of any property that is otherwise in com-
25 pliance with the coverage and building requirements of the
26 national flood insurance program, the presence of an en-

1 closed swimming pool located at ground level or in the
2 space below the lowest floor of a building after November
3 30 and before June 1 of any year shall have no effect on
4 the terms of coverage or the ability to receive coverage
5 for such building under the national flood insurance pro-
6 gram established pursuant to this title, if the pool is en-
7 closed with non-supporting breakaway walls.”.

8 **SEC. 362. INFORMATION REGARDING MULTIPLE PERILS**
9 **CLAIMS.**

10 Section 1345 of the National Flood Insurance Act of
11 1968 (42 U.S.C. 4081) is amended by adding at the end
12 the following new subsection:

13 “(d) INFORMATION REGARDING MULTIPLE PERILS
14 CLAIMS.—

15 “(1) IN GENERAL.—Subject to paragraph (2),
16 if an insured having flood insurance coverage under
17 a policy issued under the program under this title by
18 the Administrator or a company, insurer, or entity
19 offering flood insurance coverage under such pro-
20 gram (in this subsection referred to as a ‘partici-
21 pating company’) has wind or other homeowners
22 coverage from any company, insurer, or other entity
23 covering property covered by such flood insurance, in
24 the case of damage to such property that may have
25 been caused by flood or by wind, the Administrator

1 and the participating company, upon the request of
2 the insured, shall provide to the insured, within 30
3 days of such request—

4 “(A) a copy of the estimate of structure
5 damage;

6 “(B) proofs of loss;

7 “(C) any expert or engineering reports or
8 documents commissioned by or relied upon by
9 the Administrator or participating company in
10 determining whether the damage was caused by
11 flood or any other peril; and

12 “(D) the Administrator’s or the partici-
13 pating company’s final determination on the
14 claim.

15 “(2) TIMING.—Paragraph (1) shall apply only
16 with respect to a request described in such para-
17 graph made by an insured after the Administrator
18 or the participating company, or both, as applicable,
19 have issued a final decision on the flood claim in-
20 volved and resolution of all appeals with respect to
21 such claim.”.

1 **SEC. 363. FEMA AUTHORITY TO REJECT TRANSFER OF**
2 **POLICIES.**

3 Section 1345 of the National Flood Insurance Act of
4 1968 (42 U.S.C. 4081) is amended by adding at the end
5 the following new subsection:

6 “(e) FEMA AUTHORITY TO REJECT TRANSFER OF
7 POLICIES.—Notwithstanding any other provision of this
8 Act, the Administrator may, at the discretion of the Ad-
9 ministrator, refuse to accept the transfer of the adminis-
10 tration of policies for coverage under the flood insurance
11 program under this title that are written and administered
12 by any insurance company or other insurer, or any insur-
13 ance agent or broker.”.

14 **SEC. 364. APPEALS.**

15 (a) TELEVISION AND RADIO ANNOUNCEMENT.—Sec-
16 tion 1363 of the National Flood Insurance Act of 1968
17 (42 U.S.C. 4104), as amended by the preceding provisions
18 of this subtitle, is further amended—

19 (1) in subsection (a), by adding at the end the
20 following new paragraph:

21 “(5) by notifying a local television and radio
22 station,”; and

23 (2) in the first sentence of subsection (b), by in-
24 serting before the period at the end the following:

25 “and shall notify a local television and radio station
26 at least once during the same 10-day period”.

1 (b) EXTENSION OF APPEALS PERIOD.—Subsection
2 (b) of section 1363 of the National Flood Insurance Act
3 of 1968 (42 U.S.C. 4104(b)) is amended—

4 (1) by striking “(b) The Director” and insert-
5 ing “(b)(1) The Administrator”; and

6 (2) by adding at the end the following new
7 paragraph:

8 “(2) The Administrator shall grant an extension of
9 the 90-day period for appeals referred to in paragraph (1)
10 for 90 additional days if an affected community certifies
11 to the Administrator, after the expiration of at least 60
12 days of such period, that the community—

13 “(A) believes there are property owners or les-
14 sees in the community who are unaware of such pe-
15 riod for appeals; and

16 “(B) will utilize the extension under this para-
17 graph to notify property owners or lessees who are
18 affected by the proposed flood elevation determina-
19 tions of the period for appeals and the opportunity
20 to appeal the determinations proposed by the Ad-
21 ministrator.”.

22 (c) APPLICABILITY.—The amendments made by sub-
23 sections (a) and (b) shall apply with respect to any flood
24 elevation determination for any area in a community that
25 has not, as of the date of the enactment of this Act, been

1 issued a Letter of Final Determination for such deter-
2 mination under the flood insurance map modernization
3 process.

4 **SEC. 365. RESERVE FUND.**

5 (a) ESTABLISHMENT.—Chapter I of the National
6 Flood Insurance Act of 1968 is amended by inserting after
7 section 1310 (42 U.S.C. 4017) the following new section:

8 **“SEC. 1310A. RESERVE FUND.**

9 “(a) ESTABLISHMENT OF RESERVE FUND.—In car-
10 rying out the flood insurance program authorized by this
11 title, the Administrator shall establish in the Treasury of
12 the United States a National Flood Insurance Reserve
13 Fund (in this section referred to as the ‘Reserve Fund’)
14 which shall—

15 “(1) be an account separate from any other ac-
16 counts or funds available to the Administrator; and

17 “(2) be available for meeting the expected fu-
18 ture obligations of the flood insurance program.

19 “(b) RESERVE RATIO.—Subject to the phase-in re-
20 quirements under subsection (d), the Reserve Fund shall
21 maintain a balance equal to—

22 “(1) 1 percent of the sum of the total potential
23 loss exposure of all outstanding flood insurance poli-
24 cies in force in the prior fiscal year; or

1 “(2) such higher percentage as the Adminis-
2 trator determines to be appropriate, taking into con-
3 sideration any circumstance that may raise a signifi-
4 cant risk of substantial future losses to the Reserve
5 Fund.

6 “(c) MAINTENANCE OF RESERVE RATIO.—

7 “(1) IN GENERAL.—The Administrator shall
8 have the authority to establish, increase, or decrease
9 the amount of aggregate annual insurance premiums
10 to be collected for any fiscal year necessary—

11 “(A) to maintain the reserve ratio required
12 under subsection (b); and

13 “(B) to achieve such reserve ratio, if the
14 actual balance of such reserve is below the
15 amount required under subsection (b).

16 “(2) CONSIDERATIONS.—In exercising the au-
17 thority under paragraph (1), the Administrator shall
18 consider—

19 “(A) the expected operating expenses of
20 the Reserve Fund;

21 “(B) the insurance loss expenditures under
22 the flood insurance program;

23 “(C) any investment income generated
24 under the flood insurance program; and

1 “(D) any other factor that the Adminis-
2 trator determines appropriate.

3 “(3) LIMITATIONS.—In exercising the authority
4 under paragraph (1), the Administrator shall be
5 subject to all other provisions of this Act, including
6 any provisions relating to chargeable premium rates
7 and annual increases of such rates.

8 “(d) PHASE-IN REQUIREMENTS.—The phase-in re-
9 quirements under this subsection are as follows:

10 “(1) IN GENERAL.—Beginning in fiscal year
11 2012 and not ending until the fiscal year in which
12 the ratio required under subsection (b) is achieved,
13 in each such fiscal year the Administrator shall
14 place in the Reserve Fund an amount equal to not
15 less than 7.5 percent of the reserve ratio required
16 under subsection (b).

17 “(2) AMOUNT SATISFIED.—As soon as the ratio
18 required under subsection (b) is achieved, and except
19 as provided in paragraph (3), the Administrator
20 shall not be required to set aside any amounts for
21 the Reserve Fund.

22 “(3) EXCEPTION.—If at any time after the
23 ratio required under subsection (b) is achieved, the
24 Reserve Fund falls below the required ratio under
25 subsection (b), the Administrator shall place in the

1 Reserve Fund for that fiscal year an amount equal
2 to not less than 7.5 percent of the reserve ratio re-
3 quired under subsection (b).

4 “(e) LIMITATION ON RESERVE RATIO.—In any given
5 fiscal year, if the Administrator determines that the re-
6 serve ratio required under subsection (b) cannot be
7 achieved, the Administrator shall submit a report to the
8 Congress that—

9 “(1) describes and details the specific concerns
10 of the Administrator regarding such consequences;

11 “(2) demonstrates how such consequences
12 would harm the long-term financial soundness of the
13 flood insurance program; and

14 “(3) indicates the maximum attainable reserve
15 ratio for that particular fiscal year.

16 “(f) AVAILABILITY OF AMOUNTS.—The reserve ratio
17 requirements under subsection (b) and the phase-in re-
18 quirements under subsection (d) shall be subject to the
19 availability of amounts in the National Flood Insurance
20 Fund for transfer under section 1310(a)(10), as provided
21 in section 1310(f).”.

22 (b) FUNDING.—Subsection (a) of section 1310 of the
23 National Flood Insurance Act of 1968 (42 U.S.C.
24 4017(a)), as amended by the preceding provisions of this

1 Act, is further amended by adding at the end the following
2 new paragraph:

3 “(10) for transfers to the National Flood Insur-
4 ance Reserve Fund under section 1310A, in accord-
5 ance with such section.”.

6 **SEC. 366. CDBG ELIGIBILITY FOR FLOOD INSURANCE OUT-**
7 **REACH ACTIVITIES AND COMMUNITY BUILD-**
8 **ING CODE ADMINISTRATION GRANTS.**

9 Section 105(a) of the Housing and Community De-
10 velopment Act of 1974 (42 U.S.C. 5305(a)) is amended—

11 (1) in paragraph (24), by striking “and” at the
12 end;

13 (2) in paragraph (25), by striking the period at
14 the end and inserting a semicolon; and

15 (3) by adding at the end the following new
16 paragraphs:

17 “(26) supplementing existing State or local
18 funding for administration of building code enforce-
19 ment by local building code enforcement depart-
20 ments, including for increasing staffing, providing
21 staff training, increasing staff competence and pro-
22 fessional qualifications, and supporting individual
23 certification or departmental accreditation, and for
24 capital expenditures specifically dedicated to the ad-
25 ministration of the building code enforcement de-

1 partment, except that, to be eligible to use amounts
2 as provided in this paragraph—

3 “(A) a building code enforcement depart-
4 ment shall provide matching, non-Federal funds
5 to be used in conjunction with amounts used
6 under this paragraph in an amount—

7 “(i) in the case of a building code en-
8 forcement department serving an area with
9 a population of more than 50,000, equal to
10 not less than 50 percent of the total
11 amount of any funds made available under
12 this title that are used under this para-
13 graph;

14 “(ii) in the case of a building code en-
15 forcement department serving an area with
16 a population of between 20,001 and
17 50,000, equal to not less than 25 percent
18 of the total amount of any funds made
19 available under this title that are used
20 under this paragraph; and

21 “(iii) in the case of a building code
22 enforcement department serving an area
23 with a population of less than 20,000,
24 equal to not less than 12.5 percent of the
25 total amount of any funds made available

1 under this title that are used under this
2 paragraph,
3 except that the Secretary may waive the match-
4 ing fund requirements under this subparagraph,
5 in whole or in part, based upon the level of eco-
6 nomic distress of the jurisdiction in which is lo-
7 cated the local building code enforcement de-
8 partment that is using amounts for purposes
9 under this paragraph, and shall waive such
10 matching fund requirements in whole for any
11 recipient jurisdiction that has dedicated all
12 building code permitting fees to the conduct of
13 local building code enforcement; and

14 “(B) any building code enforcement de-
15 partment using funds made available under this
16 title for purposes under this paragraph shall
17 empanel a code administration and enforcement
18 team consisting of at least 1 full-time building
19 code enforcement officer, a city planner, and a
20 health planner or similar officer; and

21 “(27) provision of assistance to local govern-
22 mental agencies responsible for floodplain manage-
23 ment activities (including such agencies of Indians
24 tribes, as such term is defined in section 4 of the
25 Native American Housing Assistance and Self-De-

1 termination Act of 1996 (25 U.S.C. 4103)) in com-
2 munities that participate in the national flood insur-
3 ance program under the National Flood Insurance
4 Act of 1968 (42 U.S.C. 4001 et seq.), only for car-
5 rying out outreach activities to encourage and facili-
6 tate the purchase of flood insurance protection
7 under such Act by owners and renters of properties
8 in such communities and to promote educational ac-
9 tivities that increase awareness of flood risk reduc-
10 tion; except that—

11 “(A) amounts used as provided under this
12 paragraph shall be used only for activities de-
13 signed to—

14 “(i) identify owners and renters of
15 properties in communities that participate
16 in the national flood insurance program,
17 including owners of residential and com-
18 mercial properties;

19 “(ii) notify such owners and renters
20 when their properties become included in,
21 or when they are excluded from, an area
22 having special flood hazards and the effect
23 of such inclusion or exclusion on the appli-
24 cability of the mandatory flood insurance
25 purchase requirement under section 102 of

1 the Flood Disaster Protection Act of 1973
2 (42 U.S.C. 4012a) to such properties;

3 “(iii) educate such owners and renters
4 regarding the flood risk and reduction of
5 this risk in their community, including the
6 continued flood risks to areas that are no
7 longer subject to the flood insurance man-
8 datory purchase requirement;

9 “(iv) educate such owners and renters
10 regarding the benefits and costs of main-
11 taining or acquiring flood insurance, in-
12 cluding, where applicable, lower-cost pre-
13 ferred risk policies under this title for such
14 properties and the contents of such prop-
15 erties;

16 “(v) encourage such owners and rent-
17 ers to maintain or acquire such coverage;

18 “(vi) notify such owners of where to
19 obtain information regarding how to obtain
20 such coverage, including a telephone num-
21 ber, mailing address, and Internet site of
22 the Administrator of the Federal Emer-
23 gency Management Agency (in this para-
24 graph referred to as the ‘Administrator’)
25 where such information is available; and

1 “(vii) educate local real estate agents
2 in communities participating in the na-
3 tional flood insurance program regarding
4 the program and the availability of cov-
5 erage under the program for owners and
6 renters of properties in such communities,
7 and establish coordination and liaisons
8 with such real estate agents to facilitate
9 purchase of coverage under the National
10 Flood Insurance Act of 1968 and increase
11 awareness of flood risk reduction;

12 “(B) in any fiscal year, a local govern-
13 mental agency may not use an amount under
14 this paragraph that exceeds 3 times the amount
15 that the agency certifies, as the Secretary, in
16 consultation with the Administrator, shall re-
17 quire, that the agency will contribute from non-
18 Federal funds to be used with such amounts
19 used under this paragraph only for carrying out
20 activities described in subparagraph (A); and
21 for purposes of this subparagraph, the term
22 ‘non-Federal funds’ includes State or local gov-
23 ernment agency amounts, in-kind contributions,
24 any salary paid to staff to carry out the eligible
25 activities of the local governmental agency in-

1 involved, the value of the time and services con-
2 tributed by volunteers to carry out such services
3 (at a rate determined by the Secretary), and
4 the value of any donated material or building
5 and the value of any lease on a building;

6 “(C) a local governmental agency that uses
7 amounts as provided under this paragraph may
8 coordinate or contract with other agencies and
9 entities having particular capacities, specialties,
10 or experience with respect to certain popu-
11 lations or constituencies, including elderly or
12 disabled families or persons, to carry out activi-
13 ties described in subparagraph (A) with respect
14 to such populations or constituencies; and

15 “(D) each local government agency that
16 uses amounts as provided under this paragraph
17 shall submit a report to the Secretary and the
18 Administrator, not later than 12 months after
19 such amounts are first received, which shall in-
20 clude such information as the Secretary and the
21 Administrator jointly consider appropriate to
22 describe the activities conducted using such
23 amounts and the effect of such activities on the
24 retention or acquisition of flood insurance cov-
25 erage.”.

1 **SEC. 367. TECHNICAL CORRECTIONS.**

2 (a) FLOOD DISASTER PROTECTION ACT OF 1973.—

3 The Flood Disaster Protection Act of 1973 (42 U.S.C.
4 4002 et seq.) is amended—

5 (1) by striking “Director” each place such term
6 appears, except in section 102(f)(3) (42 U.S.C.
7 4012a(f)(3)), and inserting “Administrator”; and

8 (2) in section 201(b) (42 U.S.C. 4105(b)), by
9 striking “Director’s” and inserting “Administra-
10 tor’s”.

11 (b) NATIONAL FLOOD INSURANCE ACT OF 1968.—

12 The National Flood Insurance Act of 1968 (42 U.S.C.
13 4001 et seq.) is amended—

14 (1) by striking “Director” each place such term
15 appears and inserting “Administrator”; and

16 (2) in section 1363 (42 U.S.C. 4104), by strik-
17 ing “Director’s” each place such term appears and
18 inserting “Administrator’s”.

19 (c) FEDERAL FLOOD INSURANCE ACT OF 1956.—

20 Section 15(e) of the Federal Flood Insurance Act of 1956
21 (42 U.S.C. 2414(e)) is amended by striking “Director”
22 each place such term appears and inserting “Adminis-
23 trator”.

1 **SEC. 368. REQUIRING COMPETITION FOR NATIONAL FLOOD**
2 **INSURANCE PROGRAM POLICIES.**

3 (a) REPORT.—Not later than the expiration of the
4 90-day period beginning upon the date of the enactment
5 of this Act, the Administrator of the Federal Emergency
6 Management Agency, in consultation with insurance com-
7 panies, insurance agents and other organizations with
8 which the Administrator has contracted, shall submit to
9 the Congress a report describing procedures and policies
10 that the Administrator shall implement to limit the per-
11 centage of policies for flood insurance coverage under the
12 national flood insurance program that are directly man-
13 aged by the Agency to not more than 10 percent of the
14 aggregate number of flood insurance policies in force
15 under such program.

16 (b) IMPLEMENTATION.—Upon submission of the re-
17 port under subsection (a) to the Congress, the Adminis-
18 trator shall implement the policies and procedures de-
19 scribed in the report. The Administrator shall, not later
20 than the expiration of the 12-month period beginning
21 upon submission of such report, reduce the number of
22 policies for flood insurance coverage that are directly man-
23 aged by the Agency, or by the Agency's direct servicing
24 contractor that is not an insurer, to not more than 10
25 percent of the aggregate number of flood insurance poli-
26 cies in force as of the expiration of such 12-month period.

1 (c) CONTINUATION OF CURRENT AGENT RELATION-
2 SHIPS.—In carrying out subsection (b), the Administrator
3 shall ensure that—

4 (1) agents selling or servicing policies described
5 in such subsection are not prevented from con-
6 tinuing to sell or service such policies; and

7 (2) insurance companies are not prevented from
8 waiving any limitation such companies could other-
9 wise enforce to limit any such activity.

10 **SEC. 369. STUDIES OF VOLUNTARY COMMUNITY-BASED**
11 **FLOOD INSURANCE OPTIONS.**

12 (a) STUDIES.—The Administrator of the Federal
13 Emergency Management Agency and the Comptroller
14 General of the United States shall each conduct a separate
15 study to assess options, methods, and strategies for offer-
16 ing voluntary community-based flood insurance policy op-
17 tions and incorporating such options into the national
18 flood insurance program. Such studies shall take into con-
19 sideration and analyze how the policy options would affect
20 communities having varying economic bases, geographic
21 locations, flood hazard characteristics or classifications,
22 and flood management approaches.

23 (b) REPORTS.—Not later than the expiration of the
24 18-month period beginning on the date of the enactment
25 of this Act, the Administrator of the Federal Emergency

1 Management Agency and the Comptroller General of the
2 United States shall each submit a report to the Committee
3 on Financial Services of the House of Representatives and
4 the Committee on Banking, Housing, and Urban Affairs
5 of the Senate on the results and conclusions of the study
6 such agency conducted under subsection (a), and each
7 such report shall include recommendations for the best
8 manner to incorporate voluntary community-based flood
9 insurance options into the national flood insurance pro-
10 gram and for a strategy to implement such options that
11 would encourage communities to undertake flood mitiga-
12 tion activities.

13 **SEC. 370. REPORT ON INCLUSION OF BUILDING CODES IN**
14 **FLOODPLAIN MANAGEMENT CRITERIA.**

15 Not later than the expiration of the 6-month period
16 beginning on the date of the enactment of this Act, the
17 Administrator of the Federal Emergency Management
18 Agency shall conduct a study and submit a report to the
19 Committee on Financial Services of the House of Rep-
20 resentatives and the Committee on Banking, Housing, and
21 Urban Affairs of the Senate regarding the impact, effec-
22 tiveness, and feasibility of amending section 1361 of the
23 National Flood Insurance Act of 1968 (42 U.S.C. 4102)
24 to include widely used and nationally recognized building

1 codes as part of the floodplain management criteria devel-
2 oped under such section, and shall determine—

3 (1) the regulatory, financial, and economic im-
4 pacts of such a building code requirement on home-
5 owners, States and local communities, local land use
6 policies, and the Federal Emergency Management
7 Agency;

8 (2) the resources required of State and local
9 communities to administer and enforce such a build-
10 ing code requirement;

11 (3) the effectiveness of such a building code re-
12 quirement in reducing flood-related damage to build-
13 ings and contents;

14 (4) the impact of such a building code require-
15 ment on the actuarial soundness of the National
16 Flood Insurance Program;

17 (5) the effectiveness of nationally recognized
18 codes in allowing innovative materials and systems
19 for flood-resistant construction;

20 (6) the feasibility and effectiveness of providing
21 an incentive in lower premium rates for flood insur-
22 ance coverage under such Act for structures meeting
23 whichever of such widely used and nationally recog-
24 nized building code or any applicable local building
25 code provides greater protection from flood damage;

1 (7) the impact of such a building code require-
2 ment on rural communities with different building
3 code challenges than more urban environments; and

4 (8) the impact of such a building code require-
5 ment on Indian reservations.

6 **SEC. 371. STUDY ON GRADUATED RISK.**

7 (a) STUDY.—The National Academy of Sciences shall
8 conduct a study exploring methods for understanding
9 graduated risk behind levees and the associated land de-
10 velopment, insurance, and risk communication dimensions,
11 which shall—

12 (1) research, review, and recommend current
13 best practices for estimating direct annualized flood
14 losses behind levees for residential and commercial
15 structures;

16 (2) rank such practices based on their best
17 value, balancing cost, scientific integrity, and the in-
18 herent uncertainties associated with all aspects of
19 the loss estimate, including geotechnical engineering,
20 flood frequency estimates, economic value, and direct
21 damages;

22 (3) research, review, and identify current best
23 floodplain management and land use practices be-
24 hind levees that effectively balance social, economic,

1 and environmental considerations as part of an over-
2 all flood risk management strategy;

3 (4) identify examples where such practices have
4 proven effective and recommend methods and proc-
5 esses by which they could be applied more broadly
6 across the United States, given the variety of dif-
7 ferent flood risks, State and local legal frameworks,
8 and evolving judicial opinions;

9 (5) research, review, and identify a variety of
10 flood insurance pricing options for flood hazards be-
11 hind levees which are actuarially sound and based on
12 the flood risk data developed using the top three
13 best value approaches identified pursuant to para-
14 graph (1);

15 (6) evaluate and recommend methods to reduce
16 insurance costs through creative arrangements be-
17 tween insureds and insurers while keeping a clear
18 accounting of how much financial risk is being borne
19 by various parties such that the entire risk is ac-
20 counted for, including establishment of explicit limits
21 on disaster aid or other assistance in the event of a
22 flood; and

23 (7) taking into consideration the recommenda-
24 tions pursuant to paragraphs (1) through (3), rec-
25 ommend approaches to communicating the associ-

1 ated risks to community officials, homeowners, and
2 other residents.

3 (b) REPORT.—Not later than the expiration of the
4 12-month period beginning on the date of the enactment
5 of this Act, the National Academy of Sciences shall submit
6 a report to the Committees on Financial Services and
7 Science, Space, and Technology of the House of Rep-
8 resentatives and the Committees on Banking, Housing,
9 and Urban Affairs and Commerce, Science and Transpor-
10 tation of the Senate on the study under subsection (a) in-
11 cluding the information and recommendations required
12 under such subsection.

13 **SEC. 372. REPORT ON FLOOD-IN-PROGRESS DETERMINA-**
14 **TION.**

15 The Administrator of the Federal Emergency Man-
16 agement Agency shall review the processes and procedures
17 for determining that a flood event has commenced or is
18 in progress for purposes of flood insurance coverage made
19 available under the national flood insurance program
20 under the National Flood Insurance Act of 1968 and for
21 providing public notification that such an event has com-
22 menced or is in progress. In such review, the Adminis-
23 trator shall take into consideration the effects and implica-
24 tions that weather conditions, such as rainfall, snowfall,
25 projected snowmelt, existing water levels, and other condi-

1 tions have on the determination that a flood event has
2 commenced or is in progress. Not later than the expiration
3 of the 6-month period beginning upon the date of the en-
4 actment of this Act, the Administrator shall submit a re-
5 port to the Congress setting forth the results and conclu-
6 sions of the review undertaken pursuant to this section
7 and any actions undertaken or proposed actions to be
8 taken to provide for a more precise and technical deter-
9 mination that a flooding event has commenced or is in
10 progress.

11 **SEC. 373. STUDY ON REPAYING FLOOD INSURANCE DEBT.**

12 Not later than the expiration of the 6-month period
13 beginning on the date of the enactment of this Act, the
14 Administrator of the Federal Emergency Management
15 Agency shall submit a report to the Congress setting forth
16 a plan for repaying within 10 years all amounts, including
17 any amounts previously borrowed but not yet repaid, owed
18 pursuant to clause (2) of subsection (a) of section 1309
19 of the National Flood Insurance Act of 1968 (42 U.S.C.
20 4016(a)(2)).

21 **SEC. 374. NO CAUSE OF ACTION.**

22 No cause of action shall exist and no claim may be
23 brought against the United States for violation of any no-
24 tification requirement imposed upon the United States by
25 this subtitle or any amendment made by this subtitle.

1 **SEC. 375. AUTHORITY FOR THE CORPS OF ENGINEERS TO**
2 **PROVIDE SPECIALIZED OR TECHNICAL SERV-**
3 **ICES.**

4 (a) **IN GENERAL.**—Notwithstanding any other provi-
5 sion of law, upon the request of a State or local govern-
6 ment, the Secretary of the Army may evaluate a levee sys-
7 tem that was designed or constructed by the Secretary for
8 the purposes of the National Flood Insurance Program es-
9 tablished under chapter 1 of the National Flood Insurance
10 Act of 1968 (42 U.S.C. 4011 et seq.).

11 (b) **REQUIREMENTS.**—A levee system evaluation
12 under subsection (a) shall—

13 (1) comply with applicable regulations related
14 to areas protected by a levee system;

15 (2) be carried out in accordance with such pro-
16 cedures as the Secretary, in consultation with the
17 Administrator of the Federal Emergency Manage-
18 ment Agency, may establish; and

19 (3) be carried out only if the State or local gov-
20 ernment agrees to reimburse the Secretary for all
21 cost associated with the performance of the activi-
22 ties.

1 **Subtitle E—Repeal of the Office of**
2 **Financial Research**

3 **SEC. 381. REPEAL OF THE OFFICE OF FINANCIAL RE-**
4 **SEARCH.**

5 (a) IN GENERAL.—Subtitle B of title I of the Dodd-
6 Frank Wall Street Reform and Consumer Protection Act
7 is hereby repealed.

8 (b) CONFORMING AMENDMENTS TO THE DODD-
9 FRANK ACT.—The Dodd-Frank Wall Street Reform and
10 Consumer Protection Act is amended—

11 (1) in section 102(a), by striking paragraph
12 (5);

13 (2) in section 111—

14 (A) in subsection (b)(2)—

15 (i) by striking subparagraph (A); and

16 (ii) by redesignating subparagraphs

17 (B), (C), (D), and (E) as subparagraphs

18 (A), (B), (C), and (D), respectively;

19 (B) in subsection (c)(1), by striking “sub-

20 paragraphs (C), (D), and (E)” and inserting

21 “subparagraphs (B), (C), and (D)”;

22 (3) in section 112—

23 (A) in subsection (a)(2)—

1 (i) in subparagraph (A), by striking
2 “direct the Office of Financial Research
3 to”;

4 (ii) by striking subparagraph (B); and

5 (iii) by redesignating subparagraphs
6 (C), (D), (E), (F), (G), (H), (I), (J), (K),
7 (L), (M), and (N) as subparagraphs (B),
8 (C), (D), (E), (F), (G), (H), (I), (J), (K),
9 (L), and (M), respectively; and
10 (B) in subsection (d)—

11 (i) in paragraph (1), by striking “the
12 Office of Financial Research, member
13 agencies, and” and inserting “member
14 agencies and”;

15 (ii) in paragraph (2), by striking “the
16 Office of Financial Research, any member
17 agency, and” and inserting “any member
18 agency and”;

19 (iii) in paragraph (3)—

20 (I) by striking “, acting through
21 the Office of Financial Research,”
22 each place it appears; and

23 (II) in subparagraph (B), by
24 striking “the Office of Financial Re-
25 search or”; and

1 (iv) in paragraph (5)(A), by striking
2 “, the Office of Financial Research,”;

3 (4) in section 116, by striking “, acting through
4 the Office of Financial Research,” each place it ap-
5 pears; and

6 (5) by striking section 118.

7 (c) CONFORMING AMENDMENT TO THE PAPERWORK
8 REDUCTION ACT.—Effective as of the date specified in
9 section 1100H of the Dodd-Frank Wall Street Reform and
10 Consumer Protection Act, section 1100D(a) of such Act
11 is amended to read as follows:

12 “(a) DESIGNATION AS AN INDEPENDENT AGENCY.—
13 Section 3502(5) of subchapter I of chapter 35 of title 44,
14 United States Code (commonly known as the Paperwork
15 Reduction Act) is amended by inserting ‘the Bureau of
16 Consumer Financial Protection,’ after ‘the Securities and
17 Exchange Commission,’.”

18 (d) TECHNICAL AMENDMENTS.—The table of con-
19 tents for the Dodd-Frank Wall Street Reform and Con-
20 sumer Protection Act is amended—

21 (1) by striking the item relating to section 118;

22 and

23 (2) by striking the items relating to subtitle B
24 of title I.