

**AMENDMENT IN THE NATURE OF A SUBSTITUTE TO
COMMITTEE PRINT
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OF TEXAS, MRS. BIGGERT OF ILLINOIS, MR.
HENSARLING OF TEXAS, AND MR. GARRETT
OF NEW JERSEY**

Strike all after the enacting clause and insert the following:

1 **SEC. 1. SHORT TITLE.**

2 This Act may be cited as the “No More Bailouts Act
3 of 2009”.

4 **SEC. 2. AMENDMENTS TO TITLE 28 OF THE UNITED STATES
5 CODE.**

6 Title 28 of the United States Code is amended—

7 (1) in section 1408 by striking “section 1409”
8 and inserting “sections 1409 and 1409A”,

9 (2) by inserting after section 1409 the fol-
10 lowing:

11 **“§ 1409A. Venue of cases involving non-bank financial
12 institutions**

13 “A case under chapter 14 may be commenced in the
14 district court of the United States for the district—

1 “(1) in which the debtor has its principal place
2 of business or principal assets in the United States
3 if a Federal Reserve Bank is located in that district;

4 “(2) if venue does not exist under paragraph
5 (1), in which there is a Federal Reserve Bank and
6 in a Federal circuit in which the debtor has its prin-
7 cipal place of business or principal assets in the
8 United States; or

9 “(3) if venue does not exist under paragraph
10 (1) or (2), in which there is a Federal Reserve Bank
11 and in a Federal circuit adjacent to the Federal cir-
12 cuit in which the debtor has its principal place of
13 business or principal assets in the United States.”,
14 and

15 (3) by amending the table of sections of chapter
16 87 of such title to insert after the item relating to
17 section 1408 the following:

“1409A. Venue of cases involving non-bank financial institutions.”.

18 **SEC. 3. AMENDMENTS TO TITLE 11 OF THE UNITED STATES**

19 **CODE.**

20 (a) DEFINITIONS.—Section 101 of title 11, United
21 States Code, is amended—

22 (1) by inserting after paragraph (26) the fol-
23 lowing:

24 “(26A) The term ‘functional regulator’ means
25 the Federal regulatory agency with the primary Fed-

1 eral regulatory authority over the debtor, such as an
2 agency listed in section 509 of the Gramm-Leach-
3 Bliley Act.”,

4 (2) by redesignating paragraphs (38A) and
5 (38B) as paragraphs (38B) and (38C), respectively,

6 (3) by inserting after paragraph (38) the fol-
7 lowing:

8 “(38A) the term ‘Market Stability and Capital
9 Adequacy Board’ means the entity established in
10 section 201 of the Consumer Protection and Regu-
11 lator Enhancement Act.”, and

12 (4) by inserting after paragraph (40) the fol-
13 lowing:

14 “(40A) The term ‘non-bank financial institu-
15 tion’ means an institution the business of which is
16 engaging in financial activities that is not an insured
17 depository institution.”.

18 (b) APPLICABILITY OF CHAPTERS.—Section 103 of
19 title 11, United States Code, is amended—

20 (1) in subsection (a) by striking “13” and in-
21 serting “13, and 14”,

22 (2) by redesignating subsection (k) as sub-
23 section (l), and

24 (3) by inserting after subsection (j) the fol-
25 lowing:

1 “(k) Chapter 14 applies only in a case under such
2 chapter.”.

3 (c) WHO MAY BE A DEBTOR.—Section 109 of title
4 11, United States Code, is amended—

5 (1) in subsection (b)—

6 (A) in paragraph (2) by striking “or” at
7 the end,

8 (B) in paragraph (3) by striking the period
9 at the end and inserting “; or”, and

10 (C) by adding at the end the following:

11 “(4) a non-bank financial institution that has
12 not been a debtor under chapter 14 of this title.”,

13 (2) in subsection (d) by striking “or commodity
14 broker” and inserting “, commodity broker, or a
15 non-bank financial institution”, and

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

17 “(i) Only a non-bank financial institution may be a
18 debtor under chapter 14 of this title.”.

19 (d) INVOLUNTARY CASES.—Section 303 of title 11,
20 the United States Code, is amended—

21 (1) in subsection (a) by striking “or 11” and
22 inserting “, 11, or 14”, and

23 (2) in subsection (b) by striking “or 11” and
24 inserting “, 11, or 14”.

1 (e) OBTAINING CREDIT.—Section 364 of title 11,
2 United States Code, is amended by adding at the end the
3 following:

4 “(g) Notwithstanding any other provision of this sec-
5 tion, the trustee may not, and the court may not authorize
6 the trustee to, obtain credit, if the source of that credit
7 either directly or indirectly is the United States.”.

8 (f) CHAPTER 14.—Title 11, United States Code, is
9 amended—

10 (1) by inserting the following after chapter 13:

11 **“CHAPTER 14—ADJUSTMENT TO THE**
12 **DEBTS OF A NON-BANK FINANCIAL IN-**
13 **STITUTION**

“1401. Inapplicability of other sections.

“1402. Applicability of chapter 11 to cases under this chapter.

“1403. Prepetition consultation.

“1404. Appointment of trustee.

“1405. Right to be heard.

“1406. Right to communicate.

“1407. Exemption with respect to certain contracts or agreements.

“1408. Conversion or dismissal.

14 **“§ 1401. Inapplicability of other sections**

15 “Except as provided in section 1408, sections
16 362(b)(6), 362(b)(7), 559, 560, and 561 do not apply in
17 a case under this chapter.

1 **“§ 1402. Applicability of chapter 11 to cases under**
2 **this chapter**

3 “With the exception of sections 1104(d), 1109,
4 1112(a), 1115, and 1116, subchapters I, II, and III of
5 chapter 11 apply in a case under this chapter.

6 **“§ 1403. Prepetition consultation**

7 “(a) Subject to subsection (b)—

8 “(1) a non-bank financial institution may not
9 be a debtor under this chapter unless that institu-
10 tion has, at least 10 days prior to the date of the
11 filing of the petition by such institution, taken part
12 in the consultation described in subsection (c); and

13 “(2) a creditor may not commence an involun-
14 tary case under this chapter unless, at least 10 days
15 prior to the date of the filing of the petition by such
16 creditor, the creditor notifies the non-bank financial
17 institution, the functional regulator, and the Market
18 Stability and Capital Adequacy Board of its intent
19 to file a petition and requests a consultation as de-
20 scribed in subsection (c).

21 “(b) If the non-bank financial institution, the func-
22 tional regulator, and the Market Stability and Capital
23 Adequacy Board, in consultation with any agency charged
24 with administering a nonbankruptcy insolvency regime for
25 any component of the debtor, certify that the immediate
26 filing of a petition under section 301 or 303 is necessary,

1 or that an immediate filing would be in the interests of
2 justice, a petition may be filed notwithstanding subsection
3 (a).

4 “(c) The non-bank financial institution, the func-
5 tional regulator, the Market Stability and Capital Ade-
6 quacy Board, and any agency charged with administering
7 a nonbankruptcy insolvency regime for any component of
8 the debtor shall engage in prepetition consultation in order
9 to attempt to avoid the need for the non-bank financial
10 institution’s liquidation or reorganization in bankruptcy,
11 to make any liquidation or reorganization of the non-bank
12 financial institution under this title more orderly, or to
13 aid in the nonbankruptcy resolution of any of the non-
14 bank financial institution’s components under its non-
15 bankruptcy insolvency regime. Such consultation shall spe-
16 cifically include the attempt to negotiate forbearance of
17 claims between the non-bank financial institution and its
18 creditors if such forbearance would likely help to avoid the
19 commencement of a case under this title, would make any
20 liquidation or reorganization under this title more orderly,
21 or would aid in the nonbankruptcy resolution of any of
22 the non-bank financial institution’s components under its
23 nonbankruptcy insolvency regime. Additionally, the con-
24 sultation shall consider whether, if a petition is filed under

1 section 301 or 303, the debtor should file a motion for
2 an exemption authorized by section 1407.

3 “(d) The court may allow the consultation process to
4 continue for 30 days after the petition, upon motion by
5 the debtor or a creditor. Any post-petition consultation
6 proceedings authorized should be facilitated by the court’s
7 mediation services, under seal, and exclude ex parte com-
8 munications.

9 “(e) The Market Stability and Capital Adequacy
10 Board and the functional regulator shall publish and
11 transmit to Congress a report documenting the course of
12 any consultation. Such report shall be published and
13 transmitted to Congress within 30 days of the conclusion
14 of the consultation.

15 “(f) Nothing in this section shall be interpreted to
16 set aside any of the limitations on the use of Federal funds
17 set forth in the Consumer Protection and Regulator En-
18 hancement Act or the amendments made by such Act.

19 **“§ 1404. Appointment of trustee**

20 “In applying section 1104 to a case under this chap-
21 ter, if the court orders the appointment of a trustee or
22 an examiner, if the trustee or an examiner dies or resigns
23 during the case or is removed under section 324, or if a
24 trustee fails to qualify under section 322, the functional
25 regulator, in consultation with the Market Stability and

1 Capital Adequacy Board, shall submit a list of five disin-
2 terested persons that are qualified and willing to serve as
3 trustees in the case and the United States trustee shall
4 appoint, subject to the court's approval, one of such per-
5 sons to serve as trustee in the case.

6 **“§ 1405. Right to be heard**

7 “(a) The functional regulator, the Market Stability
8 and Capital Adequacy Board, the Federal Reserve, the
9 Department of the Treasury, the Securities and Exchange
10 Commission, and any domestic or foreign agency charged
11 with administering a nonbankruptcy insolvency regime for
12 any component of the debtor may raise and may appear
13 and be heard on any issue in a case under this chapter,
14 but may not appeal from any judgment, order, or decree
15 entered in the case.

16 “(b) A party in interest, including the debtor, the
17 trustee, a creditors' committee, an equity security holders'
18 committee, a creditor, an equity security holder, or any
19 indenture trustee may raise, and may appear and be heard
20 on, any issue in a case under this chapter.

21 **“§ 1406. Right to communicate**

22 “The court is entitled to communicate directly with,
23 or to request information or assistance directly from, the
24 functional regulator, the Market Stability and Capital
25 Adequacy Board, the Board of Governors of the Federal

1 Reserve System, the Department of the Treasury, or any
2 agency charged with administering a nonbankruptcy insol-
3 vency regime for any component of the debtor, subject to
4 the rights of a party in interest to notice and participation.

5 **“§ 1407. Exemption with respect to certain contracts**
6 **or agreements**

7 “(a) Subject to subsection (b)—

8 “(1) upon motion of the debtor, consented to by
9 the Market Stability and Capital Adequacy Board—

10 “(A) the debtor and the estate shall be ex-
11 empt from the operation of sections 362(b)(6),
12 362(b)(7), 559, 560, and 561;

13 “(B) if the Market Stability and Capital
14 Adequacy Board consents to the filing of such
15 motion by the debtor, the Board shall inform
16 the court of its reasons for consenting; and

17 “(C) the debtor may limit its motion, or
18 the board may limit its consent, to exempt the
19 debtor and the estate from the operation of sec-
20 tion 362(b)(6), 362(b)(7), 559, 560, or 561, or
21 any combination thereof; and

22 “(2) if the Market Stability and Capital Ade-
23 quacy Board does not consent to the filing of a mo-
24 tion by the debtor under paragraph (1), the debtor
25 may file a motion to exempt the debtor and the es-

1 tate from the operation of sections 362(b)(6),
2 362(b)(7), 559, 560, and 561.

3 “(b) The court shall commence a hearing on a motion
4 under subsection (a) not later than 5 days after the filing
5 of the motion to determine whether to maintain, termi-
6 nate, annul, modify, or condition the exemption under sub-
7 section (a)(1) or, in the case of a motion under subsection
8 (a)(2), grant the exemption. The court shall request that
9 the functional regulator and the Market Stability and
10 Capital Adequacy Board file briefs on whether the court
11 should maintain the exemption. The court shall decide the
12 motion not later than 5 days after commencing such hear-
13 ing unless—

14 “(1) the parties in interest consent to a exten-
15 sion for a specific period of time; or

16 “(2) except with respect to an exemption from
17 the operation of section 559, the court sua sponte
18 extends for 5 additional days the period for decision
19 if such extension would be in the interests of justice
20 or is required by compelling circumstances.

21 “(c) The court shall maintain, terminate, annul, mod-
22 ify, or condition the exemption under subsection (a)(1),
23 or, in the case of a motion under subsection (a)(2), grant
24 the exemption only upon showing of good cause. In deter-
25 mining whether good cause has been shown, the court

1 shall balance the interests of both debtor and creditors
2 while attempting to preserve the debtor's assets for repay-
3 ment and reorganization of the debtors obligations, or to
4 provide for a more orderly liquidation.

5 **“§ 1408. Conversion or dismissal**

6 “In applying section 1112 to a case under this chap-
7 ter, the debtor may convert a case under this chapter to
8 a case under chapter 7 of this title if the debtor may be
9 a debtor under such chapter unless the debtor is not a
10 debtor in possession.”, and

11 (2) by amending the table of chapters of such
12 title by adding at the end the following:

“14. Adjustment to the Debts of a Non-Bank Financial Institution 1401”.

13 **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

14 (a) EFFECTIVE DATE.—Except as provided in sub-
15 section (b), this Act and the amendments made by this
16 Act shall take effect on the date of the enactment of this
17 Act.

18 (b) APPLICATION OF AMENDMENTS.—The amend-
19 ments made by this Act shall apply only with respect to
20 cases commenced under title 11 of the United States Code
21 on or after the date of the enactment of this Act.

22 **SEC. 5. REFORMS OF SECTION 13 EMERGENCY POWERS.**

23 (a) RESTRICTIONS ON EMERGENCY POWERS.—The
24 third undesignated paragraph of section 13 of the Federal
25 Reserve Act is amended—

1 (1) by striking “In unusual and exigent” and
2 inserting the following:

3 “(3) EMERGENCY AUTHORITY.—

4 “(A) IN GENERAL.—In unusual and exi-
5 gent”; and

6 (2) by adding at the end the following new sub-
7 paragraph:

8 “(B) REQUIREMENT FOR BROAD AVAIL-
9 ABILITY OF DISCOUNTS.—Subject to the limita-
10 tions provided under subparagraph (A), any au-
11 thorization made pursuant to the authority pro-
12 vided under subparagraph (A) shall require dis-
13 counts to be made broadly available to individ-
14 uals, partnerships, and corporations within the
15 market sector for which such authorization is
16 being made.

17 “(C) TRANSPARENCY AND OVERSIGHT.—

18 “(i) SECRETARY OF THE TREASURY
19 APPROVAL REQUIRED; NOTICE TO THE
20 CONGRESS.—No authorization may be
21 made pursuant to the authority provided
22 under subparagraph (A) unless—

23 “(I) such authorization is first
24 approved by the Secretary of the
25 Treasury; and

1 “(II) the Secretary of the Treas-
2 ury issues a notice to the Congress
3 detailing what authorization the Sec-
4 retary has approved.

5 “(ii) PROGRAMS MOVED ON-BUDGET
6 AFTER 90 DAYS.—On and after the date
7 that is 90 days after the date on which any
8 authorization is made pursuant to the au-
9 thority provided under subparagraph (A),
10 all receipts and disbursements resulting
11 from such authorization shall be counted
12 as new budget authority, outlays, receipts,
13 or deficit or surplus for purposes of—

14 “(I) the budget of the United
15 States Government as submitted by
16 the President;

17 “(II) the congressional budget;
18 and

19 “(III) the Balanced Budget and
20 Emergency Deficit Control Act of
21 1985.

22 “(D) JOINT RESOLUTION OF DIS-
23 APPROVAL.—

24 “(i) IN GENERAL.—With respect to an
25 authorization made pursuant to the au-

1 thority provided under subparagraph (A),
2 if, during the 90-day period beginning on
3 the date the Congress receives a notice de-
4 scribed under subparagraph (C)(i)(II) with
5 respect to such authorization, there is en-
6 acted into law a joint resolution dis-
7 approving such authorization, any action
8 taken under such authorization must be
9 discontinued and unwound not later than
10 the end of the 180-day period beginning on
11 the date that such authorization was made.

12 “(ii) CONTENTS OF JOINT RESOLU-
13 TION.—For the purpose of this paragraph,
14 the term ‘joint resolution’ means only a
15 joint resolution—

16 “(I) that is introduced not later
17 than 3 calendar days after the date on
18 which the notice referred to in clause
19 (i) is received by the Congress;

20 “(II) which does not have a pre-
21 amble;

22 “(III) the title of which is as fol-
23 lows: ‘Joint resolution relating to the
24 disapproval of authorization under the

1 emergency powers of the Federal Re-
2 serve Act'; and

3 “(IV) the matter after the resolv-
4 ing clause of which is as follows:
5 ‘That Congress disapproves the au-
6 thorization contained in the notice
7 submitted to the Congress by the Sec-
8 retary of the Treasury on the date of
9 _____ relating to
10 _____.’ (The blank spaces
11 being appropriately filled in.).

12 “(E) FAST TRACK CONSIDERATION IN
13 HOUSE OF REPRESENTATIVES.—

14 “(i) RECONVENING.—Upon receipt of
15 a notice referred to in subparagraph
16 (D)(i), the Speaker, if the House would
17 otherwise be adjourned, shall notify the
18 Members of the House that, pursuant to
19 this section, the House shall convene not
20 later than the second calendar day after
21 receipt of such report.

22 “(ii) REPORTING AND DISCHARGE.—
23 Any committee of the House of Represent-
24 atives to which a joint resolution is re-
25 ferred shall report it to the House not later

1 than 5 calendar days after the date of re-
2 ceipt of the notice referred to in subpara-
3 graph (D)(i). If a committee fails to report
4 the joint resolution within that period, the
5 committee shall be discharged from further
6 consideration of the joint resolution and
7 the joint resolution shall be referred to the
8 appropriate calendar.

9 “(iii) PROCEEDING TO CONSIDER-
10 ATION.—After each committee authorized
11 to consider a joint resolution reports it to
12 the House or has been discharged from its
13 consideration, it shall be in order, not later
14 than the sixth day after Congress receives
15 the notice referred to in subparagraph
16 (D)(i), to move to proceed to consider the
17 joint resolution in the House. All points of
18 order against the motion are waived. Such
19 a motion shall not be in order after the
20 House has disposed of a motion to proceed
21 on the joint resolution. The previous ques-
22 tion shall be considered as ordered on the
23 motion to its adoption without intervening
24 motion. The motion shall not be debatable.
25 A motion to reconsider the vote by which

1 the motion is disposed of shall not be in
2 order.

3 “(iv) CONSIDERATION.—The joint res-
4 olution shall be considered as read. All
5 points of order against the joint resolution
6 and against its consideration are waived.
7 The previous question shall be considered
8 as ordered on the joint resolution to its
9 passage without intervening motion except
10 two hours of debate equally divided and
11 controlled by the proponent and an oppo-
12 nent. A motion to reconsider the vote on
13 passage of the joint resolution shall not be
14 in order.

15 “(F) FAST TRACK CONSIDERATION IN SEN-
16 ATE.—

17 “(i) RECONVENING.—Upon receipt of
18 a notice referred to in subparagraph
19 (D)(i), if the Senate has adjourned or re-
20 cessed for more than 2 days, the majority
21 leader of the Senate, after consultation
22 with the minority leader of the Senate,
23 shall notify the Members of the Senate
24 that, pursuant to this section, the Senate

1 shall convene not later than the second cal-
2 endar day after receipt of such message.

3 “(ii) PLACEMENT ON CALENDAR.—
4 Upon introduction in the Senate, the joint
5 resolution shall be placed immediately on
6 the calendar.

7 “(iii) FLOOR CONSIDERATION.—

8 “(I) IN GENERAL.—Notwith-
9 standing Rule XXII of the Standing
10 Rules of the Senate, it is in order at
11 any time during the period beginning
12 on the 4th day after the date on
13 which Congress receives a notice re-
14 ferred to in subparagraph (D)(i) and
15 ending on the 6th day after the date
16 on which Congress receives a notice
17 referred to in subparagraph (D)(i)
18 (even though a previous motion to the
19 same effect has been disagreed to) to
20 move to proceed to the consideration
21 of the joint resolution, and all points
22 of order against the joint resolution
23 (and against consideration of the joint
24 resolution) are waived. The motion to
25 proceed is not debatable. The motion

1 is not subject to a motion to postpone.
2 A motion to reconsider the vote by
3 which the motion is agreed to or dis-
4 agreed to shall not be in order. If a
5 motion to proceed to the consideration
6 of the resolution is agreed to, the joint
7 resolution shall remain the unfinished
8 business until disposed of.

9 “(II) DEBATE.—Debate on the
10 joint resolution, and on all debatable
11 motions and appeals in connection
12 therewith, shall be limited to not more
13 than 10 hours, which shall be divided
14 equally between the majority and mi-
15 nority leaders or their designees. A
16 motion further to limit debate is in
17 order and not debatable. An amend-
18 ment to, or a motion to postpone, or
19 a motion to proceed to the consider-
20 ation of other business, or a motion to
21 recommit the joint resolution is not in
22 order.

23 “(III) VOTE ON PASSAGE.—The
24 vote on passage shall occur imme-
25 diately following the conclusion of the

1 debate on a joint resolution, and a
2 single quorum call at the conclusion of
3 the debate if requested in accordance
4 with the rules of the Senate.

5 “(IV) RULINGS OF THE CHAIR
6 ON PROCEDURE.—Appeals from the
7 decisions of the Chair relating to the
8 application of the rules of the Senate,
9 as the case may be, to the procedure
10 relating to a joint resolution shall be
11 decided without debate.

12 “(G) RULES RELATING TO SENATE AND
13 HOUSE OF REPRESENTATIVES.—

14 “(i) COORDINATION WITH ACTION BY
15 OTHER HOUSE.—If, before the passage by
16 one House of a joint resolution of that
17 House, that House receives from the other
18 House a joint resolution, then the following
19 procedures shall apply:

20 “(I) The joint resolution of the
21 other House shall not be referred to a
22 committee.

23 “(II) With respect to a joint res-
24 olution of the House receiving the res-
25 olution—

1 “(aa) the procedure in that
2 House shall be the same as if no
3 joint resolution had been received
4 from the other House; but

5 “(bb) the vote on passage
6 shall be on the joint resolution of
7 the other House.

8 “(ii) TREATMENT OF JOINT RESOLU-
9 TION OF OTHER HOUSE.—If one House
10 fails to introduce or consider a joint resolu-
11 tion under this section, the joint resolution
12 of the other House shall be entitled to ex-
13 pedited floor procedures under this section.

14 “(iii) TREATMENT OF COMPANION
15 MEASURES.—If, following passage of the
16 joint resolution in the Senate, the Senate
17 then receives the companion measure from
18 the House of Representatives, the com-
19 panion measure shall not be debatable.

20 “(iv) VETOES.—If the President ve-
21 toes the joint resolution, debate on a veto
22 message in the Senate under this section
23 shall be 1 hour equally divided between the
24 majority and minority leaders or their des-
25 ignees.

1 “(v) RULES OF HOUSE OF REP-
2 REPRESENTATIVES AND SENATE.—This sub-
3 paragraph and subparagraphs (D), (E),
4 and (F) are enacted by Congress—

5 “(I) as an exercise of the rule-
6 making power of the Senate and
7 House of Representatives, respec-
8 tively, and as such it is deemed a part
9 of the rules of each House, respec-
10 tively, but applicable only with respect
11 to the procedure to be followed in that
12 House in the case of a joint resolu-
13 tion, and it supersedes other rules
14 only to the extent that it is incon-
15 sistent with such rules; and

16 “(II) with full recognition of the
17 constitutional right of either House to
18 change the rules (so far as relating to
19 the procedure of that House) at any
20 time, in the same manner, and to the
21 same extent as in the case of any
22 other rule of that House.”.

23 (b) CURRENT PROGRAMS MOVED ON-BUDGET.—Not
24 later than 90 days after the date of the enactment of this
25 Act, all receipts and disbursements resulting from any au-

1 thORIZATION made before the date of the enactment of this
2 Act pursuant to the authority granted by the third undes-
3 igned paragraph of section 13 of the Federal Reserve
4 Act shall be counted as new budget authority, outlays, re-
5 ceipts, or deficit or surplus for purposes of—

6 (1) the budget of the United States Govern-
7 ment as submitted by the President;

8 (2) the congressional budget; and

9 (3) the Balanced Budget and Emergency Def-
10 icit Control Act of 1985.

11 **SEC. 6. ESTABLISHMENT OF MARKET STABILITY AND CAP-**
12 **ITAL ADEQUACY BOARD.**

13 (a) IN GENERAL.—There is hereby established the
14 Market Stability and Capital Adequacy Board (hereafter
15 in this Act referred to as the “Board”) as an independent
16 establishment in the Executive Branch.

17 (b) CONSTITUTION OF BOARD.—Subject to para-
18 graph (4), the Board shall have 11 members as follows:

19 (1) PUBLIC MEMBERS.—The following shall be
20 members of the Board—

21 (A) The Secretary of the Treasury.

22 (B) The Chairman of the Board of Gov-
23 ernors of the Federal Reserve System.

24 (C) The Chairman of the Securities and
25 Exchange Commission.

1 (D) The Chairperson of the Federal De-
2 posit Insurance Corporation.

3 (E) The Chairman of the Commodity Fu-
4 tures Trading Commission.

5 (F) The Comptroller of the Currency.

6 (G) The Director of the Office of Thrift
7 Supervision.

8 (2) PRIVATE MEMBERS.—The Board shall also
9 have 5 members appointed by the President, by and
10 with the advice and consent of the Senate, who shall
11 be appointed from among individuals who—

12 (A) are specially qualified to serve on the
13 Board by virtue of their education, training,
14 and experience; and

15 (B) are not officers or employees of the
16 Federal Government, including the Board of
17 Governors of the Federal Reserve System.

18 (3) CHAIRPERSON.—The Secretary of the
19 Treasury shall serve as the Chairperson of the
20 Board.

21 (4) DIRECTOR OF FHFA AS INTERIM MEM-
22 BER.—Until such time as the charters of the Fed-
23 eral National Mortgage Association and the Federal
24 Home Loan Mortgage Corporation are both repealed
25 pursuant to section 506(d), the Board shall consist

1 of 12 members with the Director of the Federal
2 Housing Finance Agency serving as a public member
3 under paragraph (1).

4 (c) APPOINTMENTS.—

5 (1) TERM.—

6 (A) IN GENERAL.—Each appointed mem-
7 ber shall be appointed for a term of 5 years.

8 (B) STAGGERED TERMS.—Of the members
9 of the Board first appointed under subsection
10 (b)(2), as designated by the President at the
11 time of appointment—

12 (i) 1 shall be appointed for a term of
13 5 years;

14 (ii) 1 shall be appointed for a term of
15 4 years;

16 (iii) 1 shall be appointed for a term of
17 3 years;

18 (iv) 1 shall be appointed for a term of
19 2 years; and

20 (v) 1 shall be appointed for a term of
21 1 year.

22 (2) INTERIM APPOINTMENTS.—Any member ap-
23 pointed to fill a vacancy occurring before the expira-
24 tion of the term for which such member's prede-

1 cessor was appointed shall be appointed only for the
2 remainder of such term.

3 (3) CONTINUATION OF SERVICE.—Each ap-
4 pointed member may continue to serve after the ex-
5 piration of the term of office to which such member
6 was appointed until a successor has been appointed
7 and qualified.

8 (4) REAPPOINTMENT TO A 2ND TERM.—Each
9 member appointed to a term on the Board under
10 subsection (b)(2), including an interim appointment
11 under paragraph (2), may be reappointed by the
12 President to serve 1 additional term.

13 (d) VACANCY.—

14 (1) IN GENERAL.—Any vacancy on the Board
15 shall be filled in the manner in which the original
16 appointment was made.

17 (2) ACTING OFFICIALS MAY SERVE.—In the
18 event of a vacancy in any position listed in sub-
19 section (b)(1) and pending the appointment of a suc-
20 cessor, or during the absence or disability of the in-
21 dividual serving in such position, any acting official
22 in such position shall be a member of the Board
23 while such vacancy, absence or disability continues
24 and the acting official continues acting in such posi-
25 tion.

1 (e) INELIGIBILITY FOR OTHER OFFICES.—

2 (1) POSTSERVICE RESTRICTION.—No member
3 of the Board may hold any office, position, or em-
4 ployment in any financial institution or affiliate of a
5 financial institution during—

6 (A) the time such member is in office; and

7 (B) the 2-year period beginning on the
8 date such member ceases to serve on the Board.

9 (2) CERTIFICATION.—Upon taking office, each
10 member of the Board shall certify under oath that
11 such member has complied with this subsection and
12 such certification shall be filed with the secretary of
13 the Board.

14 (f) QUALIFICATIONS; INITIAL MEETING.—

15 (1) POLITICAL PARTY AFFILIATION.—Not more
16 than 3 members of the Board appointed under sub-
17 section (b)(2) shall be from the same political party.

18 (2) QUALIFICATIONS GENERALLY.—It is the
19 sense of the Congress that individuals appointed to
20 the Commission should be prominent United States
21 citizens, with national recognition and significant
22 depth of experience commensurate with the duties of
23 the Board.

24 (3) SPECIFIC APPOINTMENT QUALIFICATIONS
25 FOR CERTAIN APPOINTED MEMBERS.—

1 (A) STATE BANK.—Of the members ap-
2 pointed to the Board under subsection (b)(2),
3 at least 1 shall be appointed from among indi-
4 viduals who have had experience as a State
5 bank supervisor or senior management execu-
6 tive with a State depository institution.

7 (B) INSURANCE COMMISSIONER.—Of the
8 members appointed to the Board under sub-
9 section (b)(2), at least 1 shall be appointed
10 from among individuals who have served as a
11 State insurance commissioner or supervisor.

12 (4) INITIAL MEETING.—The Board shall meet
13 and begin the operations of the Board as soon as
14 practicable but not later than the end of the 180-day
15 period beginning the date of the enactment of this
16 Act.

17 (g) QUORUM.—Four of the members of the Board
18 designated under subsection (b)(1) and 3 members of the
19 Board appointed under (b)(2) shall constitute a quorum.

20 (h) QUARTERLY MEETINGS.—The Board shall meet
21 upon the call of the chairperson or a majority of the mem-
22 bers at least once in each calendar quarter

23 **SEC. 7. FUNCTIONS OF BOARD.**

24 (a) PRINCIPAL FUNCTIONS.—The principal functions
25 of the Board shall be to—

1 (1) monitor the interactions of various sectors
2 of the financial system; and

3 (2) identify risks that could endanger the sta-
4 bility and soundness of the system.

5 (b) SPECIFIC REVIEW FUNCTIONS INCLUDED.—In
6 carrying out the functions described in subsection (a), the
7 Board shall—

8 (1) review financial industry data collected from
9 the appropriate functional regulators;

10 (2) review insurance industry data, in coordina-
11 tion with State insurance supervisors, for all lines of
12 insurance other than health insurance;

13 (3) monitor government policies and initiatives;

14 (4) review risk management practices within fi-
15 nancial regulatory agencies;

16 (5) review capital standards set by the appro-
17 priate functional regulators and make recommenda-
18 tions to ensure capital and leverage ratios match
19 risks regulated entities are taking on;

20 (6) review transparency and regulatory under-
21 standing of risk exposures in the over-the-counter
22 derivatives markets and make recommendations re-
23 garding the appropriate clearing of trades in those
24 markets through central counterparties;

1 (7) make recommendations regarding any gov-
2 ernment or industry policies and practices that are
3 exacerbating systemic risk; and

4 (8) take such other actions and make such
5 other recommendations as the Board, in the discre-
6 tion of the Board, determines to be appropriate.

7 (c) REPORTS TO FEDERAL FUNCTIONAL REGU-
8 LATORS AND THE CONGRESS.—The Board shall periodi-
9 cally make a report to the Congress and the functional
10 regulators on the findings, conclusions, and recommenda-
11 tions of the Board in a manner and within a time frame
12 that allows the Congress and such regulators to act to con-
13 tain risks posed by specific firms, industry practices, ac-
14 tivities and interactions of entities under different regu-
15 latory regimes, or government policies.

16 (d) TESTIMONY TO CONGRESS.—Not later than Feb-
17 ruary 20 and July 20 of each year, the Chairperson of
18 the Board shall testify to the Congress at semiannual
19 hearings before the Committee on Banking, Housing, and
20 Urban Affairs of the Senate and the Committee on Finan-
21 cial Services of the House of Representatives, about the
22 state of systemic risk in the financial services industry and
23 proposals or recommendations by the Board to address
24 any undue risk.

1 (e) RULE OF CONSTRUCTION.—No provision of this
2 Act shall be construed as giving the Board any enforce-
3 ment authority over any financial institution.

4 **SEC. 8. POWERS OF BOARD.**

5 (a) CONTRACTING.—The Board may, to such extent
6 and in such amounts as are provided in appropriation
7 Acts, enter into contracts to enable the Board to discharge
8 its duties under this Act.

9 (b) INFORMATION FROM FEDERAL AGENCIES.—

10 (1) IN GENERAL.—The Board may secure di-
11 rectly from any executive department, agency, or
12 independent establishment, or any other instrumen-
13 tality of the United States information and rec-
14 ommendations for the purposes of this Act.

15 (2) DELIVERY OF REQUESTED INFORMATION.—

16 Each executive department, agency, or independent
17 establishment, or any other instrumentality of the
18 United States shall, to the extent authorized by law,
19 furnish any information and recommendations re-
20 quested under paragraph (1) directly to the Board,
21 upon request made by the chairperson or any mem-
22 ber designated by a majority of the Commission.

23 (3) RECEIPT, HANDLING, STORAGE, AND DIS-
24 SEMINATION.—Information shall only be received,
25 handled, stored, and disseminated by members of

1 the Board and its staff consistent with all applicable
2 statutes, regulations, and Executive orders.

3 (c) ASSISTANCE FROM FEDERAL AGENCIES.—

4 (1) GENERAL SERVICES ADMINISTRATION.—

5 The Administrator of General Services shall provide
6 to the Board on a reimbursable basis administrative
7 support and other services for the performance of
8 the Commission's functions.

9 (2) OTHER DEPARTMENTS AND AGENCIES.—In

10 addition to the assistance prescribed in paragraph
11 (1), departments and agencies of the United States
12 may provide to the Commission such services, funds,
13 facilities, staff, and other support services as they
14 may determine advisable and as may be authorized
15 by law, including agencies represented on the Board
16 under section 201(b)(1).

17 **SEC. 9. RESPONSIBILITIES OF FEDERAL FUNCTIONAL REG-**
18 **ULATORS.**

19 (a) FEDERAL FUNCTIONAL REGULATOR DEFINED.—

20 For purposes of this Act, the term “Federal functional
21 regulator” has the same meaning as in section 509(2) of
22 the Gramm-Leach-Bliley Act, except that such term in-
23 cludes the Commodity Futures Trading Commission.

24 (b) ASSESSMENTS AND REVIEWS.—In order to ad-

25 dress current regulatory gaps, each Federal functional

1 regulator shall, before each quarterly meeting of the
2 Board—

3 (1) assess the effects on macroeconomic sta-
4 bility of the activities of financial institutions that
5 are subject to the jurisdiction of such agency;

6 (2) review how such financial institutions inter-
7 act with entities outside the jurisdiction of such
8 agency; and

9 (3) report the results of such assessment and
10 review to the Board, together with such rec-
11 ommendations for administrative action as the agen-
12 cy determines to be appropriate.

13 **SEC. 10. STAFF OF BOARD.**

14 (a) APPOINTMENT AND COMPENSATION.—The chair-
15 person, in accordance with rules agreed upon by the Board
16 and title 5, United States Code, may appoint and fix the
17 compensation of a staff director and such other personnel
18 as may be necessary to enable the Board to carry out its
19 functions.

20 (b) DETAILEES.—Any Federal Government employee
21 may be detailed to the Board and such detailee shall retain
22 the rights, status, and privileges of his or her regular em-
23 ployment without interruption.

24 (c) CONSULTANT SERVICES.—The Board may pro-
25 cure the services of experts and consultants in accordance

1 with section 3109 of title 5, United States Code, but at
2 rates not to exceed the daily rate paid a person occupying
3 a position at level IV of the Executive Schedule under sec-
4 tion 5315 of title 5, United States Code.

5 **SEC. 11. COMPENSATION AND TRAVEL EXPENSES.**

6 (a) COMPENSATION.—Each member of the Board ap-
7 pointed under section 201(b)(2) may be compensated at
8 not to exceed the daily equivalent of the annual rate of
9 basic pay in effect for a position at level IV of the Execu-
10 tive Schedule under section 5315 of title 5, United States
11 Code, for each day during which that member is engaged
12 in the actual performance of the duties of the Board.

13 (b) TRAVEL EXPENSES.—While away from their
14 homes or regular places of business in the performance
15 of services for the Board, members of the Board shall be
16 allowed travel expenses, including per diem in lieu of sub-
17 sistence, in the same manner as persons employed inter-
18 mittently in the Government service are allowed expenses
19 under section 5703(b) of title 5, United States Code.

