

In the Senate of the United States,

May 20, 2010.

Resolved, That the bill from the House of Representatives (H.R. 4173) entitled “An Act to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.”, do pass with the following

AMENDMENTS:

Strike all after the enacting clause and insert the following:

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Severability.

Sec. 4. Effective date.

TITLE I—FINANCIAL STABILITY

Sec. 101. Short title.

Sec. 102. Definitions.

Subtitle A—Financial Stability Oversight Council

Sec. 111. Financial Stability Oversight Council established.

Sec. 112. Council authority.

Sec. 113. Authority to require supervision and regulation of certain nonbank financial companies.

Sec. 114. Registration of nonbank financial companies supervised by the Board of Governors.

Sec. 115. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies.

Sec. 116. Reports.

Sec. 117. Treatment of certain companies that cease to be bank holding companies.

Sec. 118. Council funding.

Sec. 119. Resolution of supervisory jurisdictional disputes among member agencies.

Sec. 120. Additional standards applicable to activities or practices for financial stability purposes.

Sec. 121. Mitigation of risks to financial stability.

Subtitle B—Office of Financial Research

Sec. 151. Definitions.

Sec. 152. Office of Financial Research established.

Sec. 153. Purpose and duties of the Office.

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

Sec. 155. Funding.

Sec. 156. Transition oversight.

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

Sec. 161. Reports by and examinations of nonbank financial companies supervised by the Board of Governors.

Sec. 162. Enforcement.

Sec. 163. Acquisitions.

Sec. 164. Prohibition against management interlocks between certain financial companies.

Sec. 165. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies.

Sec. 166. Early remediation requirements.

Sec. 167. Affiliations.

Sec. 168. Regulations.

Sec. 169. Avoiding duplication.

Sec. 170. Safe harbor.

Sec. 171. Leverage and risk-based capital requirements.

TITLE II—ORDERLY LIQUIDATION AUTHORITY

Sec. 201. Definitions.

Sec. 202. Judicial review.

Sec. 203. Systemic risk determination.

- Sec. 204. Orderly liquidation.*
Sec. 205. Orderly liquidation of covered brokers and dealers.
Sec. 206. Mandatory terms and conditions for all orderly liquidation actions.
Sec. 207. Directors not liable for acquiescing in appointment of receiver.
Sec. 208. Dismissal and exclusion of other actions.
Sec. 209. Rulemaking; non-conflicting law.
Sec. 210. Powers and duties of the corporation.
Sec. 211. Miscellaneous provisions.
Sec. 212. Prohibition of circumvention and prevention of conflicts of interest.
Sec. 213. Ban on senior executives and directors.
Sec. 214. Prohibition on taxpayer funding.

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

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

Subtitle A—Transfer of Powers and Duties

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

Subtitle B—Transitional Provisions

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

Subtitle C—Federal Deposit Insurance Corporation

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

Subtitle D—Termination of Federal Thrift Charter

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

**TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND
OTHERS**

- Sec. 401. Short title.*
Sec. 402. Definitions.
Sec. 403. Elimination of private adviser exemption; limited exemption for foreign private advisers; limited intrastate exemption.

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

TITLE V—INSURANCE

Subtitle A—Office of National Insurance

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

Subtitle B—State-based Insurance Reform

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

PART I—NONADMITTED INSURANCE

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

PART II—REINSURANCE

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

PART III—RULE OF CONSTRUCTION

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

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

- Sec. 601. Short title.*
Sec. 602. Definition.
Sec. 603. Moratorium and study on treatment of credit card banks, industrial loan companies, and certain other companies under the Bank Holding Company Act of 1956.

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

TITLE VII—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

- Sec. 701. Short title.*

Subtitle A—Regulation of Over-the-Counter Swaps Markets

PART I—REGULATORY AUTHORITY

- Sec. 711. Definitions.*
- Sec. 712. Review of regulatory authority.*
- Sec. 713. Recommendations for changes to portfolio margining laws.*
- Sec. 714. Abusive swaps.*
- Sec. 715. Authority to prohibit participation in swap activities.*
- Sec. 716. Prohibition against Federal Government bailouts of swaps entities.*
- Sec. 717. New product approval—CFTC-SEC process.*
- Sec. 718. Determining status of novel derivative products.*

PART II—REGULATION OF SWAP MARKETS

- Sec. 721. Definitions.*
- Sec. 722. Jurisdiction.*
- Sec. 723. Clearing.*
- Sec. 724. Swaps; segregation and bankruptcy treatment.*
- Sec. 725. Derivatives clearing organizations.*
- Sec. 726. Rulemaking on conflict of interest.*
- Sec. 727. Public reporting of swap transaction data.*
- Sec. 728. Swap data repositories.*
- Sec. 729. Reporting and recordkeeping.*
- Sec. 730. Large swap trader reporting.*
- Sec. 731. Registration and regulation of swap dealers and major swap participants.*
- Sec. 732. Conflicts of interest.*
- Sec. 733. Swap execution facilities.*

- Sec. 734. Derivatives transaction execution facilities and exempt boards of trade.*
- Sec. 735. Designated contract markets.*
- Sec. 736. Margin.*
- Sec. 737. Position limits.*
- Sec. 738. Foreign boards of trade.*
- Sec. 739. Legal certainty for swaps.*
- Sec. 740. Multilateral clearing organizations.*
- Sec. 741. Enforcement.*
- Sec. 742. Retail commodity transactions.*
- Sec. 743. Other authority.*
- Sec. 744. Restitution remedies.*
- Sec. 745. Enhanced compliance by registered entities.*
- Sec. 746. Insider trading.*
- Sec. 747. Antidisruptive practices authority.*
- Sec. 748. Commodity whistleblower incentives and protection.*
- Sec. 749. Conforming amendments.*
- Sec. 750. Study on oversight of carbon markets.*
- Sec. 751. Energy and Environmental Markets Advisory Committee.*
- Sec. 752. International harmonization.*
- Sec. 753. Antimarket manipulation authority.*
- Sec. 754. Effective date.*

Subtitle B—Regulation of Security-Based Swap Markets

- Sec. 761. Definitions under the Securities Exchange Act of 1934.*
- Sec. 762. Repeal of prohibition on regulation of security-based swap agreements.*
- Sec. 763. Amendments to the Securities Exchange Act of 1934.*
- Sec. 764. Registration and regulation of security-based swap dealers and major security-based swap participants.*
- Sec. 765. Rulemaking on conflict of interest.*
- Sec. 766. Reporting and recordkeeping.*
- Sec. 767. State gaming and bucket shop laws.*
- Sec. 768. Amendments to the Securities Act of 1933; treatment of security-based swaps.*
- Sec. 769. Definitions under the Investment Company Act of 1940.*
- Sec. 770. Definitions under the Investment Advisors Act of 1940.*
- Sec. 771. Other authority.*
- Sec. 772. Jurisdiction.*
- Sec. 773. Effective date.*

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

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

Sec. 812. Effective date.

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

Subtitle A—Increasing Investor Protection

- Sec. 911. Investor Advisory Committee established.*
Sec. 912. Clarification of authority of the Commission to engage in investor testing.
Sec. 913. Study and rulemaking regarding obligations of brokers, dealers, and investment advisers.
Sec. 914. Office of the Investor Advocate.
Sec. 915. Streamlining of filing procedures for self-regulatory organizations.
Sec. 916. Study regarding financial literacy among investors.
Sec. 917. Study regarding mutual fund advertising.
Sec. 918. Clarification of Commission authority to require investor disclosures before purchase of investment products and services.
Sec. 919. Study on conflicts of interest.
Sec. 919A. Study on improved investor access to information on investment advisers and broker-dealers.
Sec. 919B. Study on financial planners and the use of financial designations.

Subtitle B—Increasing Regulatory Enforcement and Remedies

- Sec. 921. Authority to issue rules related to mandatory predispute arbitration.*
Sec. 922. Whistleblower protection.
Sec. 923. Conforming amendments for whistleblower protection.
Sec. 924. Implementation and transition provisions for whistleblower protection.
Sec. 925. Collateral bars.
Sec. 926. Disqualifying felons and other “bad actors” from Regulation D Offerings.
Sec. 927. Equal treatment of self-regulatory organization rules.
Sec. 928. Clarification that Section 205 of the Investment Advisers Act of 1940 does not apply to State-registered advisers.
Sec. 929. Unlawful margin lending.
Sec. 929A. Protection for employees of subsidiaries and affiliates of publicly traded companies.
Sec. 929B. FAIR Fund amendments.
Sec. 929C. Increasing the borrowing limit on Treasury loans.

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

- Sec. 931. Findings.*
Sec. 932. Enhanced regulation, accountability, and transparency of nationally recognized statistical rating organizations.
Sec. 933. State of mind in private actions.
Sec. 934. Referring tips to law enforcement or regulatory authorities.
Sec. 935. Consideration of information from sources other than the issuer in rating decisions.
Sec. 936. Qualification standards for credit rating analysts.
Sec. 937. Timing of regulations.
Sec. 938. Universal ratings symbols.
Sec. 939. Removal of statutory references to credit ratings.
Sec. 939A. Securities and Exchange Commission study on strengthening credit rating agency independence.

Sec. 939B. Government Accountability Office study on alternative business models.

Sec. 939C. Government Accountability Office study on the creation of an independent professional analyst organization.

Sec. 939D. Initial credit rating assignments.

Subtitle D—Improvements to the Asset-Backed Securitization Process

Sec. 941. Regulation of credit risk retention.

Sec. 942. Disclosures and reporting for asset-backed securities.

Sec. 943. Representations and warranties in asset-backed offerings.

Sec. 944. Exempted transactions under the Securities Act of 1933.

Sec. 945. Due diligence analysis and disclosure in asset-backed securities issues.

Subtitle E—Accountability and Executive Compensation

Sec. 951. Shareholder vote on executive compensation disclosures.

Sec. 952. Compensation committee independence.

Sec. 953. Executive compensation disclosures.

Sec. 954. Recovery of erroneously awarded compensation.

Sec. 955. Disclosure regarding employee and director hedging.

Sec. 956. Excessive compensation by holding companies of depository institutions.

Sec. 957. Voting by brokers.

Subtitle F—Improvements to the Management of the Securities and Exchange Commission

Sec. 961. Report and certification of internal supervisory controls.

Sec. 962. Triennial report on personnel management.

Sec. 963. Annual financial controls audit.

Sec. 964. Report on oversight of national securities associations.

Sec. 965. Compliance examiners.

Sec. 966. Suggestion program for employees of the Commission.

Subtitle G—Strengthening Corporate Governance

Sec. 971. Election of directors by majority vote in uncontested elections.

Sec. 972. Proxy access.

Sec. 973. Disclosures regarding chairman and CEO structures.

Subtitle H—Municipal Securities

Sec. 975. Regulation of municipal securities and changes to the board of the MSRB.

Sec. 976. Government Accountability Office study of increased disclosure to investors.

Sec. 977. Government Accountability Office study on the municipal securities markets.

Sec. 978. Study of funding for Government Accounting Standards Board.

Sec. 979. Commission Office of Municipal Securities.

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

Sec. 981. Authority to share certain information with foreign authorities.

Sec. 982. Oversight of brokers and dealers.

Sec. 983. Portfolio margining.

Sec. 984. Loan or borrowing of securities.

- Sec. 985. Technical corrections to Federal securities laws.*
Sec. 986. Conforming amendments relating to repeal of the Public Utility Holding Company Act of 1935.
Sec. 987. Amendment to definition of material loss and nonmaterial losses to the Deposit Insurance Fund for purposes of Inspector General reviews.
Sec. 988. Amendment to definition of material loss and nonmaterial losses to the National Credit Union Share Insurance Fund for purposes of Inspector General reviews.
Sec. 989. Government Accountability Office study on proprietary trading.
Sec. 989A. Senior investor protections.
Sec. 989B. Designated Federal Entity Inspectors General Independence.
Sec. 989C. Strengthening Inspector General accountability.
Sec. 989D. Removal of inspectors general of designated Federal entities.
Sec. 989E. Additional oversight of financial regulatory system.

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

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

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

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

Subtitle A—Bureau of Consumer Financial Protection

- Sec. 1011. Establishment of the Bureau.*
Sec. 1012. Executive and administrative powers.
Sec. 1013. Administration.
Sec. 1014. Consumer Advisory Board.
Sec. 1015. Coordination.
Sec. 1016. Appearances before and reports to Congress.
Sec. 1017. Funding; penalties and fines.
Sec. 1018. Effective date.

Subtitle B—General Powers of the Bureau

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

Subtitle C—Specific Bureau Authorities

- Sec. 1031. Prohibiting unfair, deceptive, or abusive acts or practices.*
Sec. 1032. Disclosures.
Sec. 1033. Consumer rights to access information.
Sec. 1034. Response to consumer complaints and inquiries.
Sec. 1035. Private education loan ombudsman.
Sec. 1036. Prohibited acts.

Sec. 1037. Effective date.

Subtitle D—Preservation of State Law

Sec. 1041. Relation to State law.

Sec. 1042. Preservation of enforcement powers of States.

Sec. 1043. Preservation of existing contracts.

Sec. 1044. State law preemption standards for national banks and subsidiaries clarified.

Sec. 1045. Clarification of law applicable to nondepository institution subsidiaries.

Sec. 1046. State law preemption standards for Federal savings associations and subsidiaries clarified.

Sec. 1047. Visitorial standards for national banks and savings associations.

Sec. 1048. Effective date.

Subtitle E—Enforcement Powers

Sec. 1051. Definitions.

Sec. 1052. Investigations and administrative discovery.

Sec. 1053. Hearings and adjudication proceedings.

Sec. 1054. Litigation authority.

Sec. 1055. Relief available.

Sec. 1056. Referrals for criminal proceedings.

Sec. 1057. Employee protection.

Sec. 1058. Effective date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

Sec. 1061. Transfer of consumer financial protection functions.

Sec. 1062. Designated transfer date.

Sec. 1063. Savings provisions.

Sec. 1064. Transfer of certain personnel.

Sec. 1065. Incidental transfers.

Sec. 1066. Interim authority of the Secretary.

Sec. 1067. Transition oversight.

Subtitle G—Regulatory Improvements

Sec. 1071. Small business data collection.

Sec. 1072. GAO study on the effectiveness and impact of various appraisal methods.

Sec. 1073. Prohibited payments to mortgage originators.

Sec. 1074. Minimum standards for residential mortgage loans.

Sec. 1075. Prohibition on certain prepayment penalties.

Sec. 1076. Assistance for economically vulnerable individuals and families.

Sec. 1077. Remittance transfers.

Sec. 1078. Department of the Treasury study on ending the conservatorship of Fannie Mae, Freddie Mac, and reforming the housing finance system.

Sec. 1079. Reasonable fees and rules for payment card transactions.

Sec. 1079A. Use of Consumer Reports.

Subtitle H—Conforming Amendments

Sec. 1081. Amendments to the Inspector General Act.

Sec. 1082. Amendments to the Privacy Act of 1974.

- Sec. 1083. Amendments to the Alternative Mortgage Transaction Parity Act of 1982.*
- Sec. 1084. Amendments to the Electronic Fund Transfer Act.*
- Sec. 1085. Amendments to the Equal Credit Opportunity Act.*
- Sec. 1086. Amendments to the Expedited Funds Availability Act.*
- Sec. 1087. Amendments to the Fair Credit Billing Act.*
- Sec. 1088. Amendments to the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act.*
- Sec. 1089. Amendments to the Fair Debt Collection Practices Act.*
- Sec. 1090. Amendments to the Federal Deposit Insurance Act.*
- Sec. 1091. Amendments to the Gramm-Leach-Bliley Act.*
- Sec. 1092. Amendments to the Home Mortgage Disclosure Act.*
- Sec. 1093. Amendments to the Homeowners Protection Act of 1998.*
- Sec. 1094. Amendments to the Home Ownership and Equity Protection Act of 1994.*
- Sec. 1095. Amendments to the Omnibus Appropriations Act, 2009.*
- Sec. 1096. Amendments to the Real Estate Settlement Procedures Act.*
- Sec. 1097. Amendments to the Right to Financial Privacy Act of 1978.*
- Sec. 1098. Amendments to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.*
- Sec. 1099. Amendments to the Truth in Lending Act.*
- Sec. 1100. Amendments to the Truth in Savings Act.*
- Sec. 1101. Amendments to the Telemarketing and Consumer Fraud and Abuse Prevention Act.*
- Sec. 1102. Amendments to the Paperwork Reduction Act.*
- Sec. 1103. Adjustments for inflation in the Truth in Lending Act.*
- Sec. 1104. Small business fairness and regulatory transparency.*
- Sec. 1105. Effective date.*

TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

- Sec. 1151. Federal Reserve Act amendments on emergency lending authority.*
- Sec. 1152. Reviews of special Federal Reserve credit facilities.*
- Sec. 1153. Public access to information.*
- Sec. 1154. Liquidity event determination.*
- Sec. 1155. Emergency financial stabilization.*
- Sec. 1156. Additional related amendments.*
- Sec. 1157. Federal Reserve Act amendments on Federal reserve bank governance.*
- Sec. 1158. Amendments to the Federal Reserve Act relating to supervision and regulation policy.*
- Sec. 1159. GAO audit of the Federal Reserve facilities; Publication of Board actions.*

TITLE XII—IMPROVING ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS

- Sec. 1201. Short title.*
- Sec. 1202. Purpose.*
- Sec. 1203. Definitions.*
- Sec. 1204. Expanded access to mainstream financial institutions.*
- Sec. 1205. Low-cost alternatives to payday loans.*
- Sec. 1206. Grants to establish loan-loss reserve funds.*
- Sec. 1207. Procedural provisions.*
- Sec. 1208. Authorization of appropriations.*
- Sec. 1209. Regulations.*
- Sec. 1210. Evaluation and reports to Congress.*

TITLE XIII—PAY IT BACK ACT

Sec. 1301. Short title.

Sec. 1302. Amendment to reduce TARP authorization.

Sec. 1303. Report.

Sec. 1304. Amendments to Housing and Economic Recovery Act of 2008.

Sec. 1305. Federal Housing Finance Agency report.

Sec. 1306. Repayment of unobligated ARRA funds.

TITLE XIV—MISCELLANEOUS

Sec. 1401. Restrictions on use of Federal funds to finance bailouts of foreign governments.

TITLE XV—CONGO CONFLICT MINERALS

Sec. 1501. Sense of Congress on exploitation and trade of columbite-tantalite, cassiterite, gold, and wolframite originating in Democratic Republic of Congo.

Sec. 1502. Disclosure to Securities and Exchange Commission relating to columbite-tantalite, cassiterite, gold, and wolframite originating in Democratic Republic of Congo.

Sec. 1503. Report.

1 **SEC. 2. DEFINITIONS.**

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

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

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

13 (3) *BOARD OF GOVERNORS.*—*The term “Board of*
 14 *Governors” means the Board of Governors of the Fed-*
 15 *eral Reserve System.*

1 (4) *BUREAU*.—*The term “Bureau” means the*
2 *Bureau of Consumer Financial Protection established*
3 *under title X.*

4 (5) *COMMISSION*.—*The term “Commission”*
5 *means the Securities and Exchange Commission, ex-*
6 *cept in the context of the Commodity Futures Trading*
7 *Commission.*

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

10 (7) *COUNCIL*.—*The term “Council” means the*
11 *Financial Stability Oversight Council established*
12 *under title I.*

13 (8) *CREDIT UNION*.—*The term “credit union”*
14 *means a Federal credit union, State credit union, or*
15 *State-chartered credit union, as those terms are de-*
16 *finied in section 101 of the Federal Credit Union Act*
17 *(12 U.S.C. 1752).*

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

19 (A) *“Federal banking agency” means, indi-*
20 *vidually, the Board of Governors, the Office of*
21 *the Comptroller of the Currency, and the Cor-*
22 *poration; and*

23 (B) *“Federal banking agencies” means all*
24 *of the agencies referred to in subparagraph (A),*
25 *collectively.*

1 (10) *FUNCTIONALLY REGULATED SUBSIDIARY.*—
2 The term “functionally regulated subsidiary” has the
3 same meaning as in section 5(c)(5) of the Bank Hold-
4 ing Company Act of 1956 (12 U.S.C. 1844(c)(5)).

5 (11) *PRIMARY FINANCIAL REGULATORY AGEN-*
6 *CY.*—The term “primary financial regulatory agen-
7 cy” means—

8 (A) the appropriate Federal banking agen-
9 cy, with respect to institutions described in sec-
10 tion 3(q) of the Federal Deposit Insurance Act,
11 except to the extent that an institution is or the
12 activities of an institution are otherwise subject
13 to the jurisdiction of an agency listed in sub-
14 paragraph (B), (C), (D), or (E);

15 (B) the Securities and Exchange Commis-
16 sion, with respect to—

17 (i) any broker or dealer that is reg-
18 istered with the Commission under the Se-
19 curities Exchange Act of 1934;

20 (ii) any investment company that is
21 registered with the Commission under the
22 Investment Company Act of 1940;

23 (iii) any investment adviser that is
24 registered with the Commission under the
25 Investment Advisers Act of 1940, with re-

1 *spect to the investment advisory activities of*
2 *such company and activities that are inci-*
3 *idental to such advisory activities; and*

4 *(iv) any clearing agency registered*
5 *with the Commission under the Securities*
6 *Exchange Act of 1934;*

7 *(C) the Commodity Futures Trading Com-*
8 *mission, with respect to any futures commission*
9 *merchant, any commodity trading adviser, and*
10 *any commodity pool operator registered with the*
11 *Commodity Futures Trading Commission under*
12 *the Commodity Exchange Act, with respect to the*
13 *commodities activities of such entity and activi-*
14 *ties that are incidental to such commodities ac-*
15 *tivities;*

16 *(D) the State insurance authority of the*
17 *State in which an insurance company is domi-*
18 *ciled, with respect to the insurance activities and*
19 *activities that are incidental to such insurance*
20 *activities of an insurance company that is sub-*
21 *ject to supervision by the State insurance au-*
22 *thority under State insurance law; and*

23 *(E) the Federal Housing Finance Agency,*
24 *with respect to Federal Home Loan Banks or the*
25 *Federal Home Loan Bank System, and with re-*

1 *spect to the Federal National Mortgage Associa-*
2 *tion or the Federal Home Loan Mortgage Cor-*
3 *poration.*

4 (12) *PRUDENTIAL STANDARDS.*—*The term “pru-*
5 *dential standards” means enhanced supervision and*
6 *regulatory standards developed by the Board of Gov-*
7 *ernors under section 115 or 165.*

8 (13) *SECRETARY.*—*The term “Secretary” means*
9 *the Secretary of the Treasury.*

10 (14) *SECURITIES TERMS.*—*The—*

11 (A) *terms “broker”, “dealer”, “issuer”, “na-*
12 *tionally recognized statistical ratings organiza-*
13 *tion”, “security”, and “securities laws” have the*
14 *same meanings as in section 3 of the Securities*
15 *Exchange Act of 1934 (15 U.S.C. 78c);*

16 (B) *term “investment adviser” has the same*
17 *meaning as in section 202 of the Investment Ad-*
18 *visers Act of 1940 (15 U.S.C. 80b-2); and*

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

22 (15) *STATE.*—*The term “State” means any*
23 *State, commonwealth, territory, or possession of the*
24 *United States, the District of Columbia, the Common-*
25 *wealth of Puerto Rico, the Commonwealth of the*

1 *Northern Mariana Islands, American Samoa, Guam,*
2 *or the United States Virgin Islands.*

3 (16) *TRANSFER DATE.*—*The term “transfer*
4 *date” means the date established under section 311.*

5 (17) *OTHER INCORPORATED DEFINITIONS.*—

6 (A) *FEDERAL DEPOSIT INSURANCE ACT.*—
7 *The terms “affiliate”, “bank”, “bank holding*
8 *company”, “control” (when used with respect to*
9 *a depository institution), “deposit”, “depository*
10 *institution”, “Federal depository institution”,*
11 *“Federal savings association”, “foreign bank”,*
12 *“including”, “insured branch”, “insured depository*
13 *institution”, “national member bank”, “na-*
14 *tional nonmember bank”, “savings association”,*
15 *“State bank”, “State depository institution”,*
16 *“State member bank”, “State nonmember bank”,*
17 *“State savings association”, and “subsidiary”*
18 *have the same meanings as in section 3 of the*
19 *Federal Deposit Insurance Act (12 U.S.C. 1813).*

20 (B) *HOLDING COMPANIES.*—*The term—*

21 (i) *“bank holding company” has the*
22 *same meaning as in section 2 of the Bank*
23 *Holding Company Act of 1956 (12 U.S.C.*
24 *1841);*

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

5 (iii) “savings and loan holding com-
6 pany” has the same meaning as in section
7 10 of the Home Owners’ Loan Act (12
8 U.S.C. 1467a(a)).

9 **SEC. 3. SEVERABILITY.**

10 If any provision of this Act, an amendment made by
11 this Act, or the application of such provision or amendment
12 to any person or circumstance is held to be unconstitu-
13 tional, the remainder of this Act, the amendments made by
14 this Act, and the application of the provisions of such to
15 any person or circumstance shall not be affected thereby.

16 **SEC. 4. EFFECTIVE DATE.**

17 Except as otherwise specifically provided in this Act
18 or the amendments made by this Act, this Act and such
19 amendments shall take effect 1 day after the date of enact-
20 ment of this Act.

21 **TITLE I—FINANCIAL STABILITY**

22 **SEC. 101. SHORT TITLE.**

23 This title may be cited as the “Financial Stability Act
24 of 2010”.

1 **SEC. 102. DEFINITIONS.**

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

5 (1) *BANK HOLDING COMPANY.*—The term “bank
6 holding company” has the same meaning as in sec-
7 tion 2 of the Bank Holding Company Act of 1956 (12
8 U.S.C. 1841). A foreign bank or company that is
9 treated as a bank holding company for purposes of
10 the Bank Holding Company Act of 1956, pursuant to
11 section 8(a) of the International Banking Act of 1978
12 (12 U.S.C. 3106(a)), shall be treated as a bank hold-
13 ing company for purposes of this title.

14 (2) *CHAIRPERSON.*—The term “Chairperson”
15 means the Chairperson of the Council.

16 (3) *MEMBER AGENCY.*—The term “member agen-
17 cy” means an agency represented by a voting member
18 of the Council.

19 (4) *NONBANK FINANCIAL COMPANY DEFINI-*
20 *TIONS.*—

21 (A) *FOREIGN NONBANK FINANCIAL COM-*
22 *PANY.*—The term “foreign nonbank financial
23 company” means a company (other than a com-
24 pany that is, or is treated in the United States
25 as, a bank holding company or a subsidiary
26 thereof) that is—

1 (i) incorporated or organized in a
2 country other than the United States; and
3 (ii) predominantly engaged in, includ-
4 ing through a branch in the United States,
5 financial activities, as defined in paragraph
6 (6).

7 (B) *U.S. NONBANK FINANCIAL COMPANY.*—
8 The term “U.S. nonbank financial company”
9 means a company (other than a bank holding
10 company or a subsidiary thereof, or a Farm
11 Credit System institution chartered and subject
12 to the provisions of the Farm Credit Act of 1971
13 (12 U.S.C. 2001 et seq.)) that is—

14 (i) incorporated or organized under the
15 laws of the United States or any State; and
16 (ii) predominantly engaged in finan-
17 cial activities as defined in paragraph (6).

18 (C) *NONBANK FINANCIAL COMPANY.*—The
19 term “nonbank financial company” means a
20 U.S. nonbank financial company and a foreign
21 nonbank financial company.

22 (D) *NONBANK FINANCIAL COMPANY SUPER-*
23 *VISIONED BY THE BOARD OF GOVERNORS.*—The
24 term “nonbank financial company supervised by
25 the Board of Governors” means a nonbank fi-

1 *nancial company that the Council has deter-*
2 *mined under section 113 shall be supervised by*
3 *the Board of Governors.*

4 (5) *OFFICE OF FINANCIAL RESEARCH.*—*The term*
5 *“Office of Financial Research” means the office estab-*
6 *lished under section 152.*

7 (6) *PREDOMINANTLY ENGAGED.*—*A company is*
8 *“predominantly engaged in financial activities” if—*

9 (A) *the annual gross revenues derived by the*
10 *company and all of its subsidiaries from activi-*
11 *ties that are financial in nature (as defined in*
12 *section 4(k) of the Bank Holding Company Act*
13 *of 1956) and, if applicable, from the ownership*
14 *or control of one or more insured depository in-*
15 *stitutions, represents 85 percent or more of the*
16 *consolidated annual gross revenues of the com-*
17 *pany; or*

18 (B) *the consolidated assets of the company*
19 *and all of its subsidiaries related to activities*
20 *that are financial in nature (as defined in sec-*
21 *tion 4(k) of the Bank Holding Company Act of*
22 *1956) and, if applicable, related to the ownership*
23 *or control of one or more insured depository in-*
24 *stitutions, represents 85 percent or more of the*
25 *consolidated assets of the company.*

1 (7) *SIGNIFICANT INSTITUTIONS.*—*The terms “sig-*
2 *nificant nonbank financial company” and “signifi-*
3 *cant bank holding company” have the meanings given*
4 *those terms by rule of the Board of Governors.*

5 (b) *DEFINITIONAL CRITERIA.*—*The Board of Gov-*
6 *ernors shall establish, by regulation, the requirements for*
7 *determining if a company is predominantly engaged in fi-*
8 *ncial activities, as defined in subsection (a)(6).*

9 (c) *FOREIGN NONBANK FINANCIAL COMPANIES.*—*For*
10 *purposes of the authority of the Board of Governors under*
11 *this title with respect to foreign nonbank financial compa-*
12 *nies, references in this title to “company” or “subsidiary”*
13 *include only the United States activities and subsidiaries*
14 *of such foreign company.*

15 ***Subtitle A—Financial Stability***
16 ***Oversight Council***

17 ***SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ES-***
18 ***TABLISHED.***

19 (a) *ESTABLISHMENT.*—*Effective on the date of enact-*
20 *ment of this Act, there is established the Financial Stability*
21 *Oversight Council.*

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

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

1 (A) *the Secretary of the Treasury, who shall*
2 *serve as Chairperson of the Council;*

3 (B) *the Chairman of the Board of Gov-*
4 *ernors;*

5 (C) *the Comptroller of the Currency;*

6 (D) *the Director of the Bureau;*

7 (E) *the Chairman of the Commission;*

8 (F) *the Chairperson of the Corporation;*

9 (G) *the Chairperson of the Commodity Fu-*
10 *tures Trading Commission;*

11 (H) *the Director of the Federal Housing Fi-*
12 *nance Agency; and*

13 (I) *an independent member appointed by*
14 *the President, by and with the advice and con-*
15 *sent of the Senate, having insurance expertise.*

16 (2) *NONVOTING MEMBERS.—The Director of the*
17 *Office of Financial Research—*

18 (A) *shall serve in an advisory capacity as*
19 *a nonvoting member of the Council; and*

20 (B) *may not be excluded from any of the*
21 *proceedings, meetings, discussions, or delibera-*
22 *tions of the Council.*

23 (c) *TERMS; VACANCY.—*

24 (1) *TERMS.—The independent member of the*
25 *Council shall serve for a term of 6 years.*

1 (2) *VACANCY.*—*Any vacancy on the Council shall*
2 *be filled in the manner in which the original appoint-*
3 *ment was made.*

4 (3) *ACTING OFFICIALS MAY SERVE.*—*In the event*
5 *of a vacancy in the office of the head of a member*
6 *agency or department, and pending the appointment*
7 *of a successor, or during the absence or disability of*
8 *the head of a member agency or department, the act-*
9 *ing head of the member agency or department shall*
10 *serve as a member of the Council in the place of that*
11 *agency or department head.*

12 (d) *TECHNICAL AND PROFESSIONAL ADVISORY COM-*
13 *MITTEES.*—*The Council may appoint such special advisory,*
14 *technical, or professional committees as may be useful in*
15 *carrying out the functions of the Council, including an ad-*
16 *visory committee consisting of State regulators, and the*
17 *members of such committees may be members of the Council,*
18 *or other persons, or both.*

19 (e) *MEETINGS.*—

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

23 (2) *RULES FOR CONDUCTING BUSINESS.*—*The*
24 *Council shall adopt such rules as may be necessary*
25 *for the conduct of the business of the Council. Such*

1 *rules shall be rules of agency organization, procedure,*
2 *or practice for purposes of section 553 of title 5,*
3 *United States Code.*

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

7 *(g) NONAPPLICABILITY OF FACA.—The Federal Advi-*
8 *sory Committee Act (5 U.S.C. App.) shall not apply to the*
9 *Council, or to any special advisory, technical, or profes-*
10 *sional committee appointed by the Council, except that, if*
11 *an advisory, technical, or professional committee has one*
12 *or more members who are not employees of or affiliated with*
13 *the United States Government, the Council shall publish a*
14 *list of the names of the members of such committee.*

15 *(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any de-*
16 *partment or agency of the United States may provide to*
17 *the Council and any special advisory, technical, or profes-*
18 *sional committee appointed by the Council, such services,*
19 *funds, facilities, staff, and other support services as the*
20 *Council may determine advisable.*

21 *(i) COMPENSATION OF MEMBERS.—*

22 *(1) FEDERAL EMPLOYEE MEMBERS.—All mem-*
23 *bers of the Council who are officers or employees of*
24 *the United States shall serve without compensation in*

1 *addition to that received for their services as officers*
2 *or employees of the United States.*

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

6 *“Independent Member of the Financial Stability*
7 *Oversight Council (1).”.*

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

17 **SEC. 112. COUNCIL AUTHORITY.**

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

19 (1) *IN GENERAL.—The purposes of the Council*
20 *are—*

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

1 (B) to promote market discipline, by elimi-
2 nating expectations on the part of shareholders,
3 creditors, and counterparties of such companies
4 that the Government will shield them from losses
5 in the event of failure; and

6 (C) to respond to emerging threats to the
7 stability of the United States financial markets.

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

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

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

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

23 (D) facilitate information sharing and co-
24 ordination among the member agencies and other
25 Federal and State agencies regarding domestic

1 *financial services policy development, rule-*
2 *making, examinations, reporting requirements,*
3 *and enforcement actions;*

4 *(E) recommend to the member agencies gen-*
5 *eral supervisory priorities and principles reflect-*
6 *ing the outcome of discussions among the mem-*
7 *ber agencies;*

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

11 *(G) require supervision by the Board of*
12 *Governors for nonbank financial companies that*
13 *may pose risks to the financial stability of the*
14 *United States in the event of their material fi-*
15 *nancial distress or failure, pursuant to section*
16 *113;*

17 *(H) make recommendations to the Board of*
18 *Governors concerning the establishment of height-*
19 *ened prudential standards for risk-based capital,*
20 *leverage, liquidity, contingent capital, resolution*
21 *plans and credit exposure reports, concentration*
22 *limits, enhanced public disclosures, and overall*
23 *risk management for nonbank financial compa-*
24 *nies and large, interconnected bank holding com-*
25 *panies supervised by the Board of Governors;*

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

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

15 (K) make determinations regarding exemp-
16 tions in title VII, where necessary;

17 (L) provide a forum for—

18 (i) discussion and analysis of emerging
19 market developments and financial regu-
20 latory issues; and

21 (ii) resolution of jurisdictional disputes
22 among the members of the Council; and

23 (M) annually report to and testify before
24 Congress on—

25 (i) the activities of the Council;

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

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

7 (iv) recommendations—

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

11 (II) to promote market discipline;

12 and

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

15 (b) *AUTHORITY TO OBTAIN INFORMATION.*—

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

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

23 (B) *to otherwise carry out any of the provi-*
24 *sions of this title.*

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

6 (3) *FINANCIAL DATA COLLECTION.*—

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

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

1 *available from the Office of Financial Research*
2 *or such agencies.*

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

16 (5) *CONFIDENTIALITY.—*

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

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

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

5 (C) *FREEDOM OF INFORMATION ACT.—Sec-*
6 *tion 552 of title 5, United States Code, including*
7 *the exceptions thereunder, shall apply to any*
8 *data or information submitted under this sub-*
9 *section and subtitle B.*

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

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

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

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

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

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

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

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

12 (E) *the extent and types of the transactions*
13 *and relationships of the company with other sig-*
14 *nificant nonbank financial companies and sig-*
15 *nificant bank holding companies;*

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

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

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

25 (I) *the extent to which—*

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

3 (ii) *ownership of assets under manage-*
4 *ment is diffuse; and*

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

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

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

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

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

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

3 (C) *the amount and types of the liabilities*
4 *of the company used to fund activities and oper-*
5 *ations in the United States, including the degree*
6 *of reliance on short-term funding;*

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

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

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

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

20 (H) *the extent to which—*

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

23 (ii) *ownership of assets under manage-*
24 *ment is diffuse; and*

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

3 (c) ANTI-EVASION.—

4 (1) DETERMINATIONS.—In order to avoid eva-
5 sion of this Act, the Council, on its own initiative or
6 at the request of the Board of Governors, may deter-
7 mine, on a nondelegable basis and by a vote of not
8 fewer than $\frac{2}{3}$ of the members then serving, including
9 an affirmative vote by the Chairperson, that—

10 (A) material financial distress related to fi-
11 nancial activities conducted directly or indi-
12 rectly by a company incorporated or organized
13 under the laws of the United States or any State
14 or the financial activities in the United States of
15 a company incorporated or organized in a coun-
16 try other than the United States would pose a
17 threat to the financial stability of the United
18 States based on consideration of the factors in
19 subsection (b)(2);

20 (B) the company is organized or operates in
21 such a manner as to evade the application of
22 this title;

23 (C) such financial activities of the company
24 shall be supervised by the Board of Governors
25 and subject to prudential standards in accord-

1 *ance with this title consistent with paragraph*
2 *(2); and*

3 *(D) upon making a determination under*
4 *subsection (c)(1), the Council shall submit a re-*
5 *port to the appropriate committees of Congress*
6 *detailing the reasons for making such determina-*
7 *tion under this subsection.*

8 *(2) Consolidated supervision of only financial*
9 *activities; Establishment of an intermediate holding*
10 *company.*

11 *(A) ESTABLISHMENT OF AN INTERMEDIATE*
12 *HOLDING COMPANY.—Upon a determination*
13 *under paragraph (1), the company may establish*
14 *an intermediate holding company in which the*
15 *financial activities of such company and its sub-*
16 *subsidiaries will be conducted (other than the activi-*
17 *ties described in section 167(b)(2) in compliance*
18 *with any regulations or guidance provided by*
19 *the Board of Governors). Such intermediate hold-*
20 *ing company shall be subject to the supervision*
21 *of the Board of Governors and to prudential*
22 *standards under this title as if the intermediate*
23 *holding company is a nonbank financial com-*
24 *pany supervised by the Board of Governors.*

1 (B) *ACTION OF THE BOARD OF GOV-*
2 *ERNORS.—To facilitate the supervision of the fi-*
3 *nancial activities subject to the determination in*
4 *paragraph (1), the Board of Governors may re-*
5 *quire a company to establish an intermediate*
6 *holding company, as provided for in section 167,*
7 *which would be subject to the supervision of the*
8 *Board of Governors and to prudential standards*
9 *under this title as if the intermediate holding*
10 *company is a nonbank financial company super-*
11 *vised by the Board of Governors.*

12 (3) *NOTICE AND OPPORTUNITY FOR HEARING*
13 *AND FINAL DETERMINATION; JUDICIAL REVIEW.—Sub-*
14 *sections (d), (f), and (g) shall apply to determinations*
15 *made by the Council pursuant to paragraph (1) in*
16 *the same manner as such subsections apply to*
17 *nonbank financial companies.*

18 (4) *COVERED FINANCIAL ACTIVITIES.—For pur-*
19 *poses of this subsection, the term “financial activi-*
20 *ties” means activities that are financial in nature (as*
21 *defined in section 4(k) of the Bank Holding Company*
22 *Act of 1956) and include the ownership or control of*
23 *one or more insured depository institutions and shall*
24 *not include internal financial activities conducted for*
25 *the company or any affiliates thereof including inter-*

1 *nal treasury, investment, and employee benefit func-*
2 *tions.*

3 (5) *ONLY FINANCIAL ACTIVITIES SUBJECT TO*
4 *PRUDENTIAL SUPERVISION.*—*Nonfinancial activities*
5 *of the company shall not be subject to supervision by*
6 *the Board of Governors and prudential standards of*
7 *the Board. For purposes of this Act, the financial ac-*
8 *tivities that are the subject of the determination in*
9 *paragraph (1) shall be subject to the same require-*
10 *ments as a nonbank financial company. Nothing in*
11 *this paragraph shall prohibit or limit the authority*
12 *of the Board of Governors to apply prudential stand-*
13 *ards under this title to the financial activities that*
14 *are subject to the determination in paragraph (1).*

15 (d) *REEVALUATION AND RESCISSION.*—*The Council*
16 *shall—*

17 (1) *not less frequently than annually, reevaluate*
18 *each determination made under subsections (a) and*
19 *(b) with respect to each nonbank financial company*
20 *supervised by the Board of Governors; and*

21 (2) *rescind any such determination, if the Coun-*
22 *cil, by a vote of not fewer than $\frac{2}{3}$ of the members then*
23 *-serving, including an affirmative vote by the Chair-*
24 *person, determines that the nonbank financial com-*

1 *pany no longer meets the standards under subsection*
2 *(a) or (b), as applicable.*

3 *(e) NOTICE AND OPPORTUNITY FOR HEARING AND*
4 *FINAL DETERMINATION.—*

5 *(1) IN GENERAL.—The Council shall provide to*
6 *a nonbank financial company written notice of a pro-*
7 *posed determination of the Council, including an ex-*
8 *planation of the basis of the proposed determination*
9 *of the Council, that such nonbank financial company*
10 *shall be supervised by the Board of Governors and*
11 *shall be subject to prudential standards in accordance*
12 *with this title.*

13 *(2) HEARING.—Not later than 30 days after the*
14 *date of receipt of any notice of a proposed determina-*
15 *tion under paragraph (1), the nonbank financial*
16 *company may request, in writing, an opportunity for*
17 *a written or oral hearing before the Council to contest*
18 *the proposed determination. Upon receipt of a timely*
19 *request, the Council shall fix a time (not later than*
20 *30 days after the date of receipt of the request) and*
21 *place at which such company may appear, personally*
22 *or through counsel, to submit written materials (or,*
23 *at the sole discretion of the Council, oral testimony*
24 *and oral argument).*

1 (3) *FINAL DETERMINATION.*—Not later than 60
2 days after the date of a hearing under paragraph (2),
3 the Council shall notify the nonbank financial com-
4 pany of the final determination of the Council, which
5 shall contain a statement of the basis for the decision
6 of the Council.

7 (4) *NO HEARING REQUESTED.*—If a nonbank fi-
8 nancial company does not make a timely request for
9 a hearing, the Council shall notify the nonbank finan-
10 cial company, in writing, of the final determination
11 of the Council under subsection (a) or (b), as applica-
12 ble, not later than 10 days after the date by which the
13 company may request a hearing under paragraph
14 (2).

15 (f) *EMERGENCY EXCEPTION.*—

16 (1) *IN GENERAL.*—The Council may waive or
17 modify the requirements of subsection (d) with respect
18 to a nonbank financial company, if the Council deter-
19 mines, by a vote of not fewer than $\frac{2}{3}$ of the members
20 then serving, including an affirmative vote by the
21 Chairperson, that such waiver or modification is nec-
22 essary or appropriate to prevent or mitigate threats
23 posed by the nonbank financial company to the finan-
24 cial stability of the United States.

1 (2) *NOTICE.*—*The Council shall provide notice of*
2 *a waiver or modification under this paragraph to the*
3 *nonbank financial company concerned as soon as*
4 *practicable, but not later than 24 hours after the*
5 *waiver or modification is granted.*

6 (3) *OPPORTUNITY FOR HEARING.*—*The Council*
7 *shall allow a nonbank financial company to request,*
8 *in writing, an opportunity for a written or oral hear-*
9 *ing before the Council to contest a waiver or modi-*
10 *fication under this paragraph, not later than 10 days*
11 *after the date of receipt of notice of the waiver or*
12 *modification by the company. Upon receipt of a time-*
13 *ly request, the Council shall fix a time (not later than*
14 *15 days after the date of receipt of the request) and*
15 *place at which the nonbank financial company may*
16 *appear, personally or through counsel, to submit writ-*
17 *ten materials (or, at the sole discretion of the Council,*
18 *oral testimony and oral argument).*

19 (4) *NOTICE OF FINAL DETERMINATION.*—*Not*
20 *later than 30 days after the date of any hearing*
21 *under paragraph (3), the Council shall notify the sub-*
22 *ject nonbank financial company of the final deter-*
23 *mination of the Council under this paragraph, which*
24 *shall contain a statement of the basis for the decision*
25 *of the Council.*

1 (g) *CONSULTATION.*—*The Council shall consult with*
2 *the primary financial regulatory agency, if any, for each*
3 *nonbank financial company or subsidiary of a nonbank fi-*
4 *ancial company that is being considered for supervision*
5 *by the Board of Governors under this section before the*
6 *Council makes any final determination with respect to such*
7 *nonbank financial company under subsection (a), (b), or*
8 *(c).*

9 (h) *JUDICIAL REVIEW.*—*If the Council makes a final*
10 *determination under this section with respect to a nonbank*
11 *financial company, such nonbank financial company may,*
12 *not later than 30 days after the date of receipt of the notice*
13 *of final determination under subsection (d)(3) or (e)(4),*
14 *bring an action in the United States district court for the*
15 *judicial district in which the home office of such nonbank*
16 *financial company is located, or in the United States Dis-*
17 *trict Court for the District of Columbia, for an order requir-*
18 *ing that the final determination be rescinded, and the court*
19 *shall, upon review, dismiss such action or direct the final*
20 *determination to be rescinded. Review of such an action*
21 *shall be limited to whether the final determination made*
22 *under this section was arbitrary and capricious.*

1 **SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPA-**
2 **NIES SUPERVISED BY THE BOARD OF GOV-**
3 **ERNORS.**

4 *Not later than 180 days after the date of a final Coun-*
5 *cil determination under section 113 that a nonbank finan-*
6 *cial company is to be supervised by the Board of Governors,*
7 *such company shall register with the Board of Governors,*
8 *on forms prescribed by the Board of Governors, which shall*
9 *include such information as the Board of Governors, in con-*
10 *sultation with the Council, may deem necessary or appro-*
11 *priate to carry out this title.*

12 **SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL**
13 **STANDARDS FOR NONBANK FINANCIAL COM-**
14 **PANIES SUPERVISED BY THE BOARD OF GOV-**
15 **ERNORS AND CERTAIN BANK HOLDING COM-**
16 **PANIES.**

17 *(a) IN GENERAL.—*

18 *(1) PURPOSE.—In order to prevent or mitigate*
19 *risks to the financial stability of the United States*
20 *that could arise from the material financial distress*
21 *or failure of large, interconnected financial institu-*
22 *tions, the Council may make recommendations to the*
23 *Board of Governors concerning the establishment and*
24 *refinement of prudential standards and reporting and*
25 *disclosure requirements applicable to nonbank finan-*
26 *cial companies supervised by the Board of Governors*

1 *and large, interconnected bank holding companies,*
2 *that—*

3 *(A) are more stringent than those applicable*
4 *to other nonbank financial companies and bank*
5 *holding companies that do not present similar*
6 *risks to the financial stability of the United*
7 *States; and*

8 *(B) increase in stringency, based on the*
9 *considerations identified in subsection (b)(3).*

10 *(2) LIMITATION ON BANK HOLDING COMPA-*
11 *NIES.—Any standards recommended under sub-*
12 *sections (b) through (f) shall not apply to any bank*
13 *holding company with total consolidated assets of less*
14 *than \$50,000,000,000. The Council may recommend*
15 *an asset threshold greater than \$50,000,000,000 for*
16 *the applicability of any particular standard under*
17 *those subsections.*

18 *(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—*

19 *(1) IN GENERAL.—The recommendations of the*
20 *Council under subsection (a) may include—*

21 *(A) risk-based capital requirements;*

22 *(B) leverage limits;*

23 *(C) liquidity requirements;*

24 *(D) resolution plan and credit exposure re-*
25 *port requirements;*

- 1 (E) concentration limits;
- 2 (F) a contingent capital requirement;
- 3 (G) enhanced public disclosures; and
- 4 (H) overall risk management requirements.

5 (2) *PRUDENTIAL STANDARDS FOR FOREIGN FI-*
6 *NANCIAL COMPANIES.*—*In making recommendations*
7 *concerning the standards set forth in paragraph (1)*
8 *that would apply to foreign nonbank financial com-*
9 *panies supervised by the Board of Governors or for-*
10 *foreign-based bank holding companies, the Council shall*
11 *give due regard to the principle of national treatment*
12 *and competitive equity.*

13 (3) *CONSIDERATIONS.*—*In making recommenda-*
14 *tions concerning prudential standards under para-*
15 *graph (1), the Council shall—*

16 (A) *take into account differences among*
17 *nonbank financial companies supervised by the*
18 *Board of Governors and bank holding companies*
19 *described in subsection (a), based on—*

20 (i) *the factors described in subsections*
21 *(a) and (b) of section 113;*

22 (ii) *whether the company owns an in-*
23 *sured depository institution;*

24 (iii) *nonfinancial activities and affili-*
25 *ations of the company; and*

1 *(iv) any other factors that the Council*
2 *determines appropriate; and*

3 *(B) to the extent possible, ensure that small*
4 *changes in the factors listed in subsections (a)*
5 *and (b) of section 113 would not result in sharp,*
6 *discontinuous changes in the prudential stand-*
7 *ards established under paragraph (1).*

8 *(c) CONTINGENT CAPITAL.—*

9 *(1) STUDY REQUIRED.—The Council shall con-*
10 *duct a study of the feasibility, benefits, costs, and*
11 *structure of a contingent capital requirement for*
12 *nonbank financial companies supervised by the Board*
13 *of Governors and bank holding companies described*
14 *in subsection (a), which study shall include—*

15 *(A) an evaluation of the degree to which*
16 *such requirement would enhance the safety and*
17 *soundness of companies subject to the require-*
18 *ment, promote the financial stability of the*
19 *United States, and reduce risks to United States*
20 *taxpayers;*

21 *(B) an evaluation of the characteristics and*
22 *amounts of convertible debt that should be re-*
23 *quired;*

24 *(C) an analysis of potential prudential*
25 *standards that should be used to determine*

1 *whether the contingent capital of a company*
2 *would be converted to equity in times of finan-*
3 *cial stress;*

4 *(D) an evaluation of the costs to companies,*
5 *the effects on the structure and operation of cred-*
6 *it and other financial markets, and other eco-*
7 *nomical effects of requiring contingent capital;*

8 *(E) an evaluation of the effects of such re-*
9 *quirement on the international competitiveness*
10 *of companies subject to the requirement and the*
11 *prospects for international coordination in estab-*
12 *lishing such requirement; and*

13 *(F) recommendations for implementing reg-*
14 *ulations.*

15 *(2) REPORT.—The Council shall submit a report*
16 *to Congress regarding the study required by para-*
17 *graph (1) not later than 2 years after the date of en-*
18 *actment of this Act.*

19 *(3) RECOMMENDATIONS.—*

20 *(A) IN GENERAL.—Subsequent to submit-*
21 *ting a report to Congress under paragraph (2),*
22 *the Council may make recommendations to the*
23 *Board of Governors to require any nonbank fi-*
24 *ancial company supervised by the Board of*
25 *Governors and any bank holding company de-*

1 *scribed in subsection (a) to maintain a min-*
2 *imum amount of long-term hybrid debt that is*
3 *convertible to equity in times of financial stress.*

4 *(B) FACTORS TO CONSIDER.—In making*
5 *recommendations under this subsection, the*
6 *Council shall consider—*

7 *(i) an appropriate transition period*
8 *for implementation of a conversion under*
9 *this subsection;*

10 *(ii) the factors described in subsection*
11 *(b)(3);*

12 *(iii) capital requirements applicable to*
13 *a nonbank financial company supervised by*
14 *the Board of Governors or a bank holding*
15 *company described in subsection (a), and*
16 *subsidiaries thereof;*

17 *(iv) results of the study required by*
18 *paragraph (1); and*

19 *(v) any other factor that the Council*
20 *deems appropriate.*

21 *(d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-*
22 *PORTS.—*

23 *(1) RESOLUTION PLAN.—The Council may make*
24 *recommendations to the Board of Governors con-*
25 *cerning the requirement that each nonbank financial*

1 *company supervised by the Board of Governors and*
2 *each bank holding company described in subsection*
3 *(a) report periodically to the Council, the Board of*
4 *Governors, and the Corporation, the plan of such*
5 *company for rapid and orderly resolution in the event*
6 *of material financial distress or failure.*

7 (2) *CREDIT EXPOSURE REPORT.*—*The Council*
8 *may make recommendations to the Board of Gov-*
9 *ernors concerning the advisability of requiring each*
10 *nonbank financial company supervised by the Board*
11 *of Governors and bank holding company described in*
12 *subsection (a) to report periodically to the Council,*
13 *the Board of Governors, and the Corporation on—*

14 (A) *the nature and extent to which the com-*
15 *pany has credit exposure to other significant*
16 *nonbank financial companies and significant*
17 *bank holding companies; and*

18 (B) *the nature and extent to which other*
19 *such significant nonbank financial companies*
20 *and significant bank holding companies have*
21 *credit exposure to that company.*

22 (e) *CONCENTRATION LIMITS.*—*In order to limit the*
23 *risks that the failure of any individual company could pose*
24 *to nonbank financial companies supervised by the Board*
25 *of Governors or bank holding companies described in sub-*

1 *section (a), the Council may make recommendations to the*
2 *Board of Governors to prescribe standards to limit such*
3 *risks, as set forth in section 165.*

4 (f) *ENHANCED PUBLIC DISCLOSURES.—The Council*
5 *may make recommendations to the Board of Governors to*
6 *require periodic public disclosures by bank holding compa-*
7 *nies described in subsection (a) and by nonbank financial*
8 *companies supervised by the Board of Governors, in order*
9 *to support market evaluation of the risk profile, capital ade-*
10 *quacy, and risk management capabilities thereof.*

11 **SEC. 116. REPORTS.**

12 (a) *IN GENERAL.—Subject to subsection (b), the Coun-*
13 *cil, acting through the Office of Financial Research, may*
14 *require a bank holding company with total consolidated as-*
15 *sets of \$50,000,000,000 or greater or a nonbank financial*
16 *company supervised by the Board of Governors, and any*
17 *subsidiary thereof, to submit certified reports to keep the*
18 *Council informed as to—*

- 19 (1) *the financial condition of the company;*
20 (2) *systems for monitoring and controlling fi-*
21 *nancial, operating, and other risks;*
22 (3) *transactions with any subsidiary that is a*
23 *depository institution; and*
24 (4) *the extent to which the activities and oper-*
25 *ations of the company and any subsidiary thereof,*

1 *could, under adverse circumstances, have the potential*
2 *to disrupt financial markets or affect the overall fi-*
3 *nanacial stability of the United States.*

4 ***(b) USE OF EXISTING REPORTS.—***

5 ***(1) IN GENERAL.—****For purposes of compliance*
6 *with subsection (a), the Council, acting through the*
7 *Office of Financial Research, shall, to the fullest ex-*
8 *tent possible, use—*

9 ***(A)*** *reports that a bank holding company,*
10 *nonbank financial company supervised by the*
11 *Board of Governors, or any functionally regu-*
12 *lated subsidiary of such company has been re-*
13 *quired to provide to other Federal or State regu-*
14 *latory agencies;*

15 ***(B)*** *information that is otherwise required*
16 *to be reported publicly; and*

17 ***(C)*** *externally audited financial statements.*

18 ***(2) AVAILABILITY.—****Each bank holding company*
19 *described in subsection (a) and nonbank financial*
20 *company supervised by the Board of Governors, and*
21 *any subsidiary thereof, shall provide to the Council,*
22 *at the request of the Council, copies of all reports re-*
23 *ferred to in paragraph (1).*

24 ***(3) CONFIDENTIALITY.—****The Council shall main-*
25 *tain the confidentiality of the reports obtained under*

1 subsection (a) and paragraph (1)(A) of this sub-
2 section.

3 **SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT**
4 **CEASE TO BE BANK HOLDING COMPANIES.**

5 (a) *APPLICABILITY.*—This section shall apply to any
6 entity or a successor entity that—

7 (1) was a bank holding company having total
8 consolidated assets equal to or greater than
9 \$50,000,000,000 as of January 1, 2010; and

10 (2) received financial assistance under or par-
11 ticipated in the Capital Purchase Program estab-
12 lished under the Troubled Asset Relief Program au-
13 thorized by the Emergency Economic Stabilization
14 Act of 2008.

15 (b) *TREATMENT.*—If an entity described in subsection
16 (a) ceases to be a bank holding company at any time after
17 January 1, 2010, then such entity shall be treated as a
18 nonbank financial company supervised by the Board of
19 Governors, as if the Council had made a determination
20 under section 113 with respect to that entity.

21 (c) *APPEAL.*—

22 (1) *REQUEST FOR HEARING.*—An entity may re-
23 quest, in writing, an opportunity for a written or
24 oral hearing before the Council to appeal its treat-
25 ment as a nonbank financial company supervised by

1 *the Board of Governors in accordance with this sec-*
2 *tion. Upon receipt of the request, the Council shall fix*
3 *a time (not later than 30 days after the date of re-*
4 *ceipt of the request) and place at which such entity*
5 *may appear, personally or through counsel, to submit*
6 *written materials (or, at the sole discretion of the*
7 *Council, oral testimony and oral argument).*

8 (2) *DECISION.—*

9 (A) *PROPOSED DECISION.—Not later than*
10 *60 days after the date of a hearing under para-*
11 *graph (1), the Council shall submit a report to,*
12 *and may testify before, the Committee on Bank-*
13 *ing, Housing, and Urban Affairs of the Senate*
14 *and the Committee on Financial Services of the*
15 *House of Representatives on the proposed deci-*
16 *sion of the Council regarding an appeal under*
17 *paragraph (1), which report shall include a*
18 *statement of the basis for the proposed decision*
19 *of the Council.*

20 (B) *NOTICE OF FINAL DECISION.—The*
21 *Council shall notify the subject entity of the final*
22 *decision of the Council regarding an appeal*
23 *under paragraph (1), which notice shall contain*
24 *a statement of the basis for the final decision of*

1 *the Council, not later than 60 days after the*
2 *later of—*

3 *(i) the date of the submission of the re-*
4 *port under subparagraph (A); or*

5 *(ii) if the Committee on Banking,*
6 *Housing, and Urban Affairs of the Senate*
7 *or the Committee on Financial Services of*
8 *the House of Representatives holds one or*
9 *more hearings regarding such report, the*
10 *date of the last such hearing.*

11 *(C) CONSIDERATIONS.—In making a deci-*
12 *sion regarding an appeal under paragraph (1),*
13 *the Council shall consider whether the company*
14 *meets the standards under section 113(a) or*
15 *113(b), as applicable, and the definition of the*
16 *term “nonbank financial company” under sec-*
17 *tion 102. The decision of the Council shall be*
18 *final, subject to the review under paragraph (3).*

19 *(3) REVIEW.—If the Council denies an appeal*
20 *under this subsection, the Council shall, not less fre-*
21 *quently than annually, review and reevaluate the de-*
22 *cision.*

23 **SEC. 118. COUNCIL FUNDING.**

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

1 **SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL**
2 **DISPUTES AMONG MEMBER AGENCIES.**

3 (a) *REQUEST FOR DISPUTE RESOLUTION.*—The Coun-
4 cil shall resolve a dispute among 2 or more member agen-
5 cies, if—

6 (1) *a member agency has a dispute with another*
7 *member agency about the respective jurisdiction over*
8 *a particular bank holding company, nonbank finan-*
9 *cial company, or financial activity or product (ex-*
10 *cluding matters for which another dispute mechanism*
11 *specifically has been provided under Federal law);*

12 (2) *the Council determines that the disputing*
13 *agencies cannot, after a demonstrated good faith ef-*
14 *fort, resolve the dispute without the intervention of the*
15 *Council; and*

16 (3) *any of the member agencies involved in the*
17 *dispute—*

18 (A) *provides all other disputants prior no-*
19 *tice of the intent to request dispute resolution by*
20 *the Council; and*

21 (B) *requests in writing, not earlier than 14*
22 *days after providing the notice described in sub-*
23 *paragraph (A), that the Council resolve the dis-*
24 *pute.*

25 (b) *COUNCIL DECISION.*—The Council shall resolve
26 *each dispute described in subsection (a)—*

1 (1) *within a reasonable time after receiving the*
2 *dispute resolution request;*

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

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

8 (c) *FORM AND BINDING EFFECT.*—*A Council decision*
9 *under this section shall—*

10 (1) *be in writing;*

11 (2) *include an explanation of the reasons there-*
12 *for; and*

13 (3) *be binding on all Federal agencies that are*
14 *parties to the dispute.*

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

18 (a) *IN GENERAL.*—*The Council may issue rec-*
19 *ommendations to the primary financial regulatory agencies*
20 *to apply new or heightened standards and safeguards, in-*
21 *cluding standards enumerated in section 115, for a finan-*
22 *cial activity or practice conducted by bank holding compa-*
23 *nies or nonbank financial companies under their respective*
24 *jurisdictions, if the Council determines that the conduct of*
25 *such activity or practice could create or increase the risk*

1 *of significant liquidity, credit, or other problems spreading*
2 *among bank holding companies and nonbank financial*
3 *companies or the financial markets of the United States.*

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

6 (1) *NOTICE AND OPPORTUNITY FOR COMMENT.—*

7 *The Council shall consult with the primary financial*
8 *regulatory agencies and provide notice to the public*
9 *and opportunity for comment for any proposed rec-*
10 *ommendation that the primary financial regulatory*
11 *agencies apply new or heightened standards and safe-*
12 *guards for a financial activity or practice.*

13 (2) *CRITERIA.—The new or heightened standards*
14 *and safeguards for a financial activity or practice*
15 *recommended under paragraph (1)—*

16 (A) *shall take costs to long-term economic*
17 *growth into account; and*

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

24 (c) *IMPLEMENTATION OF RECOMMENDED STAND-*
25 *ARDS.—*

1 (1) *ROLE OF PRIMARY FINANCIAL REGULATORY*
2 *AGENCY.*—

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

9 (B) *RULE OF CONSTRUCTION.*—*The author-*
10 *ity under this paragraph is in addition to, and*
11 *does not limit, any other authority of a primary*
12 *financial regulatory agency. Compliance by an*
13 *entity with actions taken by a primary financial*
14 *regulatory agency under this section shall be en-*
15 *forceable in accordance with the statutes gov-*
16 *erning the respective jurisdiction of the primary*
17 *financial regulatory agency over the entity, as if*
18 *the agency action were taken under those stat-*
19 *utes.*

20 (2) *IMPOSITION OF STANDARDS.*—*The primary*
21 *financial regulatory agency shall impose the stand-*
22 *ards recommended by the Council in accordance with*
23 *subsection (a), or similar standards that the Council*
24 *deems acceptable, or shall explain in writing to the*
25 *Council, not later than 90 days after the date on*

1 *which the Council issues the recommendation, why the*
2 *agency has determined not to follow the recommenda-*
3 *tion of the Council.*

4 *(d) REPORT TO CONGRESS.—The Council shall report*
5 *to Congress on—*

6 *(1) any recommendations issued by the Council*
7 *under this section;*

8 *(2) the implementation of, or failure to imple-*
9 *ment such recommendation on the part of a primary*
10 *financial regulatory agency; and*

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

18 *(e) EFFECT OF RESCISSION OF IDENTIFICATION.—*

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

24 *(2) DETERMINATION OF PRIMARY FINANCIAL*
25 *REGULATORY AGENCY TO CONTINUE.—*

1 (A) *IN GENERAL.*—Upon receipt of a rec-
2 ommendation under paragraph (1), a primary
3 financial regulatory agency that has imposed
4 standards under this section shall determine
5 whether standards that it has imposed under this
6 section should remain in effect.

7 (B) *APPEAL PROCESS.*—Each primary fi-
8 nancial regulatory agency that has imposed
9 standards under this section shall promulgate
10 regulations to establish a procedure under which
11 entities under its jurisdiction may appeal a de-
12 termination by such agency under this para-
13 graph that standards imposed under this section
14 should remain in effect.

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

16 (a) *MITIGATORY ACTIONS.*—If the Board of Governors
17 determines that a bank holding company with total consoli-
18 dated assets of \$50,000,000,000 or more, or a nonbank fi-
19 nancial company supervised by the Board of Governors,
20 poses a grave threat to the financial stability of the United
21 States, the Board of Governors, upon an affirmative vote
22 of not fewer than $\frac{2}{3}$ of the Council members then serving,
23 shall require the subject company—

24 (1) to terminate one or more activities;

1 (2) *to impose conditions on the manner in which*
2 *the company conducts one or more activities; or*

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

8 (b) *NOTICE AND HEARING.*—

9 (1) *IN GENERAL.*—*The Board of Governors, in*
10 *consultation with the Council, shall provide to a com-*
11 *pany described in subsection (a) written notice that*
12 *such company is being considered for mitigatory ac-*
13 *tion pursuant to this section, including an expla-*
14 *nation of the basis for, and description of, the pro-*
15 *posed mitigatory action.*

16 (2) *HEARING.*—*Not later than 30 days after the*
17 *date of receipt of notice under paragraph (1), the*
18 *company may request, in writing, an opportunity for*
19 *a written or oral hearing before the Board of Gov-*
20 *ernors to contest the proposed mitigatory action.*
21 *Upon receipt of a timely request, the Board of Gov-*
22 *ernors shall fix a time (not later than 30 days after*
23 *the date of receipt of the request) and place at which*
24 *such company may appear, personally or through*
25 *counsel, to submit written materials (or, at the discre-*

1 *tion of the Board of Governors, in consultation with*
2 *the Council, oral testimony and oral argument).*

3 (3) *DECISION.*—*Not later than 60 days after the*
4 *date of a hearing under paragraph (2), or not later*
5 *than 60 days after the provision of a notice under*
6 *paragraph (1) if no hearing was held, the Board of*
7 *Governors shall notify the company of the final deci-*
8 *sion of the Board of Governors, including the results*
9 *of the vote of the Council, as described in subsection*
10 *(a).*

11 (c) *FACTORS FOR CONSIDERATION.*—*The Board of*
12 *Governors and the Council shall take into consideration the*
13 *factors set forth in subsection (a) or (b) of section 113, as*
14 *applicable, in a determination described in subsection (a)*
15 *and in a decision described in subsection (b).*

16 (d) *APPLICATION TO FOREIGN FINANCIAL COMPA-*
17 *NIES.*—*The Board of Governors may prescribe regulations*
18 *regarding the application of this section to foreign nonbank*
19 *financial companies supervised by the Board of Governors*
20 *and foreign-based bank holding companies, giving due re-*
21 *gard to the principle of national treatment and competitive*
22 *equity.*

1 ***Subtitle B—Office of Financial***
2 ***Research***

3 **SEC. 151. DEFINITIONS.**

4 *For purposes of this subtitle—*

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

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

11 (3) *the term “Data Center” means the data cen-*
12 *ter established under section 154;*

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

16 (5) *the term “financial transaction data” means*
17 *the structure and legal description of a financial con-*
18 *tract, with sufficient detail to describe the rights and*
19 *obligations between counterparties and make possible*
20 *an independent valuation;*

21 (6) *the term “position data”—*

22 (A) *means data on financial assets or li-*
23 *abilities held on the balance sheet of a financial*
24 *company, where positions are created or changed*
25 *by the execution of a financial transaction; and*

1 (B) includes information that identifies
2 counterparties, the valuation by the financial
3 company of the position, and information that
4 makes possible an independent valuation of the
5 position;

6 (7) the term “financial contract” means a legally
7 binding agreement between 2 or more counterparties,
8 describing rights and obligations relating to the fu-
9 ture delivery of items of intrinsic or extrinsic value
10 among the counterparties; and

11 (8) the term “financial instrument” means a fi-
12 nancial contract in which the terms and conditions
13 are publicly available, and the roles of one or more
14 of the counterparties are assignable without the con-
15 sent of any of the other counterparties (including
16 common stock of a publicly traded company, govern-
17 ment bonds, or exchange traded futures and options
18 contracts).

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

20 (a) *ESTABLISHMENT.*—There is established within the
21 Department of the Treasury the Office of Financial Re-
22 search.

23 (b) *DIRECTOR.*—

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

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

10 (3) *EXECUTIVE LEVEL.*—*The Director shall be*
11 *compensated at level III of the Executive Schedule.*

12 (4) *PROHIBITION ON DUAL SERVICE.*—*The indi-*
13 *vidual serving in the position of Director may not,*
14 *during such service, also serve as the head of any fi-*
15 *nancial regulatory agency.*

16 (5) *RESPONSIBILITIES, DUTIES, AND AUTHOR-*
17 *ITY.*—*The Director shall have sole discretion in the*
18 *manner in which the Director fulfills the responsibil-*
19 *ities and duties and exercises the authorities described*
20 *in this subtitle.*

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

23 (d) *OFFICE PERSONNEL.*—

1 (1) *IN GENERAL.*—*The Director, in consultation*
2 *with the Chairperson, may fix the number of, and ap-*
3 *point and direct, all employees of the Office.*

4 (2) *COMPENSATION.*—*The Director, in consulta-*
5 *tion with the Chairperson, shall fix, adjust, and ad-*
6 *minister the pay for all employees of the Office, with-*
7 *out regard to chapter 51 or subchapter III of chapter*
8 *53 of title 5, United States Code, relating to classi-*
9 *fication of positions and General Schedule pay rates.*

10 (3) *COMPARABILITY.*—*Section 1206(a) of the Fi-*
11 *nancial Institutions Reform, Recovery, and Enforce-*
12 *ment Act of 1989 (12 U.S.C. 1833b(a)) is amended—*

13 (A) *by striking “Finance Board,” and in-*
14 *serting “Finance Board, the Office of Financial*
15 *Research, and the Bureau of Consumer Finan-*
16 *cial Protection”;* *and*

17 (B) *by striking “and the Office of Thrift*
18 *Supervision,”.*

19 (e) *ASSISTANCE FROM FEDERAL AGENCIES.*—*Any de-*
20 *partment or agency of the United States may provide to*
21 *the Office and any special advisory, technical, or profes-*
22 *sional committees appointed by the Office, such services,*
23 *funds, facilities, staff, and other support services as the Of-*
24 *fice may determine advisable. Any Federal Government em-*
25 *ployee may be detailed to the Office without reimbursement,*

1 *and such detail shall be without interruption or loss of civil*
2 *service status or privilege.*

3 (f) *PROCUREMENT OF TEMPORARY AND INTERMITTENT*
4 *SERVICES.—The Director may procure temporary and*
5 *intermittent services under section 3109(b) of title 5, United*
6 *States Code, at rates for individuals which do not exceed*
7 *the daily equivalent of the annual rate of basic pay pre-*
8 *scribed for level V of the Executive Schedule under section*
9 *5316 of such title.*

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

14 (1) *enter into and perform contracts, execute in-*
15 *struments, and acquire, in any lawful manner, such*
16 *goods and services, or personal or real property (or*
17 *property interest), as the Director deems necessary to*
18 *carry out the duties and responsibilities of the Office;*
19 *and*

20 (2) *hold, maintain, sell, lease, or otherwise dis-*
21 *pose of the property (or property interest) acquired*
22 *under paragraph (1).*

23 (h) *NON-COMPETE.—The Director and any staff of the*
24 *Office who has had access to the transaction or position*
25 *data maintained by the Data Center or other business con-*

1 *fiducial information about financial entities required to*
2 *report to the Office, may not, for a period of 1 year after*
3 *last having access to such transaction or position data or*
4 *business confidential information, be employed by or pro-*
5 *vide advice or consulting services to a financial company,*
6 *regardless of whether that entity is required to report to*
7 *the Office. For staff whose access to business confidential*
8 *information was limited, the Director may provide, on a*
9 *case-by-case basis, for a shorter period of post-employment*
10 *prohibition, provided that the shorter period does not com-*
11 *promise business confidential information.*

12 (i) *TECHNICAL AND PROFESSIONAL ADVISORY COM-*
13 *MITTEES.*—*The Office, in consultation with the Chair-*
14 *person, may appoint such special advisory, technical, or*
15 *professional committees as may be useful in carrying out*
16 *the functions of the Office, and the members of such commit-*
17 *tees may be staff of the Office, or other persons, or both.*

18 (j) *FELLOWSHIP PROGRAM.*—*The Office, in consulta-*
19 *tion with the Chairperson, may establish and maintain an*
20 *academic and professional fellowship program, under which*
21 *qualified academics and professionals shall be invited to*
22 *spend not longer than 2 years at the Office, to perform re-*
23 *search and to provide advanced training for Office per-*
24 *sonnel.*

1 (k) *EXECUTIVE SCHEDULE COMPENSATION.*—Section
2 5314 of title 5, United States Code, is amended by adding
3 at the end the following new item:

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

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

6 (a) *PURPOSE AND DUTIES.*—The purpose of the Office
7 is to support the Council in fulfilling the purposes and du-
8 ties of the Council, as set forth in subtitle A, and to support
9 member agencies, by—

10 (1) collecting data on behalf of the Council, and
11 providing such data to the Council and member agen-
12 cies;

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

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

17 (4) developing tools for risk measurement and
18 monitoring;

19 (5) performing other related services;

20 (6) making the results of the activities of the Of-
21 fice available to financial regulatory agencies; and

22 (7) assisting such member agencies in deter-
23 mining the types and formats of data authorized by
24 this Act to be collected by such member agencies.

25 (b) *ADMINISTRATIVE AUTHORITY.*—The Office may—

1 (1) *share data and information, including soft-*
2 *ware developed by the Office, with the Council and*
3 *member agencies, which shared data, information,*
4 *and software—*

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

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

10 (2) *sponsor and conduct research projects; and*

11 (3) *assist, on a reimbursable basis, with finan-*
12 *cial analyses undertaken at the request of other Fed-*
13 *eral agencies that are not member agencies.*

14 (c) *RULEMAKING AUTHORITY.—*

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

20 (2) *STANDARDIZATION.—Member agencies, in*
21 *consultation with the Office, shall implement regula-*
22 *tions promulgated by the Office under paragraph (1)*
23 *to standardize the types and formats of data reported*
24 *and collected on behalf of the Council, as described in*
25 *subsection (a)(2). If a member agency fails to imple-*

1 *ment such regulations prior to the expiration of the*
2 *3-year period following the date of publication of*
3 *final regulations, the Office, in consultation with the*
4 *Chairperson, may implement such regulations with*
5 *respect to the financial entities under the jurisdiction*
6 *of the member agency.*

7 *(d) TESTIMONY.—*

8 *(1) IN GENERAL.—The Director of the Office*
9 *shall report to and testify before the Committee on*
10 *Banking, Housing, and Urban Affairs of the Senate*
11 *and the Committee on Financial Services of the*
12 *House of Representatives annually on the activities of*
13 *the Office, including the work of the Data Center and*
14 *the Research and Analysis Center, and the assessment*
15 *of the Office of significant financial market develop-*
16 *ments and potential emerging threats to the financial*
17 *stability of the United States.*

18 *(2) NO PRIOR REVIEW.—No officer or agency of*
19 *the United States shall have any authority to require*
20 *the Director to submit the testimony required under*
21 *paragraph (1) or other Congressional testimony to*
22 *any officer or agency of the United States for ap-*
23 *proval, comment, or review prior to the submission of*
24 *such testimony. Any such testimony to Congress shall*
25 *include a statement that the views expressed therein*

1 *are those of the Director and do not necessarily rep-*
2 *resent the views of the President.*

3 *(e) ADDITIONAL REPORTS.—The Director may provide*
4 *additional reports to Congress concerning the financial sta-*
5 *bility of the United States. The Director shall notify the*
6 *Council of any such additional reports provided to Con-*
7 *gress.*

8 *(f) SUBPOENA.—*

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

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

15 *(B) the Office has coordinated with such*
16 *agency, as required under section*
17 *154(b)(1)(B)(ii).*

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

22 *(3) ENFORCEMENT.—In the case of contumacy or*
23 *failure to obey a subpoena, the subpoena shall be en-*
24 *forceable by order of any appropriate district court of*
25 *the United States. Any failure to obey the order of the*

1 *court may be punished by the court as a contempt of*
2 *court.*

3 **SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBIL-**
4 **ITIES OF PRIMARY PROGRAMMATIC UNITS.**

5 *(a) IN GENERAL.—There are established within the Of-*
6 *fice, to carry out the programmatic responsibilities of the*
7 *Office—*

8 *(1) the Data Center; and*

9 *(2) the Research and Analysis Center.*

10 *(b) DATA CENTER.—*

11 *(1) GENERAL DUTIES.—*

12 *(A) DATA COLLECTION.—The Data Center,*
13 *on behalf of the Council, shall collect, validate,*
14 *and maintain all data necessary to carry out the*
15 *duties of the Data Center, as described in this*
16 *subtitle. The data assembled shall be obtained*
17 *from member agencies, commercial data pro-*
18 *viders, publicly available data sources, and fi-*
19 *ancial entities under subparagraph (B).*

20 *(B) AUTHORITY.—*

21 *(i) IN GENERAL.—The Office may, as*
22 *determined by the Council or by the Direc-*
23 *tor in consultation with the Council, require*
24 *the submission of periodic and other reports*
25 *from any financial company for the pur-*

1 *pose of assessing the extent to which a fi-*
2 *nancial activity or financial market in*
3 *which the financial company participates,*
4 *or the financial company itself, poses a*
5 *threat to the financial stability of the*
6 *United States.*

7 (ii) *MITIGATION OF REPORT BUR-*
8 *DEN.—Before requiring the submission of a*
9 *report from any financial company that is*
10 *regulated by a member agency or any pri-*
11 *mary financial regulatory agency, the Of-*
12 *ice shall coordinate with such agencies and*
13 *shall, whenever possible, rely on information*
14 *available from such agencies.*

15 (C) *RULEMAKING.—The Office shall pro-*
16 *mulgate regulations pursuant to subsections*
17 *(a)(1), (a)(2), (a)(7), and (c)(1) of section 153*
18 *regarding the type and scope of the data to be*
19 *collected by the Data Center under this para-*
20 *graph.*

21 (2) *RESPONSIBILITIES.—*

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

1 (i) a financial company reference
2 database;

3 (ii) a financial instrument reference
4 database; and

5 (iii) formats and standards for Office
6 data, including standards for reporting fi-
7 nancial transaction and position data to
8 the Office.

9 (B) *CONFIDENTIALITY.*—The Data Center
10 shall not publish any confidential data under
11 subparagraph (A).

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

16 (4) *CATALOG OF FINANCIAL ENTITIES AND IN-*
17 *STRUMENTS.*—The Data Center shall maintain a
18 catalog of the financial entities and instruments re-
19 ported to the Office.

20 (5) *AVAILABILITY TO THE COUNCIL AND MEMBER*
21 *AGENCIES.*—The Data Center shall make data col-
22 lected and maintained by the Data Center available
23 to the Council and member agencies, as necessary to
24 support their regulatory responsibilities.

1 (6) *OTHER AUTHORITY.*—*The Office shall, after*
2 *consultation with the member agencies, provide cer-*
3 *tain data to financial industry participants and to*
4 *the general public to increase market transparency*
5 *and facilitate research on the financial system, to the*
6 *extent that intellectual property rights are not vio-*
7 *lated, business confidential information is properly*
8 *protected, and the sharing of such information poses*
9 *no significant threats to the financial system of the*
10 *United States.*

11 (c) *RESEARCH AND ANALYSIS CENTER.*—

12 (1) *GENERAL DUTIES.*—*The Research and Anal-*
13 *ysis Center, on behalf of the Council, shall develop*
14 *and maintain independent analytical capabilities*
15 *and computing resources—*

16 (A) *to develop and maintain metrics and*
17 *reporting systems for risks to the financial sta-*
18 *bility of the United States;*

19 (B) *to monitor, investigate, and report on*
20 *changes in system-wide risk levels and patterns*
21 *to the Council and Congress;*

22 (C) *to conduct, coordinate, and sponsor re-*
23 *search to support and improve regulation of fi-*
24 *nancial entities and markets;*

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

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

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

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

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

16 (d) *REPORTING RESPONSIBILITIES.*—

17 (1) *REQUIRED REPORTS.*—Not later than 2
18 years after the date of enactment of this Act, and not
19 later than 120 days after the end of each fiscal year
20 thereafter, the Office shall prepare and submit a re-
21 port to Congress.

22 (2) *CONTENT.*—Each report required by this sub-
23 section shall assess the state of the United States fi-
24 nancial system, including—

1 (A) *an analysis of any threats to the finan-*
2 *cial stability of the United States;*

3 (B) *the status of the efforts of the Office in*
4 *meeting the mission of the Office; and*

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

7 **SEC. 155. FUNDING.**

8 (a) *FINANCIAL RESEARCH FUND.—*

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

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

16 (3) *INVESTMENTS AUTHORIZED.—*

17 (A) *AMOUNTS IN FUND MAY BE IN-*
18 *VESTED.—The Director may request the Sec-*
19 *retary to invest the portion of the Financial Re-*
20 *search Fund that is not, in the judgment of the*
21 *Director, required to meet the needs of the Office.*

22 (B) *ELIGIBLE INVESTMENTS.—Investments*
23 *shall be made by the Secretary in obligations of*
24 *the United States or obligations that are guaran-*
25 *teed as to principal and interest by the United*

1 *States, with maturities suitable to the needs of*
2 *the Financial Research Fund, as determined by*
3 *the Director.*

4 (4) *INTEREST AND PROCEEDS CREDITED.*—*The*
5 *interest on, and the proceeds from the sale or redemp-*
6 *tion of, any obligations held in the Financial Re-*
7 *search Fund shall be credited to and form a part of*
8 *the Financial Research Fund.*

9 (b) *USE OF FUNDS.*—

10 (1) *IN GENERAL.*—*Funds obtained by, trans-*
11 *ferred to, or credited to the Financial Research Fund*
12 *shall be immediately available to the Office, and shall*
13 *remain available until expended, to pay the expenses*
14 *of the Office in carrying out the duties and respon-*
15 *sibilities of the Office.*

16 (2) *FEEES, ASSESSMENTS, AND OTHER FUNDS NOT*
17 *GOVERNMENT FUNDS.*—*Funds obtained by, trans-*
18 *ferred to, or credited to the Financial Research Fund*
19 *shall not be construed to be Government funds or ap-*
20 *propriated monies.*

21 (3) *AMOUNTS NOT SUBJECT TO APPORTION-*
22 *MENT.*—*Notwithstanding any other provision of law,*
23 *amounts in the Financial Research Fund shall not be*
24 *subject to apportionment for purposes of chapter 15 of*

1 *title 31, United States Code, or under any other au-*
2 *thority, or for any other purpose.*

3 *(c) INTERIM FUNDING.—During the 2-year period fol-*
4 *lowing the date of enactment of this Act, the Board of Gov-*
5 *ernors shall provide to the Office an amount sufficient to*
6 *cover the expenses of the Office.*

7 *(d) PERMANENT SELF-FUNDING.—*

8 *(1) IN GENERAL.—Beginning 2 years after the*
9 *date of enactment of this Act, the Secretary shall es-*
10 *tablish, by regulation, and with the approval of the*
11 *Council, an assessment schedule, including the assess-*
12 *ment base and rates, applicable to bank holding com-*
13 *panies with total consolidated assets of*
14 *\$50,000,000,000 or greater and nonbank financial*
15 *companies supervised by the Board of Governors, that*
16 *takes into account differences among such companies,*
17 *based on the considerations for establishing the pru-*
18 *dential standards under section 115, to collect assess-*
19 *ments equal to the estimated total expenses of the Of-*
20 *fice.*

21 *(2) SHORTFALL.—To the extent that the assess-*
22 *ments under paragraph (1) do not fully cover the*
23 *total expenses of the Office, the Board of Governors*
24 *shall provide to the Office an amount sufficient to*
25 *cover the difference.*

1 **SEC. 156. TRANSITION OVERSIGHT.**

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

4 (1) *has an orderly and organized startup;*

5 (2) *attracts and retains a qualified workforce;*

6 *and*

7 (3) *establishes comprehensive employee training*
8 *and benefits programs.*

9 (b) *REPORTING REQUIREMENT.*—

10 (1) *IN GENERAL.*—*The Office shall submit an*
11 *annual report to the Committee on Banking, Hous-*
12 *ing, and Urban Affairs of the Senate and the Com-*
13 *mittee on Financial Services of the House of Rep-*
14 *resentatives that includes the plans described in para-*
15 *graph (2).*

16 (2) *PLANS.*—*The plans described in this para-*
17 *graph are as follows:*

18 (A) *TRAINING AND WORKFORCE DEVELOP-*
19 *MENT PLAN.*—*The Office shall submit a training*
20 *and workforce development plan that includes, to*
21 *the extent practicable—*

22 (i) *identification of skill and technical*
23 *expertise needs and actions taken to meet*
24 *those requirements;*

25 (ii) *steps taken to foster innovation*
26 *and creativity;*

1 (iii) leadership development and suc-
2 cession planning; and

3 (iv) effective use of technology by em-
4 ployees.

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

8 (i) telework;

9 (ii) flexible work schedules;

10 (iii) phased retirement;

11 (iv) reemployed annuitants;

12 (v) part-time work;

13 (vi) job sharing;

14 (vii) parental leave benefits and
15 childcare assistance;

16 (viii) domestic partner benefits;

17 (ix) other workplace flexibilities; or

18 (x) any combination of the items de-
19 scribed in clauses (i) through (ix).

20 (C) *RECRUITMENT AND RETENTION PLAN.*—

21 *The Office shall submit a recruitment and reten-*
22 *tion plan that includes, to the extent practicable,*
23 *provisions relating to—*

1 (i) *the steps necessary to target highly*
2 *qualified applicant pools with diverse back-*
3 *grounds;*

4 (ii) *streamlined employment applica-*
5 *tion processes;*

6 (iii) *the provision of timely notifica-*
7 *tion of the status of employment applica-*
8 *tions to applicants; and*

9 (iv) *the collection of information to*
10 *measure indicators of hiring effectiveness.*

11 (c) *EXPIRATION.—The reporting requirement under*
12 *subsection (b) shall terminate 5 years after the date of en-*
13 *actment of this Act.*

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

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

20 (2) *the rights of employees under chapter 71 of*
21 *title 5, United States Code.*

1 ***Subtitle C—Additional Board of***
2 ***Governors Authority for Certain***
3 ***Nonbank Financial Companies***
4 ***and Bank Holding Companies***

5 ***SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK***
6 ***FINANCIAL COMPANIES BY THE BOARD OF***
7 ***GOVERNORS.***

8 *(a) REPORTS.—*

9 *(1) IN GENERAL.—The Board of Governors may*
10 *require each nonbank financial company supervised*
11 *by the Board of Governors, and any subsidiary there-*
12 *of, to submit reports under oath, to keep the Board*
13 *of Governors informed as to—*

14 *(A) the financial condition of the company*
15 *or subsidiary, systems of the company or sub-*
16 *subsidiary for monitoring and controlling financial,*
17 *operating, and other risks, and the extent to*
18 *which the activities and operations of the com-*
19 *pany or subsidiary pose a threat to the financial*
20 *stability of the United States; and*

21 *(B) compliance by the company or sub-*
22 *subsidiary with the requirements of this subtitle.*

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

1 (A) reports and supervisory information
2 that a nonbank financial company or subsidiary
3 thereof has been required to provide to other Fed-
4 eral or State regulatory agencies;

5 (B) information otherwise obtainable from
6 Federal or State regulatory agencies;

7 (C) information that is otherwise required
8 to be reported publicly; and

9 (D) externally audited financial statements
10 of such company or subsidiary.

11 (3) AVAILABILITY.—Upon the request of the
12 Board of Governors, a nonbank financial company
13 supervised by the Board of Governors, or a subsidiary
14 thereof, shall promptly provide to the Board of Gov-
15 ernors any information described in paragraph (2).

16 (b) EXAMINATIONS.—

17 (1) IN GENERAL.—Subject to paragraph (2), the
18 Board of Governors may examine any nonbank fi-
19 nancial company supervised by the Board of Gov-
20 ernors and any subsidiary of such company, to deter-
21 mine—

22 (A) the nature of the operations and finan-
23 cial condition of the company and such sub-
24 sidiary;

1 (B) *the financial, operational, and other*
2 *risks within the company that may pose a threat*
3 *to the safety and soundness of such company or*
4 *to the financial stability of the United States;*

5 (C) *the systems for monitoring and control-*
6 *ling such risks; and*

7 (D) *compliance by the company with the re-*
8 *quirements of this subtitle.*

9 (2) *USE OF EXAMINATION REPORTS AND INFOR-*
10 *MATION.—For purposes of this subsection, the Board*
11 *of Governors shall, to the fullest extent possible, rely*
12 *on reports of examination of any depository institu-*
13 *tion subsidiary or functionally regulated subsidiary*
14 *made by the primary financial regulatory agency for*
15 *that subsidiary, and on information described in sub-*
16 *section (a)(2).*

17 (c) *COORDINATION WITH PRIMARY FINANCIAL REGU-*
18 *LATORY AGENCY.—The Board of Governors shall—*

19 (1) *provide to the primary financial regulatory*
20 *agency for any company or subsidiary, reasonable no-*
21 *tice before requiring a report, requesting information,*
22 *or commencing an examination of such subsidiary*
23 *under this section; and*

1 (2) *avoid duplication of examination activities,*
2 *reporting requirements, and requests for information,*
3 *to the extent possible.*

4 **SEC. 162. ENFORCEMENT.**

5 (a) *IN GENERAL.*—*Except as provided in subsection*
6 *(b), a nonbank financial company supervised by the Board*
7 *of Governors and any subsidiaries of such company (other*
8 *than any depository institution subsidiary) shall be subject*
9 *to the provisions of subsections (b) through (n) of section*
10 *8 of the Federal Deposit Insurance Act (12 U.S.C. 1818),*
11 *in the same manner and to the same extent as if the com-*
12 *pany were a bank holding company, as provided in section*
13 *8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C.*
14 *1818(b)(3)).*

15 (b) *ENFORCEMENT AUTHORITY FOR FUNCTIONALLY*
16 *REGULATED SUBSIDIARIES.*—

17 (1) *REFERRAL.*—*If the Board of Governors de-*
18 *termines that a condition, practice, or activity of a*
19 *depository institution subsidiary or functionally regu-*
20 *lated subsidiary of a nonbank financial company su-*
21 *pervised by the Board of Governors does not comply*
22 *with the regulations or orders prescribed by the Board*
23 *of Governors under this Act, or otherwise poses a*
24 *threat to the financial stability of the United States,*
25 *the Board of Governors may recommend, in writing,*

1 *to the primary financial regulatory agency for the*
2 *subsidiary that such agency initiate a supervisory ac-*
3 *tion or enforcement proceeding. The recommendation*
4 *shall be accompanied by a written explanation of the*
5 *concerns giving rise to the recommendation.*

6 (2) *BACK-UP AUTHORITY OF THE BOARD OF GOV-*
7 *ERNORS.—If, during the 60-day period beginning on*
8 *the date on which the primary financial regulatory*
9 *agency receives a recommendation under paragraph*
10 *(1), the primary financial regulatory agency does not*
11 *take supervisory or enforcement action against a sub-*
12 *subsidiary that is acceptable to the Board of Governors,*
13 *the Board of Governors (upon a vote of its members)*
14 *may take the recommended supervisory or enforce-*
15 *ment action, as if the subsidiary were a bank holding*
16 *company subject to supervision by the Board of Gov-*
17 *ernors.*

18 **SEC. 163. ACQUISITIONS.**

19 (a) *ACQUISITIONS OF BANKS; TREATMENT AS A BANK*
20 *HOLDING COMPANY.—For purposes of section 3 of the Bank*
21 *Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank*
22 *financial company supervised by the Board of Governors*
23 *shall be deemed to be, and shall be treated as, a bank hold-*
24 *ing company.*

25 (b) *ACQUISITION OF NONBANK COMPANIES.—*

1 (1) *PRIOR NOTICE FOR LARGE ACQUISITIONS.*—
2 *Notwithstanding section 4(k)(6)(B) of the Bank Hold-*
3 *ing Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)),*
4 *a bank holding company with total consolidated as-*
5 *sets equal to or greater than \$50,000,000,000 or a*
6 *nonbank financial company supervised by the Board*
7 *of Governors shall not acquire direct or indirect own-*
8 *ership or control of any voting shares of any com-*
9 *pany (other than an insured depository institution)*
10 *that is engaged in activities described in section 4(k)*
11 *of the Bank Holding Company Act of 1956 having*
12 *total consolidated assets of \$10,000,000,000 or more,*
13 *without providing written notice to the Board of Gov-*
14 *ernors in advance of the transaction.*

15 (2) *EXEMPTIONS.*—*The prior notice requirement*
16 *in paragraph (1) shall not apply with regard to the*
17 *acquisition of shares that would qualify for the ex-*
18 *emptions in section 4(c) or section 4(k)(4)(E) of the*
19 *Bank Holding Company Act of 1956 (12 U.S.C.*
20 *1843(c) and (k)(4)(E)).*

21 (3) *NOTICE PROCEDURES.*—*The notice proce-*
22 *dures set forth in section 4(j)(1) of the Bank Holding*
23 *Company Act of 1956 (12 U.S.C. 1843(j)(1)), without*
24 *regard to section 4(j)(3) of that Act, shall apply to an*
25 *acquisition of any company (other than an insured*

1 *depository institution) by a bank holding company*
2 *with total consolidated assets equal to or greater than*
3 *\$50,000,000,000 or a nonbank financial company su-*
4 *pervised by the Board of Governors, as described in*
5 *paragraph (1), including any such company engaged*
6 *in activities described in section 4(k) of that Act.*

7 (4) *STANDARDS FOR REVIEW.—In addition to*
8 *the standards provided in section 4(j)(2) of the Bank*
9 *Holding Company Act of 1956 (12 U.S.C.*
10 *1843(j)(2)), the Board of Governors shall consider the*
11 *extent to which the proposed acquisition would result*
12 *in greater or more concentrated risks to global or*
13 *United States financial stability or the United States*
14 *economy.*

15 **SEC. 164. PROHIBITION AGAINST MANAGEMENT INTER-**
16 **LOCKS BETWEEN CERTAIN FINANCIAL COM-**
17 **PANIES.**

18 *A nonbank financial company supervised by the Board*
19 *of Governors shall be treated as a bank holding company*
20 *for purposes of the Depository Institutions Management*
21 *Interlocks Act (12 U.S.C. 3201 et seq.), except that the*
22 *Board of Governors shall not exercise the authority provided*
23 *in section 7 of that Act (12 U.S.C. 3207) to permit service*
24 *by a management official of a nonbank financial company*
25 *supervised by the Board of Governors as a management offi-*

1 *cial of any bank holding company with total consolidated*
2 *assets equal to or greater than \$50,000,000,000, or other*
3 *nonaffiliated nonbank financial company supervised by the*
4 *Board of Governors (other than to provide a temporary ex-*
5 *emption for interlocks resulting from a merger, acquisition,*
6 *or consolidation).*

7 **SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL**
8 **STANDARDS FOR NONBANK FINANCIAL COM-**
9 **PANIES SUPERVISED BY THE BOARD OF GOV-**
10 **ERNORS AND CERTAIN BANK HOLDING COM-**
11 **PANIES.**

12 *(a) IN GENERAL.—*

13 *(1) PURPOSE.—In order to prevent or mitigate*
14 *risks to the financial stability of the United States*
15 *that could arise from the material financial distress*
16 *or failure of large, interconnected financial institu-*
17 *tions, the Board of Governors shall, on its own or*
18 *pursuant to recommendations by the Council under*
19 *section 115, establish prudential standards and re-*
20 *porting and disclosure requirements applicable to*
21 *nonbank financial companies supervised by the Board*
22 *of Governors and large, interconnected bank holding*
23 *companies that—*

24 *(A) are more stringent than the standards*
25 *and requirements applicable to nonbank finan-*

1 *cial companies and bank holding companies that*
2 *do not present similar risks to the financial sta-*
3 *bility of the United States; and*

4 *(B) increase in stringency, based on the*
5 *considerations identified in subsection (b)(3).*

6 *(2) LIMITATION ON BANK HOLDING COMPA-*
7 *NIES.—Any standards established under subsections*
8 *(b) through (f) shall not apply to any bank holding*
9 *company with total consolidated assets of less than*
10 *\$50,000,000,000, but the Board of Governors may es-*
11 *tablish an asset threshold greater than*
12 *\$50,000,000,000 for the applicability of any par-*
13 *ticular standard under subsections (b) through (f).*

14 *(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—*

15 *(1) IN GENERAL.—*

16 *(A) REQUIRED STANDARDS.—The Board of*
17 *Governors shall, by regulation or order, establish*
18 *prudential standards for nonbank financial com-*
19 *panies supervised by the Board of Governors and*
20 *bank holding companies described in subsection*
21 *(a), that shall include—*

22 *(i) risk-based capital requirements;*

23 *(ii) leverage limits;*

24 *(iii) liquidity requirements;*

1 (iv) resolution plan and credit expo-
2 sure report requirements; and
3 (v) concentration limits.

4 (B) *ADDITIONAL STANDARDS AUTHOR-*
5 *IZED.—The Board of Governors may, by regula-*
6 *tion or order, establish prudential standards for*
7 *nonbank financial companies supervised by the*
8 *Board of Governors and bank holding companies*
9 *described in subsection (a), that include—*

10 (i) a contingent capital requirement;
11 (ii) enhanced public disclosures; and
12 (iii) overall risk management require-
13 ments.

14 (2) *PRUDENTIAL STANDARDS FOR FOREIGN FI-*
15 *NANCIAL COMPANIES.—In applying the standards set*
16 *forth in paragraph (1) to foreign nonbank financial*
17 *companies supervised by the Board of Governors and*
18 *to foreign-based bank holding companies, the Board of*
19 *Governors shall give due regard to the principle of*
20 *national treatment and competitive equity.*

21 (3) *CONSIDERATIONS.—In prescribing pruden-*
22 *tial standards under paragraph (1), the Board of*
23 *Governors shall—*

24 (A) take into account differences among
25 nonbank financial companies supervised by the

1 *Board of Governors and bank holding companies*
2 *described in subsection (a), based on—*

3 *(i) the factors described in subsections*
4 *(a) and (b) of section 113;*

5 *(ii) whether the company owns an in-*
6 *sured depository institution;*

7 *(iii) nonfinancial activities and affili-*
8 *ations of the company; and*

9 *(iv) any other factors that the Board of*
10 *Governors determines appropriate;*

11 *(B) to the extent possible, ensure that small*
12 *changes in the factors listed in subsections (a)*
13 *and (b) of section 113 would not result in sharp,*
14 *discontinuous changes in the prudential stand-*
15 *ards established under paragraph (1) of this sub-*
16 *section; and*

17 *(C) take into account any recommendations*
18 *of the Council under section 115.*

19 *(4) REPORT.—The Board of Governors shall sub-*
20 *mit an annual report to Congress regarding the im-*
21 *plementation of the prudential standards required*
22 *pursuant to paragraph (1), including the use of such*
23 *standards to mitigate risks to the financial stability*
24 *of the United States.*

25 *(c) CONTINGENT CAPITAL.—*

1 (1) *IN GENERAL.*—Subsequent to submission by
2 the Council of a report to Congress under section
3 115(c), the Board of Governors may promulgate regu-
4 lations that require each nonbank financial company
5 supervised by the Board of Governors and bank hold-
6 ing companies described in subsection (a) to main-
7 tain a minimum amount of long-term hybrid debt
8 that is convertible to equity in times of financial
9 stress.

10 (2) *FACTORS TO CONSIDER.*—In establishing reg-
11 ulations under this subsection, the Board of Governors
12 shall consider—

13 (A) the results of the study undertaken by
14 the Council, and any recommendations of the
15 Council, under section 115(c);

16 (B) an appropriate transition period for
17 implementation of a conversion under this sub-
18 section;

19 (C) the factors described in subsection
20 (b)(3)(A);

21 (D) capital requirements applicable to the
22 nonbank financial company supervised by the
23 Board of Governors or a bank holding company
24 described in subsection (a), and subsidiaries
25 thereof; and

1 (E) any other factor that the Board of Gov-
2 ernors deems appropriate.

3 (d) *RESOLUTION PLAN AND CREDIT EXPOSURE RE-*
4 *PORTS.*—

5 (1) *RESOLUTION PLAN.*—*The Board of Governors*
6 *shall require each nonbank financial company super-*
7 *vised by the Board of Governors and bank holding*
8 *companies described in subsection (a) to report peri-*
9 *odically to the Board of Governors, the Council, and*
10 *the Corporation the plan of such company for rapid*
11 *and orderly resolution in the event of material finan-*
12 *cial distress or failure.*

13 (2) *CREDIT EXPOSURE REPORT.*—*The Board of*
14 *Governors shall require each nonbank financial com-*
15 *pany supervised by the Board of Governors and bank*
16 *holding companies described in subsection (a) to re-*
17 *port periodically to the Board of Governors, the Coun-*
18 *cil, and the Corporation on—*

19 (A) *the nature and extent to which the com-*
20 *pany has credit exposure to other significant*
21 *nonbank financial companies and significant*
22 *bank holding companies; and*

23 (B) *the nature and extent to which other*
24 *significant nonbank financial companies and*

1 *significant bank holding companies have credit*
2 *exposure to that company.*

3 (3) *REVIEW.*—*The Board of Governors and the*
4 *Corporation shall review the information provided in*
5 *accordance with this section by each nonbank finan-*
6 *cial company supervised by the Board of Governors*
7 *and bank holding company described in subsection*
8 *(a).*

9 (4) *NOTICE OF DEFICIENCIES.*—*If the Board of*
10 *Governors and the Corporation jointly determine,*
11 *based on their review under paragraph (3), that the*
12 *resolution plan of a nonbank financial company su-*
13 *pervised by the Board of Governors or a bank holding*
14 *company described in subsection (a) is not credible or*
15 *would not facilitate an orderly resolution of the com-*
16 *pany under title 11, United States Code—*

17 (A) *the Board of Governors and the Cor-*
18 *poration shall notify the company, as applicable,*
19 *of the deficiencies in the resolution plan; and*

20 (B) *the company shall resubmit the resolu-*
21 *tion plan within a time frame determined by the*
22 *Board of Governors and the Corporation, with*
23 *revisions demonstrating that the plan is credible*
24 *and would result in an orderly resolution under*
25 *title 11, United States Code, including any pro-*

1 *posed changes in business operations and cor-*
2 *porate structure to facilitate implementation of*
3 *the plan.*

4 (5) *FAILURE TO RESUBMIT CREDIBLE PLAN.—*

5 (A) *IN GENERAL.—If a nonbank financial*
6 *company supervised by the Board of Governors*
7 *or a bank holding company described in sub-*
8 *section (a) fails to timely resubmit the resolution*
9 *plan as required under paragraph (4), with such*
10 *revisions as are required under subparagraph*
11 *(B), the Board of Governors and the Corporation*
12 *may jointly impose more stringent capital, lever-*
13 *age, or liquidity requirements, or restrictions on*
14 *the growth, activities, or operations of the com-*
15 *pany, or any subsidiary thereof, until such time*
16 *as the company resubmits a plan that remedies*
17 *the deficiencies.*

18 (B) *DIVESTITURE.—The Board of Gov-*
19 *ernors and the Corporation, in consultation with*
20 *the Council, may direct a nonbank financial*
21 *company supervised by the Board of Governors*
22 *or a bank holding company described in sub-*
23 *section (a), by order, to divest certain assets or*
24 *operations identified by the Board of Governors*
25 *and the Corporation, to facilitate an orderly res-*

1 *olution of such company under title 11, United*
2 *States Code, in the event of the failure of such*
3 *company, in any case in which—*

4 *(i) the Board of Governors and the*
5 *Corporation have jointly imposed more*
6 *stringent requirements on the company pur-*
7 *suant to subparagraph (A); and*

8 *(ii) the company has failed, within the*
9 *2-year period beginning on the date of the*
10 *imposition of such requirements under sub-*
11 *paragraph (A), to resubmit the resolution*
12 *plan with such revisions as were required*
13 *under paragraph (4)(B).*

14 *(6) RULES.—Not later than 18 months after the*
15 *date of enactment of this Act, the Board of Governors*
16 *and the Corporation shall jointly issue final rules im-*
17 *plementing this subsection.*

18 *(e) CONCENTRATION LIMITS.—*

19 *(1) STANDARDS.—In order to limit the risks that*
20 *the failure of any individual company could pose to*
21 *a nonbank financial company supervised by the*
22 *Board of Governors or a bank holding company de-*
23 *scribed in subsection (a), the Board of Governors, by*
24 *regulation, shall prescribe standards that limit such*
25 *risks.*

1 (2) *LIMITATION ON CREDIT EXPOSURE.*—*The*
2 *regulations prescribed by the Board of Governors*
3 *under paragraph (1) shall prohibit each nonbank fi-*
4 *nancial company supervised by the Board of Gov-*
5 *ernors and bank holding company described in sub-*
6 *section (a) from having credit exposure to any unaf-*
7 *filiated company that exceeds 25 percent of the cap-*
8 *ital stock and surplus (or such lower amount as the*
9 *Board of Governors may determine by regulation to*
10 *be necessary to mitigate risks to the financial sta-*
11 *bility of the United States) of the company.*

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

14 (A) *all extensions of credit to the company,*
15 *including loans, deposits, and lines of credit;*

16 (B) *all repurchase agreements and reverse*
17 *repurchase agreements with the company;*

18 (C) *all securities borrowing and lending*
19 *transactions with the company, to the extent that*
20 *such transactions create credit exposure for the*
21 *nonbank financial company supervised by the*
22 *Board of Governors or a bank holding company*
23 *described in subsection (a);*

1 (D) all guarantees, acceptances, or letters of
2 credit (including endorsement or standby letters
3 of credit) issued on behalf of the company;

4 (E) all purchases of or investment in securi-
5 ties issued by the company;

6 (F) counterparty credit exposure to the com-
7 pany in connection with a derivative transaction
8 between the nonbank financial company super-
9 vised by the Board of Governors or a bank hold-
10 ing company described in subsection (a) and the
11 company; and

12 (G) any other similar transactions that the
13 Board of Governors, by regulation, determines to
14 be a credit exposure for purposes of this section.

15 (4) *ATTRIBUTION RULE.*—For purposes of this
16 subsection, any transaction by a nonbank financial
17 company supervised by the Board of Governors or a
18 bank holding company described in subsection (a)
19 with any person is a transaction with a company, to
20 the extent that the proceeds of the transaction are
21 used for the benefit of, or transferred to, that com-
22 pany.

23 (5) *RULEMAKING.*—The Board of Governors may
24 issue such regulations and orders, including defini-

1 *tions consistent with this section, as may be necessary*
2 *to administer and carry out this subsection.*

3 (6) *EXEMPTIONS.—The Board of Governors may,*
4 *by regulation or order, exempt transactions, in whole*
5 *or in part, from the definition of “credit exposure”*
6 *for purposes of this subsection, if the Board of Gov-*
7 *ernors finds that the exemption is in the public inter-*
8 *est and is consistent with the purpose of this sub-*
9 *section.*

10 (7) *TRANSITION PERIOD.—*

11 (A) *IN GENERAL.—This subsection and any*
12 *regulations and orders of the Board of Governors*
13 *under this subsection shall not be effective until*
14 *3 years after the date of enactment of this Act.*

15 (B) *EXTENSION AUTHORIZED.—The Board*
16 *of Governors may extend the period specified in*
17 *subparagraph (A) for not longer than an addi-*
18 *tional 2 years.*

19 (f) *ENHANCED PUBLIC DISCLOSURES.—The Board of*
20 *Governors may prescribe, by regulation, periodic public dis-*
21 *closures by nonbank financial companies supervised by the*
22 *Board of Governors and bank holding companies described*
23 *in subsection (a) in order to support market evaluation of*
24 *the risk profile, capital adequacy, and risk management ca-*
25 *pabilities thereof.*

1 *(g) RISK COMMITTEE.—*

2 *(1) NONBANK FINANCIAL COMPANIES SUPER-*
3 *VED BY THE BOARD OF GOVERNORS.—The Board of*
4 *Governors shall require each nonbank financial com-*
5 *pany supervised by the Board of Governors that is a*
6 *publicly traded company to establish a risk com-*
7 *mittee, as set forth in paragraph (3), not later than*
8 *1 year after the date of receipt of a notice of final de-*
9 *termination under section 113(d)(3) with respect to*
10 *such nonbank financial company supervised by the*
11 *Board of Governors.*

12 *(2) CERTAIN BANK HOLDING COMPANIES.—*

13 *(A) MANDATORY REGULATIONS.—The*
14 *Board of Governors shall issue regulations re-*
15 *quiring each bank holding company that is a*
16 *publicly traded company and that has total con-*
17 *solidated assets of not less than \$10,000,000,000*
18 *to establish a risk committee, as set forth in*
19 *paragraph (3).*

20 *(B) PERMISSIVE REGULATIONS.—The*
21 *Board of Governors may require each bank hold-*
22 *ing company that is a publicly traded company*
23 *and that has total consolidated assets of less than*
24 *\$10,000,000,000 to establish a risk committee, as*
25 *set forth in paragraph (3), as determined nec-*

1 *essary or appropriate by the Board of Governors*
2 *to promote sound risk management practices.*

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

5 (A) *be responsible for the oversight of the*
6 *enterprise-wide risk management practices of the*
7 *nonbank financial company supervised by the*
8 *Board of Governors or bank holding company*
9 *described in subsection (a), as applicable;*

10 (B) *include such number of independent di-*
11 *rectors as the Board of Governors may determine*
12 *appropriate, based on the nature of operations,*
13 *size of assets, and other appropriate criteria re-*
14 *lated to the nonbank financial company super-*
15 *vised by the Board of Governors or a bank hold-*
16 *ing company described in subsection (a), as ap-*
17 *plicable; and*

18 (C) *include at least 1 risk management ex-*
19 *pert having experience in identifying, assessing,*
20 *and managing risk exposures of large, complex*
21 *firms.*

22 (4) *RULEMAKING.*—*The Board of Governors shall*
23 *issue final rules to carry out this subsection, not later*
24 *than 1 year after the transfer date, to take effect not*
25 *later than 15 months after the transfer date.*

1 (h) *STRESS TESTS.*—*The Board of Governors shall*
2 *conduct analyses in which nonbank financial companies su-*
3 *pervised by the Board of Governors and bank holding com-*
4 *panies described in subsection (a) are subject to evaluation*
5 *of whether the companies have the capital, on a total con-*
6 *solidated basis, necessary to absorb losses as a result of ad-*
7 *verse economic conditions. The Board of Governors may de-*
8 *velop and apply such other analytic techniques as are nec-*
9 *essary to identify, measure, and monitor risks to the finan-*
10 *cial stability of the United States.*

11 **SEC. 166. EARLY REMEDIATION REQUIREMENTS.**

12 (a) *IN GENERAL.*—*The Board of Governors, in con-*
13 *sultation with the Council and the Corporation, shall pre-*
14 *scribe regulations establishing requirements to provide for*
15 *the early remediation of financial distress of a nonbank fi-*
16 *nancial company supervised by the Board of Governors or*
17 *a bank holding company described in section 165(a), except*
18 *that nothing in this subsection authorizes the provision of*
19 *financial assistance from the Federal Government.*

20 (b) *PURPOSE OF THE EARLY REMEDIATION REQUIRE-*
21 *MENTS.*—*The purpose of the early remediation require-*
22 *ments under subsection (a) shall be to establish a series of*
23 *specific remedial actions to be taken by a nonbank financial*
24 *company supervised by the Board of Governors or a bank*
25 *holding company described in section 165(a) that is experi-*

1 *encing increasing financial distress, in order to minimize*
2 *the probability that the company will become insolvent and*
3 *the potential harm of such insolvency to the financial sta-*
4 *bility of the United States.*

5 (c) *REMEDATION REQUIREMENTS.*—*The regulations*
6 *prescribed by the Board of Governors under subsection (a)*
7 *shall—*

8 (1) *define measures of the financial condition of*
9 *the company, including regulatory capital, liquidity*
10 *measures, and other forward-looking indicators; and*

11 (2) *establish requirements that increase in strin-*
12 *gency as the financial condition of the company de-*
13 *clines, including—*

14 (A) *requirements in the initial stages of fi-*
15 *nancial decline, including limits on capital dis-*
16 *tributions, acquisitions, and asset growth; and*

17 (B) *requirements at later stages of financial*
18 *decline, including a capital restoration plan and*
19 *capital-raising requirements, limits on trans-*
20 *actions with affiliates, management changes, and*
21 *asset sales.*

22 **SEC. 167. AFFILIATIONS.**

23 (a) *AFFILIATIONS.*—*Nothing in this subtitle shall be*
24 *construed to require a nonbank financial company super-*
25 *vised by the Board of Governors, or a company that controls*

1 *a nonbank financial company supervised by the Board of*
2 *Governors, to conform the activities thereof to the require-*
3 *ments of section 4 of the Bank Holding Company Act of*
4 *1956 (12 U.S.C. 1843).*

5 *(b) REQUIREMENT.—*

6 *(1) IN GENERAL.—If a nonbank financial com-*
7 *pany supervised by the Board of Governors conducts*
8 *activities other than those that are determined to be*
9 *financial in nature or incidental thereto under sec-*
10 *tion 4(k) of the Bank Holding Company Act of 1956,*
11 *the Board of Governors may require such company to*
12 *establish and conduct such activities that are deter-*
13 *mined to be financial in nature or incidental thereto*
14 *in an intermediate holding company established pur-*
15 *suant to regulation of the Board of Governors, not*
16 *later than 90 days after the date on which the*
17 *nonbank financial company supervised by the Board*
18 *of Governors was notified of the determination under*
19 *section 113(a).*

20 *(2) INTERNAL FINANCIAL ACTIVITIES.—For pur-*
21 *poses of this subsection, activities that are determined*
22 *to be financial in nature or incidental thereto under*
23 *section 4(k) of the Bank Holding Company Act of*
24 *1956, as described in paragraph (1), shall not include*
25 *internal financial activities conducted for a nonbank*

1 *financial company supervised by the Board of Gov-*
2 *ernors or any affiliate, including internal treasury,*
3 *investment, and employee benefit functions. With re-*
4 *spect to any internal financial activity of such com-*
5 *pany during the year prior to the date of enactment*
6 *of this Act, such company may continue to engage in*
7 *such activity as long as at least $\frac{2}{3}$ of the assets or*
8 *$\frac{2}{3}$ of the revenues generated from the activity are*
9 *from or attributable to such company, subject to re-*
10 *view by the Board of Governors, to determine whether*
11 *engaging in such activity presents undue risk to such*
12 *company or to the financial stability of the United*
13 *States.*

14 *(c) REGULATIONS.—The Board of Governors—*

15 *(1) shall promulgate regulations to establish the*
16 *criteria for determining whether to require a nonbank*
17 *financial company supervised by the Board of Gov-*
18 *ernors to establish an intermediate holding company*
19 *under subsection (a); and*

20 *(2) may promulgate regulations to establish any*
21 *restrictions or limitations on transactions between an*
22 *intermediate holding company or a nonbank finan-*
23 *cial company supervised by the Board of Governors*
24 *and its affiliates, as necessary to prevent unsafe and*
25 *unsound practices in connection with transactions be-*

1 *tween such company, or any subsidiary thereof, and*
2 *its parent company or affiliates that are not subsidi-*
3 *aries of such company, except that such regulations*
4 *shall not restrict or limit any transaction in connec-*
5 *tion with the bona fide acquisition or lease by an un-*
6 *affiliated person of assets, goods, or services.*

7 **SEC. 168. REGULATIONS.**

8 *Except as otherwise specified in this subtitle, not later*
9 *than 18 months after the transfer date, the Board of Gov-*
10 *ernors shall issue final regulations to implement this sub-*
11 *title and the amendments made by this subtitle.*

12 **SEC. 169. AVOIDING DUPLICATION.**

13 *The Board of Governors shall take any action that the*
14 *Board of Governors deems appropriate to avoid imposing*
15 *requirements under this subtitle that are duplicative of re-*
16 *quirements applicable to bank holding companies and*
17 *nonbank financial companies under other provisions of law.*

18 **SEC. 170. SAFE HARBOR.**

19 *(a) REGULATIONS.—The Board of Governors shall pro-*
20 *mulgate regulations on behalf of, and in consultation with,*
21 *the Council setting forth the criteria for exempting certain*
22 *types or classes of U.S. nonbank financial companies or for-*
23 *foreign nonbank financial companies from supervision by the*
24 *Board of Governors.*

1 (b) *CONSIDERATIONS.*—*In developing the criteria*
2 *under subsection (a), the Board of Governors shall take into*
3 *account the factors for consideration described in sub-*
4 *sections (a) and (b) of section 113 in determining whether*
5 *a U.S. nonbank financial company or foreign nonbank fi-*
6 *ncial company shall be supervised by the Board of Gov-*
7 *ernors.*

8 (c) *RULE OF CONSTRUCTION.*—*Nothing in this section*
9 *shall be construed to require supervision by the Board of*
10 *Governors of a U.S. nonbank financial company or foreign*
11 *nonbank financial company, if such company does not meet*
12 *the criteria for exemption established under subsection (a).*

13 (d) *UPDATE.*—*The Board of Governors shall, in con-*
14 *sultation with the Council, review the regulations promul-*
15 *gated under subsection (a), not less frequently than every*
16 *5 years, and based upon the review, the Board of Governors*
17 *may revise such regulations on behalf of, and in consulta-*
18 *tion with, the Council to update as necessary the criteria*
19 *set forth in such regulations.*

20 (e) *TRANSITION PERIOD.*—*No revisions under sub-*
21 *section (d) shall take effect before the end of the 2-year pe-*
22 *riod after the date of publication of such revisions in final*
23 *form.*

24 (f) *REPORT.*—*The Chairperson of the Board of Gov-*
25 *ernors and the Chairperson of the Council shall submit a*

1 *joint report to the Committee on Banking, Housing, and*
2 *Urban Affairs of the Senate and the Committee on Finan-*
3 *cial Services of the House of Representatives not later than*
4 *30 days after the date of the issuance in final form of the*
5 *regulations under subsection (a), or any subsequent revision*
6 *to such regulations under subsection (d), as applicable.*
7 *Such report shall include, at a minimum, the rationale for*
8 *exemption and empirical evidence to support the criteria*
9 *for exemption.*

10 **SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIRE-**
11 **MENTS.**

12 (a) *DEFINITIONS.—*

13 (1) *GENERALLY APPLICABLE LEVERAGE CAPITAL*
14 *REQUIREMENTS.—The term “generally applicable le-*
15 *verage capital requirements” means—*

16 (A) *the minimum ratios of tier 1 capital to*
17 *average total assets, as established by the appro-*
18 *priate Federal banking agencies to apply to in-*
19 *sured depository institutions under the prompt*
20 *corrective action regulations implementing sec-*
21 *tion 38 of the Federal Deposit Insurance Act, re-*
22 *gardless of total consolidated asset size or foreign*
23 *financial exposure; and*

24 (B) *includes the regulatory capital compo-*
25 *nents in the numerator of that capital require-*

1 *ment, average total assets in the denominator of*
2 *that capital requirement, and the required ratio*
3 *of the numerator to the denominator.*

4 (2) *GENERALLY APPLICABLE RISK-BASED CAP-*
5 *ITAL REQUIREMENTS.—The term “generally applica-*
6 *ble risk-based capital requirements” means—*

7 (A) *the risk-based capital requirements as*
8 *established by the appropriate Federal banking*
9 *agencies to apply to insured depository institu-*
10 *tions under the agency’s Prompt Corrective Ac-*
11 *tion regulations that implement section 38 of the*
12 *Federal Deposit Insurance Act, regardless of*
13 *total consolidated asset size or foreign financial*
14 *exposure; and*

15 (B) *includes the regulatory capital compo-*
16 *nents in the numerator of those capital require-*
17 *ments, the risk-weighted assets in the denomi-*
18 *nator of those capital requirements, and the re-*
19 *quired ratio of the numerator to the denomi-*
20 *nator.*

21 (b) *MINIMUM CAPITAL REQUIREMENTS.—*

22 (1) *MINIMUM LEVERAGE CAPITAL REQUIRE-*
23 *MENTS.—The appropriate Federal banking agencies*
24 *shall establish minimum leverage capital require-*
25 *ments on a consolidated basis for insured depository*

1 *institutions, depository institution holding compa-*
2 *nies, and nonbank financial companies identified*
3 *under section 113. The minimum leverage capital re-*
4 *quirements established under this paragraph shall not*
5 *be less than the generally applicable leverage capital*
6 *requirements, which shall serve as a floor for any cap-*
7 *ital requirements the agency may require, nor quan-*
8 *titatively lower than the generally applicable leverage*
9 *capital requirements that were in effect for insured*
10 *depository institutions as of the date of enactment of*
11 *this Act.*

12 (2) *MINIMUM RISK-BASED CAPITAL REQUIRE-*
13 *MENTS.—The appropriate Federal banking agencies*
14 *shall establish minimum risk-based capital require-*
15 *ments on a consolidated basis for insured depository*
16 *institutions, depository institution holding compa-*
17 *nies, and nonbank financial companies identified*
18 *under section 113. The minimum risk-based capital*
19 *requirements established under this paragraph shall*
20 *not be less than the generally applicable risk-based*
21 *capital requirements, which shall serve as a floor for*
22 *any capital requirements the agency may require, nor*
23 *quantitatively lower than the generally applicable*
24 *risk-based capital requirements that were in effect for*

1 *insured depository institutions as of the date of enact-*
2 *ment of this Act.*

3 (3) *CAPITAL REQUIREMENTS TO ADDRESS AC-*
4 *TIVITIES THAT POSE RISKS TO THE FINANCIAL SYS-*
5 *TEM.—*

6 (A) *IN GENERAL.—Subject to the rec-*
7 *ommendations of the Council, in accordance with*
8 *section 120, the Federal banking agencies shall*
9 *develop capital requirements applicable to all in-*
10 *stitutions covered by this section that address the*
11 *risks that the activities of such institutions pose,*
12 *not only to the institution engaging in the activ-*
13 *ity, but to other public and private stakeholders*
14 *in the event of adverse performance, disruption,*
15 *or failure of the institution or the activity.*

16 (B) *CONTENT.—Such rules shall address, at*
17 *a minimum, the risks arising from—*

18 (i) *significant volumes of activity in*
19 *derivatives, securitized products purchased*
20 *and sold, financial guarantees purchased*
21 *and sold, securities borrowing and lending,*
22 *and repurchase agreements and reverse re-*
23 *purchase agreements;*

24 (ii) *concentrations in assets for which*
25 *the values presented in financial reports are*

1 *based on models rather than historical cost*
2 *or prices deriving from deep and liquid 2-*
3 *way markets; and*

4 *(iii) concentrations in market share for*
5 *any activity that would substantially dis-*
6 *rupt financial markets if the institution is*
7 *forced to unexpectedly cease the activity.*

8 **TITLE II—ORDERLY**
9 **LIQUIDATION AUTHORITY**

10 **SEC. 201. DEFINITIONS.**

11 *(a) IN GENERAL.—In this title, the following defini-*
12 *tions shall apply:*

13 *(1) ADMINISTRATIVE EXPENSES OF THE RE-*
14 *CEIVER.—The term “administrative expenses of the*
15 *receiver” includes—*

16 *(A) the actual, necessary costs and expenses*
17 *incurred by the Corporation as receiver for a*
18 *covered financial company in liquidating a cov-*
19 *ered financial company; and*

20 *(B) any obligations that the Corporation as*
21 *receiver for a covered financial company deter-*
22 *mines are necessary and appropriate to facilitate*
23 *the smooth and orderly liquidation of the covered*
24 *financial company.*

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

3 (3) *BRIDGE FINANCIAL COMPANY.*—*The term*
4 *“bridge financial company” means a new financial*
5 *company organized by the Corporation in accordance*
6 *with section 210(h) for the purpose of resolving a cov-*
7 *ered financial company.*

8 (4) *CLAIM.*—*The term “claim” means any right*
9 *of payment, whether or not such right is reduced to*
10 *judgment, liquidated, unliquidated, fixed, contingent,*
11 *matured, unmatured, disputed, undisputed, legal, eq-*
12 *uitable, secured, or unsecured.*

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

19 (6) *COVERED BROKER OR DEALER.*—*The term*
20 *“covered broker or dealer” means a covered financial*
21 *company that is a broker or dealer that—*

22 (A) *is registered with the Commission under*
23 *section 15(b) of the Securities Exchange Act of*
24 *1934 (15 U.S.C. 78o(b)); and*

25 (B) *is a member of SIPC.*

1 (7) *COVERED FINANCIAL COMPANY.*—*The term*
2 *“covered financial company”*—

3 (A) *means a financial company for which*
4 *a determination has been made under section*
5 *203(b); and*

6 (B) *does not include an insured depository*
7 *institution.*

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

11 (A) *an insured depository institution;*

12 (B) *an insurance company; or*

13 (C) *a covered broker or dealer.*

14 (9) *DEFINITIONS RELATING TO COVERED BRO-*
15 *KERS AND DEALERS.*—*The terms “customer”, “cus-*
16 *tomers name securities”, “customer property”, and*
17 *“net equity” in the context of a covered broker or*
18 *dealer, have the same meanings as in section 16 of the*
19 *Securities Investor Protection Act of 1970 (15 U.S.C.*
20 *78lll).*

21 (10) *FINANCIAL COMPANY.*—*The term “financial*
22 *company” means any company that—*

23 (A) *is incorporated or organized under any*
24 *provision of Federal law or the laws of any*
25 *State;*

1 (B) is—

2 (i) a bank holding company, as defined
3 in section 2(a) of the Bank Holding Com-
4 pany Act of 1956 (12 U.S.C. 1841(a)), and
5 including any company described in para-
6 graph (5);

7 (ii) a nonbank financial company su-
8 pervised by the Board of Governors;

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

17 (iv) any subsidiary of any company
18 described in any of clauses (i) through (iii)
19 that is predominantly engaged in activities
20 that the Board of Governors has determined
21 are financial in nature or incidental thereto
22 for purposes of section 4(k) of the Bank
23 Holding Company Act of 1956 (12 U.S.C.
24 1843(k)) (other than a subsidiary that is an

1 *insured depository institution or an insur-*
2 *ance company); and*

3 *(C) is not a Farm Credit System institu-*
4 *tion chartered under and subject to the provi-*
5 *sions of the Farm Credit Act of 1971, as amend-*
6 *ed (12 U.S.C. 2001 et seq.), a governmental enti-*
7 *ty, or a regulated entity, as defined under sec-*
8 *tion 1303 of the Federal Housing Enterprises Fi-*
9 *nancial Safety and Soundness Act of 1992 (12*
10 *U.S.C. 4502(20)).*

11 (11) *FUND.*—*The term “Fund” means the Or-*
12 *derly Liquidation Fund established under section*
13 *210(n).*

14 (12) *INSURANCE COMPANY.*—*The term “insur-*
15 *ance company” means any entity that is—*

16 *(A) engaged in the business of insurance;*

17 *(B) subject to regulation by a State insur-*
18 *ance regulator; and*

19 *(C) covered by a State law that is designed*
20 *to specifically deal with the rehabilitation, liq-*
21 *uidation, or insolvency of an insurance com-*
22 *pany.*

23 (13) *NONBANK FINANCIAL COMPANY.*—*The term*
24 *“nonbank financial company” has the same meaning*
25 *as in section 102(a)(4)(C).*

1 (14) *NONBANK FINANCIAL COMPANY SUPERVISED*
2 *BY THE BOARD OF GOVERNORS.*—*The term “nonbank*
3 *financial company supervised by the Board of Gov-*
4 *ernors” has the same meaning as in section*
5 *102(a)(3)(D).*

6 (15) *COURT.*—*The term “Court” means the*
7 *United States District Court for the District of Co-*
8 *lumbia.*

9 (16) *SIPC.*—*The term “SIPC” means the Secu-*
10 *rities Investor Protection Corporation.*

11 (b) *DEFINITIONAL CRITERIA.*—*For purpose of the defi-*
12 *inition of the term “financial company” under subsection*
13 *(a)(10), no company shall be deemed to be predominantly*
14 *engaged in activities that the Board of Governors has deter-*
15 *mined are financial in nature or incidental thereto for pur-*
16 *poses of section 4(k) of the Bank Holding Company Act of*
17 *1956 (12 U.S.C. 1843(k)), if the consolidated revenues of*
18 *such company from such activities constitute less than 85*
19 *percent of the total consolidated revenues of such company,*
20 *as the Corporation, in consultation with the Secretary, shall*
21 *establish by regulation. In determining whether a company*
22 *is a financial company under this title, the consolidated*
23 *revenues derived from the ownership or control of a deposi-*
24 *tory institution shall be included.*

1 **SEC. 202. JUDICIAL REVIEW.**

2 *(a) COMMENCEMENT OF ORDERLY LIQUIDATION.—*

3 *(1) PETITION TO DISTRICT COURT.—*

4 *(A) DISTRICT COURT REVIEW.—*

5 *(i) PETITION TO DISTRICT COURT.—*

6 *Subsequent to a determination by the Sec-*
7 *retary under section 203 that a financial*
8 *company satisfies the criteria in section*
9 *203(b), the Secretary shall notify the Cor-*
10 *poration and the covered financial com-*
11 *pany. If the board of directors (or body per-*
12 *forming similar functions) of the covered fi-*
13 *ancial company acquiesces or consents to*
14 *the appointment of the Corporation as a re-*
15 *ceiver, the Secretary shall appoint the Cor-*
16 *poration as a receiver. If the board of direc-*
17 *tors (or body performing similar functions)*
18 *of the covered financial company does not*
19 *acquiesce or consent to the appointment of*
20 *the Corporation as receiver, the Secretary*
21 *shall petition the United States District*
22 *Court for the District of Columbia for an*
23 *order authorizing the Secretary to appoint*
24 *the Corporation as a receiver.*

25 *(ii) FORM AND CONTENT OF ORDER.—*

26 *The Secretary shall present all relevant*

1 *findings and the recommendation made*
2 *pursuant to section 203(a) to the Court. The*
3 *petition shall be filed under seal.*

4 *(iii) DETERMINATION.—On a strictly*
5 *confidential basis, and without any prior*
6 *public disclosure, the Court, after notice to*
7 *the covered financial company and a hear-*
8 *ing in which the covered financial company*
9 *may oppose the petition, shall determine*
10 *whether the determination of the Secretary*
11 *that the covered financial company is in de-*
12 *fault or in danger of default and satisfies*
13 *the definition of a financial company under*
14 *section 201(10) is arbitrary and capricious.*

15 *(iv) ISSUANCE OF ORDER.—If the*
16 *Court determines that the determination of*
17 *the Secretary that the covered financial*
18 *company is in default or in danger of de-*
19 *fault and satisfies the definition of a finan-*
20 *cial company under section 201(10)—*

21 *(I) is not arbitrary and capri-*
22 *cious, the Court shall issue an order*
23 *immediately authorizing the Secretary*
24 *to appoint the Corporation as receiver*
25 *of the covered financial company; or*

1 (II) is arbitrary and capricious,
2 the Court shall immediately provide to
3 the Secretary a written statement of
4 each reason supporting its determina-
5 tion, and afford the Secretary an im-
6 mediate opportunity to amend and
7 refile the petition under clause (i).

8 (v) *PETITION GRANTED BY OPERATION*
9 *OF LAW.*—If the Court does not make a de-
10 termination within 24 hours of receipt of
11 the petition—

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

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

16 (III) liquidation under this title
17 shall automatically and without fur-
18 ther notice or action be commenced
19 and the Corporation may immediately
20 take all actions authorized under this
21 title.

22 (B) *EFFECT OF DETERMINATION.*—The de-
23 termination of the Court under subparagraph
24 (A) shall be final, and shall be subject to appeal
25 only in accordance with paragraph (2). The de-

1 *cision shall not be subject to any stay or injunc-*
2 *tion pending appeal. Upon conclusion of its pro-*
3 *ceedings under subparagraph (A), the Court*
4 *shall provide immediately for the record a writ-*
5 *ten statement of each reason supporting the deci-*
6 *sion of the Court, and shall provide copies there-*
7 *of to the Secretary and the covered financial*
8 *company.*

9 (C) *CRIMINAL PENALTIES.—A person who*
10 *recklessly discloses a determination of the Sec-*
11 *retary under section 203(b) or a petition of the*
12 *Secretary under subparagraph (A), or the pend-*
13 *ency of court proceedings as provided for under*
14 *subparagraph (A), shall be fined not more than*
15 *\$250,000, or imprisoned for not more than 5*
16 *years, or both.*

17 (2) *APPEAL OF DECISIONS OF THE DISTRICT*
18 *COURT.—*

19 (A) *APPEAL TO COURT OF APPEALS.—*

20 (i) *IN GENERAL.—Subject to clause*
21 *(ii), the United States Court of Appeals for*
22 *the District of Columbia Circuit shall have*
23 *jurisdiction of an appeal of a final decision*
24 *of the Court filed by the Secretary or a cov-*
25 *ered financial company, through its board*

1 of directors, notwithstanding section
2 210(a)(1)(A)(i), not later than 30 days after
3 the date on which the decision of the Court
4 is rendered or deemed rendered under this
5 subsection.

6 (ii) *CONDITION OF JURISDICTION.*—
7 The Court of Appeals shall have jurisdiction
8 of an appeal by a covered financial com-
9 pany only if the covered financial company
10 did not acquiesce or consent to the appoint-
11 ment of a receiver by the Secretary under
12 paragraph (1)(A).

13 (iii) *EXPEDITION.*—The Court of Ap-
14 peals shall consider any appeal under this
15 subparagraph on an expedited basis.

16 (iv) *SCOPE OF REVIEW.*—For an ap-
17 peal taken under this subparagraph, review
18 shall be limited to whether the determina-
19 tion of the Secretary that a covered finan-
20 cial company is in default or in danger of
21 default and satisfies the definition of a fi-
22 nancial company under section 201(10) is
23 arbitrary and capricious.

24 (B) *APPEAL TO THE SUPREME COURT.*—

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

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

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

21 (iv) *SCOPE OF REVIEW.*—Review by
22 the Supreme Court under this subparagraph
23 shall be limited to whether the determina-
24 tion of the Secretary that the covered finan-
25 cial company is in default or in danger of

1 *default and satisfies the definition of a fi-*
2 *nancial company under section 201(10) is*
3 *arbitrary and capricious.*

4 **(b) ESTABLISHMENT AND TRANSMITTAL OF RULES**
5 **AND PROCEDURES.—**

6 **(1) IN GENERAL.—***Not later than 6 months after*
7 *the date of enactment of this Act, the Court shall es-*
8 *tablish such rules and procedures as may be necessary*
9 *to ensure the orderly conduct of proceedings, includ-*
10 *ing rules and procedures to ensure that the 24-hour*
11 *deadline is met and that the Secretary shall have an*
12 *ongoing opportunity to amend and refile petitions*
13 *under subsection (a)(1).*

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

18 **(A)** *the Committee on the Judiciary of the*
19 *Senate;*

20 **(B)** *the Committee on Banking, Housing,*
21 *and Urban Affairs of the Senate;*

22 **(C)** *the Committee on the Judiciary of the*
23 *House of Representatives; and*

24 **(D)** *the Committee on Financial Services of*
25 *the House of Representatives.*

1 (c) *PROVISIONS APPLICABLE TO FINANCIAL COMPANIES.*—
2

3 (1) *BANKRUPTCY CODE.*—*Except as provided in*
4 *this subsection, the provisions of the Bankruptcy Code*
5 *and rules issued thereunder, and not the provisions of*
6 *this title, shall apply to financial companies that are*
7 *not covered financial companies for which the Cor-*
8 *poration has been appointed as receiver.*

9 (2) *THIS TITLE.*—*The provisions of this title*
10 *shall exclusively apply to and govern all matters re-*
11 *lating to covered financial companies for which the*
12 *Corporation is appointed as receiver, and no provi-*
13 *sions of the Bankruptcy Code or the rules issued*
14 *thereunder shall apply in such cases.*

15 (d) *TIME LIMIT ON RECEIVERSHIP AUTHORITY.*—

16 (1) *BASELINE PERIOD.*—*Any appointment of the*
17 *Corporation as receiver under this section shall termi-*
18 *nate at the end of the 3-year period beginning on the*
19 *date on which such appointment is made.*

20 (2) *EXTENSION OF TIME LIMIT.*—*The time limit*
21 *established in paragraph (1) may be extended by the*
22 *Corporation for up to 1 additional year, if the Chair-*
23 *person of the Corporation determines and certifies in*
24 *writing to the Committee on Banking, Housing, and*
25 *Urban Affairs of the Senate and the Committee on*

1 *Financial Services of the House of Representatives*
2 *that continuation of the receivership is necessary—*

3 (A) *to—*

4 (i) *maximize the net present value re-*
5 *turn from the sale or other disposition of*
6 *the assets of the covered financial company;*
7 *or*

8 (ii) *minimize the amount of loss real-*
9 *ized upon the sale or other disposition of the*
10 *assets of the covered financial company; and*

11 (B) *to protect the stability of the financial*
12 *system of the United States.*

13 (3) *SECOND EXTENSION OF TIME LIMIT.—*

14 (A) *IN GENERAL.—The time limit under*
15 *this subsection, as extended under paragraph (2),*
16 *may be extended for up to 1 additional year, if*
17 *the Chairperson of the Corporation, with the con-*
18 *currence of the Secretary, submits the certifi-*
19 *cations described in paragraph (2).*

20 (B) *ADDITIONAL REPORT REQUIRED.—Not*
21 *later than 30 days after the date of commence-*
22 *ment of the extension under subparagraph (A),*
23 *the Corporation shall submit a report to the*
24 *Committee on Banking, Housing, and Urban Af-*
25 *airs of the Senate and the Committee on Finan-*

1 *cial Services of the House of Representatives de-*
2 *scribing the need for the extension and the spe-*
3 *cific plan of the Corporation to conclude the re-*
4 *ceivership before the end of the second extension.*

5 (4) *ONGOING LITIGATION.*—*The time limit under*
6 *this subsection, as extended under paragraph (3),*
7 *may be further extended solely for the purpose of com-*
8 *pleting ongoing litigation in which the Corporation*
9 *as receiver is a party, provided that the appointment*
10 *of the Corporation as receiver shall terminate not*
11 *later than 90 days after the date of completion of such*
12 *litigation, if—*

13 (A) *the Council determines that the Cor-*
14 *poration used its best efforts to conclude the re-*
15 *ceivership in accordance with its plan before the*
16 *end of the time limit described in paragraph (3);*

17 (B) *the Council determines that the comple-*
18 *tion of longer-term responsibilities in the form of*
19 *ongoing litigation justifies the need for an exten-*
20 *sion; and*

21 (C) *the Corporation submits a report ap-*
22 *proved by the Council not later than 30 days*
23 *after the date of the determinations by the Coun-*
24 *cil under subparagraphs (A) and (B) to the*
25 *Committee on Banking, Housing, and Urban Af-*

1 *fairs of the Senate and the Committee on Finan-*
2 *cial Services of the House of Representatives, de-*
3 *scribing—*

4 *(i) the ongoing litigation justifying the*
5 *need for an extension; and*

6 *(ii) the specific plan of the Corporation*
7 *to complete the litigation and conclude the*
8 *receivership.*

9 (5) *REGULATIONS.—The Corporation may issue*
10 *regulations governing the termination of receiverships*
11 *under this title.*

12 (6) *NO LIABILITY.—The Corporation and the De-*
13 *posit Insurance Fund shall not be liable for unre-*
14 *solved claims arising from the receivership after the*
15 *termination of the receivership.*

16 (e) *STUDY OF BANKRUPTCY AND ORDERLY LIQUIDA-*
17 *TION PROCESS FOR FINANCIAL COMPANIES.—*

18 (1) *STUDY.—*

19 (A) *IN GENERAL.—The Administrative Of-*
20 *fice of the United States Courts and the Comp-*
21 *troller General of the United States shall each*
22 *monitor the activities of the Court, and each*
23 *such Office shall conduct separate studies regard-*
24 *ing the bankruptcy and orderly liquidation proc-*

1 *ess for financial companies under the Bank-*
2 *ruptcy Code.*

3 (B) *ISSUES TO BE STUDIED.*—*In con-*
4 *ducting the study under subparagraph (A), the*
5 *Administrative Office of the United States*
6 *Courts and the Comptroller General of the*
7 *United States each shall evaluate—*

8 *(i) the effectiveness of chapter 7 or*
9 *chapter 11 of the Bankruptcy Code in fa-*
10 *ilitating the orderly liquidation or reorga-*
11 *nization of financial companies;*

12 *(ii) ways to maximize the efficiency*
13 *and effectiveness of the Court; and*

14 *(iii) ways to make the orderly liquida-*
15 *tion process under the Bankruptcy Code for*
16 *financial companies more effective.*

17 (2) *REPORTS.*—*Not later than 1 year after the*
18 *date of enactment of this Act, in each successive year*
19 *until the third year, and every fifth year after that*
20 *date of enactment, the Administrative Office of the*
21 *United States Courts and the Comptroller General of*
22 *the United States shall submit to the Committee on*
23 *Banking, Housing, and Urban Affairs and the Com-*
24 *mittee on the Judiciary of the Senate and the Com-*
25 *mittee on Financial Services and the Committee on*

1 *the Judiciary of the House of Representatives separate*
2 *reports summarizing the results of the studies*
3 *conducted under paragraph (1).*

4 *(f) STUDY OF INTERNATIONAL COORDINATION RELAT-*
5 *ING TO BANKRUPTCY PROCESS FOR FINANCIAL COMPA-*
6 *NIES.—*

7 *(1) STUDY.—*

8 *(A) IN GENERAL.—The Comptroller General*
9 *of the United States shall conduct a study re-*
10 *garding international coordination relating to*
11 *the orderly liquidation of financial companies*
12 *under the Bankruptcy Code.*

13 *(B) ISSUES TO BE STUDIED.—In con-*
14 *ducting the study under subparagraph (A), the*
15 *Comptroller General of the United States shall*
16 *evaluate, with respect to the bankruptcy process*
17 *for financial companies—*

18 *(i) the extent to which international*
19 *coordination currently exists;*

20 *(ii) current mechanisms and structures*
21 *for facilitating international cooperation;*

22 *(iii) barriers to effective international*
23 *coordination; and*

24 *(iv) ways to increase and make more*
25 *effective international coordination.*

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

10 (g) *STUDY OF PROMPT CORRECTIVE ACTION IMPLE-*
11 *MENTATION BY THE APPROPRIATE FEDERAL AGENCIES.*—

12 (1) *STUDY.*—The Comptroller General of the
13 United States shall conduct a study regarding the im-
14 plementation of prompt corrective action by the ap-
15 propriate Federal banking agencies.

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

19 (A) the effectiveness of implementation of
20 prompt corrective action by the appropriate Fed-
21 eral banking agencies and the resolution of in-
22 sured depository institutions by the Corporation;
23 and

24 (B) ways to make prompt corrective action
25 a more effective tool to resolve the insured deposi-

1 *tory institutions at the least possible long-term*
2 *cost to the Deposit Insurance Fund.*

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

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

18 **SEC. 203. SYSTEMIC RISK DETERMINATION.**

19 (a) *WRITTEN RECOMMENDATION AND DETERMINA-*
20 *TION.*—

21 (1) *VOTE REQUIRED.*—

22 (A) *IN GENERAL.*—*On their own initiative,*
23 *or at the request of the Secretary, the Corpora-*
24 *tion and the Board of Governors shall consider*
25 *whether to make a written recommendation de-*

1 scribed in paragraph (2) with respect to whether
2 the Secretary should appoint the Corporation as
3 receiver for a financial company. Such rec-
4 ommendation shall be made upon a vote of not
5 fewer than $\frac{2}{3}$ of the members of the Board of
6 Governors then serving and $\frac{2}{3}$ of the members of
7 the board of directors of the Corporation then
8 serving.

9 (B) CASES INVOLVING COVERED BROKERS
10 OR DEALERS.—In the case of a covered broker or
11 dealer, or in which the largest United States sub-
12 sidiary (as measured by total assets as of the end
13 of the previous calendar quarter) of a financial
14 company is a covered broker or dealer, the Com-
15 mission and the Board of Governors, at the re-
16 quest of the Secretary, or on their own initiative,
17 shall consider whether to make the written rec-
18 ommendation described in paragraph (2) with
19 respect to the financial company. Subject to the
20 requirements in paragraph (2), such rec-
21 ommendation shall be made upon a vote of not
22 fewer than $\frac{2}{3}$ of the members of the Board of
23 Governors then serving and the members of the
24 Commission then serving, and in consultation
25 with the Corporation.

1 (2) *RECOMMENDATION REQUIRED.*—Any written
2 recommendation pursuant to paragraph (1) shall con-
3 tain—

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

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

9 (C) a recommendation regarding the nature
10 and the extent of actions to be taken under this
11 title regarding the financial company;

12 (D) an evaluation of the likelihood of a pri-
13 vate sector alternative to prevent the default of
14 the financial company;

15 (E) an evaluation of why a case under the
16 Bankruptcy Code is not appropriate for the fi-
17 nancial company;

18 (F) an evaluation of the effects on creditors,
19 counterparties, and shareholders of the financial
20 company and other market participants; and

21 (G) an evaluation of whether the company
22 satisfies the definition of a financial company
23 under section 201.

24 (b) *DETERMINATION BY THE SECRETARY.*—Notwith-
25 standing any other provision of Federal or State law, the

1 *Secretary shall take action in accordance with section*
2 *202(a)(1)(A), if, upon the written recommendation under*
3 *subsection (a), the Secretary (in consultation with the*
4 *President) determines that—*

5 (1) *the financial company is in default or in*
6 *danger of default;*

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

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

13 (4) *any effect on the claims or interests of credi-*
14 *tors, counterparties, and shareholders of the financial*
15 *company and other market participants as a result of*
16 *actions to be taken under this title is appropriate,*
17 *given the impact that any action taken under this*
18 *title would have on financial stability in the United*
19 *States;*

20 (5) *any action under section 204 would avoid or*
21 *mitigate such adverse effects, taking into consider-*
22 *ation the effectiveness of the action in mitigating po-*
23 *tential adverse effects on the financial system, the cost*
24 *to the general fund of the Treasury, and the potential*
25 *to increase excessive risk taking on the part of credi-*

1 *tors, counterparties, and shareholders in the financial*
2 *company;*

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

7 *(7) the company satisfies the definition of a fi-*
8 *nancial company under section 201.*

9 *(c) DOCUMENTATION AND REVIEW.—*

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

11 *(A) document any determination under sub-*
12 *section (b);*

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

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

17 *(2) REPORT TO CONGRESS.—Not later than 24*
18 *hours after the date of appointment of the Corpora-*
19 *tion as receiver for a covered financial company, the*
20 *Secretary shall provide written notice of the rec-*
21 *ommendations and determinations reached in accord-*
22 *ance with subsections (a) and (b) to the Majority*
23 *Leader and the Minority Leader of the Senate and the*
24 *Speaker and the Minority Leader of the House of*
25 *Representatives, the Committee on Banking, Housing,*

1 *and Urban Affairs of the Senate, and the Committee*
2 *on Financial Services of the House of Representatives,*
3 *which shall consist of a summary of the basis for the*
4 *determination, including, to the extent available at*
5 *the time of the determination—*

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

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

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

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

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

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

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

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

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

11 (3) *REPORTS TO CONGRESS AND THE PUBLIC.—*

12 (A) *IN GENERAL.—Not later than 60 days*
13 *after the date of appointment of the Corporation*
14 *as receiver for a covered financial company, the*
15 *Corporation shall file a report with the Com-*
16 *mittee on Banking, Housing, and Urban Affairs*
17 *of the Senate and the Committee on Financial*
18 *Services of the House of Representatives—*

19 (i) *setting forth information on the fi-*
20 *nancial condition of the covered financial*
21 *company as of the date of the appointment,*
22 *including a description of its assets and li-*
23 *abilities;*

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

4 (iii) explaining each instance in which
5 the Corporation waived any applicable re-
6 quirements of part 366 of title 12, Code of
7 Federal Regulations (or any successor there-
8 to) with respect to conflicts of interest by
9 any person in the private sector who was
10 retained to provide services to the Corpora-
11 tion in connection with such receivership;

12 (iv) describing the reasons for the pro-
13 vision of any funding to the receivership out
14 of the Fund;

15 (v) setting forth the expected costs of
16 the orderly liquidation of the covered finan-
17 cial company;

18 (vi) setting forth the identity of any
19 claimant that is treated in a manner dif-
20 ferent from other similarly situated claim-
21 ants under subsection (b)(4), (d)(4), or
22 (h)(5)(E), the amount of any additional
23 payment to such claimant under subsection
24 (d)(4), and the reason for any such action;
25 and

1 (vii) which report the Corporation
2 shall publish on an online website main-
3 tained by the Corporation, subject to main-
4 taining appropriate confidentiality.

5 (B) AMENDMENTS.—The Corporation shall,
6 on a timely basis, not less frequently than quar-
7 terly, amend or revise and resubmit the reports
8 prepared under this paragraph, as necessary.

9 (C) CONGRESSIONAL TESTIMONY.—The Cor-
10 poration and the primary financial regulatory
11 agency, if any, of the financial company for
12 which the Corporation was appointed receiver
13 under this title shall appear before Congress, if
14 requested, not later than 30 days after the date
15 on which the Corporation first files the reports
16 required under subparagraph (A).

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

21 (A) a case has been, or likely will promptly
22 be, commenced with respect to the financial com-
23 pany under the Bankruptcy Code;

24 (B) the financial company has incurred, or
25 is likely to incur, losses that will deplete all or

1 *substantially all of its capital, and there is no*
2 *reasonable prospect for the company to avoid*
3 *such depletion;*

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

7 *(D) the financial company is, or is likely to*
8 *be, unable to pay its obligations (other than*
9 *those subject to a bona fide dispute) in the nor-*
10 *mal course of business.*

11 (5) *GAO REVIEW.—The Comptroller General of*
12 *the United States shall review and report to Congress*
13 *on any determination under subsection (b), that re-*
14 *sults in the appointment of the Corporation as re-*
15 *ceiver, including—*

16 *(A) the basis for the determination;*

17 *(B) the purpose for which any action was*
18 *taken pursuant thereto;*

19 *(C) the likely effect of the determination*
20 *and such action on the incentives and conduct of*
21 *financial companies and their creditors, counter-*
22 *parties, and shareholders; and*

23 *(D) the likely disruptive effect of the deter-*
24 *mination and such action on the reasonable ex-*
25 *pectations of creditors, counterparties, and share-*

1 *holders, taking into account the impact any ac-*
2 *tion under this title would have on financial sta-*
3 *bility in the United States, including whether*
4 *the rights of such parties will be disrupted.*

5 *(d) CORPORATION POLICIES AND PROCEDURES.—As*
6 *soon as is practicable after the date of enactment of this*
7 *Act, the Corporation shall establish policies and procedures*
8 *that are acceptable to the Secretary governing the use of*
9 *funds available to the Corporation to carry out this title,*
10 *including the terms and conditions for the provision and*
11 *use of funds under sections 204(d), 210(h)(2)(G)(iv), and*
12 *210(h)(9).*

13 *(e) TREATMENT OF INSURANCE COMPANIES AND IN-*
14 *SURANCE COMPANY SUBSIDIARIES.—*

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

23 *(2) EXCEPTION FOR SUBSIDIARIES AND AFFILI-*
24 *ATES.—The requirement of paragraph (1) shall not*
25 *apply with respect to any subsidiary or affiliate of an*

1 *insurance company that is not itself an insurance*
2 *company.*

3 (3) *BACKUP AUTHORITY.—Notwithstanding*
4 *paragraph (1), with respect to a covered financial*
5 *company described in paragraph (1), if, after the end*
6 *of the 60-day period beginning on the date on which*
7 *a determination is made under section 202(a) with*
8 *respect to such company, the appropriate regulatory*
9 *agency has not filed the appropriate judicial action*
10 *in the appropriate State court to place such company*
11 *into orderly liquidation under the laws and require-*
12 *ments of the State, the Corporation shall have the au-*
13 *thority to stand in the place of the appropriate regu-*
14 *latory agency and file the appropriate judicial action*
15 *in the appropriate State court to place such company*
16 *into orderly liquidation under the laws and require-*
17 *ments of the State.*

18 **SEC. 204. ORDERLY LIQUIDATION.**

19 (a) *PURPOSE OF ORDERLY LIQUIDATION AUTHOR-*
20 *ITY.—It is the purpose of this title to provide the necessary*
21 *authority to liquidate failing financial companies that pose*
22 *a significant risk to the financial stability of the United*
23 *States in a manner that mitigates such risk and minimizes*
24 *moral hazard. The authority provided in this title shall be*

1 *exercised in the manner that best fulfills such purpose, so*
2 *that—*

3 (1) *creditors and shareholders will bear the losses*
4 *of the financial company;*

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

7 (3) *the Corporation and other appropriate agen-*
8 *cies will take all steps necessary and appropriate to*
9 *assure that all parties, including management and*
10 *third parties, having responsibility for the condition*
11 *of the financial company bear losses consistent with*
12 *their responsibility, including actions for damages,*
13 *restitution, and recoupment of compensation and*
14 *other gains not compatible with such responsibility.*

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

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

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

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

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

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

1 (d) *FUNDING FOR ORDERLY LIQUIDATION.*—Upon its
2 appointment as receiver for a covered financial company,
3 and thereafter as the Corporation may, in its discretion,
4 determine to be necessary or appropriate, the Corporation
5 may make available to the receivership, subject to the condi-
6 tions set forth in section 206 and subject to the plan de-
7 scribed in section 210(n)(11), funds for the orderly liquida-
8 tion of the covered financial company. All funds provided
9 by the Corporation under this subsection shall have a pri-
10 ority of claims under subparagraph (A) or (B) of section
11 210(b)(1), as applicable, including funds used for—

12 (1) making loans to, or purchasing any debt ob-
13 ligation of, the covered financial company or any cov-
14 ered subsidiary;

15 (2) purchasing or guaranteeing against loss the
16 assets of the covered financial company or any cov-
17 ered subsidiary, directly or through an entity estab-
18 lished by the Corporation for such purpose;

19 (3) assuming or guaranteeing the obligations of
20 the covered financial company or any covered sub-
21 sidiary to 1 or more third parties;

22 (4) taking a lien on any or all assets of the cov-
23 ered financial company or any covered subsidiary,
24 including a first priority lien on all unencumbered
25 assets of the covered financial company or any cov-

1 *ered subsidiary to secure repayment of any trans-*
2 *actions conducted under this subsection;*

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

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

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

11 *(a) APPOINTMENT OF SIPC AS TRUSTEE FOR PROTEC-*
12 *TION OF CUSTOMER SECURITIES AND PROPERTY.—Upon*
13 *the appointment of the Corporation as receiver for any cov-*
14 *ered broker or dealer, the Corporation shall appoint, with-*
15 *out any need for court approval, the Securities Investor*
16 *Protection Corporation to act as trustee for liquidation*
17 *under the Securities Investor Protection Act of 1970 (15*
18 *U.S.C. 78aaa et seq.) of the covered broker or dealer.*

19 *(b) POWERS AND DUTIES OF SIPC.—*

20 *(1) IN GENERAL.—Except as provided in this*
21 *section, upon its appointment as trustee for the liq-*
22 *uidation of a covered broker or dealer, SIPC shall*
23 *have all of the powers and duties provided by the Se-*
24 *curities Investor Protection Act of 1970 (15 U.S.C.*
25 *78aaa et seq.), including, without limitation, all*

1 *rights of action against third parties, but shall have*
2 *no powers or duties with respect to assets and liabil-*
3 *ities transferred by the Corporation from the covered*
4 *broker or dealer to any bridge financial company es-*
5 *tablished in accordance with this title.*

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

11 (A) *any action, except as otherwise provided*
12 *in this title—*

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

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

17 (iii) *to transfer assets and liabilities;*

18 (iv) *to enforce or repudiate contracts;*

19 *or*

20 (v) *to take any other action relating to*
21 *such bridge financial company under sec-*
22 *tion 210; or*

23 (B) *determining claims under subsection*

24 (d).

1 (3) *QUALIFIED FINANCIAL CONTRACTS.*—*Not-*
2 *withstanding any provision of the Securities Investor*
3 *Protection Act of 1970 to the contrary (including sec-*
4 *tion 5(b)(2)(C) of that Act (15 U.S.C.*
5 *78eee(b)(2)(C))), the rights and obligations of any*
6 *party to a qualified financial contract (as that term*
7 *is defined in section 210(c)(8)) to which a covered*
8 *broker or dealer described in subsection (a) is a party*
9 *shall be governed exclusively by section 210, including*
10 *the limitations and restrictions contained in section*
11 *210(c)(10)(B).*

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

21 (d) *ACTIONS BY CORPORATION AS RECEIVER.*—

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

1 (A) adversely affect the rights of a customer
2 to customer property or customer name securi-
3 ties;

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

6 (C) otherwise impair the recoveries provided
7 to a customer under the Securities Investor Pro-
8 tection Act of 1970 (15 U.S.C. 78aaa et seq.).

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

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

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

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

24 (f) *SATISFACTION OF CUSTOMER CLAIMS.*—

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

17 (2) *SATISFACTION OF CLAIMS BY SIPC.*—*SIPC,*
18 *as trustee for a covered broker or dealer, shall satisfy*
19 *customer claims in the manner and amount provided*
20 *under the Securities Investor Protection Act of 1970*
21 *(15 U.S.C. 78aaa et seq.), as if the appointment of the*
22 *Corporation as receiver had not occurred, and with a*
23 *filing date as of the date on which the Corporation*
24 *is appointed as receiver. The Corporation shall satisfy*
25 *customer claims, to the extent that a customer would*

1 *have received more securities or cash with respect to*
2 *the allocation of customer property had the covered fi-*
3 *nancial company been subject to a proceeding under*
4 *the Securities Investor Protection Act (15 U.S.C.*
5 *78aaa et seq.) without the appointment of the Cor-*
6 *poration as receiver, and with a filing date as of the*
7 *date on which the Corporation is appointed as re-*
8 *ceiver.*

9 *(g) PRIORITIES.—*

10 *(1) CUSTOMER PROPERTY.—As trustee for a cov-*
11 *ered broker or dealer, SIPC shall allocate customer*
12 *property and deliver customer name securities in ac-*
13 *cordance with section 8(c) of the Securities Investor*
14 *Protection Act of 1970 (15 U.S.C. 78fff–2(c)).*

15 *(2) OTHER CLAIMS.—All claims other than those*
16 *described in paragraph (1) (including any unpaid*
17 *claim by a customer for the allowed net equity claim*
18 *of such customer from customer property) shall be*
19 *paid in accordance with the priorities in section*
20 *210(b).*

21 *(h) RULEMAKING.—The Commission and the Corpora-*
22 *tion, after consultation with SIPC, shall jointly issue rules*
23 *to implement this section.*

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

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

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

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

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

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

20 *(5) not take an equity interest in or become a*
21 *shareholder of any covered financial company or any*
22 *covered subsidiary.*

23 **SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN AP-**
24 **POINTMENT OF RECEIVER.**

25 *The members of the board of directors (or body per-*
26 *forming similar functions) of a covered financial company*

1 *shall not be liable to the shareholders or creditors thereof*
2 *for acquiescing in or consenting in good faith to the ap-*
3 *pointment of the Corporation as receiver for the covered fi-*
4 *nancial company under section 203.*

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

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

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

1 *or any similar provision of State liquidation or insolvency*
2 *law applicable to the covered financial company, revert in*
3 *the covered financial company.*

4 (c) *LIMITATION.*—*Notwithstanding subsections (a) and*
5 *(b), any order entered or other relief granted by a bank-*
6 *ruptcy court prior to the date of appointment of the Cor-*
7 *poration as receiver shall continue with the same validity*
8 *as if an orderly liquidation had not been commenced.*

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

10 *The Corporation shall, in consultation with the Coun-*
11 *cil, prescribe such rules or regulations as the Corporation*
12 *considers necessary or appropriate to implement this title,*
13 *including rules and regulations with respect to the rights,*
14 *interests, and priorities of creditors, counterparties, secu-*
15 *rity entitlement holders, or other persons with respect to*
16 *any covered financial company or any assets or other prop-*
17 *erty of or held by such covered financial company, and ad-*
18 *dress the potential for conflicts of interest between or among*
19 *individual receiverships established under this title or*
20 *under the Federal Deposit Insurance Act. To the extent pos-*
21 *sible, the Corporation shall seek to harmonize applicable*
22 *rules and regulations promulgated under this section with*
23 *the insolvency laws that would otherwise apply to a covered*
24 *financial company.*

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

2 (a) *POWERS AND AUTHORITIES.*—

3 (1) *GENERAL POWERS.*—

4 (A) *SUCCESSOR TO COVERED FINANCIAL*
5 *COMPANY.*—*The Corporation shall, upon ap-*
6 *pointment as receiver for a covered financial*
7 *company under this title, succeed to—*

8 (i) *all rights, titles, powers, and privi-*
9 *leges of the covered financial company and*
10 *its assets, and of any stockholder, member,*
11 *officer, or director of such company; and*

12 (ii) *title to the books, records, and as-*
13 *sets of any previous receiver or other legal*
14 *custodian of such covered financial com-*
15 *pany.*

16 (B) *OPERATION OF THE COVERED FINAN-*
17 *CIAL COMPANY DURING THE PERIOD OF ORDERLY*
18 *LIQUIDATION.*—*The Corporation, as receiver for*
19 *a covered financial company, may—*

20 (i) *take over the assets of and operate*
21 *the covered financial company with all of*
22 *the powers of the members or shareholders,*
23 *the directors, and the officers of the covered*
24 *financial company, and conduct all busi-*
25 *ness of the covered financial company;*

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

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

6 (iv) manage the assets and property of
7 the covered financial company, consistent
8 with maximization of the value of the assets
9 in the context of the orderly liquidation;
10 and

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

14 (C) *FUNCTIONS OF COVERED FINANCIAL*
15 *COMPANY OFFICERS, DIRECTORS, AND SHARE-*
16 *HOLDERS.—*

17 (i) *IN GENERAL.—The Corporation*
18 *may provide for the exercise of any function*
19 *by any member or stockholder, director, or*
20 *officer of any covered financial company for*
21 *which the Corporation has been appointed*
22 *as receiver under this title.*

23 (ii) *PRESUMPTION.—There shall be a*
24 *strong presumption that the Corporation, as*
25 *receiver for a covered financial company,*

1 *will remove management responsible for the*
2 *failed condition of the covered financial*
3 *company.*

4 *(D) ADDITIONAL POWERS AS RECEIVER.—*

5 *The Corporation shall, as receiver for a covered*
6 *financial company, and subject to all legally en-*
7 *forceable and perfected security interests and all*
8 *legally enforceable security entitlements in re-*
9 *spect of assets held by the covered financial com-*
10 *pany, liquidate, and wind-up the affairs of a*
11 *covered financial company, including taking*
12 *steps to realize upon the assets of the covered fi-*
13 *nancial company, in such manner as the Cor-*
14 *poration deems appropriate, including through*
15 *the sale of assets, the transfer of assets to a*
16 *bridge financial company established under sub-*
17 *section (h), or the exercise of any other rights or*
18 *privileges granted to the receiver under this sec-*
19 *tion.*

20 *(E) ADDITIONAL POWERS WITH RESPECT TO*
21 *FAILING SUBSIDIARIES OF A COVERED FINANCIAL*
22 *COMPANY.—*

23 *(i) IN GENERAL.—In any case in*
24 *which a receiver is appointed for a covered*
25 *financial company under section 202, the*

1 *Corporation may appoint itself as receiver*
2 *of any subsidiary (other than an insured*
3 *depository institution, any covered broker*
4 *or dealer, or an insurance company) of the*
5 *covered financial company that is organized*
6 *under Federal law or the laws of any State,*
7 *if the Corporation and the Secretary jointly*
8 *determine that—*

9 *(I) the subsidiary is in default or*
10 *in danger of default;*

11 *(II) such action would avoid or*
12 *mitigate serious adverse effects on the*
13 *financial stability or economic condi-*
14 *tions of the United States; and*

15 *(III) such action would facilitate*
16 *the orderly liquidation of the covered*
17 *financial company.*

18 *(ii) TREATMENT AS COVERED FINAN-*
19 *CIAL COMPANY.—If the Corporation is ap-*
20 *pointed as receiver of a subsidiary of a cov-*
21 *ered financial company under clause (i),*
22 *the subsidiary shall thereafter be considered*
23 *a covered financial company under this*
24 *title, and the Corporation shall thereafter*
25 *have all the powers and rights with respect*

1 *to that subsidiary as it has with respect to*
2 *a covered financial company under this*
3 *title.*

4 (F) ORGANIZATION OF BRIDGE COMPA-
5 NIES.—*The Corporation, as receiver for a cov-*
6 *ered financial company, may organize a bridge*
7 *financial company under subsection (h).*

8 (G) MERGER; TRANSFER OF ASSETS AND LI-
9 ABILITIES.—

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

13 (I) *merge the covered financial*
14 *company with another company; or*

15 (II) *transfer any asset or liability*
16 *of the covered financial company (in-*
17 *cluding any assets and liabilities held*
18 *by the covered financial company for*
19 *security entitlement holders, any cus-*
20 *tomer property, or any assets and li-*
21 *abilities associated with any trust or*
22 *custody business) without obtaining*
23 *any approval, assignment, or consent*
24 *with respect to such transfer.*

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

5 (I) *the transaction may not be*
6 *consummated before the 5th calendar*
7 *day after the date of approval by the*
8 *Federal agency responsible for such ap-*
9 *proval;*

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

20 (III) *if notification under section*
21 *7A of the Clayton Act is required with*
22 *respect to such transaction, then the re-*
23 *quired waiting period shall end on the*
24 *15th day after the date on which the*
25 *Attorney General and the Federal*

1 *Trade Commission receive such notifi-*
2 *cation, unless the waiting period is ter-*
3 *minated earlier under subsection (b)(2)*
4 *of such section 7A, or is extended pur-*
5 *suant to subsection (e)(2) of such sec-*
6 *tion 7A.*

7 (iii) *SETOFF.*—*Subject to the other*
8 *provisions of this title, any transferee of as-*
9 *sets from a receiver, including a bridge fi-*
10 *ancial company, shall be subject to such*
11 *claims or rights as would prevail over the*
12 *rights of such transferee in such assets*
13 *under applicable noninsolvency law.*

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

22 (I) *APPLICABLE NONINSOLVENCY LAW.*—*Ex-*
23 *cept as may otherwise be provided in this title,*
24 *the applicable noninsolvency law shall be deter-*
25 *mined by the noninsolvency choice of law rules*

1 *otherwise applicable to the claims, rights, titles,*
2 *persons, or entities at issue.*

3 *(J) SUBPOENA AUTHORITY.—*

4 *(i) IN GENERAL.—The Corporation, as*
5 *receiver for a covered financial company,*
6 *may, for purposes of carrying out any*
7 *power, authority, or duty with respect to*
8 *the covered financial company (including*
9 *determining any claim against the covered*
10 *financial company and determining and re-*
11 *alizing upon any asset of any person in the*
12 *course of collecting money due the covered*
13 *financial company), exercise any power es-*
14 *tablished under section 8(n) of the Federal*
15 *Deposit Insurance Act, as if the Corpora-*
16 *tion were the appropriate Federal banking*
17 *agency for the covered financial company,*
18 *and the covered financial company were an*
19 *insured depository institution.*

20 *(ii) RULE OF CONSTRUCTION.—This*
21 *subparagraph may not be construed as lim-*
22 *iting any rights that the Corporation, in*
23 *any capacity, might otherwise have to exer-*
24 *cise any powers described in clause (i) or*
25 *under any other provision of law.*

1 (K) *INCIDENTAL POWERS.*—*The Corporation,*
2 *as receiver for a covered financial com-*
3 *pany, may exercise all powers and authorities*
4 *specifically granted to receivers under this title,*
5 *and such incidental powers as shall be necessary*
6 *to carry out such powers under this title.*

7 (L) *UTILIZATION OF PRIVATE SECTOR.*—*In*
8 *carrying out its responsibilities in the manage-*
9 *ment and disposition of assets from the covered*
10 *financial company, the Corporation, as receiver*
11 *for a covered financial company, may utilize the*
12 *services of private persons, including real estate*
13 *and loan portfolio asset management, property*
14 *management, auction marketing, legal, and bro-*
15 *kerage services, if such services are available in*
16 *the private sector, and the Corporation deter-*
17 *mines that utilization of such services is prac-*
18 *ticable, efficient, and cost effective.*

19 (M) *SHAREHOLDERS AND CREDITORS OF*
20 *COVERED FINANCIAL COMPANY.*—*Notwith-*
21 *standing any other provision of law, the Cor-*
22 *poration, as receiver for a covered financial com-*
23 *pany, shall succeed by operation of law to the*
24 *rights, titles, powers, and privileges described in*
25 *subparagraph (A), and shall terminate all rights*

1 *and claims that the stockholders and creditors of*
2 *the covered financial company may have against*
3 *the assets of the covered financial company or*
4 *the Corporation arising out of their status as*
5 *stockholders or creditors, except for their right to*
6 *payment, resolution, or other satisfaction of their*
7 *claims, as permitted under this section. The Cor-*
8 *poration shall ensure that shareholders and unse-*
9 *cured creditors bear losses, consistent with the*
10 *priority of claims provisions under this section.*

11 (N) *COORDINATION WITH FOREIGN FINAN-*
12 *CIAL AUTHORITIES.*—*The Corporation, as re-*
13 *ceiver for a covered financial company, shall co-*
14 *ordinate, to the maximum extent possible, with*
15 *the appropriate foreign financial authorities re-*
16 *garding the orderly liquidation of any covered fi-*
17 *nancial company that has assets or operations in*
18 *a country other than the United States.*

19 (O) *RESTRICTION ON TRANSFERS TO*
20 *BRIDGE FINANCIAL COMPANY.*—

21 (i) *SECTION OF ACCOUNTS FOR TRANS-*
22 *FER.*—*If the Corporation establishes one or*
23 *more bridge financial companies with re-*
24 *spect to a covered broker or dealer, the Cor-*
25 *poration shall transfer to a bridge financial*

1 *company, all customer accounts of the cov-*
2 *ered financial company, unless the Corpora-*
3 *tion, after consulting with the Commission*
4 *and SIPC, determines that—*

5 *(I) the customer accounts are like-*
6 *ly to be promptly transferred to an-*
7 *other covered broker or dealer; or*

8 *(II) the transfer of the accounts to*
9 *a bridge financial company would ma-*
10 *terially interfere with the ability of the*
11 *Corporation to avoid or mitigate seri-*
12 *ous adverse effects on financial sta-*
13 *bility or economic conditions in the*
14 *United States.*

15 *(ii) TRANSFER OF PROPERTY.—SIPC,*
16 *as trustee for the liquidation of the covered*
17 *broker or dealer, and the Commission, shall*
18 *provide any and all reasonable assistance*
19 *necessary to complete such transfers by the*
20 *Corporation.*

21 *(iii) CUSTOMER CONSENT AND COURT*
22 *APPROVAL NOT REQUIRED.—Neither cus-*
23 *tomers consent nor court approval shall be*
24 *required to transfer any customer accounts*
25 *and associated customer property to a*

1 *bridge financial company in accordance*
2 *with this section.*

3 *(iv) NOTIFICATION OF SIPC AND SHAR-*
4 *ING OF INFORMATION.—The Corporation*
5 *shall identify to SIPC the customer ac-*
6 *counts and associated customer property*
7 *transferred to the bridge financial company.*
8 *The Corporation and SIPC shall cooperate*
9 *in the sharing of any information necessary*
10 *for each entity to discharge its obligations*
11 *under this title and under the Securities In-*
12 *vestor Protection Act of 1970 (15 U.S.C.*
13 *78aaa et seq.) including by providing access*
14 *to the books and records of the covered fi-*
15 *nancial company and any bridge financial*
16 *company established in accordance with*
17 *this title.*

18 (2) *DETERMINATION OF CLAIMS.—*

19 *(A) IN GENERAL.—The Corporation, as re-*
20 *ceiver for a covered financial company, shall re-*
21 *port on claims, as set forth in section 203(c)(3).*
22 *Subject to paragraph (4) of this subsection, the*
23 *Corporation, as receiver for a covered financial*
24 *company, shall determine claims in accordance*

1 *with the requirements of this subsection and reg-*
2 *ulations prescribed under section 209.*

3 *(B) NOTICE REQUIREMENTS.—The Corpora-*
4 *tion, as receiver for a covered financial com-*
5 *pany, in any case involving the liquidation or*
6 *winding up of the affairs of a covered financial*
7 *company, shall—*

8 *(i) promptly publish a notice to the*
9 *creditors of the covered financial company*
10 *to present their claims, together with proof,*
11 *to the receiver by a date specified in the no-*
12 *tice, which shall be not earlier than 90 days*
13 *after the date of publication of such notice;*
14 *and*

15 *(ii) republish such notice 1 month and*
16 *2 months, respectively, after the date of pub-*
17 *lication under clause (i).*

18 *(C) MAILING REQUIRED.—The Corporation*
19 *as receiver shall mail a notice similar to the no-*
20 *tice published under clause (i) or (ii) of subpara-*
21 *graph (B), at the time of such publication, to*
22 *any creditor shown on the books and records of*
23 *the covered financial company—*

24 *(i) at the last address of the creditor*
25 *appearing in such books;*

1 (ii) in any claim filed by the claimant;

2 or

3 (iii) upon discovery of the name and
4 address of a claimant not appearing on the
5 books and records of the covered financial
6 company, not later than 30 days after the
7 date of the discovery of such name and ad-
8 dress.

9 (3) PROCEDURES FOR RESOLUTION OF
10 CLAIMS.—

11 (A) DECISION PERIOD.—

12 (i) IN GENERAL.—Prior to the 180th
13 day after the date on which a claim against
14 a covered financial company is filed with
15 the Corporation as receiver, or such later
16 date as may be agreed as provided in clause
17 (ii), the Corporation shall notify the claim-
18 ant whether it accepts or objects to the
19 claim, in accordance with subparagraphs
20 (B), (C), and (D).

21 (ii) EXTENSION OF TIME.—By written
22 agreement executed not later than 180 days
23 after the date on which a claim against a
24 covered financial company is filed with the
25 Corporation, the period described in clause

1 *(i) may be extended by written agreement*
2 *between the claimant and the Corporation.*
3 *Failure to notify the claimant of any dis-*
4 *allowance within the time period set forth*
5 *in clause (i), as it may be extended by*
6 *agreement under this clause, shall be*
7 *deemed to be a disallowance of such claim,*
8 *and the claimant may file or continue an*
9 *action in court, as provided in paragraph*
10 *(4).*

11 *(iii) MAILING OF NOTICE SUFFI-*
12 *CIENT.—The requirements of clause (i) shall*
13 *be deemed to be satisfied if the notice of any*
14 *decision with respect to any claim is mailed*
15 *to the last address of the claimant which*
16 *appears—*

17 *(I) on the books, records, or both*
18 *of the covered financial company;*

19 *(II) in the claim filed by the*
20 *claimant; or*

21 *(III) in documents submitted in*
22 *proof of the claim.*

23 *(iv) CONTENTS OF NOTICE OF DIS-*
24 *ALLOWANCE.—If the Corporation as receiver*

1 *objects to any claim filed under clause (i),*
2 *the notice to the claimant shall contain—*

3 *(I) a statement of each reason for*
4 *the disallowance; and*

5 *(II) the procedures required to file*
6 *or continue an action in court, as pro-*
7 *vided in paragraph (4).*

8 *(B) ALLOWANCE OF PROVEN CLAIM.—The*
9 *receiver shall allow any claim received by the re-*
10 *ceiver on or before the date specified in the notice*
11 *under paragraph (2)(B)(i), which is proved to*
12 *the satisfaction of the receiver.*

13 *(C) DISALLOWANCE OF CLAIMS FILED*
14 *AFTER END OF FILING PERIOD.—*

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

20 *(ii) CERTAIN EXCEPTIONS.—Clause (i)*
21 *shall not apply with respect to any claim*
22 *filed by a claimant after the date specified*
23 *in the notice published under paragraph*
24 *(2)(B)(i), and such claim may be considered*

1 by the receiver under subparagraph (B),
2 if—

3 (I) the claimant did not receive
4 notice of the appointment of the re-
5 ceiver in time to file such claim before
6 such date; and

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

9 (D) *AUTHORITY TO DISALLOW CLAIMS.*—

10 (i) *IN GENERAL.*—The Corporation
11 may object to any portion of any claim by
12 a creditor or claim of a security, preference,
13 setoff, or priority which is not proved to the
14 satisfaction of the Corporation.

15 (ii) *PAYMENTS TO UNDERSECURED*
16 *CREDITORS.*—In the case of a claim against
17 a covered financial company that is secured
18 by any property or other asset of such cov-
19 ered financial company, the receiver—

20 (I) may treat the portion of such
21 claim which exceeds an amount equal
22 to the fair market value of such prop-
23 erty or other asset as an unsecured
24 claim; and

1 (ii) *may not make any payment*
2 *with respect to such unsecured portion*
3 *of the claim, other than in connection*
4 *with the disposition of all claims of*
5 *unsecured creditors of the covered fi-*
6 *nancial company.*

7 (iii) *EXCEPTIONS.—No provision of*
8 *this paragraph shall apply with respect*
9 *to—*

10 (i) *any extension of credit from*
11 *any Federal reserve bank, or the Cor-*
12 *poration, to any covered financial*
13 *company; or*

14 (ii) *subject to clause (ii), any le-*
15 *gally enforceable and perfected security*
16 *interest in the assets of the covered fi-*
17 *nancial company securing any such*
18 *extension of credit.*

19 (E) *LEGAL EFFECT OF FILING.—*

20 (i) *STATUTE OF LIMITATIONS*
21 *TOLLED.—For purposes of any applicable*
22 *statute of limitations, the filing of a claim*
23 *with the receiver shall constitute a com-*
24 *mencement of an action.*

1 (ii) *NO PREJUDICE TO OTHER AC-*
2 *TIONS.—Subject to paragraph (8), the filing*
3 *of a claim with the receiver shall not preju-*
4 *dice any right of the claimant to continue*
5 *any action which was filed before the date*
6 *of appointment of the receiver for the cov-*
7 *ered financial company.*

8 (4) *JUDICIAL DETERMINATION OF CLAIMS.—*

9 (A) *IN GENERAL.—Subject to subparagraph*
10 *(B), a claimant may file suit on a claim (or*
11 *continue an action commenced before the date of*
12 *appointment of the Corporation as receiver) in*
13 *the district or territorial court of the United*
14 *States for the district within which the principal*
15 *place of business of the covered financial com-*
16 *pany is located (and such court shall have juris-*
17 *isdiction to hear such claim).*

18 (B) *TIMING.—A claim under subparagraph*
19 *(A) may be filed before the end of the 60-day pe-*
20 *riod beginning on the earlier of—*

21 (i) *the end of the period described in*
22 *paragraph (3)(A)(i) (or, if extended by*
23 *agreement of the Corporation and the*
24 *claimant, the period described in paragraph*
25 *(3)(A)(ii)) with respect to any claim*

1 *against a covered financial company for*
2 *which the Corporation is receiver; or*

3 *(ii) the date of any notice of disallow-*
4 *ance of such claim pursuant to paragraph*
5 *(3)(A)(i).*

6 (C) *STATUTE OF LIMITATIONS.—If any*
7 *claimant fails to file suit on such claim (or to*
8 *continue an action on such claim commenced be-*
9 *fore the date of appointment of the Corporation*
10 *as receiver) prior to the end of the 60-day period*
11 *described in subparagraph (B), the claim shall*
12 *be deemed to be disallowed (other than any por-*
13 *tion of such claim which was allowed by the re-*
14 *ceiver) as of the end of such period, such dis-*
15 *allowance shall be final, and the claimant shall*
16 *have no further rights or remedies with respect*
17 *to such claim.*

18 (5) *EXPEDITED DETERMINATION OF CLAIMS.—*

19 (A) *PROCEDURE REQUIRED.—The Corpora-*
20 *tion shall establish a procedure for expedited re-*
21 *lief outside of the claims process established*
22 *under paragraph (3), for any claimant that al-*
23 *leges—*

24 (i) *the existence of a legally valid and*
25 *enforceable or perfected security interest in*

1 *property of a covered financial company, or*
2 *is an entitlement holder that has obtained*
3 *control of any legally valid and enforceable*
4 *security entitlement in respect of any asset*
5 *held by the covered financial company for*
6 *which the Corporation has been appointed*
7 *receiver; and*

8 *(ii) that irreparable injury will occur*
9 *if the claims procedure established under*
10 *paragraph (3) is followed.*

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

16 *(i) determine—*

17 *(I) whether to allow or disallow*
18 *such claim, or any portion thereof; or*

19 *(II) whether such claim should be*
20 *determined pursuant to the procedures*
21 *established pursuant to paragraph (3);*

22 *(ii) notify the claimant of the deter-*
23 *mination; and*

24 *(iii) if the claim is disallowed, provide*
25 *a statement of each reason for the disallow-*

1 *ance and the procedure for obtaining a ju-*
2 *dicial determination.*

3 *(C) PERIOD FOR FILING OR RENEWING*
4 *SUIT.—Any claimant who files a request for ex-*
5 *pedited relief shall be permitted to file suit (or*
6 *continue a suit filed before the date of appoint-*
7 *ment of the Corporation as receiver seeking a de-*
8 *termination of the rights of the claimant with re-*
9 *spect to such security interest (or such security*
10 *entitlement) after the earlier of—*

11 *(i) the end of the 90-day period begin-*
12 *ning on the date of the filing of a request*
13 *for expedited relief; or*

14 *(ii) the date on which the Corporation*
15 *denies the claim or a portion thereof.*

16 *(D) STATUTE OF LIMITATIONS.—If an ac-*
17 *tion described in subparagraph (C) is not filed,*
18 *or the motion to renew a previously filed suit is*
19 *not made, before the end of the 30-day period be-*
20 *ginning on the date on which such action or mo-*
21 *tion may be filed in accordance with subpara-*
22 *graph (C), the claim shall be deemed to be dis-*
23 *allowed as of the end of such period (other than*
24 *any portion of such claim which was allowed by*
25 *the receiver), such disallowance shall be final,*

1 *and the claimant shall have no further rights or*
2 *remedies with respect to such claim.*

3 *(E) LEGAL EFFECT OF FILING.—*

4 *(i) STATUTE OF LIMITATIONS*
5 *TOLLED.—For purposes of any applicable*
6 *statute of limitations, the filing of a claim*
7 *with the receiver shall constitute a com-*
8 *mencement of an action.*

9 *(ii) NO PREJUDICE TO OTHER AC-*
10 *TIONS.—Subject to paragraph (8), the filing*
11 *of a claim with the receiver shall not preju-*
12 *dice any right of the claimant to continue*
13 *any action which was filed before the ap-*
14 *pointment of the Corporation as receiver for*
15 *the covered financial company.*

16 *(6) AGREEMENTS AGAINST INTEREST OF THE*
17 *RECEIVER.—No agreement that tends to diminish or*
18 *defeat the interest of the Corporation as receiver in*
19 *any asset acquired by the receiver under this section*
20 *shall be valid against the receiver, unless such agree-*
21 *ment—*

22 *(A) is in writing;*

23 *(B) was executed by an authorized officer or*
24 *representative of the covered financial company,*

1 *or confirmed in the ordinary course of business*
2 *by the covered financial company; and*

3 *(C) has been, since the time of its execution,*
4 *an official record of the company or the party*
5 *claiming under the agreement provides docu-*
6 *mentation, acceptable to the receiver, of such*
7 *agreement and its authorized execution or con-*
8 *firmation by the covered financial company.*

9 (7) *PAYMENT OF CLAIMS.—*

10 (A) *IN GENERAL.—Subject to subparagraph*
11 *(B), the Corporation as receiver may, in its dis-*
12 *cretion and to the extent that funds are avail-*
13 *able, pay creditor claims, in such manner and*
14 *amounts as are authorized under this section,*
15 *which are—*

16 (i) *allowed by the receiver;*

17 (ii) *approved by the receiver pursuant*
18 *to a final determination pursuant to para-*
19 *graph (3) or (5), as applicable; or*

20 (iii) *determined by the final judgment*
21 *of a court of competent jurisdiction.*

22 (B) *LIMITATION.—A creditor shall, in no*
23 *event, receive less than the amount that the cred-*
24 *itor is entitled to receive under paragraphs (2)*
25 *and (3) of subsection (d), as applicable.*

1 (C) *PAYMENT OF DIVIDENDS ON CLAIMS.*—

2 *The Corporation as receiver may, in its sole dis-*
3 *cretion, and to the extent otherwise permitted by*
4 *this section, pay dividends on proven claims at*
5 *any time, and no liability shall attach to the*
6 *Corporation as receiver, by reason of any such*
7 *payment or for failure to pay dividends to a*
8 *claimant whose claim is not proved at the time*
9 *of any such payment.*

10 (D) *RULEMAKING BY THE CORPORATION.*—

11 *The Corporation may prescribe such rules, in-*
12 *cluding definitions of terms, as the Corporation*
13 *deems appropriate to establish an interest rate*
14 *for or to make payments of post-insolvency inter-*
15 *est to creditors holding proven claims against the*
16 *receivership estate of a covered financial com-*
17 *pany, except that no such interest shall be paid*
18 *until the Corporation as receiver has satisfied*
19 *the principal amount of all creditor claims.*

20 (8) *SUSPENSION OF LEGAL ACTIONS.*—

21 (A) *IN GENERAL.*—*After the appointment of*
22 *the Corporation as receiver for a covered finan-*
23 *cial company, the Corporation may request a*
24 *stay in any judicial action or proceeding in*
25 *which such covered financial company is or be-*

1 *comes a party, for a period of not to exceed 90*
2 *days.*

3 *(B) GRANT OF STAY BY ALL COURTS RE-*
4 *QUIRED.—Upon receipt of a request by the Cor-*
5 *poration pursuant to subparagraph (A), the*
6 *court shall grant such stay as to all parties.*

7 *(9) ADDITIONAL RIGHTS AND DUTIES.—*

8 *(A) PRIOR FINAL ADJUDICATION.—The Cor-*
9 *poration shall abide by any final, non-appeal-*
10 *able judgment of any court of competent jurisdic-*
11 *tion that was rendered before the appointment of*
12 *the Corporation as receiver.*

13 *(B) RIGHTS AND REMEDIES OF RE-*
14 *CEIVER.—In the event of any appealable judg-*
15 *ment, the Corporation as receiver shall—*

16 *(i) have all the rights and remedies*
17 *available to the covered financial company*
18 *(before the date of appointment of the Cor-*
19 *poration as receiver under section 202) and*
20 *the Corporation, including removal to Fed-*
21 *eral court and all appellate rights; and*

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

24 *(C) NO ATTACHMENT OR EXECUTION.—No*
25 *attachment or execution may be issued by any*

1 *court upon assets in the possession of the Cor-*
2 *poration as receiver for a covered financial com-*
3 *pany.*

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

7 *(i) any claim or action for payment*
8 *from, or any action seeking a determination*
9 *of rights with respect to, the assets of any*
10 *covered financial company for which the*
11 *Corporation has been appointed receiver,*
12 *including any assets which the Corporation*
13 *may acquire from itself as such receiver; or*

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

17 (E) *DISPOSITION OF ASSETS.—In exercising*
18 *any right, power, privilege, or authority as re-*
19 *ceiver in connection with any covered financial*
20 *company for which the Corporation is acting as*
21 *receiver under this section, the Corporation shall,*
22 *to the greatest extent practicable, conduct its op-*
23 *erations in a manner that—*

1 (i) *maximizes the net present value re-*
2 *turn from the sale or disposition of such as-*
3 *sets;*

4 (ii) *minimizes the amount of any loss*
5 *realized in the resolution of cases;*

6 (iii) *mitigates the potential for serious*
7 *adverse effects to the financial system;*

8 (iv) *ensures timely and adequate com-*
9 *petition and fair and consistent treatment*
10 *of offerors; and*

11 (v) *prohibits discrimination on the*
12 *basis of race, sex, or ethnic group in the so-*
13 *licitation and consideration of offers.*

14 (10) *STATUTE OF LIMITATIONS FOR ACTIONS*
15 *BROUGHT BY RECEIVER.—*

16 (A) *IN GENERAL.—Notwithstanding any*
17 *provision of any contract, the applicable statute*
18 *of limitations with regard to any action brought*
19 *by the Corporation as receiver for a covered fi-*
20 *nancial company shall be—*

21 (i) *in the case of any contract claim,*
22 *the longer of—*

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

1 (ii) the period applicable under
2 State law; and

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

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

7 (II) the period applicable under
8 State law.

9 (B) *DATE ON WHICH A CLAIM ACCRUES.*—

10 For purposes of subparagraph (A), the date on
11 which the statute of limitations begins to run on
12 any claim described in subparagraph (A) shall
13 be the later of—

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

16 (ii) the date on which the cause of ac-
17 tion accrues.

18 (C) *REVIVAL OF EXPIRED STATE CAUSES OF*
19 *ACTION.*—

20 (i) *IN GENERAL.*—In the case of any
21 tort claim described in clause (ii) for which
22 the applicable statute of limitations under
23 State law has expired not more than 5
24 years before the date of appointment of the
25 Corporation as receiver for a covered finan-

1 *cial company, the Corporation may bring*
2 *an action as receiver on such claim without*
3 *regard to the expiration of the statute of*
4 *limitations.*

5 *(ii) CLAIMS DESCRIBED.—A tort claim*
6 *referred to in clause (i) is a claim arising*
7 *from fraud, intentional misconduct result-*
8 *ing in unjust enrichment, or intentional*
9 *misconduct resulting in substantial loss to*
10 *the covered financial company.*

11 *(11) AVOIDABLE TRANSFERS.—*

12 *(A) FRAUDULENT TRANSFERS.—The Cor-*
13 *poration, as receiver for any covered financial*
14 *company, may avoid a transfer of any interest*
15 *of the covered financial company in property, or*
16 *any obligation incurred by the covered financial*
17 *company, that was made or incurred at or with-*
18 *in 2 years before the time of commencement, if—*

19 *(i) the covered financial company vol-*
20 *untarily or involuntarily—*

21 *(I) made such transfer or incurred*
22 *such obligation with actual intent to*
23 *hinder, delay, or defraud any entity to*
24 *which the covered financial company*
25 *was or became, on or after the date on*

1 *which such transfer was made or such*
2 *obligation was incurred, indebted; or*

3 *(II) received less than a reason-*
4 *ably equivalent value in exchange for*
5 *such transferor obligation; and*

6 *(ii) the covered financial company vol-*
7 *untarily or involuntarily—*

8 *(I) was insolvent on the date that*
9 *such transfer was made or such obliga-*
10 *tion was incurred, or became insolvent*
11 *as a result of such transfer or obliga-*
12 *tion;*

13 *(II) was engaged in business or a*
14 *transaction, or was about to engage in*
15 *business or a transaction, for which*
16 *any property remaining with the cov-*
17 *ered financial company was an unrea-*
18 *sonably small capital;*

19 *(III) intended to incur, or be-*
20 *lieved that the covered financial com-*
21 *pany would incur, debts that would be*
22 *beyond the ability of the covered finan-*
23 *cial company to pay as such debts ma-*
24 *tured; or*

1 (IV) made such transfer to or for
2 the benefit of an insider, or incurred
3 such obligation to or for the benefit of
4 an insider, under an employment con-
5 tract and not in the ordinary course of
6 business.

7 (B) *PREFERENTIAL TRANSFERS.*—The Cor-
8 poration as receiver for any covered financial
9 company may avoid a transfer of an interest of
10 the covered financial company in property—

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

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

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

17 (iv) that was made—

18 (I) 90 days or less before the date
19 on which the Corporation was ap-
20 pointed receiver; or

21 (II) more than 90 days, but less
22 than 1 year before the date on which
23 the Corporation was appointed re-
24 ceiver, if such creditor at the time of
25 the transfer was an insider; and

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

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

6 (II) the transfer had not been
7 made; and

8 (III) the creditor received pay-
9 ment of such debt to the extent pro-
10 vided by the provisions of chapter 7 of
11 the Bankruptcy Code.

12 (C) *POST-RECEIVERSHIP TRANSACTIONS.*—
13 *The Corporation as receiver for any covered fi-*
14 *nancial company may avoid a transfer of prop-*
15 *erty of the receivership that occurred after the*
16 *Corporation was appointed receiver that was not*
17 *authorized under this title by the Corporation as*
18 *receiver.*

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

1 (i) *the initial transferee of such trans-*
2 *fer or the person for whose benefit such*
3 *transfer was made; or*

4 (ii) *any immediate or mediate trans-*
5 *feree of any such initial transferee.*

6 (E) *RIGHTS OF TRANSFEREE OR OBLI-*
7 *GEE.—The Corporation may not recover under*
8 *subparagraph (D)(i) from—*

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

14 (ii) *any immediate or mediate good*
15 *faith transferee of such transferee.*

16 (F) *DEFENSES.—Subject to the other provi-*
17 *sions of this title—*

18 (i) *a transferee or obligee from which*
19 *the Corporation seeks to recover a transfer*
20 *or to avoid an obligation under subpara-*
21 *graph (A), (B), (C), or (D) shall have the*
22 *same defenses available to a transferee or*
23 *obligee from which a trustee seeks to recover*
24 *a transfer or avoid an obligation under;*
25 *and*

1 (ii) *the authority of the Corporation to*
2 *recover a transfer or avoid an obligation*
3 *shall be subject to subsections (b) and (c) of*
4 *section 546, section 547(c), and section*
5 *548(c) of the Bankruptcy Code.*

6 (G) *RIGHTS UNDER THIS SECTION.—The*
7 *rights of the Corporation as receiver under this*
8 *section shall be superior to any rights of a trust-*
9 *ee or any other party (other than a Federal*
10 *agency) under the Bankruptcy Code.*

11 (H) *RULES OF CONSTRUCTION; DEFINI-*
12 *TIONS.—For purposes of—*

13 (i) *subparagraphs (A) and (B)—*

14 (I) *the term “insider” has the*
15 *same meaning as in section 101(31) of*
16 *the Bankruptcy Code;*

17 (II) *a transfer is made when such*
18 *transfer is so perfected that a bona fide*
19 *purchaser from the covered financial*
20 *company against whom applicable law*
21 *permits such transfer to be perfected*
22 *cannot acquire an interest in the prop-*
23 *erty transferred that is superior to the*
24 *interest in such property of the trans-*
25 *feree, but if such transfer is not so per-*

1 *fected before the date on which the Cor-*
2 *poration is appointed as receiver for*
3 *the covered financial company, such*
4 *transfer is made immediately before*
5 *the date of such appointment; and*

6 *(III) the term “value” means*
7 *property, or satisfaction or securing of*
8 *a present or antecedent debt of the cov-*
9 *ered financial company, but does not*
10 *include an unperformed promise to*
11 *furnish support to the covered finan-*
12 *cial company; and*

13 *(ii) subparagraph (B)—*

14 *(I) the covered financial company*
15 *is presumed to have been insolvent on*
16 *and during the 90-day period imme-*
17 *diately preceding the date of appoint-*
18 *ment of the Corporation as receiver;*
19 *and*

20 *(II) the term “insolvent” has the*
21 *same meaning as in section 101(32) of*
22 *the Bankruptcy Code.*

23 (12) *SETOFF.—*

24 *(A) GENERALLY.—Except as otherwise pro-*
25 *vided in this title, any right of a creditor to off-*

1 *set a mutual debt owed by the creditor to any*
2 *covered financial company that arose before the*
3 *Corporation was appointed as receiver for the*
4 *covered financial company against a claim of*
5 *such creditor may be asserted if enforceable*
6 *under applicable noninsolvency law, except to*
7 *the extent that—*

8 *(i) the claim of the creditor against the*
9 *covered financial company is disallowed;*

10 *(ii) the claim was transferred, by an*
11 *entity other than the covered financial com-*
12 *pany, to the creditor—*

13 *(I) after the Corporation was ap-*
14 *pointed as receiver of the covered fi-*
15 *nancial company; or*

16 *(II)(aa) after the 90-day period*
17 *preceding the date on which the Cor-*
18 *poration was appointed as receiver for*
19 *the covered financial company; and*

20 *(bb) while the covered financial*
21 *company was insolvent (except for a*
22 *setoff in connection with a qualified fi-*
23 *nancial contract); or*

1 (iii) the debt owed to the covered finan-
2 cial company was incurred by the covered
3 financial company—

4 (I) after the 90-day period pre-
5 ceding the date on which the Corpora-
6 tion was appointed as receiver for the
7 covered financial company;

8 (II) while the covered financial
9 company was insolvent; and

10 (III) for the purpose of obtaining
11 a right of setoff against the covered fi-
12 nancial company (except for a setoff in
13 connection with a qualified financial
14 contract).

15 (B) INSUFFICIENCY.—

16 (i) IN GENERAL.—Except with respect
17 to a setoff in connection with a qualified fi-
18 nancial contract, if a creditor offsets a mu-
19 tual debt owed to the covered financial com-
20 pany against a claim of the covered finan-
21 cial company on or within the 90-day pe-
22 riod preceding the date on which the Cor-
23 poration is appointed as receiver for the
24 covered financial company, the Corporation
25 may recover from the creditor the amount so

1 *offset, to the extent that any insufficiency*
2 *on the date of such setoff is less than the in-*
3 *sufficiency on the later of—*

4 (I) *the date that is 90 days before*
5 *the date on which the Corporation is*
6 *appointed as receiver for the covered fi-*
7 *nancial company; or*

8 (II) *the first day on which there*
9 *is an insufficiency during the 90-day*
10 *period preceding the date on which the*
11 *Corporation is appointed as receiver*
12 *for the covered financial company.*

13 (ii) *DEFINITION OF INSUFFICIENCY.—*

14 *In this subparagraph, the term “insuffi-*
15 *ciency” means the amount, if any, by which*
16 *a claim against the covered financial com-*
17 *pany exceeds a mutual debt owed to the cov-*
18 *ered financial company by the holder of*
19 *such claim.*

20 (C) *INSOLVENCY.—The term “insolvent” has*
21 *the same meaning as in section 101(32) of the*
22 *Bankruptcy Code.*

23 (D) *PRESUMPTION OF INSOLVENCY.—For*
24 *purposes of this paragraph, the covered financial*
25 *company is presumed to have been insolvent on*

1 *and during the 90-day period preceding the date*
2 *of appointment of the Corporation as receiver.*

3 *(E) LIMITATION.—Nothing in this para-*
4 *graph (12) shall be the basis for any right of*
5 *setoff where no such right exists under applicable*
6 *noninsolvency law.*

7 *(F) PRIORITY CLAIM.—Except as otherwise*
8 *provided in this title, the Corporation as receiver*
9 *for the covered financial company may sell or*
10 *transfer any assets free and clear of the setoff*
11 *rights of any party, except that such party shall*
12 *be entitled to a claim, subordinate to the claims*
13 *payable under subparagraphs (A), (B), (C), and*
14 *(D) of subsection (b)(1), but senior to all other*
15 *unsecured liabilities defined in subsection*
16 *(b)(1)(E), in an amount equal to the value of*
17 *such setoff rights.*

18 *(13) ATTACHMENT OF ASSETS AND OTHER IN-*
19 *JUNCTIVE RELIEF.—Subject to paragraph (14), any*
20 *court of competent jurisdiction may, at the request of*
21 *the Corporation as receiver for a covered financial*
22 *company, issue an order in accordance with Rule 65*
23 *of the Federal Rules of Civil Procedure, including an*
24 *order placing the assets of any person designated by*

1 *the Corporation under the control of the court and*
2 *appointing a trustee to hold such assets.*

3 (14) *STANDARDS.—*

4 (A) *SHOWING.—Rule 65 of the Federal*
5 *Rules of Civil Procedure shall apply with respect*
6 *to any proceeding under paragraph (13), with-*
7 *out regard to the requirement that the applicant*
8 *show that the injury, loss, or damage is irrep-*
9 *arable and immediate.*

10 (B) *STATE PROCEEDING.—If, in the case of*
11 *any proceeding in a State court, the court deter-*
12 *mines that rules of civil procedure available*
13 *under the laws of the State provide substantially*
14 *similar protections of the right of the parties to*
15 *due process as provided under Rule 65 (as modi-*
16 *fied with respect to such proceeding by subpara-*
17 *graph (A)), the relief sought by the Corporation*
18 *pursuant to paragraph (14) may be requested*
19 *under the laws of such State.*

20 (15) *TREATMENT OF CLAIMS ARISING FROM*
21 *BREACH OF CONTRACTS EXECUTED BY THE CORPORA-*
22 *TION AS RECEIVER.—Notwithstanding any other pro-*
23 *vision of this title, any final and non-appealable*
24 *judgment for monetary damages entered against the*
25 *Corporation as receiver for a covered financial com-*

1 *pany for the breach of an agreement executed or ap-*
2 *proved by the Corporation after the date of its ap-*
3 *pointment shall be paid as an administrative expense*
4 *of the receiver. Nothing in this paragraph shall be*
5 *construed to limit the power of a receiver to exercise*
6 *any rights under contract or law, including to termi-*
7 *nate, breach, cancel, or otherwise discontinue such*
8 *agreement.*

9 (16) *ACCOUNTING AND RECORDKEEPING RE-*
10 *QUIREMENTS.—*

11 (A) *IN GENERAL.—The Corporation as re-*
12 *ceiver for a covered financial company shall,*
13 *consistent with the accounting and reporting*
14 *practices and procedures established by the Cor-*
15 *poration, maintain a full accounting of each re-*
16 *ceivership or other disposition of any covered fi-*
17 *nancial company.*

18 (B) *ANNUAL ACCOUNTING OR REPORT.—*
19 *With respect to each receivership to which the*
20 *Corporation is appointed, the Corporation shall*
21 *make an annual accounting or report, as appro-*
22 *priate, available to the Secretary and the Comp-*
23 *troller General of the United States.*

24 (C) *AVAILABILITY OF REPORTS.—Any re-*
25 *port prepared pursuant to subparagraph (B)*

1 *and section 203(c)(3) shall be made available to*
2 *the public by the Corporation.*

3 *(D) RECORDKEEPING REQUIREMENT.—*

4 *(i) IN GENERAL.—The Corporation*
5 *shall prescribe such regulations and estab-*
6 *lish such retention schedules as are nec-*
7 *essary to maintain the documents and*
8 *records of the Corporation generated in ex-*
9 *ercising the authorities of this title and the*
10 *records of a covered financial company for*
11 *which the Corporation is appointed receiver,*
12 *with due regard for—*

13 *(I) the avoidance of duplicative*
14 *record retention; and*

15 *(II) the expected evidentiary needs*
16 *of the Corporation as receiver for a*
17 *covered financial company and the*
18 *public regarding the records of covered*
19 *financial companies.*

20 *(ii) RETENTION OF RECORDS.—Unless*
21 *otherwise required by applicable Federal*
22 *law or court order, the Corporation may*
23 *not, at any time, destroy any records that*
24 *are subject to clause (i).*

1 (iii) *RECORDS DEFINED.*—As used in
2 this subparagraph, the terms “records” and
3 “records of a covered financial company”
4 mean any document, book, paper, map,
5 photograph, microfiche, microfilm, computer
6 or electronically-created record generated or
7 maintained by the covered financial com-
8 pany in the course of and necessary to its
9 transaction of business.

10 (b) *PRIORITY OF EXPENSES AND UNSECURED*
11 *CLAIMS.*—

12 (1) *IN GENERAL.*—Unsecured claims against a
13 covered financial company, or the Corporation as re-
14 ceiver for such covered financial company under this
15 section, that are proven to the satisfaction of the re-
16 ceiver shall have priority in the following order:

17 (A) *Administrative expenses of the receiver.*

18 (B) *Any amounts owed to the United*
19 *States, unless the United States agrees or con-*
20 *sents otherwise.*

21 (C) *Wages, salaries, or commissions, includ-*
22 *ing vacation, severance, and sick leave pay*
23 *earned by an individual (other than an indi-*
24 *vidual described in subparagraph (G)), but only*
25 *to the extent of \$11,725 for each individual (as*

1 *indexed for inflation, by regulation of the Cor-*
2 *poration) earned not later than 180 days before*
3 *the date of appointment of the Corporation as re-*
4 *ceiver.*

5 *(D) Contributions owed to employee benefit*
6 *plans arising from services rendered not later*
7 *than 180 days before the date of appointment of*
8 *the Corporation as receiver, to the extent of the*
9 *number of employees covered by each such plan,*
10 *multiplied by \$11,725 (as indexed for inflation,*
11 *by regulation of the Corporation), less the aggre-*
12 *gate amount paid to such employees under sub-*
13 *paragraph (C), plus the aggregate amount paid*
14 *by the receivership on behalf of such employees to*
15 *any other employee benefit plan.*

16 *(E) Any other general or senior liability of*
17 *the covered financial company (which is not a li-*
18 *ability described under subparagraph (F), (G),*
19 *or (H)).*

20 *(F) Any obligation subordinated to general*
21 *creditors (which is not an obligation described*
22 *under subparagraph (G) or (H)).*

23 *(G) Any wages, salaries, or commissions in-*
24 *cluding vacation, severance, and sick leave pay*

1 *earned, owed to senior executives and directors of*
2 *the covered financial company.*

3 *(H) Any obligation to shareholders, mem-*
4 *bers, general partners, limited partners, or other*
5 *persons, with interests in the equity of the cov-*
6 *ered financial company arising as a result of*
7 *their status as shareholders, members, general*
8 *partners, limited partners, or other persons with*
9 *interests in the equity of the covered financial*
10 *company.*

11 (2) *POST-RECEIVERSHIP FINANCING PRIORITY.—*
12 *In the event that the Corporation, as receiver for a*
13 *covered financial company, is unable to obtain unse-*
14 *cured credit for the covered financial company from*
15 *commercial sources, the Corporation as receiver may*
16 *obtain credit or incur debt on the part of the covered*
17 *financial company, which shall have priority over*
18 *any or all administrative expenses of the receiver*
19 *under paragraph (1)(A).*

20 (3) *CLAIMS OF THE UNITED STATES.—Unsecured*
21 *claims of the United States shall, at a minimum,*
22 *have a higher priority than liabilities of the covered*
23 *financial company that count as regulatory capital.*

24 (4) *CREDITORS SIMILARLY SITUATED.—All*
25 *claimants of a covered financial company that are*

1 *similarly situated under paragraph (1) shall be treat-*
2 *ed in a similar manner, except that the Corporation*
3 *as receiver may take any action (including making*
4 *payments, subject to subsection (o)(1)(E)(ii)) that*
5 *does not comply with this subsection, if—*

6 *(A) the Corporation determines that such*
7 *action is necessary—*

8 *(i) to maximize the value of the assets*
9 *of the covered financial company;*

10 *(ii) to initiate and continue operations*
11 *essential to implementation of the receiver-*
12 *ship or any bridge financial company;*

13 *(iii) to maximize the present value re-*
14 *turn from the sale or other disposition of*
15 *the assets of the covered financial company;*
16 *or*

17 *(iv) to minimize the amount of any*
18 *loss realized upon the sale or other disposi-*
19 *tion of the assets of the covered financial*
20 *company; and*

21 *(B) all claimants that are similarly situ-*
22 *ated under paragraph (1) receive not less than*
23 *the amount provided in paragraphs (2) and (3)*
24 *of subsection (d).*

1 (5) *SECURED CLAIMS UNAFFECTED.*—*This sec-*
2 *tion shall not affect secured claims or security entitle-*
3 *ments in respect of assets or property held by the cov-*
4 *ered financial company, except to the extent that the*
5 *security is insufficient to satisfy the claim, and then*
6 *only with regard to the difference between the claim*
7 *and the amount realized from the security.*

8 (6) *PRIORITY OF EXPENSES AND UNSECURED*
9 *CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC MEM-*
10 *BER.*—*Where the Corporation is appointed as receiver*
11 *for a covered broker or dealer, unsecured claims*
12 *against such covered broker or dealer, or the Corpora-*
13 *tion as receiver for such covered broker or dealer*
14 *under this section, that are proven to the satisfaction*
15 *of the receiver under section 205(e), shall have the*
16 *priority prescribed in paragraph (1), except that—*

17 (A) *SIPC shall be entitled to recover admin-*
18 *istrative expenses incurred in performing its re-*
19 *sponsibilities under section 205 on an equal*
20 *basis with the Corporation, in accordance with*
21 *paragraph (1)(A);*

22 (B) *the Corporation shall be entitled to re-*
23 *cover any amounts paid to customers or to SIPC*
24 *pursuant to section 205(f), in accordance with*
25 *paragraph (1)(B);*

1 (C) *SIPC shall be entitled to recover any*
2 *amounts paid out of the SIPC Fund to meet its*
3 *obligations under section 205 and under the Se-*
4 *curities Investor Protection Act of 1970 (15*
5 *U.S.C. 78aaa et seq.), which claim shall be sub-*
6 *ordinate to the claims payable under subpara-*
7 *graphs (A) and (B) of paragraph (1), but senior*
8 *to all other claims; and*

9 (D) *the Corporation may, after paying any*
10 *proven claims to customers under section 205*
11 *and the Securities Investor Protection Act of*
12 *1970 (15 U.S.C. 78aaa et seq.), and as provided*
13 *above, pay dividends on other proven claims, in*
14 *its discretion, and to the extent that funds are*
15 *available, in accordance with the priorities set*
16 *forth in paragraph (1).*

17 (c) *PROVISIONS RELATING TO CONTRACTS ENTERED*
18 *INTO BEFORE APPOINTMENT OF RECEIVER.—*

19 (1) *AUTHORITY TO REPUDIATE CONTRACTS.—In*
20 *addition to any other rights that a receiver may have,*
21 *the Corporation as receiver for any covered financial*
22 *company may disaffirm or repudiate any contract or*
23 *lease—*

24 (A) *to which the covered financial company*
25 *is a party;*

1 (B) *the performance of which the Corpora-*
2 *tion as receiver, in the discretion of the Corpora-*
3 *tion, determines to be burdensome; and*

4 (C) *the disaffirmance or repudiation of*
5 *which the Corporation as receiver determines, in*
6 *the discretion of the Corporation, will promote*
7 *the orderly administration of the affairs of the*
8 *covered financial company.*

9 (2) *TIMING OF REPUDIATION.*—*The Corporation,*
10 *as receiver for any covered financial company, shall*
11 *determine whether or not to exercise the rights of re-*
12 *repudiation under this section within a reasonable pe-*
13 *riod of time.*

14 (3) *CLAIMS FOR DAMAGES FOR REPUDIATION.*—

15 (A) *IN GENERAL.*—*Except as provided in*
16 *paragraphs (4), (5), and (6) and in subpara-*
17 *graphs (C), (D), and (E) of this paragraph, the*
18 *liability of the Corporation as receiver for a cov-*
19 *ered financial company for the disaffirmance or*
20 *repudiation of any contract pursuant to para-*
21 *graph (1) shall be—*

22 (i) *limited to actual direct compen-*
23 *satory damages; and*

24 (ii) *determined as of—*

1 (I) the date of the appointment of
2 the Corporation as receiver; or

3 (II) in the case of any contract or
4 agreement referred to in paragraph
5 (8), the date of the disaffirmance or re-
6 pudiation of such contract or agree-
7 ment.

8 (B) NO LIABILITY FOR OTHER DAMAGES.—
9 For purposes of subparagraph (A), the term “ac-
10 tual direct compensatory damages” does not in-
11 clude—

12 (i) punitive or exemplary damages;
13 (ii) damages for lost profits or oppor-
14 tunity; or
15 (iii) damages for pain and suffering.

16 (C) MEASURE OF DAMAGES FOR REPUDI-
17 ATION OF QUALIFIED FINANCIAL CONTRACTS.—In
18 the case of any qualified financial contract or
19 agreement to which paragraph (8) applies, com-
20 pensatory damages shall be—

21 (i) deemed to include normal and rea-
22 sonable costs of cover or other reasonable
23 measures of damages utilized in the indus-
24 tries for such contract and agreement
25 claims; and

1 (ii) paid in accordance with this para-
2 graph and subsection (d), except as other-
3 wise specifically provided in this subsection.

4 (D) MEASURE OF DAMAGES FOR REPUDI-
5 ATION OR DISAFFIRMANCE OF DEBT OBLIGA-
6 TION.—In the case of any debt for borrowed
7 money or evidenced by a security, actual direct
8 compensatory damages shall be no less than the
9 amount lent plus accrued interest plus any
10 accreted original issue discount as of the date the
11 Corporation was appointed receiver of the cov-
12 ered financial company and, to the extent that
13 an allowed secured claim is secured by property
14 the value of which is greater than the amount of
15 such claim and any accrued interest through the
16 date of repudiation or disaffirmance, such ac-
17 crued interest pursuant to paragraph (1).

18 (E) MEASURE OF DAMAGES FOR REPUDI-
19 ATION OR DISAFFIRMANCE OF CONTINGENT OBLI-
20 GATION.—In the case of any contingent obliga-
21 tion of a covered financial company consisting of
22 any obligation under a guarantee, letter of cred-
23 it, loan commitment, or similar credit obliga-
24 tion, the Corporation may, by rule or regulation,
25 prescribe that actual direct compensatory dam-

1 *ages shall be no less than the estimated value of*
2 *the claim as of the date the Corporation was ap-*
3 *pointed receiver of the covered financial com-*
4 *pany, as such value is measured based on the*
5 *likelihood that such contingent claim would be-*
6 *come fixed and the probable magnitude thereof.*

7 *(4) LEASES UNDER WHICH THE COVERED FINAN-*
8 *CIAL COMPANY IS THE LESSEE.—*

9 *(A) IN GENERAL.—If the Corporation as re-*
10 *ceiver disaffirms or repudiates a lease under*
11 *which the covered financial company is the les-*
12 *see, the receiver shall not be liable for any dam-*
13 *ages (other than damages determined pursuant*
14 *to subparagraph (B)) for the disaffirmance or re-*
15 *pudiation of such lease.*

16 *(B) PAYMENTS OF RENT.—Notwithstanding*
17 *subparagraph (A), the lessor under a lease to*
18 *which subparagraph (A) would otherwise apply*
19 *shall—*

20 *(i) be entitled to the contractual rent*
21 *accruing before the later of the date on*
22 *which—*

23 *(I) the notice of disaffirmance or*
24 *repudiation is mailed; or*

1 (II) *the disaffirmance or repudi-*
2 *ation becomes effective, unless the lessor*
3 *is in default or breach of the terms of*
4 *the lease;*

5 *(ii) have no claim for damages under*
6 *any acceleration clause or other penalty*
7 *provision in the lease; and*

8 *(iii) have a claim for any unpaid rent,*
9 *subject to all appropriate offsets and de-*
10 *fenses, due as of the date of the appointment*
11 *which shall be paid in accordance with this*
12 *paragraph and subsection (d).*

13 (5) *LEASES UNDER WHICH THE COVERED FINAN-*
14 *CIAL COMPANY IS THE LESSOR.—*

15 (A) *IN GENERAL.—If the Corporation as re-*
16 *ceiver for a covered financial company repudi-*
17 *ates an unexpired written lease of real property*
18 *of the covered financial company under which*
19 *the covered financial company is the lessor and*
20 *the lessee is not, as of the date of such repudi-*
21 *ation, in default, the lessee under such lease may*
22 *either—*

23 *(i) treat the lease as terminated by*
24 *such repudiation; or*

1 (ii) remain in possession of the lease-
2 hold interest for the balance of the term of
3 the lease, unless the lessee defaults under the
4 terms of the lease after the date of such re-
5 pudiation.

6 (B) *PROVISIONS APPLICABLE TO LESSEE*
7 *REMAINING IN POSSESSION.*—If any lessee under
8 a lease described in subparagraph (A) remains
9 in possession of a leasehold interest pursuant to
10 clause (ii) of subparagraph (A)—

11 (i) the lessee—

12 (I) shall continue to pay the con-
13 tractual rent pursuant to the terms of
14 the lease after the date of the repudi-
15 ation of such lease; and

16 (II) may offset against any rent
17 payment which accrues after the date
18 of the repudiation of the lease, any
19 damages which accrue after such date
20 due to the nonperformance of any obli-
21 gation of the covered financial com-
22 pany under the lease after such date;
23 and

24 (ii) the Corporation as receiver shall
25 not be liable to the lessee for any damages

1 *arising after such date as a result of the re-*
2 *pudiation, other than the amount of any*
3 *offset allowed under clause (i)(II).*

4 (6) *CONTRACTS FOR THE SALE OF REAL PROP-*
5 *ERTY.—*

6 (A) *IN GENERAL.—If the receiver repudiates*
7 *any contract (which meets the requirements of*
8 *subsection (a)(6)) for the sale of real property,*
9 *and the purchaser of such real property under*
10 *such contract is in possession and is not, as of*
11 *the date of such repudiation, in default, such*
12 *purchaser may either—*

13 *(i) treat the contract as terminated by*
14 *such repudiation; or*

15 *(ii) remain in possession of such real*
16 *property.*

17 (B) *PROVISIONS APPLICABLE TO PUR-*
18 *CHASER REMAINING IN POSSESSION.—If any*
19 *purchaser of real property under any contract*
20 *described in subparagraph (A) remains in pos-*
21 *session of such property pursuant to clause (ii)*
22 *of subparagraph (A)—*

23 *(i) the purchaser—*

24 *(I) shall continue to make all*
25 *payments due under the contract after*

1 *the date of the repudiation of the con-*
2 *tract; and*

3 *(II) may offset against any such*
4 *payments any damages which accrue*
5 *after such date due to the nonperform-*
6 *ance (after such date) of any obligation*
7 *of the covered financial company under*
8 *the contract; and*

9 *(ii) the Corporation as receiver shall—*
10 *(I) not be liable to the purchaser*
11 *for any damages arising after such*
12 *date as a result of the repudiation,*
13 *other than the amount of any offset al-*
14 *lowed under clause (i)(II);*

15 *(II) deliver title to the purchaser*
16 *in accordance with the provisions of*
17 *the contract; and*

18 *(III) have no obligation under the*
19 *contract other than the performance re-*
20 *quired under subclause (II).*

21 *(C) ASSIGNMENT AND SALE ALLOWED.—*

22 *(i) IN GENERAL.—No provision of this*
23 *paragraph shall be construed as limiting*
24 *the right of the Corporation as receiver to*
25 *assign the contract described in subpara-*

1 *graph (A) and sell the property, subject to*
2 *the contract and the provisions of this para-*
3 *graph.*

4 (ii) *NO LIABILITY AFTER ASSIGNMENT*
5 *AND SALE.—If an assignment and sale de-*
6 *scribed in clause (i) is consummated, the*
7 *Corporation as receiver shall have no fur-*
8 *ther liability under the contract described*
9 *in subparagraph (A) or with respect to the*
10 *real property which was the subject of such*
11 *contract.*

12 (7) *PROVISIONS APPLICABLE TO SERVICE CON-*
13 *TRACTS.—*

14 (A) *SERVICES PERFORMED BEFORE AP-*
15 *POINTMENT.—In the case of any contract for*
16 *services between any person and any covered fi-*
17 *nancial company for which the Corporation has*
18 *been appointed receiver, any claim of such per-*
19 *son for services performed before the date of ap-*
20 *pointment shall be—*

21 (i) *a claim to be paid in accordance*
22 *with subsections (a), (b), and (d); and*

23 (ii) *deemed to have arisen as of the*
24 *date on which the receiver was appointed.*

1 (B) *SERVICES PERFORMED AFTER APPOINT-*
2 *MENT AND PRIOR TO REPUDIATION.*—*If, in the*
3 *case of any contract for services described in sub-*
4 *paragraph (A), the Corporation as receiver ac-*
5 *cepts performance by the other person before*
6 *making any determination to exercise the right*
7 *of repudiation of such contract under this sec-*
8 *tion—*

9 (i) *the other party shall be paid under*
10 *the terms of the contract for the services per-*
11 *formed; and*

12 (ii) *the amount of such payment shall*
13 *be treated as an administrative expense of*
14 *the receivership.*

15 (C) *ACCEPTANCE OF PERFORMANCE NO BAR*
16 *TO SUBSEQUENT REPUDIATION.*—*The acceptance*
17 *by the Corporation as receiver for services re-*
18 *ferred to in subparagraph (B) in connection*
19 *with a contract described in subparagraph (B)*
20 *shall not affect the right of the Corporation as*
21 *receiver to repudiate such contract under this*
22 *section at any time after such performance.*

23 (8) *CERTAIN QUALIFIED FINANCIAL CON-*
24 *TRACTS.*—

1 (A) *RIGHTS OF PARTIES TO CONTRACTS.*—

2 Subject to subsection (a)(8) and paragraphs (9)
3 and (10) of this subsection, and notwithstanding
4 any other provision of this section, any other
5 provision of Federal law, or the law of any
6 State, no person shall be stayed or prohibited
7 from exercising—

8 (i) any right that such person has to
9 cause the termination, liquidation, or accel-
10 eration of any qualified financial contract
11 with a covered financial company which
12 arises upon the date of appointment of the
13 Corporation as receiver for such covered fi-
14 nancial company at any time after such
15 appointment;

16 (ii) any right under any security
17 agreement or arrangement or other credit
18 enhancement related to one or more quali-
19 fied financial contracts described in clause
20 (i); or

21 (iii) any right to offset or net out any
22 termination value, payment amount, or
23 other transfer obligation arising under or in
24 connection with 1 or more contracts or
25 agreements described in clause (i), includ-

1 *ing any master agreement for such con-*
2 *tracts or agreements.*

3 (B) *APPLICABILITY OF OTHER PROVI-*
4 *SIONS.—Subsection (a)(8) shall apply in the case*
5 *of any judicial action or proceeding brought*
6 *against the Corporation as receiver referred to in*
7 *subparagraph (A), or the subject covered finan-*
8 *cial company, by any party to a contract or*
9 *agreement described in subparagraph (A)(i) with*
10 *such covered financial company.*

11 (C) *CERTAIN TRANSFERS NOT AVOID-*
12 *ABLE.—*

13 (i) *IN GENERAL.—Notwithstanding*
14 *subsection (a)(11), (a)(12), or (c)(12), sec-*
15 *tion 5242 of the Revised Statutes of the*
16 *United States, or any other provision of*
17 *Federal or State law relating to the avoid-*
18 *ance of preferential or fraudulent transfers,*
19 *the Corporation, whether acting as the Cor-*
20 *poration or as receiver for a covered finan-*
21 *cial company, may not avoid any transfer*
22 *of money or other property in connection*
23 *with any qualified financial contract with*
24 *a covered financial company.*

1 (ii) *EXCEPTION FOR CERTAIN TRANS-*
 2 *FERS.*—*Clause (i) shall not apply to any*
 3 *transfer of money or other property in con-*
 4 *nection with any qualified financial con-*
 5 *tract with a covered financial company if*
 6 *the transferee had actual intent to hinder,*
 7 *delay, or defraud such company, the credi-*
 8 *tors of such company, or the Corporation as*
 9 *receiver appointed for such company.*

10 (D) *CERTAIN CONTRACTS AND AGREEMENTS*
 11 *DEFINED.*—*For purposes of this subsection, the*
 12 *following definitions shall apply:*

13 (i) *QUALIFIED FINANCIAL CON-*
 14 *TRACT.*—*The term “qualified financial con-*
 15 *tract” means any securities contract, com-*
 16 *modity contract, forward contract, repur-*
 17 *chase agreement, swap agreement, and any*
 18 *similar agreement that the Corporation de-*
 19 *termines by regulation, resolution, or order*
 20 *to be a qualified financial contract for pur-*
 21 *poses of this paragraph.*

22 (ii) *SECURITIES CONTRACT.*—*The term*
 23 *“securities contract” —*

24 (I) *means a contract for the pur-*
 25 *chase, sale, or loan of a security, a cer-*

1 *tificate of deposit, a mortgage loan,*
2 *any interest in a mortgage loan, a*
3 *group or index of securities, certificates*
4 *of deposit, or mortgage loans or inter-*
5 *ests therein (including any interest*
6 *therein or based on the value thereof),*
7 *or any option on any of the foregoing,*
8 *including any option to purchase or*
9 *sell any such security, certificate of de-*
10 *posit, mortgage loan, interest, group or*
11 *index, or option, and including any re-*
12 *purchase or reverse repurchase trans-*
13 *action on any such security, certificate*
14 *of deposit, mortgage loan, interest,*
15 *group or index, or option (whether or*
16 *not such repurchase or reverse repur-*
17 *chase transaction is a “repurchase*
18 *agreement”, as defined in clause (v));*

19 *(II) does not include any pur-*
20 *chase, sale, or repurchase obligation*
21 *under a participation in a commercial*
22 *mortgage loan unless the Corporation*
23 *determines by regulation, resolution, or*
24 *order to include any such agreement*
25 *within the meaning of such term;*

1 (III) means any option entered
2 into on a national securities exchange
3 relating to foreign currencies;

4 (IV) means the guarantee (includ-
5 ing by novation) by or to any securi-
6 ties clearing agency of any settlement
7 of cash, securities, certificates of de-
8 posit, mortgage loans or interests there-
9 in, group or index of securities, certifi-
10 cates of deposit or mortgage loans or
11 interests therein (including any inter-
12 est therein or based on the value there-
13 of) or an option on any of the fore-
14 going, including any option to pur-
15 chase or sell any such security, certifi-
16 cate of deposit, mortgage loan, interest,
17 group or index, or option (whether or
18 not such settlement is in connection
19 with any agreement or transaction re-
20 ferred to in subclauses (I) through
21 (XII) (other than subclause (II)));

22 (V) means any margin loan;

23 (VI) means any extension of cred-
24 it for the clearance or settlement of se-
25 curities transactions;

1 (VII) means any loan transaction
2 coupled with a securities collar trans-
3 action, any prepaid securities forward
4 transaction, or any total return swap
5 transaction coupled with a securities
6 sale transaction;

7 (VIII) means any other agreement
8 or transaction that is similar to any
9 agreement or transaction referred to in
10 this clause;

11 (IX) means any combination of
12 the agreements or transactions referred
13 to in this clause;

14 (X) means any option to enter
15 into any agreement or transaction re-
16 ferred to in this clause;

17 (XI) means a master agreement
18 that provides for an agreement or
19 transaction referred to in any of sub-
20 clauses (I) through (X), other than sub-
21 clause (II), together with all supple-
22 ments to any such master agreement,
23 without regard to whether the master
24 agreement provides for an agreement
25 or transaction that is not a securities

1 *contract under this clause, except that*
2 *the master agreement shall be consid-*
3 *ered to be a securities contract under*
4 *this clause only with respect to each*
5 *agreement or transaction under the*
6 *master agreement that is referred to in*
7 *any of subclauses (I) through (X), other*
8 *than subclause (II); and*

9 *(XII) means any security agree-*
10 *ment or arrangement or other credit*
11 *enhancement related to any agreement*
12 *or transaction referred to in this*
13 *clause, including any guarantee or re-*
14 *imbursement obligation in connection*
15 *with any agreement or transaction re-*
16 *ferred to in this clause.*

17 *(iii) COMMODITY CONTRACT.—The*
18 *term “commodity contract” means—*

19 *(I) with respect to a futures com-*
20 *mission merchant, a contract for the*
21 *purchase or sale of a commodity for fu-*
22 *ture delivery on, or subject to the rules*
23 *of, a contract market or board of trade;*

1 (II) *with respect to a foreign fu-*
2 *tures commission merchant, a foreign*
3 *future;*

4 (III) *with respect to a leverage*
5 *transaction merchant, a leverage trans-*
6 *action;*

7 (IV) *with respect to a clearing or-*
8 *ganization, a contract for the purchase*
9 *or sale of a commodity for future deliv-*
10 *ery on, or subject to the rules of, a con-*
11 *tract market or board of trade that is*
12 *cleared by such clearing organization,*
13 *or commodity option traded on, or sub-*
14 *ject to the rules of, a contract market*
15 *or board of trade that is cleared by*
16 *such clearing organization;*

17 (V) *with respect to a commodity*
18 *options dealer, a commodity option;*

19 (VI) *any other agreement or*
20 *transaction that is similar to any*
21 *agreement or transaction referred to in*
22 *this clause;*

23 (VII) *any combination of the*
24 *agreements or transactions referred to*
25 *in this clause;*

1 (VIII) any option to enter into
2 any agreement or transaction referred
3 to in this clause;

4 (IX) a master agreement that pro-
5 vides for an agreement or transaction
6 referred to in any of subclauses (I)
7 through (VIII), together with all sup-
8 plements to any such master agree-
9 ment, without regard to whether the
10 master agreement provides for an
11 agreement or transaction that is not a
12 commodity contract under this clause,
13 except that the master agreement shall
14 be considered to be a commodity con-
15 tract under this clause only with re-
16 spect to each agreement or transaction
17 under the master agreement that is re-
18 ferred to in any of subclauses (I)
19 through (VIII); or

20 (X) any security agreement or ar-
21 rangement or other credit enhancement
22 related to any agreement or trans-
23 action referred to in this clause, in-
24 cluding any guarantee or reimburse-
25 ment obligation in connection with

1 *any agreement or transaction referred*
2 *to in this clause.*

3 *(iv) FORWARD CONTRACT.—The term*
4 *“forward contract” means—*

5 *(I) a contract (other than a com-*
6 *modity contract) for the purchase, sale,*
7 *or transfer of a commodity or any*
8 *similar good, article, service, right, or*
9 *interest which is presently or in the fu-*
10 *ture becomes the subject of dealing in*
11 *the forward contract trade, or product*
12 *or byproduct thereof, with a maturity*
13 *date that is more than 10 days after*
14 *the date on which the contract is en-*
15 *tered into, including a repurchase or*
16 *reverse repurchase transaction (whether*
17 *or not such repurchase or reverse re-*
18 *purchase transaction is a “repurchase*
19 *agreement”, as defined in clause (v)),*
20 *consignment, lease, swap, hedge trans-*
21 *action, deposit, loan, option, allocated*
22 *transaction, unallocated transaction,*
23 *or any other similar agreement;*

1 (ii) any combination of agree-
2 ments or transactions referred to in
3 subclauses (I) and (III);

4 (iii) any option to enter into any
5 agreement or transaction referred to in
6 subclause (I) or (II);

7 (iv) a master agreement that pro-
8 vides for an agreement or transaction
9 referred to in subclause (I), (II), or
10 (iii), together with all supplements to
11 any such master agreement, without
12 regard to whether the master agreement
13 provides for an agreement or trans-
14 action that is not a forward contract
15 under this clause, except that the mas-
16 ter agreement shall be considered to be
17 a forward contract under this clause
18 only with respect to each agreement or
19 transaction under the master agree-
20 ment that is referred to in subclause
21 (I), (II), or (III); or

22 (v) any security agreement or ar-
23 rangement or other credit enhancement
24 related to any agreement or trans-
25 action referred to in subclause (I), (II),

1 (III), or (IV), including any guarantee
2 or reimbursement obligation in connec-
3 tion with any agreement or trans-
4 action referred to in any such sub-
5 clause.

6 (v) *REPURCHASE AGREEMENT*.—The
7 term “repurchase agreement” (which defini-
8 tion also applies to a reverse repurchase
9 agreement)—

10 (I) means an agreement, includ-
11 ing related terms, which provides for
12 the transfer of one or more certificates
13 of deposit, mortgage related securities
14 (as such term is defined in section 3 of
15 the Securities Exchange Act of 1934),
16 mortgage loans, interests in mortgage-
17 related securities or mortgage loans, el-
18 igible bankers’ acceptances, qualified
19 foreign government securities (which,
20 for purposes of this clause, means a se-
21 curity that is a direct obligation of, or
22 that is fully guaranteed by, the central
23 government of a member of the Organi-
24 zation for Economic Cooperation and
25 Development, as determined by regula-

1 *tion or order adopted by the Board of*
2 *Governors), or securities that are direct*
3 *obligations of, or that are fully guaran-*
4 *teed by, the United States or any agen-*
5 *cy of the United States against the*
6 *transfer of funds by the transferee of*
7 *such certificates of deposit, eligible*
8 *bankers' acceptances, securities, mort-*
9 *gage loans, or interests with a simulta-*
10 *neous agreement by such transferee to*
11 *transfer to the transferor thereof certifi-*
12 *cates of deposit, eligible bankers' ac-*
13 *ceptances, securities, mortgage loans,*
14 *or interests as described above, at a*
15 *date certain not later than 1 year after*
16 *such transfers or on demand, against*
17 *the transfer of funds, or any other*
18 *similar agreement;*

19 *(II) does not include any repur-*
20 *chase obligation under a participation*
21 *in a commercial mortgage loan, unless*
22 *the Corporation determines, by regula-*
23 *tion, resolution, or order to include*
24 *any such participation within the*
25 *meaning of such term;*

1 (III) means any combination of
2 agreements or transactions referred to
3 in subclauses (I) and (IV);

4 (IV) means any option to enter
5 into any agreement or transaction re-
6 ferred to in subclause (I) or (III);

7 (V) means a master agreement
8 that provides for an agreement or
9 transaction referred to in subclause (I),
10 (III), or (IV), together with all supple-
11 ments to any such master agreement,
12 without regard to whether the master
13 agreement provides for an agreement
14 or transaction that is not a repurchase
15 agreement under this clause, except
16 that the master agreement shall be con-
17 sidered to be a repurchase agreement
18 under this subclause only with respect
19 to each agreement or transaction under
20 the master agreement that is referred to
21 in subclause (I), (III), or (IV); and

22 (VI) means any security agree-
23 ment or arrangement or other credit
24 enhancement related to any agreement
25 or transaction referred to in subclause

1 (I), (III), (IV), or (V), including any
2 guarantee or reimbursement obligation
3 in connection with any agreement or
4 transaction referred to in any such
5 subclause.

6 (vi) *SWAP AGREEMENT*.—The term
7 “swap agreement” means—

8 (I) any agreement, including the
9 terms and conditions incorporated by
10 reference in any such agreement, which
11 is an interest rate swap, option, future,
12 or forward agreement, including a rate
13 floor, rate cap, rate collar, cross-cur-
14 rency rate swap, and basis swap; a
15 spot, same day-tomorrow, tomorrow-
16 next, forward, or other foreign ex-
17 change, precious metals, or other com-
18 modity agreement; a currency swap,
19 option, future, or forward agreement;
20 an equity index or equity swap, op-
21 tion, future, or forward agreement; a
22 debt index or debt swap, option, future,
23 or forward agreement; a total return,
24 credit spread or credit swap, option,
25 future, or forward agreement; a com-

1 *modity index or commodity swap, op-*
2 *tion, future, or forward agreement;*
3 *weather swap, option, future, or for-*
4 *ward agreement; an emissions swap,*
5 *option, future, or forward agreement;*
6 *or an inflation swap, option, future, or*
7 *forward agreement;*

8 *(II) any agreement or transaction*
9 *that is similar to any other agreement*
10 *or transaction referred to in this clause*
11 *and that is of a type that has been, is*
12 *presently, or in the future becomes, the*
13 *subject of recurrent dealings in the*
14 *swap or other derivatives markets (in-*
15 *cluding terms and conditions incor-*
16 *porated by reference in such agree-*
17 *ment) and that is a forward, swap, fu-*
18 *ture, option, or spot transaction on one*
19 *or more rates, currencies, commodities,*
20 *equity securities or other equity instru-*
21 *ments, debt securities or other debt in-*
22 *struments, quantitative measures asso-*
23 *ciated with an occurrence, extent of an*
24 *occurrence, or contingency associated*
25 *with a financial, commercial, or eco-*

1 *conomic consequence, or economic or fi-*
2 *nancial indices or measures of eco-*
3 *nomiic or financial risk or value;*

4 *(III) any combination of agree-*
5 *ments or transactions referred to in*
6 *this clause;*

7 *(IV) any option to enter into any*
8 *agreement or transaction referred to in*
9 *this clause;*

10 *(V) a master agreement that pro-*
11 *vides for an agreement or transaction*
12 *referred to in subclause (I), (II), (III),*
13 *or (IV), together with all supplements*
14 *to any such master agreement, without*
15 *regard to whether the master agreement*
16 *contains an agreement or transaction*
17 *that is not a swap agreement under*
18 *this clause, except that the master*
19 *agreement shall be considered to be a*
20 *swap agreement under this clause only*
21 *with respect to each agreement or*
22 *transaction under the master agree-*
23 *ment that is referred to in subclause*
24 *(I), (II), (III), or (IV); and*

1 (VI) *any security agreement or*
2 *arrangement or other credit enhance-*
3 *ment related to any agreement or*
4 *transaction referred to in any of*
5 *clauses (I) through (V), including any*
6 *guarantee or reimbursement obligation*
7 *in connection with any agreement or*
8 *transaction referred to in any such*
9 *clause.*

10 (vii) *DEFINITIONS RELATING TO DE-*
11 *FAULT.—When used in this paragraph and*
12 *paragraph (10)—*

13 (I) *the term “default” means,*
14 *with respect to a covered financial*
15 *company, any adjudication or other of-*
16 *ficial decision by any court of com-*
17 *petent jurisdiction, or other public au-*
18 *thority pursuant to which the Corpora-*
19 *tion has been appointed receiver; and*

20 (II) *the term “in danger of de-*
21 *fault” means a covered financial com-*
22 *pany with respect to which the Cor-*
23 *poration or appropriate State author-*
24 *ity has determined that—*

1 (aa) in the opinion of the
2 Corporation or such authority—

3 (AA) the covered finan-
4 cial company is not likely to
5 be able to pay its obligations
6 in the normal course of busi-
7 ness; and

8 (BB) there is no reason-
9 able prospect that the covered
10 financial company will be
11 able to pay such obligations
12 without Federal assistance;
13 or

14 (bb) in the opinion of the
15 Corporation or such authority—

16 (AA) the covered finan-
17 cial company has incurred or
18 is likely to incur losses that
19 will deplete all or substan-
20 tially all of its capital; and

21 (BB) there is no reason-
22 able prospect that the capital
23 will be replenished without
24 Federal assistance.

1 *(viii) TREATMENT OF MASTER AGREE-*
2 *MENT AS ONE AGREEMENT.—Any master*
3 *agreement for any contract or agreement de-*
4 *scribed in any of clauses (i) through (vi) (or*
5 *any master agreement for such master*
6 *agreement or agreements), together with all*
7 *supplements to such master agreement, shall*
8 *be treated as a single agreement and a sin-*
9 *gle qualified financial contact. If a master*
10 *agreement contains provisions relating to*
11 *agreements or transactions that are not*
12 *themselves qualified financial contracts, the*
13 *master agreement shall be deemed to be a*
14 *qualified financial contract only with re-*
15 *spect to those transactions that are them-*
16 *selves qualified financial contracts.*

17 *(ix) TRANSFER.—The term “transfer”*
18 *means every mode, direct or indirect, abso-*
19 *lute or conditional, voluntary or involun-*
20 *tary, of disposing of or parting with prop-*
21 *erty or with an interest in property, includ-*
22 *ing retention of title as a security interest*
23 *and foreclosure of the equity of redemption*
24 *of the covered financial company.*

1 (x) *PERSON*.—The term “person” in-
2 cludes any governmental entity in addition
3 to any entity included in the definition of
4 such term in section 1, title 1, United
5 States Code.

6 (E) *CLARIFICATION*.—No provision of law
7 shall be construed as limiting the right or power
8 of the Corporation, or authorizing any court or
9 agency to limit or delay, in any manner, the
10 right or power of the Corporation to transfer any
11 qualified financial contract in accordance with
12 paragraphs (9) and (10) of this subsection or to
13 disaffirm or repudiate any such contract in ac-
14 cordance with subsection (c)(1).

15 (F) *WALKAWAY CLAUSES NOT EFFECTIVE*.—

16 (i) *IN GENERAL*.—Notwithstanding the
17 provisions of subparagraph (A) of this
18 paragraph and sections 403 and 404 of the
19 Federal Deposit Insurance Corporation Im-
20 provement Act of 1991, no walkaway clause
21 shall be enforceable in a qualified financial
22 contract of a covered financial company in
23 default.

24 (ii) *LIMITED SUSPENSION OF CERTAIN*
25 *OBLIGATIONS*.—In the case of a qualified fi-

1 *nancial contract referred to in clause (i),*
2 *any payment or delivery obligations other-*
3 *wise due from a party pursuant to the*
4 *qualified financial contract shall be sus-*
5 *pending from the time at which the Corpora-*
6 *tion is appointed as receiver until the ear-*
7 *lier of—*

8 *(I) the time at which such party*
9 *receives notice that such contract has*
10 *been transferred pursuant to para-*
11 *graph (10)(A); or*

12 *(II) 5:00 p.m. (eastern time) on*
13 *the 3rd business day following the date*
14 *of the appointment of the Corporation*
15 *as receiver.*

16 *(iii) WALKAWAY CLAUSE DEFINED.—*
17 *For purposes of this subparagraph, the term*
18 *“walkaway clause” means any provision in*
19 *a qualified financial contract that suspends,*
20 *conditions, or extinguishes a payment obli-*
21 *gation of a party, in whole or in part, or*
22 *does not create a payment obligation of a*
23 *party that would otherwise exist, solely be-*
24 *cause of the status of such party as a non-*
25 *defaulting party in connection with the in-*

1 *solvency of a covered financial company*
2 *that is a party to the contract or the ap-*
3 *pointment of or the exercise of rights or*
4 *powers by the Corporation as receiver for*
5 *such covered financial company, and not as*
6 *a result of the exercise by a party of any*
7 *right to offset, setoff, or net obligations that*
8 *exist under the contract, any other contract*
9 *between those parties, or applicable law.*

10 *(iv) CERTAIN OBLIGATIONS TO CLEAR-*
11 *ING ORGANIZATIONS.—In the event that the*
12 *Corporation has been appointed as receiver*
13 *for a covered financial company which is a*
14 *party to any qualified financial contract*
15 *cleared by or subject to the rules of a clear-*
16 *ing organization (as defined in subsection*
17 *(c)(9)(D)), the receiver shall use its best ef-*
18 *forts to meet all margin, collateral, and set-*
19 *tlement obligations of the covered financial*
20 *company that arise under qualified finan-*
21 *cial contracts (other than any margin, col-*
22 *lateral, or settlement obligation that is not*
23 *enforceable against the receiver under para-*
24 *graph (8)(F)(i) or paragraph (10)(B)), as*
25 *required by the rules of the clearing organi-*

1 *zation when due, and such obligations shall*
2 *not be suspended pursuant to paragraph*
3 *(8)(F)(ii). Notwithstanding paragraph*
4 *(8)(F)(ii) or (10)(B), if the receiver fails to*
5 *satisfy any such margin, collateral, or set-*
6 *tlement obligations under the rules of the*
7 *clearing organization, the clearing organi-*
8 *zation shall have the immediate right to ex-*
9 *ercise, and shall not be stayed from exer-*
10 *cising, all of its rights and remedies under*
11 *its rules and applicable law with respect to*
12 *any qualified financial contract of the cov-*
13 *ered financial company, including, without*
14 *limitation, the right to liquidate all posi-*
15 *tions and collateral of such covered finan-*
16 *cial company under the company's qualified*
17 *financial contracts, and suspend or cease to*
18 *act for such covered financial company, all*
19 *in accordance with the rules of the clearing*
20 *organization.*

21 *(G) RECORDKEEPING.—*

22 *(i) JOINT RULEMAKING.—The Federal*
23 *primary financial regulatory agencies shall*
24 *jointly prescribe regulations requiring that*
25 *financial companies maintain such records*

1 *with respect to qualified financial contracts*
2 *(including market valuations) that the Fed-*
3 *eral primary financial regulatory agencies*
4 *determine to be necessary or appropriate in*
5 *order to assist the Corporation as receiver*
6 *for a covered financial company in being*
7 *able to exercise its rights and fulfill its obli-*
8 *gations under this paragraph or paragraph*
9 *(9) or (10).*

10 *(ii) TIMEFRAME.—The Federal pri-*
11 *mary financial regulatory agencies shall*
12 *prescribe joint final or interim final regula-*
13 *tions not later than 24 months after the*
14 *date of enactment of this Act.*

15 *(iii) BACK-UP RULEMAKING AUTHOR-*
16 *ITY.—If the Federal primary financial reg-*
17 *ulatory agencies do not prescribe joint final*
18 *or interim final regulations within the time*
19 *frame in clause (ii), the Chairperson of the*
20 *Council shall prescribe, in consultation with*
21 *the Corporation, the regulations required by*
22 *clause (i).*

23 *(iv) CATEGORIZATION AND TIERING.—*
24 *The joint regulations prescribed under*
25 *clause (i) shall, as appropriate, differentiate*

1 *among financial companies by taking into*
2 *consideration their size, risk, complexity, le-*
3 *verage, frequency and dollar amount of*
4 *qualified financial contracts, interconnect-*
5 *edness to the financial system, and any*
6 *other factors deemed appropriate.*

7 (9) *TRANSFER OF QUALIFIED FINANCIAL CON-*
8 *TRACTS.—*

9 (A) *IN GENERAL.—In making any transfer*
10 *of assets or liabilities of a covered financial com-*
11 *pany in default, which includes any qualified fi-*
12 *nancial contract, the Corporation as receiver for*
13 *such covered financial company shall either—*

14 (i) *transfer to one financial institu-*
15 *tion, other than a financial institution for*
16 *which a conservator, receiver, trustee in*
17 *bankruptcy, or other legal custodian has*
18 *been appointed or which is otherwise the*
19 *subject of a bankruptcy or insolvency pro-*
20 *ceeding—*

21 (I) *all qualified financial con-*
22 *tracts between any person or any affil-*
23 *iate of such person and the covered fi-*
24 *nancial company in default;*

1 (ii) all claims of such person or
2 any affiliate of such person against
3 such covered financial company under
4 any such contract (other than any
5 claim which, under the terms of any
6 such contract, is subordinated to the
7 claims of general unsecured creditors of
8 such company);

9 (iii) all claims of such covered fi-
10 nancial company against such person
11 or any affiliate of such person under
12 any such contract; and

13 (iv) all property securing or any
14 other credit enhancement for any con-
15 tract described in subclause (I) or any
16 claim described in subclause (II) or
17 (iii) under any such contract; or

18 (ii) transfer none of the qualified fi-
19 nancial contracts, claims, property or other
20 credit enhancement referred to in clause (i)
21 (with respect to such person and any affil-
22 iate of such person).

23 (B) TRANSFER TO FOREIGN BANK, FINAN-
24 CIAL INSTITUTION, OR BRANCH OR AGENCY
25 THEREOF.—In transferring any qualified finan-

1 *cial contracts and related claims and property*
2 *under subparagraph (A)(i), the Corporation as*
3 *receiver for the covered financial company shall*
4 *not make such transfer to a foreign bank, finan-*
5 *cial institution organized under the laws of a*
6 *foreign country, or a branch or agency of a for-*
7 *foreign bank or financial institution unless, under*
8 *the law applicable to such bank, financial insti-*
9 *tution, branch or agency, to the qualified finan-*
10 *cial contracts, and to any netting contract, any*
11 *security agreement or arrangement or other cred-*
12 *it enhancement related to one or more qualified*
13 *financial contracts, the contractual rights of the*
14 *parties to such qualified financial contracts, net-*
15 *ting contracts, security agreements or arrange-*
16 *ments, or other credit enhancements are enforce-*
17 *able substantially to the same extent as per-*
18 *mitted under this section.*

19 (C) *TRANSFER OF CONTRACTS SUBJECT TO*
20 *THE RULES OF A CLEARING ORGANIZATION.—In*
21 *the event that the Corporation as receiver for a*
22 *financial institution transfers any qualified fi-*
23 *nancial contract and related claims, property, or*
24 *credit enhancement pursuant to subparagraph*
25 *(A)(i) and such contract is cleared by or subject*

1 to the rules of a clearing organization, the clear-
2 ing organization shall not be required to accept
3 the transferee as a member by virtue of the
4 transfer.

5 (D) *DEFINITIONS.*—For purposes of this
6 paragraph—

7 (i) the term “financial institution”
8 means a broker or dealer, a depository in-
9 stitution, a futures commission merchant, a
10 bridge financial company, or any other in-
11 stitution determined by the Corporation, by
12 regulation, to be a financial institution;
13 and

14 (ii) the term “clearing organization”
15 has the same meaning as in section 402 of
16 the Federal Deposit Insurance Corporation
17 Improvement Act of 1991.

18 (10) *NOTIFICATION OF TRANSFER.*—

19 (A) *IN GENERAL.*—

20 (i) *NOTICE.*—The Corporation shall
21 provide notice in accordance with clause
22 (ii), if—

23 (I) the Corporation as receiver for
24 a covered financial company in default
25 or in danger of default transfers any

1 *assets or liabilities of the covered fi-*
2 *nancial company; and*

3 *(II) the transfer includes any*
4 *qualified financial contract.*

5 *(ii) TIMING.—The Corporation as re-*
6 *ceiver for a covered financial company shall*
7 *notify any person who is a party to any*
8 *contract described in clause (i) of such*
9 *transfer not later than 5:00 p.m. (eastern*
10 *time) on the 3rd business day following the*
11 *date of the appointment of the Corporation*
12 *as receiver.*

13 *(B) CERTAIN RIGHTS NOT ENFORCEABLE.—*

14 *(i) RECEIVERSHIP.—A person who is a*
15 *party to a qualified financial contract with*
16 *a covered financial company may not exer-*
17 *cise any right that such person has to ter-*
18 *minate, liquidate, or net such contract*
19 *under paragraph (8)(A) solely by reason of*
20 *or incidental to the appointment under this*
21 *section of the Corporation as receiver for the*
22 *covered financial company (or the insol-*
23 *veny or financial condition of the covered*
24 *financial company for which the Corpora-*
25 *tion has been appointed as receiver)—*

1 (I) until 5:00 p.m. (eastern time)
2 on the 3rd business day following the
3 date of the appointment; or

4 (II) after the person has received
5 notice that the contract has been trans-
6 ferred pursuant to paragraph (9)(A).

7 (ii) NOTICE.—For purposes of this
8 paragraph, the Corporation as receiver for a
9 covered financial company shall be deemed
10 to have notified a person who is a party to
11 a qualified financial contract with such cov-
12 ered financial company, if the Corporation
13 has taken steps reasonably calculated to
14 provide notice to such person by the time
15 specified in subparagraph (A).

16 (C) TREATMENT OF BRIDGE FINANCIAL
17 COMPANY.—For purposes of paragraph (9), a
18 bridge financial company shall not be considered
19 to be a covered financial company for which a
20 conservator, receiver, trustee in bankruptcy, or
21 other legal custodian has been appointed, or
22 which is otherwise the subject of a bankruptcy or
23 insolvency proceeding.

24 (D) BUSINESS DAY DEFINED.—For pur-
25 poses of this paragraph, the term “business day”

1 *means any day other than any Saturday, Sun-*
2 *day, or any day on which either the New York*
3 *Stock Exchange or the Federal Reserve Bank of*
4 *New York is closed.*

5 (11) *DISAFFIRMANCE OR REPUDIATION OF*
6 *QUALIFIED FINANCIAL CONTRACTS.—In exercising the*
7 *rights of disaffirmance or repudiation of the Corpora-*
8 *tion as receiver with respect to any qualified finan-*
9 *cial contract to which a covered financial company is*
10 *a party, the Corporation shall either—*

11 (A) *disaffirm or repudiate all qualified fi-*
12 *nancial contracts between—*

13 (i) *any person or any affiliate of such*
14 *person; and*

15 (ii) *the covered financial company in*
16 *default; or*

17 (B) *disaffirm or repudiate none of the*
18 *qualified financial contracts referred to in sub-*
19 *paragraph (A) (with respect to such person or*
20 *any affiliate of such person).*

21 (12) *CERTAIN SECURITY AND CUSTOMER INTER-*
22 *ESTS NOT AVOIDABLE.—No provision of this sub-*
23 *section shall be construed as permitting the avoidance*
24 *of any—*

1 (A) *legally enforceable or perfected security*
2 *interest in any of the assets of any covered fi-*
3 *nancial company, except in accordance with sub-*
4 *section (a)(11); or*

5 (B) *legally enforceable interest in customer*
6 *property, security entitlements in respect of as-*
7 *sets or property held by the covered financial*
8 *company for any security entitlement holder.*

9 (13) *AUTHORITY TO ENFORCE CONTRACTS.—*

10 (A) *IN GENERAL.—The Corporation, as re-*
11 *ceiver for a covered financial company, may en-*
12 *force any contract, other than a liability insur-*
13 *ance contract of a director or officer, a financial*
14 *institution bond entered into by the covered fi-*
15 *nancial company, notwithstanding any provi-*
16 *sion of the contract providing for termination,*
17 *default, acceleration, or exercise of rights upon,*
18 *or solely by reason of, insolvency, the appoint-*
19 *ment of or the exercise of rights or powers by the*
20 *Corporation as receiver, the filing of the petition*
21 *pursuant to section 202(a)(1), or the issuance of*
22 *the recommendations or determination, or any*
23 *actions or events occurring in connection there-*
24 *with or as a result thereof, pursuant to section*
25 *203.*

1 (B) *CERTAIN RIGHTS NOT AFFECTED.*—No
2 provision of this paragraph may be construed as
3 impairing or affecting any right of the Corpora-
4 tion as receiver to enforce or recover under a li-
5 ability insurance contract of a director or officer
6 or financial institution bond under other appli-
7 cable law.

8 (C) *CONSENT REQUIREMENT AND IPSO*
9 *FACTO CLAUSES.*—

10 (i) *IN GENERAL.*—Except as otherwise
11 provided by this section, no person may ex-
12 ercise any right or power to terminate, ac-
13 celerate, or declare a default under any con-
14 tract to which the covered financial com-
15 pany is a party (and no provision in any
16 such contract providing for such default,
17 termination, or acceleration shall be en-
18 forceable), or to obtain possession of or exer-
19 cise control over any property of the covered
20 financial company or affect any contractual
21 rights of the covered financial company,
22 without the consent of the Corporation as
23 receiver for the covered financial company
24 during the 90 day period beginning from

1 *the appointment of the Corporation as re-*
2 *ceiver.*

3 (ii) *EXCEPTIONS.*—*No provision of this*
4 *subparagraph shall apply to a director or*
5 *officer liability insurance contract or a fi-*
6 *ancial institution bond, to the rights of*
7 *parties to certain qualified financial con-*
8 *tracts pursuant to paragraph (8), or to the*
9 *rights of parties to netting contracts pursu-*
10 *ant to subtitle A of title IV of the Federal*
11 *Deposit Insurance Corporation Improve-*
12 *ment Act of 1991 (12 U.S.C. 4401 et seq.),*
13 *or shall be construed as permitting the Cor-*
14 *poration as receiver to fail to comply with*
15 *otherwise enforceable provisions of such con-*
16 *tract.*

17 (D) *CONTRACTS TO EXTEND CREDIT.*—*Not-*
18 *withstanding any other provision in this title, if*
19 *the Corporation as receiver enforces any contract*
20 *to extend credit to the covered financial company*
21 *or bridge financial company, any valid and en-*
22 *forceable obligation to repay such debt shall be*
23 *paid by the Corporation as receiver, as an ad-*
24 *ministrative expense of the receivership.*

1 (14) *EXCEPTION FOR FEDERAL RESERVE BANKS*
2 *AND CORPORATION SECURITY INTEREST.*—*No provi-*
3 *sion of this subsection shall apply with respect to—*

4 (A) *any extension of credit from any Fed-*
5 *eral reserve bank or the Corporation to any cov-*
6 *ered financial company; or*

7 (B) *any security interest in the assets of the*
8 *covered financial company securing any such ex-*
9 *tension of credit.*

10 (15) *SAVINGS CLAUSE.*—*The meanings of terms*
11 *used in this subsection are applicable for purposes of*
12 *this subsection only, and shall not be construed or ap-*
13 *plied so as to challenge or affect the characterization,*
14 *definition, or treatment of any similar terms under*
15 *any other statute, regulation, or rule, including the*
16 *Gramm-Leach-Bliley Act, the Legal Certainty for*
17 *Bank Products Act of 2000, the securities laws (as*
18 *that term is defined in section 3(a)(47) of the Securi-*
19 *ties Exchange Act of 1934), and the Commodity Ex-*
20 *change Act.*

21 (16) *ENFORCEMENT OF CONTRACTS GUARANTEED*
22 *BY THE COVERED FINANCIAL COMPANY.*—

23 (A) *IN GENERAL.*—*The Corporation, as re-*
24 *ceiver for a covered financial company or as re-*
25 *ceiver for a subsidiary of a covered financial*

1 *company (including an insured depository insti-*
2 *tution) shall have the power to enforce contracts*
3 *of subsidiaries or affiliates of the covered finan-*
4 *cial company, the obligations under which are*
5 *guaranteed or otherwise supported by or linked*
6 *to the covered financial company, notwith-*
7 *standing any contractual right to cause the ter-*
8 *mination, liquidation, or acceleration of such*
9 *contracts based solely on the insolvency, finan-*
10 *cial condition, or receivership of the covered fi-*
11 *nancial company, if—*

12 *(i) such guaranty or other support and*
13 *all related assets and liabilities are trans-*
14 *ferred to and assumed by a bridge financial*
15 *company or a third party (other than a*
16 *third party for which a conservator, re-*
17 *ceiver, trustee in bankruptcy, or other legal*
18 *custodian has been appointed, or which is*
19 *otherwise the subject of a bankruptcy or in-*
20 *solvent proceeding) within the same period*
21 *of time as the Corporation is entitled to*
22 *transfer the qualified financial contracts of*
23 *such covered financial company; or*

1 (ii) the Corporation, as receiver, other-
2 wise provides adequate protection with re-
3 spect to such obligations.

4 (B) *RULE OF CONSTRUCTION.*—For pur-
5 poses of this paragraph, a bridge financial com-
6 pany shall not be considered to be a third party
7 for which a conservator, receiver, trustee in
8 bankruptcy, or other legal custodian has been ap-
9 pointed, or which is otherwise the subject of a
10 bankruptcy or insolvency proceeding.

11 (d) *VALUATION OF CLAIMS IN DEFAULT.*—

12 (1) *IN GENERAL.*—Notwithstanding any other
13 provision of Federal law or the law of any State, and
14 regardless of the method utilized by the Corporation
15 for a covered financial company, including trans-
16 actions authorized under subsection (h), this sub-
17 section shall govern the rights of the creditors of any
18 such covered financial company.

19 (2) *MAXIMUM LIABILITY.*—The maximum liabil-
20 ity of the Corporation, acting as receiver for a covered
21 financial company or in any other capacity, to any
22 person having a claim against the Corporation as re-
23 ceiver or the covered financial company for which the
24 Corporation is appointed shall equal the amount that
25 such claimant would have received if—

1 (A) *the Corporation had not been appointed*
2 *receiver with respect to the covered financial*
3 *company; and*

4 (B) *the covered financial company had been*
5 *liquidated under chapter 7 of the Bankruptcy*
6 *Code, or any similar provision of State insol-*
7 *veny law applicable to the covered financial*
8 *company.*

9 (3) *SPECIAL PROVISION FOR ORDERLY LIQUIDA-*
10 *TION BY SIPC.—The maximum liability of the Cor-*
11 *poration, acting as receiver or in its corporate capac-*
12 *ity for any covered broker or dealer to any customer*
13 *of such covered broker or dealer, with respect to cus-*
14 *tomers property of such customer, shall be—*

15 (A) *equal to the amount that such customer*
16 *would have received with respect to such cus-*
17 *tomers property in a case initiated by SIPC*
18 *under the Securities Investor Protection Act of*
19 *1970 (15 U.S.C. 78aaa et seq.); and*

20 (B) *determined as of the close of business on*
21 *the date on which the Corporation is appointed*
22 *as receiver.*

23 (4) *ADDITIONAL PAYMENTS AUTHORIZED.—*

24 (A) *IN GENERAL.—Subject to subsection*
25 *(o)(1)(E)(ii), the Corporation, with the approval*

1 *of the Secretary, may make additional payments*
2 *or credit additional amounts to or with respect*
3 *to or for the account of any claimant or category*
4 *of claimants of the covered financial company, if*
5 *the Corporation determines that such payments*
6 *or credits are necessary or appropriate to mini-*
7 *mize losses to the Corporation as receiver from*
8 *the orderly liquidation of the covered financial*
9 *company under this section.*

10 *(B) LIMITATIONS.—*

11 *(i) PROHIBITION.—The Corporation*
12 *shall not make any payments or credit*
13 *amounts to any claimant or category of*
14 *claimants that would result in any claim-*
15 *ant receiving more than the face value*
16 *amount of any claim that is proven to the*
17 *satisfaction of the Corporation.*

18 *(ii) NO OBLIGATION.—Notwithstanding*
19 *any other provision of Federal or State law,*
20 *or the Constitution of any State, the Cor-*
21 *poration shall not be obligated, as a result*
22 *of having made any payment under sub-*
23 *paragraph (A) or credited any amount de-*
24 *scribed in subparagraph (A) to or with re-*
25 *spect to, or for the account, of any claimant*

1 *or category of claimants, to make payments*
2 *to any other claimant or category of claim-*
3 *ants.*

4 (C) *MANNER OF PAYMENT.*—*The Corpora-*
5 *tion may make payments or credit amounts*
6 *under subparagraph (A) directly to the claim-*
7 *ants or may make such payments or credit such*
8 *amounts to a company other than a covered fi-*
9 *nancial company or a bridge financial company*
10 *established with respect thereto in order to in-*
11 *duce such other company to accept liability for*
12 *such claims.*

13 (e) *LIMITATION ON COURT ACTION.*—*Except as pro-*
14 *vided in this title, no court may take any action to restrain*
15 *or affect the exercise of powers or functions of the receiver*
16 *hereunder, and any remedy against the Corporation or re-*
17 *ceiver shall be limited to money damages determined in ac-*
18 *cordance with this title.*

19 (f) *LIABILITY OF DIRECTORS AND OFFICERS.*—

20 (1) *IN GENERAL.*—*A director or officer of a cov-*
21 *ered financial company may be held personally liable*
22 *for monetary damages in any civil action described*
23 *in paragraph (2) by, on behalf of, or at the request*
24 *or direction of the Corporation, which action is pros-*

1 *ecuted wholly or partially for the benefit of the Cor-*
2 *poration—*

3 *(A) acting as receiver for such covered fi-*
4 *nancial company;*

5 *(B) acting based upon a suit, claim, or*
6 *cause of action purchased from, assigned by, or*
7 *otherwise conveyed by the Corporation as re-*
8 *ceiver; or*

9 *(C) acting based upon a suit, claim, or*
10 *cause of action purchased from, assigned by, or*
11 *otherwise conveyed in whole or in part by a cov-*
12 *ered financial company or its affiliate in connec-*
13 *tion with assistance provided under this title.*

14 *(2) ACTIONS COVERED.—Paragraph (1) shall*
15 *apply with respect to actions for gross negligence, in-*
16 *cluding any similar conduct or conduct that dem-*
17 *onstrates a greater disregard of a duty of care (than*
18 *gross negligence) including intentional tortious con-*
19 *duct, as such terms are defined and determined under*
20 *applicable State law.*

21 *(3) SAVINGS CLAUSE.—Nothing in this sub-*
22 *section shall impair or affect any right of the Cor-*
23 *poration under other applicable law.*

24 *(g) DAMAGES.—In any proceeding related to any*
25 *claim against a director, officer, employee, agent, attorney,*

1 *accountant, or appraiser of a covered financial company,*
2 *or any other party employed by or providing services to*
3 *a covered financial company, recoverable damages deter-*
4 *mined to result from the improvident or otherwise improper*
5 *use or investment of any assets of the covered financial com-*
6 *pany shall include principal losses and appropriate inter-*
7 *est.*

8 *(h) BRIDGE FINANCIAL COMPANIES.—*

9 *(1) ORGANIZATION.—*

10 *(A) PURPOSE.—The Corporation, as re-*
11 *ceiver for one or more covered financial compa-*
12 *nies or in anticipation of being appointed re-*
13 *ceiver for one or more covered financial compa-*
14 *nies, may organize one or more bridge financial*
15 *companies in accordance with this subsection.*

16 *(B) AUTHORITIES.—Upon the creation of a*
17 *bridge financial company under subparagraph*
18 *(A) with respect to a covered financial company,*
19 *such bridge financial company may—*

20 *(i) assume such liabilities (including*
21 *liabilities associated with any trust or cus-*
22 *tody business, but excluding any liabilities*
23 *that count as regulatory capital) of such*
24 *covered financial company as the Corpora-*

1 *tion may, in its discretion, determine to be*
2 *appropriate;*

3 *(ii) purchase such assets (including as-*
4 *sets associated with any trust or custody*
5 *business) of such covered financial company*
6 *as the Corporation may, in its discretion,*
7 *determine to be appropriate; and*

8 *(iii) perform any other temporary*
9 *function which the Corporation may, in its*
10 *discretion, prescribe in accordance with this*
11 *section.*

12 (2) *CHARTER AND ESTABLISHMENT.—*

13 (A) *ESTABLISHMENT.—Except as provided*
14 *in subparagraph (H), where the covered finan-*
15 *cial company is a covered broker or dealer, the*
16 *Corporation, as receiver for a covered financial*
17 *company, may grant a Federal charter to and*
18 *approve articles of association for one or more*
19 *bridge financial company or companies, with re-*
20 *spect to such covered financial company which*
21 *shall, by operation of law and immediately upon*
22 *issuance of its charter and approval of its arti-*
23 *cles of association, be established and operate in*
24 *accordance with, and subject to, such charter, ar-*
25 *ticles, and this section.*

1 (B) *MANAGEMENT.*—Upon its establish-
2 ment, a bridge financial company shall be under
3 the management of a board of directors ap-
4 pointed by the Corporation.

5 (C) *ARTICLES OF ASSOCIATION.*—The arti-
6 cles of association and organization certificate of
7 a bridge financial company shall have such
8 terms as the Corporation may provide, and shall
9 be executed by such representatives as the Cor-
10 poration may designate.

11 (D) *TERMS OF CHARTER; RIGHTS AND*
12 *PRIVILEGES.*—Subject to and in accordance with
13 the provisions of this subsection, the Corporation
14 shall—

15 (i) establish the terms of the charter of
16 a bridge financial company and the rights,
17 powers, authorities, and privileges of a
18 bridge financial company granted by the
19 charter or as an incident thereto; and

20 (ii) provide for, and establish the terms
21 and conditions governing, the management
22 (including the bylaws and the number of di-
23 rectors of the board of directors) and oper-
24 ations of the bridge financial company.

1 (E) *TRANSFER OF RIGHTS AND PRIVILEGES*
2 OF COVERED FINANCIAL COMPANY.—

3 (i) *IN GENERAL.*—*Notwithstanding*
4 *any other provision of Federal or State law,*
5 *the Corporation may provide for a bridge*
6 *financial company to succeed to and assume*
7 *any rights, powers, authorities, or privileges*
8 *of the covered financial company with re-*
9 *spect to which the bridge financial company*
10 *was established and, upon such determina-*
11 *tion by the Corporation, the bridge finan-*
12 *cial company shall immediately and by op-*
13 *eration of law succeed to and assume such*
14 *rights, powers, authorities, and privileges.*

15 (ii) *EFFECTIVE WITHOUT APPROVAL.*—
16 *Any succession to or assumption by a*
17 *bridge financial company of rights, powers,*
18 *authorities, or privileges of a covered finan-*
19 *cial company under clause (i) or otherwise*
20 *shall be effective without any further ap-*
21 *proval under Federal or State law, assign-*
22 *ment, or consent with respect thereto.*

23 (F) *CORPORATE GOVERNANCE AND ELEC-*
24 *TION AND DESIGNATION OF BODY OF LAW.*—*To*
25 *the extent permitted by the Corporation and con-*

1 *sistent with this section and any rules, regula-*
2 *tions, or directives issued by the Corporation*
3 *under this section, a bridge financial company*
4 *may elect to follow the corporate governance*
5 *practices and procedures that are applicable to a*
6 *corporation incorporated under the general cor-*
7 *poration law of the State of Delaware, or the*
8 *State of incorporation or organization of the cov-*
9 *ered financial company with respect to which the*
10 *bridge financial company was established, as*
11 *such law may be amended from time to time.*

12 *(G) CAPITAL.—*

13 *(i) CAPITAL NOT REQUIRED.—Notwith-*
14 *standing any other provision of Federal or*
15 *State law, a bridge financial company may,*
16 *if permitted by the Corporation, operate*
17 *without any capital or surplus, or with*
18 *such capital or surplus as the Corporation*
19 *may in its discretion determine to be ap-*
20 *propriate.*

21 *(ii) NO CONTRIBUTION BY THE COR-*
22 *PORATION REQUIRED.—The Corporation is*
23 *not required to pay capital into a bridge fi-*
24 *ancial company or to issue any capital*

1 *stock on behalf of a bridge financial com-*
2 *pany established under this subsection.*

3 *(iii) AUTHORITY.—If the Corporation*
4 *determines that such action is advisable, the*
5 *Corporation may cause capital stock or*
6 *other securities of a bridge financial com-*
7 *pany established with respect to a covered*
8 *financial company to be issued and offered*
9 *for sale in such amounts and on such terms*
10 *and conditions as the Corporation may, in*
11 *its discretion, determine.*

12 *(iv) OPERATING FUNDS IN LIEU OF*
13 *CAPITAL AND IMPLEMENTATION PLAN.—*
14 *Upon the organization of a bridge financial*
15 *company, and thereafter as the Corporation*
16 *may, in its discretion, determine to be nec-*
17 *essary or advisable, the Corporation may*
18 *make available to the bridge financial com-*
19 *pany, subject to the plan described in sub-*
20 *section (n)(11), funds for the operation of*
21 *the bridge financial company in lieu of cap-*
22 *ital.*

23 *(H) BRIDGE BROKERS OR DEALERS.—*

24 *(i) IN GENERAL.—The Corporation, as*
25 *receiver for a covered broker or dealer, may*

1 *approve articles of association for one or*
2 *more bridge financial companies with re-*
3 *spect to such covered broker or dealer, which*
4 *bridge financial company or companies*
5 *shall, by operation of law and immediately*
6 *upon approval of its articles of associa-*
7 *tion—*

8 *(I) be established and deemed reg-*
9 *istered with the Commission under the*
10 *Securities Exchange Act of 1934 and a*
11 *member of SIPC;*

12 *(II) operate in accordance with*
13 *such articles and this section; and*

14 *(III) succeed to any and all reg-*
15 *istrations and memberships of the cov-*
16 *ered financial company with or in any*
17 *self-regulatory organizations.*

18 *(ii) OTHER REQUIREMENTS.—Except*
19 *as provided in clause (i), and notwith-*
20 *standing any other provision of this section,*
21 *the bridge financial company shall be sub-*
22 *ject to the Federal securities laws and all*
23 *requirements with respect to being a mem-*
24 *ber of a self-regulatory organization, unless*
25 *exempted from any such requirements by*

1 *the Commission, as is necessary or appro-*
2 *priate in the public interest or for the pro-*
3 *tection of investors.*

4 (iii) *TREATMENT OF CUSTOMERS.—*
5 *Except as otherwise provided by this title,*
6 *any customer of the covered broker or dealer*
7 *whose account is transferred to a bridge fi-*
8 *ancial company shall have all the rights,*
9 *privileges, and protections under section*
10 *205(f) and under the Securities Investor*
11 *Protection Act of 1970 (15 U.S.C. 78aaa et*
12 *seq.), that such customer would have had if*
13 *the account were not transferred from the*
14 *covered financial company under this sub-*
15 *paragraph.*

16 (iv) *OPERATION OF BRIDGE BROKERS*
17 *OR DEALERS.—Notwithstanding any other*
18 *provision of this title, the Corporation shall*
19 *not operate any bridge financial company*
20 *created by the Corporation under this title*
21 *with respect to a covered broker or dealer in*
22 *such a manner as to adversely affect the*
23 *ability of customers to promptly access their*
24 *customer property in accordance with ap-*
25 *plicable law.*

1 (3) *INTERESTS IN AND ASSETS AND OBLIGATIONS*
2 *OF COVERED FINANCIAL COMPANY.*—*Notwithstanding*
3 *paragraph (1) or (2) or any other provision of law—*

4 (A) *a bridge financial company shall as-*
5 *sume, acquire, or succeed to the assets or liabil-*
6 *ities of a covered financial company (including*
7 *the assets or liabilities associated with any trust*
8 *or custody business) only to the extent that such*
9 *assets or liabilities are transferred by the Cor-*
10 *poration to the bridge financial company in ac-*
11 *cordance with, and subject to the restrictions set*
12 *forth in, paragraph (1)(B); and*

13 (B) *a bridge financial company shall not*
14 *assume, acquire, or succeed to any obligation*
15 *that a covered financial company for which the*
16 *Corporation has been appointed receiver may*
17 *have to any shareholder, member, general part-*
18 *ner, limited partner, or other person with an in-*
19 *terest in the equity of the covered financial com-*
20 *pany that arises as a result of the status of that*
21 *person having an equity claim in the covered fi-*
22 *nancial company.*

23 (4) *BRIDGE FINANCIAL COMPANY TREATED AS*
24 *BEING IN DEFAULT FOR CERTAIN PURPOSES.*—*A*
25 *bridge financial company shall be treated as a cov-*

1 *ered financial company in default at such times and*
2 *for such purposes as the Corporation may, in its dis-*
3 *cretion, determine.*

4 (5) *TRANSFER OF ASSETS AND LIABILITIES.—*

5 (A) *AUTHORITY OF CORPORATION.—The*
6 *Corporation, as receiver for a covered financial*
7 *company, may transfer any assets and liabilities*
8 *of a covered financial company (including any*
9 *assets or liabilities associated with any trust or*
10 *custody business) to one or more bridge financial*
11 *companies, in accordance with and subject to the*
12 *restrictions of paragraph (1).*

13 (B) *SUBSEQUENT TRANSFERS.—At any*
14 *time after the establishment of a bridge financial*
15 *company with respect to a covered financial*
16 *company, the Corporation, as receiver, may*
17 *transfer any assets and liabilities of such covered*
18 *financial company as the Corporation may, in*
19 *its discretion, determine to be appropriate in ac-*
20 *cordance with and subject to the restrictions of*
21 *paragraph (1).*

22 (C) *TREATMENT OF TRUST OR CUSTODY*
23 *BUSINESS.—For purposes of this paragraph, the*
24 *trust or custody business, including fiduciary*
25 *appointments, held by any covered financial*

1 *company is included among its assets and liabil-*
2 *ities.*

3 (D) *EFFECTIVE WITHOUT APPROVAL.—The*
4 *transfer of any assets or liabilities, including*
5 *those associated with any trust or custody busi-*
6 *ness of a covered financial company, to a bridge*
7 *financial company shall be effective without any*
8 *further approval under Federal or State law, as-*
9 *signment, or consent with respect thereto.*

10 (E) *EQUITABLE TREATMENT OF SIMILARLY*
11 *SITUATED CREDITORS.—The Corporation shall*
12 *treat all creditors of a covered financial com-*
13 *pany that are similarly situated under sub-*
14 *section (b)(1), in a similar manner in exercising*
15 *the authority of the Corporation under this sub-*
16 *section to transfer any assets or liabilities of the*
17 *covered financial company to one or more bridge*
18 *financial companies established with respect to*
19 *such covered financial company, except that the*
20 *Corporation may take any action (including*
21 *making payments, subject to subsection*
22 *(o)(1)(D)(ii)) that does not comply with this sub-*
23 *paragraph, if—*

24 (i) *the Corporation determines that*
25 *such action is necessary—*

1 (I) to maximize the value of the
2 assets of the covered financial com-
3 pany;

4 (II) to maximize the present value
5 return from the sale or other disposi-
6 tion of the assets of the covered finan-
7 cial company; or

8 (III) to minimize the amount of
9 any loss realized upon the sale or other
10 disposition of the assets of the covered
11 financial company; and

12 (ii) all creditors that are similarly sit-
13 uated under subsection (b)(1) receive not
14 less than the amount provided under para-
15 graphs (2) and (3) of subsection (d).

16 (F) *LIMITATION ON TRANSFER OF LIABIL-*
17 *ITIES.*—Notwithstanding any other provision of
18 law, the aggregate amount of liabilities of a cov-
19 ered financial company that are transferred to,
20 or assumed by, a bridge financial company from
21 a covered financial company may not exceed the
22 aggregate amount of the assets of the covered fi-
23 nancial company that are transferred to, or pur-
24 chased by, the bridge financial company from the
25 covered financial company.

1 (6) *STAY OF JUDICIAL ACTION.*—*Any judicial ac-*
2 *tion to which a bridge financial company becomes a*
3 *party by virtue of its acquisition of any assets or as-*
4 *sumption of any liabilities of a covered financial*
5 *company shall be stayed from further proceedings for*
6 *a period of not longer than 45 days (or such longer*
7 *period as may be agreed to upon the consent of all*
8 *parties) at the request of the bridge financial com-*
9 *pany.*

10 (7) *AGREEMENTS AGAINST INTEREST OF THE*
11 *BRIDGE FINANCIAL COMPANY.*—*No agreement that*
12 *tends to diminish or defeat the interest of the bridge*
13 *financial company in any asset of a covered financial*
14 *company acquired by the bridge financial company*
15 *shall be valid against the bridge financial company,*
16 *unless such agreement—*

17 (A) *is in writing;*

18 (B) *was executed by an authorized officer or*
19 *representative of the covered financial company*
20 *or confirmed in the ordinary course of business*
21 *by the covered financial company; and*

22 (C) *has been on the official record of the*
23 *company, since the time of its execution, or with*
24 *which, the party claiming under the agreement*
25 *provides documentation of such agreement and*

1 *its authorized execution or confirmation by the*
2 *covered financial company that is acceptable to*
3 *the receiver.*

4 (8) *NO FEDERAL STATUS.*—

5 (A) *AGENCY STATUS.*—*A bridge financial*
6 *company is not an agency, establishment, or in-*
7 *strumentality of the United States.*

8 (B) *EMPLOYEE STATUS.*—*Representatives*
9 *for purposes of paragraph (1)(B), directors, offi-*
10 *cers, employees, or agents of a bridge financial*
11 *company are not, solely by virtue of service in*
12 *any such capacity, officers or employees of the*
13 *United States. Any employee of the Corporation*
14 *or of any Federal instrumentality who serves at*
15 *the request of the Corporation as a representative*
16 *for purposes of paragraph (1)(B), director, offi-*
17 *cer, employee, or agent of a bridge financial*
18 *company shall not—*

19 (i) *solely by virtue of service in any*
20 *such capacity lose any existing status as an*
21 *officer or employee of the United States for*
22 *purposes of title 5, United States Code, or*
23 *any other provision of law; or*

24 (ii) *receive any salary or benefits for*
25 *service in any such capacity with respect to*

1 *a bridge financial company in addition to*
2 *such salary or benefits as are obtained*
3 *through employment with the Corporation*
4 *or such Federal instrumentality.*

5 (9) *FUNDING AUTHORIZED.*—*The Corporation*
6 *may, subject to the plan described in subsection*
7 *(n)(11), provide funding to facilitate any transaction*
8 *described in subparagraph (A), (B), (C), or (D) of*
9 *paragraph (13) with respect to any bridge financial*
10 *company, or facilitate the acquisition by a bridge fi-*
11 *nancial company of any assets, or the assumption of*
12 *any liabilities, of a covered financial company for*
13 *which the Corporation has been appointed receiver.*

14 (10) *EXEMPT TAX STATUS.*—*Notwithstanding*
15 *any other provision of Federal or State law, a bridge*
16 *financial company, its franchise, property, and in-*
17 *come shall be exempt from all taxation now or here-*
18 *after imposed by the United States, by any territory,*
19 *dependency, or possession thereof, or by any State,*
20 *county, municipality, or local taxing authority.*

21 (11) *FEDERAL AGENCY APPROVAL; ANTITRUST*
22 *REVIEW.*—*If a transaction involving the merger or*
23 *sale of a bridge financial company requires approval*
24 *by a Federal agency, the transaction may not be con-*
25 *summated before the 5th calendar day after the date*

1 of approval by the Federal agency responsible for such
2 approval with respect thereto. If, in connection with
3 any such approval a report on competitive factors
4 from the Attorney General is required, the Federal
5 agency responsible for such approval shall promptly
6 notify the Attorney General of the proposed trans-
7 action and the Attorney General shall provide the re-
8 quired report within 10 days of the request. If a noti-
9 fication is required under section 7A of the Clayton
10 Act with respect to such transaction, the required
11 waiting period shall end on the 15th day after the
12 date on which the Attorney General and the Federal
13 Trade Commission receive such notification, unless
14 the waiting period is terminated earlier under section
15 7A(b)(2) of the Clayton Act, or extended under section
16 7A(e)(2) of that Act.

17 (12) *DURATION OF BRIDGE FINANCIAL COM-*
18 *PANY.*—Subject to paragraphs (13) and (14), the sta-
19 tus of a bridge financial company as such shall ter-
20minate at the end of the 2-year period following the
21 date on which it was granted a charter. The Corpora-
22tion may, in its discretion, extend the status of the
23 bridge financial company as such for no more than
24 3 additional 1-year periods.

1 (13) *TERMINATION OF BRIDGE FINANCIAL COM-*
2 *PANY STATUS.*—*The status of any bridge financial*
3 *company as such shall terminate upon the earliest*
4 *of—*

5 (A) *the date of the merger or consolidation*
6 *of the bridge financial company with a company*
7 *that is not a bridge financial company;*

8 (B) *at the election of the Corporation, the*
9 *sale of a majority of the capital stock of the*
10 *bridge financial company to a company other*
11 *than the Corporation and other than another*
12 *bridge financial company;*

13 (C) *the sale of 80 percent, or more, of the*
14 *capital stock of the bridge financial company to*
15 *a person other than the Corporation and other*
16 *than another bridge financial company;*

17 (D) *at the election of the Corporation, either*
18 *the assumption of all or substantially all of the*
19 *liabilities of the bridge financial company by a*
20 *company that is not a bridge financial company,*
21 *or the acquisition of all or substantially all of*
22 *the assets of the bridge financial company by a*
23 *company that is not a bridge financial company,*
24 *or other entity as permitted under applicable*
25 *law; and*

1 (E) the expiration of the period provided in
2 paragraph (12), or the earlier dissolution of the
3 bridge financial company, as provided in para-
4 graph (15).

5 (14) *EFFECT OF TERMINATION EVENTS.*—

6 (A) *MERGER OR CONSOLIDATION.*—A merg-
7 er or consolidation, described in paragraph
8 (12)(A) shall be conducted in accordance with,
9 and shall have the effect provided in, the provi-
10 sions of applicable law. For the purpose of effect-
11 ing such a merger or consolidation, the bridge fi-
12 nancial company shall be treated as a corpora-
13 tion organized under the laws of the State of
14 Delaware (unless the law of another State has
15 been selected by the bridge financial company in
16 accordance with paragraph (2)(F)), and the Cor-
17 poration shall be treated as the sole shareholder
18 thereof, notwithstanding any other provision of
19 State or Federal law.

20 (B) *CHARTER CONVERSION.*—Following the
21 sale of a majority of the capital stock of the
22 bridge financial company, as provided in para-
23 graph (13)(B), the Corporation may amend the
24 charter of the bridge financial company to reflect
25 the termination of the status of the bridge finan-

1 *cial company as such, whereupon the company*
2 *shall have all of the rights, powers, and privi-*
3 *leges under its constituent documents and appli-*
4 *cable Federal or State law. In connection there-*
5 *with, the Corporation may take such steps as*
6 *may be necessary or convenient to reincorporate*
7 *the bridge financial company under the laws of*
8 *a State and, notwithstanding any provisions of*
9 *Federal or State law, such State-chartered cor-*
10 *poration shall be deemed to succeed by operation*
11 *of law to such rights, titles, powers, and interests*
12 *of the bridge financial company as the Corpora-*
13 *tion may provide, with the same effect as if the*
14 *bridge financial company had merged with the*
15 *State-chartered corporation under provisions of*
16 *the corporate laws of such State.*

17 (C) *SALE OF STOCK.—Following the sale of*
18 *80 percent or more of the capital stock of a*
19 *bridge financial company, as provided in para-*
20 *graph (13)(C), the company shall have all of the*
21 *rights, powers, and privileges under its con-*
22 *stituent documents and applicable Federal or*
23 *State law. In connection therewith, the Corpora-*
24 *tion may take such steps as may be necessary or*
25 *convenient to reincorporate the bridge financial*

1 *company under the laws of a State and, notwith-*
2 *standing any provisions of Federal or State law,*
3 *the State-chartered corporation shall be deemed*
4 *to succeed by operation of law to such rights, ti-*
5 *ties, powers and interests of the bridge financial*
6 *company as the Corporation may provide, with*
7 *the same effect as if the bridge financial com-*
8 *pany had merged with the State-chartered cor-*
9 *poration under provisions of the corporate laws*
10 *of such State.*

11 (D) *ASSUMPTION OF LIABILITIES AND SALE*
12 *OF ASSETS.—Following the assumption of all or*
13 *substantially all of the liabilities of the bridge fi-*
14 *nancial company, or the sale of all or substan-*
15 *tially all of the assets of the bridge financial*
16 *company, as provided in paragraph (13)(D), at*
17 *the election of the Corporation, the bridge finan-*
18 *cial company may retain its status as such for*
19 *the period provided in paragraph (12) or may be*
20 *dissolved at the election of the Corporation.*

21 (E) *AMENDMENTS TO CHARTER.—Following*
22 *the consummation of a transaction described in*
23 *subparagraph (A), (B), (C), or (D) of paragraph*
24 *(13), the charter of the resulting company shall*

1 *be amended to reflect the termination of bridge*
2 *financial company status, if appropriate.*

3 (15) *DISSOLUTION OF BRIDGE FINANCIAL COM-*
4 *PANY.—*

5 (A) *IN GENERAL.—Notwithstanding any*
6 *other provision of Federal or State law, if the*
7 *status of a bridge financial company as such has*
8 *not previously been terminated by the occurrence*
9 *of an event specified in subparagraph (A), (B),*
10 *(C), or (D) of paragraph (13)—*

11 *(i) the Corporation may, in its discre-*
12 *tion, dissolve the bridge financial company*
13 *in accordance with this paragraph at any*
14 *time; and*

15 *(ii) the Corporation shall promptly*
16 *commence dissolution proceedings in ac-*
17 *cordance with this paragraph upon the ex-*
18 *piration of the 2-year period following the*
19 *date on which the bridge financial company*
20 *was chartered, or any extension thereof, as*
21 *provided in paragraph (12).*

22 (B) *PROCEDURES.—The Corporation shall*
23 *remain the receiver for a bridge financial com-*
24 *pany for the purpose of dissolving the bridge fi-*
25 *nancial company. The Corporation as receiver*

1 *for a bridge financial company shall wind up*
2 *the affairs of the bridge financial company in*
3 *conformity with the provisions of law relating to*
4 *the liquidation of covered financial companies*
5 *under this title. With respect to any such bridge*
6 *financial company, the Corporation as receiver*
7 *shall have all the rights, powers, and privileges*
8 *and shall perform the duties related to the exer-*
9 *cise of such rights, powers, or privileges granted*
10 *by law to the Corporation as receiver for a cov-*
11 *ered financial company under this title and, not-*
12 *withstanding any other provision of law, in the*
13 *exercise of such rights, powers, and privileges,*
14 *the Corporation shall not be subject to the direc-*
15 *tion or supervision of any State agency or other*
16 *Federal agency.*

17 *(16) AUTHORITY TO OBTAIN CREDIT.—*

18 *(A) IN GENERAL.—A bridge financial com-*
19 *pany may obtain unsecured credit and issue un-*
20 *secured debt.*

21 *(B) INABILITY TO OBTAIN CREDIT.—If a*
22 *bridge financial company is unable to obtain*
23 *unsecured credit or issue unsecured debt, the Cor-*
24 *poration may authorize the obtaining of credit*

1 *or the issuance of debt by the bridge financial*
2 *company—*

3 *(i) with priority over any or all of the*
4 *obligations of the bridge financial company;*

5 *(ii) secured by a lien on property of*
6 *the bridge financial company that is not*
7 *otherwise subject to a lien; or*

8 *(iii) secured by a junior lien on prop-*
9 *erty of the bridge financial company that is*
10 *subject to a lien.*

11 (C) *LIMITATIONS.—*

12 *(i) IN GENERAL.—The Corporation,*
13 *after notice and a hearing, may authorize*
14 *the obtaining of credit or the issuance of*
15 *debt by a bridge financial company that is*
16 *secured by a senior or equal lien on prop-*
17 *erty of the bridge financial company that is*
18 *subject to a lien, only if—*

19 *(I) the bridge financial company*
20 *is unable to otherwise obtain such cred-*
21 *it or issue such debt; and*

22 *(II) there is adequate protection of*
23 *the interest of the holder of the lien on*
24 *the property with respect to which such*

1 *senior or equal lien is proposed to be*
2 *granted.*

3 (ii) *HEARING.*—*The hearing required*
4 *pursuant to this subparagraph shall be be-*
5 *fore a court of the United States, which*
6 *shall have jurisdiction to conduct such hear-*
7 *ing.*

8 (D) *BURDEN OF PROOF.*—*In any hearing*
9 *under this paragraph, the Corporation has the*
10 *burden of proof on the issue of adequate protec-*
11 *tion.*

12 (E) *QUALIFIED FINANCIAL CONTRACTS.*—*No*
13 *credit or debt obtained or issued by a bridge fi-*
14 *ancial company may contain terms that im-*
15 *pair the rights of a counterparty to a qualified*
16 *financial contract upon a default by the bridge*
17 *financial company, other than the priority of*
18 *such counterparty's unsecured claim (after the*
19 *exercise of rights) relative to the priority of the*
20 *bridge financial company's obligations in respect*
21 *of such credit or debt, unless such counterparty*
22 *consents in writing to any such impairment.*

23 (17) *EFFECT ON DEBTS AND LIENS.*—*The rever-*
24 *sal or modification on appeal of an authorization*
25 *under this subsection to obtain credit or issue debt, or*

1 *of a grant under this section of a priority or a lien,*
2 *does not affect the validity of any debt so issued, or*
3 *any priority or lien so granted, to an entity that ex-*
4 *tended such credit in good faith, whether or not such*
5 *entity knew of the pendency of the appeal, unless such*
6 *authorization and the issuance of such debt, or the*
7 *granting of such priority or lien, were stayed pending*
8 *appeal.*

9 *(i) SHARING RECORDS.—If the Corporation has been*
10 *appointed as receiver for a covered financial company,*
11 *other Federal regulators shall make all records relating to*
12 *the covered financial company available to the Corporation,*
13 *which may be used by the Corporation in any manner that*
14 *the Corporation determines to be appropriate.*

15 *(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—*

16 *(1) TIME FOR FILING NOTICE OF APPEAL.—The*
17 *notice of appeal of any order, whether interlocutory*
18 *or final, entered in any case brought by the Corpora-*
19 *tion against a director, officer, employee, agent, attor-*
20 *ney, accountant, or appraiser of the covered financial*
21 *company, or any other person employed by or pro-*
22 *viding services to a covered financial company, shall*
23 *be filed not later than 30 days after the date of entry*
24 *of the order. The hearing of the appeal shall be held*
25 *not later than 120 days after the date of the notice*

1 of appeal. The appeal shall be decided not later than
2 180 days after the date of the notice of appeal.

3 (2) *SCHEDULING.*—The court shall expedite the
4 consideration of any case brought by the Corporation
5 against a director, officer, employee, agent, attorney,
6 accountant, or appraiser of a covered financial com-
7 pany or any other person employed by or providing
8 services to a covered financial company. As far as
9 practicable, the court shall give such case priority on
10 its docket.

11 (3) *JUDICIAL DISCRETION.*—The court may mod-
12 ify the schedule and limitations stated in paragraphs
13 (1) and (2) in a particular case, based on a specific
14 finding that the ends of justice that would be served
15 by making such a modification would outweigh the
16 best interest of the public in having the case resolved
17 expeditiously.

18 (k) *FOREIGN INVESTIGATIONS.*—The Corporation, as
19 receiver for any covered financial company, and for pur-
20 poses of carrying out any power, authority, or duty with
21 respect to a covered financial company—

22 (1) may request the assistance of any foreign fi-
23 nancial authority and provide assistance to any for-
24 eign financial authority in accordance with section
25 8(v) of the Federal Deposit Insurance Act, as if the

1 covered financial company were an insured deposi-
2 tory institution, the Corporation were the appropriate
3 Federal banking agency for the company, and any
4 foreign financial authority were the foreign banking
5 authority; and

6 (2) may maintain an office to coordinate foreign
7 investigations or investigations on behalf of foreign fi-
8 nancial authorities.

9 (l) *PROHIBITION ON ENTERING SECRECY AGREE-*
10 *MENTS AND PROTECTIVE ORDERS.*—The Corporation may
11 not enter into any agreement or approve any protective
12 order which prohibits the Corporation from disclosing the
13 terms of any settlement of an administrative or other action
14 for damages or restitution brought by the Corporation in
15 its capacity as receiver for a covered financial company.

16 (m) *LIQUIDATION OF CERTAIN COVERED FINANCIAL*
17 *COMPANIES OR BRIDGE FINANCIAL COMPANIES.*—

18 (1) *IN GENERAL.*—Except as specifically pro-
19 vided in this section, and notwithstanding any other
20 provision of law, the Corporation, in connection with
21 the liquidation of any covered financial company or
22 bridge financial company with respect to which the
23 Corporation has been appointed as receiver, shall—

24 (A) in the case of any covered financial
25 company or bridge financial company that is or

1 *has a subsidiary that is a stockbroker, but is not*
2 *a member of the Securities Investor Protection*
3 *Corporation, apply the provisions of subchapter*
4 *III of chapter 7 of the Bankruptcy Code, in re-*
5 *spect of the distribution to any customer of all*
6 *customer name securities and customer property,*
7 *as if such covered financial company or bridge*
8 *financial company were a debtor for purposes of*
9 *such subchapter; or*

10 *(B) in the case of any covered financial*
11 *company or bridge financial company that is a*
12 *commodity broker, apply the provisions of sub-*
13 *chapter IV of chapter 7 the Bankruptcy Code, in*
14 *respect of the distribution to any customer of all*
15 *customer property, as if such covered financial*
16 *company or bridge financial company were a*
17 *debtor for purposes of such subchapter.*

18 *(2) DEFINITIONS.—For purposes of this sub-*
19 *section—*

20 *(A) the terms “customer”, “customer name*
21 *securities”, and “customer property” have the*
22 *same meanings as in section 741 of title 11,*
23 *United States Code; and*

1 (B) the terms “commodity broker” and
2 “stockbroker” have the same meanings as in sec-
3 tion 101 of the Bankruptcy Code.

4 (n) *ORDERLY LIQUIDATION FUND.*—

5 (1) *ESTABLISHMENT.*—*There is established in*
6 *the Treasury of the United States a separate fund to*
7 *be known as the “Orderly Liquidation Fund”, which*
8 *shall be available to the Corporation to carry out the*
9 *authorities contained in this title, for the cost of ac-*
10 *tions authorized by this title, including the orderly*
11 *liquidation of covered financial companies, payment*
12 *of administrative expenses, the payment of principal*
13 *and interest by the Corporation on obligations issued*
14 *under paragraph (6), and the exercise of the authori-*
15 *ties of the Corporation under this title.*

16 (2) *PROCEEDS.*—*Amounts received by the Cor-*
17 *poration, including assessments received under sub-*
18 *section (o), proceeds of obligations issued under para-*
19 *graph (6), interest and other earnings from invest-*
20 *ments, and repayments to the Corporation by covered*
21 *financial companies, shall be deposited into the Fund.*

22 (3) *MANAGEMENT.*—*The Corporation shall man-*
23 *age the Fund in accordance with this subsection and*
24 *the policies and procedures established under section*
25 *203(d).*

1 (4) *INVESTMENTS.*—*At the request of the Cor-*
2 *poration, the Secretary may invest such portion of*
3 *amounts held in the Fund that are not, in the judg-*
4 *ment of the Corporation, required to meet the current*
5 *needs of the Corporation, in obligations of the United*
6 *States having suitable maturities, as determined by*
7 *the Corporation. The interest on and the proceeds*
8 *from the sale or redemption of such obligations shall*
9 *be credited to the Fund.*

10 (5) *AUTHORITY TO ISSUE OBLIGATIONS.*—

11 (A) *CORPORATION AUTHORIZED TO ISSUE*
12 *OBLIGATIONS.*—*Upon appointment by the Sec-*
13 *retary of the Corporation as receiver for a cov-*
14 *ered financial company, the Corporation is au-*
15 *thorized to issue obligations to the Secretary.*

16 (B) *SECRETARY AUTHORIZED TO PURCHASE*
17 *OBLIGATIONS.*—*The Secretary may, under such*
18 *terms and conditions as the Secretary may re-*
19 *quire, purchase or agree to purchase any obliga-*
20 *tions issued under subparagraph (A), and for*
21 *such purpose, the Secretary is authorized to use*
22 *as a public debt transaction the proceeds of the*
23 *sale of any securities issued under chapter 31 of*
24 *title 31, United States Code, and the purposes*
25 *for which securities may be issued under chapter*

1 31 of title 31, United States Code, are extended
2 to include such purchases.

3 (C) *INTEREST RATE.*—Each purchase of ob-
4 ligations by the Secretary under this paragraph
5 shall be upon such terms and conditions as to
6 yield a return at a rate determined by the Sec-
7 retary, taking into consideration the current av-
8 erage yield on outstanding marketable obliga-
9 tions of the United States of comparable matu-
10 rity, plus an interest rate surcharge to be deter-
11 mined by the Secretary, which shall be greater
12 than the difference between—

13 (i) the current average rate on an
14 index of corporate obligations of comparable
15 maturity; and

16 (ii) the current average rate on out-
17 standing marketable obligations of the
18 United States of comparable maturity.

19 (D) *SECRETARY AUTHORIZED TO SELL OB-*
20 *LIGATIONS.*—The Secretary may sell, upon such
21 terms and conditions as the Secretary shall de-
22 termine, any of the obligations acquired under
23 this paragraph.

24 (E) *PUBLIC DEBT TRANSACTIONS.*—All pur-
25 chases and sales by the Secretary of such obliga-

1 *tions under this paragraph shall be treated as*
2 *public debt transactions of the United States,*
3 *and the proceeds from the sale of any obligations*
4 *acquired by the Secretary under this paragraph*
5 *shall be deposited into the Treasury of the*
6 *United States as miscellaneous receipts.*

7 (6) *MAXIMUM OBLIGATION LIMITATION.—The*
8 *Corporation may not, in connection with the orderly*
9 *liquidation of a covered financial company, issue or*
10 *incur any obligation, if, after issuing or incurring the*
11 *obligation, the aggregate amount of such obligations*
12 *outstanding under this subsection for each covered fi-*
13 *ancial company would exceed—*

14 (A) *an amount that is equal to 10 percent*
15 *of the total consolidated assets of the covered fi-*
16 *ancial company, based on the most recent fi-*
17 *ancial statement available, during the 30-day*
18 *period immediately following the date of ap-*
19 *pointment of the Corporation as receiver (or a*
20 *shorter time period if the Corporation has cal-*
21 *culated the amount described under subpara-*
22 *graph (B)); and*

23 (B) *the amount that is equal to 90 percent*
24 *of the fair value of the total consolidated assets*
25 *of each covered financial company that are*

1 *available for repayment, after the time period*
2 *described in subparagraph (A).*

3 (7) *RULEMAKING.—The Corporation and the*
4 *Secretary shall jointly, in consultation with the*
5 *Council, prescribe regulations governing the calcula-*
6 *tion of the maximum obligation limitation defined in*
7 *this paragraph.*

8 (8) *RULE OF CONSTRUCTION.—*

9 (A) *IN GENERAL.—Nothing in this section*
10 *shall be construed to affect the authority of the*
11 *Corporation under subsection (a) or (b) of sec-*
12 *tion 14 or section 15(c)(5) of the Federal Deposit*
13 *Insurance Act (12 U.S.C. 1824, 1825(c)(5)), the*
14 *management of the Deposit Insurance Fund by*
15 *the Corporation, or the resolution of insured de-*
16 *pository institutions, provided that—*

17 (i) *the authorities of the Corporation*
18 *contained in this title shall not be used to*
19 *assist the Deposit Insurance Fund or to as-*
20 *assist any financial company under applica-*
21 *ble law other than this Act;*

22 (ii) *the authorities of the Corporation*
23 *relating to the Deposit Insurance Fund, or*
24 *any other responsibilities of the Corporation*
25 *under applicable law other than this title,*

1 *shall not be used to assist a covered finan-*
2 *cial company pursuant to this title; and*

3 *(iii) the Deposit Insurance Fund may*
4 *not be used in any manner to otherwise cir-*
5 *cumvent the purposes of this title.*

6 (B) *VALUATION.—For purposes of deter-*
7 *mining the amount of obligations under this sub-*
8 *section—*

9 *(i) the Corporation shall include as an*
10 *obligation any contingent liability of the*
11 *Corporation pursuant to this title; and*

12 *(ii) the Corporation shall value any*
13 *contingent liability at its expected cost to*
14 *the Corporation.*

15 (9) *ORDERLY LIQUIDATION PLAN.—Amounts in*
16 *the Fund shall be available to the Corporation with*
17 *regard to a covered financial company for which the*
18 *Corporation is appointed receiver after the Corpora-*
19 *tion has developed an orderly liquidation plan that is*
20 *acceptable to the Secretary with regard to such cov-*
21 *ered financial company, including the provision and*
22 *use of funds, including taking any actions specified*
23 *under section 204(d) and subsection (h)(2)(G)(iv) and*
24 *(h)(9) of this section, and payments to third parties.*
25 *The Corporation may, at any time, amend any or-*

1 *derly liquidation plan approved by the Secretary*
2 *with the concurrence of the Secretary.*

3 *(10) IMPLEMENTATION EXPENSES.—*

4 *(A) IN GENERAL.—Reasonable implementa-*
5 *tion expenses of the Corporation incurred after*
6 *the date of enactment of this Act shall be treated*
7 *as expenses of the Council.*

8 *(B) REQUESTS FOR REIMBURSEMENT.—The*
9 *Corporation shall periodically submit a request*
10 *for reimbursement for implementation expenses*
11 *to the Chairperson of the Council, who shall ar-*
12 *range for prompt reimbursement to the Corpora-*
13 *tion of reasonable implementation expenses.*

14 *(C) DEFINITION.—As used in this para-*
15 *graph, the term “implementation expenses”—*

16 *(i) means costs incurred by the Cor-*
17 *poration beginning on the date of enactment*
18 *of this Act, as part of its efforts to imple-*
19 *ment this title that do not relate to a par-*
20 *ticular covered financial company; and*

21 *(ii) includes the costs incurred in con-*
22 *nection with the development of policies,*
23 *procedures, rules, and regulations and other*
24 *planning activities of the Corporation con-*
25 *sistent with carrying out this title.*

1 (o) *ASSESSMENTS.*—

2 (1) *RISK-BASED ASSESSMENTS.*—

3 (A) *ELIGIBLE FINANCIAL COMPANIES DE-*
4 *FINED.*—*For purposes of this subsection, the*
5 *term “eligible financial company” means any*
6 *bank holding company with total consolidated*
7 *assets equal to or greater than \$50,000,000,000*
8 *and any nonbank financial company supervised*
9 *by the Board of Governors.*

10 (B) *ASSESSMENTS.*—*The Corporation shall*
11 *charge one or more risk-based assessments in ac-*
12 *cordance with the provisions of subparagraph*
13 *(D), if such assessments are necessary to pay in*
14 *full the obligations issued by the Corporation to*
15 *the Secretary within 60 months of the date of*
16 *issuance of such obligations.*

17 (C) *EXTENSIONS AUTHORIZED.*—*The Cor-*
18 *poration may, with the approval of the Sec-*
19 *retary, extend the time period under subpara-*
20 *graph (C)(iii), if the Corporation determines*
21 *that an extension is necessary to avoid a serious*
22 *adverse effect on the financial system of the*
23 *United States.*

1 (D) *APPLICATION OF ASSESSMENTS.*—*To*
2 *meet the requirements of subparagraph (C), the*
3 *Corporation shall—*

4 (i) *impose assessments, as soon as*
5 *practicable, on any claimant that received*
6 *additional payments or amounts from the*
7 *Corporation pursuant to subsection (b)(4),*
8 *(d)(4), or (h)(5)(E), except for payments or*
9 *amounts necessary to initiate and continue*
10 *operations essential to implementation of*
11 *the receivership or any bridge financial*
12 *company, to recover on a cumulative basis,*
13 *the entire difference between—*

14 (I) *the aggregate value the claim-*
15 *ant received from the Corporation on a*
16 *claim pursuant to this title (including*
17 *pursuant to subsection (b)(4), (d)(4),*
18 *and (h)(5)(E)), as of the date on which*
19 *such value was received; and*

20 (II) *the value the claimant was*
21 *entitled to receive from the Corporation*
22 *on such claim solely from the proceeds*
23 *of the liquidation of the covered finan-*
24 *cial company under this title; and*

1 (ii) if the amounts to be recovered on
2 a cumulative basis under clause (i) are in-
3 sufficient to meet the requirements of sub-
4 paragraph (C), after taking into account
5 the considerations set forth in paragraph
6 (4), impose assessments on—

7 (I) eligible financial companies;

8 and

9 (II) financial companies with
10 total consolidated assets equal to or
11 greater than \$50,000,000,000 that are
12 not eligible financial companies.

13 (E) *PROVISION OF FINANCING.*—Payments
14 or amounts necessary to initiate and continue
15 operations essential to implementation of the re-
16 ceivership or any bridge financial company de-
17 scribed in subparagraph (E)(i) shall not include
18 the provision of financing, as defined by rule of
19 the Corporation, to third parties.

20 (2) *GRADUATED ASSESSMENT RATE.*—The Cor-
21 poration shall impose assessments on a graduated
22 basis, with financial companies having greater assets
23 being assessed at a higher rate.

24 (3) *NOTIFICATION AND PAYMENT.*—The Corpora-
25 tion shall notify each financial company of that com-

1 pany's assessment under this subsection. Any finan-
2 cial company subject to assessment under this sub-
3 section shall pay such assessment in accordance with
4 the regulations prescribed pursuant to paragraph (6).

5 (4) *RISK-BASED ASSESSMENT CONSIDER-*
6 *ATIONS.—In imposing assessments under this sub-*
7 *section, the Corporation shall—*

8 (A) *take into account economic conditions*
9 *generally affecting financial companies, so as to*
10 *allow assessments to be lower during less favor-*
11 *able economic conditions;*

12 (B) *take into account any assessments im-*
13 *posed on—*

14 (i) *an insured depository institution*
15 *subsidiary of a financial company pursuant*
16 *to section 7 or section 13(c)(4)(G) of the*
17 *Federal Deposit Insurance Act (12 U.S.C.*
18 *1817, 1823(c)(4)(G));*

19 (ii) *a financial company or subsidiary*
20 *of such company that is a member of SIPC*
21 *pursuant to section 4 of the Securities In-*
22 *vestor Protection Act of 1970 (15 U.S.C.*
23 *78ddd); and*

24 (iii) *a financial company or sub-*
25 *subsidiary of such company that is an insur-*

1 *ance company pursuant to applicable State*
2 *law to cover (or reimburse payments made*
3 *to cover) the costs of rehabilitation, liquida-*
4 *tion, or other State insolvency proceeding*
5 *with respect to one or more insurance com-*
6 *panies;*

7 *(C) take into account the financial condi-*
8 *tion of the financial company, including the ex-*
9 *tent and type of off-balance-sheet exposures of the*
10 *financial company;*

11 *(D) take into account the risks presented by*
12 *the financial company to the financial stability*
13 *of the United States economy;*

14 *(E) take into account the extent to which*
15 *the financial company or group of financial*
16 *companies has benefitted, or likely would benefit,*
17 *from the orderly liquidation of a covered finan-*
18 *cial company and the use of the Fund under this*
19 *title;*

20 *(F) distinguish among different classes of*
21 *assets or different types of financial companies*
22 *(including distinguishing among different types*
23 *of financial companies, based on their levels of*
24 *capital and leverage) in order to establish com-*

1 *parable assessment bases among financial com-*
2 *panies subject to this subsection;*

3 *(G) establish the parameters for the grad-*
4 *uated assessment requirement in paragraph (2);*
5 *and*

6 *(H) take into account such other factors as*
7 *the Corporation, in consultation with the Sec-*
8 *retary, deems appropriate.*

9 *(5) COLLECTION OF INFORMATION.—The Cor-*
10 *poration may impose on covered financial companies*
11 *such collection of information requirements as the*
12 *Corporation deems necessary to carry out this sub-*
13 *section after the appointment of the Corporation as*
14 *receiver under this title.*

15 *(6) RULEMAKING.—*

16 *(A) IN GENERAL.—The Corporation shall*
17 *prescribe regulations to carry out this subsection.*
18 *The Corporation shall consult with the Secretary*
19 *in the development and finalization of such regu-*
20 *lations.*

21 *(B) EQUITABLE TREATMENT.—The regula-*
22 *tions prescribed under subparagraph (A) shall*
23 *take into account the differences in risks posed to*
24 *the financial stability of the United States by fi-*
25 *nancial companies, the differences in the liabil-*

1 *ity structures of financial companies, and the*
2 *different bases for other assessments that such fi-*
3 *nancial companies may be required to pay, to*
4 *ensure that assessed financial companies are*
5 *treated equitably and that assessments under this*
6 *subsection reflect such differences.*

7

(p) *UNENFORCEABILITY OF CERTAIN AGREEMENTS.—*

8 (1) *IN GENERAL.—No provision described in*
9 *paragraph (2) shall be enforceable against or impose*
10 *any liability on any person, as such enforcement or*
11 *liability shall be contrary to public policy.*

12 (2) *PROHIBITED PROVISIONS.—A provision de-*
13 *scribed in this paragraph is any term contained in*
14 *any existing or future standstill, confidentiality, or*
15 *other agreement that, directly or indirectly—*

16 (A) *affects, restricts, or limits the ability of*
17 *any person to offer to acquire or acquire;*

18 (B) *prohibits any person from offering to*
19 *acquire or acquiring; or*

20 (C) *prohibits any person from using any*
21 *previously disclosed information in connection*
22 *with any such offer to acquire or acquisition of,*
23 *all or part of any covered financial company, includ-*
24 *ing any liabilities, assets, or interest therein, in con-*

1 *nection with any transaction in which the Corpora-*
2 *tion exercises its authority under this title.*

3 *(q) OTHER EXEMPTIONS.—*

4 *(1) IN GENERAL.—When acting as a receiver*
5 *under this title—*

6 *(A) the Corporation, including its franchise,*
7 *its capital, reserves and surplus, and its income,*
8 *shall be exempt from all taxation imposed by*
9 *any State, county, municipality, or local taxing*
10 *authority, except that any real property of the*
11 *Corporation shall be subject to State, territorial,*
12 *county, municipal, or local taxation to the same*
13 *extent according to its value as other real prop-*
14 *erty is taxed, except that, notwithstanding the*
15 *failure of any person to challenge an assessment*
16 *under State law of the value of such property,*
17 *such value, and the tax thereon, shall be deter-*
18 *mined as of the period for which such tax is im-*
19 *posed;*

20 *(B) no property of the Corporation shall be*
21 *subject to levy, attachment, garnishment, fore-*
22 *closure, or sale without the consent of the Cor-*
23 *poration, nor shall any involuntary lien attach*
24 *to the property of the Corporation; and*

1 (C) *the Corporation shall not be liable for*
2 *any amounts in the nature of penalties or fines,*
3 *including those arising from the failure of any*
4 *person to pay any real property, personal prop-*
5 *erty, probate, or recording tax or any recording*
6 *or filing fees when due; and*

7 (D) *the Corporation shall be exempt from*
8 *all prosecution by the United States or any*
9 *State, county, municipality, or local authority*
10 *for any criminal offense arising under Federal,*
11 *State, county, municipal, or local law, which*
12 *was allegedly committed by the covered financial*
13 *company, or persons acting on behalf of the cov-*
14 *ered financial company, prior to the appoint-*
15 *ment of the Corporation as receiver.*

16 (2) *LIMITATION.—Paragraph (1) shall not apply*
17 *with respect to any tax imposed (or other amount*
18 *arising) under the Internal Revenue Code of 1986.*

19 (r) *CERTAIN SALES OF ASSETS PROHIBITED.—*

20 (1) *PERSONS WHO ENGAGED IN IMPROPER CON-*
21 *DUCT WITH, OR CAUSED LOSSES TO, COVERED FINAN-*
22 *CIAL COMPANIES.—The Corporation shall prescribe*
23 *regulations which, at a minimum, shall prohibit the*
24 *sale of assets of a covered financial company by the*
25 *Corporation to—*

1 (A) *any person who—*

2 (i) *has defaulted, or was a member of*
3 *a partnership or an officer or director of a*
4 *corporation that has defaulted, on 1 or more*
5 *obligations, the aggregate amount of which*
6 *exceeds \$1,000,000, to such covered finan-*
7 *cial company;*

8 (ii) *has been found to have engaged in*
9 *fraudulent activity in connection with any*
10 *obligation referred to in clause (i); and*

11 (iii) *proposes to purchase any such*
12 *asset in whole or in part through the use of*
13 *the proceeds of a loan or advance of credit*
14 *from the Corporation or from any covered*
15 *financial company;*

16 (B) *any person who participated, as an of-*
17 *ficer or director of such covered financial com-*
18 *pany or of any affiliate of such company, in a*
19 *material way in any transaction that resulted in*
20 *a substantial loss to such covered financial com-*
21 *pany; or*

22 (C) *any person who has demonstrated a*
23 *pattern or practice of defalcation regarding obli-*
24 *gations to such covered financial company.*

1 (2) *CONVICTED DEBTORS.*—*Except as provided*
2 *in paragraph (3), a person may not purchase any*
3 *asset of such institution from the receiver, if that per-*
4 *son—*

5 *(A) has been convicted of an offense under*
6 *section 215, 656, 657, 1005, 1006, 1007, 1008,*
7 *1014, 1032, 1341, 1343, or 1344 of title 18,*
8 *United States Code, or of conspiring to commit*
9 *such an offense, affecting any covered financial*
10 *company; and*

11 *(B) is in default on any loan or other exten-*
12 *sion of credit from such covered financial com-*
13 *pany which, if not paid, will cause substantial*
14 *loss to the Fund or the Corporation.*

15 (3) *SETTLEMENT OF CLAIMS.*—*Paragraphs (1)*
16 *and (2) shall not apply to the sale or transfer by the*
17 *Corporation of any asset of any covered financial*
18 *company to any person, if the sale or transfer of the*
19 *asset resolves or settles, or is part of the resolution or*
20 *settlement, of 1 or more claims that have been, or*
21 *could have been, asserted by the Corporation against*
22 *the person.*

23 (4) *DEFINITION OF DEFAULT.*—*For purposes of*
24 *this subsection, the term “default” means a failure to*
25 *comply with the terms of a loan or other obligation*

1 *to such an extent that the property securing the obli-*
2 *gation is foreclosed upon.*

3 *(s) RECOUPMENT OF COMPENSATION FROM SENIOR*
4 *EXECUTIVES AND DIRECTORS.—*

5 *(1) IN GENERAL.—The Corporation, as receiver*
6 *of a covered financial company, may recover from*
7 *any current or former senior executive or director*
8 *substantially responsible for the failed condition of the*
9 *covered financial company any compensation received*
10 *during the 2-year period preceding the date on which*
11 *the Corporation was appointed as the receiver of the*
12 *covered financial company, except that, in the case of*
13 *fraud, no time limit shall apply.*

14 *(2) COST CONSIDERATIONS.—In seeking to re-*
15 *cover any such compensation, the Corporation shall*
16 *weigh the financial and deterrent benefits of such re-*
17 *covery against the cost of executing the recovery.*

18 *(3) RULEMAKING.—The Corporation shall pro-*
19 *mulgate regulations to implement the requirements of*
20 *this subsection, including defining the term “com-*
21 *ensation” to mean any financial remuneration, in-*
22 *cluding salary, bonuses, incentives, benefits, severance,*
23 *deferred compensation, or golden parachute benefits,*
24 *and any profits realized from the sale of the securities*
25 *of the covered financial company.*

1 **SEC. 211. MISCELLANEOUS PROVISIONS.**

2 (a) *CLARIFICATION OF PROHIBITION REGARDING CON-*
3 *CEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING*
4 *AGENT.*—Section 1032(1) of title 18, United States Code,
5 is amended by inserting “the Federal Deposit Insurance
6 Corporation acting as receiver for a covered financial com-
7 pany, in accordance with title II of the Restoring American
8 Financial Stability Act of 2010,” before “or the National
9 Credit”.

10 (b) *CONFORMING AMENDMENT.*—Section 1032 of title
11 18, United States Code, is amended in the section heading,
12 by striking “**of financial institution**”.

13 (c) *FEDERAL DEPOSIT INSURANCE CORPORATION IM-*
14 *PROVEMENT ACT OF 1991.*—Section 403(a) of the Federal
15 Deposit Insurance Corporation Improvement Act of 1991
16 (12 U.S.C. 4403(a)) is amended by inserting “section
17 210(c) of the Restoring American Financial Stability Act
18 of 2010, section 1367 of the Federal Housing Enterprises
19 Financial Safety and Soundness Act of 1992 (12 U.S.C.
20 4617(d)),” after “section 11(e) of the Federal Deposit Insur-
21 ance Act,”.

22 (d) *FDIC INSPECTOR GENERAL REVIEWS.*—

23 (1) *SCOPE.*—The Inspector General of the Cor-
24 poration shall conduct, supervise, and coordinate au-
25 dits and investigations of the liquidation of any cov-
26 ered financial company by the Corporation as re-

1 *ceiver under this title, including collecting and sum-*
2 *marizing—*

3 *(A) a description of actions taken by the*
4 *Corporation as receiver;*

5 *(B) a description of any material sales,*
6 *transfers, mergers, obligations, purchases, and*
7 *other material transactions entered into by the*
8 *Corporation;*

9 *(C) an evaluation of the adequacy of the*
10 *policies and procedures of the Corporation under*
11 *section 203(d) and orderly liquidation plan*
12 *under section 210(n)(14);*

13 *(D) an evaluation of the utilization by the*
14 *Corporation of the private sector in carrying out*
15 *its functions, including the adequacy of any con-*
16 *flict-of-interest reviews; and*

17 *(E) an evaluation of the overall perform-*
18 *ance of the Corporation in liquidating the cov-*
19 *ered financial company, including administra-*
20 *tive costs, timeliness of liquidation process, and*
21 *impact on the financial system.*

22 *(2) FREQUENCY.—Not later than 6 months after*
23 *the date of appointment of the Corporation as receiver*
24 *under this title and every 6 months thereafter, the In-*

1 *Inspector General of the Corporation shall conduct the*
2 *audit and investigation described in paragraph (1).*

3 (3) *REPORTS AND TESTIMONY.—The Inspector*
4 *General of the Corporation shall include in the semi-*
5 *annual reports required by section 5(a) of the Inspec-*
6 *tor General Act of 1978 (5 U.S.C. App.), a summary*
7 *of the findings and evaluations under paragraph (1),*
8 *and shall appear before the appropriate committees of*
9 *Congress, if requested, to present each such report.*

10 (4) *FUNDING.—*

11 (A) *INITIAL FUNDING.—The expenses of the*
12 *Inspector General of the Corporation in carrying*
13 *out this subsection shall be considered adminis-*
14 *trative expenses of the receivership.*

15 (B) *ADDITIONAL FUNDING.—If the max-*
16 *imum amount available to the Corporation as*
17 *receiver under this title is insufficient to enable*
18 *the Inspector General of the Corporation to carry*
19 *out the duties under this subsection, the Corpora-*
20 *tion shall pay such additional amounts from as-*
21 *sessments imposed under section 210.*

22 (5) *TERMINATION OF RESPONSIBILITIES.—The*
23 *duties and responsibilities of the Inspector General of*
24 *the Corporation under this subsection shall terminate*

1 *1 year after the date of termination of the receiver-*
2 *ship under this title.*

3 *(e) TREASURY INSPECTOR GENERAL REVIEWS.—*

4 *(1) SCOPE.—The Inspector General of the De-*
5 *partment of the Treasury shall conduct, supervise,*
6 *and coordinate audits and investigations of actions*
7 *taken by the Secretary related to the liquidation of*
8 *any covered financial company under this title, in-*
9 *cluding collecting and summarizing—*

10 *(A) a description of actions taken by the*
11 *Secretary under this title;*

12 *(B) an analysis of the approval by the Sec-*
13 *retary of the policies and procedures of the Cor-*
14 *poration under section 203 and acceptance of the*
15 *orderly liquidation plan of the Corporation*
16 *under section 210; and*

17 *(C) an assessment of the terms and condi-*
18 *tions underlying the purchase by the Secretary of*
19 *obligations of the Corporation under section 210.*

20 *(2) FREQUENCY.—Not later than 6 months after*
21 *the date of appointment of the Corporation as receiver*
22 *under this title and every 6 months thereafter, the In-*
23 *pector General of the Department of the Treasury*
24 *shall conduct the audit and investigation described in*
25 *paragraph (1).*

1 (3) *REPORTS AND TESTIMONY.*—*The Inspector*
2 *General of the Department of the Treasury shall in-*
3 *clude in the semiannual reports required by section*
4 *5(a) of the Inspector General Act of 1978 (5 U.S.C.*
5 *App.), a summary of the findings and assessments*
6 *under paragraph (1), and shall appear before the ap-*
7 *propriate committees of Congress, if requested, to*
8 *present each such report.*

9 (4) *TERMINATION OF RESPONSIBILITIES.*—*The*
10 *duties and responsibilities of the Inspector General of*
11 *the Department of the Treasury under this subsection*
12 *shall terminate 1 year after the date on which the ob-*
13 *ligations purchased by the Secretary from the Cor-*
14 *poration under section 210 are fully redeemed.*

15 (f) *PRIMARY FINANCIAL REGULATORY AGENCY IN-*
16 *SPECTOR GENERAL REVIEWS.*—

17 (1) *SCOPE.*—*Upon the appointment of the Cor-*
18 *poration as receiver for a covered financial company*
19 *supervised by a Federal primary financial regulatory*
20 *agency or the Board of Governors under section 165,*
21 *the Inspector General of the agency or the Board of*
22 *Governors shall make a written report reviewing the*
23 *supervision by the agency or the Board of Governors*
24 *of the covered financial company, which shall—*

1 (A) *evaluate the effectiveness of the agency*
2 *or the Board of Governors in carrying out its su-*
3 *pervisory responsibilities with respect to the cov-*
4 *ered financial company;*

5 (B) *identify any acts or omissions on the*
6 *part of agency or Board of Governors officials*
7 *that contributed to the covered financial com-*
8 *pany being in default or in danger of default;*

9 (C) *identify any actions that could have*
10 *been taken by the agency or the Board of Gov-*
11 *ernors that would have prevented the company*
12 *from being in default or in danger of default;*
13 *and*

14 (D) *recommend appropriate administrative*
15 *or legislative action.*

16 (2) *REPORTS AND TESTIMONY.—Not later than 1*
17 *year after the date of appointment of the Corporation*
18 *as receiver under this title, the Inspector General of*
19 *the Federal primary financial regulatory agency or*
20 *the Board of Governors shall provide the report re-*
21 *quired by paragraph (1) to such agency or the Board*
22 *of Governors, and along with such agency or the*
23 *Board of Governors, as applicable, shall appear before*
24 *the appropriate committees of Congress, if requested,*
25 *to present the report required by paragraph (1). Not*

1 *later than 90 days after the date of receipt of the re-*
2 *port required by paragraph (1), such agency or the*
3 *Board of Governors, as applicable, shall provide a*
4 *written report to Congress describing any actions*
5 *taken in response to the recommendations in the re-*
6 *port, and if no such actions were taken, describing the*
7 *reasons why no actions were taken.*

8 **SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVEN-**
9 **TION OF CONFLICTS OF INTEREST.**

10 (a) *NO OTHER FUNDING.*—*Funds for the orderly liq-*
11 *uidation of any covered financial company under this title*
12 *shall only be provided as specified under this title.*

13 (b) *LIMIT ON GOVERNMENTAL ACTIONS.*—*No govern-*
14 *mental entity may take any action to circumvent the pur-*
15 *poses of this title.*

16 (c) *CONFLICT OF INTEREST.*—*In the event that the*
17 *Corporation is appointed receiver for more than 1 covered*
18 *financial company or is appointed receiver for a covered*
19 *financial company and receiver for any insured depository*
20 *institution that is an affiliate of such covered financial*
21 *company, the Corporation shall take appropriate action, as*
22 *necessary to avoid any conflicts of interest that may arise*
23 *in connection with multiple receiverships.*

1 **SEC. 213. BAN ON SENIOR EXECUTIVES AND DIRECTORS.**

2 (a) *PROHIBITION AUTHORITY.*—The Board of Gov-
3 ernors or, if the covered financial company was not super-
4 vised by the Board of Governors, the Corporation, may exer-
5 cise the authority provided by this section.

6 (b) *AUTHORITY TO ISSUE ORDER.*—The appropriate
7 agency described in subsection (a) may take any action au-
8 thorized by subsection (c), if the agency determines that—

9 (1) a senior executive or a director of the covered
10 financial company, prior to the appointment of the
11 Corporation as receiver, has, directly or indirectly—

12 (A) violated—

13 (i) any law or regulation;

14 (ii) any cease-and-desist order which
15 has become final;

16 (iii) any condition imposed in writing
17 by a Federal agency in connection with any
18 action on any application, notice, or re-
19 quest by such company or senior executive;
20 or

21 (iv) any written agreement between
22 such company and such agency;

23 (B) engaged or participated in any unsafe
24 or unsound practice in connection with any fi-
25 nancial company; or

1 (C) committed or engaged in any act, omis-
2 sion, or practice which constitutes a breach of the
3 fiduciary duty of such senior executive or direc-
4 tor;

5 (2) by reason of the violation, practice, or breach
6 described in any clause of paragraph (1), such senior
7 executive or director has received financial gain or
8 other benefit by reason of such violation, practice, or
9 breach and such violation, practice, or breach contrib-
10 uted to the failure of the company; and

11 (3) such violation, practice, or breach—

12 (A) involves personal dishonesty on the part
13 of such senior executive or director; or

14 (B) demonstrates willful or continuing dis-
15 regard by such senior executive or director for
16 the safety or soundness of such company.

17 (c) *AUTHORIZED ACTIONS.*—

18 (1) *IN GENERAL.*—The appropriate agency for a
19 financial company, as described in subsection (a),
20 may serve upon a senior executive or director de-
21 scribed in subsection (b) a written notice of the inten-
22 tion of the agency to prohibit any further participa-
23 tion by such person, in any manner, in the conduct
24 of the affairs of any financial company for a period
25 of time determined by the appropriate agency to be

1 *commensurate with such violation, practice, or*
2 *breach, provided such period shall be not less than 2*
3 *years.*

4 (2) *PROCEDURES.*—*The due process require-*
5 *ments and other procedures under section 8(e) of the*
6 *Federal Deposit Insurance Act shall apply to actions*
7 *under this section as if the covered financial company*
8 *were an insured depository institution and the senior*
9 *executive or director were an institution-affiliated*
10 *party, as those terms are defined in that Act.*

11 (d) *REGULATIONS.*—*The Corporation and the Board*
12 *of Governors, in consultation with the Council, shall jointly*
13 *prescribe rules or regulations to administer and carry out*
14 *this section, including rules, regulations, or guidelines to*
15 *further define the term senior executive for the purposes of*
16 *this section.*

17 **SEC. 214. PROHIBITION ON TAXPAYER FUNDING.**

18 (a) *LIQUIDATION REQUIRED.*—*All financial compa-*
19 *nies put into receivership under this title shall be liq-*
20 *uidated. No taxpayer funds shall be used to prevent the liq-*
21 *uidation of any financial company under this title.*

22 (b) *RECOVERY OF FUNDS.*—*All funds expended in the*
23 *liquidation of a financial company under this title shall*
24 *be recovered from the disposition of assets of such financial*

1 *company, or shall be the responsibility of the financial sec-*
2 *tor, through assessments.*

3 *(c) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear*
4 *no losses from the exercise of any authority under this title.*

5 **TITLE III—TRANSFER OF POW-**
6 **ERS TO THE COMPTROLLER**
7 **OF THE CURRENCY, THE COR-**
8 **PORATION, AND THE BOARD**
9 **OF GOVERNORS**

10 **SEC. 300. SHORT TITLE.**

11 *This title may be cited as the “Enhancing Financial*
12 *Institution Safety and Soundness Act of 2010”.*

13 **SEC. 301. PURPOSES.**

14 *The purposes of this title are—*

15 *(1) to provide for the safe and sound operation*
16 *of the banking system of the United States;*

17 *(2) to preserve and protect the dual system of*
18 *Federal and State-chartered depository institutions;*

19 *(3) to ensure the fair and appropriate super-*
20 *vision of each depository institution, regardless of the*
21 *size or type of charter of the depository institution;*
22 *and*

23 *(4) to streamline and rationalize the supervision*
24 *of depository institutions and the holding companies*
25 *of depository institutions.*

1 **SEC. 302. DEFINITION.**

2 *In this title, the term “transferred employee” means,*
 3 *as the context requires, an employee transferred to the Office*
 4 *of the Comptroller of the Currency or the Corporation under*
 5 *section 322.*

6 ***Subtitle A—Transfer of Powers and***
 7 ***Duties***

8 **SEC. 311. TRANSFER DATE.**

9 *(a) TRANSFER DATE.—Except as provided in sub-*
 10 *section (b), the term “transfer date” means the date that*
 11 *is 1 year after the date of enactment of this Act.*

12 *(b) EXTENSION PERMITTED.—*

13 *(1) NOTICE REQUIRED.—The Secretary, in con-*
 14 *sultation with the Comptroller of the Currency, the*
 15 *Director of the Office of Thrift Supervision, the*
 16 *Chairman of the Board of Governors, and the Chair-*
 17 *person of the Corporation, may extend the period*
 18 *under subsection (a) and designate a transfer date*
 19 *that is not later than 18 months after the date of en-*
 20 *actment of this Act, if the Secretary transmits to the*
 21 *Committee on Banking, Housing, and Urban Affairs*
 22 *of the Senate and the Committee on Financial Serv-*
 23 *ices of the House of Representatives—*

24 *(A) a written determination that commence-*
 25 *ment of the orderly process to implement this*

1 *title is not feasible by the date that is 1 year*
2 *after the date of enactment of this Act;*

3 *(B) an explanation of why an extension is*
4 *necessary to commence the process of orderly im-*
5 *plementation of this title;*

6 *(C) the transfer date designated under this*
7 *subsection; and*

8 *(D) a description of the steps that will be*
9 *taken to initiate the process of an orderly and*
10 *timely implementation of this title within the ex-*
11 *tended time period.*

12 (2) *PUBLICATION OF NOTICE.*—*Not later than*
13 *270 days after the date of enactment of this Act, the*
14 *Secretary shall publish in the Federal Register notice*
15 *of any transfer date designated under paragraph (1).*

16 **SEC. 312. POWERS AND DUTIES TRANSFERRED.**

17 (a) *EFFECTIVE DATE.*—*This section, and the amend-*
18 *ments made by this section, shall take effect on the transfer*
19 *date.*

20 (b) *FUNCTIONS OF THE OFFICE OF THRIFT SUPER-*
21 *VISION.*—

22 (1) *SAVINGS AND LOAN HOLDING COMPANY FUNC-*
23 *TIONS TRANSFERRED.*—*There are transferred to the*
24 *Board of Governors all functions of the Office of*
25 *Thrift Supervision and the Director of the Office of*

1 *Thrift Supervision (including the authority to issue*
2 *orders) relating to—*

3 *(A) the supervision of—*

4 *(i) any savings and loan holding com-*
5 *pany; and*

6 *(ii) any subsidiary (other than a de-*
7 *pository institution) of a savings and loan*
8 *holding company; and*

9 *(B) all rulemaking authority of the Office of*
10 *Thrift Supervision and the Director of the Office*
11 *of Thrift Supervision relating to savings and*
12 *loan holding companies.*

13 (2) *ALL OTHER FUNCTIONS TRANSFERRED.—*

14 (A) *BOARD OF GOVERNORS.—All rule-*
15 *making authority of the Office of Thrift Super-*
16 *vision and the Director of the Office of Thrift*
17 *Supervision under section 11 of the Home Own-*
18 *ers' Loan Act (12 U.S.C. 1468) relating to trans-*
19 *actions with affiliates and extensions of credit to*
20 *executive officers, directors, and principal share-*
21 *holders and under section 5(q) of such Act relat-*
22 *ing to tying arrangements is transferred to the*
23 *Board of Governors.*

24 (B) *COMPTROLLER OF THE CURRENCY.—*

25 *Except as provided in paragraph (1) and sub-*

1 *paragraph (A), there are transferred to the*
2 *Comptroller of the Currency all functions of the*
3 *Office of Thrift Supervision and the Director of*
4 *the Office of Thrift Supervision relating to Fed-*
5 *eral savings associations.*

6 (C) CORPORATION.—*Except as provided in*
7 *paragraph (1) and subparagraph (A), all func-*
8 *tions of the Office of Thrift Supervision and the*
9 *Director of the Office of Thrift Supervision relat-*
10 *ing to State savings associations are transferred*
11 *to the Corporation.*

12 (D) COMPTROLLER OF THE CURRENCY AND
13 THE CORPORATION.—*Except as provided in*
14 *paragraph (1) and subparagraph (A), all rule-*
15 *making authority of the Office of Thrift Super-*
16 *vision and the Director of the Office of Thrift*
17 *Supervision relating to savings associations is*
18 *transferred to the Office of the Comptroller of the*
19 *Currency.*

20 (c) CONFORMING AMENDMENTS.—

21 (1) FEDERAL DEPOSIT INSURANCE ACT.—*Section*
22 *3(q) of the Federal Deposit Insurance Act (12 U.S.C.*
23 *1813(q)) is amended by striking paragraphs (1)*
24 *through (4) and inserting the following:*

1 “(1) *the Office of the Comptroller of the Cur-*
2 *rency, in the case of—*

3 “(A) *any national banking association;*

4 “(B) *any Federal branch or agency of a for-*
5 *ign bank; and*

6 “(C) *any Federal savings association;*

7 “(2) *the Federal Deposit Insurance Corporation,*
8 *in the case of—*

9 “(A) *any insured State nonmember bank;*

10 “(B) *any foreign bank having an insured*
11 *branch; and*

12 “(C) *any State savings association;*

13 “(3) *the Board of Governors of the Federal Re-*
14 *serve System, in the case of—*

15 “(A) *any State member bank;*

16 “(B) *any branch or agency of a foreign*
17 *bank with respect to any provision of the Federal*
18 *Reserve Act which is made applicable under the*
19 *International Banking Act of 1978;*

20 “(C) *any foreign bank which does not oper-*
21 *ate an insured branch;*

22 “(D) *any agency or commercial lending*
23 *company other than a Federal agency;*

24 “(E) *supervisory or regulatory proceedings*
25 *arising from the authority given to the Board of*

1 *Governors under section 7(c)(1) of the Inter-*
2 *national Banking Act of 1978, including such*
3 *proceedings under the Financial Institutions Su-*
4 *pervisory Act of 1966;*

5 *“(F) any bank holding company and any*
6 *subsidiary (other than a depository institution)*
7 *of a bank holding company; and*

8 *“(G) any savings and loan holding com-*
9 *pany and any subsidiary (other than a deposi-*
10 *tory institution) of a savings and loan holding*
11 *company.”.*

12 *(2) FEDERAL DEPOSIT INSURANCE ACT.—*

13 *(A) APPLICATION.—Section 8(b)(3) of the*
14 *Federal Deposit Insurance Act (12 U.S.C.*
15 *1818(b)(3)) is amended to read as follows:*

16 *“(3) APPLICATION TO BANK HOLDING COMPANIES,*
17 *SAVINGS AND LOAN HOLDING COMPANIES, AND EDGE AND*
18 *AGREEMENT CORPORATIONS.—*

19 *“(A) APPLICATION.—This subsection, subsections*
20 *(c) through (s) and subsection (u) of this section, and*
21 *section 50 shall apply to—*

22 *“(i) any bank holding company, and any*
23 *subsidiary (other than a bank) of a bank holding*
24 *company, as those terms are defined in section*
25 *2 of the Bank Holding Company Act of 1956 (12*

1 *U.S.C. 1841), as if such company or subsidiary*
2 *was an insured depository institution for which*
3 *the appropriate Federal banking agency for the*
4 *bank holding company was the appropriate Fed-*
5 *eral banking agency;*

6 *“(ii) any savings and loan holding com-*
7 *pany, and any subsidiary (other than a depository*
8 *institution) of a savings and loan holding*
9 *company, as those terms are defined in section*
10 *10 of the Home Owners’ Loan Act (12 U.S.C.*
11 *1467a), as if such company or subsidiary was*
12 *an insured depository institution for which the*
13 *appropriate Federal banking agency for the sav-*
14 *ings and loan holding company was the appro-*
15 *priate Federal banking agency; and*

16 *“(iii) any organization organized and oper-*
17 *ated under section 25A of the Federal Reserve*
18 *Act (12 U.S.C. 611 et seq.) or operating under*
19 *section 25 of the Federal Reserve Act (12 U.S.C.*
20 *601 et seq.) and any noninsured State member*
21 *bank, as if such organization or bank was a*
22 *bank holding company.*

23 *“(B) RULES OF CONSTRUCTION.—*

24 *“(i) EFFECT ON OTHER AUTHORITY.—Not-*
25 *ing in this paragraph may be construed to alter*

1 *or affect the authority of an appropriate Federal*
2 *banking agency to initiate enforcement pro-*
3 *ceedings, issue directives, or take other remedial*
4 *action under any other provision of law.*

5 “(i) *HOLDING COMPANIES.—Nothing in*
6 *this paragraph or subsection (c) may be con-*
7 *strued as authorizing any Federal banking agen-*
8 *cy other than the appropriate Federal banking*
9 *agency for a bank holding company or a savings*
10 *and loan holding company to initiate enforce-*
11 *ment proceedings, issue directives, or take other*
12 *remedial action against a bank holding com-*
13 *pany, a savings and loan holding company, or*
14 *any subsidiary thereof (other than a depository*
15 *institution).”.*

16 “(B) *CONFORMING AMENDMENT.—Section*
17 *8(b)(9) of the Federal Deposit Insurance Act (12*
18 *U.S.C. 1818(b)(9)) is amended to read as follows:*

19 “(9) *[Reserved].”.*

20 “(d) *CONSUMER PROTECTION.—Nothing in this section*
21 *may be construed to limit or otherwise affect the transfer*
22 *of powers under title X.*

1 **SEC. 313. ABOLISHMENT.**

2 *Effective 90 days after the transfer date, the Office of*
 3 *Thrift Supervision and the position of Director of the Office*
 4 *of Thrift Supervision are abolished.*

5 **SEC. 314. AMENDMENTS TO THE REVISED STATUTES.**

6 *(a) AMENDMENT TO SECTION 324.—Section 324 of the*
 7 *Revised Statutes of the United States (12 U.S.C. 1) is*
 8 *amended to read as follows:*

9 **“SEC. 324. COMPTROLLER OF THE CURRENCY.**

10 *“(a) OFFICE OF THE COMPTROLLER OF THE CUR-*
 11 *RENCY ESTABLISHED.—There is established in the Depart-*
 12 *ment of the Treasury a bureau to be known as the ‘Office*
 13 *of the Comptroller of the Currency’ which is charged with*
 14 *assuring the safety and soundness of, and compliance with*
 15 *laws and regulations, fair access to financial services, and*
 16 *fair treatment of customers by, the institutions and other*
 17 *persons subject to its jurisdiction.*

18 *“(b) COMPTROLLER OF THE CURRENCY.—*

19 *“(1) IN GENERAL.—The chief officer of the Office*
 20 *of the Comptroller of the Currency shall be known as*
 21 *the Comptroller of the Currency. The Comptroller of*
 22 *the Currency shall perform the duties of the Comp-*
 23 *troller of the Currency under the general direction of*
 24 *the Secretary of the Treasury. The Secretary of the*
 25 *Treasury may not delay or prevent the issuance of*
 26 *any rule or the promulgation of any regulation by the*

1 *Comptroller of the Currency, and may not intervene*
2 *in any matter or proceeding before the Comptroller of*
3 *the Currency (including agency enforcement actions),*
4 *unless otherwise specifically provided by law.*

5 “(2) *ADDITIONAL AUTHORITY.*—*The Comptroller*
6 *of the Currency shall have the same authority with*
7 *respect to functions transferred to the Comptroller of*
8 *the Currency under the Enhancing Financial Institu-*
9 *tion Safety and Soundness Act of 2010 (including*
10 *matters that were within the jurisdiction of the Direc-*
11 *tor of the Office of Thrift Supervision or the Office of*
12 *Thrift Supervision on the day before the transfer date*
13 *under that Act) as was vested in the Director of the*
14 *Office of Thrift Supervision on the transfer date*
15 *under that Act.”.*

16 “(b) *AMENDMENT TO SECTION 329.*—*Section 329 of the*
17 *Revised Statutes of the United States (12 U.S.C. 11) is*
18 *amended by inserting before the period at the end the fol-*
19 *lowing: “or any Federal savings association”.*

20 “(c) *EFFECTIVE DATE.*—*This section, and the amend-*
21 *ments made by this section, shall take effect on the transfer*
22 *date.*

1 **SEC. 315. FEDERAL INFORMATION POLICY.**

2 *Section 3502(5) of title 44, United States Code, is*
3 *amended by inserting “Office of the Comptroller of the Cur-*
4 *rency,” after “the Securities and Exchange Commission,”.*

5 **SEC. 316. SAVINGS PROVISIONS.**

6 (a) *OFFICE OF THRIFT SUPERVISION.—*

7 (1) *EXISTING RIGHTS, DUTIES, AND OBLIGA-*
8 *TIONS NOT AFFECTED.—Sections 312(b) and 313 shall*
9 *not affect the validity of any right, duty, or obliga-*
10 *tion of the United States, the Director of the Office*
11 *of Thrift Supervision, the Office of Thrift Super-*
12 *vision, or any other person, that existed on the day*
13 *before the transfer date.*

14 (2) *CONTINUATION OF SUITS.—This title shall*
15 *not abate any action or proceeding commenced by or*
16 *against the Director of the Office of Thrift Super-*
17 *vision or the Office of Thrift Supervision before the*
18 *transfer date, except that, for any action or pro-*
19 *ceeding arising out of a function of the Director of the*
20 *Office of Thrift Supervision or the Office of Thrift Su-*
21 *per vision that is transferred to the Comptroller of the*
22 *Currency, the Office of the Comptroller of the Cur-*
23 *rency, the Chairperson of the Corporation, the Cor-*
24 *poration, the Chairman of the Board of Governors, or*
25 *the Board of Governors by this subtitle, the Comp-*
26 *troller of the Currency, the Office of the Comptroller*

1 *of the Currency, the Chairperson of the Corporation,*
2 *the Corporation, the Chairman of the Board of Gov-*
3 *ernors, or the Board of Governors shall be substituted*
4 *for the Director of the Office of Thrift Supervision or*
5 *the Office of Thrift Supervision, as appropriate, as a*
6 *party to the action or proceeding as of the transfer*
7 *date.*

8 **(b) CONTINUATION OF EXISTING ORDERS, RESOLU-**
9 **TIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS,**
10 **AND OTHER MATERIALS.**—*All orders, resolutions, deter-*
11 *minations, agreements, regulations, interpretative rules,*
12 *other interpretations, guidelines, procedures, and other ad-*
13 *visory materials that have been issued, made, prescribed,*
14 *or allowed to become effective by the Office of Thrift Super-*
15 *vision, or by a court of competent jurisdiction, in the per-*
16 *formance of functions of the Office of Thrift Supervision*
17 *that are transferred by this subtitle and that are in effect*
18 *on the day before the transfer date, shall continue in effect*
19 *according to the terms of those materials, and shall be en-*
20 *forceable by or against the Office of the Comptroller of the*
21 *Currency, the Corporation, or the Board of Governors, as*
22 *appropriate, until modified, terminated, set aside, or super-*
23 *seded in accordance with applicable law by the Office of*
24 *the Comptroller of the Currency, the Corporation, or the*

1 *Board of Governors, as appropriate, by any court of com-*
2 *petent jurisdiction, or by operation of law.*

3 *(c) IDENTIFICATION OF REGULATIONS CONTINUED.—*

4 *(1) BY THE OFFICE OF THE COMPTROLLER OF*
5 *THE CURRENCY.—Not later than the transfer date, the*
6 *Office of the Comptroller of the Currency shall—*

7 *(A) in consultation with the Corporation,*
8 *identify the regulations continued under sub-*
9 *section (b) that will be enforced by the Office of*
10 *the Comptroller of the Currency; and*

11 *(B) publish a list of such regulations in the*
12 *Federal Register.*

13 *(2) BY THE CORPORATION.—Not later than the*
14 *transfer date, the Corporation shall—*

15 *(A) in consultation with the Office of the*
16 *Comptroller of the Currency, identify the regula-*
17 *tions continued under subsection (b) that will be*
18 *enforced by the Corporation; and*

19 *(B) publish a list of such regulations in the*
20 *Federal Register.*

21 *(3) BY THE BOARD OF GOVERNORS.—Not later*
22 *than the transfer date, the Board of Governors shall—*

23 *(A) in consultation with the Office of the*
24 *Comptroller of the Currency and the Corpora-*
25 *tion, identify the regulations continued under*

1 *subsection (b) that will be enforced by the Board*
2 *of Governors; and*

3 *(B) publish a list of such regulations in the*
4 *Federal Register.*

5 *(d) STATUS OF REGULATIONS PROPOSED OR NOT YET*
6 *EFFECTIVE.—*

7 *(1) PROPOSED REGULATIONS.—Any proposed*
8 *regulation of the Office of Thrift Supervision that the*
9 *Office of Thrift Supervision, in performing functions*
10 *transferred by this subtitle, has proposed before the*
11 *transfer date, but has not published as a final regula-*
12 *tion before that date, shall be deemed to be a proposed*
13 *regulation of the Office of the Comptroller of the Cur-*
14 *rency or the Board of Governors, as appropriate, ac-*
15 *cording to its terms.*

16 *(2) REGULATIONS NOT YET EFFECTIVE.—Any*
17 *interim or final regulation of the Office of Thrift Su-*
18 *per vision that the Office of Thrift Supervision, in*
19 *performing functions transferred by this subtitle, has*
20 *published before the transfer date, but which has not*
21 *become effective before that date, shall become effective*
22 *as a regulation of the Office of the Comptroller of the*
23 *Currency or the Board of Governors, as appropriate,*
24 *according to its terms.*

1 **SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL**
2 **BANKING AGENCIES.**

3 *Except as provided in section 312(d)(2), on and after*
4 *the transfer date, any reference in Federal law to the Direc-*
5 *tor of the Office of Thrift Supervision or the Office of Thrift*
6 *Supervision, in connection with any function of the Direc-*
7 *tor of the Office of Thrift Supervision or the Office of Thrift*
8 *Supervision transferred under section 312(b) or any other*
9 *provision of this subtitle, shall be deemed to be a reference*
10 *to the Comptroller of the Currency, the Office of the Comp-*
11 *troller of the Currency, the Chairperson of the Corporation,*
12 *the Corporation, the Chairman of the Board of Governors,*
13 *or the Board of Governors, as appropriate.*

14 **SEC. 318. FUNDING.**

15 *(a) FUNDING OF OFFICE OF THE COMPTROLLER OF*
16 *THE CURRENCY.—Chapter 4 of title LXII of the Revised*
17 *Statutes is amended by inserting after section 5240 (12*
18 *U.S.C. 481, 482) the following:*

19 *“SEC. 5240A. The Comptroller of the Currency may*
20 *collect an assessment, fee, or other charge from any entity*
21 *described in section 3(q)(1) of the Federal Deposit Insur-*
22 *ance Act (12 U.S.C. 1813(q)(1)), as the Comptroller deter-*
23 *mines is necessary or appropriate to carry out the respon-*
24 *sibilities of the Office of the Comptroller of the Currency.*
25 *In establishing the amount of an assessment, fee, or charge*
26 *collected from an entity under this section, the Comptroller*

1 *of the Currency may take into account the funds transferred*
2 *to the Office of the Comptroller of the Currency under this*
3 *section, the nature and scope of the activities of the entity,*
4 *the amount and type of assets that the entity holds, the fi-*
5 *nancial and managerial condition of the entity, and any*
6 *other factor, as the Comptroller of the Currency determines*
7 *is appropriate. Funds derived from any assessment, fee, or*
8 *charge collected or payment made pursuant to this section*
9 *may be deposited by the Comptroller of the Currency in*
10 *accordance with the provisions of section 5234. Such funds*
11 *shall not be construed to be Government funds or appro-*
12 *priated monies, and shall not be subject to apportionment*
13 *for purposes of chapter 15 of title 31, United States Code,*
14 *or any other provision of law. The authority of the Comp-*
15 *troller of the Currency under this section shall be in addi-*
16 *tion to the authority under section 5240.*

17 *“The Comptroller of the Currency shall have sole au-*
18 *thority to determine the manner in which the obligations*
19 *of the Office of the Comptroller of the Currency shall be in-*
20 *curred and its disbursements and expenses allowed and*
21 *paid, in accordance with this section.”.*

22 **(b) FUNDING OF BOARD OF GOVERNORS.—***Section 11*
23 *of the Federal Reserve Act (12 U.S.C. 248) is amended by*
24 *adding at the end the following:*

1 “(s) *ASSESSMENTS, FEES, AND OTHER CHARGES FOR*
2 *CERTAIN COMPANIES.*—

3 “(1) *IN GENERAL.*—*The Board shall collect a*
4 *total amount of assessments, fees, or other charges*
5 *from the companies described in paragraph (2) that*
6 *is equal to the total expenses the Board estimates are*
7 *necessary or appropriate to carry out the responsibil-*
8 *ities of the Board with respect to such companies.*

9 “(2) *COMPANIES.*—*The companies described in*
10 *this paragraph are—*

11 “(A) *all bank holding companies having*
12 *total consolidated assets of \$50,000,000,000 or*
13 *more;*

14 “(B) *all savings and loan holding compa-*
15 *nies having total consolidated assets of*
16 *\$50,000,000,000 or more; and*

17 “(C) *all nonbank financial companies su-*
18 *pervised by the Board under section 113 of the*
19 *Restoring American Financial Stability Act of*
20 *2010.*”.

21 “(c) *CORPORATION EXAMINATION FEES.*—*Section 10(e)*
22 *of the Federal Deposit Insurance Act (12 U.S.C. 1820(e))*
23 *is amended by striking paragraph (1) and inserting the fol-*
24 *lowing:*

1 “(1) *REGULAR AND SPECIAL EXAMINATIONS OF*
2 *DEPOSITORY INSTITUTIONS.—The cost of conducting*
3 *any regular examination or special examination of*
4 *any depository institution under subsection (b)(2),*
5 *(b)(3), or (d) or of any entity described in section*
6 *3(q)(2) may be assessed by the Corporation against*
7 *the institution or entity to meet the expenses of the*
8 *Corporation in carrying out such examinations, or as*
9 *the Corporation determines is necessary or appro-*
10 *priate to carry out the responsibilities of the Corpora-*
11 *tion.”.*

12 *(d) EFFECTIVE DATE.—This section, and the amend-*
13 *ments made by this section, shall take effect on the transfer*
14 *date.*

15 **SEC. 319. CONTRACTING AND LEASING AUTHORITY.**

16 *Notwithstanding the Federal Property and Adminis-*
17 *trative Services Act of 1949 (41 U.S.C. 251 et seq.) or any*
18 *other provision of law, the Office of the Comptroller of the*
19 *Currency may—*

20 *(1) enter into and perform contracts, execute in-*
21 *struments, and acquire, in any lawful manner, such*
22 *goods and services, or personal or real property (or*
23 *property interest) as the Comptroller deems necessary*
24 *to carry out the duties and responsibilities of the Of-*
25 *fice of the Comptroller of the Currency; and*

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

4 ***Subtitle B—Transitional Provisions***

5 ***SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROP-*** 6 ***ERTY OF THE OFFICE OF THRIFT SUPER-*** 7 ***VISION.***

8 (a) *IN GENERAL.*—*Before the transfer date, the Office*
9 *of the Comptroller of the Currency, the Corporation, and*
10 *the Board of Governors shall—*

11 (1) *consult and cooperate with the Office of*
12 *Thrift Supervision to facilitate the orderly transfer of*
13 *functions to the Office of the Comptroller of the Cur-*
14 *rency, the Corporation, and the Board of Governors*
15 *in accordance with this title;*

16 (2) *determine jointly, from time to time—*

17 (A) *the amount of funds necessary to pay*
18 *any expenses associated with the transfer of func-*
19 *tions (including expenses for personnel, property,*
20 *and administrative services) during the period*
21 *beginning on the date of enactment of this Act*
22 *and ending on the transfer date;*

23 (B) *which personnel are appropriate to fa-*
24 *facilitate the orderly transfer of functions by this*
25 *title; and*

1 (C) *what property and administrative serv-*
2 *ices are necessary to support the Office of the*
3 *Comptroller of the Currency, the Corporation,*
4 *and the Board of Governors during the period*
5 *beginning on the date of enactment of this Act*
6 *and ending on the transfer date; and*

7 (3) *take such actions as may be necessary to pro-*
8 *vide for the orderly implementation of this title.*

9 (b) *AGENCY CONSULTATION.*—*When requested jointly*
10 *by the Office of the Comptroller of the Currency, the Cor-*
11 *poration, and the Board of Governors to do so before the*
12 *transfer date, the Office of Thrift Supervision shall—*

13 (1) *pay to the Office of the Comptroller of the*
14 *Currency, the Corporation, or the Board of Governors,*
15 *as applicable, from funds obtained by the Office of*
16 *Thrift Supervision through assessments, fees, or other*
17 *charges that the Office of Thrift Supervision is au-*
18 *thorized by law to impose, such amounts as the Office*
19 *of the Comptroller of the Currency, the Corporation,*
20 *and the Board of Governors jointly determine to be*
21 *necessary under subsection (a);*

22 (2) *detail to the Office of the Comptroller of the*
23 *Currency, the Corporation, or the Board of Governors,*
24 *as applicable, such personnel as the Office of the*
25 *Comptroller of the Currency, the Corporation, and the*

1 *Board of Governors jointly determine to be appro-*
2 *priate under subsection (a); and*

3 *(3) make available to the Office of the Comp-*
4 *troller of the Currency, the Corporation, or the Board*
5 *of Governors, as applicable, such property and pro-*
6 *vide to the Office of the Comptroller of the Currency,*
7 *the Corporation, or the Board of Governors, as appli-*
8 *cable, such administrative services as the Office of the*
9 *Comptroller of the Currency, the Corporation, and the*
10 *Board of Governors jointly determine to be necessary*
11 *under subsection (a).*

12 *(c) NOTICE REQUIRED.—The Office of the Comptroller*
13 *of the Currency, the Corporation, and the Board of Gov-*
14 *ernors shall jointly give the Office of Thrift Supervision rea-*
15 *sonable prior notice of any request that the Office of the*
16 *Comptroller of the Currency, the Corporation, and the*
17 *Board of Governors jointly intend to make under subsection*
18 *(b).*

19 **SEC. 322. TRANSFER OF EMPLOYEES.**

20 *(a) IN GENERAL.—*

21 *(1) OFFICE OF THRIFT SUPERVISION EMPLOY-*
22 *EES.—*

23 *(A) IN GENERAL.—All employees of the Of-*
24 *fice of Thrift Supervision shall be transferred to*
25 *the Office of the Comptroller of the Currency or*

1 *the Corporation for employment in accordance*
2 *with this section.*

3 (B) *ALLOCATING EMPLOYEES FOR TRANS-*
4 *FER TO RECEIVING AGENCIES.—The Director of*
5 *the Office of Thrift Supervision, the Comptroller*
6 *of the Currency, and the Chairperson of the Cor-*
7 *poration shall—*

8 (i) *jointly determine the number of em-*
9 *ployees of the Office of Thrift Supervision*
10 *necessary to perform or support the func-*
11 *tions that are transferred to the Office of the*
12 *Comptroller of the Currency or the Corpora-*
13 *tion by this title; and*

14 (ii) *consistent with the determination*
15 *under clause (i), jointly identify employees*
16 *of the Office of Thrift Supervision for trans-*
17 *fer to the Office of the Comptroller of the*
18 *Currency or the Corporation.*

19 (2) *EMPLOYEES TRANSFERRED; SERVICE PERI-*
20 *ODS CREDITED.—For purposes of this section, periods*
21 *of service with a Federal home loan bank, a joint of-*
22 *fice of Federal home loan banks, or a Federal reserve*
23 *bank shall be credited as periods of service with a*
24 *Federal agency.*

1 (3) *APPOINTMENT AUTHORITY FOR EXCEPTED*
2 *SERVICE TRANSFERRED.*—

3 (A) *IN GENERAL.*—*Except as provided in*
4 *subparagraph (B), any appointment authority of*
5 *the Office of Thrift Supervision under Federal*
6 *law that relates to the functions transferred*
7 *under section 312, including the regulations of*
8 *the Office of Personnel Management, for filling*
9 *the positions of employees in the excepted service*
10 *shall be transferred to the Comptroller of the*
11 *Currency or the Chairperson of the Corporation,*
12 *as appropriate.*

13 (B) *DECLINING TRANSFERS ALLOWED.*—*The*
14 *Office of the Comptroller of the Currency or the*
15 *Chairperson of the Corporation may decline to*
16 *accept a transfer of authority under subpara-*
17 *graph (A) (and the employees appointed under*
18 *that authority) to the extent that such authority*
19 *relates to positions excepted from the competitive*
20 *service because of their confidential, policy-mak-*
21 *ing, policy-determining, or policy-advocating*
22 *character.*

23 (4) *ADDITIONAL APPOINTMENT AUTHORITY.*—
24 *Notwithstanding any other provision of law, the Of-*
25 *fice of the Comptroller of the Currency and the Cor-*

1 *poration may appoint transferred employees to posi-*
2 *tions in the Office of the Comptroller of the Currency*
3 *or the Corporation, respectively.*

4 *(b) TIMING OF TRANSFERS AND POSITION ASSIGN-*
5 *MENTS.—Each employee to be transferred under subsection*
6 *(a)(1) shall—*

7 *(1) be transferred not later than 90 days after*
8 *the transfer date; and*

9 *(2) receive notice of the position assignment of*
10 *the employee not later than 120 days after the effec-*
11 *tive date of the transfer of the employee.*

12 *(c) TRANSFER OF FUNCTIONS.—*

13 *(1) IN GENERAL.—Notwithstanding any other*
14 *provision of law, the transfer of employees under this*
15 *subtitle shall be deemed a transfer of functions for the*
16 *purpose of section 3503 of title 5, United States Code.*

17 *(2) PRIORITY.—If any provision of this subtitle*
18 *conflicts with any protection provided to a trans-*
19 *ferred employee under section 3503 of title 5, United*
20 *States Code, the provisions of this subtitle shall con-*
21 *trol.*

22 *(d) EMPLOYEE STATUS AND ELIGIBILITY.—The trans-*
23 *fer of functions and employees under this subtitle, and the*
24 *abolishment of the Office of Thrift Supervision under sec-*
25 *tion 313, shall not affect the status of the transferred em-*

1 *ployees as employees of an agency of the United States*
2 *under any provision of law.*

3 (e) *EQUAL STATUS AND TENURE POSITIONS.—*

4 (1) *STATUS AND TENURE.—Each transferred em-*
5 *ployee from the Office of Thrift Supervision shall be*
6 *placed in a position at the Office of the Comptroller*
7 *of the Currency or the Corporation with the same sta-*
8 *tus and tenure as the transferred employee held on the*
9 *day before the date on which the employee was trans-*
10 *ferred.*

11 (2) *FUNCTIONS.—To the extent practicable, each*
12 *transferred employee shall be placed in a position at*
13 *the Office of the Comptroller of the Currency or the*
14 *Corporation, as applicable, responsible for the same*
15 *functions and duties as the transferred employee had*
16 *on the day before the date on which the employee was*
17 *transferred, in accordance with the expertise and pref-*
18 *erences of the transferred employee.*

19 (f) *NO ADDITIONAL CERTIFICATION REQUIRE-*
20 *MENTS.—An examiner who is a transferred employee shall*
21 *not be subject to any additional certification requirements*
22 *before being placed in a comparable position at the Office*
23 *of the Comptroller of the Currency or the Corporation, if*
24 *the examiner carries out examinations of the same type of*
25 *institutions as an employee of the Office of the Comptroller*

1 *of the Currency or the Corporation as the employee was*
2 *responsible for carrying out before the date on which the*
3 *employee was transferred.*

4 *(g) PERSONNEL ACTIONS LIMITED.—*

5 *(1) 2-YEAR PROTECTION.—Except as provided in*
6 *paragraph (2), during the 2-year period beginning on*
7 *the transfer date, an employee holding a permanent*
8 *position on the day before the date on which the em-*
9 *ployee was transferred shall not be involuntarily sep-*
10 *arated or involuntarily reassigned outside the locality*
11 *pay area (as defined by the Office of Personnel Man-*
12 *agement) of the employee.*

13 *(2) EXCEPTIONS.—The Comptroller of the Cur-*
14 *rency and the Chairperson of the Corporation, as ap-*
15 *plicable, may—*

16 *(A) separate a transferred employee for*
17 *cause, including for unacceptable performance;*
18 *or*

19 *(B) terminate an appointment to a position*
20 *excepted from the competitive service because of*
21 *its confidential policy-making, policy-deter-*
22 *mining, or policy-advocating character.*

23 *(h) PAY.—*

24 *(1) 2-YEAR PROTECTION.—Except as provided in*
25 *paragraph (2), during the 2-year period beginning on*

1 *the date on which the employee was transferred under*
2 *this subtitle, a transferred employee shall be paid at*
3 *a rate that is not less than the basic rate of pay, in-*
4 *cluding any geographic differential, that the trans-*
5 *ferred employee received during the pay period imme-*
6 *diately preceding the date on which the employee was*
7 *transferred.*

8 (2) *EXCEPTIONS.—The Comptroller of the Cur-*
9 *rency or the Chairman of the Board of Governors*
10 *may reduce the rate of basic pay of a transferred em-*
11 *ployee—*

12 (A) *for cause, including for unacceptable*
13 *performance; or*

14 (B) *with the consent of the transferred em-*
15 *ployee.*

16 (3) *PROTECTION ONLY WHILE EMPLOYED.—This*
17 *subsection shall apply to a transferred employee only*
18 *during the period that the transferred employee re-*
19 *mains employed by Office of the Comptroller of the*
20 *Currency or the Corporation.*

21 (4) *PAY INCREASES PERMITTED.—Nothing in*
22 *this subsection shall limit the authority of the Comp-*
23 *troller of the Currency or the Chairperson of the Cor-*
24 *poration to increase the pay of a transferred em-*
25 *ployee.*

1 (i) *BENEFITS.*—

2 (1) *RETIREMENT BENEFITS FOR TRANSFERRED*
3 *EMPLOYEES.*—

4 (A) *IN GENERAL.*—

5 (i) *CONTINUATION OF EXISTING RE-*
6 *TIREMENT PLAN.*—*Each transferred em-*
7 *ployee shall remain enrolled in the retire-*
8 *ment plan of the transferred employee, for*
9 *as long as the transferred employee is em-*
10 *ployed by the Office of the Comptroller of*
11 *the Currency or the Corporation.*

12 (ii) *EMPLOYER’S CONTRIBUTION.*—*The*
13 *Comptroller of the Currency or the Chair-*
14 *person of the Corporation, as appropriate,*
15 *shall pay any employer contributions to the*
16 *existing retirement plan of each transferred*
17 *employee, as required under each such exist-*
18 *ing retirement plan.*

19 (B) *DEFINITION.*—*In this paragraph, the*
20 *term “existing retirement plan” means, with re-*
21 *spect to a transferred employee, the retirement*
22 *plan (including the Financial Institutions Re-*
23 *irement Fund), and any associated thrift sav-*
24 *ings plan, of the agency from which the employee*
25 *was transferred in which the employee was en-*

1 rolled on the day before the date on which the
2 employee was transferred.

3 (2) *BENEFITS OTHER THAN RETIREMENT BENE-*
4 *FITS.—*

5 (A) *DURING FIRST YEAR.—*

6 (i) *EXISTING PLANS CONTINUE.—Dur-*
7 *ing the 1-year period following the transfer*
8 *date, each transferred employee may retain*
9 *membership in any employee benefit pro-*
10 *gram (other than a retirement benefit pro-*
11 *gram) of the agency from which the em-*
12 *ployee was transferred under this title, in-*
13 *cluding any dental, vision, long term care,*
14 *or life insurance program to which the em-*
15 *ployee belonged on the day before the trans-*
16 *fer date.*

17 (ii) *EMPLOYER'S CONTRIBUTION.—The*
18 *Office of the Comptroller of the Currency or*
19 *the Corporation, as appropriate, shall pay*
20 *any employer cost required to extend cov-*
21 *erage in the benefit program to the trans-*
22 *ferred employee as required under that pro-*
23 *gram or negotiated agreements.*

24 (B) *DENTAL, VISION, OR LIFE INSURANCE*
25 *AFTER FIRST YEAR.—If, after the 1-year period*

1 *beginning on the transfer date, the Office of the*
2 *Comptroller of the Currency or the Corporation*
3 *determines that the Office of the Comptroller of*
4 *the Currency or the Corporation, as the case may*
5 *be, will not continue to participate in any den-*
6 *tal, vision, or life insurance program of an agen-*
7 *cy from which an employee was transferred, a*
8 *transferred employee who is a member of the*
9 *program may, before the decision takes effect and*
10 *without regard to any regularly scheduled open*
11 *season, elect to enroll in—*

12 *(i) the enhanced dental benefits pro-*
13 *gram established under chapter 89A of title*
14 *5, United States Code;*

15 *(ii) the enhanced vision benefits estab-*
16 *lished under chapter 89B of title 5, United*
17 *States Code; and*

18 *(iii) the Federal Employees' Group*
19 *Life Insurance Program established under*
20 *chapter 87 of title 5, United States Code,*
21 *without regard to any requirement of insur-*
22 *ability.*

23 (C) *LONG TERM CARE INSURANCE AFTER*
24 *1ST YEAR.—If, after the 1-year period beginning*
25 *on the transfer date, the Office of the Comptroller*

1 *of the Currency or the Corporation determines*
2 *that the Office of the Comptroller of the Currency*
3 *or the Corporation, as appropriate, will not con-*
4 *tinue to participate in any long term care insur-*
5 *ance program of an agency from which an em-*
6 *ployee transferred, a transferred employee who is*
7 *a member of such a program may, before the de-*
8 *cision takes effect, elect to apply for coverage*
9 *under the Federal Long Term Care Insurance*
10 *Program established under chapter 90 of title 5,*
11 *United States Code, under the underwriting re-*
12 *quirements applicable to a new active workforce*
13 *member, as described in part 875 of title 5, Code*
14 *of Federal Regulations (or any successor thereto).*

15 (D) CONTRIBUTION OF TRANSFERRED EM-
16 PLOYEE.—

17 (i) IN GENERAL.—Subject to clause
18 (ii), a transferred employee who is enrolled
19 in a plan under the Federal Employees
20 Health Benefits Program shall pay any em-
21 ployee contribution required under the plan.

22 (ii) COST DIFFERENTIAL.—The Office
23 of the Comptroller of the Currency or the
24 Corporation, as applicable, shall pay any
25 difference in cost between the employee con-

1 *tribution required under the plan provided*
2 *to transferred employees by the agency from*
3 *which the employee transferred on the date*
4 *of enactment of this Act and the plan pro-*
5 *vided by the Office of the Comptroller of the*
6 *Currency or the Corporation, as the case*
7 *may be, under this section.*

8 *(iii) FUNDS TRANSFER.—The Office of*
9 *the Comptroller of the Currency or the Cor-*
10 *poration, as the case may be, shall transfer*
11 *to the Employees Health Benefits Fund es-*
12 *tablished under section 8909 of title 5,*
13 *United States Code, an amount determined*
14 *by the Director of the Office of Personnel*
15 *Management, after consultation with the*
16 *Comptroller of the Currency or the Chair-*
17 *person of the Corporation, as the case may*
18 *be, and the Office of Management and*
19 *Budget, to be necessary to reimburse the*
20 *Fund for the cost to the Fund of providing*
21 *any benefits under this subparagraph that*
22 *are not otherwise paid for by a transferred*
23 *employee under clause (i).*

24 *(E) SPECIAL PROVISIONS TO ENSURE CON-*
25 *TINUATION OF LIFE INSURANCE BENEFITS.—*

1 (i) *IN GENERAL.*—*An annuitant, as*
2 *defined in section 8901 of title 5, United*
3 *States Code, who is enrolled in a life insur-*
4 *ance plan administered by an agency from*
5 *which employees are transferred under this*
6 *title on the day before the transfer date shall*
7 *be eligible for coverage by a life insurance*
8 *plan under sections 8706(b), 8714a, 8714b,*
9 *or 8714c of title 5, United States Code, or*
10 *by a life insurance plan established by the*
11 *Office of the Comptroller of the Currency or*
12 *the Corporation, as applicable, without re-*
13 *gard to any regularly scheduled open season*
14 *or any requirement of insurability.*

15 (ii) *CONTRIBUTION OF TRANSFERRED*
16 *EMPLOYEE.*—

17 (I) *IN GENERAL.*—*Subject to sub-*
18 *clause (II), a transferred employee en-*
19 *rolled in a life insurance plan under*
20 *this subparagraph shall pay any em-*
21 *ployee contribution required by the*
22 *plan.*

23 (II) *COST DIFFERENTIAL.*—*The*
24 *Office of the Comptroller of the Cur-*
25 *rency or the Corporation, as the case*

1 *may be, shall pay any difference in*
2 *cost between the benefits provided by*
3 *the agency from which the employee*
4 *transferred on the date of enactment of*
5 *this Act and the benefits provided*
6 *under this section.*

7 (III) *FUNDS TRANSFER.*—*The Of-*
8 *fice of the Comptroller of the Currency*
9 *or the Corporation, as the case may be,*
10 *shall transfer to the Federal Employ-*
11 *ees' Group Life Insurance Fund estab-*
12 *lished under section 8714 of title 5,*
13 *United States Code, an amount deter-*
14 *mined by the Director of the Office of*
15 *Personnel Management, after consulta-*
16 *tion with the Comptroller of the Cur-*
17 *rency or the Chairperson of the Cor-*
18 *poration, as the case may be, and the*
19 *Office of Management and Budget, to*
20 *be necessary to reimburse the Federal*
21 *Employees' Group Life Insurance*
22 *Fund for the cost to the Federal Em-*
23 *ployees' Group Life Insurance Fund of*
24 *providing benefits under this subpara-*
25 *graph not otherwise paid for by a*

1 *transferred employee under subclause*
2 *(I).*

3 (IV) *CREDIT FOR TIME ENROLLED*
4 *IN OTHER PLANS.—For any trans-*
5 *ferred employee, enrollment in a life*
6 *insurance plan administered by the*
7 *agency from which the employee trans-*
8 *ferred, immediately before enrollment*
9 *in a life insurance plan under chapter*
10 *87 of title 5, United States Code, shall*
11 *be considered as enrollment in a life*
12 *insurance plan under that chapter for*
13 *purposes of section 8706(b)(1)(A) of*
14 *title 5, United States Code.*

15 (j) *INCORPORATION INTO AGENCY PAY SYSTEM.—Not*
16 *later than 2 years after the transfer date, the Comptroller*
17 *of the Currency and the Chairperson of the Corporation*
18 *shall place each transferred employee into the established*
19 *pay system and structure of the appropriate employing*
20 *agency.*

21 (k) *EQUITABLE TREATMENT.—In administering the*
22 *provisions of this section, the Comptroller of the Currency*
23 *and the Chairperson of the Corporation—*

24 (1) *may not take any action that would unfairly*
25 *disadvantage a transferred employee relative to any*

1 *other employee of the Office of the Comptroller of the*
2 *Currency or the Corporation on the basis of prior em-*
3 *ployment by the Office of Thrift Supervision; and*

4 *(2) may take such action as is appropriate in an*
5 *individual case to ensure that a transferred employee*
6 *receives equitable treatment, with respect to the sta-*
7 *tus, tenure, pay, benefits (other than benefits under*
8 *programs administered by the Office of Personnel*
9 *Management), and accrued leave or vacation time for*
10 *prior periods of service with any Federal agency of*
11 *the transferred employee.*

12 *(l) REORGANIZATION.—*

13 *(1) IN GENERAL.—If the Comptroller of the Cur-*
14 *rency or the Chairperson of the Corporation deter-*
15 *mines, during the 2-year period beginning 1 year*
16 *after the transfer date, that a reorganization of the*
17 *staff of the Office of the Comptroller of the Currency*
18 *or the Corporation, respectively, is required, the reor-*
19 *ganization shall be deemed a “major reorganization”*
20 *for purposes of affording affected employees retirement*
21 *under section 8336(d)(2) or 8414(b)(1)(B) of title 5,*
22 *United States Code.*

23 *(2) SERVICE CREDIT.—For purposes of this sub-*
24 *section, periods of service with a Federal home loan*
25 *bank or a joint office of Federal home loan banks*

1 *shall be credited as periods of service with a Federal*
2 *agency.*

3 **SEC. 323. PROPERTY TRANSFERRED.**

4 *(a) PROPERTY DEFINED.—For purposes of this sec-*
5 *tion, the term “property” includes all real property (includ-*
6 *ing leaseholds) and all personal property, including com-*
7 *puters, furniture, fixtures, equipment, books, accounts,*
8 *records, reports, files, memoranda, paper, reports of exam-*
9 *ination, work papers, and correspondence related to such*
10 *reports, and any other information or materials.*

11 *(b) PROPERTY OF THE OFFICE OF THRIFT SUPER-*
12 *VISION.—Not later than 90 days after the transfer date, all*
13 *property of the Office of Thrift Supervision that the Comp-*
14 *troller of the Currency and the Chairperson of the Corpora-*
15 *tion jointly determine is used, on the day before the transfer*
16 *date, to perform or support the functions of the Office of*
17 *Thrift Supervision transferred to the Office of the Comp-*
18 *troller of the Currency or the Corporation under this title,*
19 *shall be transferred to the Office of the Comptroller of the*
20 *Currency or the Corporation in a manner consistent with*
21 *the transfer of employees under this subtitle.*

22 *(c) CONTRACTS RELATED TO PROPERTY TRANS-*
23 *FERRED.—Each contract, agreement, lease, license, permit,*
24 *and similar arrangement relating to property transferred*
25 *to the Office of the Comptroller of the Currency or the Cor-*

1 poration by this section shall be transferred to the Office
2 of the Comptroller of the Currency or the Corporation, as
3 appropriate, together with the property to which it relates.

4 (d) *PRESERVATION OF PROPERTY.*—Property identi-
5 fied for transfer under this section shall not be altered, de-
6 stroyed, or deleted before transfer under this section.

7 **SEC. 324. FUNDS TRANSFERRED.**

8 The funds that, on the day before the transfer date,
9 the Director of the Office of Thrift Supervision (in consulta-
10 tion with the Comptroller of the Currency, the Chairperson
11 of the Corporation, and the Chairman of the Board of Gov-
12 ernors) determines are not necessary to dispose of the affairs
13 of the Office of Thrift Supervision under section 325 and
14 are available to the Office of Thrift Supervision to pay the
15 expenses of the Office of Thrift Supervision—

16 (1) relating to the functions of the Office of
17 Thrift Supervision transferred under section
18 312(b)(1)(B), shall be transferred to the Office of the
19 Comptroller of the Currency on the transfer date;

20 (2) relating to the functions of the Office of
21 Thrift Supervision transferred under section
22 312(b)(1)(C), shall be transferred to the Corporation
23 on the transfer date; and

24 (3) relating to the functions of the Office of
25 Thrift Supervision transferred under section

1 312(b)(1)(A), shall be transferred to the Board of Gov-
2 ernors on the transfer date.

3 **SEC. 325. DISPOSITION OF AFFAIRS.**

4 (a) *AUTHORITY OF DIRECTOR.*—During the 90-day
5 period beginning on the transfer date, the Director of the
6 Office of Thrift Supervision—

7 (1) shall, solely for the purpose of winding up
8 the affairs of the Office of Thrift Supervision relating
9 to any function transferred to the Office of the Comp-
10 troller of the Currency, the Corporation, or the Board
11 of Governors under this title—

12 (A) manage the employees of the Office of
13 Thrift Supervision who have not yet been trans-
14 ferred and provide for the payment of the com-
15 pensation and benefits of the employees that ac-
16 crued before the date on which the employees are
17 transferred under this title; and

18 (B) manage any property of the Office of
19 Thrift Supervision, until the date on which the
20 property is transferred under section 323; and

21 (2) may take any other action necessary to wind
22 up the affairs of the Office of Thrift Supervision.

23 (b) *STATUS OF DIRECTOR.*—

24 (1) *IN GENERAL.*—Notwithstanding the transfer
25 of functions under this subtitle, during the 90-day pe-

1 *riod beginning on the transfer date, the Director of*
2 *the Office of Thrift Supervision shall retain and may*
3 *exercise any authority vested in the Director of the*
4 *Office of Thrift Supervision on the day before the*
5 *transfer date, only to the extent necessary—*

6 *(A) to wind up the Office of Thrift Super-*
7 *vision; and*

8 *(B) to carry out the transfer under this sub-*
9 *title during such 90-day period.*

10 *(2) OTHER PROVISIONS.—For purposes of para-*
11 *graph (1), the Director of the Office of Thrift Super-*
12 *vision shall, during the 90-day period beginning on*
13 *the transfer date, continue to be—*

14 *(A) treated as an officer of the United*
15 *States; and*

16 *(B) entitled to receive compensation at the*
17 *same annual rate of basic pay that the Director*
18 *of the Office of Thrift Supervision received on the*
19 *day before the transfer date.*

20 **SEC. 326. CONTINUATION OF SERVICES.**

21 *Any agency, department, or other instrumentality of*
22 *the United States, and any successor to any such agency,*
23 *department, or instrumentality, that was, before the trans-*
24 *fer date, providing support services to the Office of Thrift*
25 *Supervision in connection with functions transferred to the*

1 *Office of the Comptroller of the Currency, the Corporation*
2 *or the Board of Governors under this title, shall—*

3 *(1) continue to provide such services, subject to*
4 *reimbursement by the Office of the Comptroller of the*
5 *Currency, the Corporation, or the Board of Governors,*
6 *until the transfer of functions under this title is com-*
7 *plete; and*

8 *(2) consult with the Comptroller of the Currency,*
9 *the Chairperson of the Corporation, or the Chairman*
10 *of the Board of Governors, as appropriate, to coordi-*
11 *nate and facilitate a prompt and orderly transition.*

12 ***Subtitle C—Federal Deposit***
13 ***Insurance Corporation***

14 **SEC. 331. DEPOSIT INSURANCE REFORMS.**

15 *(a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Fed-*
16 *eral Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is*
17 *amended—*

18 *(1) by striking subparagraph (D); and*

19 *(2) by redesignating subparagraph (C) as sub-*
20 *paragraph (D).*

21 *(b) ASSESSMENT BASE.—The Corporation shall*
22 *amend the regulations issued by the Corporation under sec-*
23 *tion 7(b)(2) of the Federal Deposit Insurance Act (12*
24 *U.S.C. 1817(b)(2)) to define the term “assessment base”*

1 *with respect to an insured depository institution for pur-*
2 *poses of that section 7(b)(2), as an amount equal to—*

3 *(1) the average consolidated total assets of the in-*
4 *sured depository institution during the assessment pe-*
5 *riod; minus*

6 *(2) the sum of—*

7 *(A) the average tangible equity of the in-*
8 *sured depository institution during the assess-*
9 *ment period; and*

10 *(B) in the case of an insured depository in-*
11 *stitution that is a custodial bank (as defined by*
12 *the Corporation, based on factors including the*
13 *percentage of total revenues generated by custo-*
14 *dial businesses and the level of assets under cus-*
15 *tody) or a banker's bank (as that term is used*
16 *in section 5136 of the Revised Statutes (12*
17 *U.S.C. 24)), an amount that the Corporation de-*
18 *termines is necessary to establish assessments*
19 *consistent with the definition under section*
20 *7(b)(1) of the Federal Deposit Insurance Act (12*
21 *U.S.C. 1817(b)(1)) for a custodial bank or a*
22 *banker's bank.*

1 **SEC. 332. MANAGEMENT OF THE FEDERAL DEPOSIT INSUR-**
2 **ANCE CORPORATION.**

3 (a) *IN GENERAL.*—Section 2 of the Federal Deposit In-
4 surance Act (12 U.S.C. 1812) is amended—

5 (1) in subsection (a)(1)(B), by striking “Director
6 of the Office of Thrift Supervision” and inserting
7 “Director of the Consumer Financial Protection Bu-
8 reau”;

9 (2) by amending subsection (d)(2) to read as fol-
10 lows:

11 “(2) *ACTING OFFICIALS MAY SERVE.*—In the
12 event of a vacancy in the Office of the Comptroller of
13 the Currency and pending the appointment of a suc-
14 cesssor, or during the absence or disability of the
15 Comptroller of the Currency, the acting Comptroller
16 of the Currency shall be a member of the Board of Di-
17 rectors in the place of the Comptroller of the Cur-
18 rency.”; and

19 (3) in subsection (f)(2), by striking “or of the Of-
20 fice of Thrift Supervision”.

21 (b) *EFFECTIVE DATE.*—This section, and the amend-
22 ments made by this section, shall take effect on the transfer
23 date.

1 ***Subtitle D—Termination of Federal***
2 ***Thrift Charter***

3 **SEC. 341. TERMINATION OF FEDERAL SAVINGS ASSOCIA-**
4 **TIONS.**

5 (a) *IN GENERAL.*—Beginning on the date of enactment
6 of this Act, the Director of the Office of Thrift Supervision,
7 or the Comptroller of the Currency, may not issue a charter
8 for a Federal savings association under section 5 of the
9 Home Owners' Loan Act (12 U.S.C. 1464).

10 (b) *CONFORMING AMENDMENT.*—Section 5(a) of the
11 Home Owner's Loan Act (12 U.S.C. 1464(a)) is amended
12 to read as follows:

13 “(a) *IN GENERAL.*—In order to provide thrift institu-
14 tions for the deposit of funds and for the extension of credit
15 for homes and other goods and services, the Comptroller of
16 the Currency is authorized, under such regulations as the
17 Comptroller of the Currency may prescribe, to provide for
18 the examination, operation, and regulation of associations
19 to be known as ‘Federal savings associations’ (including
20 Federal savings banks), giving primary consideration to the
21 best practices of thrift institutions in the United States. The
22 lending and investment powers conferred by this section are
23 intended to encourage such institutions to provide credit for
24 housing safely and soundly.”.

1 (c) *PROSPECTIVE REPEAL.*—Effective on the date on
 2 which the Comptroller of the Currency determines that no
 3 Federal savings associations exist, section 5 of the Home
 4 Owner’s Loan Act (12 U.S.C. 1464) is repealed.

5 **SEC. 342. BRANCHING.**

6 Notwithstanding the Federal Deposit Insurance Act
 7 (12 U.S.C. 1811 et seq.), the Bank Holding Company Act
 8 of 1956 (12 U.S.C. 1841 et seq.), or any other provision
 9 of Federal or State law, a savings association that becomes
 10 a bank may continue to operate any branch or agency that
 11 the savings association operated immediately before the sav-
 12 ings association became a bank.

13 **TITLE IV—REGULATION OF AD-**
 14 **VISERS TO HEDGE FUNDS**
 15 **AND OTHERS**

16 **SEC. 401. SHORT TITLE.**

17 This title may be cited as the “Private Fund Invest-
 18 ment Advisers Registration Act of 2010”.

19 **SEC. 402. DEFINITIONS.**

20 (a) *INVESTMENT ADVISERS ACT OF 1940 DEFINI-*
 21 *TIONS.*—Section 202(a) of the Investment Advisers Act of
 22 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the
 23 end the following:

24 “(29) The term ‘private fund’ means an issuer
 25 that would be an investment company, as defined in

1 *section 3 of the Investment Company Act of 1940 (15*
2 *U.S.C. 80a-3), but for section 3(c)(1) or 3(c)(7) of*
3 *that Act.*

4 “(30) *The term ‘foreign private adviser’ means*
5 *any investment adviser who—*

6 “(A) *has no place of business in the United*
7 *States;*

8 “(B) *has, in total, fewer than 15 clients who*
9 *are domiciled in or residents of the United*
10 *States;*

11 “(C) *has aggregate assets under manage-*
12 *ment attributable to clients in the United States*
13 *and investors in the United States in private*
14 *funds advised by the investment adviser of less*
15 *than \$25,000,000, or such higher amount as the*
16 *Commission may, by rule, deem appropriate in*
17 *accordance with the purposes of this title; and*

18 “(D) *neither—*

19 “(i) *holds itself out generally to the*
20 *public in the United States as an invest-*
21 *ment adviser; nor*

22 “(ii) *acts as—*

23 “(I) *an investment adviser to any*
24 *investment company registered under*

1 *the Investment Company Act of 1940;*

2 *or*

3 *“(II) a company that has elected*
4 *to be a business development company*
5 *pursuant to section 54 of the Invest-*
6 *ment Company Act of 1940 (15 U.S.C.*
7 *80a–53), and has not withdrawn its*
8 *election.”.*

9 *(b) OTHER DEFINITIONS.—As used in this title, the*
10 *terms “investment adviser” and “private fund” have the*
11 *same meanings as in section 202 of the Investment Advisers*
12 *Act of 1940, as amended by this title.*

13 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION;**
14 **LIMITED EXEMPTION FOR FOREIGN PRIVATE**
15 **ADVISERS; LIMITED INTRASTATE EXEMPTION.**

16 *Section 203(b) of the Investment Advisers Act of 1940*
17 *(15 U.S.C. 80b–3(b)) is amended—*

18 *(1) in paragraph (1), by inserting “, other than*
19 *an investment adviser who acts as an investment ad-*
20 *viser to any private fund,” before “all of whose”;*

21 *(2) by striking paragraph (3) and inserting the*
22 *following:*

23 *“(3) any investment adviser that is a foreign*
24 *private adviser;”;* and

1 (3) in paragraph (5), by striking “or” at the
2 end;

3 (4) in paragraph (6), by striking the period at
4 the end and inserting “; or”; and

5 (5) by adding at the end the following:

6 “(7) any investment adviser, other than any en-
7 tity that has elected to be regulated or is regulated as
8 a business development company pursuant to section
9 54 of the Investment Company Act of 1940 (15 U.S.C.
10 80a–54), who solely advises—

11 “(A) small business investment companies
12 that are licensees under the Small Business In-
13 vestment Act of 1958;

14 “(B) entities that have received from the
15 Small Business Administration notice to proceed
16 to qualify for a license as a small business in-
17 vestment company under the Small Business In-
18 vestment Act of 1958, which notice or license has
19 not been revoked; or

20 “(C) applicants that are affiliated with 1 or
21 more licensed small business investment compa-
22 nies described in subparagraph (A) and that
23 have applied for another license under the Small
24 Business Investment Act of 1958, which applica-
25 tion remains pending.”.

1 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS;**
2 **EXAMINATIONS; DISCLOSURES.**

3 *Section 204 of the Investment Advisers Act of 1940 (15*
4 *U.S.C. 80b-4) is amended—*

5 *(1) by redesignating subsections (b) and (c) as*
6 *subsections (c) and (d), respectively; and*

7 *(2) by inserting after subsection (a) the fol-*
8 *lowing:*

9 *“(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—*

10 *“(1) IN GENERAL.—The Commission may re-*
11 *quire any investment adviser registered under this*
12 *title—*

13 *“(A) to maintain such records of, and file*
14 *with the Commission such reports regarding,*
15 *private funds advised by the investment adviser,*
16 *as necessary and appropriate in the public inter-*
17 *est and for the protection of investors, or for the*
18 *assessment of systemic risk by the Financial Sta-*
19 *bility Oversight Council (in this subsection re-*
20 *ferred to as the ‘Council’); and*

21 *“(B) to provide or make available to the*
22 *Council those reports or records or the informa-*
23 *tion contained therein.*

24 *“(2) TREATMENT OF RECORDS.—The records and*
25 *reports of any private fund to which an investment*
26 *adviser registered under this title provides investment*

1 *advice shall be deemed to be the records and reports*
2 *of the investment adviser.*

3 “(3) *REQUIRED INFORMATION.*—*The records and*
4 *reports required to be maintained by a private fund*
5 *and subject to inspection by the Commission under*
6 *this subsection shall include, for each private fund ad-*
7 *vised by the investment adviser, a description of—*

8 “(A) *the amount of assets under manage-*
9 *ment and use of leverage;*

10 “(B) *counterparty credit risk exposure;*

11 “(C) *trading and investment positions;*

12 “(D) *valuation policies and practices of the*
13 *fund;*

14 “(E) *types of assets held;*

15 “(F) *side arrangements or side letters,*
16 *whereby certain investors in a fund obtain more*
17 *favorable rights or entitlements than other inves-*
18 *tors;*

19 “(G) *trading practices; and*

20 “(H) *such other information as the Com-*
21 *mission, in consultation with the Council, deter-*
22 *mines is necessary and appropriate in the public*
23 *interest and for the protection of investors or for*
24 *the assessment of systemic risk, which may in-*
25 *clude the establishment of different reporting re-*

1 *quirements for different classes of fund advisers,*
2 *based on the type or size of private fund being*
3 *advised.*

4 “(4) *MAINTENANCE OF RECORDS.*—*An invest-*
5 *ment adviser registered under this title shall main-*
6 *tain such records of private funds advised by the in-*
7 *vestment adviser for such period or periods as the*
8 *Commission, by rule, may prescribe as necessary and*
9 *appropriate in the public interest and for the protec-*
10 *tion of investors, or for the assessment of systemic*
11 *risk.*

12 “(5) *FILING OF RECORDS.*—*The Commission*
13 *shall issue rules requiring each investment adviser to*
14 *a private fund to file reports containing such infor-*
15 *mation as the Commission deems necessary and ap-*
16 *propriate in the public interest and for the protection*
17 *of investors or for the assessment of systemic risk.*

18 “(6) *EXAMINATION OF RECORDS.*—

19 “(A) *PERIODIC AND SPECIAL EXAMINA-*
20 *TIONS.*—*The Commission—*

21 *“(i) shall conduct periodic inspections*
22 *of all records of private funds maintained*
23 *by an investment adviser registered under*
24 *this title in accordance with a schedule es-*
25 *tablished by the Commission; and*

1 “(i) may conduct at any time and
2 from time to time such additional, special,
3 and other examinations as the Commission
4 may prescribe as necessary and appropriate
5 in the public interest and for the protection
6 of investors, or for the assessment of sys-
7 temic risk.

8 “(B) AVAILABILITY OF RECORDS.—An in-
9 vestment adviser registered under this title shall
10 make available to the Commission any copies or
11 extracts from such records as may be prepared
12 without undue effort, expense, or delay, as the
13 Commission or its representatives may reason-
14 ably request.

15 “(7) INFORMATION SHARING.—

16 “(A) IN GENERAL.—The Commission shall
17 make available to the Council copies of all re-
18 ports, documents, records, and information filed
19 with or provided to the Commission by an in-
20 vestment adviser under this subsection as the
21 Council may consider necessary for the purpose
22 of assessing the systemic risk posed by a private
23 fund.

24 “(B) CONFIDENTIALITY.—The Council shall
25 maintain the confidentiality of information re-

1 *ceived under this paragraph in all such reports,*
2 *documents, records, and information, in a man-*
3 *ner consistent with the level of confidentiality es-*
4 *tablished by the Commission pursuant to para-*
5 *graph (8). The Council shall be exempt from sec-*
6 *tion 552 of title 5, United States Code, with re-*
7 *spect to any information in any report, docu-*
8 *ment, record, or information made available, to*
9 *the Council under this subsection.”.*

10 “(8) *COMMISSION CONFIDENTIALITY OF RE-*
11 *PORTS.—Notwithstanding any other provision of law,*
12 *the Commission may not be compelled to disclose any*
13 *report or information contained therein required to be*
14 *filed with the Commission under this subsection, ex-*
15 *cept that nothing in this subsection authorizes the*
16 *Commission—*

17 “(A) *to withhold information from Con-*
18 *gress, upon an agreement of confidentiality; or*

19 “(B) *prevent the Commission from com-*
20 *plying with—*

21 “(i) *a request for information from*
22 *any other Federal department or agency or*
23 *any self-regulatory organization requesting*
24 *the report or information for purposes with-*
25 *in the scope of its jurisdiction; or*

1 “(ii) *an order of a court of the United*
2 *States in an action brought by the United*
3 *States or the Commission.*

4 “(9) *OTHER RECIPIENTS CONFIDENTIALITY.—*
5 *Any department, agency, or self-regulatory organiza-*
6 *tion that receives reports or information from the*
7 *Commission under this subsection shall maintain the*
8 *confidentiality of such reports, documents, records,*
9 *and information in a manner consistent with the*
10 *level of confidentiality established for the Commission*
11 *under paragraph (8).*

12 “(10) *PUBLIC INFORMATION EXCEPTION.—*

13 “(A) *IN GENERAL.—The Commission, the*
14 *Council, and any other department, agency, or*
15 *self-regulatory organization that receives infor-*
16 *mation, reports, documents, records, or informa-*
17 *tion from the Commission under this subsection,*
18 *shall be exempt from the provisions of section*
19 *552 of title 5, United States Code, with respect*
20 *to any such report, document, record, or infor-*
21 *mation. Any proprietary information of an in-*
22 *vestment adviser ascertained by the Commission*
23 *from any report required to be filed with the*
24 *Commission pursuant to this subsection shall be*
25 *subject to the same limitations on public disclo-*

1 *sure as any facts ascertained during an exam-*
2 *ination, as provided by section 210(b) of this*
3 *title.*

4 “(B) *PROPRIETARY INFORMATION.*—*For*
5 *purposes of this paragraph, proprietary informa-*
6 *tion includes—*

7 “(i) *sensitive, non-public information*
8 *regarding the investment or trading strate-*
9 *gies of the investment adviser;*

10 “(ii) *analytical or research methodolo-*
11 *gies;*

12 “(iii) *trading data;*

13 “(iv) *computer hardware or software*
14 *containing intellectual property; and*

15 “(v) *any additional information that*
16 *the Commission determines to be propri-*
17 *etary.*

18 “(11) *ANNUAL REPORT TO CONGRESS.*—*The*
19 *Commission shall report annually to Congress on how*
20 *the Commission has used the data collected pursuant*
21 *to this subsection to monitor the markets for the pro-*
22 *tection of investors and the integrity of the markets.”.*

23 **SEC. 405. DISCLOSURE PROVISION ELIMINATED.**

24 *Section 210(c) of the Investment Advisers Act of 1940*
25 *(15 U.S.C. 80b–10(c)) is amended by inserting before the*

1 *period at the end the following: “or for purposes of assess-*
2 *ment of potential systemic risk”.*

3 **SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.**

4 *Section 211 of the Investment Advisers Act of 1940 (15*
5 *U.S.C. 80b–11) is amended—*

6 *(1) in subsection (a), by inserting before the pe-*
7 *riod at the end of the first sentence the following: “,*
8 *including rules and regulations defining technical,*
9 *trade, and other terms used in this title, except that*
10 *the Commission may not define the term ‘client’ for*
11 *purposes of paragraphs (1) and (2) of section 206 to*
12 *include an investor in a private fund managed by an*
13 *investment adviser, if such private fund has entered*
14 *into an advisory contract with such adviser”;* and

15 *(2) by adding at the end the following:*

16 *“(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The*
17 *Commission and the Commodity Futures Trading Commis-*
18 *sion shall, after consultation with the Council but not later*
19 *than 12 months after the date of enactment of the Private*
20 *Fund Investment Advisers Registration Act of 2010, jointly*
21 *promulgate rules to establish the form and content of the*
22 *reports required to be filed with the Commission under sub-*
23 *section 204(b) and with the Commodity Futures Trading*
24 *Commission by investment advisers that are registered both*

1 *under this title and the Commodity Exchange Act (7 U.S.C.*
 2 *1a et seq.).”.*

3 **SEC. 407. EXEMPTION OF VENTURE CAPITAL FUND ADVIS-**
 4 **ERS.**

5 *Section 203 of the Investment Advisers Act of 1940 (15*
 6 *U.S.C. 80b-3) is amended by adding at the end the fol-*
 7 *lowing:*

8 *“(l) EXEMPTION OF VENTURE CAPITAL FUND ADVIS-*
 9 *ERS.—No investment adviser shall be subject to the registra-*
 10 *tion requirements of this title with respect to the provision*
 11 *of investment advice relating to a venture capital fund. Not*
 12 *later than 6 months after the date of enactment of this sub-*
 13 *section, the Commission shall issue final rules to define the*
 14 *term ‘venture capital fund’ for purposes of this subsection.”.*

15 **SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRI-**
 16 **VATE EQUITY FUND ADVISERS.**

17 *Section 203 of the Investment Advisers Act of 1940 (15*
 18 *U.S.C. 80b-3) is amended by adding at the end the fol-*
 19 *lowing:*

20 *“(m) EXEMPTION OF AND REPORTING BY PRIVATE EQ-*
 21 *UITY FUND ADVISERS.—*

22 *“(1) IN GENERAL.—Except as provided in this*
 23 *subsection, no investment adviser shall be subject to*
 24 *the registration or reporting requirements of this title*

1 *with respect to the provision of investment advice re-*
2 *lating to a private equity fund or funds.*

3 “(2) *MAINTENANCE OF RECORDS AND ACCESS BY*
4 *COMMISSION.—Not later than 6 months after the date*
5 *of enactment of this subsection, the Commission shall*
6 *issue final rules—*

7 “(A) *to require investment advisers de-*
8 *scribed in paragraph (1) to maintain such*
9 *records and provide to the Commission such an-*
10 *ual or other reports as the Commission taking*
11 *into account fund size, governance, investment*
12 *strategy, risk, and other factors, as the Commis-*
13 *sion determines necessary and appropriate in the*
14 *public interest and for the protection of inves-*
15 *tors; and*

16 “(B) *to define the term ‘private equity fund’*
17 *for purposes of this subsection.”.*

18 **SEC. 409. FAMILY OFFICES.**

19 (a) *IN GENERAL.—Section 202(a)(11) of the Invest-*
20 *ment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is*
21 *amended by striking “or (G)” and inserting the following:*
22 *“; (G) any family office, as defined by rule, regulation, or*
23 *order of the Commission, in accordance with the purposes*
24 *of this title; or (H)”.*

1 (b) *RULEMAKING.*—*The rules, regulations, or orders*
2 *issued by the Commission pursuant to section*
3 *202(a)(11)(G) of the Investment Advisers Act of 1940, as*
4 *added by this section, regarding the definition of the term*
5 *“family office” shall provide for an exemption that—*

6 (1) *is consistent with the previous exemptive pol-*
7 *icy of the Commission, as reflected in exemptive or-*
8 *ders for family offices in effect on the date of enact-*
9 *ment of this Act; and*

10 (2) *recognizes the range of organizational, man-*
11 *agement, and employment structures and arrange-*
12 *ments employed by family offices.*

13 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**
14 **THRESHOLD FOR FEDERAL REGISTRATION**
15 **OF INVESTMENT ADVISERS.**

16 Section 203A(a)(1) of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b–3a(a)(1)) is amended—

18 (1) *in subparagraph (A)—*

19 (A) *by striking “\$25,000,000” and inserting*
20 *“\$100,000,000”; and*

21 (B) *by striking “or” at the end;*

22 (2) *in subparagraph (B), by striking the period*
23 *at the end and inserting “; or”; and*

24 (3) *by adding at the end the following:*

1 “(C) is an adviser to a company that has
2 elected to be a business development company
3 pursuant to section 54 of the Investment Com-
4 pany Act of 1940, and has not withdrawn its
5 election.”.

6 **SEC. 411. CUSTODY OF CLIENT ASSETS.**

7 *The Investment Advisers Act of 1940 (15 U.S.C. 80b-*
8 *1 et seq.) is amended by adding at the end the following*
9 *new section:*

10 **“SEC. 223. CUSTODY OF CLIENT ACCOUNTS.**

11 *“An investment adviser registered under this title shall*
12 *take such steps to safeguard client assets over which such*
13 *adviser has custody, including, without limitation,*
14 *verification of such assets by an independent public ac-*
15 *countant, as the Commission may, by rule, prescribe.”.*

16 **SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STAND-**
17 **ARD.**

18 *(a) IN GENERAL.—The Commission shall adjust any*
19 *net worth standard for an accredited investor, as set forth*
20 *in the rules of the Commission under the Securities Act of*
21 *1933, so that the individual net worth of any natural per-*
22 *son, or joint net worth with the spouse of that person, at*
23 *the time of purchase, is more than \$1,000,000 (as such*
24 *amount is adjusted periodically by rule of the Commission),*
25 *excluding the value of the primary residence of such natural*

1 *person, except that during the 4-year period that begins on*
2 *the date of enactment of this Act, any net worth standard*
3 *shall be \$1,000,000, excluding the value of the primary resi-*
4 *dence of such natural person.*

5 (b) *REVIEW AND ADJUSTMENT.—*

6 (1) *INITIAL REVIEW AND ADJUSTMENT.—*

7 (A) *INITIAL REVIEW.—The Commission*
8 *may undertake a review of the definition of the*
9 *term “accredited investor”, as such term applies*
10 *to natural persons, to determine whether the re-*
11 *quirements of the definition, excluding the re-*
12 *quirement relating to the net worth standard de-*
13 *scribed in subsection (a), should be adjusted or*
14 *modified for the protection of investors, in the*
15 *public interest, and in light of the economy.*

16 (B) *ADJUSTMENT OR MODIFICATION.—Upon*
17 *completion of a review under subparagraph (A),*
18 *the Commission may, by notice and comment*
19 *rulemaking, make such adjustments to the defini-*
20 *tion of the term “accredited investor”, excluding*
21 *adjusting or modifying the requirement relating*
22 *to the net worth standard described in subsection*
23 *(a), as such term applies to natural persons, as*
24 *the Commission may deem appropriate for the*

1 *protection of investors, in the public interest,*
2 *and in light of the economy.*

3 (2) *SUBSEQUENT REVIEWS AND ADJUSTMENT.—*

4 (A) *SUBSEQUENT REVIEWS.—Not earlier*
5 *than 4 years after the date of enactment of this*
6 *Act, and not less frequently than once every 4*
7 *years thereafter, the Commission shall undertake*
8 *a review of the definition, in its entirety, of the*
9 *term “accredited investor”, as defined in section*
10 *230.215 of title 17, Code of Federal Regulations,*
11 *or any successor thereto, as such term applies to*
12 *natural persons, to determine whether the re-*
13 *quirements of the definition should be adjusted or*
14 *modified for the protection of investors, in the*
15 *public interest, and in light of the economy.*

16 (B) *ADJUSTMENT OR MODIFICATION.—Upon*
17 *completion of a review under subparagraph (A),*
18 *the Commission may, by notice and comment*
19 *rulemaking, make such adjustments to the defini-*
20 *tion of the term “accredited investor”, as defined*
21 *in section 230.215 of title 17, Code of Federal*
22 *Regulations, or any successor thereto, as such*
23 *term applies to natural persons, as the Commis-*
24 *sion may deem appropriate for the protection of*

1 *investors, in the public interest, and in light of*
2 *the economy.*

3 **SEC. 413. GAO STUDY AND REPORT ON ACCREDITED INVES-**
4 **TORS.**

5 *The Comptroller General of the United States shall*
6 *conduct a study on the appropriate criteria for determining*
7 *the financial thresholds or other criteria needed to qualify*
8 *for accredited investor status and eligibility to invest in*
9 *private funds, and shall submit a report to the Committee*
10 *on Banking, Housing, and Urban Affairs of the Senate and*
11 *the Committee on Financial Services of the House of Rep-*
12 *resentatives on the results of such study not later than 3*
13 *years after the date of enactment of this Act.*

14 **SEC. 414. GAO STUDY ON SELF-REGULATORY ORGANIZA-**
15 **TION FOR PRIVATE FUNDS.**

16 *The Comptroller General of the United States shall—*
17 (1) *conduct a study of the feasibility of forming*
18 *a self-regulatory organization to oversee private*
19 *funds; and*
20 (2) *submit a report to the Committee on Bank-*
21 *ing, Housing, and Urban Affairs of the Senate and*
22 *the Committee on Financial Services of the House of*
23 *Representatives on the results of such study, not later*
24 *than 1 year after the date of enactment of this Act.*

1 **SEC. 415. COMMISSION STUDY AND REPORT ON SHORT**
2 **SELLING.**

3 (a) *STUDY.*—*The Division of Risk, Strategy, and Fi-*
4 *ancial Innovation of the Commission shall conduct a*
5 *study, taking into account current scholarship, on the state*
6 *of short selling on national securities exchanges and in the*
7 *over-the-counter markets, with particular attention to the*
8 *impact of recent rule changes and the incidence of—*

- 9 (1) *the failure to deliver shares sold short; or*
10 (2) *delivery of shares on the fourth day following*
11 *the short sale transaction.*

12 (b) *REPORT.*—*The Division of Risk, Strategy, and Fi-*
13 *ancial Innovation shall submit a report, together with any*
14 *recommendations for market improvements, including con-*
15 *sideration of real time reporting of short sale positions, to*
16 *the Committee on Banking, Housing, and Urban Affairs*
17 *of the Senate and the Committee on Financial Services of*
18 *the House of Representatives on the results of the study con-*
19 *ducted under subsection (a), not later than 2 years after*
20 *the date of enactment of this Act.*

21 **SEC. 416. TRANSITION PERIOD.**

22 *Except as otherwise provided in this title, this title and*
23 *the amendments made by this title shall become effective*
24 *1 year after the date of enactment of this Act, except that*
25 *any investment adviser may, at the discretion of the invest-*
26 *ment adviser, register with the Commission under the In-*

1 *vestment Advisers Act of 1940 during that 1-year period,*
 2 *subject to the rules of the Commission.*

3 **TITLE V—INSURANCE**
 4 **Subtitle A—Office of National**
 5 **Insurance**

6 **SEC. 501. SHORT TITLE.**

7 *This subtitle may be cited as the “Office of National*
 8 *Insurance Act of 2010”.*

9 **SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL INSUR-**
 10 **ANCE.**

11 *(a) ESTABLISHMENT OF OFFICE.—Subchapter I of*
 12 *chapter 3 of subtitle I of title 31, United States Code, is*
 13 *amended—*

14 *(1) by redesignating section 312 as section 315;*

15 *(2) by redesignating section 313 as section 312;*

16 *and*

17 *(3) by inserting after section 312 (as so redesi-*
 18 *gnated) the following new sections:*

19 **“SEC. 313. OFFICE OF NATIONAL INSURANCE.**

20 *“(a) ESTABLISHMENT.—There is established within*
 21 *the Department of the Treasury the Office of National In-*
 22 *surance.*

23 *“(b) LEADERSHIP.—The Office shall be headed by a*
 24 *Director, who shall be appointed by the Secretary of the*
 25 *Treasury. The position of Director shall be a career reserved*

1 *position in the Senior Executive Service, as that position*
2 *is defined under section 3132 of title 5, United States Code.*

3 “(c) *FUNCTIONS.—*

4 “(1) *AUTHORITY PURSUANT TO DIRECTION OF*
5 *SECRETARY.—The Office, pursuant to the direction of*
6 *the Secretary, shall have the authority—*

7 “(A) *to monitor all aspects of the insurance*
8 *industry, including identifying issues or gaps in*
9 *the regulation of insurers that could contribute*
10 *to a systemic crisis in the insurance industry or*
11 *the United States financial system;*

12 “(B) *to recommend to the Financial Sta-*
13 *bility Oversight Council that it designate an in-*
14 *surer, including the affiliates of such insurer, as*
15 *an entity subject to regulation as a nonbank fi-*
16 *ancial company supervised by the Board of*
17 *Governors pursuant to title I of the Restoring*
18 *American Financial Stability Act of 2010;*

19 “(C) *to assist the Secretary in admin-*
20 *istering the Terrorism Insurance Program estab-*
21 *lished in the Department of the Treasury under*
22 *the Terrorism Risk Insurance Act of 2002 (15*
23 *U.S.C. 6701 note);*

24 “(D) *to coordinate Federal efforts and de-*
25 *velop Federal policy on prudential aspects of*

1 *international insurance matters, including rep-*
2 *resenting the United States, as appropriate, in*
3 *the International Association of Insurance Su-*
4 *pervisors (or a successor entity) and assisting the*
5 *Secretary in negotiating International Insurance*
6 *Agreements on Prudential Measures;*

7 “(E) to determine, in accordance with sub-

8 *section (f), whether State insurance measures are*
9 *preempted by International Insurance Agree-*
10 *ments on Prudential Measures;*

11 “(F) to consult with the States (including

12 *State insurance regulators) regarding insurance*
13 *matters of national importance and prudential*
14 *insurance matters of international importance;*
15 *and*

16 “(G) to perform such other related duties

17 *and authorities as may be assigned to the Office*
18 *by the Secretary.*

19 “(2) *ADVISORY FUNCTIONS.*—*The Office shall ad-*
20 *vice the Secretary on major domestic and prudential*
21 *international insurance policy issues.*

22 “(d) *SCOPE.*—*The authority of the Office shall extend*
23 *to all lines of insurance except health insurance, as such*
24 *insurance is determined by the Secretary based on section*
25 *2791 of the Public Health Service Act (42 U.S.C. 300gg–*

1 91), and crop insurance, as established by the Federal Crop
2 Insurance Act (7 U.S.C. 1501 et seq.).

3 “(e) GATHERING OF INFORMATION.—

4 “(1) IN GENERAL.—In carrying out the func-
5 tions required under subsection (c), the Office may—

6 “(A) receive and collect data and informa-
7 tion on and from the insurance industry and in-
8 surers;

9 “(B) enter into information-sharing agree-
10 ments;

11 “(C) analyze and disseminate data and in-
12 formation; and

13 “(D) issue reports regarding all lines of in-
14 surance except health insurance.

15 “(2) COLLECTION OF INFORMATION FROM INSUR-
16 ERS AND AFFILIATES.—

17 “(A) IN GENERAL.—Except as provided in
18 paragraph (3), the Office may require an in-
19 surer, or any affiliate of an insurer, to submit
20 such data or information as the Office may rea-
21 sonably require in carrying out the functions de-
22 scribed under subsection (c).

23 “(B) RULE OF CONSTRUCTION.—Notwith-
24 standing any other provision of this section, for
25 purposes of subparagraph (A), the term ‘insurer’

1 *means any person that is authorized to write in-*
2 *surance or reinsure risks and issue contracts or*
3 *policies in 1 or more States.*

4 “(3) *EXCEPTION FOR SMALL INSURERS.—Para-*
5 *graph (2) shall not apply with respect to any insurer*
6 *or affiliate thereof that meets a minimum size thresh-*
7 *old that the Office may establish, whether by order or*
8 *rule.*

9 “(4) *ADVANCE COORDINATION.—Before collecting*
10 *any data or information under paragraph (2) from*
11 *an insurer, or any affiliate of an insurer, the Office*
12 *shall coordinate with each relevant State insurance*
13 *regulator (or other relevant Federal or State regu-*
14 *latory agency, if any, in the case of an affiliate of an*
15 *insurer) to determine if the information to be collected*
16 *is available from, or may be obtained in a timely*
17 *manner by, such State insurance regulator, individ-*
18 *ually or collectively, another regulatory agency, or*
19 *publicly available sources. Notwithstanding any other*
20 *provision of law, each such relevant State insurance*
21 *regulator or other Federal or State regulatory agency*
22 *is authorized to provide to the Office such data or in-*
23 *formation.*

24 “(5) *CONFIDENTIALITY.—*

1 “(A) *RETENTION OF PRIVILEGE.*—*The sub-*
2 *mission of any nonpublicly available data and*
3 *information to the Office under this subsection*
4 *shall not constitute a waiver of, or otherwise af-*
5 *fect, any privilege arising under Federal or State*
6 *law (including the rules of any Federal or State*
7 *court) to which the data or information is other-*
8 *wise subject.*

9 “(B) *CONTINUED APPLICATION OF PRIOR*
10 *CONFIDENTIALITY AGREEMENTS.*—*Any require-*
11 *ment under Federal or State law to the extent*
12 *otherwise applicable, or any requirement pursu-*
13 *ant to a written agreement in effect between the*
14 *original source of any nonpublicly available*
15 *data or information and the source of such data*
16 *or information to the Office, regarding the pri-*
17 *vacancy or confidentiality of any data or informa-*
18 *tion in the possession of the source to the Office,*
19 *shall continue to apply to such data or informa-*
20 *tion after the data or information has been pro-*
21 *vided pursuant to this subsection to the Office.*

22 “(C) *INFORMATION SHARING AGREEMENT.*—
23 *Any data or information obtained by the Office*
24 *may be made available to State insurance regu-*

1 *lators, individually or collectively, through an*
2 *information sharing agreement that—*

3 *“(i) shall comply with applicable Fed-*
4 *eral law; and*

5 *“(ii) shall not constitute a waiver of,*
6 *or otherwise affect, any privilege under Fed-*
7 *eral or State law (including the rules of any*
8 *Federal or State Court) to which the data*
9 *or information is otherwise subject.*

10 *“(D) AGENCY DISCLOSURE REQUIRE-*
11 *MENTS.—Section 552 of title 5, United States*
12 *Code, shall apply to any data or information*
13 *submitted to the Office by an insurer or an affil-*
14 *iate of an insurer.*

15 *“(6) SUBPOENAS AND ENFORCEMENT.—The Di-*
16 *rector shall have the power to require by subpoena the*
17 *production of the data or information requested under*
18 *paragraph (2), but only upon a written finding by*
19 *the Director that such data or information is required*
20 *to carry out the functions described under subsection*
21 *(c) and that the Office has coordinated with such reg-*
22 *ulator or agency as required under paragraph (4).*
23 *Subpoenas shall bear the signature of the Director*
24 *and shall be served by any person or class of persons*
25 *designated by the Director for that purpose. In the*

1 *case of contumacy or failure to obey a subpoena, the*
2 *subpoena shall be enforceable by order of any appro-*
3 *priate district court of the United States. Any failure*
4 *to obey the order of the court may be punished by the*
5 *court as a contempt of court.*

6 “(f) *PREEMPTION OF STATE INSURANCE MEAS-*
7 *URES.—*

8 “(1) *STANDARD.—A State insurance measure*
9 *shall be preempted if, and only to the extent that the*
10 *Director determines, in accordance with this sub-*
11 *section, that the measure—*

12 “(A) *results in less favorable treatment of a*
13 *non-United States insurer domiciled in a foreign*
14 *jurisdiction that is subject to an international*
15 *insurance agreement on prudential measures*
16 *than a United States insurer domiciled, licensed,*
17 *or otherwise admitted in that State; and*

18 “(B) *is inconsistent with an International*
19 *Insurance Agreement on Prudential Measures.*

20 “(2) *DETERMINATION.—*

21 “(A) *NOTICE OF POTENTIAL INCONSIST-*
22 *ENCY.—Before making any determination under*
23 *paragraph (1), the Director shall—*

1 “(i) notify and consult with the appro-
2 priate State regarding any potential incon-
3 sistency or preemption;

4 “(ii) cause to be published in the Fed-
5 eral Register notice of the issue regarding
6 the potential inconsistency or preemption,
7 including a description of each State insur-
8 ance measure at issue and any applicable
9 International Insurance Agreement on Pru-
10 dential Measures;

11 “(iii) provide interested parties a rea-
12 sonable opportunity to submit written com-
13 ments to the Office; and

14 “(iv) consider any comments received.

15 “(B) SCOPE OF REVIEW.—For purposes of
16 this subsection, the determination of the Director
17 regarding State insurance measures shall be lim-
18 ited to the subject matter contained within the
19 international insurance agreement on prudential
20 measure involved.

21 “(C) NOTICE OF DETERMINATION OF INCON-
22 SISTENCY.—Upon making any determination
23 under paragraph (1), the Director shall—

1 “(i) notify the appropriate State of the
2 determination and the extent of the incon-
3 sistency;

4 “(ii) establish a reasonable period of
5 time, which shall not be less than 30 days,
6 before the determination shall become effec-
7 tive; and

8 “(iii) notify the Committee on Bank-
9 ing, Housing, and Urban Affairs of the
10 Senate and the Committee on Financial
11 Services of the House of Representatives of
12 the inconsistency.

13 “(3) NOTICE OF EFFECTIVENESS.—Upon the
14 conclusion of the period referred to in paragraph
15 (2)(C)(ii), if the basis for such determination still ex-
16 ists, the determination shall become effective and the
17 Director shall—

18 “(A) cause to be published a notice in the
19 Federal Register that the preemption has become
20 effective, as well as the effective date; and

21 “(B) notify the appropriate State.

22 “(4) LIMITATION.—No State may enforce a State
23 insurance measure to the extent that such measure
24 has been preempted under this subsection.

1 “(g) *APPLICABILITY OF ADMINISTRATIVE PROCE-*
2 *DURES ACT.*—*Determinations of inconsistency made pursu-*
3 *ant to subsection (f)(2) shall be subject to the applicable*
4 *provisions of subchapter II of chapter 5 of title 5, United*
5 *States Code (relating to administrative procedure), and*
6 *chapter 7 of such title (relating to judicial review).*

7 “(h) *REGULATIONS, POLICIES, AND PROCEDURES.*—
8 *The Secretary may issue orders, regulations, policies, and*
9 *procedures to implement this section.*

10 “(i) *CONSULTATION.*—*The Director shall consult with*
11 *State insurance regulators, individually or collectively, to*
12 *the extent the Director determines appropriate, in carrying*
13 *out the functions of the Office.*

14 “(j) *SAVINGS PROVISIONS.*—*Nothing in this section*
15 *shall—*

16 “(1) preempt—

17 “(A) *any State insurance measure that gov-*
18 *erns any insurer’s rates, premiums, under-*
19 *writing, or sales practices;*

20 “(B) *any State coverage requirements for*
21 *insurance;*

22 “(C) *the application of the antitrust laws of*
23 *any State to the business of insurance; or*

24 “(D) *any State insurance measure gov-*
25 *erning the capital or solvency of an insurer, ex-*

1 *cept to the extent that such State insurance*
2 *measure results in less favorable treatment of a*
3 *non-United State insurer than a United States*
4 *insurer;*

5 “(2) *be construed to alter, amend, or limit any*
6 *provision of the Consumer Financial Protection Agen-*
7 *cy Act of 2010; or*

8 “(3) *affect the preemption of any State insur-*
9 *ance measure otherwise inconsistent with and pre-*
10 *empted by Federal law.*

11 “(k) *RETENTION OF EXISTING STATE REGULATORY*
12 *AUTHORITY.—Nothing in this section or section 314 shall*
13 *be construed to establish or provide the Office or the Depart-*
14 *ment of the Treasury with general supervisory or regulatory*
15 *authority over the business of insurance.*

16 “(l) *ANNUAL REPORT TO CONGRESS.—Beginning Sep-*
17 *tember 30, 2011, the Director shall submit a report on or*
18 *before September 30 of each calendar year to the President*
19 *and to the Committee on Banking, Housing, and Urban*
20 *Affairs of the Senate and the Committee on Financial Serv-*
21 *ices of the House of Representatives on the insurance indus-*
22 *try, any actions taken by the Office pursuant to subsection*
23 *(f) (regarding preemption of inconsistent State insurance*
24 *measures), and any other information as deemed relevant*
25 *by the Director or as requested by such Committees.*

1 “(m) *STUDY AND REPORT ON REGULATION OF INSUR-*
2 *ANCE.*—

3 “(1) *IN GENERAL.*—*Not later than 18 months*
4 *after the date of enactment of this section, the Direc-*
5 *tor shall conduct a study and submit a report to Con-*
6 *gress on how to modernize and improve the system of*
7 *insurance regulation in the United States.*

8 “(2) *CONSIDERATIONS.*—*The study and report*
9 *required under paragraph (1) shall be based on and*
10 *guided by the following considerations:*

11 “(A) *Systemic risk regulation with respect*
12 *to insurance.*

13 “(B) *Capital standards and the relationship*
14 *between capital allocation and liabilities, includ-*
15 *ing standards relating to liquidity and duration*
16 *risk.*

17 “(C) *Consumer protection for insurance*
18 *products and practices, including gaps in state*
19 *regulation.*

20 “(D) *The degree of national uniformity of*
21 *state insurance regulation.*

22 “(E) *The regulation of insurance companies*
23 *and affiliates on a consolidated basis.*

24 “(F) *International coordination of insur-*
25 *ance regulation.*

1 “(3) *ADDITIONAL FACTORS.*—*The study and re-*
2 *port required under paragraph (1) shall also examine*
3 *the following factors:*

4 “(A) *The costs and benefits of potential Fed-*
5 *eral regulation of insurance across various lines*
6 *of insurance (except health insurance).*

7 “(B) *The feasibility of regulating only cer-*
8 *tain lines of insurance at the Federal level, while*
9 *leaving other lines of insurance to be regulated*
10 *at the State level.*

11 “(C) *The ability of any potential Federal*
12 *regulation or Federal regulators to eliminate or*
13 *minimize regulatory arbitrage.*

14 “(D) *The impact that developments in the*
15 *regulation of insurance in foreign jurisdictions*
16 *might have on the potential Federal regulation of*
17 *insurance.*

18 “(E) *The ability of any potential Federal*
19 *regulation or Federal regulator to provide robust*
20 *consumer protection for policyholders.*

21 “(F) *The potential consequences of sub-*
22 *jecting insurance companies to a Federal resolu-*
23 *tion authority, including the effects of any Fed-*
24 *eral resolution authority—*

1 “(i) on the operation of State insur-
2 ance guaranty fund systems, including the
3 loss of guaranty fund coverage if an insur-
4 ance company is subject to a Federal resolu-
5 tion authority;

6 “(ii) on policyholder protection, in-
7 cluding the loss of the priority status of pol-
8 icyholder claims over other unsecured gen-
9 eral creditor claims;

10 “(iii) in the case of life insurance com-
11 panies, the loss of the special status of sepa-
12 rate account assets and separate account li-
13 abilities; and

14 “(iv) on the international competitive-
15 ness of insurance companies.

16 “(G) Such other factors as the Director de-
17 termines necessary or appropriate, consistent
18 with the principles set forth in paragraph (2).

19 “(4) *REQUIRED RECOMMENDATIONS.*—The study
20 and report required under paragraph (1) shall also
21 contain any legislative, administrative, or regulatory
22 recommendations, as the Director determines appro-
23 priate, to carry out or effectuate the findings set forth
24 in such report.

1 “(5) *CONSULTATION.*—*With respect to the study*
2 *and report required under paragraph (1), the Direc-*
3 *tor shall consult with the National Association of In-*
4 *surance Commissioners, consumer organizations, rep-*
5 *resentatives of the insurance industry and policy-*
6 *holders, and other organizations and experts, as ap-*
7 *propriate.*

8 “(n) *USE OF EXISTING RESOURCES.*—*To carry out*
9 *this section, the Office may employ personnel, facilities, and*
10 *any other resource of the Department of the Treasury avail-*
11 *able to the Secretary.*

12 “(o) *DEFINITIONS.*—*In this section and section 314,*
13 *the following definitions shall apply:*

14 “(1) *AFFILIATE.*—*The term ‘affiliate’ means,*
15 *with respect to an insurer, any person who controls,*
16 *is controlled by, or is under common control with the*
17 *insurer.*

18 “(2) *INSURER.*—*The term ‘insurer’ means any*
19 *person engaged in the business of insurance, includ-*
20 *ing reinsurance.*

21 “(3) *INTERNATIONAL INSURANCE AGREEMENT ON*
22 *PRUDENTIAL MEASURES.*—*The term ‘International*
23 *Insurance Agreement on Prudential Measures’ means*
24 *a written bilateral or multilateral agreement entered*
25 *into between the United States and a foreign govern-*

1 *ment, authority, or regulatory entity regarding pru-*
2 *dential measures applicable to the business of insur-*
3 *ance or reinsurance.*

4 “(4) *NON-UNITED STATES INSURER.*—*The term*
5 *‘non-United States insurer’ means an insurer that is*
6 *organized under the laws of a jurisdiction other than*
7 *a State, but does not include any United States*
8 *branch of such an insurer.*

9 “(5) *OFFICE.*—*The term ‘Office’ means the Office*
10 *of National Insurance established by this section.*

11 “(6) *STATE INSURANCE MEASURE.*—*The term*
12 *‘State insurance measure’ means any State law, regu-*
13 *lation, administrative ruling, bulletin, guideline, or*
14 *practice relating to or affecting prudential measures*
15 *applicable to insurance or reinsurance.*

16 “(7) *STATE INSURANCE REGULATOR.*—*The term*
17 *‘State insurance regulator’ means any State regu-*
18 *latory authority responsible for the supervision of in-*
19 *surers.*

20 “(8) *UNITED STATES INSURER.*—*The term*
21 *‘United States insurer’ means—*

22 “(A) *an insurer that is organized under the*
23 *laws of a State; or*

24 “(B) *a United States branch of a non-*
25 *United States insurer.*

1 “(p) *AUTHORIZATION OF APPROPRIATIONS.*—*There*
2 *are authorized to be appropriated for the Office for each*
3 *fiscal year such sums as may be necessary.*

4 “**SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON**
5 **PRUDENTIAL MEASURES.**

6 “(a) *IN GENERAL.*—*The Secretary of the Treasury is*
7 *authorized to negotiate and enter into International Insur-*
8 *ance Agreements on Prudential Measures on behalf of the*
9 *United States.*

10 “(b) *SAVINGS PROVISION.*—*Nothing in this section or*
11 *section 313 shall be construed to affect the development and*
12 *coordination of United States international trade policy or*
13 *the administration of the United States trade agreements*
14 *program. It is to be understood that the negotiation of*
15 *International Insurance Agreements on Prudential Meas-*
16 *ures under such sections is consistent with the requirement*
17 *of this subsection.*

18 “(c) *CONSULTATION.*—*The Secretary shall consult*
19 *with the United States Trade Representative on the negotia-*
20 *tion of International Insurance Agreements on Prudential*
21 *Measures, including prior to initiating and concluding any*
22 *such agreements.”.*

23 “(b) *DUTIES OF SECRETARY.*—*Section 321(a) of title*
24 *31, United States Code, is amended—*

1 (1) in paragraph (7), by striking “; and” and
2 inserting a semicolon;

3 (2) in paragraph (8)(C), by striking the period
4 at the end and inserting “; and”; and

5 (3) by adding at the end the following new para-
6 graph:

7 “(9) advise the President on major domestic and
8 international prudential policy issues in connection
9 with all lines of insurance except health insurance.”.

10 (c) *CLERICAL AMENDMENT.*—*The table of sections for*
11 *subchapter I of chapter 3 of title 31, United States Code,*
12 *is amended by striking the item relating to section 312 and*
13 *inserting the following new items:*

“Sec. 312. Terrorism and financial intelligence.

“Sec. 313. Office of National Insurance.

“Sec. 314. International insurance agreements on prudential measures.

“Sec. 315. Continuing in office.”.

14 ***Subtitle B—State-based Insurance*** 15 ***Reform***

16 ***SEC. 511. SHORT TITLE.***

17 *This subtitle may be cited as the “Nonadmitted and*
18 *Reinsurance Reform Act of 2010”.*

19 ***SEC. 512. EFFECTIVE DATE.***

20 *Except as otherwise specifically provided in this sub-*
21 *title, this subtitle shall take effect upon the expiration of*
22 *the 12-month period beginning on the date of the enactment*
23 *of this subtitle.*

1 **PART I—NONADMITTED INSURANCE**

2 **SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF PRE-**
3 **MIUM TAXES.**

4 (a) *HOME STATE’S EXCLUSIVE AUTHORITY.*—No
5 State other than the home State of an insured may require
6 any premium tax payment for nonadmitted insurance.

7 (b) *ALLOCATION OF NONADMITTED PREMIUM*
8 *TAXES.*—

9 (1) *IN GENERAL.*—The States may enter into a
10 compact or otherwise establish procedures to allocate
11 among the States the premium taxes paid to an in-
12 sured’s home State described in subsection (a).

13 (2) *EFFECTIVE DATE.*—Except as expressly oth-
14 erwise provided in such compact or other procedures,
15 any such compact or other procedures—

16 (A) if adopted on or before the expiration of
17 the 330-day period that begins on the date of the
18 enactment of this subtitle, shall apply to any
19 premium taxes that, on or after such date of en-
20 actment, are required to be paid to any State
21 that is subject to such compact or procedures;
22 and

23 (B) if adopted after the expiration of such
24 330-day period, shall apply to any premium
25 taxes that, on or after January 1 of the first cal-
26 endar year that begins after the expiration of

1 *such 330-day period, are required to be paid to*
2 *any State that is subject to such compact or pro-*
3 *cedures.*

4 (3) *REPORT.—Upon the expiration of the 330-*
5 *day period referred to in paragraph (2), the NAIC*
6 *may submit a report to the Committee on Financial*
7 *Services and Committee on the Judiciary of the*
8 *House of Representatives and the Committee on*
9 *Banking, Housing, and Urban Affairs of the Senate*
10 *identifying and describing any compact or other pro-*
11 *cedures for allocation among the States of premium*
12 *taxes that have been adopted during such period by*
13 *any States.*

14 (4) *NATIONWIDE SYSTEM.—The Congress intends*
15 *that each State adopt nationwide uniform require-*
16 *ments, forms, and procedures, such as an interstate*
17 *compact, that provides for the reporting, payment,*
18 *collection, and allocation of premium taxes for non-*
19 *admitted insurance consistent with this section.*

20 (c) *ALLOCATION BASED ON TAX ALLOCATION RE-*
21 *PORT.—To facilitate the payment of premium taxes among*
22 *the States, an insured's home State may require surplus*
23 *lines brokers and insureds who have independently procured*
24 *insurance to annually file tax allocation reports with the*
25 *insured's home State detailing the portion of the non-*

1 *admitted insurance policy premium or premiums attrib-*
2 *utable to properties, risks, or exposures located in each*
3 *State. The filing of a nonadmitted insurance tax allocation*
4 *report and the payment of tax may be made by a person*
5 *authorized by the insured to act as its agent.*

6 **SEC. 522. REGULATION OF NONADMITTED INSURANCE BY**
7 **INSURED'S HOME STATE.**

8 (a) *HOME STATE AUTHORITY.*—*Except as otherwise*
9 *provided in this section, the placement of nonadmitted in-*
10 *surance shall be subject to the statutory and regulatory re-*
11 *quirements solely of the insured's home State.*

12 (b) *BROKER LICENSING.*—*No State other than an in-*
13 *sured's home State may require a surplus lines broker to*
14 *be licensed in order to sell, solicit, or negotiate nonadmitted*
15 *insurance with respect to such insured.*

16 (c) *ENFORCEMENT PROVISION.*—*With respect to sec-*
17 *tion 521 and subsections (a) and (b) of this section, any*
18 *law, regulation, provision, or action of any State that ap-*
19 *plies or purports to apply to nonadmitted insurance sold*
20 *to, solicited by, or negotiated with an insured whose home*
21 *State is another State shall be preempted with respect to*
22 *such application.*

23 (d) *WORKERS' COMPENSATION EXCEPTION.*—*This sec-*
24 *tion may not be construed to preempt any State law, rule,*
25 *or regulation that restricts the placement of workers' com-*

1 *pensation insurance or excess insurance for self-funded*
2 *workers' compensation plans with a nonadmitted insurer.*

3 **SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-**
4 **BASE.**

5 *After the expiration of the 2-year period beginning on*
6 *the date of the enactment of this subtitle, a State may not*
7 *collect any fees relating to licensing of an individual or en-*
8 *tity as a surplus lines broker in the State unless the State*
9 *has in effect at such time laws or regulations that provide*
10 *for participation by the State in the national insurance*
11 *producer database of the NAIC, or any other equivalent uni-*
12 *form national database, for the licensure of surplus lines*
13 *brokers and the renewal of such licenses.*

14 **SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELIGI-**
15 **BILITY.**

16 *A State may not—*

17 *(1) impose eligibility requirements on, or other-*
18 *wise establish eligibility criteria for, nonadmitted in-*
19 *surers domiciled in a United States jurisdiction, ex-*
20 *cept in conformance with such requirements and cri-*
21 *teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-*
22 *mitted Insurance Model Act, unless the State has*
23 *adopted nationwide uniform requirements, forms, and*
24 *procedures developed in accordance with section*

1 521(b) of this subtitle that include alternative nation-
2 wide uniform eligibility requirements; or

3 (2) prohibit a surplus lines broker from placing
4 nonadmitted insurance with, or procuring non-
5 admitted insurance from, a nonadmitted insurer
6 domiciled outside the United States that is listed on
7 the Quarterly Listing of Alien Insurers maintained
8 by the International Insurers Department of the
9 NAIC.

10 **SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL**
11 **PURCHASERS.**

12 A surplus lines broker seeking to procure or place non-
13 admitted insurance in a State for an exempt commercial
14 purchaser shall not be required to satisfy any State require-
15 ment to make a due diligence search to determine whether
16 the full amount or type of insurance sought by such exempt
17 commercial purchaser can be obtained from admitted insur-
18 ers if—

19 (1) the broker procuring or placing the surplus
20 lines insurance has disclosed to the exempt commer-
21 cial purchaser that such insurance may or may not
22 be available from the admitted market that may pro-
23 vide greater protection with more regulatory over-
24 sight; and

1 (2) *the exempt commercial purchaser has subse-*
2 *quently requested in writing the broker to procure or*
3 *place such insurance from a nonadmitted insurer.*

4 **SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MAR-**
5 **KET.**

6 (a) *IN GENERAL.*—*The Comptroller General of the*
7 *United States shall conduct a study of the nonadmitted in-*
8 *surance market to determine the effect of the enactment of*
9 *this part on the size and market share of the nonadmitted*
10 *insurance market for providing coverage typically provided*
11 *by the admitted insurance market.*

12 (b) *CONTENTS.*—*The study shall determine and ana-*
13 *lyze—*

14 (1) *the change in the size and market share of*
15 *the nonadmitted insurance market and in the number*
16 *of insurance companies and insurance holding com-*
17 *panies providing such business in the 18-month pe-*
18 *riod that begins upon the effective date of this subtitle;*

19 (2) *the extent to which insurance coverage typi-*
20 *cally provided by the admitted insurance market has*
21 *shifted to the nonadmitted insurance market;*

22 (3) *the consequences of any change in the size*
23 *and market share of the nonadmitted insurance mar-*
24 *ket, including differences in the price and availability*

1 of coverage available in both the admitted and non-
2 admitted insurance markets;

3 (4) the extent to which insurance companies and
4 insurance holding companies that provide both ad-
5 mitted and nonadmitted insurance have experienced
6 shifts in the volume of business between admitted and
7 nonadmitted insurance; and

8 (5) the extent to which there has been a change
9 in the number of individuals who have nonadmitted
10 insurance policies, the type of coverage provided
11 under such policies, and whether such coverage is
12 available in the admitted insurance market.

13 (c) *CONSULTATION WITH NAIC.*—In conducting the
14 study under this section, the Comptroller General shall con-
15 sult with the NAIC.

16 (d) *REPORT.*—The Comptroller General shall complete
17 the study under this section and submit a report to the
18 Committee on Banking, Housing, and Urban Affairs of the
19 Senate and the Committee on Financial Services of the
20 House of Representatives regarding the findings of the study
21 not later than 30 months after the effective date of this sub-
22 title.

23 **SEC. 527. DEFINITIONS.**

24 For purposes of this part, the following definitions
25 shall apply:

1 (1) *ADMITTED INSURER.*—*The term “admitted*
2 *insurer” means, with respect to a State, an insurer*
3 *licensed to engage in the business of insurance in such*
4 *State.*

5 (2) *AFFILIATE.*—*The term “affiliate” means,*
6 *with respect to an insured, any entity that controls,*
7 *is controlled by, or is under common control with the*
8 *insured.*

9 (3) *AFFILIATED GROUP.*—*The term “affiliated*
10 *group” means any group of entities that are all affili-*
11 *ated.*

12 (4) *CONTROL.*—*An entity has “control” over an-*
13 *other entity if—*

14 (A) *the entity directly or indirectly or act-*
15 *ing through 1 or more other persons owns, con-*
16 *trols, or has the power to vote 25 percent or more*
17 *of any class of voting securities of the other enti-*
18 *ty; or*

19 (B) *the entity controls in any manner the*
20 *election of a majority of the directors or trustees*
21 *of the other entity.*

22 (5) *EXEMPT COMMERCIAL PURCHASER.*—*The*
23 *term “exempt commercial purchaser” means any per-*
24 *son purchasing commercial insurance that, at the*
25 *time of placement, meets the following requirements:*

1 (A) *The person employs or retains a quali-*
2 *fied risk manager to negotiate insurance cov-*
3 *erage.*

4 (B) *The person has paid aggregate nation-*
5 *wide commercial property and casualty insur-*
6 *ance premiums in excess of \$100,000 in the im-*
7 *mediately preceding 12 months.*

8 (C)(i) *The person meets at least 1 of the fol-*
9 *lowing criteria:*

10 (I) *The person possesses a net worth in*
11 *excess of \$20,000,000, as such amount is ad-*
12 *justed pursuant to clause (ii).*

13 (II) *The person generates annual reve-*
14 *nues in excess of \$50,000,000, as such*
15 *amount is adjusted pursuant to clause (ii).*

16 (III) *The person employs more than*
17 *500 full-time or full-time equivalent em-*
18 *ployees per individual insured or is a mem-*
19 *ber of an affiliated group employing more*
20 *than 1,000 employees in the aggregate.*

21 (IV) *The person is a not-for-profit or-*
22 *ganization or public entity generating an-*
23 *nual budgeted expenditures of at least*
24 *\$30,000,000, as such amount is adjusted*
25 *pursuant to clause (ii).*

1 (V) *The person is a municipality with*
2 *a population in excess of 50,000 persons.*

3 (ii) *Effective on the fifth January 1 occur-*
4 *ring after the date of the enactment of this sub-*
5 *title and each fifth January 1 occurring there-*
6 *after, the amounts in subclauses (I), (II), and*
7 *(IV) of clause (i) shall be adjusted to reflect the*
8 *percentage change for such 5-year period in the*
9 *Consumer Price Index for All Urban Consumers*
10 *published by the Bureau of Labor Statistics of*
11 *the Department of Labor.*

12 (6) *HOME STATE.—*

13 (A) *IN GENERAL.—Except as provided in*
14 *subparagraph (B), the term “home State”*
15 *means, with respect to an insured—*

16 (i) *the State in which an insured*
17 *maintains its principal place of business or,*
18 *in the case of an individual, the individ-*
19 *ual’s principal residence; or*

20 (ii) *if 100 percent of the insured risk*
21 *is located out of the State referred to in sub-*
22 *paragraph (A), the State to which the great-*
23 *est percentage of the insured’s taxable pre-*
24 *mium for that insurance contract is allo-*
25 *cated.*

1 (B) *AFFILIATED GROUPS.*—*If more than 1*
2 *insured from an affiliated group are named in-*
3 *sureds on a single nonadmitted insurance con-*
4 *tract, the term “home State” means the home*
5 *State, as determined pursuant to subparagraph*
6 *(A), of the member of the affiliated group that*
7 *has the largest percentage of premium attributed*
8 *to it under such insurance contract.*

9 (7) *INDEPENDENTLY PROCURED INSURANCE.*—
10 *The term “independently procured insurance” means*
11 *insurance procured directly by an insured from a*
12 *nonadmitted insurer.*

13 (8) *NAIC.*—*The term “NAIC” means the Na-*
14 *tional Association of Insurance Commissioners or any*
15 *successor entity.*

16 (9) *NONADMITTED INSURANCE.*—*The term “non-*
17 *admitted insurance” means any property and cas-*
18 *ualty insurance permitted to be placed directly or*
19 *through a surplus lines broker with a nonadmitted in-*
20 *surer eligible to accept such insurance.*

21 (10) *NON-ADMITTED INSURANCE MODEL ACT.*—
22 *The term “Non-Admitted Insurance Model Act”*
23 *means the provisions of the Non-Admitted Insurance*
24 *Model Act, as adopted by the NAIC on August 3,*

1 1994, and amended on September 30, 1996, December
2 6, 1997, October 2, 1999, and June 8, 2002.

3 (11) *NONADMITTED INSURER*.—The term “non-
4 admitted insurer”—

5 (A) means, with respect to a State, an in-
6 surer not licensed to engage in the business of in-
7 surance in such State; but

8 (B) does not include a risk retention group,
9 as that term is defined in section 2(a)(4) of the
10 Liability Risk Retention Act of 1986 (15 U.S.C.
11 3901(a)(4)).

12 (12) *QUALIFIED RISK MANAGER*.—The term
13 “qualified risk manager” means, with respect to a
14 policyholder of commercial insurance, a person who
15 meets all of the following requirements:

16 (A) The person is an employee of, or third
17 party consultant retained by, the commercial
18 policyholder.

19 (B) The person provides skilled services in
20 loss prevention, loss reduction, or risk and insur-
21 ance coverage analysis, and purchase of insur-
22 ance.

23 (C) The person—

24 (i)(I) has a bachelor’s degree or higher
25 from an accredited college or university in

1 *risk management, business administration,*
2 *finance, economics, or any other field deter-*
3 *mined by a State insurance commissioner*
4 *or other State regulatory official or entity*
5 *to demonstrate minimum competence in*
6 *risk management; and*

7 *(II)(aa) has 3 years of experience in*
8 *risk financing, claims administration, loss*
9 *prevention, risk and insurance analysis, or*
10 *purchasing commercial lines of insurance;*
11 *or*

12 *(bb) has 1 of the following designa-*
13 *tions:*

14 *(AA) a designation as a Chartered*
15 *Property and Casualty Underwriter*
16 *(in this subparagraph referred to as*
17 *“CPCU”) issued by the American In-*
18 *stitute for CPCU/Insurance Institute of*
19 *America;*

20 *(BB) a designation as an Asso-*
21 *ciate in Risk Management (ARM)*
22 *issued by the American Institute for*
23 *CPCU/Insurance Institute of America;*

24 *(CC) a designation as Certified*
25 *Risk Manager (CRM) issued by the*

1 *National Alliance for Insurance Edu-*
2 *cation & Research;*

3 *(DD) a designation as a RIMS*
4 *Fellow (RF) issued by the Global Risk*
5 *Management Institute; or*

6 *(EE) any other designation, cer-*
7 *tification, or license determined by a*
8 *State insurance commissioner or other*
9 *State insurance regulatory official or*
10 *entity to demonstrate minimum com-*
11 *petency in risk management;*

12 *(ii)(I) has at least 7 years of experi-*
13 *ence in risk financing, claims administra-*
14 *tion, loss prevention, risk and insurance*
15 *coverage analysis, or purchasing commer-*
16 *cial lines of insurance; and*

17 *(II) has any 1 of the designations spec-*
18 *ified in subitems (AA) through (EE) of*
19 *clause (i)(II)(bb);*

20 *(iii) has at least 10 years of experience*
21 *in risk financing, claims administration,*
22 *loss prevention, risk and insurance coverage*
23 *analysis, or purchasing commercial lines of*
24 *insurance; or*

1 (iv) has a graduate degree from an ac-
2 credited college or university in risk man-
3 agement, business administration, finance,
4 economics, or any other field determined by
5 a State insurance commissioner or other
6 State regulatory official or entity to dem-
7 onstrate minimum competence in risk man-
8 agement.

9 (13) *PREMIUM TAX.*—The term “premium tax”
10 means, with respect to surplus lines or independently
11 procured insurance coverage, any tax, fee, assessment,
12 or other charge imposed by a government entity di-
13 rectly or indirectly based on any payment made as
14 consideration for an insurance contract for such in-
15 surance, including premium deposits, assessments,
16 registration fees, and any other compensation given
17 in consideration for a contract of insurance.

18 (14) *SURPLUS LINES BROKER.*—The term “sur-
19 plus lines broker” means an individual, firm, or cor-
20 poration which is licensed in a State to sell, solicit,
21 or negotiate insurance on properties, risks, or expo-
22 sures located or to be performed in a State with non-
23 admitted insurers.

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PART II—REINSURANCE

**SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND
REINSURANCE AGREEMENTS.**

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer’s ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State’s law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

1 (3) attempt to enforce a reinsurance contract on
2 terms different than those set forth in the reinsurance
3 contract, to the extent that the terms are not incon-
4 sistent with this part; or

5 (4) otherwise apply the laws of the State to rein-
6 surance agreements of ceding insurers not domiciled
7 in that State.

8 **SEC. 532. REGULATION OF REINSURER SOLVENCY.**

9 (a) *DOMICILIARY STATE REGULATION.*—If the State
10 of domicile of a reinsurer is an NAIC-accredited State or
11 has financial solvency requirements substantially similar
12 to the requirements necessary for NAIC accreditation, such
13 State shall be solely responsible for regulating the financial
14 solvency of the reinsurer.

15 (b) *NONDOMICILIARY STATES.*—

16 (1) *LIMITATION ON FINANCIAL INFORMATION RE-*
17 *QUIREMENTS.*—If the State of domicile of a reinsurer
18 is an NAIC-accredited State or has financial solvency
19 requirements substantially similar to the require-
20 ments necessary for NAIC accreditation, no other
21 State may require the reinsurer to provide any addi-
22 tional financial information other than the informa-
23 tion the reinsurer is required to file with its domi-
24 ciliary State.

1 (2) *RECEIPT OF INFORMATION.*—No provision of
2 this section shall be construed as preventing or pro-
3 hibiting a State that is not the State of domicile of
4 a reinsurer from receiving a copy of any financial
5 statement filed with its domiciliary State.

6 **SEC. 533. DEFINITIONS.**

7 For purposes of this part, the following definitions
8 shall apply:

9 (1) *CEDING INSURER.*—The term “ceding in-
10 surer” means an insurer that purchases reinsurance.

11 (2) *DOMICILIARY STATE.*—The terms “State of
12 domicile” and “domiciliary State” mean, with re-
13 spect to an insurer or reinsurer, the State in which
14 the insurer or reinsurer is incorporated or entered
15 through, and licensed.

16 (3) *REINSURANCE.*—The term “reinsurance”
17 means the assumption by an insurer of all or part of
18 a risk undertaken originally by another insurer.

19 (4) *REINSURER.*—

20 (A) *IN GENERAL.*—The term “reinsurer”
21 means an insurer to the extent that the in-
22 surer—

23 (i) is principally engaged in the busi-
24 ness of reinsurance;

1 (ii) does not conduct significant
2 amounts of direct insurance as a percentage
3 of its net premiums; and

4 (iii) is not engaged in an ongoing
5 basis in the business of soliciting direct in-
6 surance.

7 (B) *DETERMINATION.*—A determination of
8 whether an insurer is a reinsurer shall be made
9 under the laws of the State of domicile in accord-
10 ance with this paragraph.

11 **PART III—RULE OF CONSTRUCTION**

12 **SEC. 541. RULE OF CONSTRUCTION.**

13 *Nothing in this subtitle or the amendments made by*
14 *this subtitle shall be construed to modify, impair, or super-*
15 *sede the application of the antitrust laws. Any implied or*
16 *actual conflict between this subtitle and any amendments*
17 *to this subtitle and the antitrust laws shall be resolved in*
18 *favor of the operation of the antitrust laws.*

19 **SEC. 542. SEVERABILITY.**

20 *If any section or subsection of this subtitle, or any ap-*
21 *plication of such provision to any person or circumstance,*
22 *is held to be unconstitutional, the remainder of this subtitle,*
23 *and the application of the provision to any other person*
24 *or circumstance, shall not be affected.*

1 **TITLE VI—IMPROVEMENTS TO**
 2 **REGULATION OF BANK AND**
 3 **SAVINGS ASSOCIATION HOLD-**
 4 **ING COMPANIES AND DEPOSI-**
 5 **TORY INSTITUTIONS**

6 **SEC. 601. SHORT TITLE.**

7 *This title may be cited as the “Bank and Savings Asso-*
 8 *ciation Holding Company and Depository Institution Reg-*
 9 *ulatory Improvements Act of 2010”.*

10 **SEC. 602. DEFINITION.**

11 *In this title, the term “commercial firm” means any*
 12 *entity that derives not less than 15 percent of the consoli-*
 13 *dated annual gross revenues of the entity, including all af-*
 14 *filiates of the entity, from engaging in activities that are*
 15 *not financial in nature or incidental to activities that are*
 16 *financial in nature, as provided in section 4(k) of the Bank*
 17 *Holding Company Act of 1956 (12 U.S.C. 1843(k)).*

18 **SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF**
 19 **CREDIT CARD BANKS, INDUSTRIAL LOAN**
 20 **COMPANIES, AND CERTAIN OTHER COMPA-**
 21 **NIES UNDER THE BANK HOLDING COMPANY**
 22 **ACT OF 1956.**

23 (a) **MORATORIUM.**—

24 (1) **DEFINITIONS.**—*In this subsection—*

1 (A) the term “credit card bank” means an
2 institution described in section 2(c)(2)(F) of the
3 Bank Holding Company Act of 1956 (12 U.S.C.
4 1841(c)(2)(F));

5 (B) the term “industrial bank” means an
6 institution described in section 2(c)(2)(H) of the
7 Bank Holding Company Act of 1956 (12 U.S.C.
8 1841(c)(2)(H)); and

9 (C) the term “trust bank” means an institu-
10 tion described in section 2(c)(2)(D) of the Bank
11 Holding Company Act of 1956 (12 U.S.C.
12 1841(c)(2)(D)).

13 (2) *MORATORIUM ON PROVISION OF DEPOSIT IN-*
14 *SURANCE.—The Corporation may not approve an ap-*
15 *plication for deposit insurance under section 5 of the*
16 *Federal Deposit Insurance Act (12 U.S.C. 1815) that*
17 *is received after November 10, 2009, for an industrial*
18 *bank, a credit card bank, or a trust bank that is di-*
19 *rectly or indirectly owned or controlled by a commer-*
20 *cial firm.*

21 (3) *CHANGE IN CONTROL.—*

22 (A) *IN GENERAL.—Except as provided in*
23 *subparagraph (B), the appropriate Federal*
24 *banking agency shall disapprove a change in*
25 *control, as provided in section 7(j) of the Federal*

1 *Deposit Insurance Act (12 U.S.C. 1817(j)), of an*
2 *industrial bank, a credit card bank, or a trust*
3 *bank if the change in control would result in di-*
4 *rect or indirect control of the industrial bank,*
5 *credit card bank, or trust bank by a commercial*
6 *firm.*

7 (B) *EXCEPTIONS.*—*Subparagraph (A) shall*
8 *not apply to a change in control of an industrial*
9 *bank, credit card bank, or trust bank that—*

10 (i) *is in danger of default, as deter-*
11 *mined by the appropriate Federal banking*
12 *agency; or*

13 (ii) *results from the merger or whole*
14 *acquisition of a commercial firm that di-*
15 *rectly or indirectly controls the industrial*
16 *bank, credit card bank, or trust bank in a*
17 *bona fide merger with or acquisition by an-*
18 *other commercial firm, as determined by the*
19 *appropriate Federal banking agency.*

20 (4) *SUNSET.*—*This subsection shall cease to have*
21 *effect 3 years after the date of enactment of this Act.*

22 (b) *GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF*
23 *EXCEPTIONS UNDER THE BANK HOLDING COMPANY ACT*
24 *OF 1956.—*

1 (1) *STUDY REQUIRED.*—*The Comptroller General*
 2 *of the United States shall carry out a study to deter-*
 3 *mine whether it is necessary, in order to strengthen*
 4 *the safety and soundness of institutions or the sta-*
 5 *bility of the financial system, to eliminate the excep-*
 6 *tions under section 2 of the Bank Holding Company*
 7 *Act of 1956 (12 U.S.C. 1841) for institutions de-*
 8 *scribed in—*

9 (A) *section 2(a)(5)(E) of the Bank Holding*
 10 *Company Act of 1956 (12 U.S.C. 1841(a)(5)(E));*

11 (B) *section 2(a)(5)(F) of the Bank Holding*
 12 *Company Act of 1956 (12 U.S.C. 1841(a)(5)(F));*

13 (C) *section 2(c)(2)(D) of the Bank Holding*
 14 *Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));*

15 (D) *section 2(c)(2)(F) of the Bank Holding*
 16 *Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));*

17 (E) *section 2(c)(2)(H) of the Bank Holding*
 18 *Company Act of 1956 (12 U.S.C. 1841(c)(2)(H));*

19 *and*

20 (F) *section 2(c)(2)(B) of the Bank Holding*
 21 *Company Act of 1956 (12 U.S.C. 1841(c)(2)(B)).*

22 (2) *CONTENT OF STUDY.*—

23 (A) *IN GENERAL.*—*The study required*
 24 *under paragraph (1), with respect to the institu-*
 25 *tions referenced in each of subparagraphs (A)*

1 *through (E) of paragraph (1), shall, to the extent*
2 *feasible be based on information provided to the*
3 *Comptroller General by the appropriate Federal*
4 *or State regulator, and shall—*

5 *(i) identify the types and number of*
6 *institutions excepted from section 2 of the*
7 *Bank Holding Company Act of 1956 (12*
8 *U.S.C. 1841) under each of the subpara-*
9 *graphs described in subparagraphs (A)*
10 *through (E) of paragraph (1);*

11 *(ii) generally describe the size and geo-*
12 *graphic locations of the institutions de-*
13 *scribed in clause (i);*

14 *(iii) determine the extent to which the*
15 *institutions described in clause (i) are held*
16 *by holding companies that are commercial*
17 *firms;*

18 *(iv) determine whether the institutions*
19 *described in clause (i) have any affiliates*
20 *that are commercial firms;*

21 *(v) identify the Federal banking agen-*
22 *cy responsible for the supervision of the in-*
23 *stitutions described in clause (i) on and*
24 *after the transfer date;*

1 (vi) determine the adequacy of the Fed-
2 eral bank regulatory framework applicable
3 to each category of institution described in
4 clause (i), including any restrictions (in-
5 cluding limitations on affiliate transactions
6 or cross-marketing) that apply to trans-
7 actions between an institution, the holding
8 company of the institution, and any other
9 affiliate of the institution; and

10 (vii) evaluate the potential con-
11 sequences of subjecting the institutions de-
12 scribed in clause (i) to the requirements of
13 the Bank Holding Company Act of 1956,
14 including with respect to the availability
15 and allocation of credit, the stability of the
16 financial system and the economy, the safe
17 and sound operation of each category of in-
18 stitution, and the impact on the types of ac-
19 tivities in which such institutions, and the
20 holding companies of such institutions, may
21 engage.

22 (B) SAVINGS ASSOCIATIONS.—With respect
23 to institutions described in paragraph (1)(F), the
24 study required under paragraph (1) shall—

1 (i) *determine the adequacy of the Fed-*
2 *eral bank regulatory framework applicable*
3 *to such institutions, including any restric-*
4 *tions (including limitations on affiliate*
5 *transactions or cross-marketing) that apply*
6 *to transactions between an institution, the*
7 *holding company of the institution, and*
8 *any other affiliate of the institution; and*

9 (ii) *evaluate the potential consequences*
10 *of subjecting the institutions described in*
11 *paragraph (1)(F) to the requirements of the*
12 *Bank Holding Company Act of 1956, in-*
13 *cluding with respect to the availability and*
14 *allocation of credit, the stability of the fi-*
15 *nancial system and the economy, the safe*
16 *and sound operation of such institutions,*
17 *and the impact on the types of activities in*
18 *which such institutions, and the holding*
19 *companies of such institutions, may engage.*

20 (3) *REPORT.*—*Not later than 18 months after the*
21 *date of enactment of this Act, the Comptroller General*
22 *shall submit to the Committee on Banking, Housing,*
23 *and Urban Affairs of the Senate and the Committee*
24 *on Financial Services of the House of Representatives*
25 *a report on the study required under paragraph (1).*

1 **SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COM-**
2 **PANIES; REGULATION OF FUNCTIONALLY**
3 **REGULATED SUBSIDIARIES.**

4 (a) *REPORTS BY BANK HOLDING COMPANIES.*—Sec-
5 *tions 5(c)(1) of the Bank Holding Company Act of 1956*
6 *(12 U.S.C. 1844(c)(1)) is amended—*

7 (1) *by striking subparagraph (B) and inserting*
8 *the following:*

9 “(B) *USE OF EXISTING REPORTS AND*
10 *OTHER SUPERVISORY INFORMATION.*—*The ap-*
11 *propriate Federal banking agency for a bank*
12 *holding company shall, to the fullest extent pos-*
13 *sible, use—*

14 “(i) *reports and other supervisory in-*
15 *formation that the bank holding company*
16 *or any subsidiary thereof has been required*
17 *to provide to other Federal or State regu-*
18 *latory agencies;*

19 “(ii) *externally audited financial state-*
20 *ments of the bank holding company or sub-*
21 *sidary;*

22 “(iii) *information otherwise available*
23 *from Federal or State regulatory agencies;*
24 *and*

25 “(iv) *information that is otherwise re-*
26 *quired to be reported publicly.”; and*

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

2 “(C) AVAILABILITY.—Upon the request of
3 the appropriate Federal banking agency for a
4 bank holding company, the bank holding com-
5 pany or a subsidiary of the bank holding com-
6 pany shall promptly provide to the appropriate
7 Federal banking agency any information de-
8 scribed in clauses (i) through (iii) of subpara-
9 graph (B).”.

10 (b) EXAMINATIONS OF BANK HOLDING COMPANIES.—
11 Section 5(c)(2) of the Bank Holding Company Act of 1956
12 (12 U.S.C. 1844(c)(2)) is amended to read as follows:

13 “(2) EXAMINATIONS.—

14 “(A) IN GENERAL.—The appropriate Fed-
15 eral banking agency for a bank holding company
16 may make examinations of the bank holding
17 company and each subsidiary of the bank hold-
18 ing company in order to—

19 “(i) inform such appropriate Federal
20 banking agency of—

21 “(I) the nature of the operations
22 and financial condition of the bank
23 holding company and the subsidiary;

24 “(II) the financial, operational,
25 and other risks within the bank hold-

1 *ing company system that may pose a*
2 *threat to—*

3 *“(aa) the safety and sound-*
4 *ness of the bank holding company*
5 *or of any depository institution*
6 *subsidiary of the bank holding*
7 *company; or*

8 *“(bb) the stability of the fi-*
9 *nancial system of the United*
10 *States; and*

11 *“(III) the systems of the bank*
12 *holding company for monitoring and*
13 *controlling the risks described in sub-*
14 *clause (II); and*

15 *“(ii) enforce the compliance of the bank*
16 *holding company and the subsidiary with*
17 *this Act and any other Federal law that*
18 *such appropriate Federal banking agency*
19 *has specific jurisdiction to enforce against*
20 *the bank holding company or subsidiary.*

21 *“(B) USE OF REPORTS TO REDUCE EXAMI-*
22 *NATIONS.—For purposes of this paragraph, the*
23 *appropriate Federal banking agency for a bank*
24 *holding company shall, to the fullest extent pos-*
25 *sible, rely on—*

1 “(i) examination reports made by
2 other Federal or State regulatory agencies
3 relating to the bank holding company and
4 any subsidiary of the bank holding com-
5 pany; and

6 “(ii) the reports and other information
7 required under paragraph (1).

8 “(C) COORDINATION WITH OTHER REGU-
9 LATORS.—The appropriate Federal banking
10 agency for a bank holding company shall—

11 “(i) provide reasonable notice to, and
12 consult with, the appropriate Federal bank-
13 ing agency or State regulatory agency of a
14 subsidiary that is a depository institution
15 or a functionally regulated subsidiary before
16 commencing an examination of the sub-
17 sidiary under this section; and

18 “(ii) to the fullest extent possible, avoid
19 duplication of examination activities, re-
20 porting requirements, and requests for in-
21 formation.”.

22 (c) AUTHORITY TO REGULATE FUNCTIONALLY REGU-
23 LATED SUBSIDIARIES OF BANK HOLDING COMPANIES.—
24 The Bank Holding Company Act of 1956 (12 U.S.C. 1841
25 et seq.) is amended—

1 (1) *in section 5(c) (12 U.S.C. 1844(c)), by strik-*
2 *ing paragraphs (3) and (4) and inserting the fol-*
3 *lowing:*

4 “*(3) [Reserved]*

5 “*(4) [Reserved]*”; and

6 (2) *by striking section 10A (12 U.S.C. 1848a).*

7 (d) *ACQUISITIONS OF BANKS.—Section 3(c) of the*
8 *Bank Holding Company Act of 1956 (12 U.S.C. 1842(c))*
9 *is amended by adding at the end the following:*

10 “*(7) FINANCIAL STABILITY.—In every case, the*
11 *appropriate Federal banking agency of a bank hold-*
12 *ing company shall take into consideration the extent*
13 *to which a proposed acquisition, merger, or consolida-*
14 *tion would result in greater or more concentrated*
15 *risks to the stability of the United States banking or*
16 *financial system.*”.

17 (e) *ACQUISITIONS OF NONBANKS.—*

18 (1) *NOTICE PROCEDURES.—Section 4(j)(2)(A) of*
19 *the Bank Holding Company Act of 1956 (12 U.S.C.*
20 *1843(j)(2)(A)) is amended by striking “or unsound*
21 *banking practices” and inserting “unsound banking*
22 *practices, or risk to the stability of the United States*
23 *banking or financial system”.*

24 (2) *ACTIVITIES THAT ARE FINANCIAL IN NA-*
25 *TURE.—Section 4(k)(6)(B) of the Bank Holding Com-*

1 *pany Act of 1956 (12 U.S.C. 1843(k)(6)(B)) is*
2 *amended to read as follows:*

3 “(B) *APPROVAL NOT REQUIRED FOR CER-*
4 *TAIN FINANCIAL ACTIVITIES.—*

5 “(i) *IN GENERAL.—Except as provided*
6 *in clause (ii), a financial holding company*
7 *may commence any activity or acquire any*
8 *company, pursuant to paragraph (4) or*
9 *any regulation prescribed or order issued*
10 *under paragraph (5), without prior ap-*
11 *proval of the appropriate Federal banking*
12 *agency for the financial holding company.*

13 “(ii) *EXCEPTION.—A financial holding*
14 *company may not acquire a company,*
15 *without the prior approval of the appro-*
16 *priate Federal banking agency for the fi-*
17 *ancial holding company, in a transaction*
18 *in which the total consolidated assets to be*
19 *acquired by the financial holding company*
20 *exceed \$25,000,000,000.”.*

21 (f) *BANK MERGER ACT TRANSACTIONS.—Section*
22 *18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.*
23 *1828(c)(5)) is amended, in the matter immediately fol-*
24 *lowing subparagraph (B), by striking “and the convenience*
25 *and needs of the community to be served” and inserting*

1 *“the convenience and needs of the community to be served,*
2 *and the risk to the stability of the United States banking*
3 *or financial system”.*

4 (g) *REPORTS BY SAVINGS AND LOAN HOLDING COMPA-*
5 *NIES.—Section 10(b)(2) of the Home Owners’ Loan Act (12*
6 *U.S.C. 1467a(b)(2) is amended—*

7 (1) *by striking “Each savings” and inserting the*
8 *following:*

9 “(A) *IN GENERAL.—Each savings*”; and

10 (2) *by adding at the end the following:*

11 “(B) *USE OF EXISTING REPORTS AND*
12 *OTHER SUPERVISORY INFORMATION.—The ap-*
13 *propriate Federal banking agency for a savings*
14 *and loan holding company shall, to the fullest*
15 *extent possible, use—*

16 “(i) *reports and other supervisory in-*
17 *formation that the savings and loan holding*
18 *company or any subsidiary thereof has been*
19 *required to provide to other Federal or*
20 *State regulatory agencies;*

21 “(ii) *externally audited financial state-*
22 *ments of the savings and loan holding com-*
23 *pany or subsidiary;*

1 “(iii) information that is otherwise
2 available from Federal or State regulatory
3 agencies; and

4 “(iv) information that is otherwise re-
5 quired to be reported publicly.

6 “(C) AVAILABILITY.—Upon the request of
7 the appropriate Federal banking agency for a
8 savings and loan holding company, the savings
9 and loan holding company or a subsidiary of the
10 savings and loan holding company shall prompt-
11 ly provide to the appropriate Federal banking
12 agency any information described in clauses (i)
13 through (iii) of subparagraph (B).”.

14 (h) EXAMINATION OF SAVINGS AND LOAN HOLDING
15 COMPANIES.—

16 (1) DEFINITIONS.—Section 2 of the Home Own-
17 ers’ Loan Act (12 U.S.C. 1462) is amended by adding
18 at the end the following:

19 “(10) APPROPRIATE FEDERAL BANKING AGEN-
20 CY.—The term ‘appropriate Federal banking agency’
21 has the same meaning as in section 3(q) of the Fed-
22 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

23 “(11) FUNCTIONALLY REGULATED SUB-
24 SIDIARY.—The term ‘functionally regulated sub-
25 sidiary’ has the same meaning as in section 5(c)(5)

1 *of the Bank Holding Company Act of 1956 (12*
2 *U.S.C. 1844(c)(5)).”.*

3 (2) *EXAMINATION.—Section 10(b) of the Home*
4 *Owners’ Loan Act (12 U.S.C. 1467a(b)) is amended*
5 *by striking paragraph (4) and inserting the following:*

6 “(4) *EXAMINATIONS.—*

7 “(A) *IN GENERAL.—The appropriate Fed-*
8 *eral banking agency for a savings and loan hold-*
9 *ing company may make examinations of the sav-*
10 *ings and loan holding company and each sub-*
11 *sidary of the savings and loan holding company*
12 *system, in order to—*

13 “(i) *inform such appropriate Federal*
14 *banking agency of—*

15 “(I) *the nature of the operations*
16 *and financial condition of the savings*
17 *and loan holding company and the*
18 *subsidiary;*

19 “(II) *the financial, operational,*
20 *and other risks within the savings and*
21 *loan holding company that may pose a*
22 *threat to—*

23 “(aa) *the safety and sound-*
24 *ness of the savings and loan hold-*
25 *ing company or of any depository*

1 *institution subsidiary of the sav-*
2 *ings and loan holding company;*
3 *or*

4 *“(bb) the stability of the fi-*
5 *nancial system of the United*
6 *States; and*

7 *“(III) the systems of the savings*
8 *and loan holding company for moni-*
9 *toring and controlling the risks de-*
10 *scribed in subclause (II); and*

11 *“(ii) enforce the compliance of the sav-*
12 *ings and loan holding company and the*
13 *subsidiary with this Act and any other Fed-*
14 *eral law that such appropriate Federal*
15 *banking agency has specific jurisdiction to*
16 *enforce against the savings and loan hold-*
17 *ing company or subsidiary.*

18 *“(B) USE OF REPORTS TO REDUCE EXAMI-*
19 *NATIONS.—For purposes of this subsection, the*
20 *appropriate Federal banking agency for a sav-*
21 *ings and loan holding company shall, to the full-*
22 *est extent possible, rely on—*

23 *“(i) the examination reports made by*
24 *other Federal or State regulatory agencies*

1 *relating to the savings and loan holding*
2 *company and any subsidiary; and*

3 “(ii) *the reports and other information*
4 *required under paragraph (2).*”

5 “(C) *COORDINATION WITH OTHER REGU-*
6 *LATORS.—The appropriate Federal banking*
7 *agency for a savings and loan holding company*
8 *shall—*

9 “(i) *provide reasonable notice to, and*
10 *consult with, the appropriate Federal bank-*
11 *ing agency or State regulatory agency of a*
12 *subsidiary that is a depository institution*
13 *or a functionally regulated subsidiary before*
14 *commencing an examination of the sub-*
15 *subsidiary under this section; and*

16 “(ii) *to the fullest extent possible, avoid*
17 *duplication of examination activities, re-*
18 *porting requirements, and requests for in-*
19 *formation.*”.

20 “(i) *EFFECTIVE DATE.—The amendments made by this*
21 *section shall take effect on the transfer date.*”

1 **SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMISSIBLE ACTIVITIES OF DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.**
 2
 3
 4

5 *Section 6 of the Bank Holding Company Act of 1956*
 6 *(12 U.S.C. 1845) is amended to read as follows:*

7 **“SEC. 6. ASSURING CONSISTENT OVERSIGHT OF PERMISSIBLE ACTIVITIES OF DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.**
 8
 9
 10

11 *“(a) DEFINITIONS.—*

12 *“(1) DEFINITIONS.—In this section—*

13 *“(A) the term ‘depository institution holding company’ has the same meaning as in section 3(w) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w));*

14 *“(B) the term ‘functionally regulated subsidiary’ has the same meaning as in section 5(c)(5); and*

15 *“(C) the term ‘lead Federal banking agency’ means—*

16 *“(i) the Office of the Comptroller of the Currency, in the case of any depository institution holding company having—*

17 *“(I) a subsidiary that is an insured depository institution, if all such*

1 *insured depository institutions are*
2 *Federal depository institutions; or*

3 *“(II) a subsidiary that is a Fed-*
4 *eral depository institution and a sub-*
5 *subsidiary that is a State depository in-*
6 *stitution, if the total consolidated as-*
7 *sets of all subsidiaries that are Federal*
8 *depository institutions exceed the total*
9 *consolidated assets of all subsidiaries*
10 *that are State depository institutions;*
11 *and*

12 *“(ii) the Federal Deposit Insurance*
13 *Corporation, in the case of any depository*
14 *institution holding company having—*

15 *“(I) a subsidiary that is an in-*
16 *insured depository institution, if all such*
17 *insured depository institutions are*
18 *State depository institutions; or*

19 *“(II) a subsidiary that is a Fed-*
20 *eral depository institution and a sub-*
21 *subsidiary that is a State depository in-*
22 *stitution, if the total consolidated as-*
23 *sets of all subsidiaries that are State*
24 *depository institutions exceed the total*
25 *consolidated assets of all subsidiaries*

1 that are Federal depository institu-
2 tions.

3 “(2) *DETERMINATION OF TOTAL CONSOLIDATED*
4 *ASSETS.—For purposes of paragraph (1)(A), the total*
5 *consolidated assets of a depository institution shall be*
6 *determined in the same manner that total consoli-*
7 *dated assets of depository institutions are determined*
8 *for purposes of section 3(q) of the Federal Deposit In-*
9 *surance Act (12 U.S.C. 1813(q)).*

10 “(b) *LEAD AGENCY SUPERVISION.—*

11 “(1) *IN GENERAL.—The lead Federal banking*
12 *agency for each depository institution holding com-*
13 *pany shall make examinations of the activities of each*
14 *nondepository institution subsidiary (other than a*
15 *functionally regulated subsidiary) of the depository*
16 *institution holding company that are permissible for*
17 *depository institution subsidiaries of the depository*
18 *institution holding company, to determine whether*
19 *the activities—*

20 “(A) *present safety and soundness risks to*
21 *any depository institution subsidiary of the de-*
22 *pository institution holding company;*

23 “(B) *are conducted in accordance with ap-*
24 *plicable law; and*

1 “(C) are subject to appropriate systems for
2 monitoring and controlling the financial, oper-
3 ating, and other risks of the activity and pro-
4 tecting the depository institution subsidiaries of
5 the holding company.

6 “(2) *PROCESS FOR EXAMINATION.*—An examina-
7 tion under paragraph (1) shall be carried out under
8 the authority of the lead Federal banking agency, as
9 if the nondepository institution subsidiary were an
10 insured depository institution for which the lead Fed-
11 eral banking agency is the appropriate Federal bank-
12 ing agency.

13 “(c) *COORDINATION.*—For each depository institution
14 holding company for which the Board of Governors is the
15 appropriate Federal banking agency, the lead Federal bank-
16 ing agency of the depository institution holding company
17 shall coordinate the supervision of the activities of subsidi-
18 aries described in subsection (b) with the Board of Gov-
19 ernors, in a manner that—

20 “(1) avoids duplication;

21 “(2) shares information relevant to the super-
22 vision of the depository institution holding company
23 by each agency;

24 “(3) achieves the objectives of subsection (b); and

1 “(4) ensures that the depository institution hold-
2 ing company and the subsidiaries of the depository
3 institution holding company are not subject to con-
4 flicting supervisory demands by the 2 agencies.

5 “(d) REFERRALS FOR ENFORCEMENT.—

6 “(1) RECOMMENDATION OF ACTION BY BOARD OF
7 GOVERNORS.—The lead Federal banking agency for a
8 depository institution holding company, based on in-
9 formation obtained pursuant to the responsibilities of
10 the agency under subsection (b), may submit to the
11 Board of Governors, in writing, a recommendation
12 that the Board of Governors take enforcement action
13 against a nondepository institution subsidiary (other
14 than a functionally regulated subsidiary) of the de-
15 pository institution holding company, together with
16 an explanation of the concerns giving rise to the rec-
17 ommendation.

18 “(2) BACK-UP AUTHORITY OF THE LEAD FED-
19 ERAL BANKING AGENCY.—If, within the 60-day period
20 beginning on the date on which the Board of Gov-
21 ernors receives a recommendation under paragraph
22 (1), the Board of Governors does not take enforcement
23 action against a nondepository institution subsidiary
24 or provide a plan for enforcement action that is ac-
25 ceptable to the lead Federal banking agency, the lead

1 *Federal banking agency (upon the authorization of*
2 *the Comptroller, or the Federal Deposit Insurance*
3 *Corporation, upon a vote of its members, as applica-*
4 *ble) may take the recommended enforcement action, in*
5 *the same manner as if the subsidiary were an insured*
6 *depository institution for which the lead Federal*
7 *banking agency is the appropriate Federal banking*
8 *agency.”.*

9 **SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
10 **PANIES TO REMAIN WELL CAPITALIZED AND**
11 **WELL MANAGED.**

12 *(a) AMENDMENT.—Section 4(l)(1) of the Bank Hold-*
13 *ing Company Act of 1956 (12 U.S.C. 1843(l)(1)) is amend-*
14 *ed—*

15 *(1) in subparagraph (B), by striking “and” at*
16 *the end;*

17 *(2) by redesignating subparagraph (C) as sub-*
18 *paragraph (D);*

19 *(3) by inserting after subparagraph (B) the fol-*
20 *lowing:*

21 *“(C) the bank holding company is well cap-*
22 *italized and well managed; and”;* and

23 *(4) in subparagraph (D)(ii), as so redesignated,*
24 *by striking “subparagraphs (A) and (B)” and insert-*
25 *ing “subparagraphs (A), (B), and (C)”.*

1 (b) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall take effect on the transfer date.*

3 **SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.**

4 (a) *ACQUISITION OF BANKS.*—*Section 3(d)(1)(A) of*
5 *the Bank Holding Company Act of 1956 (12 U.S.C.*
6 *1842(d)(1)(A)) is amended by striking “adequately capital-*
7 *ized and adequately managed” and inserting “well capital-*
8 *ized and well managed”.*

9 (b) *INTERSTATE BANK MERGERS.*—*Section*
10 *44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C.*
11 *1831u(b)(4)(B)) is amended by striking “will continue to*
12 *be adequately capitalized and adequately managed” and in-*
13 *serting “will be well capitalized and well managed”.*

14 (c) *EFFECTIVE DATE.*—*The amendments made by this*
15 *section shall take effect on the transfer date.*

16 **SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK**
17 **TRANSACTIONS WITH AFFILIATES.**

18 (a) *AFFILIATE TRANSACTIONS.*—*Section 23A of the*
19 *Federal Reserve Act (12 U.S.C. 371c) is amended—*

20 (1) *in subsection (b)—*

21 (A) *in paragraph (1), by striking subpara-*
22 *graph (D) and inserting the following:*

23 “*(D) any investment fund with respect to*
24 *which a member bank or affiliate thereof is an*
25 *investment adviser; and”;* and

1 (B) in paragraph (7)—

2 (i) in subparagraph (A), by inserting
3 before the semicolon at the end the fol-
4 lowing: “, including a purchase of assets
5 subject to an agreement to repurchase”;

6 (ii) in subparagraph (C), by striking
7 “, including assets subject to an agreement
8 to repurchase,”;

9 (iii) in subparagraph (D)—

10 (I) by inserting “or other debt ob-
11 ligations” after “acceptance of securi-
12 ties”; and

13 (II) by striking “or” at the end;
14 and

15 (iv) by adding at the end the following:

16 “(F) a transaction with an affiliate that in-
17 volves the borrowing or lending of securities, to
18 the extent that the transaction causes a member
19 bank or a subsidiary to have credit exposure to
20 the affiliate; or

21 “(G) a derivative transaction, as defined in
22 paragraph (3) of section 5200(b) of the Revised
23 Statutes of the United States (12 U.S.C. 84(b)),
24 with an affiliate, to the extent that the trans-

1 *action causes a member bank or a subsidiary to*
2 *have credit exposure to the affiliate;”;*

3 *(2) in subsection (c)—*

4 *(A) in paragraph (1)—*

5 *(i) in the matter preceding subpara-*
6 *graph (A), by striking “subsidiary” and all*
7 *that follows through “time of the trans-*
8 *action” and inserting “subsidiary, and any*
9 *credit exposure of a member bank or a sub-*
10 *subsidiary to an affiliate resulting from a secu-*
11 *rities borrowing or lending transaction, or*
12 *a derivative transaction, shall be secured at*
13 *all times”; and*

14 *(ii) in each of subparagraphs (A)*
15 *through (D), by striking “or letter of credit”*
16 *and inserting “letter of credit, or credit ex-*
17 *posure”;*

18 *(B) by striking paragraph (2);*

19 *(C) by redesignating paragraphs (3)*
20 *through (5) as paragraphs (2) through (4), re-*
21 *spectively;*

22 *(D) in paragraph (2), as so redesignated, by*
23 *inserting before the period at the end “, or credit*
24 *exposure to an affiliate resulting from a securi-*

1 *ties borrowing or lending transaction, or deriva-*
2 *tive transaction”;* and

3 (E) *in paragraph (3), as so redesignated—*

4 (i) *by inserting “or other debt obliga-*
5 *tions” after “securities”;* and

6 (ii) *by striking “or guarantee” and all*
7 *that follows through “behalf of,” and insert-*
8 *ing “guarantee, acceptance, or letter of cred-*
9 *it issued on behalf of, or credit exposure*
10 *from a securities borrowing or lending*
11 *transaction, or derivative transaction to,”;*

12 (3) *in subsection (d)(4), in the matter preceding*
13 *subparagraph (A), by striking “or issuing” and all*
14 *that follows through “behalf of,” and inserting*
15 *“issuing a guarantee, acceptance, or letter of credit on*
16 *behalf of, or having credit exposure resulting from a*
17 *securities borrowing or lending transaction, or deriva-*
18 *tive transaction to,”;* and

19 (4) *in subsection (f)—*

20 (A) *in paragraph (2)—*

21 (i) *by striking “or order”;*

22 (ii) *by striking “if it finds” and all*
23 *that follows through the end of the para-*
24 *graph and inserting the following: “if—*

1 “(i) the Board finds the exemption to
2 be in the public interest and consistent with
3 the purposes of this section, and notifies the
4 Federal Deposit Insurance Corporation of
5 such finding; and

6 “(ii) before the end of the 60-day pe-
7 riod beginning on the date on which the
8 Federal Deposit Insurance Corporation re-
9 ceives notice of the finding under clause (i),
10 the Federal Deposit Insurance Corporation
11 does not object, in writing, to the finding,
12 based on a determination that the exemp-
13 tion presents an unacceptable risk to the
14 Deposit Insurance Fund.”;

15 (iii) by striking the Board and insert-
16 ing the following:

17 “(A) IN GENERAL.—The Board”; and

18 (iv) by adding at the end the following:

19 “(B) ADDITIONAL EXEMPTIONS.—

20 “(i) NATIONAL BANKS.—The Comp-
21 troller of the Currency may, by order, ex-
22 empt a transaction of a national bank from
23 the requirements of this section if—

24 “(I) the Board and the Office of
25 the Comptroller of the Currency jointly

1 *find the exemption to be in the public*
2 *interest and consistent with the pur-*
3 *poses of this section and notify the*
4 *Federal Deposit Insurance Corporation*
5 *of such finding; and*

6 *“(II) before the end of the 60-day*
7 *period beginning on the date on which*
8 *the Federal Deposit Insurance Cor-*
9 *poration receives notice of the finding*
10 *under subclause (I), the Federal De-*
11 *posit Insurance Corporation does not*
12 *object, in writing, to the finding, based*
13 *on a determination that the exemption*
14 *presents an unacceptable risk to the*
15 *Deposit Insurance Fund.*

16 *“(ii) STATE BANKS.—The Federal De-*
17 *posit Insurance Corporation may, by order,*
18 *exempt a transaction of a State nonmember*
19 *bank, and the Board may, by order, exempt*
20 *a transaction of a State member bank, from*
21 *the requirements of this section if—*

22 *“(I) the Board and the Federal*
23 *Deposit Insurance Corporation jointly*
24 *find that the exemption is in the public*

1 *interest and consistent with the pur-*
2 *poses of this section; and*

3 “*(II) the Federal Deposit Insur-*
4 *ance Corporation finds that the exemp-*
5 *tion does not present an unacceptable*
6 *risk to the Deposit Insurance Fund.*”;
7 *and*

8 *(B) by adding at the end the following:*

9 “*(4) AMOUNTS OF COVERED TRANSACTIONS.—*
10 *The Board may issue such regulations or interpreta-*
11 *tions as the Board determines are necessary or appro-*
12 *priate with respect to the manner in which a netting*
13 *agreement may be taken into account in determining*
14 *the amount of a covered transaction between a mem-*
15 *ber bank or a subsidiary and an affiliate, including*
16 *the extent to which netting agreements between a*
17 *member bank or a subsidiary and an affiliate may be*
18 *taken into account in determining whether a covered*
19 *transaction is fully secured for purposes of subsection*
20 *(d)(4). An interpretation under this paragraph with*
21 *respect to a specific member bank, subsidiary, or affil-*
22 *iate shall be issued jointly with the appropriate Fed-*
23 *eral banking agency for such member bank, sub-*
24 *subsidiary, or affiliate.*”

1 (b) *TRANSACTIONS WITH AFFILIATES.*—Section
2 *23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e)) is*
3 *amended—*

4 (1) *by striking the undesignated matter following*
5 *subparagraph (B);*

6 (2) *by redesignating subparagraphs (A) and (B)*
7 *as clauses (i) and (ii), respectively, and adjusting the*
8 *clause margins accordingly;*

9 (3) *by redesignating paragraphs (1) and (2) as*
10 *subparagraphs (A) and (B), respectively, and adjust-*
11 *ing the subparagraph margins accordingly;*

12 (4) *by striking “The Board” and inserting the*
13 *following:*

14 “*(1) IN GENERAL.—The Board*”;

15 (5) *in paragraph (1)(B), as so redesignated—*

16 (A) *in the matter preceding clause (i), by*
17 *inserting before “regulations” the following:*

18 “*subject to paragraph (2), if the Board finds*
19 *that an exemption or exclusion is in the public*
20 *interest and is consistent with the purposes of*
21 *this section, and notifies the Federal Deposit In-*
22 *surance Corporation of such finding,”; and*

23 (B) *in clause (ii), by striking the comma at*
24 *the end and inserting a period; and*

25 (6) *by adding at the end the following:*

1 “(2) *EXCEPTION.*—*The Board may grant an exemption or exclusion under this subsection only if, during the 60-day period beginning on the date of receipt of notice of the finding from the Board under paragraph (1)(B), the Federal Deposit Insurance Corporation does not object, in writing, to such exemption or exclusion, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.*”.

10 (c) *HOME OWNERS’ LOAN ACT.*—*Section 11 of the Home Owners’ Loan Act (12 U.S.C. 1468) is amended by adding at the end the following:*

13 “(d) *EXEMPTIONS.*—

14 “(1) *FEDERAL SAVINGS ASSOCIATIONS.*—*The Comptroller of the Currency may, by order, exempt a transaction of a Federal savings association from the requirements of this section if—*

18 “(A) *the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Federal Deposit Insurance Corporation of such finding; and*

24 “(B) *before the end of the 60-day period beginning on the date on which the Federal De-*

1 *posit Insurance Corporation receives notice of the*
2 *finding under subparagraph (A), the Federal De-*
3 *posit Insurance Corporation does not object, in*
4 *writing, to the finding, based on a determination*
5 *that the exemption presents an unacceptable risk*
6 *to the Deposit Insurance Fund.*

7 “(2) *STATE SAVINGS ASSOCIATION.*—*The Federal*
8 *Deposit Insurance Corporation may, by order, exempt*
9 *a transaction of a State savings association from the*
10 *requirements of this section if the Board and the Fed-*
11 *eral Deposit Insurance Corporation jointly find*
12 *that—*

13 *“(A) the exemption is in the public interest*
14 *and consistent with the purposes of this section;*
15 *and*

16 *“(B) the exemption does not present an un-*
17 *acceptable risk to the Deposit Insurance Fund.”.*

18 *(d) EFFECTIVE DATE.*—*The amendments made by this*
19 *section shall take effect 1 year after the transfer date.*

20 **SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**
21 **WITH FINANCIAL SUBSIDIARIES.**

22 *(a) AMENDMENT.*—*Section 23A(e) of the Federal Re-*
23 *serve Act (12 U.S.C. 371c(e)) is amended—*

24 *(1) by striking paragraph (3); and*

1 (2) *by redesignating paragraph (4) as para-*
2 *graph (3).*

3 (b) *PROSPECTIVE APPLICATION OF AMENDMENT.—The*
4 *amendments made by this section shall apply with respect*
5 *to any covered transaction between a bank and a subsidiary*
6 *of the bank, as those terms are defined in section 23A of*
7 *the Federal Reserve Act (12 U.S.C. 371c), that is entered*
8 *into on or after the date of enactment of this Act.*

9 (c) *EFFECTIVE DATE.—The amendments made by this*
10 *section shall take effect 1 year after the transfer date.*

11 **SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
12 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
13 **PURCHASE AGREEMENTS, REVERSE REPUR-**
14 **CHASE AGREEMENTS, AND SECURITIES LEND-**
15 **ING AND BORROWING TRANSACTIONS.**

16 (a) *NATIONAL BANKS.—Section 5200(b) of the Revised*
17 *Statutes of the United States (12 U.S.C. 84(b)) is amend-*
18 *ed—*

19 (1) *in paragraph (1), by striking “shall include”*
20 *and all that follows through the end of the paragraph*
21 *and inserting the following: “shall include—*

22 *“(A) all direct or indirect advances of funds*
23 *to a person made on the basis of any obligation*
24 *of that person to repay the funds or repayable*

1 *from specific property pledged by or on behalf of*
2 *the person;*

3 *“(B) to the extent specified by the Comp-*
4 *troller of the Currency, any liability of a na-*
5 *tional banking association to advance funds to*
6 *or on behalf of a person pursuant to a contrac-*
7 *tual commitment; and*

8 *“(C) any credit exposure to a person aris-*
9 *ing from a derivative transaction, repurchase*
10 *agreement, reverse repurchase agreement, securi-*
11 *ties lending transaction, or securities borrowing*
12 *transaction between the national banking asso-*
13 *ciation and the person;”;*

14 *(2) in paragraph (2), by striking the period at*
15 *the end and inserting “; and”; and*

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

17 *“(3) the term ‘derivative transaction’ includes*
18 *any transaction that is a contract, agreement, swap,*
19 *warrant, note, or option that is based, in whole or in*
20 *part, on the value of, any interest in, or any quan-*
21 *titative measure or the occurrence of any event relat-*
22 *ing to, one or more commodities, securities, cur-*
23 *rencies, interest or other rates, indices, or other as-*
24 *sets.”.*

1 (b) *SAVINGS ASSOCIATIONS.*—Section 5(u)(3) of the
 2 *Home Owners' Loan Act (12 U.S.C. 1464(u)(3))* is amended
 3 by striking “Director” each place that term appears and
 4 inserting “Comptroller of the Currency”.

5 (c) *EFFECTIVE DATE.*—The amendments made by this
 6 section shall take effect 1 year after the transfer date.

7 **SEC. 611. APPLICATION OF NATIONAL BANK LENDING LIM-**
 8 **ITS TO INSURED STATE BANKS.**

9 (a) *AMENDMENT.*—Section 18 of the *Federal Deposit*
 10 *Insurance Act (12 U.S.C. 1828)* is amended by adding at
 11 the end the following:

12 “(y) *APPLICATION OF LENDING LIMITS TO INSURED*
 13 *STATE BANKS.*—Section 5200 of the *Revised Statutes of the*
 14 *United States (12 U.S.C. 84)* shall apply to each insured
 15 *State bank, in the same manner and to the same extent*
 16 *as if the insured State bank were a national banking asso-*
 17 *ciation.”.*

18 (b) *EFFECTIVE DATE.*—The amendment made by this
 19 section shall take effect 1 year after the transfer date.

20 **SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED**
 21 **BANKS.**

22 (a) *CONVERSION OF A NATIONAL BANKING ASSOCIA-*
 23 *TION TO A STATE BANK.*—The Act entitled “An Act to pro-
 24 vide for the conversion of national banking associations into
 25 and their merger or consolidation with State banks, and

1 *for other purposes.*” (12 U.S.C. 214 *et seq.*) is amended by
2 *adding at the end the following:*

3 **“SEC. 10. PROHIBITION ON CONVERSION.**

4 *“A national banking association may not convert to*
5 *a State bank or State savings association during any pe-*
6 *riod in which the national banking association is subject*
7 *to a cease and desist order (or other formal enforcement*
8 *order) issued by, or a memorandum of understanding en-*
9 *tered into with, the Comptroller of the Currency with re-*
10 *spect to a significant supervisory matter.”.*

11 **(b) CONVERSION OF A STATE BANK TO A NATIONAL**
12 **BANK.**—*Section 5154 of the Revised Statutes of the United*
13 *States (12 U.S.C. 35) is amended by adding at the end the*
14 *following: “The Comptroller of the Currency may not ap-*
15 *prove the conversion of a State bank or State savings asso-*
16 *ciation to a national banking association during any pe-*
17 *riod in which the State bank or State savings association*
18 *is subject to a cease and desist order (or other formal en-*
19 *forcement order) issued by, or a memorandum of under-*
20 *standing entered into with, a State bank supervisor or the*
21 *appropriate Federal banking agency with respect to a sig-*
22 *nificant supervisory matter.”.*

23 **(c) CONVERSION OF A FEDERAL SAVINGS ASSOCIATION**
24 **TO A NATIONAL OR STATE BANK OR STATE SAVINGS ASSO-**
25 **CIATION.**—*Section 5(i) of the Home Owners’ Loan Act (12*

1 *U.S.C. 1464(i)* is amended by adding at the end the fol-
2 *lowing:*

3 “(6) *LIMITATION ON CERTAIN CONVERSIONS BY*
4 *FEDERAL SAVINGS ASSOCIATIONS.—A Federal savings*
5 *association may not convert to a national bank or*
6 *State bank or State savings association during any*
7 *period in which the Federal savings association is*
8 *subject to a cease and desist order (or other formal en-*
9 *forcement order) issued by, or a memorandum of un-*
10 *derstanding entered into with, the Office of Thrift Su-*
11 *pervision or the Comptroller of the Currency with re-*
12 *spect to a significant supervisory matter.”.*

13 **SEC. 613. DE NOVO BRANCHING INTO STATES.**

14 (a) *NATIONAL BANKS.—Section 5155(g)(1)(A) of the*
15 *Revised Statutes of the United States (12 U.S.C.*
16 *36(g)(1)(A)) is amended to read as follows:*

17 “(A) *the law of the State in which the*
18 *branch is located, or is to be located, would per-*
19 *mit establishment of the branch, if the national*
20 *bank were a State bank chartered by such State;*
21 *and”.*

22 (b) *STATE INSURED BANKS.—Section 18(d)(4)(A)(i)*
23 *of the Federal Deposit Insurance Act (12 U.S.C.*
24 *1828(d)(4)(A)(i)) is amended to read as follows:*

1 “(i) the law of the State in which the
 2 branch is located, or is to be located, would
 3 permit establishment of the branch, if the
 4 bank were a State bank chartered by such
 5 State; and”.

6 **SEC. 614. LENDING LIMITS TO INSIDERS.**

7 (a) *EXTENSIONS OF CREDIT*.—Section 22(h)(9)(D)(i)
 8 of the Federal Reserve Act (12 U.S.C. 375b(9)(D)(i)) is
 9 amended—

10 (1) by striking the period at the end and insert-
 11 ing “; or”;

12 (2) by striking “a person” and inserting “the
 13 person”;

14 (3) by striking “extends credit by making” and
 15 inserting the following: “extends credit to a person
 16 by—

17 “(I) making”; and

18 (4) by adding at the end the following:

19 “(II) having credit exposure to the
 20 person arising from a derivative trans-
 21 action (as defined in section 5200(b) of
 22 the Revised Statutes of the United
 23 States (12 U.S.C. 84(b))), repurchase
 24 agreement, reverse repurchase agree-
 25 ment, securities lending transaction, or

1 *securities borrowing transaction be-*
2 *tween the member bank and the per-*
3 *son.”.*

4 (b) *EFFECTIVE DATE.*—*The amendments made by this*
5 *section shall take effect 1 year after the transfer date.*

6 **SEC. 615. LIMITATIONS ON PURCHASES OF ASSETS FROM**
7 **INSIDERS.**

8 (a) *AMENDMENT TO THE FEDERAL DEPOSIT INSUR-*
9 *ANCE ACT.*—*Section 18 of the Federal Deposit Insurance*
10 *Act (12 U.S.C. 1828) is amended by adding at the end the*
11 *following:*

12 “(z) *GENERAL PROHIBITION ON SALE OF ASSETS.*—

13 “(1) *IN GENERAL.*—*An insured depository insti-*
14 *tution may not purchase an asset from, or sell an*
15 *asset to, an executive officer, director, or principal*
16 *shareholder of the insured depository institution, or*
17 *any related interest of such person (as such terms are*
18 *defined in section 22(h) of Federal Reserve Act), un-*
19 *less—*

20 “(A) *the transaction is on market terms;*
21 *and*

22 “(B) *if the transaction represents more than*
23 *10 percent of the capital stock and surplus of the*
24 *insured depository institution, the transaction*
25 *has been approved in advance by a majority of*

1 *the members of the board of directors of the in-*
 2 *sured depository institution who do not have an*
 3 *interest in the transaction.*

4 “(2) *RULEMAKING.*—*The Board of Governors of*
 5 *the Federal Reserve System may issue such rules as*
 6 *may be necessary to define terms and to carry out the*
 7 *purposes this subsection. Before proposing or adopting*
 8 *a rule under this paragraph, the Board of Governors*
 9 *of the Federal Reserve System shall consult with the*
 10 *Comptroller of the Currency and the Corporation as*
 11 *to the terms of the rule.”.*

12 *(b) AMENDMENTS TO THE FEDERAL RESERVE ACT.*—
 13 *Section 22(d) of the Federal Reserve Act (12 U.S.C. 375)*
 14 *is amended to read as follows:*

15 “(d) *[Reserved]*”.

16 *(c) EFFECTIVE DATE.*—*The amendments made by this*
 17 *section shall take effect on the transfer date.*

18 **SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS OF**
 19 **HOLDING COMPANIES.**

20 *(a) CAPITAL LEVELS OF BANK HOLDING COMPA-*
 21 *NIES.*—*Section 5(b) of the Bank Holding Company Act of*
 22 *1956 (12 U.S.C. 1844(b)) is amended by inserting after*
 23 *“regulations” the following: “(including regulations relat-*
 24 *ing to the capital requirements of bank holding compa-*
 25 *nies)”.*

1 **(b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLDING**
2 **COMPANIES.**—Section 10(g)(1) of the Home Owners' Loan
3 Act (12 U.S.C. 1467a(g)(1)) is amended by inserting after
4 “orders” the following: “(including regulations relating to
5 capital requirements for savings and loan holding compa-
6 nies)”.

7 **(c) SOURCE OF STRENGTH.**—The Federal Deposit In-
8 surance Act (12 U.S.C. 1811 et seq.) is amended by insert-
9 ing after section 38 (12 U.S.C. 1831o) the following:

10 **“SEC. 38A. SOURCE OF STRENGTH.**

11 **“(a) HOLDING COMPANIES.**—The appropriate Federal
12 banking agency for a bank holding company or savings and
13 loan holding company shall require the bank holding com-
14 pany or savings and loan holding company to serve as a
15 source of financial strength for any subsidiary of the bank
16 holding company or savings and loan holding company
17 that is a depository institution.

18 **“(b) OTHER COMPANIES.**—If an insured depository
19 institution is not the subsidiary of a bank holding company
20 or savings and loan holding company, the appropriate Fed-
21 eral banking agency for the insured depository institution
22 shall require any company that directly or indirectly con-
23 trols the insured depository institution to serve as a source
24 of financial strength for such institution.

1 “(c) *REPORTS.*—*The appropriate Federal banking*
2 *agency for an insured depository institution described in*
3 *subsection (b) may, from time to time, require the company,*
4 *or a company that directly or indirectly controls the in-*
5 *insured depository institution to submit a report, under oath,*
6 *for the purposes of—*

7 “(1) *assessing the ability of such company to*
8 *comply with the requirement under subsection (b);*
9 *and*

10 “(2) *enforcing the compliance of such company*
11 *with the requirement under subsection (b).*

12 “(d) *RULES.*—*Not later than 1 year after the transfer*
13 *date, as defined in section 311 of the Enhancing Financial*
14 *Institution Safety and Soundness Act of 2010, the appro-*
15 *priate Federal banking agencies shall jointly issue final*
16 *rules to carry out this section.*

17 “(e) *DEFINITION.*—*In this section, the term ‘source of*
18 *financial strength’ means the ability of a company that di-*
19 *rectly or indirectly owns or controls an insured depository*
20 *institution to provide financial assistance to such insured*
21 *depository institution in the event of the financial distress*
22 *of the insured depository institution.’.*

23 “(d) *EFFECTIVE DATE.*—*The amendments made by this*
24 *section shall take effect on the transfer date.*

1 **SEC. 617. ELIMINATION OF ELECTIVE INVESTMENT BANK**
2 **HOLDING COMPANY FRAMEWORK.**

3 (a) *AMENDMENT.*—Section 17 of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78g) is amended—

5 (1) by striking subsection (i); and

6 (2) by redesignating subsections (j) and (k) as
7 subsections (i) and (j), respectively.

8 (b) *EFFECTIVE DATE.*—The amendments made by this
9 section shall take effect on the transfer date.

10 **SEC. 618. SECURITIES HOLDING COMPANIES.**

11 (a) *DEFINITIONS.*—In this section—

12 (1) the term “associated person of a securities
13 holding company” means a person directly or indi-
14 rectly controlling, controlled by, or under common
15 control with, a securities holding company;

16 (2) the term “foreign bank” has the same mean-
17 ing as in section 1(b)(7) of the International Banking
18 Act of 1978 (12 U.S.C. 3101(b)(7));

19 (3) the term “insured bank” has the same mean-
20 ing as in section 3 of the Federal Deposit Insurance
21 Act (12 U.S.C. 1813);

22 (4) the term “securities holding company”—

23 (A) means—

24 (i) a person (other than a natural per-
25 son) that owns or controls 1 or more brokers

1 or dealers registered with the Commission;

2 and

3 (ii) the associated persons of a person

4 described in clause (i); and

5 (B) does not include a person that is—

6 (i) a nonbank financial company su-

7 pervised by the Board under title I;

8 (ii) an affiliate of an insured bank

9 (other than an institution described in sub-

10 paragraphs (D), (F), or (H) of section

11 2(c)(2) of the Bank Holding Company Act

12 of 1956 (12 U.S.C. 1841(c)(2)) or an affil-

13 iate of a savings association;

14 (iii) a foreign bank, foreign company,

15 or company that is described in section 8(a)

16 of the International Banking Act of 1978

17 (12 U.S.C. 3106(a));

18 (iv) a foreign bank that controls, di-

19 rectly or indirectly, a corporation chartered

20 under section 25A of the Federal Reserve

21 Act (12 U.S.C. 611 et seq.); or

22 (v) subject to comprehensive consoli-

23 dated supervision by a foreign regulator;

24 (5) the term “supervised securities holding com-

25 pany” means a securities holding company that is su-

1 *pervised by the Board of Governors under this section;*
2 *and*

3 *(6) the terms “affiliate”, “bank”, “bank holding*
4 *company”, “company”, “control”, “savings associa-*
5 *tion”, and “subsidiary” have the same meanings as*
6 *in section 2 of the Bank Holding Company Act of*
7 *1956.*

8 *(b) SUPERVISION OF A SECURITIES HOLDING COM-*
9 *PANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AF-*
10 *FILIATE.—*

11 *(1) IN GENERAL.—A securities holding company*
12 *that is required by a foreign regulator or provision of*
13 *foreign law to be subject to comprehensive consoli-*
14 *dated supervision may register with the Board of*
15 *Governors under paragraph (2) to become a super-*
16 *vised securities holding company. Any securities hold-*
17 *ing company filing such a registration shall be super-*
18 *vised in accordance with this section, and shall com-*
19 *ply with the rules and orders prescribed by the Board*
20 *of Governors applicable to supervised securities hold-*
21 *ing companies.*

22 *(2) REGISTRATION AS A SUPERVISED SECURI-*
23 *TIES HOLDING COMPANY.—*

24 *(A) REGISTRATION.—A securities holding*
25 *company that elects to be subject to comprehen-*

1 *sive consolidated supervision shall register by fil-*
2 *ing with the Board of Governors such informa-*
3 *tion and documents as the Board of Governors,*
4 *by regulation, may prescribe as necessary or ap-*
5 *propriate in furtherance of the purposes of this*
6 *section.*

7 *(B) EFFECTIVE DATE.—A securities holding*
8 *company that registers under subparagraph (A)*
9 *shall be deemed to be a supervised securities*
10 *holding company, effective on the date that is 45*
11 *days after the date of receipt of the registration*
12 *information and documents under subparagraph*
13 *(A) by the Board of Governors, or within such*
14 *shorter period as the Board of Governors, by rule*
15 *or order, may determine.*

16 *(c) SUPERVISION OF SECURITIES HOLDING COMPA-*
17 *NIES.—*

18 *(1) RECORDKEEPING AND REPORTING.—*

19 *(A) RECORDKEEPING AND REPORTING RE-*
20 *QUIRED.—Each supervised securities holding*
21 *company and each affiliate of a supervised secu-*
22 *rities holding company shall make and keep for*
23 *periods determined by the Board of Governors*
24 *such records, furnish copies of such records, and*
25 *make such reports, as the Board of Governors de-*

1 *termines to be necessary or appropriate to carry*
2 *out this section, to prevent evasions thereof, and*
3 *to monitor compliance by the supervised securi-*
4 *ties holding company or affiliate with applicable*
5 *provisions of law.*

6 *(B) FORM AND CONTENTS.—*

7 *(i) IN GENERAL.—Any record or report*
8 *required to be made, furnished, or kept*
9 *under this paragraph shall—*

10 *(I) be prepared in such form and*
11 *according to such specifications (in-*
12 *cluding certification by a registered*
13 *public accounting firm), as the Board*
14 *of Governors may require; and*

15 *(II) be provided promptly to the*
16 *Board of Governors at any time, upon*
17 *request by the Board of Governors.*

18 *(ii) CONTENTS.—Records and reports*
19 *required to be made, furnished, or kept*
20 *under this paragraph may include—*

21 *(I) a balance sheet or income*
22 *statement of the supervised securities*
23 *holding company or an affiliate of a*
24 *supervised securities holding company;*

1 (II) *an assessment of the consoli-*
2 *dated capital and liquidity of the su-*
3 *pervised securities holding company;*

4 (III) *a report by an independent*
5 *auditor attesting to the compliance of*
6 *the supervised securities holding com-*
7 *pany with the internal risk manage-*
8 *ment and internal control objectives of*
9 *the supervised securities holding com-*
10 *pany; and*

11 (IV) *a report concerning the ex-*
12 *tent to which the supervised securities*
13 *holding company or affiliate has com-*
14 *plied with the provisions of this section*
15 *and any regulations prescribed and or-*
16 *ders issued under this section.*

17 (2) *USE OF EXISTING REPORTS.—*

18 (A) *IN GENERAL.—The Board of Governors*
19 *shall, to the fullest extent possible, accept reports*
20 *in fulfillment of the requirements of this para-*
21 *graph that a supervised securities holding com-*
22 *pany or an affiliate of a supervised securities*
23 *holding company has been required to provide to*
24 *another regulatory agency or a self-regulatory*
25 *organization.*

1 (B) *AVAILABILITY.*—A supervised securities
2 holding company or an affiliate of a supervised
3 securities holding company shall promptly pro-
4 vide to the Board of Governors, at the request of
5 the Board of Governors, any report described in
6 subparagraph (A), as permitted by law.

7 (3) *EXAMINATION AUTHORITY.*—

8 (A) *FOCUS OF EXAMINATION AUTHORITY.*—
9 The Board of Governors may make examinations
10 of any supervised securities holding company
11 and any affiliate of a supervised securities hold-
12 ing company to carry out this subsection, to pre-
13 vent evasions thereof, and to monitor compliance
14 by the supervised securities holding company or
15 affiliate with applicable provisions of law.

16 (B) *DEFERENCE TO OTHER EXAMINA-*
17 *TIONS.*—For purposes of this subparagraph, the
18 Board of Governors shall, to the fullest extent
19 possible, use the reports of examination made by
20 other appropriate Federal or State regulatory
21 authorities with respect to any functionally regu-
22 lated subsidiary or any institution described in
23 subparagraph (D), (F), or (H) of section 2(c)(2)
24 of the Bank Holding Company Act of 1956 (12
25 U.S.C. 1841(c)(2)).

1 (d) *CAPITAL AND RISK MANAGEMENT.*—

2 (1) *IN GENERAL.*—*The Board of Governors shall,*
3 *by regulation or order, prescribe capital adequacy*
4 *and other risk management standards for supervised*
5 *securities holding companies that are appropriate to*
6 *protect the safety and soundness of the supervised se-*
7 *curities holding companies and address the risks*
8 *posed to financial stability by supervised securities*
9 *holding companies.*

10 (2) *DIFFERENTIATION.*—*In imposing standards*
11 *under this subsection, the Board of Governors may*
12 *differentiate among supervised securities holding com-*
13 *panies on an individual basis, or by category, taking*
14 *into consideration the requirements under paragraph*
15 *(3).*

16 (3) *CONTENT.*—*Any standards imposed on a su-*
17 *pervised securities holding company under this sub-*
18 *section shall take into account—*

19 (A) *the differences among types of business*
20 *activities carried out by the supervised securities*
21 *holding company;*

22 (B) *the amount and nature of the financial*
23 *assets of the supervised securities holding com-*
24 *pany;*

1 (C) *the amount and nature of the liabilities*
2 *of the supervised securities holding company, in-*
3 *cluding the degree of reliance on short-term fund-*
4 *ing;*

5 (D) *the extent and nature of the off-balance*
6 *sheet exposures of the supervised securities hold-*
7 *ing company;*

8 (E) *the extent and nature of the trans-*
9 *actions and relationships of the supervised secu-*
10 *rities holding company with other financial com-*
11 *panies;*

12 (F) *the importance of the supervised securi-*
13 *ties holding company as a source of credit for*
14 *households, businesses, and State and local gov-*
15 *ernments, and as a source of liquidity for the fi-*
16 *nancial system; and*

17 (G) *the nature, scope, and mix of the activi-*
18 *ties of the supervised securities holding company.*

19 (4) *NOTICE.—A capital requirement imposed*
20 *under this subsection may not take effect earlier than*
21 *180 days after the date on which a supervised securi-*
22 *ties holding company is provided notice of the capital*
23 *requirement.*

1 (e) *EXCEPTION FOR BANKS.*—No bank shall be subject
2 to any of the requirements set forth in subsections (c) and
3 (d).

4 (f) *OTHER PROVISIONS OF LAW APPLICABLE TO SU-*
5 *PERVISED SECURITIES HOLDING COMPANIES.*—

6 (1) *FEDERAL DEPOSIT INSURANCE ACT.*—Sub-
7 sections (b), (c) through (s), and (u) of section 8 of
8 the Federal Deposit Insurance Act (12 U.S.C. 1818)
9 shall apply to any supervised securities holding com-
10 pany, and to any subsidiary (other than a bank or
11 an institution described in subparagraph (D), (F), or
12 (H) of section 2(c)(2) of the Bank Holding Company
13 Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised
14 securities holding company, in the same manner as
15 such subsections apply to a bank holding company for
16 which the Board of Governors is the appropriate Fed-
17 eral banking agency. For purposes of applying such
18 subsections to a supervised securities holding com-
19 pany or a subsidiary (other than a bank or an insti-
20 tution described in subparagraph (D), (F), or (H) of
21 section 2(c)(2) of the Bank Holding Company Act of
22 1956 (12 U.S.C. 1841(c)(2))) of a supervised securi-
23 ties holding company, the Board of Governors shall be
24 deemed the appropriate Federal banking agency for

1 *the supervised securities holding company or sub-*
2 *subsidiary.*

3 (2) *BANK HOLDING COMPANY ACT OF 1956.—Ex-*
4 *cept as the Board of Governors may otherwise provide*
5 *by regulation or order, a supervised securities holding*
6 *company shall be subject to the provisions of the Bank*
7 *Holding Company Act of 1956 (12 U.S.C. 1841 et*
8 *seq.) in the same manner and to the same extent a*
9 *bank holding company is subject to such provisions,*
10 *except that a supervised securities holding company*
11 *may not, by reason of this paragraph, be deemed to*
12 *be a bank holding company for purposes of section 4*
13 *of the Bank Holding Company Act of 1956 (12*
14 *U.S.C. 1843).*

15 **SEC. 619. RESTRICTIONS ON CAPITAL MARKET ACTIVITY BY**
16 **BANKS AND BANK HOLDING COMPANIES.**

17 (a) *DEFINITIONS.—In this section—*

18 (1) *the terms “hedge fund” and “private equity*
19 *fund” mean a company or other entity that is exempt*
20 *from registration as an investment company pursu-*
21 *ant to section 3(c)(1) or 3(c)(7) of the Investment*
22 *Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–*
23 *3(c)(7)), or a similar fund, as jointly determined by*
24 *the appropriate Federal banking agencies;*

25 (2) *the term “proprietary trading”—*

1 (A) means purchasing or selling, or other-
2 wise acquiring or disposing of, stocks, bonds, op-
3 tions, commodities, derivatives, or other finan-
4 cial instruments by an insured depository insti-
5 tution, a company that controls, directly or indi-
6 rectly, an insured depository institution or is
7 treated as a bank holding company for purposes
8 of the Bank Holding Company Act of 1956 (12
9 U.S.C. 1841 et seq.), and any subsidiary of such
10 institution or company, for the trading book (or
11 such other portfolio as the Federal banking agen-
12 cies may determine) of such institution, com-
13 pany, or subsidiary; and

14 (B) subject to such restrictions as the Fed-
15 eral banking agencies may determine, does not
16 include purchasing or selling, or otherwise ac-
17 quiring or disposing of, stocks, bonds, options,
18 commodities, derivatives, or other financial in-
19 struments on behalf of a customer, as part of
20 market making activities, or otherwise in connec-
21 tion with or in facilitation of customer relation-
22 ships, including risk-mitigating hedging activi-
23 ties related to such a purchase, sale, acquisition,
24 or disposal; and

1 (3) *the term “sponsoring”, when used with re-*
2 *spect to a hedge fund or private equity fund, means—*

3 (A) *serving as a general partner, managing*
4 *member, or trustee of the fund;*

5 (B) *in any manner selecting or controlling*
6 *(or having employees, officers, directors, or*
7 *agents who constitute) a majority of the direc-*
8 *tors, trustees, or management of the fund; or*

9 (C) *sharing with the fund, for corporate,*
10 *marketing, promotional, or other purposes, the*
11 *same name or a variation of the same name.*

12 *(b) PROHIBITION ON PROPRIETARY TRADING.—*

13 (1) *IN GENERAL.—Subject to the recommenda-*
14 *tions and modifications of the Council under sub-*
15 *section (g), and except as provided in paragraph (2)*
16 *or (3), the appropriate Federal banking agencies*
17 *shall, through a rulemaking under subsection (g),*
18 *jointly prohibit proprietary trading by an insured de-*
19 *pository institution, a company that controls, directly*
20 *or indirectly, an insured depository institution or is*
21 *treated as a bank holding company for purposes of*
22 *the Bank Holding Company Act of 1956 (12 U.S.C.*
23 *1841 et seq.), and any subsidiary of such institution*
24 *or company.*

25 (2) *EXCEPTED OBLIGATIONS.—*

1 (A) *IN GENERAL.*—*The prohibition under*
2 *this subsection shall not apply with respect to an*
3 *investment that is otherwise authorized by Fed-*
4 *eral law in—*

5 (i) *obligations of the United States or*
6 *any agency of the United States, including*
7 *obligations fully guaranteed as to principal*
8 *and interest by the United States or an*
9 *agency of the United States;*

10 (ii) *obligations, participations, or*
11 *other instruments of, or issued by, the Gov-*
12 *ernment National Mortgage Association, the*
13 *Federal National Mortgage Association, or*
14 *the Federal Home Loan Mortgage Corpora-*
15 *tion, including obligations fully guaranteed*
16 *as to principal and interest by such enti-*
17 *ties; and*

18 (iii) *obligations of any State or any*
19 *political subdivision of a State.*

20 (B) *CONDITIONS.*—*The appropriate Federal*
21 *banking agencies may impose conditions on the*
22 *conduct of investments described in subpara-*
23 *graph (A).*

24 (C) *RULE OF CONSTRUCTION.*—*Nothing in*
25 *subparagraph (A) may be construed to grant*

1 *any authority to any person that is not other-*
2 *wise provided in Federal law.*

3 (3) *FOREIGN ACTIVITIES.*—*An investment or ac-*
4 *tivity conducted by a company pursuant to para-*
5 *graph (9) or (13) of section 4(c) of the Bank Holding*
6 *Company Act of 1956 (12 U.S.C. 1843(c)) solely out-*
7 *side of the United States shall not be subject to the*
8 *prohibition under paragraph (1), provided that the*
9 *company is not directly or indirectly controlled by a*
10 *company that is organized under the laws of the*
11 *United States or of a State.*

12 (c) *PROHIBITION ON SPONSORING AND INVESTING IN*
13 *HEDGE FUNDS AND PRIVATE EQUITY FUNDS.*—

14 (1) *IN GENERAL.*—*Except as provided in para-*
15 *graph (2), and subject to the recommendations and*
16 *modifications of the Council under subsection (g), the*
17 *appropriate Federal banking agencies shall, through a*
18 *rulemaking under subsection (g), jointly prohibit an*
19 *insured depository institution, a company that con-*
20 *trols, directly or indirectly, an insured depository in-*
21 *stitution or is treated as a bank holding company for*
22 *purposes of the Bank Holding Company Act of 1956*
23 *(12 U.S.C. 1841 et seq.), or any subsidiary of such*
24 *institution or company, from sponsoring or investing*
25 *in a hedge fund or a private equity fund.*

1 (2) *APPLICATION TO FOREIGN ACTIVITIES OF*
2 *FOREIGN FIRMS.*—*An investment or activity con-*
3 *ducted by a company pursuant to paragraph (9) or*
4 *(13) of section 4(c) of the Bank Holding Company*
5 *Act of 1956 (12 U.S.C. 1843(c)) solely outside of the*
6 *United States shall not be subject to the prohibitions*
7 *and restrictions under paragraph (1), provided that*
8 *the company is not directly or indirectly controlled*
9 *by a company that is organized under the laws of the*
10 *United States or of a State.*

11 (d) *INVESTMENTS IN SMALL BUSINESS INVESTMENT*
12 *COMPANIES AND INVESTMENTS DESIGNED TO PROMOTE*
13 *THE PUBLIC WELFARE.*—

14 (1) *IN GENERAL.*—*A prohibition imposed by the*
15 *appropriate Federal banking agencies under sub-*
16 *section (c) shall not apply with respect an investment*
17 *otherwise authorized under Federal law that is—*

18 (A) *an investment in a small business in-*
19 *vestment company, as that term is defined in*
20 *section 103 of the Small Business Investment Act*
21 *of 1958 (15 U.S.C. 662); or*

22 (B) *designed primarily to promote the pub-*
23 *lic welfare, as provided in the 11th paragraph of*
24 *section 5136 of the Revised Statutes (12 U.S.C.*
25 *24).*

1 (2) *RULE OF CONSTRUCTION.*—*Nothing in para-*
2 *graph (1) may be construed to grant any authority*
3 *to any person that is not otherwise provided in Fed-*
4 *eral law.*

5 (e) *LIMITATIONS ON RELATIONSHIPS WITH HEDGE*
6 *FUNDS AND PRIVATE EQUITY FUNDS.*—

7 (1) *COVERED TRANSACTIONS.*—*An insured de-*
8 *pository institution, a company that controls, directly*
9 *or indirectly, an insured depository institution or is*
10 *treated as a bank holding company for purposes of*
11 *the Bank Holding Company Act of 1956 (12 U.S.C.*
12 *1841 et seq.), and any subsidiary of such institution*
13 *or company that serves, directly or indirectly, as the*
14 *investment manager or investment adviser to a hedge*
15 *fund or private equity fund may not enter into a cov-*
16 *ered transaction, as defined in section 23A of the Fed-*
17 *eral Reserve Act (12 U.S.C. 371c) with such hedge*
18 *fund or private equity fund.*

19 (2) *AFFILIATION.*—*An insured depository insti-*
20 *tution, a company that controls, directly or indi-*
21 *rectly, an insured depository institution or is treated*
22 *as a bank holding company for purposes of the Bank*
23 *Holding Company Act of 1956 (12 U.S.C. 1841 et*
24 *seq.), and any subsidiary of such institution or com-*
25 *pany that serves, directly or indirectly, as the invest-*

1 *ment manager or investment adviser to a hedge fund*
2 *or private equity fund shall be subject to section 23B*
3 *of the Federal Reserve Act (12 U.S.C. 371c–1) as if*
4 *such institution, company, or subsidiary were a mem-*
5 *ber bank and such hedge fund or private equity fund*
6 *were an affiliate.*

7 *(f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR*
8 *CERTAIN NONBANK FINANCIAL COMPANIES.—*

9 *(1) IN GENERAL.—Except as provided in para-*
10 *graph (2), and subject to the recommendations and*
11 *modifications of the Council under subsection (g), the*
12 *Board of Governors shall adopt rules imposing addi-*
13 *tional capital requirements and specifying additional*
14 *quantitative limits for nonbank financial companies*
15 *supervised by the Board of Governors under section*
16 *113 that engage in proprietary trading or sponsoring*
17 *and investing in hedge funds and private equity*
18 *funds.*

19 *(2) EXCEPTIONS.—The rules under this sub-*
20 *section shall not apply with respect to the trading of*
21 *an investment that is otherwise authorized by Federal*
22 *law—*

23 *(A) in obligations of the United States or*
24 *any agency of the United States, including obli-*
25 *gations fully guaranteed as to principal and in-*

1 *terest by the United States or an agency of the*
2 *United States;*

3 *(B) in obligations, participations, or other*
4 *instruments of, or issued by, the Government Na-*
5 *tional Mortgage Association, the Federal Na-*
6 *tional Mortgage Association, or the Federal*
7 *Home Loan Mortgage Corporation, including ob-*
8 *ligations fully guaranteed as to principal and*
9 *interest by such entities;*

10 *(C) in obligations of any State or any polit-*
11 *ical subdivision of a State;*

12 *(D) in a small business investment com-*
13 *pany, as that term is defined in section 103 of*
14 *the Small Business Investment Act of 1958 (15*
15 *U.S.C. 662); or*

16 *(E) that is designed primarily to promote*
17 *the public welfare, as provided in the 11th para-*
18 *graph of section 5136 of the Revised Statutes (12*
19 *U.S.C. 24).*

20 *(g) COUNCIL STUDY AND RULEMAKING.—*

21 *(1) STUDY AND RECOMMENDATIONS.—Not later*
22 *than 6 months after the date of enactment of this Act,*
23 *the Council—*

24 *(A) shall complete a study of the definitions*
25 *under subsection (a) and the other provisions*

1 *under subsections (b) through (f), to assess the*
2 *extent to which the definitions under subsection*
3 *(a) and the implementation of subsections (a)*
4 *through (f) would—*

5 *(i) promote and enhance the safety and*
6 *soundness of depository institutions and the*
7 *affiliates of depository institutions;*

8 *(ii) protect taxpayers and enhance fi-*
9 *nancial stability by minimizing the risk*
10 *that depository institutions and the affili-*
11 *ates of depository institutions will engage*
12 *in unsafe and unsound activities;*

13 *(iii) limit the inappropriate transfer of*
14 *Federal subsidies from institutions that ben-*
15 *efit from deposit insurance and liquidity fa-*
16 *cilities of the Federal Government to un-*
17 *regulated entities;*

18 *(iv) reduce inappropriate conflicts of*
19 *interest between the self-interest of deposi-*
20 *tory institutions, affiliates of depository in-*
21 *stitutions, and financial companies super-*
22 *vised by the Board, and the interests of the*
23 *customers of such institutions and compa-*
24 *nies;*

1 (v) raise the cost of credit or other fi-
2 nancial services, reduce the availability of
3 credit or other financial services, or impose
4 other costs on households and businesses in
5 the United States;

6 (vi) limit activities that have caused
7 undue risk or loss in depository institu-
8 tions, affiliates of depository institutions,
9 and financial companies supervised by the
10 Board of Governors, or that might reason-
11 ably be expected to create undue risk or loss
12 in such institutions, affiliates, and compa-
13 nies; and

14 (vii) appropriately accommodates the
15 business of insurance within an insurance
16 company subject to regulation in accordance
17 with State insurance company investment
18 laws;

19 (B) shall make recommendations regarding
20 the definitions under subsection (a) and the im-
21 plementation of other provisions under sub-
22 sections (b) through (f), including any modifica-
23 tions to the definitions, prohibitions, require-
24 ments, and limitations contained therein that the

1 *Council determines would more effectively imple-*
2 *ment the purposes of this section; and*

3 *(C) may make recommendations for prohib-*
4 *iting the conduct of the activities described in*
5 *subsections (b) and (c) above a specific threshold*
6 *amount and imposing additional capital re-*
7 *quirements on activities conducted below such*
8 *threshold amount.*

9 *(2) RULEMAKING.—Not earlier than the date of*
10 *completion of the study required under paragraph*
11 *(1), and not later than 9 months after the date of*
12 *completion of such study—*

13 *(A) the appropriate Federal banking agen-*
14 *cies shall jointly issue final regulations imple-*
15 *menting subsections (b) through (e), which shall*
16 *reflect any recommendations or modifications*
17 *made by the Council pursuant to paragraph*
18 *(1)(B); and*

19 *(B) the Board of Governors shall issue final*
20 *regulations implementing subsection (f), which*
21 *shall reflect any recommendations or modifica-*
22 *tions made by the Council pursuant to para-*
23 *graph (1)(B).*

24 *(h) TRANSITION.—*

1 (1) *IN GENERAL.*—*The final regulations issued*
2 *by the appropriate Federal banking agencies and the*
3 *Board of Governors under subsection (g)(2) shall pro-*
4 *vide that, effective 2 years after the date on which*
5 *such final regulations are issued, no insured depository*
6 *institution, company that controls, directly or*
7 *indirectly, an insured depository institution, com-*
8 *pany that is treated as a bank holding company for*
9 *purposes of the Bank Holding Company Act of 1956*
10 *(12 U.S.C. 1841 et seq.), or subsidiary of such institu-*
11 *tion or company, may retain any investment or rela-*
12 *tionship prohibited under such regulations.*

13 (2) *EXTENSION.*—

14 (A) *IN GENERAL.*—*The appropriate Federal*
15 *banking agency for an insured depository insti-*
16 *tution or a company described in paragraph (1)*
17 *may, upon the application of any such company,*
18 *extend the 2-year period under paragraph (1)*
19 *with respect to such company, if the appropriate*
20 *Federal banking agency determines that an ex-*
21 *tension would not be detrimental to the public*
22 *interest.*

23 (B) *TIME PERIOD FOR EXTENSION.*—*An ex-*
24 *tension granted under subparagraph (A) may*
25 *not exceed—*

- 1 (i) 1 year for each determination made
 2 by the appropriate Federal banking agency
 3 under subparagraph (A); and
 4 (ii) a total of 3 years with respect to
 5 any 1 company.

6 **SEC. 620. CONCENTRATION LIMITS ON LARGE FINANCIAL**
 7 **FIRMS.**

8 *The Bank Holding Company Act of 1956 (12 U.S.C.*
 9 *1841 et seq.) is amended by adding at the end the following:*

10 **“SEC. 13. CONCENTRATION LIMITS ON LARGE FINANCIAL**
 11 **FIRMS.**

12 “(a) *DEFINITIONS.—In this section—*

13 “(1) *the term ‘Council’ means the Financial Sta-*
 14 *bility Oversight Council;*

15 “(2) *the term ‘financial company’ means—*

16 “(A) *an insured depository institution;*

17 “(B) *a bank holding company;*

18 “(C) *a savings and loan holding company;*

19 “(D) *a company that controls an insured*
 20 *depository institution;*

21 “(E) *a nonbank financial company super-*
 22 *vised by the Board under title I of the Restoring*
 23 *American Financial Stability Act of 2010; and*

1 “(F) a foreign bank or company that is
2 treated as a bank holding company for purposes
3 of this Act; and

4 “(3) the term ‘liabilities’ means—

5 “(A) with respect to a United States finan-
6 cial company—

7 “(i) the total risk-weighted assets of the
8 financial company, as determined under the
9 risk-based capital rules applicable to bank
10 holding companies, as adjusted to reflect ex-
11 posures that are deducted from regulatory
12 capital; less

13 “(ii) the total regulatory capital of the
14 financial company under the risk-based
15 capital rules applicable to bank holding
16 companies;

17 “(B) with respect to a foreign-based finan-
18 cial company—

19 “(i) the total risk-weighted assets of the
20 United States operations of the financial
21 company, as determined under the applica-
22 ble risk-based capital rules, as adjusted to
23 reflect exposures that are deducted from reg-
24 ulatory capital; less

1 “(ii) the total regulatory capital of the
2 United States operations of the financial
3 company, as determined under the applica-
4 ble risk-based capital rules; and

5 “(C) with respect to an insurance company
6 or other nonbank financial company supervised
7 by the Board, such assets of the company as the
8 Board shall specify by rule, in order to provide
9 for consistent and equitable treatment of such
10 companies.

11 “(b) *CONCENTRATION LIMIT.*—Subject to the rec-
12 ommendations by the Council under subsection (e), a finan-
13 cial company may not merge or consolidate with, acquire
14 all or substantially all of the assets of, or otherwise acquire
15 control of, another company, if the total consolidated liabil-
16 ities of the acquiring financial company upon consumma-
17 tion of the transaction would exceed 10 percent of the aggre-
18 gate consolidated liabilities of all financial companies at
19 the end of the calendar year preceding the transaction.

20 “(c) *EXCEPTION TO CONCENTRATION LIMIT.*—With the
21 prior written consent of the Board, the concentration limit
22 under subsection (b) shall not apply to an acquisition—

23 “(1) of a bank in default or in danger of default;

24 “(2) with respect to which assistance is provided
25 by the Federal Deposit Insurance Corporation under

1 *section 13(c) of the Federal Deposit Insurance Act (12*
2 *U.S.C. 1823(c)); or*

3 *“(3) that would result only in a de minimis in-*
4 *crease in the liabilities of the financial company.*

5 *“(d) RULEMAKING AND GUIDANCE.—The Board shall*
6 *issue regulations implementing this section in accordance*
7 *with the recommendations of the Council under subsection*
8 *(e), including the definition of terms, as necessary. The*
9 *Board may issue interpretations or guidance regarding the*
10 *application of this section to an individual financial com-*
11 *pany or to financial companies in general.*

12 *“(e) COUNCIL STUDY AND RULEMAKING.—*

13 *“(1) STUDY AND RECOMMENDATIONS.—Not later*
14 *than 6 months after the date of enactment of this sec-*
15 *tion, the Council shall—*

16 *“(A) complete a study of the extent to which*
17 *the concentration limit under this section would*
18 *affect financial stability, moral hazard in the fi-*
19 *nancial system, the efficiency and competitive-*
20 *ness of United States financial firms and finan-*
21 *cial markets, and the cost and availability of*
22 *credit and other financial services to households*
23 *and businesses in the United States; and*

24 *“(B) make recommendations regarding any*
25 *modifications to the concentration limit that the*

1 *Council determines would more effectively imple-*
 2 *ment this section.*

3 “(2) *RULEMAKING.—Not later than 9 months*
 4 *after the date of completion of the study under para-*
 5 *graph (1), and notwithstanding subsections (b) and*
 6 *(d), the Board shall issue final regulations imple-*
 7 *menting this section, which shall reflect any rec-*
 8 *ommendations by the Council under paragraph*
 9 *(1)(B).”.*

10 ***TITLE VII—WALL STREET TRANS-***
 11 ***PARENCY AND ACCOUNT-***
 12 ***ABILITY***

13 ***SEC. 701. SHORT TITLE.***

14 *This title may be cited as the “Wall Street Trans-*
 15 *parency and Accountability Act of 2010”.*

16 ***Subtitle A—Regulation of Over-the-***
 17 ***Counter Swaps Markets***

18 ***PART I—REGULATORY AUTHORITY***

19 ***SEC. 711. DEFINITIONS.***

20 *In this subtitle, the terms “prudential regulator”,*
 21 *“swap”, “swap dealer”, “major swap participant”, “swap*
 22 *data repository”, “associated person of a swap dealer or*
 23 *major swap participant”, “eligible contract participant”,*
 24 *“swap execution facility”, “security-based swap”, “secu-*
 25 *rity-based swap dealer”, “major security-based swap par-*

1 *participant*”, “*swap data repository*”, and “*associated person*
2 *of a security-based swap dealer or major security-based*
3 *swap participant*” have the meanings given the terms in
4 *section 1a of the Commodity Exchange Act (7 U.S.C. 1a).*

5 **SEC. 712. REVIEW OF REGULATORY AUTHORITY.**

6 (a) *REGULATORY AUTHORITY.*—

7 (1) *IN GENERAL.*—*Except as provided in para-*
8 *graphs (4) and (8), the Commodity Futures Trading*
9 *Commission and the Securities and Exchange Com-*
10 *mission shall each prescribe such regulations as may*
11 *be necessary to carry out the purposes of this title.*

12 (2) *COORDINATION, CONSISTENCY, AND COM-*
13 *PARABILITY.*—*Both Commissions required under*
14 *paragraph (1) to prescribe regulations shall consult*
15 *and coordinate with each other for the purposes of as-*
16 *suming, to the extent possible, that the regulations pre-*
17 *scribed by each such Commission are consistent and*
18 *comparable with the regulations prescribed by the*
19 *other.*

20 (3) *PROCEDURES AND DEADLINE.*—*Such regula-*
21 *tions shall be prescribed in accordance with applica-*
22 *ble requirements of title 5, United States Code, and,*
23 *shall be issued in final form not later than 180 days*
24 *after the date of enactment of this Act.*

1 (4) *APPLICABILITY.*—*The requirements of para-*
2 *graph (1) shall not apply to an order issued—*

3 (A) *in connection with or arising from a*
4 *violation or potential violation of any provision*
5 *of the Commodity Exchange Act (7 U.S.C. 1 et*
6 *seq.);*

7 (B) *in connection with or arising from a*
8 *violation or potential violation of any provision*
9 *of the securities laws; or*

10 (C) *in any proceeding that is conducted on*
11 *the record in accordance with sections 556 and*
12 *557 of title 5, United States Code.*

13 (5) *EFFECT.*—*Nothing in this subsection author-*
14 *izes any consultation or procedure for consultation*
15 *that is not consistent with the requirements of sub-*
16 *chapter II of chapter 5, and chapter 7, of title 5,*
17 *United States Code (commonly known as the “Admin-*
18 *istrative Procedure Act”).*

19 (6) *RULES; ORDERS.*—*In developing and pro-*
20 *mulgating rules or orders pursuant to this subsection,*
21 *each Commission shall consider the views of the pru-*
22 *dential regulators.*

23 (7) *TREATMENT OF SIMILAR PRODUCTS AND EN-*
24 *TITIES.*—

1 (A) *IN GENERAL.*—*In adopting rules and*
2 *orders under this subsection, the Commodity Fu-*
3 *tures Trading Commission and the Securities*
4 *and Exchange Commission shall treat function-*
5 *ally or economically similar products or entities*
6 *described in paragraphs (1) and (2) in a similar*
7 *manner.*

8 (B) *EFFECT.*—*Nothing in this subtitle re-*
9 *quires the Commodity Futures Trading Commis-*
10 *sion or the Securities and Exchange Commission*
11 *to adopt joint rules or orders that treat function-*
12 *ally or economically similar products or entities*
13 *described in paragraphs (1) and (2) in an iden-*
14 *tical manner.*

15 (8) *MIXED SWAPS.*—*The Commodity Futures*
16 *Trading Commission and the Securities and Ex-*
17 *change Commission shall jointly prescribe such regu-*
18 *lations regarding mixed swaps, as described in section*
19 *1a(47)(D) of the Commodity Exchange Act (7 U.S.C.*
20 *1a(47)(D)) and in section (68)(D) of the Securities*
21 *Exchange Act of 1934 (15 U.S.C. (68)(D)), as may be*
22 *necessary to carry out the purposes of this title.*

23 (b) *LIMITATION.*—

24 (1) *COMMODITY FUTURES TRADING COMMIS-*
25 *SION.*—*Nothing in this title, unless specifically pro-*

1 *vided, confers jurisdiction on the Commodity Futures*
2 *Trading Commission to issue a rule, regulation, or*
3 *order providing for oversight or regulation of—*

4 (A) *security-based swaps; or*

5 (B) *with regard to its activities or functions*
6 *concerning security-based swaps—*

7 (i) *security-based swap dealers;*

8 (ii) *major security-based swap partici-*
9 *pants;*

10 (iii) *security-based swap data reposi-*
11 *tories;*

12 (iv) *persons associated with a security-*
13 *based swap dealer or major security-based*
14 *swap participant;*

15 (v) *eligible contract participants with*
16 *respect to security-based swaps; or*

17 (vi) *swap execution facilities with re-*
18 *spect to security-based swaps.*

19 (2) *SECURITIES AND EXCHANGE COMMISSION.—*

20 *Nothing in this title, unless specifically provided, con-*
21 *fers jurisdiction on the Securities and Exchange Com-*
22 *mission or State securities regulators to issue a rule,*
23 *regulation, or order providing for oversight or regula-*
24 *tion of—*

25 (A) *swaps; or*

1 (B) *with regard to its activities or functions*
2 *concerning swaps—*

3 (i) *swap dealers;*

4 (ii) *major swap participants;*

5 (iii) *swap data repositories;*

6 (iv) *persons associated with a swap*
7 *dealer or major swap participant;*

8 (v) *eligible contract participants with*
9 *respect to swaps; or*

10 (vi) *swap execution facilities with re-*
11 *spect to swaps.*

12 (3) *PROHIBITION ON CERTAIN FUTURES ASSO-*
13 *CATIONS AND NATIONAL SECURITIES ASSO-*
14 *CATIONS.—*

15 (A) *FUTURES ASSOCIATIONS.—Notwith-*
16 *standing any other provision of law (including*
17 *regulations), unless otherwise authorized by this*
18 *title, no futures association registered under sec-*
19 *tion 17 of the Commodity Exchange Act (7*
20 *U.S.C. 21) may issue a rule, regulation, or order*
21 *for the oversight or regulation of, or otherwise as-*
22 *sert jurisdiction over, for any purpose, any secu-*
23 *rity-based swap, except that this shall not limit*
24 *the authority of a national futures association to*

1 *examine for compliance with and enforce its*
2 *rules on advertising and capital adequacy.*

3 (B) NATIONAL SECURITIES ASSOCIA-
4 TIONS.—*Notwithstanding any other provision of*
5 *law (including regulations), unless otherwise au-*
6 *thorized by this title, no national securities asso-*
7 *ciation registered under section 15A of the Secu-*
8 *rities Exchange Act of 1934 (15 U.S.C. 78o–3)*
9 *may issue a rule, regulation, or order for the*
10 *oversight or regulation of, or otherwise assert ju-*
11 *risdiction over, for any purpose, any swap, ex-*
12 *cept that this shall not limit the authority of a*
13 *national securities association to examine for*
14 *compliance with and enforce its rules on adver-*
15 *tising and capital adequacy.*

16 (c) OBJECTION TO COMMISSION REGULATION.—

17 (1) FILING OF PETITION FOR REVIEW.—

18 (A) IN GENERAL.—*If either Commission re-*
19 *ferred to in this section determines that a final*
20 *rule, regulation, or order of the other Commis-*
21 *sion conflicts with subsection (a)(4) or (b), then*
22 *the complaining Commission may obtain review*
23 *of the final rule, regulation, or order in the*
24 *United States Court of Appeals for the District*
25 *of Columbia Circuit by filing in the court, not*

1 *later than 60 days after the date of publication*
2 *of the final rule, regulation, or order, a written*
3 *petition requesting that the rule, regulation, or*
4 *order be set aside.*

5 (B) *EXPEDITED PROCEEDING.*—A *pro-*
6 *ceeding described in subparagraph (A) shall be*
7 *expedited by the United States Court of Appeals*
8 *for the District of Columbia Circuit.*

9 (2) *TRANSMITTAL OF PETITION AND RECORD.*—

10 (A) *IN GENERAL.*—A *copy of a petition de-*
11 *scribed in paragraph (1) shall be transmitted not*
12 *later than 1 business day after the date of filing*
13 *by the complaining Commission to the Secretary*
14 *of the responding Commission.*

15 (B) *DUTY OF RESPONDING COMMISSION.*—
16 *On receipt of the copy of a petition described in*
17 *paragraph (1), the responding Commission shall*
18 *file with the United States Court of Appeals for*
19 *the District of Columbia Circuit—*

20 (i) *a copy of the rule, regulation, or*
21 *order under review (including any docu-*
22 *ments referred to therein); and*

23 (ii) *any other materials prescribed by*
24 *the United States Court of Appeals for the*
25 *District of Columbia Circuit.*

1 (3) *STANDARD OF REVIEW.*—*The United States*
2 *Court of Appeals for the District of Columbia Circuit*
3 *shall—*

4 (A) *give deference to the views of neither*
5 *Commission; and*

6 (B) *determine to affirm or set aside a rule,*
7 *regulation, or order of the responding Commis-*
8 *sion under this subsection, based on the deter-*
9 *mination of the court as to whether the rule, reg-*
10 *ulation, or order is in conflict with subsection*
11 *(a)(4) or (b), as applicable.*

12 (4) *JUDICIAL STAY.*—*The filing of a petition by*
13 *the complaining Commission pursuant to paragraph*
14 *(1) shall operate as a stay of the rule, regulation, or*
15 *order until the date on which the determination of the*
16 *United States Court of Appeals for the District of Co-*
17 *lumbia Circuit is final (including any appeal of the*
18 *determination).*

19 (d) *ADOPTION OF RULES ON UNCLEARED SWAPS.*—
20 *Notwithstanding subsections (b) and (c), the Commodity*
21 *Futures Trading Commission and the Securities and Ex-*
22 *change Commission shall, after consulting with each other*
23 *Commission, adopt rules—*

24 (1) *to require the maintenance of records of all*
25 *activities relating to transactions in swaps and secu-*

1 *rity-based swaps under the respective jurisdictions of*
2 *the Commodity Futures Trading Commission and the*
3 *Securities and Exchange Commission that are*
4 *uncleared;*

5 *(2) to make available, consistent with section 8*
6 *of the Commodity Exchange Act (7 U.S.C. 12), to the*
7 *Securities and Exchange Commission information re-*
8 *lating to swaps transactions that are uncleared; and*

9 *(3) to make available to the Commodity Futures*
10 *Trading Commission information relating to secu-*
11 *rity-based swaps transactions that are uncleared.*

12 *(e) DEFINITIONS.—Notwithstanding subsections (b)*
13 *and (c), the Commodity Futures Trading Commission and*
14 *the Securities and Exchange Commission shall jointly*
15 *adopt rules to define the term “security-based swap agree-*
16 *ment” in section 1a(47)(A)(v) of the Commodity Exchange*
17 *Act (7 U.S.C. 1a(47)(A)(v)) and in section 3(a)(78) of the*
18 *Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).*

19 *(f) GLOBAL RULEMAKING TIMEFRAME.—Unless other-*
20 *wise provided in a particular provision of this title, or an*
21 *amendment made by this title, the Commodity Futures*
22 *Trading Commission or the Securities and Exchange Com-*
23 *mission, or both, shall individually, and not jointly, pro-*
24 *mulgate rules and regulations required of each Commission*

1 *under this title or an amendment made by this title not*
2 *later than 180 days after the date of enactment of this Act.*

3 (g) *EXPEDITED RULEMAKING PROCESS.—The Com-*
4 *modity Futures Trading Commission or the Securities and*
5 *Exchange Commission, or both, may use emergency and ex-*
6 *pedited procedures (including any administrative or other*
7 *procedure as appropriate) to carry out this title and the*
8 *amendments made by this title if, in either of the Commis-*
9 *sions' discretion, it considers it necessary to do so.*

10 **SEC. 713. RECOMMENDATIONS FOR CHANGES TO PORT-**
11 **FOLIO MARGINING LAWS.**

12 *Not later than 180 days after the date of enactment*
13 *of this Act, the Securities and Exchange Commission, the*
14 *Commodity Futures Trading Commission, and the pruden-*
15 *tial regulators shall submit to the appropriate committees*
16 *of Congress recommendations for legislative changes to the*
17 *Federal laws to facilitate the portfolio margining of securi-*
18 *ties and commodity futures and options, commodity op-*
19 *tions, swaps, and other financial instrument positions.*

20 **SEC. 714. ABUSIVE SWAPS.**

21 *The Commodity Futures Trading Commission or the*
22 *Securities and Exchange Commission, or both, individually*
23 *may, by rule or order—*

24 (1) *collect information as may be necessary con-*
25 *cerning the markets for any types of—*

1 (A) swap (as defined in section 1a of the
2 Commodity Exchange Act (7 U.S.C. 1a)); or

3 (B) security-based swap (as defined in sec-
4 tion 1a of the Commodity Exchange Act (7
5 U.S.C. 1a)); and

6 (2) issue a report with respect to any types of
7 swaps or security-based swaps that the Commodity
8 Futures Trading Commission or the Securities and
9 Exchange Commission determines to be detrimental
10 to—

11 (A) the stability of a financial market; or

12 (B) participants in a financial market.

13 **SEC. 715. AUTHORITY TO PROHIBIT PARTICIPATION IN**
14 **SWAP ACTIVITIES.**

15 Except as provided in section 4 of the Commodity Ex-
16 change Act (7 U.S.C. 6) (as amended by section 738), if
17 the Commodity Futures Trading Commission or the Securi-
18 ties and Exchange Commission determines that the regula-
19 tion of swaps or security-based swaps markets in a foreign
20 country undermines the stability of the United States fi-
21 nancial system, either Commission, in consultation with the
22 Secretary of the Treasury, may prohibit an entity domi-
23 ciled in the foreign country from participating in the
24 United States in any swap or security-based swap activi-
25 ties.

1 **SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT**

2 **BAILOUTS OF SWAPS ENTITIES.**

3 (a) *PROHIBITION ON FEDERAL ASSISTANCE.*—Not-
4 *withstanding any other provision of law (including regula-*
5 *tions), no Federal assistance may be provided to any swaps*
6 *entity with respect to any swap, security-based swap, or*
7 *other activity of the swaps entity.*

8 (b) *DEFINITIONS.*—*In this section:*

9 (1) *FEDERAL ASSISTANCE.*—*The term “Federal*
10 *assistance” means the use of any funds, including ad-*
11 *vances from any Federal Reserve credit facility, dis-*
12 *count window, or pursuant to the third undesignated*
13 *paragraph of section 13 of the Federal Reserve Act*
14 *(12 U.S.C. 343) (relating to emergency lending au-*
15 *thority), Federal Deposit Insurance Corporation in-*
16 *surance, or guarantees for the purpose of—*

17 (A) *making any loan to, or purchasing any*
18 *stock, equity interest, or debt obligation of, any*
19 *swaps entity;*

20 (B) *purchasing the assets of any swaps enti-*
21 *ty;*

22 (C) *guaranteeing any loan or debt issuance*
23 *of any swaps entity; or*

24 (D) *entering into any assistance arrange-*
25 *ment (including tax breaks), loss sharing, or*
26 *profit sharing with any swaps entity.*

1 (2) *SWAPS ENTITY*.—*The term “swaps entity”*
 2 *means any swap dealer, security-based swap dealer,*
 3 *major swap participant, major security-based swap*
 4 *participant, swap execution facility, designated con-*
 5 *tract market, national securities exchange, central*
 6 *counterparty, clearing house, clearing agency, or de-*
 7 *rivatives clearing organization that is registered*
 8 *under—*

9 (A) *the Commodity Exchange Act (7 U.S.C.*
 10 *1 et seq.);*

11 (B) *the Securities Exchange Act of 1934 (15*
 12 *U.S.C. 78a et seq.); or*

13 (C) *any other Federal or State law (includ-*
 14 *ing regulations).*

15 **SEC. 717. NEW PRODUCT APPROVAL—CFTC—SEC PROCESS.**

16 (a) *AMENDMENTS TO THE COMMODITY EXCHANGE*
 17 *ACT*.—*Section 2(a)(1)(C) of the Commodity Exchange Act*
 18 *(7 U.S.C. 2(a)(1)(C)) is amended—*

19 (1) *in clause (i) by striking “This” and insert-*
 20 *ing “(I) Except as provided in subclause (II), this”;*
 21 *and*

22 (2) *by adding at the end of clause (i) the fol-*
 23 *lowing:*

24 *“(II) This Act shall apply to and*
 25 *the Commission shall have jurisdiction*

1 *with respect to accounts, agreements,*
2 *and transactions involving, and may*
3 *permit the listing for trading pursuant*
4 *to section 5c(c) of, a put, call, or other*
5 *option on 1 or more securities (as de-*
6 *defined in section 2(a)(1) of the Securi-*
7 *ties Act of 1933 or section 3(a)(10) of*
8 *the Securities Exchange Act of 1934 on*
9 *the date of enactment of the Futures*
10 *Trading Act of 1982), including any*
11 *group or index of such securities, or*
12 *any interest therein or based on the*
13 *value thereof, that is exempted by the*
14 *Securities and Exchange Commission*
15 *pursuant to section 36(a)(1) of the Se-*
16 *curities Exchange Act of 1934 with the*
17 *condition that the Commission exercise*
18 *concurrent jurisdiction over such put,*
19 *call, or other option; provided, how-*
20 *ever, that nothing in this paragraph*
21 *shall be construed to affect the jurisdic-*
22 *tion and authority of the Securities*
23 *and Exchange Commission over such*
24 *put, call, or other option.”.*

1 **(b) AMENDMENT TO THE SECURITIES EXCHANGE ACT**
2 *OF 1934.*—*The Securities Exchange Act of 1934 is amended*
3 *by adding the following section after section 3A (15 U.S.C.*
4 *78c–1):*

5 **“SEC. 3B. SECURITIES-RELATED DERIVATIVES.**

6 “(a) *Any agreement, contract, or transaction (or class*
7 *thereof) that is exempted by the Commodity Futures Trad-*
8 *ing Commission pursuant to section 4(c)(1) of the Com-*
9 *modity Exchange Act (7 U.S.C. 6(c)(1)) with the condition*
10 *that the Commission exercise concurrent jurisdiction over*
11 *such agreement, contract, or transaction (or class thereof)*
12 *shall be deemed a security for purposes of the securities*
13 *laws.*

14 “(b) *With respect to any agreement, contract, or trans-*
15 *action (or class thereof) that is exempted by the Commodity*
16 *Futures Trading Commission pursuant to section 4(c)(1)*
17 *of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the*
18 *condition that the Commission exercise concurrent jurisdic-*
19 *tion over such agreement, contract, or transaction (or class*
20 *thereof), references in the securities laws to the ‘purchase’*
21 *or ‘sale’ of a security shall be deemed to include the execu-*
22 *tion, termination (prior to its scheduled maturity date), as-*
23 *signment, exchange, or similar transfer or conveyance of,*
24 *or extinguishing of rights or obligations under such agree-*
25 *ment, contract, or transaction, as the context may require.”.*

1 (c) *AMENDMENT TO SECURITIES EXCHANGE ACT OF*
2 *1934.—Section 19(b) of the Securities Exchange Act of 1934*
3 *(15 U.S.C. 78s(b)) is amended by adding at the end the*
4 *following:*

5 “(10) *Notwithstanding the provisions of para-*
6 *graph (2), the time period within which the Commis-*
7 *sion is required by order to approve a proposed rule*
8 *change or institute proceedings to determine whether*
9 *the proposed rule change should be disapproved is*
10 *stayed pending a determination by the Commission*
11 *upon the request of the Commodity Futures Trading*
12 *Commission or its Chairman that the Commission*
13 *issue a determination as to whether a product that is*
14 *the subject of such proposed rule change is a security*
15 *pursuant to section 718 of the Wall Street Trans-*
16 *parency and Accountability Act of 2010.”.*

17 (d) *AMENDMENT TO COMMODITY EXCHANGE ACT.—*
18 *Section 5c(c)(1) of the Commodity Exchange Act (7 U.S.C.*
19 *7a-2(c)(1)) is amended—*

20 (1) *by striking “Subject to paragraph (2)” and*
21 *inserting the following:*

22 “(A) *ELECTION.—Subject to paragraph*
23 *(2)”;* *and*

24 (2) *by adding at the end the following:*

1 “(B) *CERTIFICATION.*—*The certification of*
2 *a product pursuant to this paragraph shall be*
3 *stayed pending a determination by the Commis-*
4 *sion upon the request of the Securities and Ex-*
5 *change Commission or its Chairman that the*
6 *Commission issue a determination as to whether*
7 *the product that is the subject of such certifi-*
8 *cation is a contract of sale of a commodity for*
9 *future delivery, an option on such a contract, or*
10 *an option on a commodity pursuant to section*
11 *718 of the Wall Street Transparency and Ac-*
12 *countability Act of 2010.”.*

13 **SEC. 718. DETERMINING STATUS OF NOVEL DERIVATIVE**
14 **PRODUCTS.**

15 *(a) PROCESS FOR DETERMINING THE STATUS OF A*
16 *NOVEL DERIVATIVE PRODUCT.—*

17 *(1) NOTICE.—*

18 *(A) IN GENERAL.—Any person filing a pro-*
19 *posal to list or trade a novel derivative product*
20 *that may have elements of both securities and*
21 *contracts of sale of a commodity for future deliv-*
22 *ery (or options on such contracts or options on*
23 *commodities) may concurrently provide notice*
24 *and furnish a copy of such filing with both the*
25 *Securities and Exchange Commission and the*

1 *Commodity Futures Trading Commission. Any*
2 *such notice shall state that notice has been made*
3 *with both Commissions.*

4 (B) *NOTIFICATION.—If no concurrent notice*
5 *is made pursuant to subparagraph (A), within 5*
6 *business days after determining that a proposal*
7 *that seeks to list or trade a novel derivative*
8 *product may have elements of both securities and*
9 *contracts of sale of a commodity for future deliv-*
10 *ery (or options on such contracts or options on*
11 *commodities), the Securities and Exchange Com-*
12 *mission or the Commodity Futures Trading*
13 *Commission, as applicable, shall notify the other*
14 *Commission and provide a copy of such filing to*
15 *the other Commission.*

16 (2) *REQUEST FOR DETERMINATION.—*

17 (A) *IN GENERAL.—No later than 21 days*
18 *after receipt of a notice under paragraph (1), or*
19 *upon its own initiative if no such notice is re-*
20 *ceived, the Commodity Futures Trading Com-*
21 *mission may request that the Securities and Ex-*
22 *change Commission issue a determination as to*
23 *whether a product is a security, as defined in*
24 *section 3(a)(10) of the Securities Exchange Act*
25 *of 1934 (15 U.S.C. 78c(a)(10)).*

1 (B) *REQUEST.*—No later than 21 days after
2 receipt of a notice under paragraph (1), or upon
3 its own initiative if no such notice is received,
4 the Securities and Exchange Commission may
5 request that the Commodity Futures Trading
6 Commission issue a determination as to whether
7 a product is a contract of sale of a commodity
8 for future delivery, an option on such a contract,
9 or an option on a commodity subject to the Com-
10 modity Futures Trading Commission’s exclusive
11 jurisdiction under section 2(a)(1)(A) of the Com-
12 modity Exchange Act (7 U.S.C. 2(a)(1)(A)).

13 (C) *REQUIREMENT RELATING TO RE-*
14 *QUEST.*—A request under subparagraph (A) or
15 (B) shall be made by submitting such request, in
16 writing, to the Securities and Exchange Com-
17 mission or the Commodity Futures Trading
18 Commission, as applicable.

19 (D) *EFFECT.*—Nothing in this paragraph
20 shall be construed to prevent—

21 (i) the Commodity Futures Trading
22 Commission from requesting that the Secu-
23 rities and Exchange Commission grant an
24 exemption pursuant to section 36(a)(1) of
25 the Securities Exchange Act of 1934 (15

1 *U.S.C. 78mm(a)(1)) with respect to a prod-*
2 *uct that is the subject of a filing under*
3 *paragraph (1); or*

4 *(ii) the Securities and Exchange Com-*
5 *mission from requesting that the Com-*
6 *modity Futures Trading Commission grant*
7 *an exemption pursuant to section 4(c)(1) of*
8 *the Commodity Exchange Act (7 U.S.C.*
9 *6(c)(1)) with respect to a product that is the*
10 *subject of a filing under paragraph (1).*

11 *Provided, however, that nothing in this subpara-*
12 *graph shall be construed to require the Com-*
13 *modity Futures Trading Commission or the Se-*
14 *curities and Exchange Commission to issue an*
15 *exemption requested pursuant to this subpara-*
16 *graph; provided further, That an order granting*
17 *or denying an exemption described in this sub-*
18 *paragraph and issued under paragraph (3)(B)*
19 *shall not be subject to judicial review pursuant*
20 *to subsection (b).*

21 *(E) WITHDRAWAL OF REQUEST.—A request*
22 *under subparagraph (A) or (B) may be with-*
23 *drawn by the Commission making the request at*
24 *any time prior to a determination being made*
25 *pursuant to paragraph (3) for any reason by*

1 *providing written notice to the head of the other*
2 *Commission.*

3 (3) *DETERMINATION.—Notwithstanding any*
4 *other provision of law, no later than 120 days after*
5 *the date of receipt of a request—*

6 (A) *under subparagraph (A) or (B) of para-*
7 *graph (2), unless such request has been with-*
8 *drawn pursuant to paragraph (2)(E), the Secu-*
9 *rities and Exchange Commission or the Com-*
10 *modity Futures Trading Commission, as appli-*
11 *icable, shall, by order, issue the determination re-*
12 *quested in subparagraph (A) or (B) of para-*
13 *graph (2), as applicable, and the reasons there-*
14 *fore; or*

15 (B) *under paragraph (2)(D), unless such re-*
16 *quest has been withdrawn, the Securities and*
17 *Exchange Commission or the Commodity Fu-*
18 *tures Trading Commission, as applicable, shall*
19 *grant an exemption or provide reasons for not*
20 *granting such exemption, provided that any de-*
21 *cision by the Securities and Exchange Commis-*
22 *sion not to grant such exemption shall not be re-*
23 *viewable under section 25 of the Securities Ex-*
24 *change Act of 1934 (15 U.S.C. 78y).*

25 (b) *JUDICIAL RESOLUTION.—*

1 (1) *IN GENERAL.*—*The Commodity Futures*
2 *Trading Commission or the Securities and Exchange*
3 *Commission may petition the United States Court of*
4 *Appeals for the District of Columbia Circuit for re-*
5 *view of a final order of the other Commission, with*
6 *respect to a novel derivative product that may have*
7 *elements of both securities and contracts of sale of a*
8 *commodity for future delivery (or options on such*
9 *contracts or options on commodities) that it believes*
10 *affects its statutory jurisdiction, including an order*
11 *or orders issued under subsection (a)(3)(A), by filing*
12 *in such court, within 60 days after the date of entry*
13 *of such order, a written petition requesting a review*
14 *of the order. Any such proceeding shall be expedited*
15 *by the Court of Appeals.*

16 (2) *TRANSMITTAL OF PETITION AND RECORD.*—
17 *A copy of a petition described in paragraph (1) shall*
18 *be transmitted not later than 1 business day after fil-*
19 *ing by the complaining Commission to the responding*
20 *Commission. On receipt of the petition, the respond-*
21 *ing Commission shall file with the court a copy of the*
22 *order under review and any documents referred to*
23 *therein, and any other materials prescribed by the*
24 *court.*

1 (3) *STANDARD OF REVIEW.*—*The court, in con-*
2 *sidering a petition filed pursuant to paragraph (1),*
3 *shall give no deference to, or presumption in favor of,*
4 *the views of either Commission.*

5 (4) *JUDICIAL STAY.*—*The filing of a petition by*
6 *the complaining Commission pursuant to paragraph*
7 *(1) shall operate as a stay of the order, until the date*
8 *on which the determination of the court is final (in-*
9 *cluding any appeal of the determination).*

10 ***PART II—REGULATION OF SWAP MARKETS***

11 ***SEC. 721. DEFINITIONS.***

12 (a) *IN GENERAL.*—*Section 1a of the Commodity Ex-*
13 *change Act (7 U.S.C. 1a) is amended—*

14 (1) *by redesignating paragraphs (2), (3) and (4),*
15 (5) *through (17), (18) through (23), (24) through*
16 (28), (29), (30), (31) *through (33), and (34) as para-*
17 *graphs (6), (8) and (9), (11) through (23), (26)*
18 *through (31), (34) through (38), (40), (41), (44)*
19 *through (46), and (51), respectively;*

20 (2) *by inserting after paragraph (1) the fol-*
21 *lowing:*

22 “(2) *APPROPRIATE FEDERAL BANKING AGEN-*
23 *CY.*—*The term ‘appropriate Federal banking agency’*
24 *has the meaning given the term in section 3 of the*
25 *Federal Deposit Insurance Act (12 U.S.C. 1813).*

1 “(3) ASSOCIATED PERSON OF A SECURITY-BASED
2 SWAP DEALER OR MAJOR SECURITY-BASED SWAP PAR-
3 TICIPANT.—The term ‘associated person of a security-
4 based swap dealer or major security-based swap par-
5 ticipant’ has the meaning given the term in section
6 3(a) of the Securities Exchange Act of 1934 (15
7 U.S.C. 78c(a)).

8 “(4) ASSOCIATED PERSON OF A SWAP DEALER
9 OR MAJOR SWAP PARTICIPANT.—

10 “(A) IN GENERAL.—The term ‘associated
11 person of a swap dealer or major swap partici-
12 pant’ means—

13 “(i) any partner, officer, director, or
14 branch manager of a swap dealer or major
15 swap participant (including any individual
16 who holds a similar status or performs a
17 similar function with respect to any part-
18 ner, officer, director, or branch manager of
19 a swap dealer or major swap participant);

20 “(ii) any person that directly or indi-
21 rectly controls, is controlled by, or is under
22 common control with, a swap dealer or
23 major swap participant; and

24 “(iii) any employee of a swap dealer
25 or major swap participant.

1 “(B) *EXCLUSION.*—Other than for purposes
2 of section 4s(b)(6), the term ‘associated person of
3 a swap dealer or major swap participant’ does
4 not include any person associated with a swap
5 dealer or major swap participant the functions
6 of which are solely clerical or ministerial.

7 “(5) *BOARD.*—The term ‘Board’ means the
8 Board of Governors of the Federal Reserve System.”;

9 (3) by inserting after paragraph (6) (as redesign-
10 ated by paragraph (1)) the following:

11 “(7) *CLEARED SWAP.*—The term ‘cleared swap’
12 means any swap that is, directly or indirectly, sub-
13 mitted to and cleared by a derivatives clearing orga-
14 nization registered with the Commission.”;

15 (4) in paragraph (9) (as redesignated by para-
16 graph (1)), by striking “except onions” and all that
17 follows through the period at the end and inserting
18 the following: “except onions (as provided in section
19 13–1) and motion picture box office receipts (or any
20 index, measure, value, or data related to such re-
21 ceipts), and all services, rights, and interests (except
22 motion picture box office receipts, or any index, meas-
23 ure, value or data related to such receipts) in which
24 contracts for future delivery are presently or in the
25 future dealt in.”;

1 (5) by inserting after paragraph (9) (as redesign-
2 nated by paragraph (1)) the following:

3 “(10) *COMMODITY POOL*.—

4 “(A) *IN GENERAL*.—The term ‘commodity
5 pool’ means any investment trust, syndicate, or
6 similar form of enterprise operated for the pur-
7 pose of trading in commodity interests, includ-
8 ing any—

9 “(i) commodity for future delivery, se-
10 curity futures product, or swap;

11 “(ii) agreement, contract, or trans-
12 action described in section 2(c)(2)(C)(i) or
13 section 2(c)(2)(D)(i);

14 “(iii) commodity option authorized
15 under section 4c; or

16 “(iv) leverage transaction authorized
17 under section 19.

18 “(B) *FURTHER DEFINITION*.—The Commis-
19 sion, by rule or regulation, may include within,
20 or exclude from, the term ‘commodity pool’ any
21 investment trust, syndicate, or similar form of
22 enterprise if the Commission determines that the
23 rule or regulation will effectuate the purposes of
24 this Act.”;

1 (6) by striking paragraph (11) (as redesignated
2 by paragraph (1)) and inserting the following:

3 “(11) COMMODITY POOL OPERATOR.—

4 “(A) IN GENERAL.—The term ‘commodity
5 pool operator’ means any person—

6 “(i) engaged in a business that is of
7 the nature of a commodity pool, investment
8 trust, syndicate, or similar form of enter-
9 prise, and who, in connection therewith, so-
10 licits, accepts, or receives from others, funds,
11 securities, or property, either directly or
12 through capital contributions, the sale of
13 stock or other forms of securities, or other-
14 wise, for the purpose of trading in com-
15 modity interest, including any—

16 “(I) commodity for future deliv-
17 ery, security futures product, or swap;

18 “(II) agreement, contract, or
19 transaction described in section
20 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

21 “(III) commodity option author-
22 ized under section 4c; or

23 “(IV) leverage transaction author-
24 ized under section 19; or

1 “(i) who is registered with the Com-
2 mission as a commodity pool operator.

3 “(B) FURTHER DEFINITION.—The Commis-
4 sion, by rule or regulation, may include within,
5 or exclude from, the term ‘commodity pool oper-
6 ator’ any person engaged in a business that is of
7 the nature of a commodity pool, investment
8 trust, syndicate, or similar form of enterprise if
9 the Commission determines that the rule or regu-
10 lation will effectuate the purposes of this Act.”;
11 (7) in paragraph (12) (as redesignated by para-
12 graph (1)), in subparagraph (A)—

13 (A) in clause (i)—

14 (i) in subclause (I), by striking “made
15 or to be made on or subject to the rules of
16 a contract market or derivatives transaction
17 execution facility” and inserting “, security
18 futures product, or swap”;

19 (ii) by redesignating subclauses (II)
20 and (III) as subclauses (III) and (IV);

21 (iii) by inserting after subclause (I) the
22 following:

23 “(II) any agreement, contract, or
24 transaction described in section

1 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)”;

2 and

3 (iv) in subclause (IV) (as so redesignated), by striking “or”;

4 (B) in clause (ii), by striking the period at
5 the end and inserting a semicolon; and

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

7 “(iii) is registered with the Commis-
8 sion as a commodity trading advisor; or

9 “(iv) the Commission, by rule or regu-
10 lation, may include if the Commission de-
11 termines that the rule or regulation will ef-
12 fectuate the purposes of this Act.”;

13 (8) in paragraph (17) (as redesignated by para-
14 graph (1)), in subparagraph (A), in the matter pre-
15 ceding clause (i), by striking “paragraph (12)(A)”
16 and inserting “paragraph (18)(A)”;

17 (9) in paragraph (18) (as redesignated by para-
18 graph (1))—

19 (A) in subparagraph (A)—

20 (i) in the matter following clause
21 (vii)(III)—

22 (I) by striking “section 1a
23 (11)(A)” and inserting “paragraph
24 (17)(A)”;

25 and

1 (II) by striking “\$25,000,000”
2 and inserting “\$50,000,000”; and

3 (ii) in clause (xi), in the matter pre-
4 ceding subclause (I), by striking “total as-
5 sets in an amount” and inserting “amounts
6 invested on a discretionary basis, the aggre-
7 gate of which is”;

8 (10) by striking paragraph (22) (as redesignated
9 by paragraph (1)) and inserting the following:

10 “(22) FLOOR BROKER.—

11 “(A) IN GENERAL.—The term ‘floor broker’
12 means any person—

13 “(i) who, in or surrounding any pit,
14 ring, post, or other place provided by a con-
15 tract market for the meeting of persons
16 similarly engaged, shall purchase or sell for
17 any other person—

18 “(I) any commodity for future de-
19 livery, security futures product, or
20 swap; or

21 “(II) any commodity option au-
22 thorized under section 4c; or

23 “(ii) who is registered with the Com-
24 mission as a floor broker.

1 “(B) *FURTHER DEFINITION.*—*The Commis-*
2 *sion, by rule or regulation, may include within,*
3 *or exclude from, the term ‘floor broker’ any per-*
4 *son in or surrounding any pit, ring, post, or*
5 *other place provided by a contract market for the*
6 *meeting of persons similarly engaged who trades*
7 *for any other person if the Commission deter-*
8 *mines that the rule or regulation will effectuate*
9 *the purposes of this Act.”;*

10 *(11) by striking paragraph (23) (as redesignated*
11 *by paragraph (1)) and inserting the following:*

12 “(23) *FLOOR TRADER.*—

13 “(A) *IN GENERAL.*—*The term ‘floor trader’*
14 *means any person—*

15 “(i) *who, in or surrounding any pit,*
16 *ring, post, or other place provided by a con-*
17 *tract market for the meeting of persons*
18 *similarly engaged, purchases, or sells solely*
19 *for such person’s own account—*

20 “(I) *any commodity for future de-*
21 *livery, security futures product, or*
22 *swap; or*

23 “(II) *any commodity option au-*
24 *thorized under section 4c; or*

1 “(i) who is registered with the Com-
2 mission as a floor trader.

3 “(B) *FURTHER DEFINITION.*—The Commis-
4 sion, by rule or regulation, may include within,
5 or exclude from, the term ‘floor trader’ any per-
6 son in or surrounding any pit, ring, post, or
7 other place provided by a contract market for the
8 meeting of persons similarly engaged who trades
9 solely for such person’s own account if the Com-
10 mission determines that the rule or regulation
11 will effectuate the purposes of this Act.”;

12 (12) by inserting after paragraph (23) (as reded-
13 icated by paragraph (1)) the following:

14 “(24) *FOREIGN EXCHANGE FORWARD.*—The term
15 ‘foreign exchange forward’ means a transaction that
16 solely involves the exchange of 2 different currencies
17 on a specific future date at a fixed rate agreed upon
18 on the inception of the contract covering the exchange.

19 “(25) *FOREIGN EXCHANGE SWAP.*—The term
20 ‘foreign exchange swap’ means a transaction that
21 solely involves—

22 “(A) an exchange of 2 different currencies
23 on a specific date at a fixed rate that is agreed
24 upon on the inception of the contract covering
25 the exchange; and

1 “(B) a reverse exchange of the 2 currencies
2 described in subparagraph (A) at a later date
3 and at a fixed rate that is agreed upon on the
4 inception of the contract covering the exchange.”;
5 (13) by striking paragraph (28) (as redesignated
6 by paragraph (1)) and inserting the following:

7 “(28) *FUTURES COMMISSION MERCHANT*.—

8 “(A) *IN GENERAL*.—The term ‘futures com-
9 mission merchant’ means an individual, associa-
10 tion, partnership, corporation, or trust—

11 “(i) that—

12 “(I) is engaged in soliciting or in
13 accepting orders for—

14 “(aa) the purchase or sale of
15 a commodity for future delivery;

16 “(bb) a security futures prod-
17 uct;

18 “(cc) a swap;

19 “(dd) any agreement, con-
20 tract, or transaction described in
21 section 2(c)(2)(C)(i) or section
22 2(c)(2)(D)(i);

23 “(ee) any commodity option
24 authorized under section 4c; or

1 “(ff) any leverage transaction
2 authorized under section 19; or

3 “(II) is acting as a counterparty
4 in any agreement, contract, or trans-
5 action described in section
6 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
7 and

8 “(III) in or in connection with
9 the activities described in subclause (I)
10 or (II), accepts any money, securities,
11 or property (or extends credit in lieu
12 thereof) to margin, guarantee, or secure
13 any trades or contracts that result or
14 may result therefrom; or

15 “(ii) that is registered with the Com-
16 mission as a futures commission merchant.

17 “(B) FURTHER DEFINITION.—The Commis-
18 sion, by rule or regulation, may include within,
19 or exclude from, the term ‘futures commission
20 merchant’ any person who engages in soliciting
21 or accepting orders for, or acting as a
22 counterparty in, any agreement, contract, or
23 transaction subject to this Act, and who accepts
24 any money, securities, or property (or extends
25 credit in lieu thereof) to margin, guarantee, or

1 *secure any trades or contracts that result or may*
2 *result therefrom, if the Commission determines*
3 *that the rule or regulation will effectuate the*
4 *purposes of this Act.”;*

5 *(14) in paragraph (30) (as redesignated by*
6 *paragraph (1)), in subparagraph (B), by striking*
7 *“state” and inserting “State”;*

8 *(15) by striking paragraph (31) (as redesignated*
9 *by paragraph (1)) and inserting the following:*

10 *“(31) INTRODUCING BROKER.—*

11 *“(A) IN GENERAL.—The term ‘introducing*
12 *broker’ means any person (except an individual*
13 *who elects to be and is registered as an associ-*
14 *ated person of a futures commission merchant)—*

15 *“(i) who—*

16 *“(I) is engaged in soliciting or in*
17 *accepting orders for—*

18 *“(aa) the purchase or sale of*
19 *any commodity for future deliv-*
20 *ery, security futures product, or*
21 *swap;*

22 *“(bb) any agreement, con-*
23 *tract, or transaction described in*
24 *section 2(c)(2)(C)(i) or section*
25 *2(c)(2)(D)(i);*

1 “(cc) any commodity option
2 authorized under section 4c; or

3 “(dd) any leverage trans-
4 action authorized under section
5 19; and

6 “(II) does not accept any money,
7 securities, or property (or extend credit
8 in lieu thereof) to margin, guarantee,
9 or secure any trades or contracts that
10 result or may result therefrom; or

11 “(ii) who is registered with the Com-
12 mission as an introducing broker.

13 “(B) FURTHER DEFINITION.—The Commis-
14 sion, by rule or regulation, may include within,
15 or exclude from, the term ‘introducing broker’
16 any person who engages in soliciting or accept-
17 ing orders for any agreement, contract, or trans-
18 action subject to this Act, and who does not ac-
19 cept any money, securities, or property (or ex-
20 tend credit in lieu thereof) to margin, guarantee,
21 or secure any trades or contracts that result or
22 may result therefrom, if the Commission deter-
23 mines that the rule or regulation will effectuate
24 the purposes of this Act.”;

1 (16) by inserting after paragraph (31) (as reded-
2 ignated by paragraph (1)) the following:

3 “(32) *MAJOR SECURITY-BASED SWAP PARTICI-*
4 *PANT.—The term ‘major security-based swap partici-*
5 *pant’ has the meaning given the term in section 3(a)*
6 *of the Securities Exchange Act of 1934 (15 U.S.C.*
7 *78c(a)).*

8 “(33) *MAJOR SWAP PARTICIPANT.—*

9 “(A) *IN GENERAL.—The term ‘major swap*
10 *participant’ means any person who is not a*
11 *swap dealer, and—*

12 “(i) *maintains a substantial position*
13 *in swaps for any of the major swap cat-*
14 *egories as determined by the Commission,*
15 *excluding—*

16 “(I) *positions held for hedging or*
17 *mitigating commercial risk; and*

18 “(II) *positions maintained by any*
19 *employee benefit plan (or any contract*
20 *held by such a plan) as defined in*
21 *paragraphs (3) and (32) of section 3 of*
22 *the Employee Retirement Income Secu-*
23 *rity Act of 1974 (29 U.S.C. 1002) for*
24 *the primary purpose of hedging or*

1 *mitigating any risk directly associated*
2 *with the operation of the plan; or*

3 *“(ii) whose outstanding swaps create*
4 *substantial counterparty exposure that*
5 *could have serious adverse effects on the fi-*
6 *nancial stability of the United States bank-*
7 *ing system or financial markets; or*

8 *“(iii)(I) is a financial entity, other*
9 *than an entity predominantly engaged in*
10 *providing financing for the purchase of an*
11 *affiliate’s merchandise or manufactured*
12 *goods, that is highly leveraged relative to*
13 *the amount of capital it holds; and*

14 *“(II) maintains a substantial position*
15 *in outstanding swaps in any major swap*
16 *category as determined by the Commission.*

17 *“(B) DEFINITION OF SUBSTANTIAL POSI-*
18 *TION.—For purposes of subparagraph (A), the*
19 *Commission shall define by rule or regulation*
20 *the term ‘substantial position’ at the threshold*
21 *that the Commission determines to be prudent*
22 *for the effective monitoring, management, and*
23 *oversight of entities that are systemically impor-*
24 *tant or can significantly impact the financial*
25 *system of the United States.*

1 “(C) *SCOPE OF DESIGNATION.*—For pur-
2 poses of subparagraph (A), a person may be des-
3 ignated as a major swap participant for 1 or
4 more categories of swaps without being classified
5 as a major swap participant for all classes of
6 swaps.

7 “(D) *CAPITAL.*—In setting capital require-
8 ments for a person that is designated as a major
9 swap participant for a single type or single class
10 or category of swaps or activities, the prudential
11 regulator and the Commission shall take into ac-
12 count the risks associated with other types of
13 swaps or classes of swaps or categories of swaps
14 engaged in and the other activities conducted by
15 that person that are not otherwise subject to reg-
16 ulation applicable to that person by virtue of the
17 status of the person as a major swap partici-
18 pant.”;

19 (17) by inserting after paragraph (38) (as redes-
20 ignated by paragraph (1)) the following:

21 “(39) *PRUDENTIAL REGULATOR.*—The term
22 ‘prudential regulator’ means—

23 “(A) the Office of the Comptroller of the
24 Currency, in the case of—

25 “(i) any national banking association;

1 “(ii) any Federal branch or agency of
2 a foreign bank; or

3 “(iii) any Federal savings association;

4 “(B) the Federal Deposit Insurance Cor-
5 poration, in the case of—

6 “(i) any insured State bank;

7 “(ii) any foreign bank having an in-
8 sured branch; or

9 “(iii) any State savings association;

10 “(C) the Board of Governors of the Federal
11 Reserve System, in the case of—

12 “(i) any noninsured State member
13 bank;

14 “(ii) any branch or agency of a foreign
15 bank with respect to any provision of the
16 Federal Reserve Act (12 U.S.C. 221 et seq.)
17 which is made applicable under the Inter-
18 national Banking Act of 1978 (12 U.S.C.
19 3101 et seq.);

20 “(iii) any foreign bank which does not
21 operate an insured branch;

22 “(iv) any agency or commercial lend-
23 ing company other than a Federal agency;
24 or

1 “(v) supervisory or regulatory pro-
2 ceedings arising from the authority given to
3 the Board of Governors under section
4 7(c)(1) of the International Banking Act of
5 1978 (12 U.S.C. 3105(c)(1)), including such
6 proceedings under the Financial Institu-
7 tions Supervisory Act of 1966 (12 U.S.C.
8 1464 et seq.); and

9 “(D) the Farm Credit Administration, in
10 the case of a swap dealer, major swap partici-
11 pant, security-based swap dealer, or major secu-
12 rity-based swap participant that is an institu-
13 tion chartered under the Farm Credit Act of
14 1971 (12 U.S.C. 2001 et seq.).”;

15 (18) in paragraph (40) (as redesignated by
16 paragraph (1))—

17 (A) by striking subparagraph (B);

18 (B) by redesignating subparagraphs (C),
19 (D), and (E) as subparagraphs (B), (C), and
20 (F), respectively;

21 (C) in subparagraph (C) (as so redesi-
22 gnated), by striking “and”;

23 (D) by inserting after subparagraph (C) (as
24 so redesignated) the following:

1 “(D) a swap execution facility registered
2 under section 5h;

3 “(E) a swap data repository; and”;

4 (19) by inserting after paragraph (41) (as redesi-
5 gnated by paragraph (1)) the following:

6 “(42) *SECURITY-BASED SWAP*.—The term ‘secu-
7 rity-based swap’ has the meaning given the term in
8 section 3(a) of the Securities Exchange Act of 1934
9 (15 U.S.C. 78c(a)).

10 “(43) *SECURITY-BASED SWAP DEALER*.—The
11 term ‘security-based swap dealer’ has the meaning
12 given the term in section 3(a) of the Securities Ex-
13 change Act of 1934 (15 U.S.C. 78c(a)).”;

14 (20) in paragraph (46) (as redesignated by
15 paragraph (1)), by striking “subject to section
16 2(h)(7)” and inserting “subject to section 2(h)(5)”;

17 (21) by inserting after paragraph (46) (as redesi-
18 gnated by paragraph (1)) the following:

19 “(47) *SWAP*.—

20 “(A) *IN GENERAL*.—Except as provided in
21 subparagraph (B), the term ‘swap’ means any
22 agreement, contract, or transaction—

23 “(i) that is a put, call, cap, floor, col-
24 lar, or similar option of any kind that is
25 for the purchase or sale, or based on the

1 *value, of 1 or more interest or other rates,*
2 *currencies, commodities, securities, instru-*
3 *ments of indebtedness, indices, quantitative*
4 *measures, or other financial or economic in-*
5 *terests or property of any kind;*

6 “(ii) that provides for any purchase,
7 sale, payment, or delivery (other than a
8 dividend on an equity security) that is de-
9 pendent on the occurrence, nonoccurrence,
10 or the extent of the occurrence of an event
11 or contingency associated with a potential
12 financial, economic, or commercial con-
13 sequence;

14 “(iii) that provides on an executory
15 basis for the exchange, on a fixed or contin-
16 gent basis, of 1 or more payments based on
17 the value or level of 1 or more interest or
18 other rates, currencies, commodities, securi-
19 ties, instruments of indebtedness, indices,
20 quantitative measures, or other financial or
21 economic interests or property of any kind,
22 or any interest therein or based on the value
23 thereof, and that transfers, as between the
24 parties to the transaction, in whole or in
25 part, the financial risk associated with a

1 *future change in any such value or level*
2 *without also conveying a current or future*
3 *direct or indirect ownership interest in an*
4 *asset (including any enterprise or invest-*
5 *ment pool) or liability that incorporates the*
6 *financial risk so transferred, including any*
7 *agreement, contract, or transaction com-*
8 *monly known as—*

9 “(I) *an interest rate swap;*

10 “(II) *a rate floor;*

11 “(III) *a rate cap;*

12 “(IV) *a rate collar;*

13 “(V) *a cross-currency rate swap;*

14 “(VI) *a basis swap;*

15 “(VII) *a currency swap;*

16 “(VIII) *a foreign exchange swap;*

17 “(IX) *a total return swap;*

18 “(X) *an equity index swap;*

19 “(XI) *an equity swap;*

20 “(XII) *a debt index swap;*

21 “(XIII) *a debt swap;*

22 “(XIV) *a credit spread;*

23 “(XV) *a credit default swap;*

24 “(XVI) *a credit swap;*

25 “(XVII) *a weather swap;*

1 “(XVIII) an energy swap;

2 “(XIX) a metal swap;

3 “(XX) an agricultural swap;

4 “(XXI) an emissions swap; and

5 “(XXII) a commodity swap;

6 “(iv) that is an agreement, contract, or
7 transaction that is, or in the future becomes
8 commonly known to the trade as a swap;

9 “(v) including any security-based swap
10 agreement which meets the definition of
11 ‘swap agreement’ as defined in section 206A
12 of the Gramm-Leach-Bliley Act (15 U.S.C.
13 78c note) of which a material term is based
14 on the price, yield, value, or volatility of
15 any security or any group or index of secu-
16 rities, or any interest therein; or

17 “(vi) that is any combination or per-
18 mutation of, or option on, any agreement,
19 contract, or transaction described in any of
20 clauses (i) through (v).

21 “(B) *EXCLUSIONS.*—The term ‘swap’ does
22 not include—

23 “(i) any contract of sale of a com-
24 modity for future delivery (or option on
25 such a contract), leverage contract author-

1 *ized under section 19, security futures prod-*
2 *uct, or agreement, contract, or transaction*
3 *described in section 2(c)(2)(C)(i) or section*
4 *2(c)(2)(D)(i);*

5 *“(ii) any sale of a nonfinancial com-*
6 *modity or security for deferred shipment or*
7 *delivery, so long as the transaction is in-*
8 *tended to be physically settled;*

9 *“(iii) any put, call, straddle, option, or*
10 *privilege on any security, certificate of de-*
11 *posit, or group or index of securities, in-*
12 *cluding any interest therein or based on the*
13 *value thereof, that is subject to—*

14 *“(I) the Securities Act of 1933 (15*
15 *U.S.C. 77a et seq.); and*

16 *“(II) the Securities Exchange Act*
17 *of 1934 (15 U.S.C. 78a et seq.);*

18 *“(iv) any put, call, straddle, option, or*
19 *privilege relating to a foreign currency en-*
20 *tered into on a national securities exchange*
21 *registered pursuant to section 6(a) of the*
22 *Securities Exchange Act of 1934 (15 U.S.C.*
23 *78f(a));*

24 *“(v) any agreement, contract, or trans-*
25 *action providing for the purchase or sale of*

1 *1 or more securities on a fixed basis that is*
2 *subject to—*

3 “(I) *the Securities Act of 1933 (15*
4 *U.S.C. 77a et seq.); and*

5 “(II) *the Securities Exchange Act*
6 *of 1934 (15 U.S.C. 78a et seq.);*

7 “(vi) *any agreement, contract, or*
8 *transaction providing for the purchase or*
9 *sale of 1 or more securities on a contingent*
10 *basis that is subject to the Securities Act of*
11 *1933 (15 U.S.C. 77a et seq.) and the Securi-*
12 *ties Exchange Act of 1934 (15 U.S.C. 78a*
13 *et seq.), unless the agreement, contract, or*
14 *transaction predicates the purchase or sale*
15 *on the occurrence of a bona fide contingency*
16 *that might reasonably be expected to affect*
17 *or be affected by the creditworthiness of a*
18 *party other than a party to the agreement,*
19 *contract, or transaction;*

20 “(vii) *any note, bond, or evidence of*
21 *indebtedness that is a security, as defined*
22 *in section 2(a) of the Securities Act of 1933*
23 *(15 U.S.C. 77b(a));*

24 “(viii) *any agreement, contract, or*
25 *transaction that is—*

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“(I) based on a security; and

“(II) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a))) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

“(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

“(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

“(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘swap’ includes a master agreement that provides for an agreement, contract, or transaction that is a

1 swap under subparagraph (A), together
2 with each supplement to any master agree-
3 ment, without regard to whether the master
4 agreement contains an agreement, contract,
5 or transaction that is not a swap pursuant
6 to subparagraph (A).

7 “(ii) EXCEPTION.—For purposes of
8 clause (i), the master agreement shall be
9 considered to be a swap only with respect to
10 each agreement, contract, or transaction
11 covered by the master agreement that is a
12 swap pursuant to subparagraph (A).

13 “(D) MIXED SWAP.—The term ‘security-
14 based swap’ includes any agreement, contract, or
15 transaction that is as described in section
16 3(a)(68)(A) of the Securities Exchange Act of
17 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based
18 on the value of 1 or more interest or other rates,
19 currencies, commodities, instruments of indebted-
20 ness, indices, quantitative measures, other finan-
21 cial or economic interest or property of any kind
22 (other than a single security or a narrow-based
23 security index), or the occurrence, non-occur-
24 rence, or the extent of the occurrence of an event
25 or contingency associated with a potential finan-

1 *cial, economic, or commercial consequence (other*
2 *than an event described in subparagraph*
3 *(A)(iii)).*

4 “(E) *TREATMENT OF FOREIGN EXCHANGE*
5 *SWAPS AND FORWARDS.—*

6 “(i) *IN GENERAL.—Foreign exchange*
7 *swaps and foreign exchange forwards shall*
8 *be considered swaps under this paragraph*
9 *unless the Secretary makes a written deter-*
10 *mination that either foreign exchange swaps*
11 *or foreign exchange forwards or both—*

12 *“(I) should be not be regulated as*
13 *swaps under this Act; and*

14 *“(II) are not structured to evade*
15 *the Wall Street Transparency and Ac-*
16 *countability Act of 2010 in violation of*
17 *any rule promulgated by the Commis-*
18 *sion pursuant to section 111(c) of that*
19 *Act.*

20 “(ii) *CONGRESSIONAL NOTICE; EFFEC-*
21 *TIVENESS.—The Secretary shall submit any*
22 *written determination under clause (i) to*
23 *the appropriate committees of Congress, in-*
24 *cluding the Committee on Agriculture, Nu-*
25 *trition, and Forestry of the Senate and the*

1 *Committee on Agriculture of the House of*
2 *Representatives. Any such written deter-*
3 *mination by the Secretary shall not be effec-*
4 *tive until it is submitted to the appropriate*
5 *committees of Congress.*

6 “(iii) *REPORTING.*—*Notwithstanding a*
7 *written determination by the Secretary*
8 *under clause (i), all foreign exchange swaps*
9 *and foreign exchange forwards shall be re-*
10 *ported to either a swap data repository, or,*
11 *if there is no swap data repository that*
12 *would accept such swaps or forwards, to the*
13 *Commission pursuant to section 4r within*
14 *such time period as the Commission may by*
15 *rule or regulation prescribe.*

16 “(iv) *BUSINESS STANDARDS.*—*Not-*
17 *withstanding clauses (ix) and (x) of sub-*
18 *paragraph (B) and clause (ii), any party to*
19 *a foreign exchange swap or forward that is*
20 *a swap dealer or major swap participant*
21 *shall conform to the business conduct stand-*
22 *ards contained in section 4s(h).*

23 “(v) *SECRETARY.*—*For purposes of this*
24 *subparagraph only, the term ‘Secretary’*
25 *means the Secretary of the Treasury.*

1 “(F) *EXCEPTION FOR CERTAIN FOREIGN EX-*
2 *CHANGE SWAPS AND FORWARDS.*—

3 “(i) *REGISTERED ENTITIES.*—*Any for-*
4 *ign exchange swap and any foreign ex-*
5 *change forward that is listed and traded on*
6 *or subject to the rules of a designated con-*
7 *tract market or a swap execution facility,*
8 *or that is cleared by a derivatives clearing*
9 *organization shall not be exempt from any*
10 *provision of this Act or amendments made*
11 *by the Wall Street Transparency and Ac-*
12 *countability Act of 2010 prohibiting fraud*
13 *or manipulation.*

14 “(ii) *RETAIL TRANSACTIONS.*—*Nothing*
15 *in subparagraph (E) shall affect, or be con-*
16 *strued to affect, the applicability of this Act*
17 *or the jurisdiction of the Commission with*
18 *respect to agreements, contracts, or trans-*
19 *actions in foreign currency pursuant to sec-*
20 *tion 2(c)(2).*

21 “(48) *SWAP DATA REPOSITORY.*—*The term ‘swap*
22 *data repository’ means any person that collects, cal-*
23 *culates, prepares, or maintains information or*
24 *records with respect to transactions or positions in, or*

1 *the terms and conditions of, swaps entered into by*
2 *third parties.*

3 “(49) *SWAP DEALER.*—

4 “(A) *IN GENERAL.*—*The term ‘swap dealer’*
5 *means any person who—*

6 “(i) *holds itself out as a dealer in*
7 *swaps;*

8 “(ii) *makes a market in swaps;*

9 “(iii) *regularly engages in the pur-*
10 *chase and sale of swaps in the ordinary*
11 *course of business; or*

12 “(iv) *engages in any activity causing*
13 *the person to be commonly known in the*
14 *trade as a dealer or market maker in*
15 *swaps.*

16 “(B) *INCLUSION.*—*A person may be des-*
17 *ignated as a swap dealer for a single type or sin-*
18 *gle class or category of swap or activities and*
19 *considered not to be a swap dealer for other*
20 *types, classes, or categories of swaps or activities.*

21 “(C) *CAPITAL.*—*In setting capital require-*
22 *ments for a person that is designated as a swap*
23 *dealer for a single type or single class or cat-*
24 *egory of swap or activities, the prudential regu-*
25 *lator and the Commission shall take into account*

1 *the risks associated with other types of swaps or*
2 *classes of swaps or categories of swaps engaged*
3 *in and the other activities conducted by that per-*
4 *son that are not otherwise subject to regulation*
5 *applicable to that person by virtue of the status*
6 *of the person as a swap dealer.*

7 “(D) *EXCEPTION.*—*The term ‘swap dealer’*
8 *does not include a person that buys or sells*
9 *swaps for such person’s own account, either indi-*
10 *vidually or in a fiduciary capacity, but not as*
11 *a part of a regular business.*

12 “(50) *SWAP EXECUTION FACILITY.*—*The term*
13 *‘swap execution facility’ means a facility in which*
14 *multiple participants have the ability to execute or*
15 *trade swaps by accepting bids and offers made by*
16 *other participants that are open to multiple partici-*
17 *pants in the facility or system, through any means of*
18 *interstate commerce, including any trading facility,*
19 *that—*

20 “(A) *facilitates the execution of swaps be-*
21 *tween persons; and*

22 “(B) *is not a designated contract market.”;*
23 *and*

1 (22) in paragraph (51) (as redesignated by
2 paragraph (1)), in subparagraph (A)(i), by striking
3 “partipants” and inserting “participants”.

4 (b) *AUTHORITY TO DEFINE TERMS.*—The Commodity
5 Futures Trading Commission may adopt a rule to define—

6 (1) the term “commercial risk”; and

7 (2) any other term included in an amendment to
8 the Commodity Exchange Act (7 U.S.C. 1 et seq.)
9 made by this subtitle.

10 (c) *MODIFICATION OF DEFINITIONS.*—To include
11 transactions and entities that have been structured to evade
12 this subtitle (or an amendment made by this subtitle), the
13 Commodity Futures Trading Commission shall adopt a
14 rule to further define the terms “swap”, “swap dealer”,
15 “major swap participant”, and “eligible contract partici-
16 pant”.

17 (d) *EXEMPTIONS.*—Section 4(c)(1) of the Commodity
18 Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking
19 “except that” and all that follows through the period at the
20 end and inserting the following: “except that—

21 “(A) unless the Commission is expressly au-
22 thorized by any provision described in this sub-
23 paragraph to grant exemptions, with respect to
24 amendments made by subtitle A of the Wall

1 *Street Transparency and Accountability Act of*
2 *2010—*

3 “(i) *with respect to—*

4 “(I) *paragraphs (2), (3), (4), (5),*
5 *and (7), clause (vii)(III) of paragraph*
6 *(17), paragraphs (23), (24), (31), (32),*
7 *(38), (39), (41), (42), (46), (47), (48),*
8 *and (49) of section 1a, and sections*
9 *2(a)(13), 2(c)(D), 4a(a), 4a(b), 4d(c),*
10 *4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g),*
11 *5(h), 5b(c), 5b(i), 8e, and 21; and*

12 “(II) *section 206(e) of the*
13 *Gramm-Leach-Bliley Act (Public Law*
14 *106–102; 15 U.S.C. 78c note); and*

15 “(ii) *in subsection (c) of section 111*
16 *and section 132; and*

17 “(B) *the Commission and the Securities*
18 *and Exchange Commission may by rule, regula-*
19 *tion, or order jointly exclude any agreement,*
20 *contract, or transaction from section 2(a)(1)(D))*
21 *if the Commission determines that the exemption*
22 *would be consistent with the public interest.”.*

23 (e) *CONFORMING AMENDMENTS.—*

1 (1) *Section 2(c)(2)(B)(i)(II) of the Commodity*
2 *Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-*
3 *ed—*

4 (A) *in item (cc)—*

5 (i) *in subitem (AA), by striking “sec-*
6 *tion 1a(20)” and inserting “section 1a”;*
7 *and*

8 (ii) *in subitem (BB), by striking “sec-*
9 *tion 1a(20)” and inserting “section 1a”;*
10 *and*

11 (B) *in item (dd), by striking “section*
12 *1a(12)(A)(ii)” and inserting “section*
13 *1a(18)(A)(ii)”.*

14 (2) *Section 4m(3) of the Commodity Exchange*
15 *Act (7 U.S.C. 6m(3)) is amended by striking “section*
16 *1a(6)” and inserting “section 1a”.*

17 (3) *Section 4q(a)(1) of the Commodity Exchange*
18 *Act (7 U.S.C. 6o–1(a)(1)) is amended by striking*
19 *“section 1a(4)” and inserting “section 1a(9)”.*

20 (4) *Section 5(e)(1) of the Commodity Exchange*
21 *Act (7 U.S.C. 7(e)(1)) is amended by striking “section*
22 *1a(4)” and inserting “section 1a(9)”.*

23 (5) *Section 5a(b)(2)(F) of the Commodity Ex-*
24 *change Act (7 U.S.C. 7a(b)(2)(F)) is amended by*

1 *striking “section 1a(4)” and inserting “section*
2 *1a(9)”.*

3 *(6) Section 5b(a) of the Commodity Exchange*
4 *Act (7 U.S.C. 7a–1(a)) is amended, in the matter pre-*
5 *ceding paragraph (1), by striking “section 1a(9)” and*
6 *inserting “section 1a”.*

7 *(7) Section 5c(c)(2)(B) of the Commodity Ex-*
8 *change Act (7 U.S.C. 7a–2(c)(2)(B)) is amended by*
9 *striking “section 1a(4)” and inserting “section*
10 *1a(9)”.*

11 *(8) Section 6(g)(5)(B)(i) of the Securities Ex-*
12 *change Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is*
13 *amended—*

14 *(A) in subclause (I), by striking “section*
15 *1a(12)(B)(ii)” and inserting “section*
16 *1a(18)(B)(ii)”;* and

17 *(B) in subclause (II), by striking “section*
18 *1a(12)” and inserting “section 1a(18)”.*

19 *(9) The Legal Certainty for Bank Products Act*
20 *of 2000 (7 U.S.C. 27 et seq.) is amended—*

21 *(A) in section 402—*

22 *(i) in subsection (a)(7), by striking*
23 *“section 1a(20)” and inserting “section 1a”;*

24 *(ii) in subsection (b)(2), by striking*
25 *“section 1a(12)” and inserting “section 1a”;*

1 (iii) in subsection (c), by striking “sec-
2 tion 1a(4)” and inserting “section 1a”; and

3 (iv) in subsection (d)—

4 (I) in the matter preceding para-
5 graph (1), by striking “section 1a(4)”
6 and inserting “section 1a(9)”;
7

8 (II) in paragraph (1)—

9 (aa) in subparagraph (A), by
10 striking “section 1a(12)” and in-
11 serting “section 1a”; and

12 (bb) in subparagraph (B), by
13 striking “section 1a(33)” and in-
14 serting “section 1a”;

15 (III) in paragraph (2)—

16 (aa) in subparagraph (A), by
17 striking “section 1a(10)” and in-
18 serting “section 1a”;

19 (bb) in subparagraph (B), by
20 striking “section 1a(12)(B)(ii)”
21 and inserting “section
22 1a(18)(B)(ii)”;

23 (cc) in subparagraph (C), by
24 striking “section 1a(12)” and in-
 serting “section 1a(18)”; and

1 (dd) in subparagraph (D),
2 by striking “section 1a(13)” and
3 inserting “section 1a”; and
4 (B) in section 404(1), by striking “section
5 1a(4)” and inserting “section 1a”.

6 **SEC. 722. JURISDICTION.**

7 (a) *EXCLUSIVE JURISDICTION.*—Section 2(a)(1)(A) of
8 *the Commodity Exchange Act* (7 U.S.C. 2(a)(1)(A)) is
9 *amended in the first sentence—*

10 (1) *by inserting “the Wall Street Transparency*
11 *and Accountability Act of 2010 (including an amend-*
12 *ment made by that Act) and” after “otherwise pro-*
13 *vided in”;*

14 (2) *by striking “(c) through (i) of this section”*
15 *and inserting “(c) and (f)”;*

16 (3) *by striking “contracts of sale” and inserting*
17 *“swaps or contracts of sale”; and*

18 (4) *by striking “or derivatives transaction execu-*
19 *tion facility registered pursuant to section 5 or 5a”*
20 *and inserting “pursuant to section 5”.*

21 (b) *REGULATION OF SWAPS UNDER FEDERAL AND*
22 *STATE LAW.*—Section 12 of *the Commodity Exchange Act*
23 (7 U.S.C. 16) is amended by adding at the end the fol-
24 *lowing:*

1 “(h) *REGULATION OF SWAPS AS INSURANCE UNDER*
2 *STATE LAW.*—*A swap—*

3 “(1) *shall not be considered to be insurance; and*

4 “(2) *may not be regulated as an insurance con-*
5 *tract under the law of any State.*”.

6 (c) *AGREEMENTS, CONTRACTS, AND TRANSACTIONS*
7 *TRADED ON AN ORGANIZED EXCHANGE.*—*Section*
8 *2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C.*
9 *2(c)(2)(A)) is amended—*

10 (1) *in clause (i), by striking “or” at the end;*

11 (2) *by redesignating clause (ii) as clause (iii);*

12 *and*

13 (3) *by inserting after clause (i) the following:*

14 “(ii) *a swap; or*”.

15 (d) *APPLICABILITY.*—*Section 2 of the Commodity Ex-*
16 *change Act (7 U.S.C. 2) (as amended by section 723(a)(3))*
17 *is amended by adding at the end the following:*

18 “(i) *APPLICABILITY.*—*The provisions of this Act relat-*
19 *ing to swaps that were enacted by the Wall Street Trans-*
20 *parency and Accountability Act of 2010 (including any*
21 *rule prescribed or regulation promulgated under that Act),*
22 *shall not apply to activities outside the United States unless*
23 *those activities—*

1 “(1) have a direct and significant connection
2 with activities in, or effect on, commerce of the
3 United States; or

4 “(2) contravene such rules or regulations as the
5 Commission may prescribe or promulgate as are nec-
6 essary or appropriate to prevent the evasion of any
7 provision of this Act that was enacted by the Wall
8 Street Transparency and Accountability Act of
9 2010.”.

10 (e) *JUST AND REASONABLE RATES.*—Section
11 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C.
12 2(a)(1)(C)) (as amended by section 717(a)) is amended by
13 adding at the end the following:

14 “(vi) Notwithstanding the exclusive ju-
15 risdiction of the Commission with respect to
16 accounts, agreements, and transactions in-
17 volving swaps or contracts of sale of a com-
18 modity for future delivery under this Act,
19 no provision of this Act shall be construed—

20 “(I) to supersede or limit the au-
21 thority of the Federal Energy Regu-
22 latory Commission under the Federal
23 Power Act (16 U.S.C. 791a et seq.) or
24 the Natural Gas Act (15 U.S.C. 717 et
25 seq.);

1 “(II) to restrict the Federal En-
2 ergy Regulatory Commission from car-
3 rying out the duties and responsibil-
4 ities of the Federal Energy Regulatory
5 Commission to ensure just and reason-
6 able rates and protect the public inter-
7 est under the Acts described in sub-
8 clause (I); or

9 “(III) to supersede or limit the
10 authority of a State regulatory author-
11 ity (as defined in section 3(21) of the
12 Federal Power Act (16 U.S.C. 796(21))
13 that has jurisdiction to regulate rates
14 and charges for the sale of electric en-
15 ergy within the State, or restrict that
16 State regulatory authority from car-
17 rying out the duties and responsibil-
18 ities of the State regulatory authority
19 pursuant to the jurisdiction of the
20 State regulatory authority to regulate
21 rates and charges for the transmission
22 or sale of electric energy.

23 “(vii) Nothing in clause (vi) shall af-
24 fect the Commission’s authority with respect
25 to the trading, execution, or clearing of any

1 *agreement, contract, or transaction on or*
2 *subject to the rules of a registered entity, in-*
3 *cluding a designated contract market, de-*
4 *rivatives clearing organization, or swaps*
5 *execution facility.”.*

6 (f) *PUBLIC INTEREST WAIVER.*—*Section 4(c) of the*
7 *Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by*
8 *section 721(d)) is amended by adding at the end the fol-*
9 *lowing:*

10 “(6) *If the Commission determines that the ex-*
11 *emption would be consistent with the public interest*
12 *and the purposes of this Act, the Commission shall,*
13 *in accordance with paragraphs (1) and (2), exempt*
14 *from the requirements of this Act an agreement, con-*
15 *tract, or transaction that is entered into—*

16 “(A) *pursuant to a tariff or rate schedule*
17 *approved or permitted to take effect by the Fed-*
18 *eral Energy Regulatory Commission;*

19 “(B) *pursuant to a tariff or rate schedule*
20 *establishing rates or charges for, or protocols gov-*
21 *erning, the sale of electric energy approved or*
22 *permitted to take effect by the regulatory author-*
23 *ity of the State or municipality having jurisdic-*
24 *tion to regulate rates and charges for the sale of*

1 *electric energy within the State or municipality;*
 2 *or*
 3 *“(C) between entities described in section*
 4 *201(f) of the Federal Power Act (16 U.S.C.*
 5 *824(f)).”.*

6 **SEC. 723. CLEARING.**

7 *(a) CLEARING REQUIREMENT.—*

8 *(1) IN GENERAL.—Section 2 of the Commodity*
 9 *Exchange Act (7 U.S.C. 2) is amended—*

10 *(A) by striking subsections (d), (e), (g), and*
 11 *(h); and*

12 *(B) by redesignating subsection (i) as sub-*
 13 *section (g).*

14 *(2) SWAPS; LIMITATION ON PARTICIPATION.—*
 15 *Section 2 of the Commodity Exchange Act (7 U.S.C.*
 16 *2) (as amended by paragraph (1)) is amended by in-*
 17 *serting after subsection (c) the following:*

18 *“(d) SWAPS.—Nothing in this Act (other than sub-*
 19 *paragraphs (A), (B), (C), and (D) of subsection (a)(1), sub-*
 20 *sections (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e), 2(h),*
 21 *4(c), 4a, 4b, and 4b–1, subsections (a), (b), and (g) of sec-*
 22 *tion 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n,*
 23 *4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and*
 24 *(d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections*
 25 *(e)(2) and (f) of section 12, subsections (a) and (b) of section*

1 13, sections 17, 20, 21, and 22(a)(4), and any other provi-
2 sion of this Act that is applicable to registered entities and
3 Commission registrants) governs or applies to a swap.

4 “(e) *LIMITATION ON PARTICIPATION.*—It shall be un-
5 lawful for any person, other than an eligible contract par-
6 ticipant, to enter into a swap unless the swap is entered
7 into on, or subject to the rules of, a board of trade des-
8 ignated as a contract market under section 5.”

9 (3) *MANDATORY CLEARING OF SWAPS.*—Section
10 2 of the Commodity Exchange Act (7 U.S.C. 2) is
11 amended by inserting after subsection (g) (as redesign-
12 ated by paragraph (1)(B)) the following:

13 “(h) *CLEARING REQUIREMENT.*—

14 “(1) *SUBMISSION.*—

15 “(A) *IN GENERAL.*—Except as provided in
16 paragraphs (9) and (10), any person who is a
17 party to a swap shall submit such swap for
18 clearing to a derivatives clearing organization
19 that is registered under this Act or a derivatives
20 clearing organization that is exempt from reg-
21 istration under section 5b(j) of this Act.

22 “(B) *OPEN ACCESS.*—The rules of a reg-
23 istered derivatives clearing organization shall—

24 “(i) prescribe that all swaps with the
25 same terms and conditions are economically

1 *equivalent and may be offset with each*
2 *other within the derivatives clearing organi-*
3 *zation; and*

4 “(ii) *provide for nondiscriminatory*
5 *clearing of a swap executed bilaterally or on*
6 *or through the rules of an unaffiliated des-*
7 *ignated contract market or swap execution*
8 *facility, subject to the requirements of sec-*
9 *tion 5(b).*

10 “(2) *COMMISSION APPROVAL.—*

11 “(A) *IN GENERAL.—A derivatives clearing*
12 *organization shall submit to the Commission for*
13 *prior approval any group, category, type, or*
14 *class of swaps that the derivatives clearing orga-*
15 *nization seeks to accept for clearing, which sub-*
16 *mission the Commission shall make available to*
17 *the public.*

18 “(B) *DEADLINE.—The Commission shall*
19 *take final action on a request submitted pursu-*
20 *ant to subparagraph (A) not later than 90 days*
21 *after submission of the request, unless the deriva-*
22 *tives clearing organization submitting the re-*
23 *quest agrees to an extension of the time limita-*
24 *tion established under this subparagraph.*

1 “(C) *APPROVAL.*—*The Commission shall*
2 *approve, unconditionally or subject to such terms*
3 *and conditions as the Commission determines to*
4 *be appropriate, any request submitted pursuant*
5 *to subparagraph (A) if the Commission finds*
6 *that the request is consistent with section*
7 *5b(c)(2). The Commission shall not approve any*
8 *such request if the Commission does not make*
9 *such finding.*

10 “(D) *RULES.*—*The Commission shall adopt*
11 *rules for a derivatives clearing organization’s*
12 *submission for approval, pursuant to this para-*
13 *graph, of any group, category, type, or class of*
14 *swaps that the derivative clearing organization*
15 *seeks to accept for clearing.*

16 “(3) *STAY OF CLEARING REQUIREMENT.*—*At any*
17 *time after issuance of an approval pursuant to para-*
18 *graph (2):*

19 “(A) *REVIEW PROCESS.*—*The Commission,*
20 *on application of a counterparty to a swap or*
21 *on its own initiative, may stay the clearing re-*
22 *quirement of paragraph (1) until the Commis-*
23 *sion completes a review of the terms of the swap,*
24 *or the group, category, type, or class of swaps,*
25 *and the clearing arrangement.*

1 “(B) *DEADLINE.*—*The Commission shall*
2 *complete a review undertaken pursuant to sub-*
3 *paragraph (A) not later than 90 days after*
4 *issuance of the stay, unless the derivatives clear-*
5 *ing organization that clears the swap, or the*
6 *group, category, type, or class of swaps, agrees to*
7 *an extension of the time limitation established*
8 *under this subparagraph.*

9 “(C) *DETERMINATION.*—*Upon completion of*
10 *the review undertaken pursuant to subparagraph*
11 *(A)—*

12 “(i) *the Commission may determine,*
13 *unconditionally or subject to such terms*
14 *and conditions as the Commission deter-*
15 *mines to be appropriate, that the swap, or*
16 *the group, category, type, or class of swaps,*
17 *must be cleared pursuant to this subsection*
18 *if the Commission finds that such clear-*
19 *ing—*

20 “(I) *is consistent with section*
21 *5b(c)(2); and*

22 “(II) *is otherwise in the public in-*
23 *terest, for the protection of investors,*
24 *and consistent with the purposes of*
25 *this Act;*

1 “(ii) the Commission may determine
2 that the clearing requirement of paragraph
3 (1) shall not apply to the swap, or the
4 group, category, type, or class of swaps; or

5 “(iii) if a determination is made that
6 the clearing requirement of paragraph (1)
7 shall no longer apply, then it shall still be
8 permissible to clear such swap, or the
9 group, category, type, or class of swaps.

10 “(D) RULES.—The Commission shall adopt
11 rules for reviewing, pursuant to this paragraph,
12 a derivatives clearing organization’s clearing of
13 a swap, or a group, category, type, or class of
14 swaps that the Commission has accepted for
15 clearing.

16 “(4) SWAPS REQUIRED TO BE ACCEPTED FOR
17 CLEARING.—

18 “(A) RULEMAKING.—The Commission shall
19 adopt rules to further identify any group, cat-
20 egory, type, or class of swaps not submitted for
21 approval under paragraph (2) that the Commis-
22 sion deems should be accepted for clearing. In
23 adopting such rules, the Commission shall take
24 into account the following factors:

1 “(i) *The extent to which any of the*
2 *terms of the group, category, type, or class*
3 *of swaps, including price, are disseminated*
4 *to third parties or are referenced in other*
5 *agreements, contracts, or transactions.*

6 “(ii) *The volume of transactions in the*
7 *group, category, type, or class of swaps.*

8 “(iii) *The extent to which the terms of*
9 *the group, category, type, or class of swaps*
10 *are similar to the terms of other agreements,*
11 *contracts, or transactions that are cleared.*

12 “(iv) *Whether any differences in the*
13 *terms of the group, category, type, or class*
14 *of swaps, compared to other agreements,*
15 *contracts, or transactions that are cleared,*
16 *are of economic significance.*

17 “(v) *Whether a derivatives clearing or-*
18 *ganization is prepared to clear the group,*
19 *category, type, or class of swaps and such*
20 *derivatives clearing organization has in*
21 *place effective risk management systems.*

22 “(vi) *Any other factors the Commission*
23 *determine to be appropriate.*

24 “(B) *OTHER DESIGNATIONS.—At any time*
25 *after the adoption of the rules required under*

1 subparagraph (A), the Commission may sepa-
2 rately designate a particular swap or class of
3 swaps as subject to the clearing requirement in
4 paragraph (1), taking into account the factors
5 described in clauses (i) through (vi) of subpara-
6 graph (A) and the rules adopted under such sub-
7 paragraph.

8 “(C) *IN GENERAL.*—In accordance with
9 subparagraph (A), the Commission shall, con-
10 sistent with the public interest, adopt rules
11 under the expedited process described in subpara-
12 graph (D) to establish criteria for determining
13 that a swap, or any group, category, type, or
14 class of swap is required to be cleared.

15 “(D) *EXPEDITED RULEMAKING AUTHOR-*
16 *ITY.*—

17 “(i) *PROCEDURE.*—The promulgation
18 of regulations under subparagraph (A) may
19 be made without regard to—

20 “(I) the notice and comment pro-
21 visions of section 553 of title 5, United
22 States Code; and

23 “(II) chapter 35 of title 44,
24 United States Code (commonly known
25 as the ‘Paperwork Reduction Act’).

1 “(i) *AGENCY RULEMAKING.*—*In car-*
2 *rying out subparagraph (A), the Commis-*
3 *sion shall use the authority provided under*
4 *section 808 of title 5, United States Code.*

5 “(5) *PREVENTION OF EVASION.*—

6 “(A) *IN GENERAL.*—*The Commission may*
7 *prescribe rules under this subsection (and issue*
8 *interpretations of rules prescribed under this*
9 *subsection) as determined by the Commission to*
10 *be necessary to prevent evasions of the manda-*
11 *tory clearing requirements under this Act.*

12 “(B) *DUTY OF COMMISSION TO INVESTIGATE*
13 *AND TAKE CERTAIN ACTIONS.*—*To the extent the*
14 *Commission finds that a particular swap, group,*
15 *category, type, or class of swaps would otherwise*
16 *be subject to mandatory clearing but no deriva-*
17 *tives clearing organization has listed the swap,*
18 *group, category, type, or class of swaps for clear-*
19 *ing, the Commission shall—*

20 “(i) *investigate the relevant facts and*
21 *circumstances;*

22 “(ii) *within 30 days issue a public re-*
23 *port containing the results of the investiga-*
24 *tion; and*

1 “(iii) take such actions as the Commis-
2 sion determines to be necessary and in the
3 public interest, which may include requir-
4 ing the retaining of adequate margin or
5 capital by parties to the swap, group, cat-
6 egory, type, or class of swaps.

7 “(C) *EFFECT ON AUTHORITY.*—Nothing in
8 this paragraph shall—

9 “(i) authorize the Commission to re-
10 quire a derivatives clearing organization to
11 list for clearing a swap, group, category,
12 type, or class of swaps if the clearing of the
13 swap, group, category, type, or class of
14 swaps would adversely affect the business
15 operations of the derivatives clearing orga-
16 nization, threaten the financial integrity of
17 the derivatives clearing organization, or
18 pose a systemic risk to the derivatives clear-
19 ing organization; and

20 “(ii) affect the authority of the Com-
21 mission to enforce the open access provisions
22 of paragraph (1) with respect to a swap,
23 group, category, type, or class of swaps that
24 is listed for clearing by a derivatives clear-
25 ing organization.

1 “(6) *REQUIRED REPORTING.*—

2 “(A) *BOTH COUNTERPARTIES.*—*Both*
3 *counterparties to a swap that is not cleared by*
4 *any derivatives clearing organization shall re-*
5 *port such a swap either to a registered swap re-*
6 *pository described in section 21 or, if there is no*
7 *repository that would accept the swap, to the*
8 *Commission pursuant to section 4r.*

9 “(B) *TIMING.*—*Counterparties to a swap*
10 *shall submit the reports required under subpara-*
11 *graph (A) not later than such time period as the*
12 *Commission may by rule or regulation prescribe.*

13 “(7) *TRANSITION RULES.*—

14 “(A) *REPORTING TRANSITION RULES.*—
15 *Rules adopted by the Commission under this sec-*
16 *tion shall provide for the reporting of data, as*
17 *follows:*

18 “(i) *SWAPS ENTERED INTO BEFORE*
19 *DATE OF ENACTMENT OF THIS SUB-*
20 *SECTION.*—*Swaps entered into before the*
21 *date of the enactment of this subsection shall*
22 *be reported to a registered swap repository*
23 *or the Commission not later than 180 days*
24 *after the effective date of this subsection.*

1 “(i) *SWAPS ENTERED INTO ON OR*
2 *AFTER DATE OF ENACTMENT OF THIS SUB-*
3 *SECTION.—Swaps entered into on or after*
4 *such date of enactment shall be reported to*
5 *a registered swap repository or the Commis-*
6 *sion not later than the later of—*

7 “(I) *90 days after such effective*
8 *date; or*

9 “(II) *such other time after enter-*
10 *ing into the swap as the Commission*
11 *may prescribe by rule or regulation.*

12 “(B) *CLEARING TRANSITION RULES.—*

13 “(i) *SWAPS ENTERED INTO BEFORE*
14 *THE DATE OF THE ENACTMENT OF THIS*
15 *SUBSECTION.—Swaps entered into before*
16 *the date of the enactment of this subsection*
17 *are exempt from the clearing requirements*
18 *of this subsection if reported pursuant to*
19 *subparagraph (A)(i).*

20 “(ii) *SWAPS ENTERED INTO BEFORE*
21 *APPLICATION OF CLEARING REQUIRE-*
22 *MENT.—Swaps entered into before applica-*
23 *tion of the clearing requirement pursuant to*
24 *this subsection are exempt from the clearing*

1 *requirements of this subsection if reported*
2 *pursuant to subparagraph (A)(ii).*

3 “(8) *TRADE EXECUTION.*—

4 “(A) *IN GENERAL.*—*With respect to trans-*
5 *actions involving swaps subject to the clearing*
6 *requirement of paragraph (1), counterparties*
7 *shall—*

8 “(i) *execute the transaction on a board*
9 *of trade designated as a contract market*
10 *under section 5; or*

11 “(ii) *execute the transaction on a swap*
12 *execution facility registered under section*
13 *5h or a swap execution facility that is ex-*
14 *empt from registration under section 5h(f)*
15 *of this Act.*

16 “(B) *EXCEPTION.*—*The requirements of*
17 *clauses (i) and (ii) of subparagraph (A) shall not*
18 *apply if no board of trade or swap execution fa-*
19 *ility makes the swap available to trade or a*
20 *swap transactions where a commercial end user*
21 *opts to use the clearing exemption under para-*
22 *graph (9).*

23 “(9) *REQUIRED EXEMPTION.*—*Subject to para-*
24 *graph (4), the Commission shall exempt a swap from*
25 *the requirements of paragraphs (1) and (8) and any*

1 *rules issued under this subsection, if no derivatives*
2 *clearing organization registered under this Act or no*
3 *derivatives clearing organization that is exempt from*
4 *registration under section 5b(j) of this Act will accept*
5 *the swap from clearing.*

6 “(10) *END USER CLEARING EXEMPTION.*—

7 “(A) *DEFINITION OF COMMERCIAL END*
8 *USER.*—

9 “(i) *IN GENERAL.*—*In this paragraph,*
10 *the term ‘commercial end user’ means any*
11 *person other than a financial entity de-*
12 *scribed in clause (ii) who, as its primary*
13 *business activity, owns, uses, produces,*
14 *processes, manufactures, distributes, mer-*
15 *chandises, or markets goods, services, or*
16 *commodities (which shall include but not be*
17 *limited to coal, natural gas, electricity, eth-*
18 *anol, crude oil, gasoline, propane, dis-*
19 *tillates, and other hydrocarbons) either in-*
20 *dividually or in a fiduciary capacity.*

21 “(ii) *FINANCIAL ENTITY.*—*The term*
22 *‘financial entity’ means—*

23 “(I) *a swap dealer, major swap*
24 *participant, security-based swap deal-*

1 er, or major security-based swap par-
2 ticipant;

3 “(II) a person predominantly en-
4 gaged in activities that are in the busi-
5 ness of banking or financial in nature,
6 as defined in Section 4(k) of the Bank
7 Holding Company Act of 1956;

8 “(III) a person predominantly en-
9 gaged in activities that are financial
10 in nature;

11 “(IV) a commodity pool or a pri-
12 vate fund as defined in section 202(a)
13 of the Investment Advisers Act of 1940
14 (15 U.S.C. 80b-2(a)); or

15 “(V) a person that is registered or
16 required to be registered with the Com-
17 mission.

18 “(B) *END USER CLEARING EXEMPTION.*—

19 “(i) *IN GENERAL.*—Subject to clause
20 (ii), in the event that a swap is subject to
21 the mandatory clearing requirement under
22 paragraph (1), and 1 of the counterparties
23 to the swap is a commercial end user, that
24 counterparty—

1 “(I)(aa) may elect not to clear the
2 swap, as required under paragraph
3 (1); or

4 “(bb) may elect to require clearing
5 of the swap; and

6 “(II) if the end user makes an
7 election under subclause (I)(bb), shall
8 have the sole right to select the deriva-
9 tives clearing organization at which
10 the swap will be cleared.

11 “(ii) *LIMITATION.*—A commercial end
12 user may only make an election under
13 clause (i) if the end user is using the swap
14 to hedge its own commercial risk.

15 “(C) *TREATMENT OF AFFILIATES.*—

16 “(i) *IN GENERAL.*—An affiliate of a
17 commercial end user (including affiliate en-
18 tities predominantly engaged in providing
19 financing for the purchase of the merchan-
20 dise or manufactured goods of the commer-
21 cial end user) may make an election under
22 subparagraph (B)(i) only if the affiliate,
23 acting on behalf of the commercial end user
24 and as an agent, uses the swap to hedge or
25 mitigate the commercial risk of the commer-

1 *cial end user parent or other affiliate of the*
2 *commercial end user that is not a financial*
3 *entity.*

4 “(ii) *PROHIBITION RELATING TO CER-*
5 *TAIN AFFILIATES.—An affiliate of a com-*
6 *mercial end user shall not use the exemption*
7 *under subparagraph (B) if the affiliate is—*

8 *“(I) a swap dealer;*

9 *“(II) a security-based swap deal-*
10 *er;*

11 *“(III) a major swap participant;*

12 *“(IV) a major security-based swap*
13 *participant;*

14 *“(V) an issuer that would be an*
15 *investment company, as defined in sec-*
16 *tion 3 of the Investment Company Act*
17 *of 1940 (15 U.S.C. 80a-3), but for*
18 *paragraph (1) or (7) of subsection (c)*
19 *of that Act (15 U.S.C. 80a-3(c));*

20 *“(VI) a commodity pool;*

21 *“(VII) a bank holding company*
22 *with over \$50,000,000,000 in consoli-*
23 *dated assets; or*

1 “(VIII) an affiliate of any entity
2 described in subclauses (I) through
3 (VII).

4 “(D) ABUSE OF EXEMPTION.—The Commis-
5 sion may prescribe such rules or issue interpre-
6 tations of the rules as the Commission deter-
7 mines to be necessary to prevent abuse of the ex-
8 emption described in subparagraph (B). The
9 Commission may also request information from
10 those entities claiming the clearing exemption as
11 necessary to prevent abuse of the exemption de-
12 scribed in subparagraph (B).

13 “(E) OPTION TO CLEAR.—

14 “(i) SWAPS REQUIRED TO BE CLEARED
15 ENTERED INTO WITH A FINANCIAL ENTI-
16 TY.—With respect to any swap that is re-
17 quired to be cleared by a derivatives clear-
18 ing organization and entered into by a
19 swap dealer or a major swap participant
20 with a financial entity, the financial entity
21 shall have the sole right to select the deriva-
22 tives clearing organization at which the
23 swap will be cleared.

24 “(ii) SWAPS NOT REQUIRED TO BE
25 CLEARED ENTERED INTO WITH A FINANCIAL

1 *ENTITY OR COMMERCIAL END USER.—With*
2 *respect to any swap that is not required to*
3 *be cleared by a derivatives clearing organi-*
4 *zation and entered into by a swap dealer or*
5 *a major swap participant with a financial*
6 *entity or commercial end user, the financial*
7 *entity or commercial end user—*

8 *“(I) may elect to require clearing*
9 *of the swap; and*

10 *“(II) shall have the sole right to*
11 *select the derivatives clearing organiza-*
12 *tion at which the swap will be*
13 *cleared.”.*

14 *(b) COMMODITY EXCHANGE ACT.—Section 2 of the*
15 *Commodity Exchange Act (7 U.S.C. 2) is amended by add-*
16 *ing at the end the following:*

17 *“(j) AUDIT COMMITTEE APPROVAL.—Exemptions from*
18 *the requirements of subsection (h)(2)(F) to clear a swap and*
19 *subsection (b) to trade a swap through a board of trade*
20 *or swap execution facility shall be available to a*
21 *counterparty that is an issuer of securities that are reg-*
22 *istered under section 12 of the Securities Exchange Act of*
23 *1934 (15 U.S.C. 78l) or that is required to file reports pur-*
24 *suant to section 15(d) of the Securities Exchange Act of*
25 *1934 (15 U.S.C. 78o) only if the issuer’s audit committee*

1 *has reviewed and approved its decision to enter into swaps*
2 *that are subject to such exemptions.”.*

3 (c) *GRANDFATHER PROVISIONS.—*

4 (1) *LEGAL CERTAINTY FOR CERTAIN TRANS-*
5 *ACTIONS IN EXEMPT COMMODITIES.—Not later than*
6 *60 days after the date of enactment of this Act, a per-*
7 *son may submit to the Commodity Futures Trading*
8 *Commission a petition to remain subject to section*
9 *2(h) of the Commodity Exchange Act (7 U.S.C. 2(h))*
10 *(as in effect on the day before the date of enactment*
11 *of this Act).*

12 (2) *CONSIDERATION; AUTHORITY OF COMMODITY*
13 *FUTURES TRADING COMMISSION.—The Commodity*
14 *Futures Trading Commission—*

15 (A) *shall consider any petition submitted*
16 *under subparagraph (A) in a prompt manner;*
17 *and*

18 (B) *may allow a person to continue oper-*
19 *ating subject to section 2(h) of the Commodity*
20 *Exchange Act (7 U.S.C. 2(h)) (as in effect on the*
21 *day before the date of enactment of this Act) for*
22 *not longer than a 1-year period.*

23 (3) *AGRICULTURAL SWAPS.—*

24 (A) *IN GENERAL.—Except as provided in*
25 *paragraph (2), no person shall offer to enter*

1 *into, enter into, or confirm the execution of, any*
2 *swap in an agricultural commodity (as defined*
3 *by the Commodity Futures Trading Commis-*
4 *sion).*

5 (B) *EXCEPTION.*—*Notwithstanding para-*
6 *graph (1), a person may offer to enter into, enter*
7 *into, or confirm the execution of, any swap in*
8 *an agricultural commodity pursuant to section*
9 *4(c) of the Commodity Exchange Act (7 U.S.C.*
10 *6(c)) or any rule, regulation, or order issued*
11 *thereunder (including any rule, regulation, or*
12 *order in effect as of the date of enactment of this*
13 *Act) by the Commodity Futures Trading Com-*
14 *mission to allow swaps under such terms and*
15 *conditions as the Commission shall prescribe.*

16 (4) *REQUIRED REPORTING.*—*If the exception de-*
17 *scribed in paragraph (2) applies, and there is no fa-*
18 *cility that makes the swap available to trade, the*
19 *counterparties shall comply with any recordkeeping*
20 *and transaction reporting requirements that may be*
21 *prescribed by the Commission with respect to swaps*
22 *subject to the requirements of paragraph (1).*

1 **SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREAT-**
2 **MENT.**

3 (a) *SEGREGATION REQUIREMENTS FOR CLEARED*
4 *SWAPS.*—Section 4d of the Commodity Exchange Act (7
5 U.S.C. 6d) (as amended by section 732) is amended by add-
6 *ing at the end the following:*

7 “(f) *SWAPS.*—

8 “(1) *REGISTRATION REQUIREMENT.*—It shall be
9 *unlawful for any person to accept any money, securi-*
10 *ties, or property (or to extend any credit in lieu of*
11 *money, securities, or property) from, for, or on behalf*
12 *of a swaps customer to margin, guarantee, or secure*
13 *a swap cleared by or through a derivatives clearing*
14 *organization (including money, securities, or property*
15 *accruing to the customer as the result of such a*
16 *swap), unless the person shall have registered under*
17 *this Act with the Commission as a futures commis-*
18 *sion merchant, and the registration shall not have ex-*
19 *pired nor been suspended nor revoked.*

20 “(2) *CLEARED SWAPS.*—

21 “(A) *SEGREGATION REQUIRED.*—A *futures*
22 *commission merchant shall treat and deal with*
23 *all money, securities, and property of any swaps*
24 *customer received to margin, guarantee, or secure*
25 *a swap cleared by or though a derivatives clear-*
26 *ing organization (including money, securities, or*

1 *property accruing to the swaps customer as the*
2 *result of such a swap) as belonging to the swaps*
3 *customer.*

4 “(B) *COMMINGLING PROHIBITED.*—*Money,*
5 *securities, and property of a swaps customer de-*
6 *scribed in subparagraph (A) shall be separately*
7 *accounted for and shall not be commingled with*
8 *the funds of the futures commission merchant or*
9 *be used to margin, secure, or guarantee any*
10 *trades or contracts of any swaps customer or*
11 *person other than the person for whom the same*
12 *are held.*

13 “(3) *EXCEPTIONS.*—

14 “(A) *USE OF FUNDS.*—

15 “(i) *IN GENERAL.*—*Notwithstanding*
16 *paragraph (2), money, securities, and prop-*
17 *erty of a swaps customer of a futures com-*
18 *mission merchant described in paragraph*
19 *(2) may, for convenience, be commingled*
20 *and deposited in the same 1 or more ac-*
21 *counts with any bank or trust company or*
22 *with a derivatives clearing organization.*

23 “(ii) *WITHDRAWAL.*—*Notwithstanding*
24 *paragraph (2), such share of the money, se-*
25 *curities, and property described in clause*

1 *(i) as in the normal course of business shall*
2 *be necessary to margin, guarantee, secure,*
3 *transfer, adjust, or settle a cleared swap*
4 *with a derivatives clearing organization, or*
5 *with any member of the derivatives clearing*
6 *organization, may be withdrawn and ap-*
7 *plied to such purposes, including the pay-*
8 *ment of commissions, brokerage, interest,*
9 *taxes, storage, and other charges, lawfully*
10 *accruing in connection with the cleared*
11 *swap.*

12 “(B) COMMISSION ACTION.—Notwith-

13 *standing paragraph (2), in accordance with such*
14 *terms and conditions as the Commission may*
15 *prescribe by rule, regulation, or order, any*
16 *money, securities, or property of the swaps cus-*
17 *tomers of a futures commission merchant de-*
18 *scribed in paragraph (2) may be commingled*
19 *and deposited as provided in this section with*
20 *any other money, securities, or property received*
21 *by the futures commission merchant and re-*
22 *quired by the Commission to be separately ac-*
23 *counted for and treated and dealt with as belong-*
24 *ing to the swaps customer of the futures commis-*
25 *sion merchant.*

1 “(4) *PERMITTED INVESTMENTS.*—*Money de-*
2 *scribed in paragraph (2) may be invested in obliga-*
3 *tions of the United States, in general obligations of*
4 *any State or of any political subdivision of a State,*
5 *and in obligations fully guaranteed as to principal*
6 *and interest by the United States, or in any other in-*
7 *vestment that the Commission may by rule or regula-*
8 *tion prescribe, and such investments shall be made in*
9 *accordance with such rules and regulations and sub-*
10 *ject to such conditions as the Commission may pre-*
11 *scribe.*

12 “(5) *COMMODITY CONTRACT.*—*A swap cleared by*
13 *or through a derivatives clearing organization shall be*
14 *considered to be a commodity contract as such term*
15 *is defined in section 761 of title 11, United States*
16 *Code, with regard to all money, securities, and prop-*
17 *erty of any swaps customer received by a futures com-*
18 *mission merchant or a derivatives clearing organiza-*
19 *tion to margin, guarantee, or secure the swap (includ-*
20 *ing money, securities, or property accruing to the cus-*
21 *tomers as the result of the swap).*

22 “(6) *PROHIBITION.*—*It shall be unlawful for any*
23 *person, including any derivatives clearing organiza-*
24 *tion and any depository institution, that has received*
25 *any money, securities, or property for deposit in a*

1 *separate account or accounts as provided in para-*
2 *graph (2) to hold, dispose of, or use any such money,*
3 *securities, or property as belonging to the depositing*
4 *futures commission merchant or any person other*
5 *than the swaps customer of the futures commission*
6 *merchant.”.*

7 ***(b) BANKRUPTCY TREATMENT OF CLEARED SWAPS.—***
8 *Section 761 of title 11, United States Code, is amended—*

9 *(1) in paragraph (4), by striking subparagraph*
10 *(F) and inserting the following:*

11 *“(F)(i) any other contract, option, agree-*
12 *ment, or transaction that is similar to a con-*
13 *tract, option, agreement, or transaction referred*
14 *to in this paragraph; and*

15 *“(ii) with respect to a futures commission*
16 *merchant or a clearing organization, any other*
17 *contract, option, agreement, or transaction, in*
18 *each case, that is cleared by a clearing organiza-*
19 *tion;”;* and

20 *(2) in paragraph (9)(A)(i), by striking “the com-*
21 *modity futures account” and inserting “a commodity*
22 *contract account”.*

23 ***(c) SEGREGATION REQUIREMENTS FOR UNCLEARED***
24 ***SWAPS.—Section 4s of the Commodity Exchange Act (as***

1 *added by section 731) is amended by adding at the end*
2 *the following:*

3 “(l) *SEGREGATION REQUIREMENTS.*—

4 “(1) *SEGREGATION OF ASSETS HELD AS COLLAT-*
5 *ERAL IN UNCLEARED SWAP TRANSACTIONS.*—

6 “(A) *NOTIFICATION.*—*A swap dealer or*
7 *major swap participant shall be required to no-*
8 *tify the counterparty of the swap dealer or major*
9 *swap participant at the beginning of a swap*
10 *transaction that the counterparty has the right*
11 *to require segregation of the funds or other prop-*
12 *erty supplied to margin, guarantee, or secure the*
13 *obligations of the counterparty.*

14 “(B) *SEGREGATION AND MAINTENANCE OF*
15 *FUNDS.*—*At the request of a counterparty to a*
16 *swap that provides funds or other property to a*
17 *swap dealer or major swap participant to mar-*
18 *gin, guarantee, or secure the obligations of the*
19 *counterparty, the swap dealer or major swap*
20 *participant shall—*

21 “(i) *segregate the funds or other prop-*
22 *erty for the benefit of the counterparty; and*

23 “(ii) *in accordance with such rules and*
24 *regulations as the Commission may promul-*
25 *gate, maintain the funds or other property*

1 *in a segregated account separate from the*
2 *assets and other interests of the swap dealer*
3 *or major swap participant.*

4 “(2) *APPLICABILITY.—The requirements de-*
5 *scribed in paragraph (1) shall—*

6 “(A) *apply only to a swap between a*
7 *counterparty and a swap dealer or major swap*
8 *participant that is not submitted for clearing to*
9 *a derivatives clearing organization; and*

10 “(B)(i) *not apply to variation margin pay-*
11 *ments; or*

12 “(ii) *not preclude any commercial arrange-*
13 *ment regarding—*

14 “(I) *the investment of segregated funds*
15 *or other property that may only be invested*
16 *in such investments as the Commission may*
17 *permit by rule or regulation; and*

18 “(II) *the related allocation of gains*
19 *and losses resulting from any investment of*
20 *the segregated funds or other property.*

21 “(3) *USE OF INDEPENDENT THIRD-PARTY*
22 *CUSTODIANS.—The segregated account described in*
23 *paragraph (1) shall be—*

24 “(A) *carried by an independent third-party*
25 *custodian; and*

1 “(B) designated as a segregated account for
2 and on behalf of the counterparty.

3 “(4) *REPORTING REQUIREMENT.*—If the
4 counterparty does not choose to require segregation of
5 the funds or other property supplied to margin, guar-
6 antee, or secure the obligations of the counterparty,
7 the swap dealer or major swap participant shall re-
8 port to the counterparty of the swap dealer or major
9 swap participant on a quarterly basis that the back
10 office procedures of the swap dealer or major swap
11 participant relating to margin and collateral require-
12 ments are in compliance with the agreement of the
13 counterparties.”.

14 **SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.**

15 (a) *REGISTRATION REQUIREMENT.*—Section 5b of the
16 *Commodity Exchange Act* (7 U.S.C. 7a–1) is amended by
17 striking subsections (a) and (b) and inserting the following:

18 “(a) *REGISTRATION REQUIREMENT.*—

19 “(1) *IN GENERAL.*—Except as provided in para-
20 graph (2), it shall be unlawful for a derivatives clear-
21 ing organization, directly or indirectly, to make use
22 of the mails or any means or instrumentality of
23 interstate commerce to perform the functions of a de-
24 rivatives clearing organization with respect to—

1 “(A) a contract of sale of a commodity for
2 future delivery (or an option on the contract of
3 sale) or option on a commodity, in each case,
4 unless the contract or option is—

5 “(i) excluded from this Act by sub-
6 section (a)(1)(C)(i), (c), or (f) of section 2;
7 or

8 “(ii) a security futures product cleared
9 by a clearing agency registered with the Se-
10 curities and Exchange Commission under
11 the Securities Exchange Act of 1934 (15
12 U.S.C. 78a et seq.); or

13 “(B) a swap.

14 “(2) *EXCEPTION.*—Paragraph (1) shall not
15 apply to a derivatives clearing organization that is
16 registered with the Commission.

17 “(b) *VOLUNTARY REGISTRATION.*—A person that
18 clears 1 or more agreements, contracts, or transactions that
19 are not required to be cleared under this Act may register
20 with the Commission as a derivatives clearing organiza-
21 tion.”.

22 (b) *REGISTRATION FOR DEPOSITORY INSTITUTIONS*
23 *AND CLEARING AGENCIES; EXEMPTIONS; COMPLIANCE OF-*
24 *FICER; ANNUAL REPORTS.*—Section 5b of the Commodity

1 *Exchange Act (7 U.S.C. 7a-1) is amended by adding at*
2 *the end the following:*

3 “(g) *REQUIRED REGISTRATION FOR DEPOSITORY IN-*
4 *STITUTIONS AND CLEARING AGENCIES.*—*A person that is*
5 *required to be registered as a derivatives clearing organiza-*
6 *tion under this section shall register with the Commission*
7 *regardless of whether the person is also licensed as a deposi-*
8 *tory institution (as that term is defined in section 3 of the*
9 *Federal Deposit Insurance Act (12 U.S.C. 1813) or a clear-*
10 *ing agency registered with the Securities and Exchange*
11 *Commission under the Securities Exchange Act of 1934 (15*
12 *U.S.C. 78a et seq.).*

13 “(h) *EXISTING DEPOSITORY INSTITUTIONS AND*
14 *CLEARING AGENCIES.*—

15 “(1) *IN GENERAL.*—*A depository institution or*
16 *clearing agency registered with the Securities and Ex-*
17 *change Commission under the Securities Exchange*
18 *Act of 1934 (15 U.S.C. 78a et seq.) that is required*
19 *to be registered as a derivatives clearing organization*
20 *under this section is deemed to be registered under*
21 *this section to the extent that, before the date of enact-*
22 *ment of this subsection—*

23 “(A) *the depository institution cleared*
24 *swaps as a multilateral clearing organization; or*

25 “(B) *the clearing agency cleared swaps.*

1 “(2) *CONVERSION OF DEPOSITORY INSTITU-*
2 *TIONS.*—*A depository institution to which this para-*
3 *graph applies may, by the vote of the shareholders*
4 *owning not less than 51 percent of the voting interests*
5 *of the depository institution, be converted into a State*
6 *corporation, partnership, limited liability company,*
7 *or similar legal form pursuant to a plan of conver-*
8 *sion, if the conversion is not in contravention of ap-*
9 *plicable State law.*

10 “(i) *EXEMPTIONS.*—*The Commission may exempt,*
11 *conditionally or unconditionally, a derivatives clearing or-*
12 *ganization from registration under this section for the*
13 *clearing of swaps if the Commission determines that the de-*
14 *rivatives clearing organization is subject to comparable,*
15 *comprehensive supervision and regulation by the Securities*
16 *and Exchange Commission or the appropriate government*
17 *authorities in the home country of the organization. Such*
18 *conditions may include, but are not limited to, requiring*
19 *that the derivatives clearing organization be available for*
20 *inspection by the Commission and make available all infor-*
21 *mation requested by the Commission.*

22 “(j) *DESIGNATION OF CHIEF COMPLIANCE OFFICER.*—

23 “(1) *IN GENERAL.*—*Each derivatives clearing or-*
24 *ganization shall designate an individual to serve as*
25 *a chief compliance officer.*

1 “(2) *DUTIES.*—*The chief compliance officer*
2 *shall—*

3 “(A) *report directly to the board or to the*
4 *senior officer of the derivatives clearing organi-*
5 *zation;*

6 “(B) *review the compliance of the deriva-*
7 *tives clearing organization with respect to the*
8 *core principles described in subsection (c)(2);*

9 “(C) *in consultation with the board of the*
10 *derivatives clearing organization, a body per-*
11 *forming a function similar to the board of the*
12 *derivatives clearing organization, or the senior*
13 *officer of the derivatives clearing organization,*
14 *resolve any conflicts of interest that may arise;*

15 “(D) *be responsible for administering each*
16 *policy and procedure that is required to be estab-*
17 *lished pursuant to this section;*

18 “(E) *ensure compliance with this Act (in-*
19 *cluding regulations) relating to agreements, con-*
20 *tracts, or transactions, including each rule pre-*
21 *scribed by the Commission under this section;*

22 “(F) *establish procedures for the remedi-*
23 *ation of noncompliance issues identified by the*
24 *compliance officer through any—*

25 “(i) *compliance office review;*

1 “(ii) look-back;
2 “(iii) internal or external audit find-
3 ing;
4 “(iv) self-reported error; or
5 “(v) validated complaint; and
6 “(G) establish and follow appropriate proce-
7 dures for the handling, management response, re-
8 mediation, retesting, and closing of noncompli-
9 ance issues.

10 “(3) ANNUAL REPORTS.—

11 “(A) IN GENERAL.—In accordance with
12 rules prescribed by the Commission, the chief
13 compliance officer shall annually prepare and
14 sign a report that contains a description of—

15 “(i) the compliance of the derivatives
16 clearing organization of the compliance offi-
17 cer with respect to this Act (including regu-
18 lations); and

19 “(ii) each policy and procedure of the
20 derivatives clearing organization of the
21 compliance officer (including the code of
22 ethics and conflict of interest policies of the
23 derivatives clearing organization).

24 “(B) REQUIREMENTS.—A compliance re-
25 port under subparagraph (A) shall—

1 “(i) accompany each appropriate fi-
2 nancial report of the derivatives clearing or-
3 ganization that is required to be furnished
4 to the Commission pursuant to this section;
5 and

6 “(ii) include a certification that, under
7 penalty of law, the compliance report is ac-
8 curate and complete.”.

9 (c) *CORE PRINCIPLES FOR DERIVATIVES CLEARING*
10 *ORGANIZATIONS.*—Section 5b(c) of the Commodity Ex-
11 change Act (7 U.S.C. 7a–1(c)) is amended by striking para-
12 graph (2) and inserting the following:

13 “(2) *CORE PRINCIPLES FOR DERIVATIVES CLEAR-*
14 *ING ORGANIZATIONS.*—

15 “(A) *COMPLIANCE.*—

16 “(i) *IN GENERAL.*—To be registered
17 and to maintain registration as a deriva-
18 tives clearing organization, a derivatives
19 clearing organization shall comply with
20 each core principle described in this para-
21 graph and any requirement that the Com-
22 mission may impose by rule or regulation
23 pursuant to section 8a(5).

24 “(ii) *DISCRETION OF DERIVATIVES*
25 *CLEARING ORGANIZATION.*—Subject to any

1 *rule or regulation prescribed by the Com-*
2 *mission, a derivatives clearing organization*
3 *shall have reasonable discretion in estab-*
4 *lishing the manner by which the derivatives*
5 *clearing organization complies with each*
6 *core principle described in this paragraph.*

7 “(B) *FINANCIAL RESOURCES.*—

8 “(i) *IN GENERAL.*—*Each derivatives*
9 *clearing organization shall have adequate*
10 *financial, operational, and managerial re-*
11 *sources, as determined by the Commission,*
12 *to discharge each responsibility of the de-*
13 *rivatives clearing organization.*

14 “(ii) *MINIMUM AMOUNT OF FINANCIAL*
15 *RESOURCES.*—*Each derivatives clearing or-*
16 *ganization shall possess financial resources*
17 *that, at a minimum, exceed the total*
18 *amount that would—*

19 “(I) *enable the organization to*
20 *meet its financial obligations to its*
21 *members and participants notwith-*
22 *standing a default by the member or*
23 *participant creating the largest finan-*
24 *cial exposure for that organization in*

1 *extreme but plausible market condi-*
2 *tions; and*

3 *“(II) enable the derivatives clear-*
4 *ing organization to cover the operating*
5 *costs of the derivatives clearing organi-*
6 *zation for a period of 1 year (as cal-*
7 *culated on a rolling basis).*

8 *“(C) PARTICIPANT AND PRODUCT ELIGI-*
9 *BILITY.—*

10 *“(i) IN GENERAL.—Each derivatives*
11 *clearing organization shall establish—*

12 *“(I) appropriate admission and*
13 *continuing eligibility standards (in-*
14 *cluding sufficient financial resources*
15 *and operational capacity to meet obli-*
16 *gations arising from participation in*
17 *the derivatives clearing organization)*
18 *for members of, and participants in,*
19 *the derivatives clearing organization;*
20 *and*

21 *“(II) appropriate standards for*
22 *determining the eligibility of agree-*
23 *ments, contracts, and transactions sub-*
24 *mitted to the derivatives clearing orga-*
25 *nization for clearing.*

1 “(ii) *REQUIRED PROCEDURES.*—*Each*
2 *derivatives clearing organization shall es-*
3 *tablish and implement procedures to verify,*
4 *on an ongoing basis, the compliance of each*
5 *participation and membership requirement*
6 *of the derivatives clearing organization.*

7 “(iii) *REQUIREMENTS.*—*The partici-*
8 *pation and membership requirements of*
9 *each derivatives clearing organization*
10 *shall—*

11 “(I) *be objective;*

12 “(II) *be publicly disclosed; and*

13 “(III) *permit fair and open ac-*
14 *cess.*

15 “(D) *RISK MANAGEMENT.*—

16 “(i) *IN GENERAL.*—*Each derivatives*
17 *clearing organization shall ensure that the*
18 *derivatives clearing organization possesses*
19 *the ability to manage the risks associated*
20 *with discharging the responsibilities of the*
21 *derivatives clearing organization through*
22 *the use of appropriate tools and procedures.*

23 “(ii) *MEASUREMENT OF CREDIT EXPO-*
24 *SURE.*—*Each derivatives clearing organiza-*
25 *tion shall—*

1 “(I) not less than once during
2 each business day of the derivatives
3 clearing organization, measure the
4 credit exposures of the derivatives
5 clearing organization to each member
6 and participant of the derivatives
7 clearing organization; and

8 “(II) monitor each exposure de-
9 scribed in subclause (I) periodically
10 during the business day of the deriva-
11 tives clearing organization.

12 “(iii) *LIMITATION OF EXPOSURE TO*
13 *POTENTIAL LOSSES FROM DEFAULTS.—*
14 *Each derivatives clearing organization,*
15 *through margin requirements and other risk*
16 *control mechanisms, shall limit the exposure*
17 *of the derivatives clearing organization to*
18 *potential losses from defaults by members*
19 *and participants of the derivatives clearing*
20 *organization to ensure that—*

21 “(I) the operations of the deriva-
22 tives clearing organization would not
23 be disrupted; and

24 “(II) nondefaulting members or
25 participants would not be exposed to

1 *losses that nondefaulting members or*
2 *participants cannot anticipate or con-*
3 *trol.*

4 “(iv) *MARGIN REQUIREMENTS.—The*
5 *margin required from each member and*
6 *participant of a derivatives clearing organi-*
7 *zation shall be sufficient to cover potential*
8 *exposures in normal market conditions.*

9 “(v) *REQUIREMENTS REGARDING MOD-*
10 *ELS AND PARAMETERS.—Each model and*
11 *parameter used in setting margin require-*
12 *ments under clause (iv) shall be—*

13 “(I) *risk-based; and*

14 “(II) *reviewed on a regular basis.*

15 “(E) *SETTLEMENT PROCEDURES.—Each de-*
16 *rivatives clearing organization shall—*

17 “(i) *complete money settlements on a*
18 *timely basis (but not less frequently than*
19 *once each business day);*

20 “(ii) *employ money settlement ar-*
21 *rangements to eliminate or strictly limit the*
22 *exposure of the derivatives clearing organi-*
23 *zation to settlement bank risks (including*
24 *credit and liquidity risks from the use of*
25 *banks to effect money settlements);*

1 “(iii) ensure that money settlements
2 are final when effected;

3 “(iv) maintain an accurate record of
4 the flow of funds associated with each
5 money settlement;

6 “(v) possess the ability to comply with
7 each term and condition of any permitted
8 netting or offset arrangement with any
9 other clearing organization;

10 “(vi) regarding physical settlements,
11 establish rules that clearly state each obliga-
12 tion of the derivatives clearing organization
13 with respect to physical deliveries; and

14 “(vii) ensure that each risk arising
15 from an obligation described in clause (vi)
16 is identified and managed.

17 “(F) TREATMENT OF FUNDS.—

18 “(i) REQUIRED STANDARDS AND PRO-
19 CEDURES.—Each derivatives clearing orga-
20 nization shall establish standards and pro-
21 cedures that are designed to protect and en-
22 sure the safety of member and participant
23 funds and assets.

24 “(ii) HOLDING OF FUNDS AND AS-
25 SETS.—Each derivatives clearing organiza-

1 *tion shall hold member and participant*
2 *funds and assets in a manner by which to*
3 *minimize the risk of loss or of delay in the*
4 *access by the derivatives clearing organiza-*
5 *tion to the assets and funds.*

6 “(iii) *PERMISSIBLE INVESTMENTS.—*
7 *Funds and assets invested by a derivatives*
8 *clearing organization shall be held in in-*
9 *struments with minimal credit, market, and*
10 *liquidity risks.*

11 “(G) *DEFAULT RULES AND PROCEDURES.—*

12 “(i) *IN GENERAL.—Each derivatives*
13 *clearing organization shall have rules and*
14 *procedures designed to allow for the effi-*
15 *cient, fair, and safe management of events*
16 *during which members or participants—*

17 “(I) *become insolvent; or*

18 “(II) *otherwise default on the obli-*
19 *gations of the members or participants*
20 *to the derivatives clearing organiza-*
21 *tion.*

22 “(ii) *DEFAULT PROCEDURES.—Each*
23 *derivatives clearing organization shall—*

1 “(I) clearly state the default pro-
2 cedures of the derivatives clearing or-
3 ganization;

4 “(II) make publicly available the
5 default rules of the derivatives clearing
6 organization; and

7 “(III) ensure that the derivatives
8 clearing organization may take timely
9 action—

10 “(aa) to contain losses and
11 liquidity pressures; and

12 “(bb) to continue meeting
13 each obligation of the derivatives
14 clearing organization.

15 “(H) *RULE ENFORCEMENT.*—Each deriva-
16 tives clearing organization shall—

17 “(i) maintain adequate arrangements
18 and resources for—

19 “(I) the effective monitoring and
20 enforcement of compliance with the
21 rules of the derivatives clearing organi-
22 zation; and

23 “(II) the resolution of disputes;

24 “(ii) have the authority and ability to
25 discipline, limit, suspend, or terminate the

1 *activities of a member or participant due to*
2 *a violation by the member or participant of*
3 *any rule of the derivatives clearing organi-*
4 *zation; and*

5 *“(iii) report to the Commission regard-*
6 *ing rule enforcement activities and sanc-*
7 *tions imposed against members and partici-*
8 *pants as provided in clause (ii).*

9 *“(I) SYSTEM SAFEGUARDS.—Each deriva-*
10 *tives clearing organization shall—*

11 *“(i) establish and maintain a program*
12 *of risk analysis and oversight to identify*
13 *and minimize sources of operational risk*
14 *through the development of appropriate con-*
15 *trols and procedures, and automated sys-*
16 *tems, that are reliable, secure, and have*
17 *adequate scalable capacity;*

18 *“(ii) establish and maintain emergency*
19 *procedures, backup facilities, and a plan for*
20 *disaster recovery that allows for—*

21 *“(I) the timely recovery and re-*
22 *sumption of operations of the deriva-*
23 *tives clearing organization; and*

1 “(II) *the fulfillment of each obli-*
2 *gation and responsibility of the deriva-*
3 *tives clearing organization; and*

4 “(iii) *periodically conduct tests to*
5 *verify that the backup resources of the de-*
6 *rivatives clearing organization are suffi-*
7 *cient to ensure daily processing, clearing,*
8 *and settlement.*

9 “(J) *REPORTING.—Each derivatives clear-*
10 *ing organization shall provide to the Commis-*
11 *sion all information that the Commission deter-*
12 *mines to be necessary to conduct oversight of the*
13 *derivatives clearing organization.*

14 “(K) *RECORDKEEPING.—Each derivatives*
15 *clearing organization shall maintain records of*
16 *all activities related to the business of the deriva-*
17 *tives clearing organization as a derivatives clear-*
18 *ing organization—*

19 “(i) *in a form and manner that is ac-*
20 *ceptable to the Commission; and*

21 “(ii) *for a period of not less than 5*
22 *years.*

23 “(L) *PUBLIC INFORMATION.—*

24 “(i) *IN GENERAL.—Each derivatives*
25 *clearing organization shall provide to mar-*

1 *ket participants sufficient information to*
2 *enable the market participants to identify*
3 *and evaluate accurately the risks and costs*
4 *associated with using the services of the de-*
5 *rivatives clearing organization.*

6 “(ii) *AVAILABILITY OF INFORMA-*
7 *TION.—Each derivatives clearing organiza-*
8 *tion shall make information concerning the*
9 *rules and operating procedures governing*
10 *the clearing and settlement systems of the*
11 *derivatives clearing organization available*
12 *to market participants.*

13 “(iii) *PUBLIC DISCLOSURE.—Each de-*
14 *rivatives clearing organization shall disclose*
15 *publicly and to the Commission informa-*
16 *tion concerning—*

17 “(I) *the terms and conditions of*
18 *each contract, agreement, and other*
19 *transaction cleared and settled by the*
20 *derivatives clearing organization;*

21 “(II) *each clearing and other fee*
22 *that the derivatives clearing organiza-*
23 *tion charges the members and partici-*
24 *pants of the derivatives clearing orga-*
25 *nization;*

1 “(III) *the margin-setting method-*
2 *ology, and the size and composition, of*
3 *the financial resource package of the*
4 *derivatives clearing organization;*

5 “(IV) *daily settlement prices, vol-*
6 *ume, and open interest for each con-*
7 *tract settled or cleared by the deriva-*
8 *tives clearing organization; and*

9 “(V) *any other matter relevant to*
10 *participation in the settlement and*
11 *clearing activities of the derivatives*
12 *clearing organization.*

13 “(M) *INFORMATION-SHARING.—Each de-*
14 *rivatives clearing organization shall—*

15 “(i) *enter into, and abide by the terms*
16 *of, each appropriate and applicable domes-*
17 *tic and international information-sharing*
18 *agreement; and*

19 “(ii) *use relevant information obtained*
20 *from each agreement described in clause (i)*
21 *in carrying out the risk management pro-*
22 *gram of the derivatives clearing organiza-*
23 *tion.*

24 “(N) *ANTITRUST CONSIDERATIONS.—Unless*
25 *necessary or appropriate to achieve the purposes*

1 *of this Act, a derivatives clearing organization*
2 *shall not—*

3 “(i) *adopt any rule or take any action*
4 *that results in any unreasonable restraint of*
5 *trade; or*

6 “(ii) *impose any material anticompeti-*
7 *tive burden.*

8 “(O) *GOVERNANCE FITNESS STANDARDS.—*

9 “(i) *GOVERNANCE ARRANGEMENTS.—*
10 *Each derivatives clearing organization shall*
11 *establish governance arrangements that are*
12 *transparent—*

13 “(I) *to fulfill public interest re-*
14 *quirements; and*

15 “(II) *to support the objectives of*
16 *owners and participants.*

17 “(ii) *FITNESS STANDARDS.—Each de-*
18 *rivatives clearing organization shall estab-*
19 *lish and enforce appropriate fitness stand-*
20 *ards for—*

21 “(I) *directors;*

22 “(II) *members of any disciplinary*
23 *committee;*

24 “(III) *members of the derivatives*
25 *clearing organization;*

1 “(IV) any other individual or en-
2 tity with direct access to the settlement
3 or clearing activities of the derivatives
4 clearing organization; and

5 “(V) any party affiliated with
6 any individual or entity described in
7 this clause.

8 “(P) CONFLICTS OF INTEREST.—Each de-
9 rivatives clearing organization shall—

10 “(i) establish and enforce rules to min-
11 imize conflicts of interest in the decision-
12 making process of the derivatives clearing
13 organization; and

14 “(ii) establish a process for resolving
15 conflicts of interest described in clause (i).

16 “(Q) COMPOSITION OF GOVERNING
17 BOARDS.—Each derivatives clearing organiza-
18 tion shall ensure that the composition of the gov-
19 erning board or committee of the derivatives
20 clearing organization includes market partici-
21 pants.

22 “(R) LEGAL RISK.—Each derivatives clear-
23 ing organization shall have a well-founded,
24 transparent, and enforceable legal framework for

1 *each aspect of the activities of the derivatives*
2 *clearing organization.*

3 “(S) *MODIFICATION OF CORE PRIN-*
4 *CIPLES.—The Commission may conform the core*
5 *principles established in this paragraph to reflect*
6 *evolving United States and international stand-*
7 *ards.”.*

8 (d) *CONFLICTS OF INTEREST.—The Commodity Fu-*
9 *tures Trading Commission shall adopt rules mitigating*
10 *conflicts of interest in connection with the conduct of busi-*
11 *ness by a swap dealer or a major swap participant with*
12 *a derivatives clearing organization, board of trade, or a*
13 *swap execution facility that clears or trades swaps in which*
14 *the swap dealer or major swap participant has a material*
15 *debt or material equity investment.*

16 (e) *REPORTING REQUIREMENTS.—Section 5b of the*
17 *Commodity Exchange Act (7 U.S.C. 7a–1) (as amended by*
18 *subsection (b)) is amended by adding at the end the fol-*
19 *lowing:*

20 “(k) *REPORTING REQUIREMENTS.—*

21 “(1) *DUTY OF DERIVATIVES CLEARING ORGANI-*
22 *ZATIONS.—Each derivatives clearing organization*
23 *that clears swaps shall provide to the Commission all*
24 *information that is determined by the Commission to*

1 *be necessary to perform each responsibility of the*
2 *Commission under this Act.*

3 “(2) *DATA COLLECTION AND MAINTENANCE RE-*
4 *QUIREMENTS.—The Commission shall adopt data col-*
5 *lection and maintenance requirements for swaps*
6 *cleared by derivatives clearing organizations that are*
7 *comparable to the corresponding requirements for—*

8 “(A) *swaps data reported to swap data re-*
9 *positories; and*

10 “(B) *swaps traded on swap execution facili-*
11 *ties.*

12 “(3) *REPORTS ON SECURITY-BASED SWAP*
13 *AGREEMENTS TO BE SHARED WITH THE SECURITIES*
14 *AND EXCHANGE COMMISSION.—*

15 “(A) *IN GENERAL.—A derivatives clearing*
16 *organization that clears security-based swap*
17 *agreements (as defined in section 3(a)(79) of the*
18 *Securities Exchange Act) shall, upon request,*
19 *make available to the Securities and Exchange*
20 *Commission all books and records relating to*
21 *such security-based swap agreements, consistent*
22 *with the confidentiality and disclosure require-*
23 *ments of section 8.*

24 “(B) *JURISDICTION.—Nothing in this para-*
25 *graph shall affect the exclusive jurisdiction of the*

1 *Commission to prescribe recordkeeping and re-*
2 *porting requirements for a derivatives clearing*
3 *organization that is registered with the Commis-*
4 *sion.”*

5 “(4) *INFORMATION SHARING.*—*Subject to section*
6 *8, and upon request, the Commission shall share in-*
7 *formation collected under paragraph (2) with—*

8 “(A) *the Board;*

9 “(B) *the Securities and Exchange Commis-*
10 *sion;*

11 “(C) *each appropriate prudential regulator;*

12 “(D) *the Financial Stability Oversight*
13 *Council;*

14 “(E) *the Department of Justice; and*

15 “(F) *any other person that the Commission*
16 *determines to be appropriate, including—*

17 “(i) *foreign financial supervisors (in-*
18 *cluding foreign futures authorities);*

19 “(ii) *foreign central banks; and*

20 “(iii) *foreign ministries.*

21 “(5) *CONFIDENTIALITY AND INDEMNIFICATION*
22 *AGREEMENT.*—*Before the Commission may share in-*
23 *formation with any entity described in paragraph*
24 *(4)—*

1 “(A) *the Commission shall receive a written*
2 *agreement from each entity stating that the enti-*
3 *ty shall abide by the confidentiality requirements*
4 *described in section 8 relating to the information*
5 *on swap transactions that is provided; and*

6 “(B) *each entity shall agree to indemnify*
7 *the Commission for any expenses arising from*
8 *litigation relating to the information provided*
9 *under section 8.*

10 “(6) *PUBLIC INFORMATION.—Each derivatives*
11 *clearing organization that clears swaps shall provide*
12 *to the Commission (including any designee of the*
13 *Commission) information under paragraph (2) in*
14 *such form and at such frequency as is required by the*
15 *Commission to comply with the public reporting re-*
16 *quirements contained in section 2(a)(13).”.*

17 “(f) *PUBLIC DISCLOSURE.—Section 8(e) of the Com-*
18 *modity Exchange Act (7 U.S.C. 12(e)) is amended in the*
19 *last sentence—*

20 (1) *by inserting “, central bank and ministries,”*
21 *after “department” each place it appears; and*

22 (2) *by striking “. is a party.” and inserting “,*
23 *is a party.”.*

24 “(g) *LEGAL CERTAINTY FOR IDENTIFIED BANKING*
25 *PRODUCTS.—*

1 (1) *REPEALS.*—*The Legal Certainty for Bank*
2 *Products Act of 2000 (7 U.S.C. 27 et seq.) is amend-*
3 *ed—*

4 (A) *by striking sections 404 and 407 (7*
5 *U.S.C. 27b, 27e);*

6 (B) *in section 402 (7 U.S.C. 27), by strik-*
7 *ing subsection (d); and*

8 (C) *in section 408 (7 U.S.C. 27f)—*

9 (i) *in subsection (c)—*

10 (I) *by striking “in the case” and*
11 *all that follows through “a hybrid” and*
12 *inserting “in the case of a hybrid”;*

13 (II) *by striking “; or” and insert-*
14 *ing a period; and*

15 (III) *by striking paragraph (2);*

16 (ii) *by striking subsection (b); and*

17 (iii) *by redesignating subsection (c) as*
18 *subsection (b).*

19 (2) *LEGAL CERTAINTY FOR BANK PRODUCTS ACT*
20 *OF 2000.*—*Section 403 of the Legal Certainty for*
21 *Bank Products Act of 2000 (7 U.S.C. 27a) is amend-*
22 *ed to read as follows:*

23 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

24 “(a) *EXCLUSION.*—*Except as provided in subsection*
25 *(b) or (c)—*

1 “(1) *the Commodity Exchange Act (7 U.S.C. 1*
2 *et seq.) shall not apply to, and the Commodity Fu-*
3 *tures Trading Commission shall not exercise regu-*
4 *latory authority under the Commodity Exchange Act*
5 *(7 U.S.C. 1 et seq.) with respect to, an identified*
6 *banking product; and*

7 “(2) *the definitions of ‘security-based swap’ in*
8 *section 3(a)(68) of the Securities Exchange Act of*
9 *1934 and ‘security-based swap agreement’ in section*
10 *3(a)(79) of the Securities Exchange Act of 1934 do*
11 *not include any identified bank product.*

12 “(b) *EXCEPTION.—An appropriate Federal banking*
13 *agency may except an identified banking product of a bank*
14 *under its regulatory jurisdiction from the exclusion in sub-*
15 *section (a) if the agency determines, in consultation with*
16 *the Commodity Futures Trading Commission and the Secu-*
17 *rities and Exchange Commission, that the product—*

18 “(1) *would meet the definition of a ‘swap’ under*
19 *section 1a(46) of the Commodity Exchange Act (7*
20 *U.S.C. 1a) or a ‘security-based swap’ under that sec-*
21 *tion 3(a)(68) of the Securities Exchange Act of 1934;*
22 *and*

23 “(2) *has become known to the trade as a swap*
24 *or security-based swap, or otherwise has been struc-*
25 *tured as an identified banking product for the pur-*

1 *pose of evading the provisions of the Commodity Ex-*
2 *change Act (7 U.S.C. 1 et seq.), the Securities Act of*
3 *1933 (15 U.S.C. 77a et seq.), or the Securities Ex-*
4 *change Act of 1934 (15 U.S.C. 78a et seq.).*

5 “(c) *EXCEPTION.—The exclusions in subsection (a)*
6 *shall not apply to an identified bank product that—*

7 “(1) *is a product of a bank that is not under the*
8 *regulatory jurisdiction of an appropriate Federal*
9 *banking agency;*

10 “(2) *meets the definition of swap in section*
11 *1a(46) of the Commodity Exchange Act or security-*
12 *based swap in section 3(a)(68) of the Securities Ex-*
13 *change Act of 1934; and*

14 “(3) *has become known to the trade as a swap*
15 *or security-based swap, or otherwise has been struc-*
16 *tured as an identified banking product for the pur-*
17 *pose of evading the provisions of the Commodity Ex-*
18 *change Act (7 U.S.C. 1 et seq.), the Securities Act of*
19 *1933 (15 U.S.C. 77a et seq.), or the Securities Ex-*
20 *change Act of 1934 (15 U.S.C. 78a et seq.).”.*

21 **SEC. 726. RULEMAKING ON CONFLICT OF INTEREST.**

22 “(a) *IN GENERAL.—Not later than 180 days after the*
23 *date of enactment of the Wall Street Transparency and Ac-*
24 *countability Act of 2010, the Commodity Futures Trading*
25 *Commission shall determine whether to adopt rules to estab-*

1 *lish limits on the control of any derivatives clearing organi-*
2 *zation that clears swaps, or swap execution facility or board*
3 *of trade designated as a contract market that posts swaps*
4 *or makes swaps available for trading, by a bank holding*
5 *company (as defined in section 2 of the Bank Holding Com-*
6 *pany Act of 1956 (12 U.S.C. 1841)) with total consolidated*
7 *assets of \$50,000,000,000 or more, a nonbank financial*
8 *company (as defined in section 102) supervised by the*
9 *Board of Governors of the Federal Reserve System, an affil-*
10 *iate of such a bank holding company or nonbank financial*
11 *company, a swap dealer, major swap participant, or associ-*
12 *ated person of a swap dealer or major swap participant.*

13 *(b) PURPOSES.—The Commission shall adopt rules if*
14 *it determines, after the review described in subsection (a),*
15 *that such rules are necessary or appropriate to improve the*
16 *governance of, or to mitigate systemic risk, promote com-*
17 *petition, or mitigate conflicts of interest in connection with*
18 *a swap dealer or major swap participant’s conduct of busi-*
19 *ness with, a derivatives clearing organization, contract*
20 *market, or swap execution facility that clears or posts swaps*
21 *or makes swaps available for trading and in which such*
22 *swap dealer or major swap participant has a material debt*
23 *or equity investment.*

1 **SEC. 727. PUBLIC REPORTING OF SWAP TRANSACTION**
2 **DATA.**

3 *Section 2(a) of the Commodity Exchange Act (7 U.S.C.*
4 *2(a)) is amended by adding at the end the following:*

5 *“(13) PUBLIC AVAILABILITY OF SWAP TRANS-*
6 *ACTION DATA.—*

7 *“(A) DEFINITION OF REAL-TIME PUBLIC RE-*
8 *PORTING.—In this paragraph, the term ‘real-*
9 *time public reporting’ means to report data re-*
10 *lating to a swap transaction as soon as techno-*
11 *logically practicable after the time at which the*
12 *swap transaction has been executed.*

13 *“(B) PURPOSE.—The purpose of this section*
14 *is to authorize the Commission to make swap*
15 *transaction and pricing data available to the*
16 *public in such form and at such times as the*
17 *Commission determines appropriate to enhance*
18 *price discovery.*

19 *“(C) GENERAL RULE.—The Commission is*
20 *authorized and required to provide by rule for*
21 *the public availability of swap transaction and*
22 *pricing data as follows:*

23 *“(i) With respect to those swaps that*
24 *are subject to the mandatory clearing re-*
25 *quirement described in subsection (h)(2)*
26 *(including those swaps that are exempted*

1 *from the requirement pursuant to subsection*
2 *(h)(10)), the Commission shall require real-*
3 *time public reporting for such transactions.*

4 “(ii) *With respect to those swaps that*
5 *are not subject to the mandatory clearing*
6 *requirement described in subsection (h)(2),*
7 *but are cleared at a registered derivatives*
8 *clearing organization, the Commission shall*
9 *require real-time public reporting for such*
10 *transactions.*

11 “(iii) *With respect to swaps that are*
12 *not cleared at a registered derivatives clear-*
13 *ing organization and which are reported to*
14 *a swap data repository or the Commission*
15 *under subsection (h), the Commission shall*
16 *make available to the public, in a manner*
17 *that does not disclose the business trans-*
18 *actions and market positions of any person,*
19 *aggregate data on such swap trading vol-*
20 *umes and positions.*

21 “(iv) *With respect to swaps that are*
22 *exempt from the requirements of subsection*
23 *(h)(1), pursuant to subsection (h)(10), the*
24 *Commission shall require real-time public*
25 *reporting for such transactions.*

1 “(D) REGISTERED ENTITIES AND PUBLIC
2 REPORTING.—The Commission may require reg-
3 istered entities to publicly disseminate the swap
4 transaction and pricing data required to be re-
5 ported under this paragraph.

6 “(E) RULEMAKING REQUIRED.—With re-
7 spect to the rule providing for the public avail-
8 ability of transaction and pricing data for swaps
9 described in clauses (i) and (ii) of subparagraph
10 (C), the rule promulgated by the Commission
11 shall contain provisions—

12 “(i) to ensure such information does
13 not identify the participants;

14 “(ii) to specify the criteria for deter-
15 mining what constitutes a large notional
16 swap transaction (block trade) for par-
17 ticular markets and contracts;

18 “(iii) to specify the appropriate time
19 delay for reporting large notional swap
20 transactions (block trades) to the public;
21 and

22 “(iv) that take into account whether
23 the public disclosure will materially reduce
24 market liquidity.

1 “(F) *TIMELINESS OF REPORTING.*—Parties
2 to a swap (including agents of the parties to a
3 swap) shall be responsible for reporting swap
4 transaction information to the appropriate reg-
5 istered entity in a timely manner as may be pre-
6 scribed by the Commission.

7 “(14) *SEMIANNUAL AND ANNUAL PUBLIC RE-*
8 *PORTING OF AGGREGATE SWAP DATA.*—

9 “(A) *IN GENERAL.*—In accordance with
10 subparagraph (B), the Commission shall issue a
11 written report on a semiannual and annual
12 basis to make available to the public information
13 relating to—

14 “(i) the trading and clearing in the
15 major swap categories; and

16 “(ii) the market participants and de-
17 velopments in new products.

18 “(B) *USE; CONSULTATION.*—In preparing a
19 report under subparagraph (A), the Commission
20 shall—

21 “(i) use information from swap data
22 repositories and derivatives clearing organi-
23 zations; and

24 “(ii) consult with the Office of the
25 Comptroller of the Currency, the Bank for

1 *International Settlements, and such other*
2 *regulatory bodies as may be necessary.”.*

3 **SEC. 728. SWAP DATA REPOSITORIES.**

4 *The Commodity Exchange Act is amended by inserting*
5 *after section 20 (7 U.S.C. 24) the following:*

6 **“SEC. 21. SWAP DATA REPOSITORIES.**

7 *“(a) REGISTRATION REQUIREMENT.—*

8 *“(1) IN GENERAL.—It shall be unlawful for any*
9 *person, unless registered with the Commission, di-*
10 *rectly or indirectly to make use of the mails or any*
11 *means or instrumentality of interstate commerce to*
12 *perform the functions of a swap data repository.*

13 *“(2) INSPECTION AND EXAMINATION.—Each reg-*
14 *istered swap data repository shall be subject to inspec-*
15 *tion and examination by any representative of the*
16 *Commission.*

17 *“(3) COMPLIANCE WITH CORE PRINCIPLES.—*

18 *“(A) IN GENERAL.—To be registered, and*
19 *maintain registration, as a swap data reposi-*
20 *tory, the swap data repository shall comply*
21 *with—*

22 *“(i) the core principles described in*
23 *this subsection; and*

1 “(ii) any requirement that the Com-
2 mission may impose by rule or regulation
3 pursuant to section 8a(5).

4 “(B) REASONABLE DISCRETION OF SWAP
5 DATA REPOSITORY.—Unless otherwise determined
6 by the Commission by rule or regulation, a swap
7 data repository described in subparagraph (A)
8 shall have reasonable discretion in establishing
9 the manner in which the swap data repository
10 complies with the core principles described in
11 this subsection.

12 “(b) STANDARD SETTING.—

13 “(1) DATA IDENTIFICATION.—The Commission
14 shall prescribe standards that specify the data ele-
15 ments for each swap that shall be collected and main-
16 tained by each registered swap data repository.

17 “(2) DATA COLLECTION AND MAINTENANCE.—
18 The Commission shall prescribe data collection and
19 data maintenance standards for swap data reposi-
20 tories.

21 “(3) COMPARABILITY.—The standards prescribed
22 by the Commission under this subsection shall be com-
23 parable to the data standards imposed by the Com-
24 mission on derivatives clearing organizations in con-
25 nection with their clearing of swaps.

1 “(4) *SHARING OF INFORMATION WITH SECURI-*
2 *TIES AND EXCHANGE COMMISSION.*—Registered swap
3 *data repositories shall make available to the Securi-*
4 *ties and Exchange Commission, upon request, all*
5 *books and records relating to security-based swap*
6 *agreements that are maintained by such swap data*
7 *repository, consistent with the confidentiality and*
8 *disclosure requirements of section 8. Nothing in this*
9 *paragraph shall affect the exclusive jurisdiction of the*
10 *Commission to prescribe recordkeeping and reporting*
11 *requirements for a swap data repository that is reg-*
12 *istered with the Commission.*

13 “(c) *DUTIES.*—A swap data repository shall—

14 “(1) accept data prescribed by the Commission
15 for each swap under subsection (b);

16 “(2) confirm with both counterparties to the
17 swap the accuracy of the data that was submitted;

18 “(3) maintain the data described in paragraph
19 (1) in such form, in such manner, and for such pe-
20 riod as may be required by the Commission;

21 “(4)(A) provide direct electronic access to the
22 Commission (or any designee of the Commission, in-
23 cluding another registered entity); and

24 “(B) provide the information described in para-
25 graph (1) in such form and at such frequency as the

1 *Commission may require to comply with the public*
2 *reporting requirements contained in section 2(a)(13);*

3 *“(5) at the direction of the Commission, establish*
4 *automated systems for monitoring, screening, and*
5 *analyzing swap data, including compliance and fre-*
6 *quency of end user clearing exemption claims by indi-*
7 *vidual and affiliated entities;*

8 *“(6) maintain the privacy of any and all swap*
9 *transaction information that the swap data reposi-*
10 *tory receives from a swap dealer, counterparty, or*
11 *any other registered entity; and*

12 *“(7) on a confidential basis pursuant to section*
13 *8, upon request, and after notifying the Commission*
14 *of the request, make available all data obtained by the*
15 *swap data repository, including individual*
16 *counterparty trade and position data, to—*

17 *“(A) each appropriate prudential regulator;*

18 *“(B) the Financial Stability Oversight*
19 *Council;*

20 *“(C) the Securities and Exchange Commis-*
21 *sion;*

22 *“(D) the Department of Justice; and*

23 *“(E) any other person that the Commission*
24 *determines to be appropriate, including—*

1 “(i) *foreign financial supervisors (in-*
2 *cluding foreign futures authorities);*

3 “(ii) *foreign central banks;*

4 “(iii) *foreign ministries; and*

5 “(8) *establish and maintain emergency proce-*
6 *dures, backup facilities, and a plan for disaster recov-*
7 *ery that allows for the timely recovery and resump-*
8 *tion of operations and the fulfillment of the respon-*
9 *sibilities and obligations of the organization.*

10 “(d) *CONFIDENTIALITY AND INDEMNIFICATION AGREE-*
11 *MENT.—Before the swap data repository may share infor-*
12 *mation with any entity described above—*

13 “(1) *the swap data repository shall receive a*
14 *written agreement from each entity stating that the*
15 *entity shall abide by the confidentiality requirements*
16 *described in section 8 relating to the information on*
17 *swap transactions that is provided; and*

18 “(2) *each entity shall agree to indemnify the*
19 *swap data repository and the Commission for any ex-*
20 *penses arising from litigation relating to the informa-*
21 *tion provided under section 8.*

22 “(e) *DESIGNATION OF CHIEF COMPLIANCE OFFI-*
23 *CER.—*

1 “(1) *IN GENERAL.*—*Each swap data repository*
2 *shall designate an individual to serve as a chief com-*
3 *pliance officer.*

4 “(2) *DUTIES.*—*The chief compliance officer*
5 *shall—*

6 “(A) *report directly to the board or to the*
7 *senior officer of the swap data repository;*

8 “(B) *review the compliance of the swap*
9 *data repository with respect to the core prin-*
10 *ciples described in subsection (f);*

11 “(C) *in consultation with the board of the*
12 *swap data repository, a body performing a func-*
13 *tion similar to the board of the swap data repos-*
14 *itory, or the senior officer of the swap data re-*
15 *pository, resolve any conflicts of interest that*
16 *may arise;*

17 “(D) *be responsible for administering each*
18 *policy and procedure that is required to be estab-*
19 *lished pursuant to this section;*

20 “(E) *ensure compliance with this Act (in-*
21 *cluding regulations) relating to agreements, con-*
22 *tracts, or transactions, including each rule pre-*
23 *scribed by the Commission under this section;*

1 “(F) establish procedures for the remedi-
2 ation of noncompliance issues identified by the
3 chief compliance officer through any—

4 “(i) compliance office review;

5 “(ii) look-back;

6 “(iii) internal or external audit find-
7 ing;

8 “(iv) self-reported error; or

9 “(v) validated complaint; and

10 “(G) establish and follow appropriate proce-
11 dures for the handling, management response, re-
12 mediation, retesting, and closing of noncompli-
13 ance issues.

14 “(3) ANNUAL REPORTS.—

15 “(A) IN GENERAL.—In accordance with
16 rules prescribed by the Commission, the chief
17 compliance officer shall annually prepare and
18 sign a report that contains a description of—

19 “(i) the compliance of the swap data
20 repository of the chief compliance officer
21 with respect to this Act (including regula-
22 tions); and

23 “(ii) each policy and procedure of the
24 swap data repository of the chief compli-
25 ance officer (including the code of ethics and

1 *conflict of interest policies of the swap data*
2 *repository).*

3 “(B) *REQUIREMENTS.*—*A compliance re-*
4 *port under subparagraph (A) shall—*

5 “(i) *accompany each appropriate fi-*
6 *ancial report of the swap data repository*
7 *that is required to be furnished to the Com-*
8 *mission pursuant to this section; and*

9 “(ii) *include a certification that, under*
10 *penalty of law, the compliance report is ac-*
11 *curate and complete.*

12 “(f) *CORE PRINCIPLES APPLICABLE TO SWAP DATA*
13 *REPOSITORIES.*—

14 “(1) *ANTITRUST CONSIDERATIONS.*—*Unless nec-*
15 *essary or appropriate to achieve the purposes of this*
16 *Act, a swap data repository shall not*

17 “(A) *adopt any rule or take any action that*
18 *results in any unreasonable restraint of trade; or*

19 “(B) *impose any material anticompetitive*
20 *burden on the trading, clearing, or reporting of*
21 *transactions.*

22 “(2) *GOVERNANCE ARRANGEMENTS.*—*Each swap*
23 *data repository shall establish governance arrange-*
24 *ments that are transparent—*

1 “(A) to fulfill public interest requirements;

2 and

3 “(B) to support the objectives of the Federal
4 Government, owners, and participants.

5 “(3) *CONFLICTS OF INTEREST.*—Each swap data
6 repository shall—

7 “(A) establish and enforce rules to minimize
8 conflicts of interest in the decision-making proc-
9 ess of the swap data repository; and

10 “(B) establish a process for resolving con-
11 flicts of interest described in subparagraph (A).

12 “(g) *REQUIRED REGISTRATION FOR SWAP DATA RE-*
13 *POSITORIES.*—Any person that is required to be registered
14 as a swap data repository under this section shall register
15 with the Commission regardless of whether that person is
16 also licensed as a bank or registered with the Securities and
17 Exchange Commission as a swap data repository.

18 “(h) *RULES.*—The Commission shall adopt rules gov-
19 erning persons that are registered under this section.”.

20 **SEC. 729. REPORTING AND RECORDKEEPING.**

21 The Commodity Exchange Act is amended by inserting
22 after section 4q (7 U.S.C. 6o–1) the following:

1 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR**
2 **UNCLEARED SWAPS.**

3 *“(a) REQUIRED REPORTING OF SWAPS NOT ACCEPT-*
4 *ED BY ANY DERIVATIVES CLEARING ORGANIZATION.—*

5 *“(1) IN GENERAL.—Each swap that is not ac-*
6 *cepted for clearing by any derivatives clearing orga-*
7 *nization shall be reported to—*

8 *“(A) a swap data repository described in*
9 *section 21; or*

10 *“(B) in the case in which there is no swap*
11 *data repository that would accept the swap, to*
12 *the Commission pursuant to this section within*
13 *such time period as the Commission may by rule*
14 *or regulation prescribe.*

15 *“(2) TRANSITION RULE FOR PREENACTMENT*
16 *SWAPS.—*

17 *“(A) SWAPS ENTERED INTO BEFORE THE*
18 *DATE OF ENACTMENT OF THE WALL STREET*
19 *TRANSPARENCY AND ACCOUNTABILITY ACT OF*
20 *2010.—Each swap entered into before the date of*
21 *enactment of the Wall Street Transparency and*
22 *Accountability Act of 2010, the terms of which*
23 *have not expired as of the date of enactment of*
24 *that Act, shall be reported to a registered swap*
25 *data repository or the Commission by a date*
26 *that is not later than—*

1 “(i) 30 days after issuance of the in-
2 terim final rule; or

3 “(ii) such other period as the Commis-
4 sion determines to be appropriate.

5 “(B) COMMISSION RULEMAKING.—The Com-
6 mission shall promulgate an interim final rule
7 within 90 days of the date of enactment of this
8 section providing for the reporting of each swap
9 entered into before the date of enactment as ref-
10 erenced in subparagraph (A).

11 “(C) EFFECTIVE DATE.—The reporting pro-
12 visions described in this section shall be effective
13 upon the enactment of this section.

14 “(3) REPORTING OBLIGATIONS.—

15 “(A) SWAPS IN WHICH ONLY 1
16 COUNTERPARTY IS A SWAP DEALER OR MAJOR
17 SWAP PARTICIPANT.—With respect to a swap in
18 which only 1 counterparty is a swap dealer or
19 major swap participant, the swap dealer or
20 major swap participant shall report the swap as
21 required under paragraphs (1) and (2).

22 “(B) SWAPS IN WHICH 1 COUNTERPARTY IS
23 A SWAP DEALER AND THE OTHER A MAJOR SWAP
24 PARTICIPANT.—With respect to a swap in which
25 1 counterparty is a swap dealer and the other a

1 *major swap participant, the swap dealer shall*
2 *report the swap as required under paragraphs*
3 *(1) and (2).*

4 “(C) *OTHER SWAPS.*—*With respect to any*
5 *other swap not described in subparagraph (A) or*
6 *(B), the counterparties to the swap shall select a*
7 *counterparty to report the swap as required*
8 *under paragraphs (1) and (2).*

9 “(b) *DUTIES OF CERTAIN INDIVIDUALS.*—*Any indi-*
10 *vidual or entity that enters into a swap shall meet each*
11 *requirement described in subsection (c) if the individual or*
12 *entity did not—*

13 “(1) *clear the swap in accordance with section*
14 *2(h)(1); or*

15 “(2) *have the data regarding the swap accepted*
16 *by a swap data repository in accordance with rules*
17 *(including timeframes) adopted by the Commission*
18 *under section 21.*

19 “(c) *REQUIREMENTS.*—*An individual or entity de-*
20 *scribed in subsection (b) shall—*

21 “(1) *upon written request from the Commission,*
22 *provide reports regarding the swaps held by the indi-*
23 *vidual or entity to the Commission in such form and*
24 *in such manner as the Commission may request; and*

1 “(2) *maintain books and records pertaining to*
2 *the swaps held by the individual or entity in such*
3 *form, in such manner, and for such period as the*
4 *Commission may require, which shall be open to in-*
5 *spection by—*

6 “(A) *any representative of the Commission;*

7 “(B) *an appropriate prudential regulator;*

8 “(C) *the Securities and Exchange Commis-*
9 *sion;*

10 “(D) *the Financial Stability Oversight*
11 *Council; and*

12 “(E) *the Department of Justice.*

13 “(d) *IDENTICAL DATA.—In prescribing rules under*
14 *this section, the Commission shall require individuals and*
15 *entities described in subsection (b) to submit to the Commis-*
16 *sion a report that contains data that is not less comprehen-*
17 *sive than the data required to be collected by swap data*
18 *repositories under section 21.”.*

19 **SEC. 730. LARGE SWAP TRADER REPORTING.**

20 *The Commodity Exchange Act (7 U.S.C. 1 et seq.) is*
21 *amended by adding after section 4s (as added by section*
22 *731) the following:*

23 **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

24 “(a) *PROHIBITION.—*

1 “(1) *IN GENERAL.*—*Except as provided in para-*
2 *graph (2), it shall be unlawful for any person to enter*
3 *into any swap that the Commission determines to*
4 *perform a significant price discovery function with*
5 *respect to registered entities if—*

6 “(A) *the person directly or indirectly enters*
7 *into the swap during any 1 day in an amount*
8 *equal to or in excess of such amount as shall be*
9 *established periodically by the Commission; and*

10 “(B) *the person directly or indirectly has or*
11 *obtains a position in the swap equal to or in ex-*
12 *cess of such amount as shall be established peri-*
13 *odically by the Commission.*

14 “(2) *EXCEPTION.*—*Paragraph (1) shall not*
15 *apply if—*

16 “(A) *the person files or causes to be filed*
17 *with the properly designated officer of the Com-*
18 *mission such reports regarding any transactions*
19 *or positions described in subparagraphs (A) and*
20 *(B) of paragraph (1) as the Commission may re-*
21 *quire by rule or regulation; and*

22 “(B) *in accordance with the rules and regu-*
23 *lations of the Commission, the person keeps books*
24 *and records of all such swaps and any trans-*
25 *actions and positions in any related commodity*

1 *traded on or subject to the rules of any board of*
2 *trade, and of cash or spot transactions in, inven-*
3 *tories of, and purchase and sale commitments of,*
4 *such a commodity.*

5 “(b) *REQUIREMENTS.*—

6 “(1) *IN GENERAL.*—*Books and records described*
7 *in subsection (a)(2)(B) shall—*

8 “(A) *show such complete details concerning*
9 *all transactions and positions as the Commission*
10 *may prescribe by rule or regulation;*

11 “(B) *be open at all times to inspection and*
12 *examination by any representative of the Com-*
13 *mission; and*

14 “(C) *be open at all times to inspection and*
15 *examination by the Securities and Exchange*
16 *Commission, to the extent such books and records*
17 *relate to transactions in security-based swap*
18 *agreements (as that term is defined in section*
19 *3(a)(79) of the Securities Exchange Act of 1934),*
20 *and consistent with the confidentiality and dis-*
21 *closure requirements of section 8.*

22 “(2) *JURISDICTION.*—*Nothing in paragraph (1)*
23 *shall affect the exclusive jurisdiction of the Commis-*
24 *sion to prescribe recordkeeping and reporting require-*
25 *ments for large swap traders under this section.*

1 “(c) *APPLICABILITY.*—For purposes of this section, the
 2 *swaps, futures, and cash or spot transactions and positions*
 3 *of any person shall include the swaps, futures, and cash*
 4 *or spot transactions and positions of any persons directly*
 5 *or indirectly controlled by the person.*

6 “(d) *SIGNIFICANT PRICE DISCOVERY FUNCTION.*—In
 7 *making a determination as to whether a swap performs or*
 8 *affects a significant price discovery function with respect*
 9 *to registered entities, the Commission shall consider the fac-*
 10 *tors described in section 4a(a)(3).”.*

11 **SEC. 731. REGISTRATION AND REGULATION OF SWAP DEAL-**
 12 **ERS AND MAJOR SWAP PARTICIPANTS.**

13 *The Commodity Exchange Act (7 U.S.C. 1 et seq.) is*
 14 *amended by inserting after section 4r (as added by section*
 15 *729) the following:*

16 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
 17 **ERS AND MAJOR SWAP PARTICIPANTS.**

18 “(a) *REGISTRATION.*—

19 “(1) *SWAP DEALERS.*—It shall be unlawful for
 20 *any person to act as a swap dealer unless the person*
 21 *is registered as a swap dealer with the Commission.*

22 “(2) *MAJOR SWAP PARTICIPANTS.*—It shall be
 23 *unlawful for any person to act as a major swap par-*
 24 *ticipant unless the person is registered as a major*
 25 *swap participant with the Commission.*

1 “(b) *REQUIREMENTS.*—

2 “(1) *IN GENERAL.*—A person shall register as a
3 swap dealer or major swap participant by filing a
4 registration application with the Commission.

5 “(2) *CONTENTS.*—

6 “(A) *IN GENERAL.*—The application shall
7 be made in such form and manner as prescribed
8 by the Commission, and shall contain such infor-
9 mation, as the Commission considers necessary
10 concerning the business in which the applicant is
11 or will be engaged.

12 “(B) *CONTINUAL REPORTING.*—A person
13 that is registered as a swap dealer or major
14 swap participant shall continue to submit to the
15 Commission reports that contain such informa-
16 tion pertaining to the business of the person as
17 the Commission may require.

18 “(3) *EXPIRATION.*—Each registration under this
19 section shall expire at such time as the Commission
20 may prescribe by rule or regulation.

21 “(4) *RULES.*—Except as provided in subsections
22 (c), (e), and (f), the Commission may prescribe rules
23 applicable to non-bank swap dealers and non-bank
24 major swap participants, including rules that limit

1 *the activities of swap dealers and major swap partici-*
2 *pants.*

3 “(5) *TRANSITION.*—*Rules under this section shall*
4 *provide for the registration of swap dealers and major*
5 *swap participants not later than 1 year after the date*
6 *of enactment of the Wall Street Transparency and Ac-*
7 *countability Act of 2010.*

8 “(6) *STATUTORY DISQUALIFICATION.*—*Except to*
9 *the extent otherwise specifically provided by rule, reg-*
10 *ulation, or order, it shall be unlawful for a swap*
11 *dealer or a major swap participant to permit any*
12 *person associated with a swap dealer or a major swap*
13 *participant who is subject to a statutory disqualifica-*
14 *tion to effect or be involved in effecting swaps on be-*
15 *half of the swap dealer or major swap participant, if*
16 *the swap dealer or major swap participant knew, or*
17 *in the exercise of reasonable care should have known,*
18 *of the statutory disqualification.*

19 “(c) *DUAL REGISTRATION.*—

20 “(1) *SWAP DEALER.*—*Any person that is re-*
21 *quired to be registered as a swap dealer under this*
22 *section shall register with the Commission regardless*
23 *of whether the person also is a depository institution*
24 *or is registered with the Securities and Exchange*
25 *Commission as a security-based swap dealer.*

1 “(2) *MAJOR SWAP PARTICIPANT.*—Any person
2 that is required to be registered as a major swap par-
3 ticipant under this section shall register with the
4 Commission regardless of whether the person also is
5 a depository institution or is registered with the Se-
6 curities and Exchange Commission as a major secu-
7 rity-based swap participant.

8 “(d) *RULEMAKINGS.*—

9 “(1) *IN GENERAL.*—The Commission shall adopt
10 rules for persons that are registered as swap dealers
11 or major swap participants under this section.

12 “(2) *EXCEPTION FOR PRUDENTIAL REQUIRE-*
13 *MENTS.*—

14 “(A) *IN GENERAL.*—The Commission may
15 not prescribe rules imposing prudential require-
16 ments on swap dealers or major swap partici-
17 pants for which there is a prudential regulator.

18 “(B) *APPLICABILITY.*—Subparagraph (A)
19 does not limit the authority of the Commission
20 to prescribe appropriate business conduct, re-
21 porting, and recordkeeping requirements to pro-
22 tect investors.

23 “(e) *CAPITAL AND MARGIN REQUIREMENTS.*—

24 “(1) *IN GENERAL.*—

1 “(A) SWAP DEALERS AND MAJOR SWAP PAR-
2 TICIPANTS THAT ARE DEPOSITORY INSTITU-
3 TIONS.—Each registered swap dealer and major
4 swap participant that is a depository institu-
5 tion, as that term is defined in section 3 of the
6 Federal Deposit Insurance Act (12 U.S.C. 1813),
7 shall meet such minimum capital requirements
8 and minimum initial and variation margin re-
9 quirements as the appropriate Federal banking
10 agency shall by rule or regulation prescribe
11 under paragraph (2)(A) to help ensure the safety
12 and soundness of the swap dealer or major swap
13 participant.

14 “(B) SWAP DEALERS AND MAJOR SWAP PAR-
15 TICIPANTS THAT ARE NOT DEPOSITORY INSTITU-
16 TIONS.—Each registered swap dealer and major
17 swap participant that is not a depository insti-
18 tution, as that term is defined in section 3 of the
19 Federal Deposit Insurance Act (12 U.S.C. 1813),
20 shall meet such minimum capital requirements
21 and minimum initial and variation margin re-
22 quirements as the Commission and the Securities
23 and Exchange Commission shall by rule or regu-
24 lation prescribe under paragraph (2)(B) to help

1 *ensure the safety and soundness of the swap deal-*
2 *er or major swap participant.*

3 “(2) *RULES.—*

4 “(A) *SWAP DEALERS AND MAJOR SWAP PAR-*
5 *TICIPANTS THAT ARE DEPOSITORY INSTITU-*
6 *TIONS.—The appropriate Federal banking agen-*
7 *cies, in consultation with the Commission and*
8 *the Securities and Exchange Commission, shall*
9 *adopt rules imposing capital and margin re-*
10 *quirements under this subsection for swap deal-*
11 *ers and major swap participants that are deposi-*
12 *tory institutions, as that term is defined in sec-*
13 *tion 3 of the Federal Deposit Insurance Act (12*
14 *U.S.C. 1813).*

15 “(B) *SWAP DEALERS AND MAJOR SWAP PAR-*
16 *TICIPANTS THAT ARE NOT DEPOSITORY INSTITU-*
17 *TIONS.—The Commission shall adopt rules im-*
18 *posing capital and margin requirements under*
19 *this subsection for swap dealers and major swap*
20 *participants that are not depository institutions,*
21 *as that term is defined in section 3 of the Fed-*
22 *eral Deposit Insurance Act (12 U.S.C. 1813).*

23 “(3) *CAPITAL.—*

24 “(A) *SWAP DEALERS AND MAJOR SWAP PAR-*
25 *TICIPANTS THAT ARE DEPOSITORY INSTITU-*

1 TIONS.—*The capital requirements prescribed*
2 *under paragraph (2)(A) for swap dealers and*
3 *major swap participants that are depository in-*
4 *stitutions shall contain—*

5 “(i) *a capital requirement that is*
6 *greater than zero for swaps that are cleared*
7 *by a registered derivatives clearing organi-*
8 *zation or a derivatives clearing organiza-*
9 *tion that is exempt from registration under*
10 *section 5b(j); and*

11 “(ii) *to offset the greater risk to the*
12 *swap dealer or major swap participant and*
13 *to the financial system arising from the use*
14 *of swaps that are not cleared, substantially*
15 *higher capital requirements for swaps that*
16 *are not cleared by a registered derivatives*
17 *clearing organization or a derivatives clear-*
18 *ing organization that is exempt from reg-*
19 *istration under section 5b(j) than for swaps*
20 *that are cleared.*

21 “(B) *SWAP DEALERS AND MAJOR SWAP PAR-*
22 *TICIPANTS THAT ARE NOT DEPOSITORY INSTITU-*
23 *TIONS.—The capital requirements prescribed*
24 *under paragraph (2)(B) for swap dealers and*
25 *major swap participants that are not depository*

1 *institutions shall be as strict as or stricter than*
2 *the capital requirements prescribed for swap*
3 *dealers and major swap participants that are*
4 *depository institutions under paragraph (2)(A).*

5 “(C) *RULE OF CONSTRUCTION.*—

6 “(i) *IN GENERAL.*—*Nothing in this sec-*
7 *tion shall limit, or be construed to limit, the*
8 *authority—*

9 “(I) *of the Commission to set fi-*
10 *nancial responsibility rules for a fu-*
11 *tures commission merchant or intro-*
12 *ducing broker registered pursuant to*
13 *section 4f(a) (except for section*
14 *4f(a)(3)) in accordance with section*
15 *4f(b); or*

16 “(II) *of the Securities and Ex-*
17 *change Commission to set financial re-*
18 *sponsibility rules for a broker or dealer*
19 *registered pursuant to section 15(b) of*
20 *the Securities Exchange Act of 1934*
21 *(15 U.S.C. 78o(b)) (except for section*
22 *15(b)(11) of that Act (15 U.S.C.*
23 *78o(b)(11)) in accordance with section*
24 *15(c)(3) of the Securities Exchange Act*
25 *of 1934 (15 U.S.C. 78o(c)(3)).*

1 “(i) *FUTURES COMMISSION MER-*
2 *CHANTS AND OTHER DEALERS.—A futures*
3 *commission merchant, introducing broker,*
4 *broker, or dealer shall maintain sufficient*
5 *capital to comply with the stricter of any*
6 *applicable capital requirements to which*
7 *such futures commission merchant, intro-*
8 *ducing broker, broker, or dealer is subject to*
9 *under this Act or the Securities Exchange*
10 *Act of 1934 (15 U.S.C. 78a et seq.).*

11 “(4) *MARGIN.—*

12 “(A) *SWAP DEALERS AND MAJOR SWAP PAR-*
13 *TICIPANTS THAT ARE DEPOSITORY INSTITU-*
14 *TIONS.—The appropriate Federal banking agen-*
15 *cy for swap dealers and major swap participants*
16 *that are depository institutions shall impose both*
17 *initial and variation margin requirements in*
18 *accordance with paragraph (2)(A) on all swaps*
19 *that are not cleared by a registered derivatives*
20 *clearing organization or a derivatives clearing*
21 *organization that is exempt from registration*
22 *under section 5b(j).*

23 “(B) *SWAP DEALERS AND MAJOR SWAP PAR-*
24 *TICIPANTS THAT ARE NOT DEPOSITORY INSTITU-*
25 *TIONS.—The Commission and the Securities and*

1 *Exchange Commission shall impose both initial*
2 *and variation margin requirements in accord-*
3 *ance with paragraph (2)(B) for swap dealers*
4 *and major swap participants that are not depos-*
5 *itory institutions on all swaps that are not*
6 *cleared by a registered derivatives clearing orga-*
7 *nization or a derivatives clearing organization*
8 *that is exempt from registration under section*
9 *5b(j). Any such initial and variation margin re-*
10 *quirements shall be as strict as or stricter than*
11 *the margin requirements prescribed under para-*
12 *graph (4)(A).*

13 “(5) *MARGIN REQUIREMENTS.*—*In prescribing*
14 *margin requirements under this subsection, the ap-*
15 *propriate Federal banking agency with respect to*
16 *swap dealers and major swap participants that are*
17 *depository institutions and the Commission with re-*
18 *spect to swap dealers and major swap participants*
19 *that are not depository institutions may permit the*
20 *use of noncash collateral, as the agency or the Com-*
21 *mission determines to be consistent with—*

22 “(A) *preserving the financial integrity of*
23 *markets trading swaps; and*

24 “(B) *preserving the stability of the United*
25 *States financial system.*

1 “(6) *COMPARABILITY OF CAPITAL AND MARGIN*
2 *REQUIREMENTS.*—

3 “(A) *IN GENERAL.*—*The appropriate Fed-*
4 *eral banking agencies, the Commission, and the*
5 *Securities and Exchange Commission shall peri-*
6 *odically (but not less frequently than annually)*
7 *consult on minimum capital requirements and*
8 *minimum initial and variation margin require-*
9 *ments.*

10 “(B) *COMPARABILITY.*—*The entities de-*
11 *scribed in subparagraph (A) shall, to the max-*
12 *imum extent practicable, establish and maintain*
13 *comparable minimum capital requirements and*
14 *minimum initial and variation margin require-*
15 *ments, including the use of non cash collateral,*
16 *for—*

17 “(i) *swap dealers; and*

18 “(ii) *major swap participants.*

19 “(7) *REQUESTED MARGIN.*—*If any party to a*
20 *swap that is exempt from the margin requirements of*
21 *paragraph (4)(A)(i) pursuant to the provisions of*
22 *paragraph (4)(A)(ii), or from the margin require-*
23 *ments of paragraph (4)(B)(i) pursuant to the provi-*
24 *sions of paragraph (4)(B)(ii), requests that such swap*
25 *be margined, then—*

1 “(A) the exemption shall not apply; and

2 “(B) the counterparty to such swap shall
3 provide the requested margin.

4 “(8) *APPLICABILITY WITH RESPECT TO*
5 *COUNTERPARTIES.*—Paragraph (4) shall not apply to
6 initial and variation margin for swaps in which 1 of
7 the counterparties is not—

8 “(A) a swap dealer;

9 “(B) a major swap participant; or

10 “(C) a financial entity as described in sec-
11 tion 2(h)(9)(A)(ii), and such counterparty is eli-
12 gible for and utilizing the commercial end user
13 clearing exemption under section 2(h)(9).

14 “(f) *REPORTING AND RECORDKEEPING.*—

15 “(1) *IN GENERAL.*—Each registered swap dealer
16 and major swap participant—

17 “(A) shall make such reports as are re-
18 quired by the Commission by rule or regulation
19 regarding the transactions and positions and fi-
20 nancial condition of the registered swap dealer
21 or major swap participant;

22 “(B)(i) for which there is a prudential regu-
23 lator, shall keep books and records of all activi-
24 ties related to the business as a swap dealer or
25 major swap participant in such form and man-

1 *ner and for such period as may be prescribed by*
2 *the Commission by rule or regulation; and*

3 *“(ii) for which there is no prudential regu-*
4 *lator, shall keep books and records in such form*
5 *and manner and for such period as may be pre-*
6 *scribed by the Commission by rule or regulation;*
7 *and*

8 *“(C) shall keep books and records described*
9 *in subparagraph (B) open to inspection and ex-*
10 *amination by any representative of the Commis-*
11 *sion.*

12 *“(2) RULES.—The Commission shall adopt rules*
13 *governing reporting and recordkeeping for swap deal-*
14 *ers and major swap participants.*

15 *“(g) DAILY TRADING RECORDS.—*

16 *“(1) IN GENERAL.—Each registered swap dealer*
17 *and major swap participant shall maintain daily*
18 *trading records of the swaps of the registered swap*
19 *dealer and major swap participant and all related*
20 *records (including related cash or forward trans-*
21 *actions) and recorded communications, including*
22 *electronic mail, instant messages, and recordings of*
23 *telephone calls, for such period as may be required by*
24 *the Commission by rule or regulation.*

1 “(2) *INFORMATION REQUIREMENTS.*—*The daily*
2 *trading records shall include such information as the*
3 *Commission shall require by rule or regulation.*

4 “(3) *COUNTERPARTY RECORDS.*—*Each registered*
5 *swap dealer and major swap participant shall main-*
6 *tain daily trading records for each counterparty in a*
7 *manner and form that is identifiable with each swap*
8 *transaction.*

9 “(4) *AUDIT TRAIL.*—*Each registered swap dealer*
10 *and major swap participant shall maintain a com-*
11 *plete audit trail for conducting comprehensive and*
12 *accurate trade reconstructions.*

13 “(5) *RULES.*—*The Commission shall adopt rules*
14 *governing daily trading records for swap dealers and*
15 *major swap participants.*

16 “(h) *BUSINESS CONDUCT STANDARDS.*—

17 “(1) *IN GENERAL.*—*Each registered swap dealer*
18 *and major swap participant shall conform with such*
19 *business conduct standards as may be prescribed by*
20 *the Commission by rule or regulation that relate to—*

21 “(A) *fraud, manipulation, and other abu-*
22 *sive practices involving swaps (including swaps*
23 *that are offered but not entered into);*

1 “(B) *diligent supervision of the business of*
2 *the registered swap dealer and major swap par-*
3 *ticipant;*

4 “(C) *adherence to all applicable position*
5 *limits; and*

6 “(D) *such other matters as the Commission*
7 *determines to be appropriate.*

8 “(2) *SPECIAL RULE; FIDUCIARY DUTIES TO CER-*
9 *TAIN ENTITIES.—*

10 “(A) *GOVERNMENTAL ENTITIES.—A swap*
11 *dealer that provides advice regarding, or offers to*
12 *enter into, or enters into a swap with a State,*
13 *State agency, city, county, municipality, or*
14 *other political subdivision of a State or a Fed-*
15 *eral agency shall have a fiduciary duty to the*
16 *State, State agency, city, county, municipality,*
17 *or other political subdivision of a State, or the*
18 *Federal agency, as appropriate.*

19 “(B) *PENSION PLANS; ENDOWMENTS; RE-*
20 *TIREMENT PLANS.—A swap dealer that provides*
21 *advice regarding, or offers to enter into, or enters*
22 *into a swap with a pension plan, endowment, or*
23 *retirement plan shall have a fiduciary duty to*
24 *the pension plan, endowment, or retirement*
25 *plan, as appropriate.*

1 “(3) *BUSINESS CONDUCT REQUIREMENTS.*—
2 *Business conduct requirements adopted by the Com-*
3 *mission shall—*

4 “(A) *establish the standard of care for a*
5 *swap dealer or major swap participant to verify*
6 *that any counterparty meets the eligibility*
7 *standards for an eligible contract participant;*

8 “(B) *require disclosure by the swap dealer*
9 *or major swap participant to any counterparty*
10 *to the transaction (other than a swap dealer,*
11 *major swap participant, security-based swap*
12 *dealer, or major security-based swap partici-*
13 *pant) of—*

14 “(i) *information about the material*
15 *risks and characteristics of the swap;*

16 “(ii) *the source and amount of any fees*
17 *or other material remuneration that the*
18 *swap dealer or major swap participant*
19 *would directly or indirectly expect to receive*
20 *in connection with the swap;*

21 “(iii) *any other material incentives or*
22 *conflicts of interest that the swap dealer or*
23 *major swap participant may have in con-*
24 *nection with the swap; and*

1 “(iv)(I) for cleared swaps, upon the re-
2 quest of the counterparty, the daily mark
3 from the appropriate derivatives clearing
4 organization; and

5 “(II) for uncleared swaps, the daily
6 mark of the swap dealer or the major swap
7 participant;

8 “(C) establish a standard of conduct for a
9 swap dealer or major swap participant to com-
10 municate in a fair and balanced manner based
11 on principles of fair dealing and good faith;

12 “(D) establish a standard of conduct for a
13 swap dealer or major swap participant, with re-
14 spect to a counterparty that is an eligible con-
15 tract participant within the meaning of sub-
16 clause (I) or (II) of clause (vii) of section 1a(18)
17 of this Act, to have a reasonable basis to believe
18 that the counterparty has an independent rep-
19 resentative that—

20 “(i) has sufficient knowledge to evalu-
21 ate the transaction and risks;

22 “(ii) is not subject to a statutory dis-
23 qualification;

24 “(iii) is independent of the swap dealer
25 or major swap participant;

1 “(iv) undertakes a duty to act in the
2 best interests of the counterparty it rep-
3 resents;

4 “(v) makes appropriate disclosures;
5 and

6 “(vi) will provide written representa-
7 tions to the eligible contract participant re-
8 garding fair pricing and the appropriate-
9 ness of the transaction; and

10 “(E) establish such other standards and re-
11 quirements as the Commission may determine
12 are appropriate in the public interest, for the
13 protection of investors, or otherwise in further-
14 ance of the purposes of this Act.

15 “(4) RULES.—The Commission shall prescribe
16 rules under this subsection governing business conduct
17 standards for swap dealers and major swap partici-
18 pants.

19 “(i) DOCUMENTATION AND BACK OFFICE STAND-
20 ARDS.—

21 “(1) IN GENERAL.—Each registered swap dealer
22 and major swap participant shall conform with such
23 standards as may be prescribed by the Commission by
24 rule or regulation that relate to timely and accurate

1 *confirmation, processing, netting, documentation, and*
2 *valuation of all swaps.*

3 “(2) *RULES.—The Commission shall adopt rules*
4 *governing documentation and back office standards*
5 *for swap dealers and major swap participants.*

6 “(j) *DUTIES.—Each registered swap dealer and major*
7 *swap participant at all times shall comply with the fol-*
8 *lowing requirements:*

9 “(1) *MONITORING OF TRADING.—The swap deal-*
10 *er or major swap participant shall monitor its trad-*
11 *ing in swaps to prevent violations of applicable posi-*
12 *tion limits.*

13 “(2) *RISK MANAGEMENT PROCEDURES.—The*
14 *swap dealer or major swap participant shall establish*
15 *robust and professional risk management systems ade-*
16 *quate for managing the day-to-day business of the*
17 *swap dealer or major swap participant.*

18 “(3) *DISCLOSURE OF GENERAL INFORMATION.—*
19 *The swap dealer or major swap participant shall dis-*
20 *close to the Commission and to the prudential regu-*
21 *lator for the swap dealer or major swap participant,*
22 *as applicable, information concerning—*

23 “(A) *terms and conditions of its swaps;*

24 “(B) *swap trading operations, mechanisms,*
25 *and practices;*

1 “(C) *financial integrity protections relating*
2 *to swaps; and*

3 “(D) *other information relevant to its trad-*
4 *ing in swaps.*

5 “(4) *ABILITY TO OBTAIN INFORMATION.—The*
6 *swap dealer or major swap participant shall—*

7 “(A) *establish and enforce internal systems*
8 *and procedures to obtain any necessary informa-*
9 *tion to perform any of the functions described in*
10 *this section; and*

11 “(B) *provide the information to the Com-*
12 *mission and to the prudential regulator for the*
13 *swap dealer or major swap participant, as ap-*
14 *plicable, on request.*

15 “(5) *CONFLICTS OF INTEREST.—The swap dealer*
16 *and major swap participant shall implement conflict-*
17 *of-interest systems and procedures that—*

18 “(A) *establish structural and institutional*
19 *safeguards to ensure that the activities of any*
20 *person within the firm relating to research or*
21 *analysis of the price or market for any com-*
22 *modity or swap or acting in a role of providing*
23 *clearing activities or making determinations as*
24 *to accepting clearing customers are separated by*
25 *appropriate informational partitions within the*

1 *firm from the review, pressure, or oversight of*
2 *persons whose involvement in pricing, trading,*
3 *or clearing activities might potentially bias their*
4 *judgment or supervision and contravene the core*
5 *principles of open access and the business con-*
6 *duct standards described in this Act; and*

7 *“(B) address such other issues as the Com-*
8 *mission determines to be appropriate.*

9 *“(6) ANTITRUST CONSIDERATIONS.—Unless nec-*
10 *essary or appropriate to achieve the purposes of this*
11 *Act, a swap dealer or major swap participant shall*
12 *not—*

13 *“(A) adopt any process or take any action*
14 *that results in any unreasonable restraint of*
15 *trade; or*

16 *“(B) impose any material anticompetitive*
17 *burden on trading or clearing.*

18 *“(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-*
19 *CER.—*

20 *“(1) IN GENERAL.—Each swap dealer and major*
21 *swap participant shall designate an individual to*
22 *serve as a chief compliance officer.*

23 *“(2) DUTIES.—The chief compliance officer*
24 *shall—*

1 “(A) report directly to the board or to the
2 senior officer of the swap dealer or major swap
3 participant;

4 “(B) review the compliance of the swap
5 dealer or major swap participant with respect to
6 the swap dealer and major swap participant re-
7 quirements described in this section;

8 “(C) in consultation with the board of di-
9 rectors, a body performing a function similar to
10 the board, or the senior officer of the organiza-
11 tion, resolve any conflicts of interest that may
12 arise;

13 “(D) be responsible for administering each
14 policy and procedure that is required to be estab-
15 lished pursuant to this section;

16 “(E) ensure compliance with this Act (in-
17 cluding regulations) relating to swaps, including
18 each rule prescribed by the Commission under
19 this section;

20 “(F) establish procedures for the remedi-
21 ation of noncompliance issues identified by the
22 chief compliance officer through any—

23 “(i) compliance office review;

24 “(ii) look-back;

1 “(iii) *internal or external audit find-*
2 *ing;*

3 “(iv) *self-reported error; or*

4 “(v) *validated complaint; and*

5 “(G) *establish and follow appropriate proce-*
6 *dures for the handling, management response, re-*
7 *mediation, retesting, and closing of noncompli-*
8 *ance issues.*

9 “(3) *ANNUAL REPORTS.—*

10 “(A) *IN GENERAL.—In accordance with*
11 *rules prescribed by the Commission, the chief*
12 *compliance officer shall annually prepare and*
13 *sign a report that contains a description of—*

14 “(i) *the compliance of the swap dealer*
15 *or major swap participant with respect to*
16 *this Act (including regulations); and*

17 “(ii) *each policy and procedure of the*
18 *swap dealer or major swap participant of*
19 *the chief compliance officer (including the*
20 *code of ethics and conflict of interest poli-*
21 *cies).*

22 “(B) *REQUIREMENTS.—A compliance re-*
23 *port under subparagraph (A) shall—*

24 “(i) *accompany each appropriate fi-*
25 *nancial report of the swap dealer or major*

1 *swap participant that is required to be fur-*
2 *nished to the Commission pursuant to this*
3 *section; and*

4 *“(ii) include a certification that, under*
5 *penalty of law, the compliance report is ac-*
6 *curate and complete.”.*

7 **SEC. 732. CONFLICTS OF INTEREST.**

8 *Section 4d of the Commodity Exchange Act (7 U.S.C.*
9 *6d) is amended—*

10 *(1) by redesignating subsection (c) as subsection*
11 *(e); and*

12 *(2) by inserting after subsection (b) the fol-*
13 *lowing:*

14 *“(c) CONFLICTS OF INTEREST.—The Commission shall*
15 *require that futures commission merchants and introducing*
16 *brokers implement conflict-of-interest systems and proce-*
17 *dures that—*

18 *“(1) establish structural and institutional safe-*
19 *guards to ensure that the activities of any person*
20 *within the firm relating to research or analysis of the*
21 *price or market for any commodity are separated by*
22 *appropriate informational partitions within the firm*
23 *from the review, pressure, or oversight of persons*
24 *whose involvement in trading or clearing activities*

1 *might potentially bias the judgment or supervision of*
2 *the persons; and*

3 *“(2) address such other issues as the Commission*
4 *determines to be appropriate.*

5 *“(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-*
6 *CER.—*

7 *“(1) IN GENERAL.—Each futures commission*
8 *merchant shall designate an individual to serve as a*
9 *chief compliance officer.*

10 *“(2) DUTIES.—The chief compliance officer*
11 *shall—*

12 *“(A) report directly to the board or to the*
13 *senior officer of the futures commission mer-*
14 *chant;*

15 *“(B) review the compliance of the futures*
16 *commission merchant with respect to require-*
17 *ments described in this section;*

18 *“(C) in consultation with the board of di-*
19 *rectors, a body performing a function similar to*
20 *the board, or the senior officer of the organiza-*
21 *tion, resolve any conflicts of interest that may*
22 *arise;*

23 *“(D) be responsible for administering each*
24 *policy and procedure that is required to be estab-*
25 *lished pursuant to this section;*

1 “(E) ensure compliance with this Act (in-
2 cluding regulations and each rule prescribed by
3 the Commission under this section) relating, but
4 not limited, to—

5 “(i) contracts of sale of a commodity
6 for future delivery;

7 “(ii) options on the contracts described
8 in clause (i);

9 “(iii) commodity options;

10 “(iv) retail commodity transactions;

11 “(v) security futures products;

12 “(vi) leverage contracts; and

13 “(vii) swaps;

14 “(F) establish procedures for the remedi-
15 ation of noncompliance issues identified by the
16 chief compliance officer through any—

17 “(i) compliance office review;

18 “(ii) look-back;

19 “(iii) internal or external audit find-
20 ing;

21 “(iv) self-reported error; or

22 “(v) validated complaint; and

23 “(G) establish and follow appropriate proce-
24 dures for the handling, management response, re-

1 *mediation, retesting, and closing of noncompli-*
2 *ance issues.*

3 “(3) *ANNUAL REPORTS.*—

4 “(A) *IN GENERAL.*—*In accordance with*
5 *rules prescribed by the Commission, the chief*
6 *compliance officer shall annually prepare and*
7 *sign a report that contains a description of—*

8 “(i) *the compliance of the futures com-*
9 *mission merchant with respect to this Act*
10 *(including regulations); and*

11 “(ii) *each policy and procedure of the*
12 *futures commission merchant of the chief*
13 *compliance officer (including the code of*
14 *ethics and conflict of interest policies).*

15 “(B) *REQUIREMENTS.*—*A compliance re-*
16 *port under subparagraph (A) shall—*

17 “(i) *accompany each appropriate fi-*
18 *nancial report of the futures commission*
19 *merchant that is required to be furnished to*
20 *the Commission pursuant to this section;*
21 *and*

22 “(ii) *include a certification that, under*
23 *penalty of law, the compliance report is ac-*
24 *curate and complete.”.*

1 **SEC. 733. SWAP EXECUTION FACILITIES.**

2 *The Commodity Exchange Act is amended by inserting*
3 *after section 5g (7 U.S.C. 7b–2) the following:*

4 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

5 *“(a) REGISTRATION.—*

6 *“(1) IN GENERAL.—No person may operate a fa-*
7 *cility for the trading or processing of swaps unless the*
8 *facility is registered as a swap execution facility or*
9 *as a designated contract market under this section.*

10 *“(2) DUAL REGISTRATION.—Any person that is*
11 *registered as a swap execution facility under this sec-*
12 *tion shall register with the Commission regardless of*
13 *whether the person also is registered with the Securi-*
14 *ties and Exchange Commission as a swap execution*
15 *facility.*

16 *“(b) TRADING AND TRADE PROCESSING.—A swap exe-*
17 *cution facility that is registered under subsection (a) may—*

18 *“(1) make available for trading any swap; and*

19 *“(2) facilitate trade processing of any swap.*

20 *“(c) IDENTIFICATION OF FACILITY USED TO TRADE*
21 *SWAPS BY CONTRACT MARKETS.—A board of trade that op-*
22 *erates a contract market shall, to the extent that the board*
23 *of trade also operates a swap execution facility and uses*
24 *the same electronic trade execution system for listing and*
25 *executing trades of swaps on or through the contract market*
26 *and the swap execution facility, identify whether the elec-*

1 *tronic trading of such swaps is taking place on or through*
2 *the contract market or the swap execution facility.*

3 “(d) *CORE PRINCIPLES FOR SWAP EXECUTION FACILI-*
4 *TIES.—*

5 “(1) *COMPLIANCE WITH CORE PRINCIPLES.—*

6 “(A) *IN GENERAL.—To be registered, and*
7 *maintain registration, as a swap execution facil-*
8 *ity, the swap execution facility shall comply*
9 *with—*

10 “(i) *the core principles described in*
11 *this subsection; and*

12 “(ii) *any requirement that the Com-*
13 *mission may impose by rule or regulation*
14 *pursuant to section 8a(5).*

15 “(B) *REASONABLE DISCRETION OF SWAP*
16 *EXECUTION FACILITY.—Unless otherwise deter-*
17 *mined by the Commission by rule or regulation,*
18 *a swap execution facility described in subpara-*
19 *graph (A) shall have reasonable discretion in es-*
20 *tablishing the manner in which the swap execu-*
21 *tion facility complies with the core principles de-*
22 *scribed in this subsection.*

23 “(2) *COMPLIANCE WITH RULES.—A swap execu-*
24 *tion facility shall—*

1 “(A) monitor and enforce compliance with
2 any rule of the swap execution facility, includ-
3 ing—

4 “(i) the terms and conditions of the
5 swaps traded or processed on or through the
6 swap execution facility; and

7 “(ii) any limitation on access to the
8 swap execution facility;

9 “(B) establish and enforce trading, trade
10 processing, and participation rules that will
11 deter abuses and have the capacity to detect, in-
12 vestigate, and enforce those rules, including
13 means—

14 “(i) to provide market participants
15 with impartial access to the market; and

16 “(ii) to capture information that may
17 be used in establishing whether rule viola-
18 tions have occurred;

19 “(C) establish rules governing the operation
20 of the facility, including rules specifying trading
21 procedures to be used in entering and executing
22 orders traded or posted on the facility, including
23 block trades; and

24 “(D) provide by its rules that when a swap
25 dealer or major swap participant enters into or

1 *facilitates a swap that is subject to the manda-*
2 *tory clearing requirement of section 2(h)(2)(F),*
3 *the swap dealer or major swap participant shall*
4 *be responsible for compliance with the manda-*
5 *tory trading requirement of section 113(d) of the*
6 *Wall Street Transparency and Accountability*
7 *Act of 2010.*

8 “(3) *SWAPS NOT READILY SUSCEPTIBLE TO MA-*
9 *NIPULATION.—The swap execution facility shall per-*
10 *mit trading only in swaps that are not readily sus-*
11 *ceptible to manipulation.*

12 “(4) *MONITORING OF TRADING AND TRADE PROC-*
13 *ESSING.—The swap execution facility shall—*

14 “(A) *establish and enforce rules or terms*
15 *and conditions defining, or specifications detail-*
16 *ing—*

17 “(i) *trading procedures to be used in*
18 *entering and executing orders traded on or*
19 *through the facilities of the swap execution*
20 *facility; and*

21 “(ii) *procedures for trade processing of*
22 *swaps on or through the facilities of the*
23 *swap execution facility; and*

24 “(B) *monitor trading in swaps to prevent*
25 *manipulation, price distortion, and disruptions*

1 *of the delivery or cash settlement process through*
2 *surveillance, compliance, and disciplinary prac-*
3 *tices and procedures, including methods for con-*
4 *ducting real-time monitoring of trading and*
5 *comprehensive and accurate trade reconstruc-*
6 *tions.*

7 “(5) *ABILITY TO OBTAIN INFORMATION.—The*
8 *swap execution facility shall—*

9 “(A) *establish and enforce rules that will*
10 *allow the facility to obtain any necessary infor-*
11 *mation to perform any of the functions described*
12 *in this section;*

13 “(B) *provide the information to the Com-*
14 *mission on request; and*

15 “(C) *have the capacity to carry out such*
16 *international information-sharing agreements as*
17 *the Commission may require.*

18 “(6) *POSITION LIMITS OR ACCOUNTABILITY.—*

19 “(A) *IN GENERAL.—To reduce the potential*
20 *threat of market manipulation or congestion, es-*
21 *pecially during trading in the delivery month, a*
22 *swap execution facility that is a trading facility*
23 *shall adopt for each of the contracts of the facil-*
24 *ity, as is necessary and appropriate, position*

1 *limitations or position accountability for specu-*
2 *lators.*

3 “(B) *POSITION LIMITS.*—*For any contract*
4 *that is subject to a position limitation estab-*
5 *lished by the Commission pursuant to section*
6 *4a(a), the swap execution facility shall set its po-*
7 *sition limitation at a level no higher than the*
8 *Commission limitation.*

9 “(C) *POSITION ENFORCEMENT.*—*For any*
10 *contract that is subject to a position limitation*
11 *established by the Commission pursuant to sec-*
12 *tion 4a(a), a swap execution facility shall reject*
13 *any proposed swap transaction if, based on in-*
14 *formation readily available to a swap execution*
15 *facility, any proposed swap transaction would*
16 *cause a swap execution facility customer that*
17 *would be a party to such swap transaction to ex-*
18 *ceed such position limitation.*

19 “(7) *FINANCIAL INTEGRITY OF TRANSACTIONS.*—
20 *The swap execution facility shall establish and enforce*
21 *rules and procedures for ensuring the financial integ-*
22 *egrity of swaps entered on or through the facilities of*
23 *the swap execution facility, including the clearance*
24 *and settlement of the swaps pursuant to section*
25 *2(h)(1).*

1 “(8) *EMERGENCY AUTHORITY.*—*The swap execu-*
2 *tion facility shall adopt rules to provide for the exer-*
3 *cise of emergency authority, in consultation or co-*
4 *operation with the Commission, as is necessary and*
5 *appropriate, including the authority to liquidate or*
6 *transfer open positions in any swap or to suspend or*
7 *curtail trading in a swap.*

8 “(9) *TIMELY PUBLICATION OF TRADING INFOR-*
9 *MATION.*—

10 “(A) *IN GENERAL.*—*The swap execution fa-*
11 *cility shall make public timely information on*
12 *price, trading volume, and other trading data on*
13 *swaps to the extent prescribed by the Commis-*
14 *sion.*

15 “(B) *CAPACITY OF SWAP EXECUTION FACIL-*
16 *ITY.*—*The swap execution facility shall be re-*
17 *quired to have the capacity to electronically cap-*
18 *ture trade information with respect to trans-*
19 *actions executed on the facility.*

20 “(10) *RECORDKEEPING AND REPORTING.*—

21 “(A) *IN GENERAL.*—*A swap execution facil-*
22 *ity shall—*

23 “(i) *maintain records of all activities*
24 *relating to the business of the facility, in-*
25 *cluding a complete audit trail, in a form*

1 *and manner acceptable to the Commission*
2 *for a period of 5 years; and*

3 “(ii) *report to the Commission, in a*
4 *form and manner acceptable to the Commis-*
5 *sion, such information as the Commission*
6 *determines to be necessary or appropriate*
7 *for the Commission to perform the duties of*
8 *the Commission under this Act.*

9 “(B) *REQUIREMENTS.—The Commission*
10 *shall adopt data collection and reporting re-*
11 *quirements for swap execution facilities that are*
12 *comparable to corresponding requirements for de-*
13 *rivatives clearing organizations and swap data*
14 *repositories.*

15 “(11) *ANTITRUST CONSIDERATIONS.—Unless nec-*
16 *essary or appropriate to achieve the purposes of this*
17 *Act, the swap execution facility shall not—*

18 “(A) *adopt any rules or taking any actions*
19 *that result in any unreasonable restraint of*
20 *trade; or*

21 “(B) *impose any material anticompetitive*
22 *burden on trading or clearing.*

23 “(12) *CONFLICTS OF INTEREST.—The swap exe-*
24 *cution facility shall—*

1 “(A) *establish and enforce rules to minimize*
2 *conflicts of interest in its decision-making proc-*
3 *ess; and*

4 “(B) *establish a process for resolving the*
5 *conflicts of interest.*

6 “(13) *FINANCIAL RESOURCES.—*

7 “(A) *IN GENERAL.—The swap execution fa-*
8 *cility shall have adequate financial, operational,*
9 *and managerial resources to discharge each re-*
10 *responsibility of the swap execution facility.*

11 “(B) *DETERMINATION OF RESOURCE ADE-*
12 *QUACY.—The financial resources of a swap exe-*
13 *cution facility shall be considered to be adequate*
14 *if the value of the financial resources exceeds the*
15 *total amount that would enable the swap execu-*
16 *tion facility to cover the operating costs of the*
17 *swap execution facility for a 1-year period, as*
18 *calculated on a rolling basis.*

19 “(14) *SYSTEM SAFEGUARDS.—The swap execu-*
20 *tion facility shall—*

21 “(A) *establish and maintain a program of*
22 *risk analysis and oversight to identify and mini-*
23 *mize sources of operational risk, through the de-*
24 *velopment of appropriate controls and proce-*
25 *dures, and automated systems, that—*

1 “(i) are reliable and secure; and

2 “(ii) have adequate scalable capacity;

3 “(B) establish and maintain emergency pro-
4 cedures, backup facilities, and a plan for disaster
5 recovery that are designed to allow for—

6 “(i) the timely recovery and resump-
7 tion of operations; and

8 “(ii) the fulfillment of the responsibil-
9 ities and obligation of the swap execution
10 facility; and

11 “(C) periodically conduct tests to verify that
12 the backup resources of the swap execution facil-
13 ity are sufficient to ensure continued—

14 “(i) order processing and trade match-
15 ing;

16 “(ii) price reporting;

17 “(iii) market surveillance and

18 “(iv) maintenance of a comprehensive
19 and accurate audit trail.

20 “(15) DESIGNATION OF CHIEF COMPLIANCE OFFI-
21 CER.—

22 “(A) IN GENERAL.—Each swap execution
23 facility shall designate an individual to serve as
24 a chief compliance officer.

1 “(B) *DUTIES.*—*The chief compliance officer*
2 *shall—*

3 “(i) *report directly to the board or to*
4 *the senior officer of the facility;*

5 “(ii) *review compliance with the core*
6 *principles in this subsection;*

7 “(iii) *in consultation with the board of*
8 *the facility, a body performing a function*
9 *similar to that of a board, or the senior offi-*
10 *cer of the facility, resolve any conflicts of*
11 *interest that may arise;*

12 “(iv) *be responsible for establishing*
13 *and administering the policies and proce-*
14 *dures required to be established pursuant to*
15 *this section;*

16 “(v) *ensure compliance with this Act*
17 *and the rules and regulations issued under*
18 *this Act, including rules prescribed by the*
19 *Commission pursuant to this section; and*

20 “(vi) *establish procedures for the reme-*
21 *diation of noncompliance issues found dur-*
22 *ing compliance office reviews, look backs,*
23 *internal or external audit findings, self-re-*
24 *ported errors, or through validated com-*
25 *plaints.*

1 “(C) *REQUIREMENTS FOR PROCEDURES.*—
2 *In establishing procedures under subparagraph*
3 *(B)(vi), the chief compliance officer shall design*
4 *the procedures to establish the handling, manage-*
5 *ment response, remediation, retesting, and clos-*
6 *ing of noncompliance issues.*

7 “(D) *ANNUAL REPORTS.*—

8 “(i) *IN GENERAL.*—*In accordance with*
9 *rules prescribed by the Commission, the*
10 *chief compliance officer shall annually pre-*
11 *pare and sign a report that contains a de-*
12 *scription of—*

13 “(I) *the compliance of the swap*
14 *execution facility with this Act; and*

15 “(II) *the policies and procedures,*
16 *including the code of ethics and con-*
17 *flict of interest policies, of the swap*
18 *execution facility.*

19 “(ii) *REQUIREMENTS.*—*The chief com-*
20 *pliance officer shall—*

21 “(I) *submit each report described*
22 *in clause (i) with the appropriate fi-*
23 *nancial report of the swap execution*
24 *facility that is required to be submitted*

1 to the Commission pursuant to this
2 section; and

3 “(II) include in the report a cer-
4 tification that, under penalty of law,
5 the report is accurate and complete.

6 “(e) *EXEMPTIONS.*—The Commission may exempt,
7 conditionally or unconditionally, a swap execution facility
8 from registration under this section if the Commission finds
9 that the facility is subject to comparable, comprehensive su-
10 pervision and regulation on a consolidated basis by the Se-
11 curities and Exchange Commission, a prudential regulator,
12 or the appropriate governmental authorities in the home
13 country of the facility.

14 “(f) *RULES.*—The Commission shall prescribe rules
15 governing the regulation of alternative swap execution fa-
16 cilities under this section.”.

17 **SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILI-**
18 **TIES AND EXEMPT BOARDS OF TRADE.**

19 (a) *IN GENERAL.*—Sections 5a and 5d of the Com-
20 modity Exchange Act (7 U.S.C. 7a, 7a–3) are repealed.

21 (b) *CONFORMING AMENDMENTS.*—

22 (1) Section 2 of the Commodity Exchange Act (7
23 U.S.C. 2) is amended—

24 (A) in subsection (a)(1)(A), in the first sen-
25 tence, by striking “or 5a”; and

1 (B) in paragraph (2) of subsection (g) (as
 2 redesignated by section 723(a)(1)(B)), by strik-
 3 ing “section 5a of this Act” and all that follows
 4 through “5d of this Act” and inserting “section
 5 5b of this Act”.

6 (2) Section 6(g)(1)(A) of the Securities Exchange
 7 Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is amended—

8 (A) by striking “that—” and all that fol-
 9 lows through “(i) has been designated” and in-
 10 serting “that has been designated”;

11 (B) by striking “; or” and inserting “; and”
 12 and

13 (C) by striking clause (ii).

14 **SEC. 735. DESIGNATED CONTRACT MARKETS.**

15 (a) *CRITERIA FOR DESIGNATION.*—Section 5 of the
 16 Commodity Exchange Act (7 U.S.C. 7) is amended by strik-
 17 ing subsection (b).

18 (b) *CORE PRINCIPLES FOR CONTRACT MARKETS.*—
 19 Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is
 20 amended by striking subsection (d) and inserting the fol-
 21 lowing:

22 “(d) *CORE PRINCIPLES FOR CONTRACT MARKETS.*—

23 “(1) *DESIGNATION AS CONTRACT MARKET.*—

1 “(A) *IN GENERAL.*—*To be designated, and*
2 *maintain a designation, as a contract market, a*
3 *board of trade shall comply with—*

4 “(i) *any core principle described in*
5 *this subsection; and*

6 “(ii) *any requirement that the Com-*
7 *mission may impose by rule or regulation*
8 *pursuant to section 8a(5).*

9 “(B) *REASONABLE DISCRETION OF CON-*
10 *TRACT MARKET.*—*Unless otherwise determined*
11 *by the Commission by rule or regulation, a*
12 *board of trade described in subparagraph (A)*
13 *shall have reasonable discretion in establishing*
14 *the manner in which the board of trade complies*
15 *with the core principles described in this sub-*
16 *section.*

17 “(2) *COMPLIANCE WITH RULES.*—

18 “(A) *IN GENERAL.*—*The board of trade*
19 *shall establish, monitor, and enforce compliance*
20 *with the rules of the contract market, includ-*
21 *ing—*

22 “(i) *access requirements;*

23 “(ii) *the terms and conditions of any*
24 *contracts to be traded on the contract mar-*
25 *ket; and*

1 “(iii) rules prohibiting abusive trade
2 practices on the contract market.

3 “(B) CAPACITY OF CONTRACT MARKET.—
4 The board of trade shall have the capacity to de-
5 tect, investigate, and apply appropriate sanc-
6 tions to any person that violates any rule of the
7 contract market.

8 “(C) REQUIREMENT OF RULES.—The rules
9 of the contract market shall provide the board of
10 trade with the ability and authority to obtain
11 any necessary information to perform any func-
12 tion described in this subsection, including the
13 capacity to carry out such international infor-
14 mation-sharing agreements as the Commission
15 may require.

16 “(3) CONTRACTS NOT READILY SUBJECT TO MA-
17 NIPULATION.—The board of trade shall list on the
18 contract market only contracts that are not readily
19 susceptible to manipulation.

20 “(4) PREVENTION OF MARKET DISRUPTION.—The
21 board of trade shall have the capacity and responsi-
22 bility to prevent manipulation, price distortion, and
23 disruptions of the delivery or cash-settlement process
24 through market surveillance, compliance, and enforce-
25 ment practices and procedures, including—

1 “(A) *methods for conducting real-time mon-*
2 *itoring of trading; and*

3 “(B) *comprehensive and accurate trade re-*
4 *constructions.*

5 “(5) *POSITION LIMITATIONS OR ACCOUNT-*
6 *ABILITY.—*

7 “(A) *IN GENERAL.—To reduce the potential*
8 *threat of market manipulation or congestion (es-*
9 *pecially during trading in the delivery month),*
10 *the board of trade shall adopt for each contract*
11 *of the board of trade, as is necessary and appro-*
12 *priate, position limitations or position account-*
13 *ability for speculators.*

14 “(B) *MAXIMUM ALLOWABLE POSITION LIM-*
15 *TATION.—For any contract that is subject to a*
16 *position limitation established by the Commis-*
17 *sion pursuant to section 4a(a), the board of trade*
18 *shall set the position limitation of the board of*
19 *trade at a level not higher than the position lim-*
20 *itation established by the Commission.*

21 “(6) *EMERGENCY AUTHORITY.—The board of*
22 *trade, in consultation or cooperation with the Com-*
23 *mission, shall adopt rules to provide for the exercise*
24 *of emergency authority, as is necessary and appro-*
25 *priate, including the authority—*

1 “(A) to liquidate or transfer open positions
2 in any contract;

3 “(B) to suspend or curtail trading in any
4 contract; and

5 “(C) to require market participants in any
6 contract to meet special margin requirements.

7 “(7) AVAILABILITY OF GENERAL INFORMATION.—
8 The board of trade shall make available to market au-
9 thorities, market participants, and the public accu-
10 rate information concerning—

11 “(A) the terms and conditions of the con-
12 tracts of the contract market; and

13 “(B)(i) the rules, regulations, and mecha-
14 nisms for executing transactions on or through
15 the facilities of the contract market; and

16 “(ii) the rules and specifications describing
17 the operation of the contract market’s—

18 “(I) electronic matching platform; or

19 “(II) trade execution facility.

20 “(8) DAILY PUBLICATION OF TRADING INFORMA-
21 TION.—The board of trade shall make public daily in-
22 formation on settlement prices, volume, open interest,
23 and opening and closing ranges for actively traded
24 contracts on the contract market.

25 “(9) EXECUTION OF TRANSACTIONS.—

1 “(A) *IN GENERAL.*—*The board of trade*
2 *shall provide a competitive, open, and efficient*
3 *market and mechanism for executing trans-*
4 *actions that protects the price discovery process*
5 *of trading in the centralized market of the board*
6 *of trade.*

7 “(B) *RULES.*—*The rules of the board of*
8 *trade may authorize, for bona fide business pur-*
9 *poses—*

10 “(i) *transfer trades or office trades;*

11 “(ii) *an exchange of—*

12 “(I) *futures in connection with a*
13 *cash commodity transaction;*

14 “(II) *futures for cash commod-*
15 *ities; or*

16 “(III) *futures for swaps; or*

17 “(iii) *a futures commission merchant,*
18 *acting as principal or agent, to enter into*
19 *or confirm the execution of a contract for*
20 *the purchase or sale of a commodity for fu-*
21 *ture delivery if the contract is reported, re-*
22 *corded, or cleared in accordance with the*
23 *rules of the contract market or a derivatives*
24 *clearing organization.*

1 “(10) *TRADE INFORMATION.*—*The board of trade*
2 *shall maintain rules and procedures to provide for the*
3 *recording and safe storage of all identifying trade in-*
4 *formation in a manner that enables the contract mar-*
5 *ket to use the information—*

6 “(A) *to assist in the prevention of customer*
7 *and market abuses; and*

8 “(B) *to provide evidence of any violations of*
9 *the rules of the contract market.*

10 “(11) *FINANCIAL INTEGRITY OF TRANS-*
11 *ACTIONS.*—*The board of trade shall establish and en-*
12 *force—*

13 “(A) *rules and procedures for ensuring the*
14 *financial integrity of transactions entered into*
15 *on or through the facilities of the contract market*
16 *(including the clearance and settlement of the*
17 *transactions with a derivatives clearing organi-*
18 *zation); and*

19 “(B) *rules to ensure—*

20 “(i) *the financial integrity of any—*

21 “(I) *futures commission merchant;*

22 *and*

23 “(II) *introducing broker; and*

24 “(ii) *the protection of customer funds.*

1 “(12) *PROTECTION OF MARKETS AND MARKET*
2 *PARTICIPANTS.—The board of trade shall establish*
3 *and enforce rules—*

4 “(A) *to protect markets and market partici-*
5 *pants from abusive practices committed by any*
6 *party, including abusive practices committed by*
7 *a party acting as an agent for a participant;*
8 *and*

9 “(B) *to promote fair and equitable trading*
10 *on the contract market.*

11 “(13) *DISCIPLINARY PROCEDURES.—The board*
12 *of trade shall establish and enforce disciplinary proce-*
13 *dures that authorize the board of trade to discipline,*
14 *suspend, or expel members or market participants*
15 *that violate the rules of the board of trade, or similar*
16 *methods for performing the same functions, including*
17 *delegation of the functions to third parties.*

18 “(14) *DISPUTE RESOLUTION.—The board of*
19 *trade shall establish and enforce rules regarding, and*
20 *provide facilities for alternative dispute resolution as*
21 *appropriate for, market participants and any market*
22 *intermediaries.*

23 “(15) *GOVERNANCE FITNESS STANDARDS.—The*
24 *board of trade shall establish and enforce appropriate*
25 *fitness standards for directors, members of any dis-*

1 *ciplinary committee, members of the contract market,*
2 *and any other person with direct access to the facility*
3 *(including any party affiliated with any person de-*
4 *scribed in this paragraph).*

5 “(16) *CONFLICTS OF INTEREST.*—*The board of*
6 *trade shall establish and enforce rules—*

7 “(A) *to minimize conflicts of interest in the*
8 *decision-making process of the contract market;*
9 *and*

10 “(B) *to establish a process for resolving con-*
11 *licts of interest described in subparagraph (A).*

12 “(17) *COMPOSITION OF GOVERNING BOARDS OF*
13 *CONTRACT MARKETS.*—*The governance arrangements*
14 *of the board of trade shall be designed to promote the*
15 *objectives of market participants.*

16 “(18) *RECORDKEEPING.*—*The board of trade*
17 *shall maintain records of all activities relating to the*
18 *business of the contract market—*

19 “(A) *in a form and manner that is accept-*
20 *able to the Commission; and*

21 “(B) *for a period of at least 5 years.*

22 “(19) *ANTITRUST CONSIDERATIONS.*—*Unless nec-*
23 *essary or appropriate to achieve the purposes of this*
24 *Act, the board of trade shall not—*

1 “(A) adopt any rule or taking any action
2 that results in any unreasonable restraint of
3 trade; or

4 “(B) impose any material anticompetitive
5 burden on trading on the contract market.

6 “(20) *SYSTEM SAFEGUARDS*.—The board of trade
7 shall—

8 “(A) establish and maintain a program of
9 risk analysis and oversight to identify and mini-
10 mize sources of operational risk, through the de-
11 velopment of appropriate controls and proce-
12 dures, and the development of automated sys-
13 tems, that are reliable, secure, and have adequate
14 scalable capacity;

15 “(B) establish and maintain emergency pro-
16 cedures, backup facilities, and a plan for disaster
17 recovery that allow for the timely recovery and
18 resumption of operations and the fulfillment of
19 the responsibilities and obligations of the board
20 of trade; and

21 “(C) periodically conduct tests to verify that
22 backup resources are sufficient to ensure contin-
23 ued order processing and trade matching, price
24 reporting, market surveillance, and maintenance
25 of a comprehensive and accurate audit trail.

1 “(21) *FINANCIAL RESOURCES.*—

2 “(A) *IN GENERAL.*—*The board of trade*
3 *shall have adequate financial, operational, and*
4 *managerial resources to discharge each responsi-*
5 *bility of the board of trade.*

6 “(B) *DETERMINATION OF ADEQUACY.*—*The*
7 *financial resources of the board of trade shall be*
8 *considered to be adequate if the value of the fi-*
9 *nancial resources exceeds the total amount that*
10 *would enable the contract market to cover the op-*
11 *erating costs of the contract market for a 1-year*
12 *period, as calculated on a rolling basis.”.*

13 **SEC. 736. MARGIN.**

14 *Section 8a(7) of the Commodity Exchange Act (7*
15 *U.S.C. 12a(7)) is amended—*

16 (1) *in subparagraph (C), by striking “, excepting*
17 *the setting of levels of margin”;*

18 (2) *by redesignating subparagraphs (D) through*
19 *(F) as subparagraphs (E) through (G), respectively;*
20 *and*

21 (3) *by inserting after subparagraph (C) the fol-*
22 *lowing:*

23 “(D) *margin requirements, provided that*
24 *the rules, regulations, or orders shall—*

1 “(i) be limited to protecting the finan-
2 cial integrity of the derivatives clearing or-
3 ganization;

4 “(ii) be designed for risk management
5 purposes to protect the financial integrity of
6 transactions; and

7 “(iii) not set specific margin
8 amounts;”.

9 **SEC. 737. POSITION LIMITS.**

10 (a) *AGGREGATE POSITION LIMITS.*—Section 4a(a) of
11 *the Commodity Exchange Act (7 U.S.C. 6a(a)) is amend-*
12 *ed—*

13 (1) *by inserting after “(a)” the following:*

14 “(1) *IN GENERAL.*—”;

15 (2) *in the first sentence, by striking “on elec-*
16 *tronic trading facilities with respect to a significant*
17 *price discovery contract” and inserting “swaps that*
18 *perform or affect a significant price discovery func-*
19 *tion with respect to registered entities”;*

20 (3) *in the second sentence—*

21 (A) *by inserting “, including any group or*
22 *class of traders,” after “held by any person”; and*

23 (B) *by striking “on an electronic trading*
24 *facility with respect to a significant price dis-*
25 *covery contract,” and inserting “swaps traded on*

1 *or subject to the rules of an swaps execution fa-*
2 *cility, or swaps not traded on or subject to the*
3 *rules of an swaps execution facility that perform*
4 *a significant price discovery function with re-*
5 *spect to a registered entity,”; and*

6 *(4) by adding at the end the following:*

7 *“(2) AGGREGATE POSITION LIMITS.—The Com-*
8 *mission shall, by rule or regulation, establish limits*
9 *(including related hedge exemption provisions) on the*
10 *aggregate number or amount of positions in contracts*
11 *based on the same underlying commodity (as defined*
12 *by the Commission) that may be held by any person,*
13 *including any group or class of traders, for each*
14 *month across—*

15 *“(A) contracts listed by designated contract*
16 *markets;*

17 *“(B) with respect to an agreement, contract,*
18 *or transaction that settles against, or in relation*
19 *to, any price (including the daily or final settle-*
20 *ment price) of 1 or more contracts listed for*
21 *trading on a registered entity, contracts traded*
22 *on a foreign board of trade that provides mem-*
23 *bers or other participants located in the United*
24 *States with direct access to the electronic trading*

1 *and order matching system of the foreign board*
2 *of trade;*

3 “(C) *swaps traded on or subject to the rules*
4 *of a swap execution facility; and*

5 “(D) *swaps not traded on or subject to the*
6 *rules of a swap execution facility that perform or*
7 *affect a significant price discovery function with*
8 *respect to a registered entity.*

9 “(3) *SIGNIFICANT PRICE DISCOVERY FUNC-*
10 *TION.—In making a determination as to whether a*
11 *swap performs or affects a significant price discovery*
12 *function with respect to registered entities, the Com-*
13 *mission shall consider, as appropriate, the following*
14 *factors:*

15 “(A) *PRICE LINKAGE.—The extent to which*
16 *the swap uses or otherwise relies on a daily or*
17 *final settlement price, or other major price pa-*
18 *rameter, of another contract traded on a reg-*
19 *istered entity based on the same underlying com-*
20 *modity, to value a position, transfer or convert*
21 *a position, financially settle a position, or close*
22 *out a position.*

23 “(B) *ARBITRAGE.—The extent to which the*
24 *price for the swap is sufficiently related to the*
25 *price of another contract traded on a registered*

1 *entity based on the same underlying commodity*
2 *so as to permit market participants to effectively*
3 *arbitrage between the markets by simultaneously*
4 *maintaining positions or executing trades in the*
5 *swaps on a frequent and recurring basis.*

6 “(C) *MATERIAL PRICE REFERENCE.*—*The*
7 *extent to which, on a frequent and recurring*
8 *basis, bids, offers, or transactions in a contract*
9 *traded on a registered entity are directly based*
10 *on, or are determined by referencing, the price*
11 *generated by the swap.*

12 “(D) *MATERIAL LIQUIDITY.*—*The extent to*
13 *which the volume of swaps being traded in the*
14 *commodity is sufficient to have a material effect*
15 *on another contract traded on a registered entity.*

16 “(E) *OTHER MATERIAL FACTORS.*—*Such*
17 *other material factors as the Commission speci-*
18 *fies by rule or regulation as relevant to deter-*
19 *mine whether a swap serves a significant price*
20 *discovery function with respect to a regulated*
21 *market.*

22 “(4) *EXEMPTIONS.*—*The Commission, by rule,*
23 *regulation, or order, may exempt, conditionally or*
24 *unconditionally, any person or class of persons, any*
25 *swap or class of swaps, or any transaction or class*

1 of transactions from any requirement that the Com-
 2 mission establishes under this section with respect to
 3 position limits.”.

4 (b) *CONFORMING AMENDMENTS.*—Section 4a(b) of the
 5 Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

6 (1) in paragraph (1), by striking “or derivatives
 7 transaction execution facility or facilities or electronic
 8 trading facility” and inserting “or swap execution fa-
 9 cility or facilities”; and

10 (2) in paragraph (2), by striking “or derivatives
 11 transaction execution facility or facilities or electronic
 12 trading facility” and inserting “or swap execution fa-
 13 cility”.

14 **SEC. 738. FOREIGN BOARDS OF TRADE.**

15 (a) *IN GENERAL.*—Section 4(b) of the Commodity Ex-
 16 change Act (7 U.S.C. 6(b)) is amended—

17 (1) in the first sentence, by striking “The Com-
 18 mission” and inserting the following:

19 “(2) *PERSONS LOCATED IN THE UNITED*
 20 *STATES.*—

21 “(A) *IN GENERAL.*—The Commission”;

22 (2) in the second sentence, by striking “Such
 23 rules and regulations” and inserting the following:

24 “(B) *DIFFERENT REQUIREMENTS.*—Rules
 25 and regulations described in subparagraph (A)”;

1 (3) *in the third sentence—*

2 (A) *by striking “No rule or regulation” and*
3 *inserting the following:*

4 “(C) *PROHIBITION.—Except as provided in*
5 *paragraphs (1) and (2), no rule or regulation”;*

6 (B) *by striking “that (1) requires” and in-*
7 *serting the following: “that—*

8 *“(i) requires”;* and

9 (C) *by striking “market, or (2) governs”*
10 *and inserting the following: “market; or*

11 *“(ii) governs”;* and

12 (4) *by inserting before paragraph (2) (as des-*
13 *ignated by paragraph (1)) the following:*

14 “(1) *FOREIGN BOARDS OF TRADE.—*

15 “(A) *IN GENERAL.—It shall be unlawful for*
16 *a foreign board of trade to provide to the mem-*
17 *bers of the foreign board of trade or other par-*
18 *ticipants located in the United States direct ac-*
19 *cess to the electronic trading and order-matching*
20 *system of the foreign board of trade with respect*
21 *to an agreement, contract, or transaction that*
22 *settles against any price (including the daily or*
23 *final settlement price) of 1 or more contracts*
24 *listed for trading on a registered entity, unless*
25 *the Commission determines that—*

1 “(i) the foreign board of trade makes
2 public daily trading information regarding
3 the agreement, contract, or transaction that
4 is comparable to the daily trading informa-
5 tion published by the registered entity for
6 the 1 or more contracts against which the
7 agreement, contract, or transaction traded
8 on the foreign board of trade settles; and

9 “(ii) the foreign board of trade (or the
10 foreign futures authority that oversees the
11 foreign board of trade)—

12 “(I) adopts position limits (in-
13 cluding related hedge exemption provi-
14 sions) for the agreement, contract, or
15 transaction that are comparable to the
16 position limits (including related hedge
17 exemption provisions) adopted by the
18 registered entity for the 1 or more con-
19 tracts against which the agreement,
20 contract, or transaction traded on the
21 foreign board of trade settles;

22 “(II) has the authority to require
23 or direct market participants to limit,
24 reduce, or liquidate any position the
25 foreign board of trade (or the foreign

1 *futures authority that oversees the for-*
2 *ign board of trade) determines to be*
3 *necessary to prevent or reduce the*
4 *threat of price manipulation, excessive*
5 *speculation as described in section 4a,*
6 *price distortion, or disruption of deliv-*
7 *ery or the cash settlement process;*

8 *“(III) agrees to promptly notify*
9 *the Commission, with regard to the*
10 *agreement, contract, or transaction*
11 *that settles against any price (includ-*
12 *ing the daily or final settlement price)*
13 *of 1 or more contracts listed for trad-*
14 *ing on a registered entity, of any*
15 *change regarding—*

16 *“(aa) the information that*
17 *the foreign board of trade will*
18 *make publicly available;*

19 *“(bb) the position limits that*
20 *the foreign board of trade or for-*
21 *ign futures authority will adopt*
22 *and enforce;*

23 *“(cc) the position reductions*
24 *required to prevent manipulation,*
25 *excessive speculation as described*

1 *in section 4a, price distortion, or*
2 *disruption of delivery or the cash*
3 *settlement process; and*

4 *“(dd) any other area of in-*
5 *terest expressed by the Commis-*
6 *sion to the foreign board of trade*
7 *or foreign futures authority;*

8 *“(IV) provides information to the*
9 *Commission regarding large trader po-*
10 *sitions in the agreement, contract, or*
11 *transaction that is comparable to the*
12 *large trader position information col-*
13 *lected by the Commission for the 1 or*
14 *more contracts against which the*
15 *agreement, contract, or transaction*
16 *traded on the foreign board of trade*
17 *settles; and*

18 *“(V) provides the Commission*
19 *such information as is necessary to*
20 *publish reports on aggregate trader po-*
21 *sitions for the agreement, contract, or*
22 *transaction traded on the foreign board*
23 *of trade that are comparable to such*
24 *reports on aggregate trader positions*
25 *for the 1 or more contracts against*

1 *which the agreement, contract, or*
2 *transaction traded on the foreign board*
3 *of trade settles.*

4 “(B) *EXISTING FOREIGN BOARDS OF*
5 *TRADE.—Subparagraph (A) shall not be effective*
6 *with respect to any foreign board of trade to*
7 *which, prior to the date of enactment of this*
8 *paragraph, the Commission granted direct access*
9 *permission until the date that is 180 days after*
10 *that date of enactment.”.*

11 (b) *LIABILITY OF REGISTERED PERSONS TRADING ON*
12 *A FOREIGN BOARD OF TRADE.—Section 4 of the Com-*
13 *modity Exchange Act (7 U.S.C. 6) is amended—*

14 (1) *in subsection (a), in the matter preceding*
15 *paragraph (1), by inserting “or by subsection (e)”*
16 *after “Unless exempted by the Commission pursuant*
17 *to subsection (c)”;* and

18 (2) *by adding at the end the following:*

19 “(e) *LIABILITY OF REGISTERED PERSONS TRADING ON*
20 *A FOREIGN BOARD OF TRADE.—A person registered with*
21 *the Commission, or exempt from registration by the Com-*
22 *mission, under this Act may not be found to have violated*
23 *subsection (a) with respect to a transaction in, or in connec-*
24 *tion with, a contract of sale of a commodity for future deliv-*
25 *ery if the person has reason to believe that the transaction*

1 *and the contract is made on or subject to the rules of a*
2 *foreign board of trade that has complied with paragraphs*
3 *(1) and (2) of subsection (b).”.*

4 *(c) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES*
5 *CONTRACTS.—Section 22(a) of the Commodity Exchange*
6 *Act (7 U.S.C. 25(a)) (as amended by section 739) is amend-*
7 *ed by adding at the end the following:*

8 *“(6) CONTRACT ENFORCEMENT FOR FOREIGN FU-*
9 *TURES CONTRACTS.—A contract of sale of a com-*
10 *modity for future delivery traded or executed on or*
11 *through the facilities of a board of trade, exchange, or*
12 *market located outside the United States for purposes*
13 *of section 4(a) shall not be void, voidable, or unen-*
14 *forceable, and a party to such a contract shall not be*
15 *entitled to rescind or recover any payment made with*
16 *respect to the contract, based on the failure of the for-*
17 *foreign board of trade to comply with any provision of*
18 *this Act.”.*

19 **SEC. 739. LEGAL CERTAINTY FOR SWAPS.**

20 *Section 22(a) of the Commodity Exchange Act (7*
21 *U.S.C. 25(a)) is amended by striking paragraph (4) and*
22 *inserting the following:*

23 *“(4) CONTRACT ENFORCEMENT BETWEEN ELIGI-*
24 *BLE COUNTERPARTIES.—*

1 “(A) *IN GENERAL.*—No hybrid instrument
2 sold to any investor shall be void, voidable, or
3 unenforceable, and no party to a hybrid instru-
4 ment shall be entitled to rescind, or recover any
5 payment made with respect to, the hybrid instru-
6 ment under this section or any other provision
7 of Federal or State law, based solely on the fail-
8 ure of the hybrid instrument to comply with the
9 terms or conditions of section 2(f) or regulations
10 of the Commission.

11 “(B) *SWAPS.*—No agreement, contract, or
12 transaction between eligible contract partici-
13 pants or persons reasonably believed to be eligi-
14 ble contract participants shall be void, voidable,
15 or unenforceable, and no party to an agreement,
16 contract, or transaction shall be entitled to re-
17 scind, or recover any payment made with respect
18 to, the agreement, contract, or transaction under
19 this section or any other provision of Federal or
20 State law, based solely on the failure of the
21 agreement, contract, or transaction—

22 “(i) to meet the definition of a swap
23 under section 1a; or

24 “(ii) to be cleared in accordance with
25 section 2(h)(1).

1 “(5) *LEGAL CERTAINTY FOR LONG-TERM SWAPS*
2 *ENTERED INTO BEFORE THE DATE OF ENACTMENT OF*
3 *THE WALL STREET TRANSPARENCY AND ACCOUNT-*
4 *ABILITY ACT OF 2010.*—

5 “(A) *IN GENERAL.*—*Any swap entered into*
6 *before the date of enactment of the Wall Street*
7 *Transparency and Accountability Act of 2010,*
8 *the terms of which have not expired as of the*
9 *date of enactment, shall not be subject to the*
10 *mandatory clearing requirements under this Act.*

11 “(B) *EFFECT ON SWAPS.*—*Unless specifi-*
12 *cally reserved in the applicable bilateral trading*
13 *agreement, neither the enactment of the Wall*
14 *Street Transparency and Accountability Act of*
15 *2010, nor any requirement under that Act or an*
16 *amendment made by that Act, shall constitute a*
17 *termination event, force majeure, illegality, in-*
18 *creased costs, regulatory change, or similar event*
19 *under a bilateral trading agreement (including*
20 *any related credit support arrangement) that*
21 *would permit a party to terminate, renegotiate,*
22 *modify, amend, or supplement 1 or more trans-*
23 *actions under the bilateral trading agreement.*

24 “(C) *POSITION LIMITS.*—*Any position limit*
25 *established under the Wall Street Transparency*

1 *and Accountability Act of 2010 shall not apply*
2 *to a position acquired in good faith prior to the*
3 *effective date of any rule, regulation, or order*
4 *under the Act that establishes the position limit;*
5 *provided, however, that such positions shall be*
6 *attributed to the trader if the trader’s position is*
7 *increased after the effective date such position*
8 *limit rule, regulation, or order.”.*

9 **SEC. 740. MULTILATERAL CLEARING ORGANIZATIONS.**

10 *Sections 408 and 409 of the Federal Deposit Insurance*
11 *Corporation Improvement Act of 1991 (12 U.S.C. 4421,*
12 *4422) are repealed.*

13 **SEC. 741. ENFORCEMENT.**

14 *(a) ENFORCEMENT AUTHORITY.—The Commodity Ex-*
15 *change Act is amended by inserting after section 4b (7*
16 *U.S.C. 6b) the following:*

17 **“SEC. 4b–1. ENFORCEMENT AUTHORITY.**

18 *“(a) COMMISSION.—Except as provided in subsections*
19 *(b), (c), and (d), the Commission shall have primary au-*
20 *thority to enforce the amendments made by the Wall Street*
21 *Transparency and Accountability Act of 2010 with respect*
22 *to any person.*

23 *“(b) APPROPRIATE FEDERAL BANKING AGENCIES.—*
24 *The appropriate Federal banking agency for swap dealers*
25 *or major swap participants that are depository institu-*

1 tions, as that term is defined under section 3 of the Federal
2 Deposit Insurance Act (12 U.S.C. 1813), shall have exclu-
3 sive authority to enforce the provisions of section 4s(e) and
4 other prudential requirements of this Act, with respect to
5 depository institutions that are swap dealers or major swap
6 participants.

7 “(c) REFERRALS.—

8 “(1) PRUDENTIAL REGULATORS.—If the pruden-
9 tial regulator for a swap dealer or major swap partic-
10 ipant has cause to believe that the swap dealer or
11 major swap participant, or any affiliate or division
12 of the swap dealer or major swap participant, may
13 have engaged in conduct that constitutes a violation
14 of the nonprudential requirements of this Act (includ-
15 ing section 4s or rules adopted by the Commission
16 under that section), the prudential regulator shall
17 promptly notify the Commission in a written report
18 that includes—

19 “(A) a request that the Commission initiate
20 an enforcement proceeding under this Act; and

21 “(B) an explanation of the facts and cir-
22 cumstances that led to the preparation of the
23 written report.

24 “(2) COMMISSION.—If the Commission has cause
25 to believe that a swap dealer or major swap partici-

1 *part that has a prudential regulator may have en-*
2 *gaged in conduct that constitutes a violation of any*
3 *prudential requirement of section 4s or rules adopted*
4 *by the Commission under that section, the Commis-*
5 *sion may notify the prudential regulator of the con-*
6 *duct in a written report that includes—*

7 “(A) a request that the prudential regulator
8 initiate an enforcement proceeding under this
9 Act or any other Federal law (including regula-
10 tions); and

11 “(B) an explanation of the concerns of the
12 Commission, and a description of the facts and
13 circumstances, that led to the preparation of the
14 written report.

15 “(d) *BACKSTOP ENFORCEMENT AUTHORITY.—*

16 “(1) *INITIATION OF ENFORCEMENT PROCEEDING*
17 *BY PRUDENTIAL REGULATOR.—If the Commission*
18 *does not initiate an enforcement proceeding before the*
19 *end of the 90-day period beginning on the date on*
20 *which the Commission receives a written report under*
21 *subsection (c)(1), the prudential regulator may ini-*
22 *tiate an enforcement proceeding.*

23 “(2) *INITIATION OF ENFORCEMENT PROCEEDING*
24 *BY COMMISSION.—If the prudential regulator does not*
25 *initiate an enforcement proceeding before the end of*

1 *the 90-day period beginning on the date on which the*
2 *prudential regulator receives a written report under*
3 *subsection (c)(2), the Commission may initiate an en-*
4 *forcement proceeding.”.*

5 **(b) CONFORMING AMENDMENTS.—**

6 *(1) Section 4b of the Commodity Exchange Act*
7 *(7 U.S.C. 6b) is amended—*

8 *(A) in subsection (a)(2), by striking “or*
9 *other agreement, contract, or transaction subject*
10 *to paragraphs (1) and (2) of section 5a(g),” and*
11 *inserting “or swap,”;*

12 *(B) in subsection (b), by striking “or other*
13 *agreement, contract or transaction subject to*
14 *paragraphs (1) and (2) of section 5a(g),” and*
15 *inserting “or swap,”; and*

16 *(C) by adding at the end the following:*

17 *“(e) It shall be unlawful for any person, directly or*
18 *indirectly, by the use of any means or instrumentality of*
19 *interstate commerce, or of the mails, or of any facility of*
20 *any registered entity, in or in connection with any order*
21 *to make, or the making of, any contract of sale of any com-*
22 *modity for future delivery (or option on such a contract),*
23 *or any swap, on a group or index of securities (or any in-*
24 *terest therein or based on the value thereof)—*

1 “(1) to employ any device, scheme, or artifice to
2 defraud;

3 “(2) to make any untrue statement of a material
4 fact or to omit to state a material fact necessary in
5 order to make the statements made, in the light of the
6 circumstances under which they were made, not mis-
7 leading; or

8 “(3) to engage in any act, practice, or course of
9 business which operates or would operate as a fraud
10 or deceit upon any person.”.

11 (2) Section 4c(a)(1) of the *Commodity Exchange*
12 *Act* (7 U.S.C. 6c(a)(1)) is amended by inserting “or
13 swap” before “if the transaction is used or may be
14 used”.

15 (3) Section 6(c) of the *Commodity Exchange Act*
16 (7 U.S.C. 9) is amended in the first sentence by in-
17 sserting “or of any swap,” before “or has willfully
18 made”.

19 (4) Section 6(d) of the *Commodity Exchange Act*
20 (7 U.S.C. 13b) is amended in the first sentence, in the
21 matter preceding the proviso, by inserting “or of any
22 swap,” before “or otherwise is violating”.

23 (5) Section 6c(a) of the *Commodity Exchange*
24 *Act* (7 U.S.C. 13a-1(a)) is amended in the matter

1 preceding the proviso by inserting “or any swap”
2 after “commodity for future delivery”.

3 (6) Section 9 of the Commodity Exchange Act (7
4 U.S.C. 13) is amended—

5 (A) in subsection (a)—

6 (i) in paragraph (2), by inserting “or
7 of any swap,” before “or to corner”; and

8 (ii) in paragraph (4), by inserting
9 “swap data repository,” before “or futures
10 association” and

11 (B) in subsection (e)(1)—

12 (i) by inserting “swap data reposi-
13 tory,” before “or registered futures associa-
14 tion”; and

15 (ii) by inserting “, or swaps,” before
16 “on the basis”.

17 (7) Section 9(a) of the Commodity Exchange Act
18 (7 U.S.C. 13(a)) is amended by adding at the end the
19 following:

20 “(6) Any person to abuse the end user clearing
21 exemption under section 2(h)(4), as determined by the
22 Commission.”.

23 (8) Section 8(b) of the Federal Deposit Insurance
24 Act (12 U.S.C. 1818(b)) is amended by adding at the
25 end the following:

1 “(11) SWAPS.—

2 “(A) *IN GENERAL.*—Subject to subpara-
3 graph (B), this section shall apply to any swap
4 dealer, major swap participant, security-based
5 swap dealer, major security-based swap partici-
6 pant, derivatives clearing organization, swap
7 data repository, or swap execution facility, re-
8 gardless of whether the dealer, participant, orga-
9 nization, repository, or facility is an insured de-
10 pository institution, for which the Board, the
11 Corporation, or the Office of the Comptroller of
12 the Currency is the appropriate Federal banking
13 agency or prudential regulator for purposes of
14 the amendments made by the Wall Street Trans-
15 parency and Accountability Act of 2010.

16 “(B) *LIMITATION.*—The authority described
17 in subparagraph (A) shall be limited by, and ex-
18 ercised in accordance with, section 4b–1 of the
19 Commodity Exchange Act.”.

20 (9) Section 2(c)(2)(B) of the Commodity Ex-
21 change Act (7 U.S.C. 2(c)(2)(B)) is amended—

22 (A) by striking “(dd),” each place it ap-
23 pears;

1 (B) in clause (iii), by inserting “, and ac-
2 counts or pooled investment vehicles described in
3 clause (vi),” before “shall be subject to”; and

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

5 “(vi) This Act applies to, and the
6 Commission shall have jurisdiction over, an
7 account or pooled investment vehicle that is
8 offered for the purpose of trading, or that
9 trades, any agreement, contract, or trans-
10 action in foreign currency described in
11 clause (i).”.

12 (10) Section 2(c)(2)(C) of the Commodity Ex-
13 change Act (7 U.S.C. 2(c)(2)(C)) is amended—

14 (A) by striking “(dd),” each place it ap-
15 pears;

16 (B) in clause (ii)(I), by inserting “, and ac-
17 counts or pooled investment vehicles described in
18 clause (vii),” before “shall be subject to”; and

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

20 “(vii) This Act applies to, and the
21 Commission shall have jurisdiction over, an
22 account or pooled investment vehicle that is
23 offered for the purpose of trading, or that
24 trades, any agreement, contract, or trans-

1 *action in foreign currency described in*
 2 *clause (i).”.*

3 *(11) Section 1a(19)(A)(iv)(II) of the Commodity*
 4 *Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II)) (as reded-*
 5 *signed by section 721(a)(1)) is amended by inserting*
 6 *before the semicolon at the end the following: “pro-*
 7 *vided, however, that for purposes of section*
 8 *2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the term*
 9 *‘eligible contract participant’ shall not include a com-*
 10 *modity pool in which any participant is not other-*
 11 *wise an eligible contract participant”.*

12 **SEC. 742. RETAIL COMMODITY TRANSACTIONS.**

13 *(a) IN GENERAL.—Section 2(c) of the Commodity Ex-*
 14 *change Act (7 U.S.C. 2(c)) is amended—*

15 *(1) in paragraph (1), by striking “(to the extent*
 16 *provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))”*
 17 *and inserting “, 5b, or 12(e)(2)(B))”; and*

18 *(2) in paragraph (2), by adding at the end the*
 19 *following:*

20 *“(D) RETAIL COMMODITY TRANSACTIONS.—*

21 *“(i) APPLICABILITY.—Except as pro-*
 22 *vided in clause (ii), this subparagraph shall*
 23 *apply to any agreement, contract, or trans-*
 24 *action in any commodity that is—*

1 “(I) entered into with, or offered
2 to (even if not entered into with), a
3 person that is not an eligible contract
4 participant or eligible commercial en-
5 tity; and

6 “(II) entered into, or offered (even
7 if not entered into), on a leveraged or
8 marginated basis, or financed by the of-
9 feror, the counterparty, or a person
10 acting in concert with the offeror or
11 counterparty on a similar basis.

12 “(ii) *EXCEPTIONS.*—This subpara-
13 graph shall not apply to—

14 “(I) an agreement, contract, or
15 transaction described in paragraph (1)
16 or subparagraphs (A), (B), or (C), in-
17 cluding any agreement, contract, or
18 transaction specifically excluded from
19 subparagraph (A), (B), or (C);

20 “(II) any security;

21 “(III) a contract of sale that—

22 “(aa) results in actual deliv-
23 ery within 28 days or such other
24 period as the Commission may
25 determine by rule or regulation

1 *based upon the typical commer-*
2 *cial practice in cash or spot mar-*
3 *kets for the commodity involved;*
4 *or*

5 *“(bb) creates an enforceable*
6 *obligation to deliver between a*
7 *seller and a buyer that have the*
8 *ability to deliver and accept deliv-*
9 *ery, respectively, in connection*
10 *with the line of business of the*
11 *seller and buyer; or*

12 *“(IV) an agreement, contract, or*
13 *transaction that is listed on a national*
14 *securities exchange registered under*
15 *section 6(a) of the Securities Exchange*
16 *Act of 1934 (15 U.S.C. 78f(a)); or*

17 *“(V) an identified banking prod-*
18 *uct, as defined in section 402(b) of the*
19 *Legal Certainty for Bank Products Act*
20 *of 2000 (7 U.S.C.27(b)).*

21 *“(iii) ENFORCEMENT.—Sections 4(a),*
22 *4(b), and 4b apply to any agreement, con-*
23 *tract, or transaction described in clause (i),*
24 *as if the agreement, contract, or transaction*

1 *was a contract of sale of a commodity for*
2 *future delivery.*

3 “(iv) *ELIGIBLE COMMERCIAL ENTI-*
4 *TY.—For purposes of this subparagraph, an*
5 *agricultural producer, packer, or handler*
6 *shall be considered to be an eligible commer-*
7 *cial entity for any agreement, contract, or*
8 *transaction for a commodity in connection*
9 *with the line of business of the agricultural*
10 *producer, packer, or handler.*

11 “(v) *ACTUAL DELIVERY.—For purposes*
12 *of clause (ii)(III), the term ‘actual delivery’*
13 *does not include delivery to a third party in*
14 *a financed transaction in which the com-*
15 *modity is held as collateral.”.*

16 (b) *GRAMM-LEACH-BLILEY ACT.—Section 206(a) of*
17 *the Gramm-Leach-Bliley Act (Public Law 106–102; 15*
18 *U.S.C. 78c note) is amended, in the matter preceding para-*
19 *graph (1), by striking “For purposes of” and inserting “Ex-*
20 *cept as provided in subsection (e), for purposes of”.*

21 (c) *CONFORMING AMENDMENTS RELATING TO RETAIL*
22 *FOREIGN EXCHANGE TRANSACTIONS.—*

23 (1) *Section 2(c)(2)(B)(i)(II) of the Commodity*
24 *Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-*
25 *ed—*

1 (A) in item (aa), by inserting “United
2 States” before “financial institution”;

3 (B) by striking items (dd) and (ff);

4 (C) by redesignating items (ee) and (gg) as
5 items (dd) and (ff), respectively; and

6 (D) in item (dd) (as so redesignated), by
7 striking the semicolon and inserting “; or”.

8 (2) Section 2(c)(2) of the Commodity Exchange
9 Act (7 U.S.C. 2(c)(2)) (as amended by subsection
10 (a)(2)) is amended by adding at the end the fol-
11 lowing:

12 “(E) PROHIBITION.—

13 “(i) DEFINITION OF FEDERAL REGU-
14 LATORY AGENCY.—In this subparagraph,
15 the term ‘Federal regulatory agency’
16 means—

17 “(I) the Commission;

18 “(II) the Securities and Exchange
19 Commission;

20 “(III) an appropriate Federal
21 banking agency;

22 “(IV) the National Credit Union
23 Association; and

24 “(V) the Farm Credit Administra-
25 tion.

1 “(ii) *PROHIBITION.*—A person de-
2 scribed in subparagraph (B)(i)(II) for
3 which there is a Federal regulatory agency
4 shall not offer to, or enter into with, a per-
5 son that is not an eligible contract partici-
6 pant, any agreement, contract, or trans-
7 action in foreign currency described in sub-
8 paragraph (B)(i)(I) except pursuant to a
9 rule or regulation of a Federal regulatory
10 agency allowing the agreement, contract, or
11 transaction under such terms and condi-
12 tions as the Federal regulatory agency shall
13 prescribe.

14 “(iii) *REQUIREMENTS OF RULES AND*
15 *REGULATIONS.*—

16 “(I) *IN GENERAL.*—The rules and
17 regulations described in clause (ii)
18 shall prescribe appropriate require-
19 ments with respect to—

20 “(aa) disclosure;

21 “(bb) recordkeeping;

22 “(cc) capital and margin;

23 “(dd) reporting;

24 “(ee) business conduct;

25 “(ff) documentation; and

1 “(gg) such other standards or
2 requirements as the Federal regu-
3 latory agency shall determine to
4 be necessary.

5 “(II) TREATMENT.—The rules or
6 regulations described in clause (ii)
7 shall treat all agreements, contracts,
8 and transactions in foreign currency
9 described in subparagraph (B)(i)(I),
10 and all agreements, contracts, and
11 transactions in foreign currency that
12 are functionally or economically simi-
13 lar to agreements, contracts, or trans-
14 actions described in subparagraph
15 (B)(i)(I), similarly.”.

16 **SEC. 743. OTHER AUTHORITY.**

17 *Unless otherwise provided by the amendments made by*
18 *this subtitle, the amendments made by this subtitle do not*
19 *divest any appropriate Federal banking agency, the Com-*
20 *modity Futures Trading Commission, the Securities and*
21 *Exchange Commission, or other Federal or State agency of*
22 *any authority derived from any other applicable law.*

1 **SEC. 744. RESTITUTION REMEDIES.**

2 *Section 6c(d) of the Commodity Exchange Act (7*
 3 *U.S.C. 13a-1(d)) is amended by adding at the end the fol-*
 4 *lowing:*

5 “(3) *EQUITABLE REMEDIES.—In any action*
 6 *brought under this section, the Commission may seek,*
 7 *and the court shall have jurisdiction to impose, on a*
 8 *proper showing, on any person found in the action to*
 9 *have committed any violation, equitable remedies in-*
 10 *cluding—*

11 “(A) *restitution to persons who have sus-*
 12 *tained losses proximately caused by such viola-*
 13 *tion (in the amount of such losses); and*

14 “(B) *disgorgement of gains received in con-*
 15 *nection with such violation.”.*

16 **SEC. 745. ENHANCED COMPLIANCE BY REGISTERED ENTI-**
 17 **TIES.**

18 (a) *CORE PRINCIPLES FOR CONTRACT MARKETS.—*
 19 *Section 5(d) of the Commodity Exchange Act (7 U.S.C.*
 20 *7(d)) (as amended by section 735(b)) is amended by strik-*
 21 *ing paragraph (1) and inserting the following:*

22 “(1) *DESIGNATION.—*

23 “(A) *IN GENERAL.—To be designated as,*
 24 *and to maintain the designation of, a board of*
 25 *trade as a contract market, the board of trade*
 26 *shall comply with—*

1 “(i) *the core principles described in*
2 *this subsection; and*

3 “(ii) *any requirement that the Com-*
4 *mission may impose by rule or regulation*
5 *pursuant to section 8a(5).*

6 “(B) *DISCRETION OF BOARD OF TRADE.—*
7 *Unless the Commission determines otherwise by*
8 *rule or regulation, the board of trade shall have*
9 *reasonable discretion in establishing the manner*
10 *by which the board of trade complies with each*
11 *core principle.”.*

12 (b) *CORE PRINCIPLES.—Section 5b(c)(2) of the Com-*
13 *modity Exchange Act (7 U.S.C. 7a–1(c)(2)) (as amended*
14 *by section 725(c)) is amended by striking subparagraph (A)*
15 *and inserting the following:*

16 “(A) *REGISTRATION.—*

17 “(i) *IN GENERAL.—To be registered*
18 *and to maintain registration as a deriva-*
19 *tives clearing organization, a derivatives*
20 *clearing organization shall comply with—*

21 “(I) *the core principles described*
22 *in this paragraph; and*

23 “(II) *any requirement that the*
24 *Commission may impose by rule or*
25 *regulation pursuant to section 8a(5).*

1 “(i) *DISCRETION OF COMMISSION.*—
2 *Unless the Commission determines otherwise*
3 *by rule or regulation, a derivatives clearing*
4 *organization shall have reasonable discre-*
5 *tion in establishing the manner by which*
6 *the derivatives clearing organization com-*
7 *plies with each core principle.”*

8 (c) *EFFECT OF INTERPRETATION.*—Section 5c(a) of
9 *the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amend-*
10 *ed by striking paragraph (2) and inserting the following:*

11 “(2) *EFFECT OF INTERPRETATION.*—*An inter-*
12 *pretation issued under paragraph (1) may provide*
13 *the exclusive means for complying with each section*
14 *described in paragraph (1).”*

15 (d) *NEW CONTRACTS, NEW RULES, AND RULE AMEND-*
16 *MENTS.*—

17 (1) *IN GENERAL.*—*A registered entity may elect*
18 *to list for trading or accept for clearing any new con-*
19 *tract, or other instrument, or may elect to approve*
20 *and implement any new rule or rule amendment, by*
21 *providing to the Commission (and the Secretary of*
22 *the Treasury, in the case of a contract of sale of a*
23 *government security for future delivery (or option on*
24 *such a contract) or a rule or rule amendment specifi-*
25 *cally related to such a contract) a written certifi-*

1 *cation that the new contract or instrument or clear-*
2 *ing of the new contract or instrument, new rule, or*
3 *rule amendment complies with this Act (including*
4 *regulations under this Act).*

5 (2) *RULE REVIEW.*—*The new rule or rule*
6 *amendment described in paragraph (1) shall become*
7 *effective, pursuant to the certification of the registered*
8 *entity, on the date that is 10 business days after the*
9 *date on which the Commission receives the certifi-*
10 *cation (or such shorter period as determined by the*
11 *Commission by rule or regulation) unless the Com-*
12 *mission notifies the registered entity within such time*
13 *that it is staying the certification because there exist*
14 *novel or complex issues that require additional time*
15 *to analyze, an inadequate explanation by the submit-*
16 *ting registered entity, or a potential inconsistency*
17 *with this Act (including regulations under this Act).*

18 (3) *STAY OF CERTIFICATION FOR RULES.*—

19 (A) *A notification by the Commission pur-*
20 *suant to paragraph (2) shall stay the certifi-*
21 *cation of the new rule or rule amendment for up*
22 *to an additional 90 days from the date of the no-*
23 *tification.*

24 (B) *A rule or rule amendment subject to a*
25 *stay pursuant to subparagraph (A) shall become*

1 *effective, pursuant to the certification of the reg-*
2 *istered entity, at the expiration of the period de-*
3 *scribed in subparagraph (A) unless the Commis-*
4 *sion—*

5 *(i) withdraws the stay prior to that*
6 *time; or*

7 *(ii) notifies the registered entity during*
8 *such period that it objects to the proposed*
9 *certification on the grounds that it is incon-*
10 *sistent with this Act (including regulations*
11 *under this Act).*

12 (4) *PRIOR APPROVAL.—*

13 (A) *IN GENERAL.—A registered entity may*
14 *request that the Commission grant prior ap-*
15 *proval to any new contract or other instrument,*
16 *new rule, or rule amendment.*

17 (B) *PRIOR APPROVAL REQUIRED.—Notwith-*
18 *standing any other provision of this section, a*
19 *designated contract market shall submit to the*
20 *Commission for prior approval each rule amend-*
21 *ment that materially changes the terms and con-*
22 *ditions, as determined by the Commission, in*
23 *any contract of sale for future delivery of a com-*
24 *modity specifically enumerated in section 1a(10)*
25 *(or any option thereon) traded through its facili-*

1 *ties if the rule amendment applies to contracts*
2 *and delivery months which have already been*
3 *listed for trading and have open interest.*

4 (C) *DEADLINE.*—*If prior approval is re-*
5 *quested under subparagraph (A), the Commis-*
6 *sion shall take final action on the request not*
7 *later than 90 days after submission of the re-*
8 *quest, unless the person submitting the request*
9 *agrees to an extension of the time limitation es-*
10 *tablished under this subparagraph.*

11 (5) *APPROVAL.*—

12 (A) *RULES.*—*The Commission shall ap-*
13 *prove a new rule, or rule amendment, of a reg-*
14 *istered entity unless the Commission finds that*
15 *the new rule, or rule amendment, is inconsistent*
16 *with this subtitle (including regulations).*

17 (B) *CONTRACTS AND INSTRUMENTS.*—*The*
18 *Commission shall approve a new contract or*
19 *other instrument unless the Commission finds*
20 *that the new contract or other instrument would*
21 *violate this subtitle (including regulations).*

22 (C) *SPECIAL RULE FOR REVIEW AND AP-*
23 *PROVAL OF EVENT CONTRACTS AND SWAPS CON-*
24 *TRACTS.*—

1 (i) *EVENT CONTRACTS.*—*In connection*
2 *with the listing of agreements, contracts,*
3 *transactions, or swaps in excluded commod-*
4 *ities that are based upon the occurrence, ex-*
5 *tent of an occurrence, or contingency (other*
6 *than a change in the price, rate, value, or*
7 *levels of a commodity described in section*
8 *1a(2)(i)), by a designated contract market*
9 *or swap execution facility, the Commission*
10 *may determine that such agreements, con-*
11 *tracts, or transactions are contrary to the*
12 *public interest if the agreements, contracts,*
13 *or transactions involve—*

14 (I) *activity that is unlawful*
15 *under any Federal or State law;*

16 (II) *terrorism;*

17 (III) *assassination;*

18 (IV) *war;*

19 (V) *gaming; or*

20 (VI) *other similar activity deter-*
21 *mined by the Commission, by rule or*
22 *regulation, to be contrary to the public*
23 *interest.*

24 (ii) *PROHIBITION.*—*No agreement,*
25 *contract, or transaction determined by the*

1 *Commission to be contrary to the public in-*
2 *terest under clause (i) may be listed or*
3 *made available for clearing or trading on or*
4 *through a registered entity.*

5 *(iii) SWAPS CONTRACTS.—*

6 *(I) IN GENERAL.—In connection*
7 *with the listing of a swap for clearing*
8 *by a derivatives clearing organization,*
9 *the Commission shall determine, upon*
10 *request or on its own motion, the ini-*
11 *tial eligibility, or the continuing quali-*
12 *fication, of a derivatives clearing orga-*
13 *nization to clear such a swap under*
14 *those criteria, conditions, or rules that*
15 *the Commission, in its discretion, de-*
16 *termines.*

17 *(II) REQUIREMENTS.—Any such*
18 *criteria, conditions, or rules shall con-*
19 *sider—*

20 *(aa) the financial integrity*
21 *of the derivatives clearing organi-*
22 *zation; and*

23 *(bb) any other factors which*
24 *the Commission determines may*
25 *be appropriate.*

1 (iv) *DEADLINE.*—*The Commission*
2 *shall take final action under clauses (i) and*
3 *(ii) in not later than 90 days from the com-*
4 *mencement of its review unless the party*
5 *seeking to offer the contract or swap agrees*
6 *to an extension of this time limitation.*

7 (e) *VIOLATION OF CORE PRINCIPLES.*—*Section 5c of*
8 *the Commodity Exchange Act (7 U.S.C. 7a–2) is amended*
9 *by striking subsection (d).*

10 **SEC. 746. INSIDER TRADING.**

11 *Section 4c(a) of the Commodity Exchange Act (7*
12 *U.S.C. 6c(a)) is amended by adding at the end the fol-*
13 *lowing:*

14 “(3) *CONTRACT OF SALE.*—*It shall be unlawful*
15 *for any employee or agent of any department or agen-*
16 *cy of the Federal Government who, by virtue of the*
17 *employment or position of the employee or agent, ac-*
18 *quires information that may affect or tend to affect*
19 *the price of any commodity in interstate commerce,*
20 *or for future delivery, or any swap, and which infor-*
21 *mation has not been disseminated by the department*
22 *or agency of the Federal Government holding or cre-*
23 *ating the information in a manner which makes it*
24 *generally available to the trading public, or disclosed*
25 *in a criminal, civil, or administrative hearing, or in*

1 *a congressional, administrative, or Government Ac-*
2 *countability Office report, hearing, audit, or inves-*
3 *tigation, to use the information in his personal ca-*
4 *capacity and for personal gain to enter into, or offer to*
5 *enter into—*

6 “(A) *a contract of sale of a commodity for*
7 *future delivery (or option on such a contract);*

8 “(B) *an option (other than an option exe-*
9 *cuted or traded on a national securities exchange*
10 *registered pursuant to section 6(a) of the Securi-*
11 *ties Exchange Act of 1934 (15 U.S.C. 78f(a)); or*

12 “(C) *a swap.*

13 “(4) *NONPUBLIC INFORMATION.—*

14 “(A) *IMPARTING OF NONPUBLIC INFORMA-*
15 *TION.—It shall be unlawful for any employee or*
16 *agent of any department or agency of the Fed-*
17 *eral Government who, by virtue of the employ-*
18 *ment or position of the employee or agent, ac-*
19 *quires information that may affect or tend to af-*
20 *fect the price of any commodity in interstate*
21 *commerce, or for future delivery, or any swap,*
22 *and which information has not been dissemi-*
23 *nated by the department or agency of the Federal*
24 *Government holding or creating the information*
25 *in a manner which makes it generally available*

1 to the trading public, or disclosed in a criminal,
2 civil, or administrative hearing, or in a congress-
3 sional, administrative, or Government Account-
4 ability Office report, hearing, audit, or inves-
5 tigation, to impart the information in his per-
6 sonal capacity and for personal gain with intent
7 to assist another person, directly or indirectly, to
8 use the information to enter into, or offer to
9 enter into—

10 “(i) a contract of sale of a commodity
11 for future delivery (or option on such a con-
12 tract);

13 “(ii) an option (other than an option
14 executed or traded on a national securities
15 exchange registered pursuant to section 6(a)
16 of the Securities Exchange Act of 1934 (15
17 U.S.C. 78f(a)); or

18 “(iii) a swap.

19 “(B) KNOWING USE.—It shall be unlawful
20 for any person who receives information im-
21 parted by any employee or agent of any depart-
22 ment or agency of the Federal Government as de-
23 scribed in subparagraph (A) to knowingly use
24 such information to enter into, or offer to enter
25 into—

1 “(i) a contract of sale of a commodity
2 for future delivery (or option on such a con-
3 tract);

4 “(ii) an option (other than an option
5 executed or traded on a national securities
6 exchange registered pursuant to section 6(a)
7 of the Securities Exchange Act of 1934 (15
8 U.S.C. 78f(a)); or

9 “(iii) a swap.

10 “(C) *THEFT OF NONPUBLIC INFORMA-*
11 *TION.—It shall be unlawful for any person to*
12 *steal, convert, or misappropriate, by any means*
13 *whatsoever, information held or created by any*
14 *department or agency of the Federal Government*
15 *that may affect or tend to affect the price of any*
16 *commodity in interstate commerce, or for future*
17 *delivery, or any swap, where such person knows,*
18 *or acts in reckless disregard of the fact, that such*
19 *information has not been disseminated by the de-*
20 *partment or agency of the Federal Government*
21 *holding or creating the information in a manner*
22 *which makes it generally available to the trading*
23 *public, or disclosed in a criminal, civil, or ad-*
24 *ministrative hearing, or in a congressional, ad-*
25 *ministrative, or Government Accountability Of-*

1 *fice report, hearing, audit, or investigation, and*
2 *to use such information, or to impart such infor-*
3 *mation with the intent to assist another person,*
4 *directly or indirectly, to use such information to*
5 *enter into, or offer to enter into—*

6 “(i) *a contract of sale of a commodity*
7 *for future delivery (or option on such a con-*
8 *tract);*

9 “(ii) *an option (other than an option*
10 *executed or traded on a national securities*
11 *exchange registered pursuant to section 6(a)*
12 *of the Securities Exchange Act of 1934 (15*
13 *U.S.C. 78f(a)); or*

14 “(iii) *a swap.*

15 *Provided, however, that nothing in this sub-*
16 *paragraph shall preclude a person that has*
17 *provided information concerning, or gen-*
18 *erated by, the person, its operations or ac-*
19 *tivities, to any employee or agent of any de-*
20 *partment or agency of the Federal Govern-*
21 *ment, voluntarily or as required by law,*
22 *from using such information to enter into,*
23 *or offer to enter into, a contract of sale, op-*
24 *tion, or swap described in clauses (i), (ii),*
25 *or (iii).”.*

1 **SEC. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY.**

2 *Section 4c(a) of the Commodity Exchange Act (7*
3 *U.S.C. 6c(a)) (as amended by section 746) is amended by*
4 *adding at the end the following:*

5 *“(5) DISRUPTIVE PRACTICES.—It shall be un-*
6 *lawful for any person to engage in any trading, prac-*
7 *tice, or conduct on or subject to the rules of a reg-*
8 *istered entity that—*

9 *“(A) violates bids or offers;*

10 *“(B) demonstrates intentional or reckless*
11 *disregard for the orderly execution of trans-*
12 *actions during the closing period; or*

13 *“(C) is, is of the character of, or is com-*
14 *monly known to the trade as, ‘spoofing’ (bidding*
15 *or offering with the intent to cancel the bid or*
16 *offer before execution).*

17 *“(6) RULEMAKING AUTHORITY.—The Commis-*
18 *sion may make and promulgate such rules and regu-*
19 *lations as, in the judgment of the Commission, are*
20 *reasonably necessary to prohibit the trading practices*
21 *described in paragraph (5) and any other trading*
22 *practice that is disruptive of fair and equitable trad-*
23 *ing.*

24 *“(7) USE OF SWAPS TO DEFRAUD.—It shall be*
25 *unlawful for any person to enter into a swap know-*
26 *ing, or acting in reckless disregard of the fact, that*

1 *its counterparty will use the swap as part of a device,*
2 *scheme, or artifice to defraud any third party.”.*

3 **SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND**
4 **PROTECTION.**

5 *The Commodity Exchange Act (7 U.S.C. 1 et seq.) is*
6 *amended by adding at the end the following:*

7 **“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND**
8 **PROTECTION.**

9 *“(a) DEFINITIONS.—In this section:*

10 *“(1) COVERED JUDICIAL OR ADMINISTRATIVE AC-*
11 *TION.—The term ‘covered judicial or administrative*
12 *action’ means any judicial or administrative action*
13 *brought by the Commission under this Act that results*
14 *in monetary sanctions exceeding \$1,000,000.*

15 *“(2) FUND.—The term ‘Fund’ means the Com-*
16 *modity Futures Trading Commission Customer Pro-*
17 *tection Fund established under subsection (g).*

18 *“(3) MONETARY SANCTIONS.—The term ‘mone-*
19 *tary sanctions’, when used with respect to any judi-*
20 *cial or administrative action means—*

21 *“(A) any monies, including penalties,*
22 *disgorgement, restitution, and interest ordered to*
23 *be paid; and*

24 *“(B) any monies deposited into a*
25 *disgorgement fund or other fund pursuant to sec-*

1 *tion 308(b) of the Sarbanes-Oxley Act of 2002*
2 *(15 U.S.C. 7246(b)), as a result of such action*
3 *or any settlement of such action.*

4 “(4) *ORIGINAL INFORMATION.*—*The term ‘origi-*
5 *nal information’ means information that—*

6 *“(A) is derived from the independent knowl-*
7 *edge or analysis of a whistleblower;*

8 *“(B) is not known to the Commission from*
9 *any other source, unless the whistleblower is the*
10 *original source of the information; and*

11 *“(C) is not exclusively derived from an alle-*
12 *gation made in a judicial or administrative*
13 *hearing, in a governmental report, hearing,*
14 *audit, or investigation, or from the news media,*
15 *unless the whistleblower is a source of the infor-*
16 *mation.*

17 “(5) *RELATED ACTION.*—*The term ‘related ac-*
18 *tion’, when used with respect to any judicial or ad-*
19 *ministrative action brought by the Commission under*
20 *this Act, means any judicial or administrative action*
21 *brought by an entity described in subclauses (i)*
22 *through (vi) of subsection (g)(2)(B) that is based upon*
23 *the original information provided by a whistleblower*
24 *pursuant to subsection (a) that led to the successful*
25 *enforcement of the Commission action.*

1 “(6) *SUCCESSFUL RESOLUTION.*—*The term ‘suc-*
2 *cessful resolution’, when used with respect to any ju-*
3 *dicial or administrative action brought by the Com-*
4 *mission under this Act, includes any settlement of*
5 *such action.*

6 “(7) *WHISTLEBLOWER.*—*The term ‘whistle-*
7 *blower’ means any individual, or 2 or more individ-*
8 *uals acting jointly, who provides information relating*
9 *to a violation of this Act to the Commission, in a*
10 *manner established by rule or regulation, by the Com-*
11 *mission.*

12 “(b) *AWARDS.*—

13 “(1) *IN GENERAL.*—*In any covered judicial or*
14 *administrative action, or related action, the Commis-*
15 *sion, under regulations prescribed by the Commission*
16 *and subject to subsection (c), shall pay an award or*
17 *awards to 1 or more whistleblowers who voluntarily*
18 *provided original information to the Commission that*
19 *led to the successful enforcement of the covered judi-*
20 *cial or administrative action, or related action, in an*
21 *aggregate amount equal to—*

22 “(A) *not less than 10 percent, in total, of*
23 *what has been collected of the monetary sanctions*
24 *imposed in the action or related actions; and*

1 “(B) not more than 30 percent, in total, of
2 what has been collected of the monetary sanctions
3 imposed in the action or related actions.

4 “(2) PAYMENT OF AWARDS.—Any amount paid
5 under paragraph (1) shall be paid from the Fund.

6 “(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL
7 OF AWARD.—

8 “(1) DETERMINATION OF AMOUNT OF AWARD.—

9 “(A) DISCRETION.—The determination of
10 the amount of an award made under subsection
11 (b) shall be in the discretion of the Commission.

12 “(B) CRITERIA.—In determining the
13 amount of an award made under subsection (b),
14 the Commission shall take into account—

15 “(i) the significance of the information
16 provided by the whistleblower to the success
17 of the covered judicial or administrative ac-
18 tion;

19 “(ii) the degree of assistance provided
20 by the whistleblower and any legal rep-
21 resentative of the whistleblower in a covered
22 judicial or administrative action;

23 “(iii) the programmatic interest of the
24 Commission in deterring violations of the
25 Act (including regulations under the Act)

1 *by making awards to whistleblowers who*
2 *provide information that leads to the suc-*
3 *cessful enforcement of such laws; and*

4 *“(iv) such additional relevant factors*
5 *as the Commission may establish by rule or*
6 *regulation.*

7 “(2) *DENIAL OF AWARD.*—*No award under sub-*
8 *section (b) shall be made—*

9 *“(A) to any whistleblower who is, or was at*
10 *the time the whistleblower acquired the original*
11 *information submitted to the Commission, a*
12 *member, officer, or employee of—*

13 *“(i) a appropriate regulatory agency;*

14 *“(ii) the Department of Justice;*

15 *“(iii) a registered entity;*

16 *“(iv) a registered futures association;*

17 *or*

18 *“(v) a self-regulatory organization as*
19 *defined in section 3(a) of the Securities Ex-*
20 *change Act of 1934 (15 U.S.C. 78c(a)); or*

21 *“(vi) a law enforcement organization;*

22 *“(B) to any whistleblower who is convicted*
23 *of a criminal violation related to the judicial or*
24 *administrative action for which the whistle-*

1 blower otherwise could receive an award under
2 this section;

3 “(C) to any whistleblower who submits in-
4 formation to the Commission that is based on the
5 facts underlying the covered action submitted
6 previously by another whistleblower;

7 “(D) to any whistleblower who fails to sub-
8 mit information to the Commission in such form
9 as the Commission may, by rule or regulation,
10 require.

11 “(d) REPRESENTATION.—

12 “(1) PERMITTED REPRESENTATION.—Any whis-
13 tleblower who makes a claim for an award under sub-
14 section (b) may be represented by counsel.

15 “(2) REQUIRED REPRESENTATION.—

16 “(A) IN GENERAL.—Any whistleblower who
17 anonymously makes a claim for an award under
18 subsection (b) shall be represented by counsel if
19 the whistleblower submits the information upon
20 which the claim is based.

21 “(B) DISCLOSURE OF IDENTITY.—Prior to
22 the payment of an award, a whistleblower shall
23 disclose the identity of the whistleblower and
24 provide such other information as the Commis-

1 *sion may require, directly or through counsel for*
2 *the whistleblower.*

3 “(e) *NO CONTRACT NECESSARY.*—*No contract with the*
4 *Commission is necessary for any whistleblower to receive*
5 *an award under subsection (b), unless otherwise required*
6 *by the Commission, by rule or regulation.*

7 “(f) *APPEALS.*—

8 “(1) *IN GENERAL.*—*Any determination made*
9 *under this section, including whether, to whom, or in*
10 *what amount to make awards, shall be in the discre-*
11 *tion of the Commission.*

12 “(2) *APPEALS.*—*Any determination described in*
13 *paragraph (1) may be appealed to the appropriate*
14 *court of appeals of the United States not more than*
15 *30 days after the determination is issued by the Com-*
16 *mission.*

17 “(3) *REVIEW.*—*The court shall review the deter-*
18 *mination made by the Commission in accordance*
19 *with section 7064 of title 5, United States Code.*

20 “(g) *COMMODITY FUTURES TRADING COMMISSION*
21 *CUSTOMER PROTECTION FUND.*—

22 “(1) *ESTABLISHMENT.*—*There is established in*
23 *the Treasury of the United States a revolving fund to*
24 *be known as the ‘Commodity Futures Trading Com-*
25 *mission Customer Protection Fund’.*

1 “(2) *USE OF FUND.*—*The Fund shall be avail-*
2 *able to the Commission, without further appropri-*
3 *ation or fiscal year limitation, for—*

4 “(A) *the payment of awards to whistle-*
5 *blowers as provided in subsection (a); and*

6 “(B) *the funding of customer education ini-*
7 *tiatives designed to help customers protect them-*
8 *selves against fraud or other violations of this*
9 *Act, or the rules and regulations thereunder.*

10 “(3) *DEPOSITS AND CREDITS.*—*There shall be*
11 *deposited into or credited to the Fund—*

12 “(A) *any monetary judgment collected by*
13 *the Commission in any judicial or administra-*
14 *tive action brought by the Commission under*
15 *this Act, that is not otherwise distributed to vic-*
16 *tims of a violation of this Act or the rules and*
17 *regulations thereunder underlying such action,*
18 *unless the balance of the Fund at the time the*
19 *monetary judgment is collected exceeds*
20 *\$100,000,000; and*

21 “(B) *all income from investments made*
22 *under paragraph (4).*

23 “(4) *INVESTMENTS.*—

24 “(A) *AMOUNTS IN FUND MAY BE IN-*
25 *VESTED.*—*The Commission may request the Sec-*

1 *retary of the Treasury to invest the portion of*
2 *the Fund that is not, in the Commission's judg-*
3 *ment, required to meet the current needs of the*
4 *Fund.*

5 “(B) *ELIGIBLE INVESTMENTS.*—*Investments*
6 *shall be made by the Secretary of the Treasury*
7 *in obligations of the United States or obligations*
8 *that are guaranteed as to principal and interest*
9 *by the United States, with maturities suitable to*
10 *the needs of the Fund as determined by the Com-*
11 *mission.*

12 “(C) *INTEREST AND PROCEEDS CRED-*
13 *ITED.*—*The interest on, and the proceeds from*
14 *the sale or redemption of, any obligations held in*
15 *the Fund shall be credited to, and form a part*
16 *of, the Fund.*

17 “(5) *REPORTS TO CONGRESS.*—*Not later than*
18 *October 30 of each year, the Commission shall trans-*
19 *mit to the Committee on Agriculture, Nutrition, and*
20 *Forestry of the Senate, and the Committee on Agri-*
21 *culture of the House of Representatives a report on—*

22 “(A) *the Commission's whistleblower award*
23 *program under this section, including a descrip-*
24 *tion of the number of awards granted and the*

1 *types of cases in which awards were granted*
2 *during the preceding fiscal year;*

3 “(B) *customer education initiatives de-*
4 *scribed in paragraph (2)(B) that were funded by*
5 *the Fund during the preceding fiscal year;*

6 “(C) *the balance of the Fund at the begin-*
7 *ning of the preceding fiscal year;*

8 “(D) *the amounts deposited into or credited*
9 *to the Fund during the preceding fiscal year;*

10 “(E) *the amount of earnings on investments*
11 *of amounts in the Fund during the preceding fis-*
12 *cal year;*

13 “(F) *the amount paid from the Fund dur-*
14 *ing the preceding fiscal year to whistleblowers*
15 *pursuant to subsection (b);*

16 “(G) *the amount paid from the Fund dur-*
17 *ing the preceding fiscal year for customer edu-*
18 *cation initiatives described in paragraph (2)(B);*

19 “(H) *the balance of the Fund at the end of*
20 *the preceding fiscal year; and*

21 “(I) *a complete set of audited financial*
22 *statements, including a balance sheet, income*
23 *statement, and cash flow analysis.*

24 “(h) *PROTECTION OF WHISTLEBLOWERS.—*

25 “(1) *PROHIBITION AGAINST RETALIATION.—*

1 “(A) *IN GENERAL.*—No employer may dis-
2 charge, demote, suspend, threaten, harass, di-
3 rectly or indirectly, or in any other manner dis-
4 criminate against, a whistleblower in the terms
5 and conditions of employment because of any
6 lawful act done by the whistleblower—

7 “(i) in providing information to the
8 Commission in accordance with subsection
9 (b); or

10 “(ii) in assisting in any investigation
11 or judicial or administrative action of the
12 Commission based upon or related to such
13 information.

14 “(B) *ENFORCEMENT.*—

15 “(i) *CAUSE OF ACTION.*—An indi-
16 vidual who alleges discharge or other dis-
17 crimination in violation of subparagraph
18 (A) may bring an action under this sub-
19 section in the appropriate district court of
20 the United States for the relief provided in
21 subparagraph (C), unless the individual
22 who is alleging discharge or other discrimi-
23 nation in violation of subparagraph (A) is
24 an employee of the federal government, in
25 which case the individual shall only bring

1 *an action under section 1221 of title 5*
2 *United States Code.*

3 “(ii) *SUBPOENAS.*—*A subpoena requir-*
4 *ing the attendance of a witness at a trial or*
5 *hearing conducted under this subsection*
6 *may be served at any place in the United*
7 *States.*

8 “(iii) *STATUTE OF LIMITATIONS.*—*An*
9 *action under this subsection may not be*
10 *brought more than 2 years after the date on*
11 *which the violation reported in subpara-*
12 *graph (A) is committed.*

13 “(C) *RELIEF.*—*Relief for an individual*
14 *prevailing in an action brought under subpara-*
15 *graph (B) shall include—*

16 “(i) *reinstatement with the same se-*
17 *niority status that the individual would*
18 *have had, but for the discrimination;*

19 “(ii) *the amount of back pay otherwise*
20 *owed to the individual, with interest; and*

21 “(iii) *compensation for any special*
22 *damages sustained as a result of the dis-*
23 *charge or discrimination, including litiga-*
24 *tion costs, expert witness fees, and reason-*
25 *able attorney’s fees.*

1 “(2) *CONFIDENTIALITY.*—

2 “(A) *INFORMATION PROVIDED.*—

3 “(i) *IN GENERAL.*—*Except as provided*
4 *in subparagraph (B), all information pro-*
5 *vided to the Commission by a whistleblower*
6 *shall be confidential and privileged as an*
7 *evidentiary matter (and shall not be subject*
8 *to civil discovery or other legal process) in*
9 *any proceeding in any Federal or State*
10 *court or administrative agency, and shall be*
11 *exempt from disclosure, in the hands of a*
12 *department or agency of the Federal Gov-*
13 *ernment, under section 552 of title 5,*
14 *United States Code (commonly known as*
15 *the ‘Freedom of Information Act’) or other-*
16 *wise, unless and until required to be dis-*
17 *closed to a defendant or respondent in con-*
18 *nection with a public proceeding instituted*
19 *by the Commission or any entity described*
20 *in subparagraph (B).*

21 “(ii) *CONSTRUCTION.*—*For purposes of*
22 *section 552 of title 5, United States Code,*
23 *this paragraph shall be considered to be a*
24 *statute described in subsection (b)(3)(B) of*
25 *that section.*

1 “(iii) *EFFECT.*—*Nothing in this para-*
2 *graph is intended to limit the ability of the*
3 *Attorney General to present such evidence to*
4 *a grand jury or to share such evidence with*
5 *potential witnesses or defendants in the*
6 *course of an ongoing criminal investigation.*

7 “(B) *AVAILABILITY TO GOVERNMENT AGEN-*
8 *CIES.*—

9 “(i) *IN GENERAL.*—*Without the loss of*
10 *its status as confidential and privileged in*
11 *the hands of the Commission, all informa-*
12 *tion referred to in subparagraph (A) may,*
13 *in the discretion of the Commission, when*
14 *determined by the Commission to be nec-*
15 *essary or appropriate to accomplish the*
16 *purposes of this Act and protect customers*
17 *and in accordance with clause (ii), be made*
18 *available to—*

19 “(I) *the Department of Justice;*

20 “(II) *an appropriate department*
21 *or agency of the Federal Government,*
22 *acting within the scope of its jurisdic-*
23 *tion;*

24 “(III) *a registered entity, reg-*
25 *istered futures association, or self-regu-*

1 *latory organization as defined in sec-*
2 *tion 3(a) of the Securities Exchange*
3 *Act of 1934 (15 U.S.C. 78c(a));*

4 *“(IV) a State attorney general in*
5 *connection with any criminal inves-*
6 *tigation;*

7 *“(V) an appropriate department*
8 *or agency of any State, acting within*
9 *the scope of its jurisdiction; and*

10 *“(VI) a foreign futures authority.*

11 *“(ii) MAINTENANCE OF INFORMA-*
12 *TION.—Each of the entities, agencies, or*
13 *persons described in clause (i) shall main-*
14 *tain information described in that clause as*
15 *confidential and privileged, in accordance*
16 *with the requirements in subparagraph (A).*

17 *“(3) RIGHTS RETAINED.—Nothing in this section*
18 *shall be deemed to diminish the rights, privileges, or*
19 *remedies of any whistleblower under any Federal or*
20 *State law, or under any collective bargaining agree-*
21 *ment.*

22 *“(i) RULEMAKING AUTHORITY.—The Commission*
23 *shall have the authority to issue such rules and regulations*
24 *as may be necessary or appropriate to implement the provi-*

1 sions of this section consistent with the purposes of this sec-
2 tion.

3 “(j) *IMPLEMENTING RULES.*—The Commission shall
4 issue final rules or regulations implementing the provisions
5 of this section not later than 270 days after the date of en-
6 actment of the Wall Street Transparency and Account-
7 ability Act of 2010.

8 “(k) *ORIGINAL INFORMATION.*—Information submitted
9 to the Commission by a whistleblower in accordance with
10 rules or regulations implementing this section shall not lose
11 its status as original information solely because the whistle-
12 blower submitted such information prior to the effective
13 date of such rules or regulations, provided such information
14 was submitted after the date of enactment of the Wall Street
15 Transparency and Accountability Act of 2010.

16 “(l) *AWARDS.*—A whistleblower may receive an award
17 pursuant to this section regardless of whether any violation
18 of a provision of this Act, or a rule or regulation thereunder,
19 underlying the judicial or administrative action upon
20 which the award is based occurred prior to the date of en-
21 actment of the Wall Street Transparency and Account-
22 ability Act of 2010.

23 “(m) *PROVISION OF FALSE INFORMATION.*—A whistle-
24 blower who knowingly and willfully makes any false, ficti-
25 tious, or fraudulent statement or representation, or who

1 *makes or uses any false writing or document knowing the*
2 *same to contain any false, fictitious, or fraudulent state-*
3 *ment or entry, shall not be entitled to an award under this*
4 *section and shall be subject to prosecution under section*
5 *1001 of title 18, United States Code.”.*

6 **SEC. 749. CONFORMING AMENDMENTS.**

7 (a) *Section 2(c)(1) of the Commodity Exchange Act (7*
8 *U.S.C. 2(c)(1)) is amended, in the matter preceding sub-*
9 *paragraph (A), by striking “5a (to the extent provided in*
10 *section 5a(g)),”.*

11 (b) *Section 4d of the Commodity Exchange Act (7*
12 *U.S.C. 6d) (as amended by section 724) is amended—*

13 (1) *in subsection (a)—*

14 (A) *in the matter preceding paragraph*

15 (1)—

16 (i) *by striking “engage as” and insert-*
17 *ing “be a”; and*

18 (ii) *by striking “or introducing*
19 *broker” and all that follows through “or de-*
20 *rivatives transaction execution facility”;*

21 (B) *in paragraph (1), by striking “or intro-*
22 *ducing broker”; and*

23 (C) *in paragraph (2), by striking “if a fu-*
24 *tures commission merchant,”; and*

25 (2) *by adding at the end the following:*

1 “(g) It shall be unlawful for any person to be an intro-
2 ducing broker unless such person shall have registered under
3 this Act with the Commission as an introducing broker and
4 such registration shall not have expired nor been suspended
5 nor revoked.”.

6 (c) Section 4m(3) of the Commodity Exchange Act (7
7 U.S.C. 6m(3)) is amended—

8 (1) by striking “(3) Subsection (1) of this sec-
9 tion” and inserting the following:

10 “(3) EXCEPTION.—

11 “(A) IN GENERAL.—Paragraph (1)”; and

12 (2) by striking “to any investment trust” and all
13 that follows through the period at the end and insert-
14 ing the following: “to any commodity pool that is en-
15 gaged primarily in trading commodity interests.

16 “(B) ENGAGED PRIMARILY.—For purposes
17 of subparagraph (A), a commodity trading advi-
18 sor or a commodity pool shall be considered to
19 be ‘engaged primarily’ in the business of being a
20 commodity trading advisor or commodity pool if
21 it is or holds itself out to the public as being en-
22 gaged primarily, or proposes to engage pri-
23 marily, in the business of advising on com-
24 modity interests or investing, reinvesting, own-

1 ing, holding, or trading in commodity interests,
2 respectively.

3 “(C) *COMMODITY INTERESTS.*—For pur-
4 poses of this paragraph, commodity interests
5 shall include contracts of sale of a commodity for
6 future delivery, options on such contracts, secu-
7 rity futures, swaps, leverage contracts, foreign
8 exchange, spot and forward contracts on physical
9 commodities, and any monies held in an account
10 used for trading commodity interests.”.

11 (d) *Section 5c of the Commodity Exchange Act (7*
12 *U.S.C. 7a–2) is amended—*

13 (1) *in subsection (a)(1)—*

14 (A) *by striking “, 5a(d),”; and*

15 (B) *by striking “and section (2)(h)(7) with*
16 *respect to significant price discovery contracts,”;*
17 *and*

18 (2) *in subsection (f)(1), by striking “section*
19 *4d(c) of this Act” and inserting “section 4d(e)”.*

20 (e) *Section 5e of the Commodity Exchange Act (7*
21 *U.S.C. 7b) is amended by striking “or revocation of the*
22 *right of an electronic trading facility to rely on the exemp-*
23 *tion set forth in section 2(h)(3) with respect to a significant*
24 *price discovery contract,”.*

1 (f) *Section 6(b) of the Commodity Exchange Act (7*
2 *U.S.C. 8(b)) is amended in the first sentence by striking*
3 *“, or to revoke the right of an electronic trading facility*
4 *to rely on the exemption set forth in section 2(h)(3) with*
5 *respect to a significant price discovery contract,”.*

6 (g) *Section 12(e)(2)(B) of the Commodity Exchange*
7 *Act (7 U.S.C. 16(e)(2)(B)) is amended—*

8 (1) *by striking “section 2(c), 2(d), 2(f), or 2(g)*
9 *of this Act” and inserting “section 2(c), 2(f), or 2(i)*
10 *of this Act”; and*

11 (2) *by striking “2(h) or”.*

12 (h) *Section 17(r)(1) of the Commodity Exchange Act*
13 *(7 U.S.C. 21(r)(1)) is amended by striking “section 4d(c)*
14 *of this Act” and inserting “section 4d(e)”.*

15 (i) *Section 22(b)(1)(A) of the Commodity Exchange*
16 *Act (7 U.S.C. 25(b)(1)(A)) is amended by striking “section*
17 *2(h)(7) or”.*

18 (j) *Section 408(2)(C) of the Federal Deposit Insurance*
19 *Corporation Improvement Act of 1991 (12 U.S.C.*
20 *4421(2)(C)) is amended—*

21 (1) *by striking “section 2(c), 2(d), 2(f), or (2)(g)*
22 *of such Act” and inserting “section 2(c), 2(f), or 2(i)*
23 *of that Act”; and*

24 (2) *by striking “2(h) or”.*

1 **SEC. 750. STUDY ON OVERSIGHT OF CARBON MARKETS.**

2 (a) *INTERAGENCY WORKING GROUP.*—*There is estab-*
3 *lished to carry out this section an interagency working*
4 *group (referred to in this section as the “interagency*
5 *group”)* composed of the following members or designees:

6 (1) *The Chairman of the Commodity Futures*
7 *Trading Commission (referred to in this section as*
8 *the “Commission”), who shall serve as Chairman of*
9 *the interagency group.*

10 (2) *The Secretary of Agriculture.*

11 (3) *The Secretary of the Treasury.*

12 (4) *The Chairman of the Securities and Ex-*
13 *change Commission.*

14 (5) *The Administrator of the Environmental*
15 *Protection Agency.*

16 (6) *The Chairman of the Federal Energy Regu-*
17 *latory Commission.*

18 (7) *The Commissioner of the Federal Trade Com-*
19 *mission.*

20 (8) *The Administrator of the Energy Informa-*
21 *tion Administration.*

22 (b) *ADMINISTRATIVE SUPPORT.*—*The Commission*
23 *shall provide the interagency group such administrative*
24 *support services as are necessary to enable the interagency*
25 *group to carry out the functions of the interagency group*
26 *under this section.*

1 (c) *CONSULTATION.*—*In carrying out this section, the*
2 *interagency group shall consult with representatives of ex-*
3 *changes, clearinghouses, self-regulatory bodies, major carbon*
4 *market participants, consumers, and the general public, as*
5 *the interagency group determines to be appropriate.*

6 (d) *STUDY.*—*The interagency group shall conduct a*
7 *study on the oversight of existing and prospective carbon*
8 *markets to ensure an efficient, secure, and transparent car-*
9 *bon market, including oversight of spot markets and deriva-*
10 *tive markets.*

11 (e) *REPORT.*—*Not later than 180 days after the date*
12 *of enactment of this Act, the interagency group shall submit*
13 *to Congress a report on the results of the study conducted*
14 *under subsection (b), including recommendations for the*
15 *oversight of existing and prospective carbon markets to en-*
16 *sure an efficient, secure, and transparent carbon market,*
17 *including oversight of spot markets and derivative markets.*

18 **SEC. 751. ENERGY AND ENVIRONMENTAL MARKETS ADVI-**
19 **SORY COMMITTEE.**

20 *Section 2(a) of the Commodity Exchange Act (7 U.S.C.*
21 *2(a)) (as amended by section 727) is amended by adding*
22 *at the end the following:*

23 “(15) *ENERGY AND ENVIRONMENTAL MARKETS*
24 *ADVISORY COMMITTEE.*—

25 “(A) *ESTABLISHMENT.*—

1 “(i) *IN GENERAL.*—*An Energy and*
2 *Environmental Markets Advisory Com-*
3 *mittee is hereby established.*

4 “(ii) *MEMBERSHIP.*—*The Committee*
5 *shall have 9 members.*

6 “(iii) *ACTIVITIES.*—*The Committee’s*
7 *objectives and scope of activities shall be—*

8 “(I) *to conduct public meetings;*

9 “(II) *to submit reports and rec-*
10 *ommendations to the Commission (in-*
11 *cluding dissenting or minority views,*
12 *if any); and*

13 “(III) *otherwise to serve as a vehi-*
14 *cle for discussion and communication*
15 *on matters of concern to exchanges,*
16 *firms, end users, and regulators re-*
17 *garding energy and environmental*
18 *markets and their regulation by the*
19 *Commission.*

20 “(B) *REQUIREMENTS.*—

21 “(i) *IN GENERAL.*—*The Committee*
22 *shall hold public meetings at such intervals*
23 *as are necessary to carry out the functions*
24 *of the Committee, but not less frequently*
25 *than 2 times per year.*

1 “(i) *MEMBERS.*—*Members shall be ap-*
2 *pointed to 3-year terms, but may be re-*
3 *moved for cause by vote of the Commission.*

4 “(C) *APPOINTMENT.*—*The Commission shall*
5 *appoint members with a wide diversity of opin-*
6 *ion and who represent a broad spectrum of inter-*
7 *ests, including hedgers and consumers.*

8 “(D) *REIMBURSEMENT.*—*Members shall be*
9 *entitled to per diem and travel expense reim-*
10 *bursement by the Commission.*

11 “(E) *FACA.*—*The Committee shall not be*
12 *subject to the Federal Advisory Committee Act (5*
13 *U.S.C. App.).”.*

14 **SEC. 752. INTERNATIONAL HARMONIZATION.**

15 *In order to promote effective and consistent global reg-*
16 *ulation of swaps and security-based swaps, the Securities*
17 *and Exchange Commission, the Commodity Futures Trad-*
18 *ing Commission, the Financial Stability Oversight Council,*
19 *and the Treasury Department—*

20 (1) *shall, both individually and collectively, con-*
21 *sult and coordinate with foreign regulatory authori-*
22 *ties on the establishment of consistent international*
23 *standards with respect to the regulation of such*
24 *swaps; and*

1 (2) *may, both individually and collectively, agree*
2 *to such information-sharing arrangements as may be*
3 *deemed to be necessary or appropriate in the public*
4 *interest or for the protection of investors and swap*
5 *counterparties.*

6 **SEC. 753. ANTIMARKET MANIPULATION AUTHORITY.**

7 (a) *PROHIBITION REGARDING MANIPULATION AND*
8 *FALSE INFORMATION.*—*Subsection (c) of section 6 of the*
9 *Commodity Exchange Act (7 U.S.C. 9, 15) is amended to*
10 *read as follows:*

11 “(c) *PROHIBITION REGARDING MANIPULATION AND*
12 *FALSE INFORMATION.*—

13 “(1) *PROHIBITION AGAINST MANIPULATION.*—*It*
14 *shall be unlawful for any person, directly or indi-*
15 *rectly, to use or employ, or attempt to use or employ,*
16 *in connection with any swap, or a contract of sale of*
17 *any commodity in interstate commerce, or for future*
18 *delivery on or subject to the rules of any registered en-*
19 *tity, any manipulative or deceptive device or contriv-*
20 *ance, in contravention of such rules and regulations*
21 *as the Commission shall promulgate by not later than*
22 *1 year after the date of enactment of the Restoring*
23 *American Financial Stability Act of 2010.*

24 “(A) *SPECIAL PROVISION FOR MANIPULA-*
25 *TION BY FALSE REPORTING.*—*Unlawful manipu-*

1 *lation for purposes of this paragraph shall in-*
2 *clude, but not be limited to, delivering, or caus-*
3 *ing to be delivered for transmission through the*
4 *mails or interstate commerce, by any means of*
5 *communication whatsoever, a false or misleading*
6 *or inaccurate report concerning crop or market*
7 *information or conditions that affect or tend to*
8 *affect the price of any commodity in interstate*
9 *commerce, knowing, or acting in reckless dis-*
10 *regard of the fact, that such report is false, mis-*
11 *leading or inaccurate.*

12 *“(B) EFFECT ON OTHER LAW.—Nothing in*
13 *this paragraph shall affect, or be construed to af-*
14 *fect, the applicability of section 9(a)(2).*

15 *“(2) PROHIBITION REGARDING FALSE INFORMA-*
16 *TION.—It shall be unlawful for any person to make*
17 *any false or misleading statement of a material fact*
18 *to the Commission, including in any registration ap-*
19 *plication or any report filed with the Commission*
20 *under this Act, or any other information relating to*
21 *a swap, or a contract of sale of a commodity, in*
22 *interstate commerce, or for future delivery on or sub-*
23 *ject to the rules of any registered entity, or to omit*
24 *to state in any such statement any material fact that*
25 *is necessary to make any statement of a material fact*

1 *made not misleading in any material respect, if the*
2 *person knew, or reasonably should have known, the*
3 *statement to be false or misleading.*

4 “(3) *OTHER MANIPULATION.*—*In addition to the*
5 *prohibition in paragraph (1), it shall be unlawful for*
6 *any person, directly or indirectly, to manipulate or*
7 *attempt to manipulate the price of any swap, or of*
8 *any commodity in interstate commerce, or for future*
9 *delivery on or subject to the rules of any registered en-*
10 *tity.*

11 “(4) *ENFORCEMENT.*—

12 “(A) *AUTHORITY OF COMMISSION.*—*If the*
13 *Commission has reason to believe that any per-*
14 *son (other than a registered entity) is violating*
15 *or has violated this subsection, or any other pro-*
16 *vision of this Act (including any rule, regula-*
17 *tion, or order of the Commission promulgated in*
18 *accordance with this subsection or any other pro-*
19 *vision of this Act), the Commission may serve*
20 *upon the person a complaint.*

21 “(B) *CONTENTS OF COMPLAINT.*—*A com-*
22 *plaint under subparagraph (A) shall—*

23 “(i) *contain a description of the*
24 *charges against the person that is the sub-*
25 *ject of the complaint; and*

1 “(ii) have attached or contain a notice
2 of hearing that specifies the date and loca-
3 tion of the hearing regarding the complaint.

4 “(C) HEARING.—A hearing described in
5 subparagraph (B)(ii)—

6 “(i) shall be held not later than 3 days
7 after service of the complaint described in
8 subparagraph (A);

9 “(ii) shall require the person to show
10 cause regarding why—

11 “(I) an order should not be
12 made—

13 “(aa) to prohibit the person
14 from trading on, or subject to the
15 rules of, any registered entity; and

16 “(bb) to direct all registered
17 entities to refuse all privileges to
18 the person until further notice of
19 the Commission; and

20 “(II) the registration of the per-
21 son, if registered with the Commission
22 in any capacity, should not be sus-
23 pended or revoked; and

24 “(iii) may be held before—

25 “(I) the Commission; or

1 “(II) *an administrative law judge*
2 *designated by the Commission, under*
3 *which the administrative law judge*
4 *shall ensure that all evidence is re-*
5 *corded in written form and submitted*
6 *to the Commission.*

7 “(5) *SUBPOENA.—For the purpose of securing ef-*
8 *fective enforcement of the provisions of this Act, for*
9 *the purpose of any investigation or proceeding under*
10 *this Act, and for the purpose of any action taken*
11 *under section 12(f) of this Act, any member of the*
12 *Commission or any Administrative Law Judge or*
13 *other officer designated by the Commission (except as*
14 *provided in paragraph (7)) may administer oaths*
15 *and affirmations, subpoena witnesses, compel their*
16 *attendance, take evidence, and require the production*
17 *of any books, papers, correspondence, memoranda, or*
18 *other records that the Commission deems relevant or*
19 *material to the inquiry.*

20 “(6) *WITNESSES.—The attendance of witnesses*
21 *and the production of any such records may be re-*
22 *quired from any place in the United States, any*
23 *State, or any foreign country or jurisdiction at any*
24 *designated place of hearing.*

1 “(7) *SERVICE.*—A subpoena issued under this
2 section may be served upon any person who is not to
3 be found within the territorial jurisdiction of any
4 court of the United States in such manner as the Fed-
5 eral Rules of Civil Procedure prescribe for service of
6 process in a foreign country, except that a subpoena
7 to be served on a person who is not to be found within
8 the territorial jurisdiction of any court of the United
9 States may be issued only on the prior approval of
10 the Commission.

11 “(8) *REFUSAL TO OBEY.*—In case of contumacy
12 by, or refusal to obey a subpoena issued to, any per-
13 son, the Commission may invoke the aid of any court
14 of the United States within the jurisdiction in which
15 the investigation or proceeding is conducted, or where
16 such person resides or transacts business, in requiring
17 the attendance and testimony of witnesses and the
18 production of books, papers, correspondence, memo-
19 randa, and other records. Such court may issue an
20 order requiring such person to appear before the Com-
21 mission or member or Administrative Law Judge or
22 other officer designated by the Commission, there to
23 produce records, if so ordered, or to give testimony
24 touching the matter under investigation or in ques-
25 tion.

1 “(9) *FAILURE TO OBEY.*—*Any failure to obey*
2 *such order of the court may be punished by the court*
3 *as a contempt thereof. All process in any such case*
4 *may be served in the judicial district wherein such*
5 *person is an inhabitant or transacts business or wher-*
6 *ever such person may be found.*

7 “(10) *EVIDENCE.*—*On the receipt of evidence*
8 *under paragraph (4)(C)(iii), the Commission may—*

9 “(A) *prohibit the person that is the subject*
10 *of the hearing from trading on, or subject to the*
11 *rules of, any registered entity and require all*
12 *registered entities to refuse the person all privi-*
13 *leges on the registered entities for such period as*
14 *the Commission may require in the order;*

15 “(B) *if the person is registered with the*
16 *Commission in any capacity, suspend, for a pe-*
17 *riod not to exceed 180 days, or revoke, the reg-*
18 *istration of the person;*

19 “(C) *assess such person—*

20 “(i) *a civil penalty of not more than*
21 *an amount equal to the greater of—*

22 “(I) *\$140,000; or*

23 “(II) *triple the monetary gain to*
24 *such person for each such violation; or*

1 “(ii) *in any case of manipulation or*
2 *attempted manipulation in violation of this*
3 *subsection or section 9(a)(2), a civil penalty*
4 *of not more than an amount equal to the*
5 *greater of—*

6 “(I) *\$1,000,000; or*

7 “(II) *triple the monetary gain to*
8 *the person for each such violation; and*

9 “(D) *require restitution to customers of*
10 *damages proximately caused by violations of the*
11 *person.*

12 “(11) *ORDERS.—*

13 “(A) *NOTICE.—The Commission shall pro-*
14 *vide to a person described in paragraph (10)*
15 *and the appropriate governing board of the reg-*
16 *istered entity notice of the order described in*
17 *paragraph (10) by—*

18 “(i) *registered mail;*

19 “(ii) *certified mail; or*

20 “(iii) *personal delivery.*

21 “(B) *REVIEW.—*

22 “(i) *IN GENERAL.—A person described*
23 *in paragraph (10) may obtain a review of*
24 *the order or such other equitable relief as*

1 *determined to be appropriate by a court de-*
2 *scribed in clause (i).*

3 “(i) *PETITION.*—*To obtain a review*
4 *or other relief under clause (i), a person*
5 *may, not later than 15 days after notice is*
6 *given to the person under clause (i), file a*
7 *written petition to set aside the order with*
8 *the United States Court of Appeals—*

9 “(I) *for the circuit in which the*
10 *petitioner carries out the business of*
11 *the petitioner; or*

12 “(II) *in the case of an order deny-*
13 *ing registration, the circuit in which*
14 *the principal place of business of the*
15 *petitioner is located, as listed on the*
16 *application for registration of the peti-*
17 *tioner.*

18 “(C) *PROCEDURE.*—

19 “(i) *DUTY OF CLERK OF APPROPRIATE*
20 *COURT.*—*The clerk of the appropriate court*
21 *under subparagraph (B)(i) shall transmit*
22 *to the Commission a copy of a petition filed*
23 *under subparagraph (B)(i).*

24 “(ii) *DUTY OF COMMISSION.*—*In ac-*
25 *cordance with section 2112 of title 28,*

1 *United States Code, the Commission shall*
2 *file in the appropriate court described in*
3 *subparagraph (B)(ii) the record theretofore*
4 *made.*

5 “(iii) *JURISDICTION OF APPROPRIATE*
6 *COURT.—Upon the filing of a petition*
7 *under subparagraph (B)(ii), the appro-*
8 *priate court described in subparagraph*
9 *(B)(ii) shall have jurisdiction to affirm, set*
10 *aside, or modify the order of the Commis-*
11 *sion, and the findings of the Commission as*
12 *to the facts, if supported by the weight of*
13 *evidence, shall in like manner be conclu-*
14 *sive.”.*

15 **(b) CEASE AND DESIST ORDERS, FINES.—***Section 6(d)*
16 *of the Commodity Exchange Act (7 U.S.C. 13b) is amended*
17 *to read as follows:*

18 “(d) *If any person (other than a registered entity), is*
19 *violating or has violated subsection (c) or any other provi-*
20 *sions of this Act or of the rules, regulations, or orders of*
21 *the Commission thereunder, the Commission may, upon no-*
22 *tice and hearing, and subject to appeal as in other cases*
23 *provided for in subsection (c), make and enter an order di-*
24 *recting that such person shall cease and desist therefrom*
25 *and, if such person thereafter and after the lapse of the pe-*

1 *riod allowed for appeal of such order or after the affirmance*
2 *of such order, shall fail or refuse to obey or comply with*
3 *such order, such person shall be guilty of a misdemeanor*
4 *and, upon conviction thereof, shall be fined not more than*
5 *the higher of \$140,000 or triple the monetary gain to such*
6 *person, or imprisoned for not less than six months nor more*
7 *than one year, or both, except that if such failure or refusal*
8 *to obey or comply with such order involves any offense with-*
9 *in subsection (a) or (b) of section 9 of this Act, such person*
10 *shall be guilty of a felony and, upon conviction thereof, shall*
11 *be subject to the penalties of said subsection (a) or (b): Pro-*
12 *vided, That any such cease and desist order under this sub-*
13 *section against any respondent in any case of manipulation*
14 *shall be issued only in conjunction with an order issued*
15 *against such respondent under subsection (c). Each day*
16 *during which such failure or refusal to obey or comply with*
17 *such order continues shall be deemed a separate offense.”.*

18 *(c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—*
19 *Section 22(a)(1) of the Commodity Exchange Act (7 U.S.C.*
20 *25(a)(1)) is amended by striking subparagraph (D) and in-*
21 *serting the following:*

22 *“(D) who purchased or sold a contract re-*
23 *ferred to in subparagraph (B) hereof or swap if*
24 *the violation constitutes—*

1 “(i) the use or employment of, or an
2 attempt to use or employ, in connection
3 with a swap, or a contract of sale of a com-
4 modity, in interstate commerce, or for fu-
5 ture delivery on or subject to the rules of
6 any registered entity, any manipulative de-
7 vice or contrivance in contravention of such
8 rules and regulations as the Commission
9 shall promulgate by not later than 1 year
10 after the date of enactment of the Restoring
11 American Financial Stability Act of 2010;
12 or

13 “(ii) a manipulation of the price of
14 any such contract or swap or the price of
15 the commodity underlying such contract or
16 swap.”.

17 (d) *EFFECTIVE DATE.*—

18 (1) *The amendments made by this section shall*
19 *take effect on the date on which the final rule promul-*
20 *gated by the Commodity Futures Trading Commis-*
21 *sion pursuant to this Act takes effect.*

22 (2) *Paragraph (1) shall not preclude the Com-*
23 *mission from undertaking prior to the effective date*
24 *any rulemaking necessary to implement the amend-*
25 *ments contained in this section.*

1 **SEC. 754. EFFECTIVE DATE.**

2 *Unless otherwise provided in this title, this subtitle*
 3 *shall take effect on the date that is 180 days after the date*
 4 *of enactment of this Act.*

5 ***Subtitle B—Regulation of Security-***
 6 ***Based Swap Markets***

7 **SEC. 761. DEFINITIONS UNDER THE SECURITIES EXCHANGE**
 8 **ACT OF 1934.**

9 *(a) DEFINITIONS.—Section 3(a) of the Securities Ex-*
 10 *change Act of 1934 (15 U.S.C. 78c(a)) is amended—*

11 *(1) in subparagraphs (A) and (B) of paragraph*
 12 *(5), by inserting “(not including security-based*
 13 *swaps, other than security-based swaps with or for*
 14 *persons that are not eligible contract participants)”*
 15 *after “securities” each place that term appears;*

16 *(2) in paragraph (10), by inserting “security-*
 17 *based swap,” after “security future,”;*

18 *(3) in paragraph (13), by adding at the end the*
 19 *following: “For security-based swaps, such terms in-*
 20 *clude the execution, termination (prior to its sched-*
 21 *uled maturity date), assignment, exchange, or similar*
 22 *transfer or conveyance of, or extinguishing of rights*
 23 *or obligations under, a security-based swap, as the*
 24 *context may require.”;*

25 *(4) in paragraph (14), by adding at the end the*
 26 *following: “For security-based swaps, such terms in-*

1 *clude the execution, termination (prior to its sched-*
2 *uled maturity date), assignment, exchange, or similar*
3 *transfer or conveyance of, or extinguishing of rights*
4 *or obligations under, a security-based swap, as the*
5 *context may require.”;*

6 (5) *in paragraph (39)—*

7 (A) *in subparagraph (B)(i)—*

8 (i) *in subclause (I), by striking “or*
9 *government securities dealer” and inserting*
10 *“government securities dealer, security-*
11 *based swap dealer, or major security-based*
12 *swap participant”;* and

13 (ii) *in subclause (II), by inserting “se-*
14 *curity-based swap dealer, major security-*
15 *based swap participant,” after “government*
16 *securities dealer,”;*

17 (B) *in subparagraph (C), by striking “or*
18 *government securities dealer” and inserting*
19 *“government securities dealer, security-based*
20 *swap dealer, or major security-based swap par-*
21 *ticipant”;* and

22 (C) *in subparagraph (D), by inserting “se-*
23 *curity-based swap dealer, major security-based*
24 *swap participant,” after “government securities*
25 *dealer,”;* and

1 (6) by adding at the end the following:

2 “(65) *ELIGIBLE CONTRACT PARTICIPANT*.—The
3 term ‘eligible contract participant’ has the same
4 meaning as in section 1a of the Commodity Exchange
5 Act (7 U.S.C. 1a).

6 “(66) *MAJOR SWAP PARTICIPANT*.—The term
7 ‘major swap participant’ has the same meaning as in
8 section 1a of the Commodity Exchange Act (7 U.S.C.
9 1a).

10 “(67) *MAJOR SECURITY-BASED SWAP PARTICI-*
11 *PANT*.—

12 “(A) *IN GENERAL*.—The term ‘major secu-

13 rity-based swap participant’ means any per-

14 son—

15 “(i) who is not a security-based swap
16 dealer; and

17 “(ii)(I) who maintains a substantial
18 position in security-based swaps for any of
19 the major security-based swap categories, as
20 such categories are determined by the Com-

21 mission, excluding—

22 “(aa) positions held for hedging
23 or mitigating commercial risk; and

24 “(bb) positions maintained by
25 any employee benefit plan (or any con-

1 *tract held by such a plan), as that*
2 *term is defined in paragraphs (3) and*
3 *(32) of section 3 of the Employee Re-*
4 *irement Income Security Act of 1974*
5 *(29 U.S.C. 1002), for the primary pur-*
6 *pose of hedging or mitigating any risk*
7 *directly associated with the operation*
8 *of the plan;*

9 *“(II) whose outstanding security-based*
10 *swaps create substantial counterparty expo-*
11 *sure that could have serious adverse effects*
12 *on the financial stability of the United*
13 *States banking system or financial markets;*
14 *or*

15 *“(III) that is a financial entity that—*
16 *“(aa) is highly leveraged relative*
17 *to the amount of capital such entity*
18 *holds; and*

19 *“(bb) maintains a substantial po-*
20 *sition in outstanding security-based*
21 *swaps in any major security-based*
22 *swap category, as such categories are*
23 *determined by the Commission.*

24 *“(B) DEFINITION OF SUBSTANTIAL POSI-*
25 *TION.—For purposes of subparagraph (A), the*

1 *Commission shall define, by rule or regulation,*
2 *the term ‘substantial position’ at the threshold*
3 *that the Commission determines to be prudent*
4 *for the effective monitoring, management, and*
5 *oversight of entities that are systemically impor-*
6 *tant or can significantly impact the financial*
7 *system of the United States.*

8 “(C) *SCOPE OF DESIGNATION.*—*For pur-*
9 *poses of subparagraph (A), a person may be des-*
10 *ignated as a major security-based swap partici-*
11 *part for 1 or more categories of security-based*
12 *swaps without being classified as a major secu-*
13 *rity-based swap participant for all classes of se-*
14 *curity-based swaps.*

15 “(D) *CAPITAL.*—*In setting capital require-*
16 *ments for a person that is designated as a major*
17 *security-based swap participant for a single type*
18 *or single class or category of security-based swap*
19 *or activities, the prudential regulator and the*
20 *Commission shall take into account the risks as-*
21 *sociated with other types of security-based swaps*
22 *or classes of security-based swaps or categories of*
23 *security-based swaps engaged in and the other*
24 *activities conducted by that person that are not*
25 *otherwise subject to regulation applicable to that*

1 *person by virtue of the status of the person as a*
2 *major security-based swap participant.*

3 “(68) *SECURITY-BASED SWAP.*—

4 “(A) *IN GENERAL.*—*Except as provided in*
5 *subparagraph (B), the term ‘security-based swap’*
6 *means any agreement, contract, or transaction*
7 *that—*

8 “(i) *is a swap, as that term is defined*
9 *under section 1a of the Commodity Ex-*
10 *change Act; and*

11 “(ii) *is based on—*

12 “(I) *an index that is a narrow-*
13 *based security index, including any in-*
14 *terest therein or on the value thereof;*

15 “(II) *a single security or loan, in-*
16 *cluding any interest therein or on the*
17 *value thereof; or*

18 “(III) *the occurrence, nonoccur-*
19 *rence, or extent of the occurrence of an*
20 *event relating to a single issuer of a se-*
21 *curity or the issuers of securities in a*
22 *narrow-based security index, provided*
23 *that such event directly affects the fi-*
24 *ancial statements, financial condi-*

1 tion, or financial obligations of the
2 issuer.

3 “(B) *RULE OF CONSTRUCTION REGARDING*
4 *MASTER AGREEMENTS.*—The term ‘security-based
5 swap’ shall be construed to include a master
6 agreement that provides for an agreement, con-
7 tract, or transaction that is a security-based
8 swap pursuant to subparagraph (A), together
9 with all supplements to any such master agree-
10 ment, without regard to whether the master
11 agreement contains an agreement, contract, or
12 transaction that is not a security-based swap
13 pursuant to subparagraph (A), except that the
14 master agreement shall be considered to be a se-
15 curity-based swap only with respect to each
16 agreement, contract, or transaction under the
17 master agreement that is a security-based swap
18 pursuant to subparagraph (A).

19 “(C) *EXCLUSIONS.*—The term ‘security-
20 based swap’ does not include any agreement,
21 contract, or transaction that meets the definition
22 of a security-based swap only because such agree-
23 ment, contract, or transaction references, is based
24 upon, or settles through the transfer, delivery, or
25 receipt of an exempted security under paragraph

1 (12), as in effect on the date of enactment of the
2 *Futures Trading Act of 1982* (other than any
3 municipal security as defined in paragraph (29)
4 as in effect on the date of enactment of the *Fu-*
5 *tures Trading Act of 1982*), unless such agree-
6 ment, contract, or transaction is of the character
7 of, or is commonly known in the trade as, a put,
8 call, or other option.

9 “(D) *MIXED SWAP*.—The term ‘security-
10 based swap’ includes any agreement, contract, or
11 transaction that is as described in subparagraph
12 (A) and also is based on the value of 1 or more
13 interest or other rates, currencies, commodities,
14 instruments of indebtedness, indices, quantitative
15 measures, other financial or economic interest or
16 property of any kind (other than a single secu-
17 rity or a narrow-based security index), or the oc-
18 currence, non-occurrence, or the extent of the oc-
19 currence of an event or contingency associated
20 with a potential financial, economic, or commer-
21 cial consequence (other than an event described
22 in subparagraph (A)(ii)(III)).

23 “(69) *SWAP*.—The term ‘swap’ has the same
24 meaning as in section 1a of the *Commodity Exchange*
25 *Act* (7 U.S.C. 1a).

1 “(70) *PERSON ASSOCIATED WITH A SECURITY-*
2 *BASED SWAP DEALER OR MAJOR SECURITY-BASED*
3 *SWAP PARTICIPANT.*—

4 “(A) *IN GENERAL.*—*The term ‘person asso-*
5 *ciated with a security-based swap dealer or*
6 *major security-based swap participant’ or ‘asso-*
7 *ciated person of a security-based swap dealer or*
8 *major security-based swap participant’ means—*

9 “(i) *any partner, officer, director, or*
10 *branch manager of such security-based swap*
11 *dealer or major security-based swap partici-*
12 *part (or any person occupying a similar*
13 *status or performing similar functions);*

14 “(ii) *any person directly or indirectly*
15 *controlling, controlled by, or under common*
16 *control with such security-based swap dealer*
17 *or major security-based swap participant;*
18 *or*

19 “(iii) *any employee of such security-*
20 *based swap dealer or major security-based*
21 *swap participant.*

22 “(B) *EXCLUSION.*—*Other than for purposes*
23 *of section 15F(l)(2), the term ‘person associated*
24 *with a security-based swap dealer or major secu-*
25 *urity-based swap participant’ or ‘associated per-*

1 *son of a security-based swap dealer or major se-*
2 *curity-based swap participant’ does not include*
3 *any person associated with a security-based*
4 *swap dealer or major security-based swap partic-*
5 *ipant whose functions are solely clerical or min-*
6 *isterial.*

7 “(71) *SECURITY-BASED SWAP DEALER.*—

8 “(A) *IN GENERAL.*—*The term ‘security-*
9 *based swap dealer’ means any person who—*

10 “(i) *holds themselves out as a dealer in*
11 *security-based swaps;*

12 “(ii) *makes a market in security-based*
13 *swaps;*

14 “(iii) *regularly engages in the pur-*
15 *chase and sale of security-based swaps in*
16 *the ordinary course of a business; or*

17 “(iv) *engages in any activity causing*
18 *it to be commonly known in the trade as a*
19 *dealer or market maker in security-based*
20 *swaps.*

21 “(B) *DESIGNATION BY TYPE OR CLASS.*—*A*
22 *person may be designated as a security-based*
23 *swap dealer for a single type or single class or*
24 *category of security-based swap or activities and*
25 *considered not to be a security-based swap dealer*

1 *for other types, classes, or categories of security-*
2 *based swaps or activities.*

3 “(C) *CAPITAL.*—*In setting capital require-*
4 *ments for a person that is designated as a secu-*
5 *rity-based swap dealer for a single type or single*
6 *class or category of security-based swap or ac-*
7 *tivities, the prudential regulator and the Com-*
8 *mission shall take into account the risks associ-*
9 *ated with other types of security-based swaps or*
10 *classes of security-based swaps or categories of se-*
11 *curity-based swaps engaged in and the other ac-*
12 *tivities conducted by that person that are not*
13 *otherwise subject to regulation applicable to that*
14 *person by virtue of the status of the person as a*
15 *security-based swap dealer.*

16 “(72) *APPROPRIATE FEDERAL BANKING AGEN-*
17 *CY.*—*The term ‘appropriate Federal banking agency’*
18 *has the same meaning as in section 3(q) of the Fed-*
19 *eral Deposit Insurance Act (12 U.S.C. 1813(q)).*

20 “(73) *BOARD.*—*The term ‘Board’ means the*
21 *Board of Governors of the Federal Reserve System.*

22 “(74) *PRUDENTIAL REGULATOR.*—*The term*
23 *‘prudential regulator’ has the same meaning as in*
24 *section 1a of the Commodity Exchange Act (7 U.S.C.*
25 *1a).*

1 “(75) *SECURITY-BASED SWAP DATA REPOSI-*
2 *TORY.—The term ‘security-based swap data reposi-*
3 *tory’ means any person that collects, calculates, pre-*
4 *pares, or maintains information or records with re-*
5 *spect to transactions or positions in, or the terms and*
6 *conditions of, security-based swaps entered into by*
7 *third parties.*

8 “(76) *SWAP DEALER.—The term ‘swap dealer’*
9 *has the same meaning as in section 1a of the Com-*
10 *modity Exchange Act (7 U.S.C. 1a).*

11 “(77) *SWAP EXECUTION FACILITY.—The term*
12 *‘swap execution facility’ means a facility in which*
13 *multiple participants have the ability to execute or*
14 *trade security-based swaps by accepting bids and of-*
15 *fers made by other participants that are open to mul-*
16 *tiple participants in the facility or system, or con-*
17 *firmation facility, that—*

18 “(A) *facilitates the execution of security-*
19 *based swaps between persons; and*

20 “(B) *is not a designated contract market.*

21 “(78) *SECURITY-BASED SWAP AGREEMENT.—*

22 “(A) *IN GENERAL.—For purposes of sections*
23 *9, 10, 16, 20, and 21A of this Act, and section*
24 *17 of the Securities Act of 1933 (15 U.S.C. 77q),*
25 *the term ‘security-based swap agreement’ means*

1 a swap agreement as defined in section 206A of
2 the Gramm-Leach-Bliley Act (15 U.S.C. 78c
3 note) of which a material term is based on the
4 price, yield, value, or volatility of any security
5 or any group or index of securities, or any inter-
6 est therein.

7 “(B) *EXCLUSIONS.*—The term ‘security-
8 based swap agreement’ does not include any se-
9 curity-based swap.”.

10 (b) *AUTHORITY TO FURTHER DEFINE TERMS.*—The
11 Securities and Exchange Commission may, by rule, further
12 define the terms “security-based swap”, “security-based
13 swap dealer”, “major security-based swap participant”,
14 and “eligible contract participant” with regard to security-
15 based swaps (as such terms are defined in the amendments
16 made by subsection (a)) for the purpose of including trans-
17 actions and entities that have been structured to evade this
18 subtitle or the amendments made by this subtitle.

19 (c) *OTHER INCORPORATED DEFINITIONS.*—Except as
20 the context otherwise requires, in this subtitle, the terms
21 “prudential regulator”, “swap”, “swap dealer”, “major
22 swap participant”, “swap data repository”, “associated
23 person of a swap dealer or major swap participant”, “eligi-
24 ble contract participant”, “swap execution facility”, “secu-
25 rity-based swap”, “security-based swap dealer”, “major se-

1 *curity-based swap participant*”, “*security-based swap data*
 2 *repository*”, and “*associated person of a security-based*
 3 *swap dealer or major security-based swap participant*”
 4 *have the same meanings as in section 1a of the Commodity*
 5 *Exchange Act (7 U.S.C. 1a), as amended by this Act.*

6 **SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SE-**
 7 **CURITY-BASED SWAP AGREEMENTS.**

8 (a) *REPEAL.*—*Sections 206B and 206C of the Gramm-*
 9 *Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note)*
 10 *are repealed.*

11 (b) *CONFORMING AMENDMENTS TO THE SECURITIES*
 12 *ACT OF 1933.*—

13 (1) *Section 2A of the Securities Act of 1933 (15*
 14 *U.S.C. 77b–1) is amended—*

15 (A) *by striking subsection (a) and reserving*
 16 *that subsection; and*

17 (B) *by striking “(as defined in section 206B*
 18 *of the Gramm-Leach-Bliley Act)” each place that*
 19 *such term appears and inserting “(as defined in*
 20 *section 3(a)(78) of the Securities Exchange Act*
 21 *of 1934)”.*

22 (2) *Section 17 of the Securities Act of 1933 (15*
 23 *U.S.C. 77q) is amended—*

24 (A) *in subsection (a)—*

1 (i) by inserting “(including security-
2 based swaps)” after “securities”; and

3 (ii) by striking “(as defined in section
4 206B of the Gramm-Leach-Bliley Act)” and
5 inserting “(as defined in section 3(a)(78) of
6 the Securities Exchange Act)”; and

7 (B) in subsection (d), by striking “206B of
8 the Gramm-Leach-Bliley Act” and inserting
9 “3(a)(78) of the Securities Exchange Act of
10 1934”.

11 (c) *CONFORMING AMENDMENTS TO THE SECURITIES*
12 *EXCHANGE ACT OF 1934.*—*The Securities Exchange Act of*
13 *1934 (15 U.S.C. 78a et seq.) is amended—*

14 (1) *in section 3A (15 U.S.C. 78c-1)—*

15 (A) *by striking subsection (a) and reserving*
16 *that subsection; and*

17 (B) *by striking “(as defined in section 206B*
18 *of the Gramm-Leach-Bliley Act)” each place that*
19 *the term appears;*

20 (2) *in section 9 (15 U.S.C. 78i)—*

21 (A) *in subsection (a), by striking para-*
22 *graphs (2) through (5) and inserting the fol-*
23 *lowing:*

24 “(2) *To effect, alone or with 1 or more other persons,*
25 *a series of transactions in any security registered on a na-*

1 *tional securities exchange, any security not so registered,*
2 *or in connection with any security-based swap or security-*
3 *based swap agreement with respect to such security creating*
4 *actual or apparent active trading in such security, or rais-*
5 *ing or depressing the price of such security, for the purpose*
6 *of inducing the purchase or sale of such security by others.*

7 “(3) *If a dealer, broker, security-based swap dealer,*
8 *major security-based swap participant, or other person sell-*
9 *ing or offering for sale or purchasing or offering to purchase*
10 *the security, a security-based swap, or a security-based*
11 *swap agreement with respect to such security, to induce the*
12 *purchase or sale of any security registered on a national*
13 *securities exchange, any security not so registered, any secu-*
14 *rity-based swap, or any security-based swap agreement*
15 *with respect to such security by the circulation or dissemi-*
16 *nation in the ordinary course of business of information*
17 *to the effect that the price of any such security will or is*
18 *likely to rise or fall because of market operations of any*
19 *1 or more persons conducted for the purpose of raising or*
20 *depressing the price of such security.*

21 “(4) *If a dealer, broker, security-based swap dealer,*
22 *major security-based swap participant, or other person sell-*
23 *ing or offering for sale or purchasing or offering to purchase*
24 *the security, a security-based swap, or security-based swap*
25 *agreement with respect to such security, to make, regarding*

1 *any security registered on a national securities exchange,*
2 *any security not so registered, any security-based swap, or*
3 *any security-based swap agreement with respect to such se-*
4 *curity, for the purpose of inducing the purchase or sale of*
5 *such security, such security-based swap, or such security-*
6 *based swap agreement any statement which was at the time*
7 *and in the light of the circumstances under which it was*
8 *made, false or misleading with respect to any material fact,*
9 *and which that person knew or had reasonable ground to*
10 *believe was so false or misleading.*

11 “(5) *For a consideration, received directly or indi-*
12 *rectly from a broker, dealer, security-based swap dealer,*
13 *major security-based swap participant, or other person sell-*
14 *ing or offering for sale or purchasing or offering to purchase*
15 *the security, a security-based swap, or security-based swap*
16 *agreement with respect to such security, to induce the pur-*
17 *chase of any security registered on a national securities ex-*
18 *change, any security not so registered, any security-based*
19 *swap, or any security-based swap agreement with respect*
20 *to such security by the circulation or dissemination of in-*
21 *formation to the effect that the price of any such security*
22 *will or is likely to rise or fall because of the market oper-*
23 *ations of any 1 or more persons conducted for the purpose*
24 *of raising or depressing the price of such security.”; and*

1 (B) in subsection (i), by striking “(as de-
2 fined in section 206B of the Gramm-Leach-Bliley
3 Act)”;

4 (3) in section 10 (15 U.S.C. 78j)—

5 (A) in subsection (b), by striking “(as de-
6 fined in section 206B of the Gramm-Leach-Bliley
7 Act),” each place that term appears; and

8 (B) in the matter following subsection (b),
9 by striking “(as defined in section 206B of the
10 Gramm-Leach-Bliley Act)”;

11 (4) in section 15 (15 U.S.C. 78o)—

12 (A) in subsection (c)(1)(A), by striking “(as
13 defined in section 206B of the Gramm-Leach-
14 Bliley Act),”;

15 (B) in subparagraphs (B) and (C) of sub-
16 section (c)(1), by striking “(as defined in section
17 206B of the Gramm-Leach-Bliley Act)” each
18 place that term appears;

19 (C) by redesignating subsection (i), as
20 added by section 303(f) of the Commodity Fu-
21 tures Modernization Act of 2000 (Public Law
22 106–554; 114 Stat. 2763A–455), as subsection
23 (j); and

1 (D) in subsection (j), as redesignated by
2 subparagraph (C), by striking “(as defined in
3 section 206B of the Gramm-Leach-Bliley Act)”;
4 (5) in section 16 (15 U.S.C. 78p)—

5 (A) in subsection (a)(2)(C), by striking “(as
6 defined in section 206(b) of the Gramm-Leach-
7 Bliley Act (15 U.S.C. 78c note))”;

8 (B) in subsection (a)(3)(B), by inserting
9 “or security-based swaps” after “security-based
10 swap agreement”;

11 (C) in the first sentence of subsection (b), by
12 striking “(as defined in section 206B of the
13 Gramm-Leach-Bliley Act)”;

14 (D) in the third sentence of subsection (b),
15 by striking “(as defined in section 206B of the
16 Gramm-Leach Bliley Act)” and inserting “or a
17 security-based swap”; and

18 (E) in subsection (g), by striking “(as de-
19 fined in section 206B of the Gramm-Leach-Bliley
20 Act)”;

21 (6) in section 20 (15 U.S.C. 78t),

22 (A) in subsection (d), by striking “(as de-
23 fined in section 206B of the Gramm-Leach-Bliley
24 Act)”;

1 (B) in subsection (f), by striking “(as de-
2 fined in section 206B of the Gramm-Leach-Bliley
3 Act)”;

4 (7) in section 21A (15 U.S.C. 78u-1)—

5 (A) in subsection (a)(1), by striking “(as
6 defined in section 206B of the Gramm-Leach-
7 Bliley Act)”;

8 (B) in subsection (g), by striking “(as de-
9 fined in section 206B of the Gramm-Leach-Bliley
10 Act)”.

11 **SEC. 763. AMENDMENTS TO THE SECURITIES EXCHANGE**

12 **ACT OF 1934.**

13 (a) *CLEARING FOR SECURITY-BASED SWAPS.*—*The Se-*
14 *curities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is*
15 *amended by inserting after section 3B (as added by section*
16 *717 of this Act):*

17 **“SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.**

18 “(a) *CLEARING REQUIREMENT.*—

19 “(1) *SUBMISSION.*—

20 “(A) *IN GENERAL.*—*Except as provided in*
21 *paragraphs (9) and (10), any person who is a*
22 *party to a security-based swap shall submit such*
23 *security-based swap for clearing to a clearing*
24 *agency registered under section 17A of this title.*

1 “(B) *OPEN ACCESS.*—*The rules of a reg-*
2 *istered clearing agency shall—*

3 “(i) *prescribe that all security-based*
4 *swaps with the same terms and conditions*
5 *are economically equivalent and may be off-*
6 *set with each other within the clearing*
7 *agency; and*

8 “(ii) *provide for nondiscriminatory*
9 *clearing of a security-based swap executed*
10 *bilaterally or on or through the rules of an*
11 *unaffiliated national securities exchange or*
12 *swap execution facility, subject to the re-*
13 *quirements of section 5(b).*

14 “(2) *COMMISSION APPROVAL.*—

15 “(A) *IN GENERAL.*—*A clearing agency shall*
16 *submit to the Commission for prior approval*
17 *any group, category, type, or class of security-*
18 *based swaps that the clearing agency seeks to ac-*
19 *cept for clearing, which submission the Commis-*
20 *sion shall make available to the public.*

21 “(B) *DEADLINE.*—*The Commission shall*
22 *take final action on a request submitted pursu-*
23 *ant to subparagraph (A) not later than 90 days*
24 *after submission of the request, unless the clear-*
25 *ing agency submitting the request agrees to an*

1 *extension of the time limitation established under*
2 *this subparagraph.*

3 “(C) *APPROVAL.*—*The Commission shall*
4 *approve, unconditionally or subject to such terms*
5 *and conditions as the Commission determines to*
6 *be appropriate, any request submitted pursuant*
7 *to subparagraph (A) if the Commission finds*
8 *that the request is consistent with the require-*
9 *ments of section 17A. The Commission shall not*
10 *approve any such request if the Commission does*
11 *not make such finding.*

12 “(D) *RULES.*—*The Commission shall adopt*
13 *rules for a clearing agency’s submission for ap-*
14 *proval, pursuant to this paragraph, of any*
15 *group, category, type, or class of security-based*
16 *swaps that the clearing agency seeks to accept for*
17 *clearing.*

18 “(3) *STAY OF CLEARING REQUIREMENT.*—*At any*
19 *time after issuance of an approval pursuant to para-*
20 *graph (2):*

21 “(A) *REVIEW PROCESS.*—*The Commission,*
22 *on application of a counterparty to a security-*
23 *based swap or on its own initiative, may stay*
24 *the clearing requirement of paragraph (1) until*
25 *the Commission completes a review of the terms*

1 *of the security-based swap, or the group, cat-*
2 *egory, type, or class of security-based swaps, and*
3 *the clearing arrangement.*

4 “(B) *DEADLINE.*—*The Commission shall*
5 *complete a review undertaken pursuant to sub-*
6 *paragraph (A) not later than 90 days after*
7 *issuance of the stay, unless the clearing agency*
8 *that clears the security-based swap, or the group,*
9 *category, type, or class of security-based swaps,*
10 *agrees to an extension of the time limitation es-*
11 *tablished under this subparagraph.*

12 “(C) *DETERMINATION.*—*Upon completion of*
13 *the review undertaken pursuant to subparagraph*
14 *(A)—*

15 “(i) *the Commission may determine,*
16 *unconditionally or subject to such terms*
17 *and conditions as the Commission deter-*
18 *mines to be appropriate, that the security-*
19 *based swap, or the group, category, type, or*
20 *class of security-based swaps, must be*
21 *cleared pursuant to this subsection if the*
22 *Commission finds that such clearing—*

23 “(I) *is consistent with the require-*
24 *ments of section 17A; and*

1 “(II) is otherwise in the public in-
2 terest, for the protection of investors,
3 and consistent with the purposes of
4 this title;

5 “(ii) the Commission may determine
6 that the clearing requirement of paragraph
7 (1) shall not apply to the security-based
8 swap, or the group, category, type, or class
9 of security-based swaps; or

10 “(iii) if a determination is made that
11 the clearing requirement of paragraph (1)
12 shall no longer apply, then the Commission
13 may still permit such security-based swap,
14 or the group, category, type, or class of secu-
15 rity-based swaps to be cleared.

16 “(D) RULES.—The Commission shall adopt
17 rules for reviewing, pursuant to this paragraph,
18 a clearing agency’s clearing of a security-based
19 swap, or a group, category, type, or class of secu-
20 rity-based swaps that the Commission has ac-
21 cepted for clearing.

22 “(4) SECURITY-BASED SWAPS REQUIRED TO BE
23 ACCEPTED FOR CLEARING.—

24 “(A) RULEMAKING.—The Commission shall
25 adopt rules to further identify any group, cat-

1 egory, type, or class of security-based swaps not
2 submitted for approval under paragraph (2) that
3 the Commission deems should be accepted for
4 clearing. In adopting such rules, the Commission
5 shall take into account the following factors:

6 “(i) The extent to which any of the
7 terms of the group, category, type, or class
8 of security-based swaps, including price, are
9 disseminated to third parties or are ref-
10 erenced in other agreements, contracts, or
11 transactions.

12 “(ii) The volume of transactions in the
13 group, category, type, or class of security-
14 based swaps.

15 “(iii) The extent to which the terms of
16 the group, category, type, or class of secu-
17 rity-based swaps are similar to the terms of
18 other agreements, contracts, or transactions
19 that are cleared.

20 “(iv) Whether any differences in the
21 terms of the group, category, type, or class
22 of security-based swaps, compared to other
23 agreements, contracts, or transactions that
24 are cleared, are of economic significance.

1 “(v) *Whether a clearing agency is pre-*
2 *pared to clear the group, category, type, or*
3 *class of security-based swaps and such*
4 *clearing agency has in place effective risk*
5 *management systems.*

6 “(vi) *Any other factor the Commission*
7 *determines to be appropriate.*

8 “(B) *OTHER DESIGNATIONS.—At any time*
9 *after the adoption of the rules required under*
10 *subparagraph (A), the Commission may sepa-*
11 *rately designate a particular security-based swap*
12 *or class of security-based swaps as subject to the*
13 *clearing requirement of paragraph (1), taking*
14 *into account the factors established in clauses (i)*
15 *through (vi) of subparagraph (A) and the rules*
16 *adopted in such subparagraph.*

17 “(C) *IN GENERAL.—In accordance with*
18 *subparagraph (A), the Commission shall, con-*
19 *sistent with the public interest, adopt rules*
20 *under the expedited process described in subpara-*
21 *graph (D) to establish criteria for determining*
22 *that a swap, or any group, category, type, or*
23 *class of swap is required to be cleared.*

24 “(D) *EXPEDITED RULEMAKING AUTHOR-*
25 *ITY.—*

1 “(i) *PROCEDURE.*—*The promulgation*
2 *of regulations under subparagraph (A) may*
3 *be made without regard to—*

4 “(I) *the notice and comment pro-*
5 *visions of section 553 of title 5, United*
6 *States Code; and*

7 “(II) *chapter 35 of title 44,*
8 *United States Code (commonly known*
9 *as the ‘Paperwork Reduction Act’).*

10 “(ii) *AGENCY RULEMAKING.*—*In car-*
11 *rying out subparagraph (A), the Commis-*
12 *sion shall use the authority provided under*
13 *section 808 of title 5, United States Code.*

14 “(5) *PREVENTION OF EVASION.*—

15 “(A) *IN GENERAL.*—*The Commission shall*
16 *have authority to prescribe rules under this sec-*
17 *tion, or issue interpretations of such rules, as*
18 *necessary to prevent evasions of this section.*

19 “(B) *DUTY OF COMMISSION TO INVESTIGATE*
20 *AND TAKE CERTAIN ACTIONS.*—*To the extent the*
21 *Commission finds that a particular security-*
22 *based swap or any group, category, type, or class*
23 *of security-based swaps that would otherwise be*
24 *subject to mandatory clearing but no clearing*
25 *agency has listed the security-based swap or the*

1 *group, category, type, or class of security-based*
2 *swaps for clearing, the Commission shall—*

3 “(i) *investigate the relevant facts and*
4 *circumstances;*

5 “(ii) *within 30 days issue a public re-*
6 *port containing the results of the investiga-*
7 *tion; and*

8 “(iii) *take such actions as the Commis-*
9 *sion determines to be necessary and in the*
10 *public interest, which may include requir-*
11 *ing the retaining of adequate margin or*
12 *capital by parties to the security-based*
13 *swap or the group, category, type, or class*
14 *of security-based swaps.*

15 “(C) *EFFECT ON AUTHORITY.—Nothing in*
16 *this paragraph—*

17 “(i) *authorize the Commission to re-*
18 *quire a clearing agency to list for clearing*
19 *a security-based swap or any group, cat-*
20 *egory, type, or class of security-based swaps*
21 *if the clearing of the security-based swap or*
22 *the group, category, type, or class of secu-*
23 *rity-based swaps would adversely affect the*
24 *business operations of the clearing agency,*
25 *threaten the financial integrity of the clear-*

1 *ing agency, or pose a systemic risk to the*
2 *clearing agency; and*

3 *“(ii) affect the authority of the Com-*
4 *mission to enforce the open access provisions*
5 *of paragraph (1) with respect to a security-*
6 *based swap or the group, category, type, or*
7 *class of security-based swaps that is listed*
8 *for clearing by a clearing agency.*

9 *“(6) REQUIRED REPORTING.—*

10 *“(A) BOTH COUNTERPARTIES.—Both*
11 *counterparties to a security-based swap that is*
12 *not cleared by any clearing agency shall report*
13 *such a security-based swap either to a registered*
14 *security-based swap repository described in sec-*
15 *tion 13(n) or, if there is no repository that*
16 *would accept the security-based swap, to the*
17 *Commission pursuant to section 13A.*

18 *“(B) TIMING.—Counterparties to a secu-*
19 *urity-based swap shall submit the reports required*
20 *under subparagraph (A) not later than such time*
21 *period as the Commission may by rule or regula-*
22 *tion prescribe.*

23 *“(7) TRANSITION RULES.—*

24 *“(A) REPORTING TRANSITION RULES.—*
25 *Rules adopted by the Commission under this sec-*

1 *tion shall provide for the reporting of data, as*
2 *follows:*

3 *“(i) Security-based swaps entered into*
4 *before the date of the enactment of this sec-*
5 *tion shall be reported to a registered secu-*
6 *rity-based swap repository or the Commis-*
7 *sion not later than 180 days after the effec-*
8 *tive date of this section.*

9 *“(ii) Security-based swaps entered into*
10 *on or after such date of enactment shall be*
11 *reported to a registered security-based swap*
12 *repository or the Commission not later than*
13 *the later of—*

14 *“(I) 90 days after such effective*
15 *date; or*

16 *“(II) such other time after enter-*
17 *ing into the security-based swap as the*
18 *Commission may prescribe by rule or*
19 *regulation.*

20 *“(B) CLEARING TRANSITION RULES.—*

21 *“(i) Security-based swaps entered into*
22 *before the date of the enactment of this sec-*
23 *tion are exempt from the clearing require-*
24 *ments of this subsection if reported pursu-*
25 *ant to subparagraph (A)(i).*

1 “(ii) *Security-based swaps entered into*
2 *before application of the clearing require-*
3 *ment pursuant to this section are exempt*
4 *from the clearing requirements of this sec-*
5 *tion if reported pursuant to subparagraph*
6 *(A)(ii).*

7 “(8) *TRADE EXECUTION.—*

8 “(A) *IN GENERAL.—With respect to trans-*
9 *actions involving security-based swaps subject to*
10 *the clearing requirement of paragraph (1),*
11 *counterparties shall—*

12 “(i) *execute the transaction on an ex-*
13 *change; or*

14 “(ii) *execute the transaction on a swap*
15 *execution facility registered under section*
16 *3D or a swap execution facility that is ex-*
17 *empt from registration under section 3D(e).*

18 “(B) *EXCEPTION.—The requirements of*
19 *clauses (i) and (ii) of subparagraph (A) shall not*
20 *apply—*

21 “(i) *if no national securities exchange*
22 *or security-based swap execution facility*
23 *makes the security-based swap available to*
24 *trade; or*

1 “(ii) to swap transactions where a
2 commercial end user opts to use the clearing
3 exemption under paragraph (10).

4 “(9) *REQUIRED EXEMPTION.*—Subject to para-
5 graph (4), the Commission shall exempt a security-
6 based swap from the requirements of paragraphs (1)
7 and (8) and any rules issued under this subsection,
8 if no clearing agency registered under this Act will
9 accept the security-based swap from clearing.

10 “(10) *END USER CLEARING EXEMPTION.*—

11 “(A) *DEFINITION OF COMMERCIAL END*
12 *USER.*—

13 “(i) *IN GENERAL.*—In this paragraph,
14 the term ‘commercial end user’ means any
15 person other than a financial entity de-
16 scribed in clause (ii) who, as its primary
17 business activity, owns, uses, produces,
18 processes, manufactures, distributes, mer-
19 chandises, or markets services or commod-
20 ities (which shall include coal, natural gas,
21 electricity, ethanol, crude oil, distillates,
22 and other hydrocarbons) either individually
23 or in a fiduciary capacity.

24 “(ii) *FINANCIAL ENTITY.*—The term
25 ‘financial entity’ means—

1 “(I) a swap dealer, major swap
2 participant, security-based swap deal-
3 er, or major security-based swap par-
4 ticipant;

5 “(II) a person predominantly en-
6 gaged in activities that are in the busi-
7 ness of banking or financial in nature,
8 as defined in Section 4(k) of the Bank
9 Holding Company Act of 1956;

10 “(III) a person predominantly en-
11 gaged in activities that are financial
12 in nature;

13 “(IV) a private fund as defined in
14 section 202(a) of the Investment Advis-
15 ers Act of 1940 (15 U.S.C. 80b–2(a))
16 or a commodity pool as defined in sec-
17 tion 1a of the Commodity Exchange
18 Act (7 U.S.C. 1a); or

19 “(V) a person that is registered or
20 required to be registered with the Com-
21 mission, but does not include a public
22 company which registers its securities
23 with the Commission.

24 “(B) END USER CLEARING EXEMPTION.—

1 “(i) *IN GENERAL.*—Subject to clause
2 (ii), in the event that a security-based swap
3 is subject to the mandatory clearing require-
4 ment under paragraph (1), and 1 of the
5 counterparties to the security-based swap is
6 a commercial end user that counterparty—

7 “(I)(aa) may elect not to clear the
8 security-based swap, as required under
9 paragraph (1); or

10 “(bb) may elect to require clearing
11 of the security-based swap; and

12 “(II) if the end user makes an
13 election under subclause (I)(bb), shall
14 have the sole right to select the clearing
15 agency at which the security-based
16 swap will be cleared.

17 “(ii) *LIMITATION.*—A commercial end
18 user may only make an election under
19 clause (i) if the end user is using the secu-
20 rity-based swap to hedge its own commer-
21 cial risk.

22 “(C) *TREATMENT OF AFFILIATES.*—

23 “(i) *IN GENERAL.*—An affiliate of a
24 commercial end user (including affiliate en-
25 tities predominantly engaged in providing

1 *financing for the purchase of the merchan-*
2 *dise or manufactured goods of the commer-*
3 *cial end user) may make an election under*
4 *subparagraph (B)(i) only if the affiliate,*
5 *acting on behalf of the commercial end user*
6 *and as an agent, uses the security-based*
7 *swap to hedge or mitigate the commercial*
8 *risk of the commercial end user parent or*
9 *other affiliates of the commercial end user*
10 *that is not a financial entity.*

11 “(ii) *PROHIBITION RELATING TO CER-*
12 *TAIN AFFILIATES.—An affiliate of a com-*
13 *mercial end user shall not use the exemption*
14 *under subparagraph (B) if the affiliate is—*

15 “(I) *a security-based swap dealer;*

16 “(II) *a security-based security-*
17 *based swap dealer;*

18 “(III) *a major security-based*
19 *swap participant;*

20 “(IV) *a major security-based secu-*
21 *rity-based swap participant;*

22 “(V) *an issuer that would be an*
23 *investment company, as defined in sec-*
24 *tion 3 of the Investment Company Act*
25 *of 1940 (15 U.S.C. 80a–3), but for*

1 paragraph (1) or (7) of subsection (c)
2 of that section 3 (15 U.S.C. 80a-3(c));

3 “(VI) a commodity pool;

4 “(VII) a bank holding company
5 with over \$50,000,000,000 in consoli-
6 dated assets; or

7 “(VIII) an affiliate of any entity
8 described in subclauses (I) through
9 (VII).

10 “(iii) *ABUSE OF EXEMPTION.*—*The*
11 *Commission may prescribe such rules, or*
12 *issue interpretations of the rules, as the*
13 *Commission determines to be necessary to*
14 *prevent abuse of the exemption described in*
15 *subparagraph (B).*

16 “(D) *OPTION TO CLEAR.*—

17 “(i) *SECURITY-BASED SWAPS RE-*
18 *QUIRED TO BE CLEARED ENTERED INTO*
19 *WITH A FINANCIAL ENTITY.*—*With respect to*
20 *any securities-based swap that is required*
21 *to be cleared by a clearing agency and en-*
22 *tered into by a securities-based swap dealer*
23 *or a major securities-based swap partici-*
24 *part with a financial entity, the financial*
25 *entity shall have the sole right to select the*

1 *clearing agency at which the securities-*
2 *based swap will be cleared.*

3 “(ii) *SECURITY-BASED SWAPS NOT RE-*
4 *QUIRED TO BE CLEARED ENTERED INTO*
5 *WITH A FINANCIAL ENTITY OR COMMERCIAL*
6 *END USER.—With respect to any securities-*
7 *based swap that is not required to be*
8 *cleared by a clearing agency and entered*
9 *into by a securities-based swap dealer or a*
10 *major securities-based swap participant*
11 *with a financial entity or commercial end*
12 *user, the financial entity or commercial end*
13 *user—*

14 “(I) *may elect to require clearing*
15 *of the securities-based swap; and*

16 “(II) *shall have the sole right to*
17 *select the clearing agency at which the*
18 *securities-based swap will be cleared.*

19 “(b) *AUDIT COMMITTEE APPROVAL.—Exemptions*
20 *from the requirements of this section to clear or trade a*
21 *security-based swap through a national securities exchange*
22 *or security-based swap execution facility shall be available*
23 *to a counterparty that is an issuer of securities that are*
24 *registered under section 12 or that is required to file reports*
25 *pursuant to section 15(d), only if the issuer’s audit com-*

1 *mittee has reviewed and approved the issuer's decision to*
2 *enter into security-based swaps that are subject to such ex-*
3 *emptions.*

4 “(c) *PUBLIC AVAILABILITY OF SECURITY-BASED SWAP*
5 *TRANSACTION DATA.*—

6 “(1) *IN GENERAL.*—

7 “(A) *DEFINITION OF REAL-TIME PUBLIC RE-*
8 *PORTING.*—*In this paragraph, the term ‘real-*
9 *time public reporting’ means to report data re-*
10 *lating to a security-based swap transaction as*
11 *soon as technologically practicable after the time*
12 *at which the security-based swap transaction has*
13 *been executed.*

14 “(B) *PURPOSE.*—*The purpose of this section*
15 *is to authorize the Commission to make security-*
16 *based swap transaction and pricing data avail-*
17 *able to the public in such form and at such times*
18 *as the Commission determines appropriate to en-*
19 *hance price discovery.*

20 “(C) *GENERAL RULE.*—*The Commission is*
21 *authorized to provide by rule for the public*
22 *availability of security-based swap transaction*
23 *and pricing data as follows:*

24 “(i) *With respect to those security-*
25 *based swaps that are subject to the manda-*

1 *tory clearing requirement described in sub-*
2 *section (a)(1) (including those security-*
3 *based swaps that are exempted from those*
4 *requirements), the Commission shall require*
5 *real-time public reporting for such trans-*
6 *actions.*

7 *“(ii) With respect to those security-*
8 *based swaps that are not subject to the man-*
9 *datory clearing requirement described in*
10 *subsection (a)(1), but are cleared at a reg-*
11 *istered clearing agency, the Commission*
12 *shall require real-time public reporting for*
13 *such transactions.*

14 *“(iii) With respect to security-based*
15 *swaps that are not cleared at a registered*
16 *clearing agency and which are reported to*
17 *a security-based swap data repository or the*
18 *Commission under subsection (a), the Com-*
19 *mission shall make available to the public,*
20 *in a manner that does not disclose the busi-*
21 *ness transactions and market positions of*
22 *any person, aggregate data on such secu-*
23 *rity-based swap trading volumes and posi-*
24 *tions.*

1 “(iv) *With respect to security-based*
2 *swaps that are exempt from the require-*
3 *ments of subsection (a)(1), but are subject to*
4 *the requirements of subsection (a)(8), the*
5 *Commission shall require real-time public*
6 *reporting for such transactions.*

7 “(D) *REGISTERED ENTITIES AND PUBLIC*
8 *REPORTING.—The Commission may require reg-*
9 *istered entities to publicly disseminate the secu-*
10 *rity-based swap transaction and pricing data re-*
11 *quired to be reported under this paragraph.*

12 “(E) *RULEMAKING REQUIRED.—With re-*
13 *spect to the rule providing for the public avail-*
14 *ability of transaction and pricing data for secu-*
15 *rity-based swaps described in clauses (i) and (ii)*
16 *of subparagraph (C), the rule promulgated by the*
17 *Commission shall contain provisions—*

18 “(i) *to ensure such information does*
19 *not identify the participants;*

20 “(ii) *to specify the criteria for deter-*
21 *mining what constitutes a large notional se-*
22 *curity-based swap transaction (block trade)*
23 *for particular markets and contracts;*

24 “(iii) *to specify the appropriate time*
25 *delay for reporting large notional security-*

1 *based swap transactions (block trades) to*
2 *the public; and*

3 *“(iv) that take into account whether*
4 *the public disclosure will materially reduce*
5 *market liquidity.*

6 *“(F) TIMELINESS OF REPORTING.—Parties*
7 *to a security-based swap (including agents of the*
8 *parties to a security-based swap) shall be respon-*
9 *sible for reporting security-based swap trans-*
10 *action information to the appropriate registered*
11 *entity in a timely manner as may be prescribed*
12 *by the Commission.*

13 *“(2) SEMIANNUAL AND ANNUAL PUBLIC REPORT-*
14 *ING OF AGGREGATE SECURITY-BASED SWAP DATA.—*

15 *“(A) IN GENERAL.—In accordance with*
16 *subparagraph (B), the Commission shall issue a*
17 *written report on a semiannual and annual*
18 *basis to make available to the public information*
19 *relating to—*

20 *“(i) the trading and clearing in the*
21 *major security-based swap categories; and*

22 *“(ii) the market participants and de-*
23 *velopments in new products.*

1 “(B) *USE; CONSULTATION.*—*In preparing a*
2 *report under subparagraph (A), the Commission*
3 *shall—*

4 “(i) *use information from security-*
5 *based swap data repositories and clearing*
6 *agencies; and*

7 “(ii) *consult with the Office of the*
8 *Comptroller of the Currency, the Bank for*
9 *International Settlements, and such other*
10 *regulatory bodies as may be necessary.*

11 “(C) *TRANSITION RULE FOR*
12 *PREENACTMENT SECURITY-BASED SWAPS.—*

13 “(i) *SECURITY-BASED SWAPS ENTERED*
14 *INTO BEFORE THE DATE OF ENACTMENT OF*
15 *THE WALL STREET TRANSPARENCY AND AC-*
16 *COUNTABILITY ACT OF 2010.—Each security-*
17 *based swap entered into before the date of*
18 *enactment of the Wall Street Transparency*
19 *and Accountability Act of 2010, the terms of*
20 *which have not expired as of the date of en-*
21 *actment of that Act, shall be reported to a*
22 *registered security-based swap data reposi-*
23 *tory or the Commission by a date that is*
24 *not later than—*

1 “(I) 30 days after the date of
2 issuance of the interim final rule; or

3 “(II) such other period as the
4 Commission determines to be appro-
5 priate.

6 “(ii) COMMISSION RULEMAKING.—The
7 Commission shall promulgate an interim
8 final rule within 90 days of the date of en-
9 actment of this section providing for the re-
10 porting of each security-based swap entered
11 into before the date of enactment as ref-
12 erenced in clause (i).

13 “(D) EFFECTIVE DATE.—The reporting pro-
14 visions described in this paragraph shall be effec-
15 tive upon the date of enactment of this section.

16 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-
17 CER.—

18 “(1) IN GENERAL.—Each registered clearing
19 agency shall designate an individual to serve as a
20 chief compliance officer.

21 “(2) DUTIES.—The chief compliance officer
22 shall—

23 “(A) report directly to the board or to the
24 senior officer of the clearing agency;

1 “(B) in consultation with its board, a body
2 performing a function similar thereto, or the sen-
3 ior officer of the registered clearing agency, re-
4 solve any conflicts of interest that may arise;

5 “(C) be responsible for administering each
6 policy and procedure that is required to be estab-
7 lished pursuant to this section;

8 “(D) ensure compliance with this title (in-
9 cluding regulations issued under this title) relat-
10 ing to agreements, contracts, or transactions, in-
11 cluding each rule prescribed by the Commission
12 under this section;

13 “(E) establish procedures for the remedi-
14 ation of noncompliance issues identified by the
15 compliance officer through any—

16 “(i) compliance office review;

17 “(ii) look-back;

18 “(iii) internal or external audit find-
19 ing;

20 “(iv) self-reported error; or

21 “(v) validated complaint; and

22 “(F) establish and follow appropriate proce-
23 dures for the handling, management response, re-
24 mediation, retesting, and closing of noncompli-
25 ance issues.

1 “(3) *ANNUAL REPORTS.*—

2 “(A) *IN GENERAL.*—*In accordance with*
3 *rules prescribed by the Commission, the chief*
4 *compliance officer shall annually prepare and*
5 *sign a report that contains a description of—*

6 “(i) *the compliance of the registered*
7 *clearing agency or security-based swap exe-*
8 *cution facility of the compliance officer with*
9 *respect to this title (including regulations*
10 *under this title); and*

11 “(ii) *each policy and procedure of the*
12 *registered clearing agency of the compliance*
13 *officer (including the code of ethics and con-*
14 *flict of interest policies of the registered*
15 *clearing agency).*

16 “(B) *REQUIREMENTS.*—*A compliance re-*
17 *port under subparagraph (A) shall—*

18 “(i) *accompany each appropriate fi-*
19 *nancial report of the registered clearing*
20 *agency that is required to be furnished to*
21 *the Commission pursuant to this section;*
22 *and*

23 “(ii) *include a certification that, under*
24 *penalty of law, the compliance report is ac-*
25 *curate and complete.*”

1 **(b) CLEARING AGENCY REQUIREMENTS.**—*Section 17A*
2 *of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1)*
3 *is amended by adding at the end the following:*

4 **“(g) REGISTRATION REQUIREMENT.**—*It shall be un-*
5 *lawful for a clearing agency, unless registered with the*
6 *Commission, directly or indirectly to make use of the mails*
7 *or any means or instrumentality of interstate commerce to*
8 *perform the functions of a clearing agency with respect to*
9 *a security-based swap.*

10 **“(h) VOLUNTARY REGISTRATION.**—*A person that*
11 *clears agreements, contracts, or transactions that are not*
12 *required to be cleared under this title may register with*
13 *the Commission as a clearing agency.*

14 **“(i) STANDARDS FOR CLEARING AGENCIES CLEARING**
15 **SECURITY-BASED SWAP TRANSACTIONS.**—*To be registered*
16 *and to maintain registration as a clearing agency that*
17 *clears security-based swap transactions, a clearing agency*
18 *shall comply with such standards as the Commission may*
19 *establish by rule. In establishing any such standards, and*
20 *in the exercise of its oversight of such a clearing agency*
21 *pursuant to this title, the Commission may conform such*
22 *standards or oversight to reflect evolving United States and*
23 *international standards. Except where the Commission de-*
24 *termines otherwise by rule or regulation, a clearing agency*

1 *shall have reasonable discretion in establishing the manner*
2 *in which it complies with any such standards.*

3 “(j) *RULES.—The Commission shall adopt rules gov-*
4 *erning persons that are registered as clearing agencies for*
5 *security-based swaps under this title.*

6 “(k) *EXEMPTIONS.—*

7 “(1) *IN GENERAL.—The Commission may ex-*
8 *empt, conditionally or unconditionally, a clearing*
9 *agency from registration under this section for the*
10 *clearing of security-based swaps if the Commission*
11 *determines that the clearing agency is subject to com-*
12 *parable, comprehensive supervision and regulation by*
13 *the Commodity Futures Trading Commission or the*
14 *appropriate government authorities in the home coun-*
15 *try of the agency. Such conditions may include, but*
16 *are not limited to, requiring that the clearing agency*
17 *be available for inspection by the Commission and*
18 *make available all information requested by the Com-*
19 *mission.*

20 “(2) *DERIVATIVES CLEARING ORGANIZATIONS.—*
21 *A person that is required to be registered as a deriva-*
22 *tives clearing organization under the Commodity Ex-*
23 *change Act, whose principal business is clearing com-*
24 *modity futures and options on commodity futures*
25 *transactions and swaps and which is a derivatives*

1 *clearing organization registered with the Commodity*
2 *Futures Trading Commission under the Commodity*
3 *Exchange Act (7 U.S.C. 1 et seq.), shall be uncondi-*
4 *tionally exempt from registration under this section*
5 *solely for the purpose of clearing security-based*
6 *swaps, unless the Commission finds that such deriva-*
7 *tives clearing organization is not subject to com-*
8 *parable, comprehensive supervision and regulation by*
9 *the Commodity Futures Trading Commission.*

10 “(l) **MODIFICATION OF CORE PRINCIPLES.**—*The Com-*
11 *mission may conform the core principles established in this*
12 *section to reflect evolving United States and international*
13 *standards.”.*

14 “(c) **SECURITY-BASED SWAP EXECUTION FACILITIES.**—
15 *The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)*
16 *is amended by inserting after section 3C (as added by sub-*
17 *section (a) of this section) the following:*

18 **“SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.**

19 “(a) **REGISTRATION.**—

20 “(1) **IN GENERAL.**—*No person may operate a fa-*
21 *cility for the trading or processing of security-based*
22 *swaps, unless the facility is registered as a security-*
23 *based swap execution facility or as a national securi-*
24 *ties exchange under this section.*

1 “(2) *DUAL REGISTRATION.*—Any person that is
2 registered as a security-based swap execution facility
3 under this section shall register with the Commission
4 regardless of whether the person also is registered with
5 the Commodity Futures Trading Commission as a
6 swap execution facility.

7 “(b) *TRADING AND TRADE PROCESSING.*—A security-
8 based swap execution facility that is registered under sub-
9 section (a) may—

10 “(1) make available for trading any security-
11 based swap; and

12 “(2) facilitate trade processing of any security-
13 based swap.

14 “(c) *IDENTIFICATION OF FACILITY USED TO TRADE*
15 *SECURITY-BASED SWAPS BY NATIONAL SECURITIES EX-*
16 *CHANGES.*—A national securities exchange shall, to the ex-
17 tent that the exchange also operates a security-based swap
18 execution facility and uses the same electronic trade execu-
19 tion system for listing and executing trades of security-
20 based swaps on or through the exchange and the facility,
21 identify whether electronic trading of such security-based
22 swaps is taking place on or through the national securities
23 exchange or the security-based swap execution facility.

24 “(d) *CORE PRINCIPLES FOR SECURITY-BASED SWAP*
25 *EXECUTION FACILITIES.*—

1 “(1) *COMPLIANCE WITH CORE PRINCIPLES.*—

2 “(A) *IN GENERAL.*—*To be registered, and*
3 *maintain registration, as a security-based swap*
4 *execution facility, the security-based swap execu-*
5 *tion facility shall comply with—*

6 “(i) *the core principles described in*
7 *this subsection; and*

8 “(ii) *any requirement that the Com-*
9 *mission may impose by rule or regulation.*

10 “(B) *REASONABLE DISCRETION OF SECUR-*
11 *ITY-BASED SWAP EXECUTION FACILITY.*—*Unless*
12 *otherwise determined by the Commission, by rule*
13 *or regulation, a security-based swap execution*
14 *facility described in subparagraph (A) shall have*
15 *reasonable discretion in establishing the manner*
16 *in which it complies with the core principles de-*
17 *scribed in this subsection.*

18 “(2) *COMPLIANCE WITH RULES.*—*A security-*
19 *based swap execution facility shall—*

20 “(A) *monitor and enforce compliance with*
21 *any rule established by such security-based swap*
22 *execution facility, including—*

23 “(i) *the terms and conditions of the se-*
24 *curity-based swaps traded or processed on*
25 *or through the facility; and*

1 “(ii) any limitation on access to the
2 facility;

3 “(B) establish and enforce trading, trade
4 processing, and participation rules that will
5 deter abuses and have the capacity to detect, in-
6 vestigate, and enforce those rules, including
7 means—

8 “(i) to provide market participants
9 with impartial access to the market; and

10 “(ii) to capture information that may
11 be used in establishing whether rule viola-
12 tions have occurred; and

13 “(C) establish rules governing the operation
14 of the facility, including rules specifying trading
15 procedures to be used in entering and executing
16 orders traded or posted on the facility, including
17 block trades.

18 “(3) SECURITY-BASED SWAPS NOT READILY SUS-
19 CEPTIBLE TO MANIPULATION.—The security-based
20 swap execution facility shall permit trading only in
21 security-based swaps that are not readily susceptible
22 to manipulation.

23 “(4) MONITORING OF TRADING AND TRADE PROC-
24 ESSING.—The security-based swap execution facility
25 shall—

1 “(A) establish and enforce rules or terms
2 and conditions defining, or specifications detail-
3 ing—

4 “(i) trading procedures to be used in
5 entering and executing orders traded on or
6 through the facilities of the security-based
7 swap execution facility; and

8 “(ii) procedures for trade processing of
9 security-based swaps on or through the fa-
10 cilities of the security-based swap execution
11 facility; and

12 “(B) monitor trading in security-based
13 swaps to prevent manipulation, price distortion,
14 and disruptions of the delivery or cash settlement
15 process through surveillance, compliance, and
16 disciplinary practices and procedures, including
17 methods for conducting real-time monitoring of
18 trading and comprehensive and accurate trade
19 reconstructions.

20 “(5) ABILITY TO OBTAIN INFORMATION.—The se-
21 curity-based swap execution facility shall—

22 “(A) establish and enforce rules that will
23 allow the facility to obtain any necessary infor-
24 mation to perform any of the functions described
25 in this subsection;

1 “(B) provide the information to the Com-
2 mission on request; and

3 “(C) have the capacity to carry out such
4 international information-sharing agreements as
5 the Commission may require.

6 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

7 “(A) IN GENERAL.—To reduce the potential
8 threat of market manipulation or congestion, es-
9 pecially during trading in the delivery month, a
10 security-based swap execution facility that is a
11 trading facility shall adopt for each of the con-
12 tracts of the facility, as is necessary and appro-
13 priate, position limitations or position account-
14 ability for speculators.

15 “(B) POSITION LIMITS.—For any contract
16 or agreement that is subject to a position limita-
17 tion established by the Commission pursuant to
18 section 10B, the security-based swap execution
19 facility shall set its position limitation at a level
20 no higher than the limitation established by the
21 Commission.

22 “(C) POSITION ENFORCEMENT.—For any
23 contract or agreement that is subject to a posi-
24 tion limitation established by the Commission
25 pursuant to section 10B, a security-based swap

1 *execution facility shall reject any proposed secu-*
2 *rity-based swap transaction if, based on infor-*
3 *mation readily available to a security-based*
4 *swap execution facility, any proposed security-*
5 *based swap transaction would cause a security-*
6 *based swap execution facility customer that*
7 *would be a party to such swap transaction to ex-*
8 *ceed such position limitation.*

9 “(7) *FINANCIAL INTEGRITY OF TRANSACTIONS.—*
10 *The security-based swap execution facility shall estab-*
11 *lish and enforce rules and procedures for ensuring the*
12 *financial integrity of security-based swaps entered on*
13 *or through the facilities of the security-based swap*
14 *execution facility, including the clearance and settle-*
15 *ment of security-based swaps pursuant to section*
16 *3C(a)(1).*

17 “(8) *EMERGENCY AUTHORITY.—The security-*
18 *based swap execution facility shall adopt rules to pro-*
19 *vide for the exercise of emergency authority, in con-*
20 *sultation or cooperation with the Commission, as is*
21 *necessary and appropriate, including the authority to*
22 *liquidate or transfer open positions in any security-*
23 *based swap or to suspend or curtail trading in a se-*
24 *curity-based swap.*

1 “(9) *TIMELY PUBLICATION OF TRADING INFOR-*
2 *MATION.—*

3 “(A) *IN GENERAL.—The security-based*
4 *swap execution facility shall make public timely*
5 *information on price, trading volume, and other*
6 *trading data on security-based swaps to the ex-*
7 *tent prescribed by the Commission.*

8 “(B) *CAPACITY OF SECURITY-BASED SWAP*
9 *EXECUTION FACILITY.—The security-based swap*
10 *execution facility shall be required to have the*
11 *capacity to electronically capture trade informa-*
12 *tion with respect to transactions executed on the*
13 *facility.*

14 “(10) *RECORDKEEPING AND REPORTING.—*

15 “(A) *IN GENERAL.—A security-based swap*
16 *execution facility shall—*

17 “(i) *maintain records of all activities*
18 *relating to the business of the facility, in-*
19 *cluding a complete audit trail, in a form*
20 *and manner acceptable to the Commission*
21 *for a period of 5 years; and*

22 “(ii) *report to the Commission, in a*
23 *form and manner acceptable to the Commis-*
24 *sion, such information as the Commission*
25 *determines to be necessary or appropriate*

1 *for the Commission to perform the duties of*
2 *the Commission under this title.*

3 “(B) *REQUIREMENTS.*—*The Commission*
4 *shall adopt data collection and reporting re-*
5 *quirements for security-based swap execution fa-*
6 *ilities that are comparable to corresponding re-*
7 *quirements for clearing agencies and security-*
8 *based swap data repositories.*

9 “(11) *ANTITRUST CONSIDERATIONS.*—*Unless nec-*
10 *essary or appropriate to achieve the purposes of this*
11 *title, the security-based swap execution facility shall*
12 *not—*

13 “(A) *adopt any rules or taking any actions*
14 *that result in any unreasonable restraint of*
15 *trade; or*

16 “(B) *impose any material anticompetitive*
17 *burden on trading or clearing.*

18 “(12) *CONFLICTS OF INTEREST.*—*The security-*
19 *based swap execution facility shall—*

20 “(A) *establish and enforce rules to minimize*
21 *conflicts of interest in its decision-making proc-*
22 *ess; and*

23 “(B) *establish a process for resolving the*
24 *conflicts of interest.*

25 “(13) *FINANCIAL RESOURCES.*—

1 “(A) *IN GENERAL.*—*The security-based*
2 *swap execution facility shall have adequate fi-*
3 *nancial, operational, and managerial resources*
4 *to discharge each responsibility of the security-*
5 *based swap execution facility, as determined by*
6 *the Commission.*

7 “(B) *DETERMINATION OF RESOURCE ADE-*
8 *QUACY.*—*The financial resources of a security-*
9 *based swap execution facility shall be considered*
10 *to be adequate if the value of the financial re-*
11 *sources—*

12 “(i) *enables the organization to meet*
13 *its financial obligations to its members and*
14 *participants notwithstanding a default by*
15 *the member or participant creating the*
16 *largest financial exposure for that organiza-*
17 *tion in extreme but plausible market condi-*
18 *tions; and*

19 “(ii) *exceeds the total amount that*
20 *would enable the security-based swap execu-*
21 *tion facility to cover the operating costs of*
22 *the security-based swap execution facility*
23 *for a 1-year period, as calculated on a roll-*
24 *ing basis.*

1 “(14) *SYSTEM SAFEGUARDS.*—*The security-based*
2 *swap execution facility shall—*

3 “(A) *establish and maintain a program of*
4 *risk analysis and oversight to identify and mini-*
5 *mize sources of operational risk, through the de-*
6 *velopment of appropriate controls and proce-*
7 *dures, and automated systems, that—*

8 “(i) *are reliable and secure; and*

9 “(ii) *have adequate scalable capacity;*

10 “(B) *establish and maintain emergency pro-*
11 *cedures, backup facilities, and a plan for disaster*
12 *recovery that are designed to allow for—*

13 “(i) *the timely recovery and resump-*
14 *tion of operations; and*

15 “(ii) *the fulfillment of the responsibil-*
16 *ities and obligation of the security-based*
17 *swap execution facility; and*

18 “(C) *periodically conduct tests to verify that*
19 *the backup resources of the security-based swap*
20 *execution facility are sufficient to ensure contin-*
21 *ued—*

22 “(i) *order processing and trade match-*
23 *ing;*

24 “(ii) *price reporting;*

25 “(iii) *market surveillance; and*

1 “(iv) maintenance of a comprehensive
2 and accurate audit trail.

3 “(15) DESIGNATION OF CHIEF COMPLIANCE OFFI-
4 CER.—

5 “(A) IN GENERAL.—Each security-based
6 swap execution facility shall designate an indi-
7 vidual to serve as a chief compliance officer.

8 “(B) DUTIES.—The chief compliance officer
9 shall—

10 “(i) report directly to the board or to
11 the senior officer of the facility;

12 “(ii) review compliance with the core
13 principles in this subsection;

14 “(iii) in consultation with the board of
15 the facility, a body performing a function
16 similar to that of a board, or the senior offi-
17 cer of the facility, resolve any conflicts of
18 interest that may arise;

19 “(iv) be responsible for establishing
20 and administering the policies and proce-
21 dures required to be established pursuant to
22 this section;

23 “(v) ensure compliance with this title
24 and the rules and regulations issued under

1 *this title, including rules prescribed by the*
2 *Commission pursuant to this section;*

3 “(vi) *establish procedures for the reme-*
4 *diation of noncompliance issues found dur-*
5 *ing—*

6 “(I) *compliance office reviews;*

7 “(II) *look backs;*

8 “(III) *internal or external audit*
9 *findings;*

10 “(IV) *self-reported errors; or*

11 “(V) *through validated com-*
12 *plaints; and*

13 “(vii) *establish and follow appropriate*
14 *procedures for the handling, management*
15 *response, remediation, retesting, and closing*
16 *of noncompliance issues.*

17 “(C) *ANNUAL REPORTS.—*

18 “(i) *IN GENERAL.—In accordance with*
19 *rules prescribed by the Commission, the*
20 *chief compliance officer shall annually pre-*
21 *pare and sign a report that contains a de-*
22 *scription of—*

23 “(I) *the compliance of the secu-*
24 *rity-based swap execution facility with*
25 *this title; and*

1 “(II) the policies and procedures,
2 including the code of ethics and con-
3 flict of interest policies, of the security-
4 based security-based swap execution fa-
5 cility.

6 “(ii) *REQUIREMENTS.*—The chief com-
7 pliance officer shall—

8 “(I) submit each report described
9 in clause (i) with the appropriate fi-
10 nancial report of the security-based
11 swap execution facility that is required
12 to be submitted to the Commission pur-
13 suant to this section; and

14 “(II) include in the report a cer-
15 tification that, under penalty of law,
16 the report is accurate and complete.

17 “(e) *EXEMPTIONS.*—The Commission may exempt,
18 conditionally or unconditionally, a security-based swap
19 execution facility from registration under this section if the
20 Commission finds that the facility is subject to comparable,
21 comprehensive supervision and regulation on a consolidated
22 basis by the Commodity Futures Trading Commission.

23 “(f) *RULES.*—The Commission shall prescribe rules
24 governing the regulation of security-based swap execution
25 facilities under this section.”.

1 (d) *SEGREGATION OF ASSETS HELD AS COLLATERAL*
2 *IN SECURITY-BASED SWAP TRANSACTIONS.*—*The Securities*
3 *Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended*
4 *by inserting after section 3D (as added by subsection (b))*
5 *the following:*

6 **“SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL**
7 **IN SECURITY-BASED SWAP TRANSACTIONS.**

8 “(a) *REGISTRATION REQUIREMENT.*—*It shall be un-*
9 *lawful for any person to accept any money, securities, or*
10 *property (or to extend any credit in lieu of money, securi-*
11 *ties, or property) from, for, or on behalf of a security-based*
12 *swaps customer or to margin, guarantee, or secure a secu-*
13 *rity-based swap cleared by or through a clearing agency*
14 *(including money, securities, or property accruing to the*
15 *customer as the result of such a security-based swap), unless*
16 *the person shall have registered under this title with the*
17 *Commission as a broker, dealer, or security-based swap*
18 *dealer, and the registration shall not have expired nor been*
19 *suspended nor revoked.*

20 “(b) *CLEARED SECURITY-BASED SWAPS.*—

21 “(1) *SEGREGATION REQUIRED.*—*A broker, deal-*
22 *er, or security-based swap dealer shall treat and deal*
23 *with all money, securities, and property of any secu-*
24 *rity-based swaps customer received to margin, guar-*
25 *antee, or secure a security-based swap cleared by or*

1 *though a clearing agency (including money, securi-*
2 *ties, or property accruing to the security-based swaps*
3 *customer as the result of such a security-based swap)*
4 *as belonging to the security-based swaps customer.*

5 “(2) *COMMINGLING PROHIBITED.*—*Money, secu-*
6 *rities, and property of a security-based swaps cus-*
7 *tomer described in paragraph (1) shall be separately*
8 *accounted for and shall not be commingled with the*
9 *funds of the broker, dealer, or security-based swap*
10 *dealer or be used to margin, secure, or guarantee any*
11 *trades or contracts of any security-based swaps cus-*
12 *tomer or person other than the person for whom the*
13 *same are held.*

14 “(c) *EXCEPTIONS.*—

15 “(1) *USE OF FUNDS.*—

16 “(A) *IN GENERAL.*—*Notwithstanding sub-*
17 *section (b), money, securities, and property of a*
18 *security-based swaps customer of a broker, deal-*
19 *er, or security-based swap dealer described in*
20 *subsection (b) may, for convenience, be commin-*
21 *gled and deposited in the same 1 or more ac-*
22 *counts with any bank or trust company or with*
23 *a clearing agency.*

24 “(B) *WITHDRAWAL.*—*Notwithstanding sub-*
25 *section (b), such share of the money, securities,*

1 *and property described in subparagraph (A) as*
2 *in the normal course of business shall be nec-*
3 *essary to margin, guarantee, secure, transfer, ad-*
4 *just, or settle a cleared security-based swap with*
5 *a clearing agency, or with any member of the*
6 *clearing agency, may be withdrawn and applied*
7 *to such purposes, including the payment of com-*
8 *missions, brokerage, interest, taxes, storage, and*
9 *other charges, lawfully accruing in connection*
10 *with the cleared security-based swap.*

11 “(2) *COMMISSION ACTION.—Notwithstanding*
12 *subsection (b), in accordance with such terms and*
13 *conditions as the Commission may prescribe by rule,*
14 *regulation, or order, any money, securities, or prop-*
15 *erty of the security-based swaps customer of a broker,*
16 *dealer, or security-based swap dealer described in sub-*
17 *section (b) may be commingled and deposited as pro-*
18 *vided in this section with any other money, securities,*
19 *or property received by the broker, dealer, or security-*
20 *based swap dealer and required by the Commission to*
21 *be separately accounted for and treated and dealt*
22 *with as belonging to the security-based swaps cus-*
23 *tomer of the broker, dealer, or security-based swap*
24 *dealer.*

1 “(d) *PERMITTED INVESTMENTS.*—Money described in
2 subsection (b) may be invested in obligations of the United
3 States, in general obligations of any State or of any polit-
4 ical subdivision of a State, and in obligations fully guaran-
5 teed as to principal and interest by the United States, or
6 in any other investment that the Commission may by rule
7 or regulation prescribe, and such investments shall be made
8 in accordance with such rules and regulations and subject
9 to such conditions as the Commission may prescribe.

10 “(e) *PROHIBITION.*—It shall be unlawful for any per-
11 son, including any clearing agency and any depository in-
12 stitution, that has received any money, securities, or prop-
13 erty for deposit in a separate account or accounts as pro-
14 vided in subsection (b) to hold, dispose of, or use any such
15 money, securities, or property as belonging to the depositing
16 broker, dealer, or security-based swap dealer or any person
17 other than the swaps customer of the broker, dealer, or secu-
18 rity-based swap dealer.”.

19 “(e) *TRADING IN SECURITY-BASED SWAPS.*—Section 6
20 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is
21 amended by adding at the end the following:

22 “(l) *SECURITY-BASED SWAPS.*—It shall be unlawful
23 for any person to effect a transaction in a security-based
24 swap with or for a person that is not an eligible contract
25 participant, unless such transaction is effected on a na-

1 *tional securities exchange registered pursuant to subsection*
2 *(b).”.*

3 *(f) ADDITIONS OF SECURITY-BASED SWAPS TO CER-*
4 *TAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the Se-*
5 *curities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amend-*
6 *ed by striking paragraphs (1) through (3) and inserting*
7 *the following:*

8 *“(1) any transaction in connection with any se-*
9 *curity whereby any party to such transaction ac-*
10 *quires—*

11 *“(A) any put, call, straddle, or other option*
12 *or privilege of buying the security from or selling*
13 *the security to another without being bound to do*
14 *so;*

15 *“(B) any security futures product on the se-*
16 *curity; or*

17 *“(C) any security-based swap involving the*
18 *security or the issuer of the security;*

19 *“(2) any transaction in connection with any se-*
20 *curity with relation to which such person has, di-*
21 *rectly or indirectly, any interest in any—*

22 *“(A) such put, call, straddle, option, or*
23 *privilege;*

24 *“(B) such security futures product; or*

25 *“(C) such security-based swap; or*

1 “(3) any transaction in any security for the ac-
2 count of any person who such person has reason to
3 believe has, and who actually has, directly or indi-
4 rectly, any interest in any—

5 “(A) such put, call, straddle, option, or
6 privilege;

7 “(B) such security futures product with re-
8 lation to such security; or

9 “(C) any security-based swap involving
10 such security or the issuer of such security.”.

11 (g) *RULEMAKING AUTHORITY TO PREVENT FRAUD,*
12 *MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-*
13 *BASED SWAPS.*—Section 9 of the Securities Exchange Act
14 of 1934 (15 U.S.C. 78i) is amended by adding at the end
15 the following:

16 “(j) It shall be unlawful for any person, directly or
17 indirectly, by the use of any means or instrumentality of
18 interstate commerce or of the mails, or of any facility of
19 any national securities exchange, to effect any transaction
20 in, or to induce or attempt to induce the purchase or sale
21 of, any security-based swap, in connection with which such
22 person engages in any fraudulent, deceptive, or manipula-
23 tive act or practice, makes any fictitious quotation, or en-
24 gages in any transaction, practice, or course of business
25 which operates as a fraud or deceit upon any person. The

1 Commission shall, for the purposes of this subsection, by
 2 rules and regulations define, and prescribe means reason-
 3 ably designed to prevent, such transactions, acts, practices,
 4 and courses of business as are fraudulent, deceptive, or ma-
 5 nipulative, and such quotations as are fictitious.”.

6 (h) *POSITION LIMITS AND POSITION ACCOUNTABILITY*
 7 *FOR SECURITY-BASED SWAPS.*—The Securities Exchange
 8 Act of 1934 is amended by inserting after section 10A (15
 9 U.S.C. 78j–1) the following:

10 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
 11 **ABILITY FOR SECURITY-BASED SWAPS AND**
 12 **LARGE TRADER REPORTING.**

13 “(a) *POSITION LIMITS.*—As a means reasonably de-
 14 signed to prevent fraud and manipulation, the Commission
 15 shall, by rule or regulation, as necessary or appropriate in
 16 the public interest or for the protection of investors, estab-
 17 lish limits (including related hedge exemption provisions)
 18 on the size of positions in any security-based swap that may
 19 be held by any person. In establishing such limits, the Com-
 20 mission may require any person to aggregate positions in—

21 “(1) any security-based swap and any security
 22 or loan or group of securities or loans on which such
 23 security-based swap is based, which such security-
 24 based swap references, or to which such security-based
 25 swap is related as described in paragraph (68) of sec-

1 *tion 3(a), and any other instrument relating to such*
2 *security or loan or group or index of securities or*
3 *loans; or*

4 *“(2) any security-based swap and—*

5 *“(A) any security or group or index of secu-*
6 *rities, the price, yield, value, or volatility of*
7 *which, or of which any interest therein, is the*
8 *basis for a material term of such security-based*
9 *swap as described in paragraph (68) of section*
10 *3(a); and*

11 *“(B) any other instrument relating to the*
12 *same security or group or index of securities de-*
13 *scribed under subparagraph (A).*

14 *“(b) EXEMPTIONS.—The Commission, by rule, regula-*
15 *tion, or order, may conditionally or unconditionally exempt*
16 *any person or class of persons, any security-based swap or*
17 *class of security-based swaps, or any transaction or class*
18 *of transactions from any requirement the Commission may*
19 *establish under this section with respect to position limits.*

20 *“(c) SRO RULES.—*

21 *“(1) IN GENERAL.—As a means reasonably de-*
22 *signed to prevent fraud or manipulation, the Com-*
23 *mission, by rule, regulation, or order, as necessary or*
24 *appropriate in the public interest, for the protection*
25 *of investors, or otherwise in furtherance of the pur-*

1 *poses of this title, may direct a self-regulatory organi-*
2 *zation—*

3 *“(A) to adopt rules regarding the size of po-*
4 *sitions in any security-based swap that may be*
5 *held by—*

6 *“(i) any member of such self-regulatory*
7 *organization; or*

8 *“(ii) any person for whom a member*
9 *of such self-regulatory organization effects*
10 *transactions in such security-based swap;*
11 *and*

12 *“(B) to adopt rules reasonably designed to*
13 *ensure compliance with requirements prescribed*
14 *by the Commission under this subsection.*

15 *“(2) REQUIREMENT TO AGGREGATE POSI-*
16 *TIONS.—In establishing the limits under paragraph*
17 *(1), the self-regulatory organization may require such*
18 *member or person to aggregate positions in—*

19 *“(A) any security-based swap and any secu-*
20 *rity or loan or group or narrow-based security*
21 *narrow-based security index of securities or loans*
22 *on which such security-based swap is based,*
23 *which such security-based swap references, or to*
24 *which such security-based swap is related as de-*
25 *scribed in section 3(a)(68), and any other in-*

1 *strument relating to such security or loan or*
2 *group or narrow-based security index of securi-*
3 *ties or loans; or*

4 “(B)(i) *any security-based swap; and*

5 “(ii) *any security-based swap and any*
6 *other instrument relating to the same security or*
7 *group or narrow-based security index of securi-*
8 *ties.*

9 “(d) *LARGE TRADER REPORTING.—The Commission,*
10 *by rule or regulation, may require any person that effects*
11 *transactions for such person’s own account or the account*
12 *of others in any securities-based swap or uncleared security-*
13 *based swap and any security or loan or group or narrow-*
14 *based security index of securities or loans as set forth in*
15 *paragraphs (1) and (2) of subsection (a) under this section*
16 *to report such information as the Commission may pre-*
17 *scribe regarding any position or positions in any security-*
18 *based swap or uncleared security-based swap and any secu-*
19 *rity or loan or group or narrow-based security index of se-*
20 *curities or loans and any other instrument relating to such*
21 *security or loan or group or narrow-based security index*
22 *of securities or loans as set forth in paragraphs (1) and*
23 *(2) of subsection (a) under this section.”.*

24 (i) *PUBLIC REPORTING AND REPOSITORIES FOR SE-*
25 *CURITY-BASED SWAPS.—Section 13 of the Securities Ex-*

1 *change Act of 1934 (15 U.S.C. 78m) is amended by adding*
2 *at the end the following:*

3 “(m) *PUBLIC AVAILABILITY OF SECURITY-BASED*
4 *SWAP TRANSACTION DATA.—*

5 “(1) *IN GENERAL.—*

6 “(A) *DEFINITION OF REAL-TIME PUBLIC RE-*
7 *PORTING.—In this paragraph, the term ‘real-*
8 *time public reporting’ means to report data re-*
9 *lating to a security-based swap transaction as*
10 *soon as technologically practicable after the time*
11 *at which the security-based swap transaction has*
12 *been executed.*

13 “(B) *PURPOSE.—The purpose of this section*
14 *is to authorize the Commission to make security-*
15 *based swap transaction and pricing data avail-*
16 *able to the public in such form and at such times*
17 *as the Commission determines appropriate to en-*
18 *hance price discovery.*

19 “(C) *GENERAL RULE.—The Commission is*
20 *authorized to provide by rule for the public*
21 *availability of security-based swap transaction*
22 *and pricing data as follows:*

23 “(i) *With respect to those security-*
24 *based swaps that are subject to the manda-*
25 *tory clearing requirement described in sec-*

1 *tion 3C(a)(1) (including those security-*
2 *based swaps that are exempted from the re-*
3 *quirement pursuant to section 3C(a)(10)),*
4 *the Commission shall require real-time pub-*
5 *lic reporting for such transactions.*

6 *“(ii) With respect to those security-*
7 *based swaps that are not subject to the man-*
8 *datory clearing requirement described in*
9 *subsection section 3C(a)(1), but are cleared*
10 *at a registered clearing agency, the Com-*
11 *mission shall require real-time public re-*
12 *porting for such transactions.*

13 *“(iii) With respect to security-based*
14 *swaps that are not cleared at a registered*
15 *clearing agency and which are reported to*
16 *a security-based swap data repository or the*
17 *Commission under section 3C(a), the Com-*
18 *mission shall make available to the public,*
19 *in a manner that does not disclose the busi-*
20 *ness transactions and market positions of*
21 *any person, aggregate data on such secu-*
22 *rity-based swap trading volumes and posi-*
23 *tions.*

24 *“(iv) With respect to security-based*
25 *swaps that are exempt from the require-*

1 *ments of section 3C(a)(1), but are subject to*
2 *the requirements of section 3C(a)(8), the*
3 *Commission shall require real-time public*
4 *reporting for such transactions.*

5 *“(D) REGISTERED ENTITIES AND PUBLIC*
6 *REPORTING.—The Commission may require reg-*
7 *istered entities to publicly disseminate the secu-*
8 *rity-based swap transaction and pricing data re-*
9 *quired to be reported under this paragraph.*

10 *“(E) RULEMAKING REQUIRED.—With re-*
11 *spect to the rule providing for the public avail-*
12 *ability of transaction and pricing data for secu-*
13 *rity-based swaps described in clauses (i) and (ii)*
14 *of subparagraph (C), the rule promulgated by the*
15 *Commission shall contain provisions—*

16 *“(i) to ensure such information does*
17 *not identify the participants;*

18 *“(ii) to specify the criteria for deter-*
19 *mining what constitutes a large notional se-*
20 *curity-based swap transaction (block trade)*
21 *for particular markets and contracts;*

22 *“(iii) to specify the appropriate time*
23 *delay for reporting large notional security-*
24 *based swap transactions (block trades) to*
25 *the public; and*

1 “(iv) that take into account whether
2 the public disclosure will materially reduce
3 market liquidity.

4 “(F) *TIMELINESS OF REPORTING.*—Parties
5 to a security-based swap (including agents of the
6 parties to a security-based swap) shall be respon-
7 sible for reporting security-based swap trans-
8 action information to the appropriate registered
9 entity in a timely manner as may be prescribed
10 by the Commission.

11 “(2) *SEMIANNUAL AND ANNUAL PUBLIC REPORT-*
12 *ING OF AGGREGATE SECURITY-BASED SWAP DATA.*—

13 “(A) *IN GENERAL.*—In accordance with
14 subparagraph (B), the Commission shall issue a
15 written report on a semiannual and annual
16 basis to make available to the public information
17 relating to—

18 “(i) the trading and clearing in the
19 major security-based swap categories; and

20 “(ii) the market participants and de-
21 velopments in new products.

22 “(B) *USE; CONSULTATION.*—In preparing a
23 report under subparagraph (A), the Commission
24 shall—

1 “(i) use information from security-
2 based swap data repositories and deriva-
3 tives clearing organizations; and

4 “(ii) consult with the Office of the
5 Comptroller of the Currency, the Bank for
6 International Settlements, and such other
7 regulatory bodies as may be necessary.

8 “(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

9 “(1) REGISTRATION REQUIREMENT.—It shall be
10 unlawful for any person, unless registered with the
11 Commission, directly or indirectly, to make use of the
12 mails or any means or instrumentality of interstate
13 commerce to perform the functions of a security-based
14 swap data repository.

15 “(2) INSPECTION AND EXAMINATION.—Each reg-
16 istered security-based swap data repository shall be
17 subject to inspection and examination by any rep-
18 resentative of the Commission.

19 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

20 “(A) IN GENERAL.—To be registered, and
21 maintain registration, as a security-based swap
22 data repository, the security-based swap data re-
23 pository shall comply with—

24 “(i) the core principles described in
25 this subsection; and

1 “(ii) any requirement that the Com-
2 mission may impose by rule or regulation.

3 “(B) *REASONABLE DISCRETION OF SECUR-*
4 *ITY-BASED SWAP DATA REPOSITORY.*—Unless
5 otherwise determined by the Commission, by rule
6 or regulation, a security-based swap data reposi-
7 tory described in subparagraph (A) shall have
8 reasonable discretion in establishing the manner
9 in which the security-based swap data repository
10 complies with the core principles described in
11 this subsection.

12 “(4) *STANDARD SETTING.*—

13 “(A) *DATA IDENTIFICATION.*—The Commis-
14 sion shall prescribe standards that specify the
15 data elements for each security-based swap that
16 shall be collected and maintained by each reg-
17 istered security-based swap data repository.

18 “(B) *DATA COLLECTION AND MAINTEN-*
19 *NANCE.*—The Commission shall prescribe data
20 collection and data maintenance standards for
21 security-based swap data repositories.

22 “(C) *COMPARABILITY.*—The standards pre-
23 scribed by the Commission under this subsection
24 shall be comparable to the data standards im-
25 posed by the Commission on clearing agencies in

1 *connection with their clearing of security-based*
2 *swaps.*

3 “(5) *DUTIES.—A security-based swap data re-*
4 *pository shall—*

5 “(A) *accept data prescribed by the Commis-*
6 *sion for each security-based swap under sub-*
7 *section (b);*

8 “(B) *confirm with both counterparties to*
9 *the security-based swap the accuracy of the data*
10 *that was submitted;*

11 “(C) *maintain the data described in sub-*
12 *paragraph (A) in such form, in such manner,*
13 *and for such period as may be required by the*
14 *Commission;*

15 “(D)(i) *provide direct electronic access to*
16 *the Commission (or any designee of the Commis-*
17 *sion, including another registered entity); and*

18 “(ii) *provide the information described in*
19 *subparagraph (A) in such form and at such fre-*
20 *quency as the Commission may require to com-*
21 *ply with the public reporting requirements set*
22 *forth in subsection (m);*

23 “(E) *at the direction of the Commission, es-*
24 *tablish automated systems for monitoring,*

1 *screening, and analyzing security-based swap*
2 *data;*

3 “(F) *maintain the privacy of any and all*
4 *security-based swap transaction information that*
5 *the security-based swap data repository receives*
6 *from a security-based swap dealer, counterparty,*
7 *or any other registered entity; and*

8 “(G) *on a confidential basis pursuant to*
9 *section 24, upon request, and after notifying the*
10 *Commission of the request, make available all*
11 *data obtained by the security-based swap data*
12 *repository, including individual counterparty*
13 *trade and position data, to—*

14 “(i) *each appropriate prudential regu-*
15 *lator;*

16 “(ii) *the Financial Stability Oversight*
17 *Council;*

18 “(iii) *the Commodity Futures Trading*
19 *Commission;*

20 “(iv) *the Department of Justice; and*

21 “(v) *any other person that the Com-*
22 *mission determines to be appropriate, in-*
23 *cluding—*

24 “(I) *foreign financial supervisors*
25 *(including foreign futures authorities);*

1 “(II) *foreign central banks; and*

2 “(III) *foreign ministries.*

3 “(H) *CONFIDENTIALITY AND INDEMNIFICA-*
4 *TION AGREEMENT.—Before the security-based*
5 *swap data repository may share information*
6 *with any entity described in subparagraph*
7 *(G)—*

8 “(i) *the security-based swap data re-*
9 *pository shall receive a written agreement*
10 *from each entity stating that the entity*
11 *shall abide by the confidentiality require-*
12 *ments described in section 24 relating to the*
13 *information on security-based swap trans-*
14 *actions that is provided; and*

15 “(ii) *each entity shall agree to indem-*
16 *nify the security-based swap data repository*
17 *and the Commission for any expenses aris-*
18 *ing from litigation relating to the informa-*
19 *tion provided under section 24.*

20 “(6) *DESIGNATION OF CHIEF COMPLIANCE OFFI-*
21 *CER.—*

22 “(A) *IN GENERAL.—Each security-based*
23 *swap data repository shall designate an indi-*
24 *vidual to serve as a chief compliance officer.*

1 “(B) *DUTIES.*—*The chief compliance officer*
2 *shall—*

3 “(i) *report directly to the board or to*
4 *the senior officer of the security-based swap*
5 *data repository;*

6 “(ii) *review the compliance of the secu-*
7 *rity-based swap data repository with re-*
8 *spect to the core principles described in*
9 *paragraph (7);*

10 “(iii) *in consultation with the board of*
11 *the security-based swap data repository, a*
12 *body performing a function similar to the*
13 *board of the security-based swap data repos-*
14 *itory, or the senior officer of the security-*
15 *based swap data repository, resolve any*
16 *conflicts of interest that may arise;*

17 “(iv) *be responsible for administering*
18 *each policy and procedure that is required*
19 *to be established pursuant to this section;*

20 “(v) *ensure compliance with this title*
21 *(including regulations) relating to agree-*
22 *ments, contracts, or transactions, including*
23 *each rule prescribed by the Commission*
24 *under this section;*

1 “(vi) establish procedures for the reme-
2 diation of noncompliance issues identified
3 by the chief compliance officer through
4 any—

5 “(I) compliance office review;

6 “(II) look-back;

7 “(III) internal or external audit
8 finding;

9 “(IV) self-reported error; or

10 “(V) validated complaint; and

11 “(vii) establish and follow appropriate
12 procedures for the handling, management
13 response, remediation, retesting, and closing
14 of noncompliance issues.

15 “(C) ANNUAL REPORTS.—

16 “(i) IN GENERAL.—In accordance with
17 rules prescribed by the Commission, the
18 chief compliance officer shall annually pre-
19 pare and sign a report that contains a de-
20 scription of—

21 “(I) the compliance of the secu-
22 rity-based swap data repository of the
23 chief compliance officer with respect to
24 this title (including regulations); and

1 “(II) each policy and procedure of
2 the security-based swap data repository
3 of the chief compliance officer (includ-
4 ing the code of ethics and conflict of
5 interest policies of the security-based
6 swap data repository).

7 “(ii) *REQUIREMENTS.*—A compliance
8 report under clause (i) shall—

9 “(I) accompany each appropriate
10 financial report of the security-based
11 swap data repository that is required
12 to be furnished to the Commission pur-
13 suant to this section; and

14 “(II) include a certification that,
15 under penalty of law, the compliance
16 report is accurate and complete.

17 “(7) *CORE PRINCIPLES APPLICABLE TO SECU-*
18 *RITY-BASED SWAP DATA REPOSITORIES.*—

19 “(A) *ANTITRUST CONSIDERATIONS.*—Unless
20 necessary or appropriate to achieve the purposes
21 of this title, the swap data repository shall not—

22 “(i) adopt any rule or take any action
23 that results in any unreasonable restraint of
24 trade; or

1 “(ii) impose any material anticompeti-
2 tive burden on the trading, clearing, or re-
3 porting of transactions.

4 “(B) GOVERNANCE ARRANGEMENTS.—Each
5 security-based swap data repository shall estab-
6 lish governance arrangements that are trans-
7 parent—

8 “(i) to fulfill public interest require-
9 ments; and

10 “(ii) to support the objectives of the
11 Federal Government, owners, and partici-
12 pants.

13 “(C) CONFLICTS OF INTEREST.—Each secu-
14 rity-based swap data repository shall—

15 “(i) establish and enforce rules to min-
16 imize conflicts of interest in the decision-
17 making process of the security-based swap
18 data repository; and

19 “(ii) establish a process for resolving
20 any conflicts of interest described in clause
21 (i).

22 “(8) REQUIRED REGISTRATION FOR SECURITY-
23 BASED SWAP DATA REPOSITORIES.—Any person that
24 is required to be registered as a security-based swap
25 data repository under this subsection shall register

1 *with the Commission, regardless of whether that per-*
 2 *son is also licensed under the Commodity Exchange*
 3 *Act as a swap data repository.*

4 “(9) *RULES.*—*The Commission shall adopt rules*
 5 *governing persons that are registered under this sub-*
 6 *section.”.*

7 **SEC. 764. REGISTRATION AND REGULATION OF SECURITY-**
 8 **BASED SWAP DEALERS AND MAJOR SECU-**
 9 **RITY-BASED SWAP PARTICIPANTS.**

10 *The Securities Exchange Act of 1934 (15 U.S.C. 78a*
 11 *et seq.) is amended by inserting after section 15E (15*
 12 *U.S.C. 78o–7) the following:*

13 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
 14 **BASED SWAP DEALERS AND MAJOR SECU-**
 15 **RITY-BASED SWAP PARTICIPANTS.**

16 “(a) *REGISTRATION.*—

17 “(1) *SECURITY-BASED SWAP DEALERS.*—*It shall*
 18 *be unlawful for any person to act as a security-based*
 19 *swap dealer unless the person is registered as a secu-*
 20 *rity-based swap dealer with the Commission.*

21 “(2) *MAJOR SECURITY-BASED SWAP PARTICI-*
 22 *PANTS.*—*It shall be unlawful for any person to act as*
 23 *a major security-based swap participant unless the*
 24 *person is registered as a major security-based swap*
 25 *participant with the Commission.*

1 “(b) *REQUIREMENTS.*—

2 “(1) *IN GENERAL.*—*A person shall register as a*
3 *security-based swap dealer or major security-based*
4 *swap participant by filing a registration application*
5 *with the Commission.*

6 “(2) *CONTENTS.*—

7 “(A) *IN GENERAL.*—*The application shall*
8 *be made in such form and manner as prescribed*
9 *by the Commission, and shall contain such infor-*
10 *mation, as the Commission considers necessary*
11 *concerning the business in which the applicant is*
12 *or will be engaged.*

13 “(B) *CONTINUAL REPORTING.*—*A person*
14 *that is registered as a security-based swap dealer*
15 *or major security-based swap participant shall*
16 *continue to submit to the Commission reports*
17 *that contain such information pertaining to the*
18 *business of the person as the Commission may*
19 *require.*

20 “(3) *EXPIRATION.*—*Each registration under this*
21 *section shall expire at such time as the Commission*
22 *may prescribe by rule or regulation.*

23 “(4) *RULES.*—*Except as provided in subsections*
24 *(c), (e), and (f), the Commission may prescribe rules*
25 *applicable to security-based swap dealers and major*

1 *security-based swap participants, including rules that*
2 *limit the activities of non-bank security-based swap*
3 *dealers and non-bank major security-based swap par-*
4 *ticipants.*

5 “(5) *TRANSITION.*—*Not later than 1 year after*
6 *the date of enactment of the Wall Street Transparency*
7 *and Accountability Act of 2010, the Commission shall*
8 *issue rules under this section to provide for the reg-*
9 *istration of security-based swap dealers and major se-*
10 *curity-based swap participants.*

11 “(6) *STATUTORY DISQUALIFICATION.*—*Except to*
12 *the extent otherwise specifically provided by rule, reg-*
13 *ulation, or order of the Commission, it shall be un-*
14 *lawful for a security-based swap dealer or a major se-*
15 *curity-based swap participant to permit any person*
16 *associated with a security-based swap dealer or a*
17 *major security-based swap participant who is subject*
18 *to a statutory disqualification to effect or be involved*
19 *in effecting security-based swaps on behalf of the secu-*
20 *urity-based swap dealer or major security-based swap*
21 *participant, if the security-based swap dealer or*
22 *major security-based swap participant knew, or in*
23 *the exercise of reasonable care should have known, of*
24 *the statutory disqualification.*

25 “(c) *DUAL REGISTRATION.*—

1 “(1) *SECURITY-BASED SWAP DEALER.*—Any per-
2 son that is required to be registered as a security-
3 based swap dealer under this section shall register
4 with the Commission, regardless of whether the person
5 also is registered with the Commodity Futures Trad-
6 ing Commission as a swap dealer.

7 “(2) *MAJOR SECURITY-BASED SWAP PARTICI-*
8 *PANT.*—Any person that is required to be registered
9 as a major security-based swap participant under
10 this section shall register with the Commission, re-
11 gardless of whether the person also is registered with
12 the Commodity Futures Trading Commission as a
13 major swap participant.

14 “(d) *RULEMAKING.*—

15 “(1) *IN GENERAL.*—The Commission shall adopt
16 rules for persons that are registered as security-based
17 swap dealers or major security-based swap partici-
18 pants under this section.

19 “(2) *EXCEPTION FOR PRUDENTIAL REQUIRE-*
20 *MENTS.*—

21 “(A) *IN GENERAL.*—The Commission may
22 not prescribe rules imposing prudential require-
23 ments on security-based swap dealers or major
24 security-based swap participants that are deposi-
25 tory institutions, as that term is defined in sec-

1 *tion 3 of the Federal Deposit Insurance Act (12*
2 *U.S.C. 1813).*

3 “(B) *APPLICABILITY.—Subparagraph (A)*
4 *does not limit the authority of the Commission*
5 *to prescribe appropriate business conduct, re-*
6 *porting, and recordkeeping requirements on secu-*
7 *rity-based swap dealers or major security-based*
8 *swap participants that are depository institu-*
9 *tions to protect investors.*

10 “(e) *CAPITAL AND MARGIN REQUIREMENTS.—*

11 “(1) *IN GENERAL.—*

12 “(A) *SECURITY-BASED SWAP DEALERS AND*
13 *MAJOR SECURITY-BASED SWAP PARTICIPANTS*
14 *THAT ARE DEPOSITORY INSTITUTIONS.—Each*
15 *registered security-based swap dealer and major*
16 *security-based swap participant that is a depository*
17 *institution, as that term is defined in sec-*
18 *tion 3 of the Federal Deposit Insurance Act (12*
19 *U.S.C. 1813), shall meet such minimum capital*
20 *requirements and minimum initial and vari-*
21 *ation margin requirements as the appropriate*
22 *Federal banking agency shall by rule or regula-*
23 *tion prescribe under paragraph (2)(A) to help*
24 *ensure the safety and soundness of the security-*

1 *based swap dealer or major security-based swap*
2 *participant.*

3 “(B) *SECURITY-BASED SWAP DEALERS AND*
4 *MAJOR SECURITY-BASED SWAP PARTICIPANTS*
5 *THAT ARE NOT DEPOSITORY INSTITUTIONS.—*
6 *Each registered security-based swap dealer and*
7 *major security-based swap participant that is*
8 *not a depository institution, as that term is de-*
9 *fined in section 3 of the Federal Deposit Insur-*
10 *ance Act (12 U.S.C. 1813), shall meet such min-*
11 *imum capital requirements and minimum ini-*
12 *tial and variation margin requirements as the*
13 *Commission shall by rule or regulation prescribe*
14 *under paragraph (2)(B) to help ensure the safety*
15 *and soundness of the security-based swap dealer*
16 *or major security-based swap participant.*

17 “(2) *RULES.—*

18 “(A) *SECURITY-BASED SWAP DEALERS AND*
19 *MAJOR SECURITY-BASED SWAP PARTICIPANTS*
20 *THAT ARE DEPOSITORY INSTITUTIONS.—The ap-*
21 *propriate Federal banking agencies, in consulta-*
22 *tion with the Commission and the Commodity*
23 *Futures Trading Commission, shall adopt rules*
24 *imposing capital and margin requirements*
25 *under this subsection for security-based swap*

1 *dealers and major security-based swap partici-*
2 *pants that are depository institutions, as that*
3 *term is defined in section 3 of the Federal De-*
4 *posit Insurance Act (12 U.S.C. 1813).*

5 “(B) *SECURITY-BASED SWAP DEALERS AND*
6 *MAJOR SECURITY-BASED SWAP PARTICIPANTS*
7 *THAT ARE NOT DEPOSITORY INSTITUTIONS.—The*
8 *Commission shall adopt rules imposing capital*
9 *and margin requirements under this subsection*
10 *for security-based swap dealers and major secu-*
11 *rity-based swap participants that are not deposi-*
12 *tory institutions, as that term is defined in sec-*
13 *tion 3 of the Federal Deposit Insurance Act (12*
14 *U.S.C. 1813).*

15 “(3) *CAPITAL.—*

16 “(A) *SECURITY-BASED SWAP DEALERS AND*
17 *MAJOR SECURITY-BASED SWAP PARTICIPANTS*
18 *THAT ARE DEPOSITORY INSTITUTIONS.—The cap-*
19 *ital requirements prescribed under paragraph*
20 *(2)(A) for security-based swap dealers and major*
21 *security-based swap participants that are deposi-*
22 *tory institutions shall contain—*

23 “(i) *a capital requirement that is*
24 *greater than zero for security-based swaps*
25 *that are cleared by a clearing agency; and*

1 “(i) to offset the greater risk to the se-
2 curity-based swap dealer or major security-
3 based swap participant and to the financial
4 system arising from the use of security-
5 based swaps that are not cleared, substan-
6 tially higher capital requirements for secu-
7 rity-based swaps that are not cleared by a
8 clearing agency than for security-based
9 swaps that are cleared.

10 “(B) SECURITY-BASED SWAP DEALERS AND
11 MAJOR SECURITY-BASED SWAP PARTICIPANTS
12 THAT ARE NOT DEPOSITORY INSTITUTIONS.—The
13 capital requirements prescribed under paragraph
14 (2)(B) for security-based swap dealers and major
15 security-based swap participants that are not de-
16 pository institutions shall be as strict as or
17 stricter than the capital requirements prescribed
18 for security-based swap dealers and major secu-
19 rity-based swap participants that are depository
20 institutions under paragraph (2)(A).

21 “(C) RULE OF CONSTRUCTION.—

22 “(i) IN GENERAL.—Nothing in this sec-
23 tion shall limit, or be construed to limit, the
24 authority—

1 “(I) of the Commission to set fi-
2 nancial responsibility rules for a
3 broker or dealer registered pursuant to
4 section 15(b) (except for section
5 15(b)(11) thereof) in accordance with
6 section 15(c)(3); or

7 “(II) of the Commodity Futures
8 Trading Commission to set financial
9 responsibility rules for a futures com-
10 mission merchant or introducing
11 broker registered pursuant to section
12 4f(a) of the Commodity Exchange Act
13 (except for section 4f(a)(3) thereof) in
14 accordance with section 4f(b) of the
15 Commodity Exchange Act.

16 “(ii) *FUTURES COMMISSION MER-*
17 *CHANTS AND OTHER DEALERS.*—A futures
18 commission merchant, introducing broker,
19 broker, or dealer shall maintain sufficient
20 capital to comply with the stricter of any
21 applicable capital requirements to which
22 such futures commission merchant, intro-
23 ducing broker, broker, or dealer is subject to
24 under this title or the Commodity Exchange
25 Act.

1 “(4) *MARGIN.*—

2 “(A) *SECURITY-BASED SWAP DEALERS AND*
3 *MAJOR SECURITY-BASED SWAP PARTICIPANTS*
4 *THAT ARE DEPOSITORY INSTITUTIONS.*—*The ap-*
5 *propriate Federal banking agency for security-*
6 *based swap dealers and major security-based*
7 *swap participants that are depository institu-*
8 *tions shall impose both initial and variation*
9 *margin requirements in accordance with para-*
10 *graph (2)(A) on all security-based swaps that*
11 *are not cleared by a clearing agency.*

12 “(B) *SECURITY-BASED SWAP DEALERS AND*
13 *MAJOR SECURITY-BASED SWAP PARTICIPANTS*
14 *THAT ARE NOT DEPOSITORY INSTITUTIONS.*—*The*
15 *Commission shall impose both initial and vari-*
16 *ation margin requirements in accordance with*
17 *paragraph (2)(B) for security-based swap dealers*
18 *and major security-based swap participants that*
19 *are not depository institutions on all security-*
20 *based swaps that are not cleared by a clearing*
21 *agency. Any such initial and variation margin*
22 *requirements shall be as strict as or stricter than*
23 *the margin requirements prescribed under para-*
24 *graph (4)(A).*

1 “(5) *MARGIN REQUIREMENTS.*—*In prescribing*
2 *margin requirements under this subsection, the ap-*
3 *propriate Federal banking agency with respect to se-*
4 *curity-based swap dealers and major security-based*
5 *swap participants that are depository institutions,*
6 *and the Commission with respect to security-based*
7 *swap dealers and major security-based swap partici-*
8 *pants that are not depository institutions may permit*
9 *the use of noncash collateral, as the agency or the*
10 *Commission determines to be consistent with—*

11 “(A) *preserving the financial integrity of*
12 *markets trading security-based swaps; and*

13 “(B) *preserving the stability of the United*
14 *States financial system.*

15 “(6) *COMPARABILITY OF CAPITAL AND MARGIN*
16 *REQUIREMENTS.*—

17 “(A) *IN GENERAL.*—*The appropriate Fed-*
18 *eral banking agencies, the Commission, and the*
19 *Securities and Exchange Commission shall peri-*
20 *odically (but not less frequently than annually)*
21 *consult on minimum capital requirements and*
22 *minimum initial and variation margin require-*
23 *ments.*

24 “(B) *COMPARABILITY.*—*The entities de-*
25 *scribed in subparagraph (A) shall, to the max-*

1 *imum extent practicable, establish and maintain*
2 *comparable minimum capital requirements and*
3 *minimum initial and variation margin require-*
4 *ments, including the use of noncash collateral,*
5 *for—*

6 *“(i) security-based swap dealers; and*

7 *“(ii) major security-based swap par-*
8 *ticipants.*

9 *“(7) REQUESTED MARGIN.—If any party to a se-*
10 *curity-based swap that is exempt from the margin re-*
11 *quirements of paragraph (4)(A) or paragraph (4)(B)*
12 *requests that such security-based swap be margined,*
13 *then—*

14 *“(A) the exemption shall not apply; and*

15 *“(B) the counterparty to such security-based*
16 *swap shall provide the requested margin.*

17 *“(8) APPLICABILITY WITH RESPECT TO*
18 *COUNTERPARTIES.—Paragraphs (4) and (5) shall not*
19 *apply to initial and variation margin for security-*
20 *based swaps in which 1 of the counterparties is not—*

21 *“(A) a security-based swap dealer;*

22 *“(B) a major security-based swap partici-*
23 *pant; or*

24 *“(C) a financial entity as described in sec-*
25 *tion 3C(a)(10)(A)(ii), and such counterparty is*

1 *eligible for and utilizing the commercial end user*
2 *clearing exemption under section 3C(a)(10).*

3 “(f) *REPORTING AND RECORDKEEPING.—*

4 “(1) *IN GENERAL.—Each registered security-*
5 *based swap dealer and major security-based swap*
6 *participant—*

7 “(A) *shall make such reports as are re-*
8 *quired by the Commission, by rule or regulation,*
9 *regarding the transactions and positions and fi-*
10 *nancial condition of the registered security-based*
11 *swap dealer or major security-based swap partic-*
12 *ipant;*

13 “(B)(i) *for which there is a prudential regu-*
14 *lator, shall keep books and records of all activi-*
15 *ties related to the business as a security-based*
16 *swap dealer or major security-based swap partic-*
17 *ipant in such form and manner and for such pe-*
18 *riod as may be prescribed by the Commission by*
19 *rule or regulation; and*

20 “(ii) *for which there is no prudential regu-*
21 *lator, shall keep books and records in such form*
22 *and manner and for such period as may be pre-*
23 *scribed by the Commission by rule or regulation;*
24 *and*

1 “(C) shall keep books and records described
2 in subparagraph (B) open to inspection and ex-
3 amination by any representative of the Commis-
4 sion.

5 “(2) RULES.—The Commission shall adopt rules
6 governing reporting and recordkeeping for security-
7 based swap dealers and major security-based swap
8 participants.

9 “(g) DAILY TRADING RECORDS.—

10 “(1) IN GENERAL.—Each registered security-
11 based swap dealer and major security-based swap
12 participant shall maintain daily trading records of
13 the security-based swaps of the registered security-
14 based swap dealer and major security-based swap
15 participant and all related records (including related
16 cash or forward transactions) and recorded commu-
17 nications, including electronic mail, instant messages,
18 and recordings of telephone calls, for such period as
19 may be required by the Commission by rule or regula-
20 tion.

21 “(2) INFORMATION REQUIREMENTS.—The daily
22 trading records shall include such information as the
23 Commission shall require by rule or regulation.

24 “(3) CUSTOMER RECORDS.—Each registered se-
25 curity-based swap dealer and major security-based

1 *swap participant shall maintain daily trading*
2 *records for each customer or counterparty in a man-*
3 *ner and form that is identifiable with each security-*
4 *based swap transaction.*

5 “(4) *AUDIT TRAIL.*—*Each registered security-*
6 *based swap dealer and major security-based swap*
7 *participant shall maintain a complete audit trail for*
8 *conducting comprehensive and accurate trade recon-*
9 *structions.*

10 “(5) *RULES.*—*The Commission shall adopt rules*
11 *governing daily trading records for security-based*
12 *swap dealers and major security-based swap partici-*
13 *pants.*

14 “(h) *BUSINESS CONDUCT STANDARDS.*—

15 “(1) *IN GENERAL.*—*Each registered security-*
16 *based swap dealer and major security-based swap*
17 *participant shall conform with such business conduct*
18 *standards as may be prescribed by the Commission,*
19 *by rule or regulation, that relate to—*

20 “(A) *fraud, manipulation, and other abu-*
21 *sive practices involving security-based swaps (in-*
22 *cluding security-based swaps that are offered but*
23 *not entered into);*

1 “(B) *diligent supervision of the business of*
2 *the registered security-based swap dealer and*
3 *major security-based swap participant;*

4 “(C) *adherence to all applicable position*
5 *limits; and*

6 “(D) *such other matters as the Commission*
7 *determines to be appropriate.*

8 “(2) *SPECIAL RULE; FIDUCIARY DUTIES TO CER-*
9 *TAIN ENTITIES.—*

10 “(A) *GOVERNMENTAL ENTITIES.—A secu-*
11 *rity-based swap dealer that provides advice re-*
12 *garding, or offers to enter into, or enters into a*
13 *security-based swap with a State, State agency,*
14 *city, county, municipality, or other political sub-*
15 *division of a State, or a Federal agency shall*
16 *have a fiduciary duty to the State, State agency,*
17 *city, county, municipality, or other political sub-*
18 *division of the State, or the Federal agency, as*
19 *appropriate.*

20 “(B) *PENSION PLANS; ENDOWMENTS; RE-*
21 *TIREMENT PLANS.—A security-based swap dealer*
22 *that provides advice regarding, or offers to enter*
23 *into, or enters into a security-based swap with*
24 *a pension plan, endowment, or retirement plan*

1 *shall have a fiduciary duty to the pension plan,*
2 *endowment, or retirement plan, as appropriate.*

3 “(3) *BUSINESS CONDUCT REQUIREMENTS.—*
4 *Business conduct requirements adopted by the Com-*
5 *mission under this subsection shall—*

6 “(A) *establish the standard of care for a se-*
7 *curity-based swap dealer or major security-based*
8 *swap participant to verify that any*
9 *counterparty meets the eligibility standards for*
10 *an eligible contract participant;*

11 “(B) *require disclosure by the security-based*
12 *swap dealer or major security-based swap partic-*
13 *ipant to any counterparty to the transaction*
14 *(other than a security-based swap dealer or a*
15 *major security-based swap participant) of—*

16 “(i) *information about the material*
17 *risks and characteristics of the security-*
18 *based swap;*

19 “(ii) *the source and amount of any fees*
20 *or other material remuneration that the se-*
21 *curity-based swap dealer or major security-*
22 *based swap participant would directly or*
23 *indirectly expect to receive in connection*
24 *with the security-based swap;*

1 “(iii) any other material incentives or
2 conflicts of interest that the security-based
3 swap dealer or major security-based swap
4 participant may have in connection with
5 the security-based swap; and

6 “(iv)(I) for cleared security-based
7 swaps, upon the request of the counterparty,
8 the daily mark from the appropriate clear-
9 ing agency; and

10 “(II) for uncleared security-based
11 swaps, the daily mark of the security-based
12 swap dealer or the major security-based
13 swap participant;

14 “(C) establish a standard of conduct for a
15 security-based swap dealer or major security-
16 based swap participant to communicate in a
17 fair and balanced manner based on principles of
18 fair dealing and good faith;

19 “(D) establish a standard of conduct for a
20 security-based swap dealer or major security-
21 based swap participant, with respect to a
22 counterparty that is an eligible contract partici-
23 pant within the meaning of subclause (I) or (II)
24 of clause (vii) of section 1a(18) of the Com-
25 modity Exchange Act, to have a reasonable basis

1 to believe that the counterparty has an inde-
2 pendent representative that—

3 “(i) has sufficient knowledge to evalu-
4 ate the transaction and risks;

5 “(ii) is not subject to a statutory dis-
6 qualification;

7 “(iii) is independent of the security-
8 based swap dealer or major security-based
9 swap participant;

10 “(iv) undertakes a duty to act in the
11 best interests of the counterparty it rep-
12 resents;

13 “(v) makes appropriate disclosures;
14 and

15 “(vi) will provide written representa-
16 tions to the eligible contract participant re-
17 garding fair pricing and the appropriate-
18 ness of the transaction; and

19 “(E) establish such other standards and re-
20 quirements as the Commission may determine
21 are appropriate in the public interest, for the
22 protection of investors, or otherwise in further-
23 ance of the purposes of this title.

24 “(4) RULES.—The Commission shall prescribe
25 rules under this subsection governing business conduct

1 *standards for security-based swap dealers and major*
2 *security-based swap participants.*

3 “(i) *DOCUMENTATION AND BACK OFFICE STAND-*
4 *ARDS.—*

5 “(1) *IN GENERAL.—Each registered security-*
6 *based swap dealer and major security-based swap*
7 *participant shall conform with such standards as*
8 *may be prescribed by the Commission, by rule or reg-*
9 *ulation, that relate to timely and accurate confirma-*
10 *tion, processing, netting, documentation, and valu-*
11 *ation of all security-based swaps.*

12 “(2) *RULES.—The Commission shall adopt rules*
13 *governing documentation and back office standards*
14 *for security-based swap dealers and major security-*
15 *based swap participants.*

16 “(j) *DUTIES.—Each registered security-based swap*
17 *dealer and major security-based swap participant shall, at*
18 *all times, comply with the following requirements:*

19 “(1) *MONITORING OF TRADING.—The security-*
20 *based swap dealer or major security-based swap par-*
21 *ticipant shall monitor its trading in security-based*
22 *swaps to prevent violations of applicable position*
23 *limits.*

24 “(2) *RISK MANAGEMENT PROCEDURES.—The se-*
25 *curity-based swap dealer or major security-based*

1 *swap participant shall establish robust and profes-*
2 *sional risk management systems adequate for man-*
3 *aging the day-to-day business of the security-based*
4 *swap dealer or major security-based swap partici-*
5 *pant.*

6 “(3) *DISCLOSURE OF GENERAL INFORMATION.*—
7 *The security-based swap dealer or major security-*
8 *based swap participant shall disclose to the Commis-*
9 *sion and to the prudential regulator for the security-*
10 *based swap dealer or major security-based swap par-*
11 *ticipant, as applicable, information concerning—*

12 “(A) *terms and conditions of its security-*
13 *based swaps;*

14 “(B) *security-based swap trading oper-*
15 *ations, mechanisms, and practices;*

16 “(C) *financial integrity protections relating*
17 *to security-based swaps; and*

18 “(D) *other information relevant to its trad-*
19 *ing in security-based swaps.*

20 “(4) *ABILITY TO OBTAIN INFORMATION.*—*The se-*
21 *curity-based swap dealer or major security-based*
22 *swap participant shall—*

23 “(A) *establish and enforce internal systems*
24 *and procedures to obtain any necessary informa-*

1 *tion to perform any of the functions described in*
2 *this section; and*

3 *“(B) provide the information to the Com-*
4 *mission and to the prudential regulator for the*
5 *security-based swap dealer or major security-*
6 *based swap participant, as applicable, on re-*
7 *quest.*

8 *“(5) CONFLICTS OF INTEREST.—The security-*
9 *based swap dealer and major security-based swap*
10 *participant shall implement conflict-of-interest sys-*
11 *tems and procedures that—*

12 *“(A) establish structural and institutional*
13 *safeguards to ensure that the activities of any*
14 *person within the firm relating to research or*
15 *analysis of the price or market for any security-*
16 *based swap or acting in a role of providing*
17 *clearing activities or making determinations as*
18 *to accepting clearing customers are separated by*
19 *appropriate informational partitions within the*
20 *firm from the review, pressure, or oversight of*
21 *persons whose involvement in pricing, trading,*
22 *or clearing activities might potentially bias their*
23 *judgment or supervision and contravene the core*
24 *principles of open access and the business con-*
25 *duct standards described in this title; and*

1 “(B) address such other issues as the Com-
2 mission determines to be appropriate.

3 “(6) *ANTITRUST CONSIDERATIONS.*—Unless nec-
4 essary or appropriate to achieve the purposes of this
5 title, the security-based swap dealer or major secu-
6 rity-based swap participant shall not—

7 “(A) adopt any process or take any action
8 that results in any unreasonable restraint of
9 trade; or

10 “(B) impose any material anticompetitive
11 burden on trading or clearing.

12 “(k) *DESIGNATION OF CHIEF COMPLIANCE OFFI-*
13 *CER.*—

14 “(1) *IN GENERAL.*—Each security-based swap
15 dealer and major security-based swap participant
16 shall designate an individual to serve as a chief com-
17 pliance officer.

18 “(2) *DUTIES.*—The chief compliance officer
19 shall—

20 “(A) report directly to the board or to the
21 senior officer of the security-based swap dealer or
22 major security-based swap participant;

23 “(B) review the compliance of the security-
24 based swap dealer or major security-based swap
25 participant with respect to the security-based

1 *swap dealer and major security-based swap par-*
2 *ticipant requirements described in this section;*

3 “(C) *in consultation with the board of di-*
4 *rectors, a body performing a function similar to*
5 *the board, or the senior officer of the organiza-*
6 *tion, resolve any conflicts of interest that may*
7 *arise;*

8 “(D) *be responsible for administering each*
9 *policy and procedure that is required to be estab-*
10 *lished pursuant to this section;*

11 “(E) *ensure compliance with this title (in-*
12 *cluding regulations) relating to security-based*
13 *swaps, including each rule prescribed by the*
14 *Commission under this section;*

15 “(F) *establish procedures for the remedi-*
16 *ation of noncompliance issues identified by the*
17 *chief compliance officer through any—*

18 “(i) *compliance office review;*

19 “(ii) *look-back;*

20 “(iii) *internal or external audit find-*
21 *ing;*

22 “(iv) *self-reported error; or*

23 “(v) *validated complaint; and*

24 “(G) *establish and follow appropriate proce-*
25 *dures for the handling, management response, re-*

1 *mediation, retesting, and closing of noncompli-*
2 *ance issues.*

3 “(3) *ANNUAL REPORTS.*—

4 “(A) *IN GENERAL.*—*In accordance with*
5 *rules prescribed by the Commission, the chief*
6 *compliance officer shall annually prepare and*
7 *sign a report that contains a description of—*

8 “(i) *the compliance of the security-*
9 *based swap dealer or major swap partici-*
10 *part with respect to this title (including*
11 *regulations); and*

12 “(ii) *each policy and procedure of the*
13 *security-based swap dealer or major secu-*
14 *rity-based swap participant of the chief*
15 *compliance officer (including the code of*
16 *ethics and conflict of interest policies).*

17 “(B) *REQUIREMENTS.*—*A compliance re-*
18 *port under subparagraph (A) shall—*

19 “(i) *accompany each appropriate fi-*
20 *nancial report of the security-based swap*
21 *dealer or major security-based swap partici-*
22 *part that is required to be furnished to the*
23 *Commission pursuant to this section; and*

1 “(ii) include a certification that, under
2 penalty of law, the compliance report is ac-
3 curate and complete.

4 “(l) ENFORCEMENT AND ADMINISTRATIVE PRO-
5 CEEDING AUTHORITY.—

6 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

7 “(A) SECURITIES AND EXCHANGE COMMIS-
8 SION.—Except as provided in subparagraph (B),
9 the Commission shall have primary authority to
10 enforce subtitle B, and the amendments made by
11 subtitle B of the Wall Street Transparency and
12 Accountability Act of 2010, with respect to any
13 person.

14 “(B) APPROPRIATE FEDERAL BANKING
15 AGENCIES.—The appropriate Federal banking
16 agency for security-based swap dealers or major
17 security-based swap participants that are deposi-
18 tory institutions, as that term is defined under
19 section 3 of the Federal Deposit Insurance Act
20 (12 U.S.C. 1813), shall have exclusive authority
21 to enforce the provisions of subsection (e) and
22 other prudential requirements of this title, with
23 respect to depository institutions that are secu-
24 rity-based swap dealers or major security-based
25 swap participants.

1 “(C) *REFERRAL.*—

2 “(i) *VIOLATIONS OF NONPRUDENTIAL*
3 *REQUIREMENTS.*—*If the appropriate Fed-*
4 *eral banking agency for security-based swap*
5 *dealers or major security-based swap par-*
6 *ticipants that are depository institutions*
7 *has cause to believe that such security-based*
8 *swap dealer or major security-based swap*
9 *participant may have engaged in conduct*
10 *that constitutes a violation of the non-*
11 *prudential requirements of this section or*
12 *rules adopted by the Commission there-*
13 *under, the agency may recommend in writ-*
14 *ing to the Commission that the Commission*
15 *initiate an enforcement proceeding as au-*
16 *thorized under this title. The recommenda-*
17 *tion shall be accompanied by a written ex-*
18 *planation of the concerns giving rise to the*
19 *recommendation.*

20 “(ii) *VIOLATIONS OF PRUDENTIAL RE-*
21 *QUIREMENTS.*—*If the Commission has cause*
22 *to believe that a securities-based swap deal-*
23 *er or major securities-based swap partici-*
24 *part that has a prudential regulator may*
25 *have engaged in conduct that constitute a*

1 *violation of the prudential requirements of*
2 *subsection (e) or rules adopted thereunder,*
3 *the Commission may recommend in writing*
4 *to the prudential regulator that the pruden-*
5 *tial regulator initiate an enforcement pro-*
6 *ceeding as authorized under this title. The*
7 *recommendation shall be accompanied by a*
8 *written explanation of the concerns giving*
9 *rise to the recommendation.*

10 “(2) *CENSURE, DENIAL, SUSPENSION; NOTICE*
11 *AND HEARING.—The Commission, by order, shall cen-*
12 *sure, place limitations on the activities, functions, or*
13 *operations of, or revoke the registration of any secu-*
14 *rity-based swap dealer or major security-based swap*
15 *participant that has registered with the Commission*
16 *pursuant to subsection (b) if the Commission finds,*
17 *on the record after notice and opportunity for hear-*
18 *ing, that such censure, placing of limitations, or rev-*
19 *ocation is in the public interest and that such secu-*
20 *rity-based swap dealer or major security-based swap*
21 *participant, or any person associated with such secu-*
22 *rity-based swap dealer or major security-based swap*
23 *participant effecting or involved in effecting trans-*
24 *actions in security-based swaps on behalf of such secu-*
25 *rity-based swap dealer or major security-based swap*

1 *participant, whether prior or subsequent to becoming*
2 *so associated—*

3 *“(A) has committed or omitted any act, or*
4 *is subject to an order or finding, enumerated in*
5 *subparagraph (A), (D), or (E) of paragraph (4)*
6 *of section 15(b);*

7 *“(B) has been convicted of any offense speci-*
8 *fied in subparagraph (B) of such paragraph (4)*
9 *within 10 years of the commencement of the pro-*
10 *ceedings under this subsection;*

11 *“(C) is enjoined from any action, conduct,*
12 *or practice specified in subparagraph (C) of such*
13 *paragraph (4);*

14 *“(D) is subject to an order or a final order*
15 *specified in subparagraph (F) or (H), respec-*
16 *tively, of such paragraph (4); or*

17 *“(E) has been found by a foreign financial*
18 *regulatory authority to have committed or omit-*
19 *ted any act, or violated any foreign statute or*
20 *regulation, enumerated in subparagraph (G) of*
21 *such paragraph (4).*

22 *“(3) ASSOCIATED PERSONS.—With respect to*
23 *any person who is associated, who is seeking to be-*
24 *come associated, or, at the time of the alleged mis-*
25 *conduct, who was associated or was seeking to become*

1 *associated with a security-based swap dealer or major*
2 *security-based swap participant for the purpose of ef-*
3 *fecting or being involved in effecting security-based*
4 *swaps on behalf of such security-based swap dealer or*
5 *major security-based swap participant, the Commis-*
6 *sion, by order, shall censure, place limitations on the*
7 *activities or functions of such person, or suspend for*
8 *a period not exceeding 12 months, or bar such person*
9 *from being associated with a security-based swap*
10 *dealer or major security-based swap participant, if*
11 *the Commission finds, on the record after notice and*
12 *opportunity for a hearing, that such censure, placing*
13 *of limitations, suspension, or bar is in the public in-*
14 *terest and that such person—*

15 *“(A) has committed or omitted any act, or*
16 *is subject to an order or finding, enumerated in*
17 *subparagraph (A), (D), or (E) of paragraph (4)*
18 *of section 15(b);*

19 *“(B) has been convicted of any offense speci-*
20 *fied in subparagraph (B) of such paragraph (4)*
21 *within 10 years of the commencement of the pro-*
22 *ceedings under this subsection;*

23 *“(C) is enjoined from any action, conduct,*
24 *or practice specified in subparagraph (C) of such*
25 *paragraph (4);*

1 “(D) is subject to an order or a final order
2 specified in subparagraph (F) or (H), respec-
3 tively, of such paragraph (4); or

4 “(E) has been found by a foreign financial
5 regulatory authority to have committed or omit-
6 ted any act, or violated any foreign statute or
7 regulation, enumerated in subparagraph (G) of
8 such paragraph (4).

9 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
10 ful—

11 “(A) for any person as to whom an order
12 under paragraph (3) is in effect, without the
13 consent of the Commission, willfully to become,
14 or to be, associated with a security-based swap
15 dealer or major security-based swap participant
16 in contravention of such order; or

17 “(B) for any security-based swap dealer or
18 major security-based swap participant to permit
19 such a person, without the consent of the Com-
20 mission, to become or remain a person associated
21 with the security-based swap dealer or major se-
22 curity-based swap participant in contravention
23 of such order, if such security-based swap dealer
24 or major security-based swap participant knew,

1 *or in the exercise of reasonable care should have*
2 *known, of such order.”.*

3 **SEC. 765. RULEMAKING ON CONFLICT OF INTEREST.**

4 (a) *IN GENERAL.*—Not later than 180 days after the
5 *date of enactment of the Wall Street Transparency and Ac-*
6 *countability Act of 2010, the Securities and Exchange Com-*
7 *mission shall determine whether to adopt rules to establish*
8 *limits on the control of any clearing agency that clears secu-*
9 *rity-based swaps, or on the control of any security-based*
10 *swap execution facility or national securities exchange that*
11 *posts or makes available for trading security-based swaps,*
12 *by a bank holding company (as defined in section 2 of the*
13 *Bank Holding Company Act of 1956 (12 U.S.C. 1841))*
14 *with total consolidated assets of \$50,000,000,000 or more,*
15 *a nonbank financial company (as defined in section 102)*
16 *supervised by the Board of Governors of the Federal Reserve*
17 *System, affiliate of such a bank holding company or*
18 *nonbank financial company, a security-based swap dealer,*
19 *major security-based swap participant, or person associated*
20 *with a security-based swap dealer or major security-based*
21 *swap participant.*

22 (b) *PURPOSES.*—The Commission shall adopt rules if
23 *the Commission determines, after the review described in*
24 *subsection (a), that such rules are necessary or appropriate*
25 *to improve the governance of, or to mitigate systemic risk,*

1 *promote competition, or mitigate conflicts of interest in*
 2 *connection with a security-based swap dealer or major secu-*
 3 *rity-based swap participant’s conduct of business with, a*
 4 *clearing agency, national securities exchange, or security-*
 5 *based swap execution facility that clears, posts, or makes*
 6 *available for trading security-based swaps and in which*
 7 *such security-based swap dealer or major security-based*
 8 *swap participant has a material debt or equity investment.*

9 **SEC. 766. REPORTING AND RECORDKEEPING.**

10 (a) *IN GENERAL.—The Securities Exchange Act of*
 11 *1934 (15 U.S.C. 78a et seq.) is amended by inserting after*
 12 *section 13 the following:*

13 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN**
 14 **SECURITY-BASED SWAPS.**

15 **“(a) REQUIRED REPORTING OF SECURITY-BASED**
 16 **SWAPS NOT ACCEPTED BY ANY CLEARING AGENCY OR DE-**
 17 **RIVATIVES CLEARING ORGANIZATION.—**

18 **“(1) IN GENERAL.—Each security-based swap**
 19 **that is not accepted for clearing by any clearing**
 20 **agency or derivatives clearing organization shall be**
 21 **reported to—**

22 **“(A) a security-based swap data repository**
 23 **described in section 10B(n); or**

24 **“(B) in the case in which there is no secu-**
 25 **rity-based swap data repository that would ac-**

1 *cept the security-based swap, to the Commission*
2 *pursuant to this section within such time period*
3 *as the Commission may by rule or regulation*
4 *prescribe.*

5 “(2) *TRANSITION RULE FOR PREENACTMENT SE-*
6 *CURITY-BASED SWAPS.—*

7 “(A) *SECURITY-BASED SWAPS ENTERED*
8 *INTO BEFORE THE DATE OF ENACTMENT OF THE*
9 *WALL STREET TRANSPARENCY AND ACCOUNT-*
10 *ABILITY ACT OF 2010.—Each security-based swap*
11 *entered into before the date of enactment of the*
12 *Wall Street Transparency and Accountability*
13 *Act of 2010, the terms of which have not expired*
14 *as of the date of enactment of that Act, shall be*
15 *reported to a registered security-based swap data*
16 *repository or the Commission by a date that is*
17 *not later than—*

18 “(i) *30 days after issuance of the in-*
19 *terim final rule; or*

20 “(ii) *such other period as the Commis-*
21 *sion determines to be appropriate.*

22 “(B) *COMMISSION RULEMAKING.—The Com-*
23 *mission shall promulgate an interim final rule*
24 *within 90 days of the date of enactment of this*
25 *section providing for the reporting of each secu-*

1 *rity-based swap entered into before the date of*
2 *enactment as referenced in subparagraph (A).*

3 “(C) *EFFECTIVE DATE.*—*The reporting pro-*
4 *visions described in this section shall be effective*
5 *upon the date of the enactment of this section.*

6 “(3) *REPORTING OBLIGATIONS.*—

7 “(A) *SECURITY-BASED SWAPS IN WHICH*
8 *ONLY 1 COUNTERPARTY IS A SECURITY-BASED*
9 *SWAP DEALER OR MAJOR SECURITY-BASED SWAP*
10 *PARTICIPANT.*—*With respect to a security-based*
11 *swap in which only 1 counterparty is a security-*
12 *based swap dealer or major security-based swap*
13 *participant, the security-based swap dealer or*
14 *major security-based swap participant shall re-*
15 *port the security-based swap as required under*
16 *paragraphs (1) and (2).*

17 “(B) *SECURITY-BASED SWAPS IN WHICH 1*
18 *COUNTERPARTY IS A SECURITY-BASED SWAP*
19 *DEALER AND THE OTHER A MAJOR SECURITY-*
20 *BASED SWAP PARTICIPANT.*—*With respect to a*
21 *security-based swap in which 1 counterparty is*
22 *a security-based swap dealer and the other a*
23 *major security-based swap participant, the secu-*
24 *rity-based swap dealer shall report the security-*

1 *based swap as required under paragraphs (1)*
2 *and (2).*

3 “(C) *OTHER SECURITY-BASED SWAPS.—*
4 *With respect to any other security-based swap*
5 *not described in subparagraph (A) or (B), the*
6 *counterparties to the security-based swap shall*
7 *select a counterparty to report the security-based*
8 *swap as required under paragraphs (1) and (2).*

9 “(b) *DUTIES OF CERTAIN INDIVIDUALS.—Any indi-*
10 *vidual or entity that enters into a security-based swap shall*
11 *meet each requirement described in subsection (c) if the in-*
12 *dividual or entity did not—*

13 “(1) *clear the security-based swap in accordance*
14 *with section 3C(a)(1); or*

15 “(2) *have the data regarding the security-based*
16 *swap accepted by a security-based swap data reposi-*
17 *tory in accordance with rules (including timeframes)*
18 *adopted by the Commission under this title.*

19 “(c) *REQUIREMENTS.—An individual or entity de-*
20 *scribed in subsection (b) shall—*

21 “(1) *upon written request from the Commission,*
22 *provide reports regarding the security-based swaps*
23 *held by the individual or entity to the Commission in*
24 *such form and in such manner as the Commission*
25 *may request; and*

1 “(2) *maintain books and records pertaining to*
2 *the security-based swaps held by the individual or en-*
3 *tity in such form, in such manner, and for such pe-*
4 *riod as the Commission may require, which shall be*
5 *open to inspection by—*

6 “(A) *any representative of the Commission;*

7 “(B) *an appropriate prudential regulator;*

8 “(C) *the Commodity Futures Trading Com-*
9 *mission;*

10 “(D) *the Financial Stability Oversight*
11 *Council; and*

12 “(E) *the Department of Justice.*

13 “(d) *IDENTICAL DATA.—In prescribing rules under*
14 *this section, the Commission shall require individuals and*
15 *entities described in subsection (b) to submit to the Commis-*
16 *sion a report that contains data that is not less comprehen-*
17 *sive than the data required to be collected by security-based*
18 *swap data repositories under this title.”.*

19 “(b) *BENEFICIAL OWNERSHIP REPORTING.—Section 13*
20 *of the Securities Exchange Act of 1934 (15 U.S.C. 78m)*
21 *is amended—*

22 “(1) *in subsection (d)(1), by inserting “or other-*
23 *wise becomes or is deemed to become a beneficial*
24 *owner of any of the foregoing upon the purchase or*
25 *sale of a security-based swap that the Commission*

1 *may define by rule, and” after “Alaska Native Claims*
2 *Settlement Act,”; and*

3 (2) *in subsection (g)(1), by inserting “or other-*
4 *wise becomes or is deemed to become a beneficial*
5 *owner of any security of a class described in sub-*
6 *section (d)(1) upon the purchase or sale of a security-*
7 *based swap that the Commission may define by rule”*
8 *after “subsection (d)(1) of this section”.*

9 (c) *REPORTS BY INSTITUTIONAL INVESTMENT MAN-*
10 *AGERS.—Section 13(f)(1) of the Securities Exchange Act of*
11 *1934 (15 U.S.C. 78m(f)(1)) is amended by inserting “or*
12 *otherwise becomes or is deemed to become a beneficial owner*
13 *of any security of a class described in subsection (d)(1)*
14 *upon the purchase or sale of a security-based swap that the*
15 *Commission may define by rule,” after “subsection (d)(1)*
16 *of this section”.*

17 (d) *ADMINISTRATIVE PROCEEDING AUTHORITY.—Sec-*
18 *tion 15(b)(4) of the Securities Exchange Act of 1934 (15*
19 *U.S.C. 78o(b)(4)) is amended—*

20 (1) *in subparagraph (C), by inserting “security-*
21 *based swap dealer, major security-based swap partici-*
22 *part,” after “government securities dealer,”; and*

23 (2) *in subparagraph (F), by striking “broker or*
24 *dealer” and inserting “broker, dealer, security-based*

1 *swap dealer, or a major security-based swap partici-*
2 *pant”.*

3 *(e) SECURITY-BASED SWAP BENEFICIAL OWNER-*
4 *SHIP.—Section 13 of the Securities Exchange Act of 1934*
5 *(15 U.S.C. 78m) is amended by adding at the end the fol-*
6 *lowing:*

7 *“(o) BENEFICIAL OWNERSHIP.—For purposes of this*
8 *section and section 16, a person shall be deemed to acquire*
9 *beneficial ownership of an equity security based on the pur-*
10 *chase or sale of a security-based swap, only to the extent*
11 *that the Commission, by rule, determines after consultation*
12 *with the prudential regulators and the Secretary of the*
13 *Treasury, that the purchase or sale of the security-based*
14 *swap, or class of security-based swap, provides incidents of*
15 *ownership comparable to direct ownership of the equity se-*
16 *curity, and that it is necessary to achieve the purposes of*
17 *this section that the purchase or sale of the security-based*
18 *swaps, or class of security-based swap, be deemed the acqui-*
19 *sition of beneficial ownership of the equity security.”.*

20 **SEC. 767. STATE GAMING AND BUCKET SHOP LAWS.**

21 *Section 28(a) of the Securities Exchange Act of 1934*
22 *(15 U.S.C. 78bb(a)) is amended to read as follows:*

23 *“(a) LIMITATION ON JUDGMENTS.—*

24 *“(1) IN GENERAL.—No person permitted to*
25 *maintain a suit for damages under the provisions of*

1 *this title shall recover, through satisfaction of judg-*
2 *ment in 1 or more actions, a total amount in excess*
3 *of the actual damages to that person on account of the*
4 *act complained of. Except as otherwise specifically*
5 *provided in this title, nothing in this title shall affect*
6 *the jurisdiction of the securities commission (or any*
7 *agency or officer performing like functions) of any*
8 *State over any security or any person insofar as it*
9 *does not conflict with the provisions of this title or the*
10 *rules and regulations under this title.*

11 “(2) *RULE OF CONSTRUCTION.*—*Except as pro-*
12 *vided in subsection (f), the rights and remedies pro-*
13 *vided by this title shall be in addition to any and all*
14 *other rights and remedies that may exist at law or in*
15 *equity.*

16 “(3) *STATE BUCKET SHOP LAWS.*—*No State law*
17 *which prohibits or regulates the making or promoting*
18 *of wagering or gaming contracts, or the operation of*
19 *‘bucket shops’ or other similar or related activities,*
20 *shall invalidate—*

21 “(A) *any put, call, straddle, option, privi-*
22 *lege, or other security subject to this title (except*
23 *any security that has a pari-mutuel payout or*
24 *otherwise is determined by the Commission, act-*
25 *ing by rule, regulation, or order, to be appro-*

1 *priately subject to such laws), or apply to any*
2 *activity which is incidental or related to the*
3 *offer, purchase, sale, exercise, settlement, or close-*
4 *out of any such security;*

5 “(B) *any security-based swap between eligi-*
6 *ble contract participants; or*

7 “(C) *any security-based swap effected on a*
8 *national securities exchange registered pursuant*
9 *to section 6(b).*

10 “(4) *OTHER STATE PROVISIONS.—No provision*
11 *of State law regarding the offer, sale, or distribution*
12 *of securities shall apply to any transaction in a secu-*
13 *rity-based swap or a security futures product, except*
14 *that this paragraph may not be construed as limiting*
15 *any State antifraud law of general applicability. A*
16 *security-based swap may not be regulated as an in-*
17 *surance contract under any provision of State law.”.*

18 **SEC. 768. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

19 **TREATMENT OF SECURITY-BASED SWAPS.**

20 (a) *DEFINITIONS.—Section 2(a) of the Securities Act*
21 *of 1933 (15 U.S.C. 77b(a)) is amended—*

22 (1) *in paragraph (1), by inserting “security-*
23 *based swap,” after “security future,”;*

24 (2) *in paragraph (3), by adding at the end the*
25 *following: “Any offer or sale of a security-based swap*

1 *by or on behalf of the issuer of the securities upon*
2 *which such security-based swap is based or is ref-*
3 *erenced, an affiliate of the issuer, or an underwriter,*
4 *shall constitute a contract for sale of, sale of, offer for*
5 *sale, or offer to sell such securities.”; and*

6 *(3) by adding at the end the following:*

7 *“(17) The terms ‘swap’ and ‘security-based swap’*
8 *have the same meanings as in section 1a of the Com-*
9 *modity Exchange Act (7 U.S.C. 1a).*

10 *“(18) The terms ‘purchase’ or ‘sale’ of a security-*
11 *based swap shall be deemed to mean the execution,*
12 *termination (prior to its scheduled maturity date),*
13 *assignment, exchange, or similar transfer or convey-*
14 *ance of, or extinguishing of rights or obligations*
15 *under, a security-based swap, as the context may re-*
16 *quire.”.*

17 *(b) REGISTRATION OF SECURITY-BASED SWAPS.—Sec-*
18 *tion 5 of the Securities Act of 1933 (15 U.S.C. 77e) is*
19 *amended by adding at the end the following:*

20 *“(d) Notwithstanding the provisions of section 3 or 4,*
21 *unless a registration statement meeting the requirements of*
22 *section 10(a) is in effect as to a security-based swap, it shall*
23 *be unlawful for any person, directly or indirectly, to make*
24 *use of any means or instruments of transportation or com-*
25 *munication in interstate commerce or of the mails to offer*

1 *to sell, offer to buy or purchase or sell a security-based swap*
2 *to any person who is not an eligible contract participant*
3 *as defined in section 1a(18) of the Commodity Exchange*
4 *Act (7 U.S.C. 1a(18)).”.*

5 **SEC. 769. DEFINITIONS UNDER THE INVESTMENT COMPANY**

6 **ACT OF 1940.**

7 *Section 2(a) of the Investment Company Act of 1940*
8 *(15 U.S.C. 80a-2) is amended by adding at the end the*
9 *following:*

10 *“(54) The terms ‘commodity pool’, ‘commodity*
11 *pool operator’, ‘commodity trading advisor’, ‘major*
12 *swap participant’, ‘swap’, ‘swap dealer’, and ‘swap*
13 *execution facility’ have the same meanings as in sec-*
14 *tion 1a of the Commodity Exchange Act (7 U.S.C.*
15 *1a).”.*

16 **SEC. 770. DEFINITIONS UNDER THE INVESTMENT ADVI-**

17 **SORS ACT OF 1940.**

18 *Section 202(a) of the Investment Advisers Act of 1940*
19 *(15 U.S.C. 80b-2) is amended by adding at the end the*
20 *following:*

21 *“(29) The terms ‘commodity pool’, ‘commodity*
22 *pool operator’, ‘commodity trading advisor’, ‘major*
23 *swap participant’, ‘swap’, ‘swap dealer’, and ‘swap*
24 *execution facility’ have the same meanings as in sec-*

1 *tion 1a of the Commodity Exchange Act (7 U.S.C.*
2 *1a).”.*

3 **SEC. 771. OTHER AUTHORITY.**

4 *Unless otherwise provided by its terms, this subtitle*
5 *does not divest any appropriate Federal banking agency,*
6 *the Securities and Exchange Commission, the Commodity*
7 *Futures Trading Commission, or any other Federal or State*
8 *agency, of any authority derived from any other provision*
9 *of applicable law.*

10 **SEC. 772. JURISDICTION.**

11 *(a) IN GENERAL.—Section 36 of the Securities Ex-*
12 *change Act of 1934 (15 U.S.C. 78mm) is amended by add-*
13 *ing at the end the following:*

14 *“(c) DERIVATIVES.—The Commission shall not grant*
15 *exemptions from the security-based swap provisions of the*
16 *Wall Street Transparency and Accountability Act of 2010*
17 *or the amendments made by that Act, except as expressly*
18 *authorized under the provisions of that Act.”.*

19 *(b) RULE OF CONSTRUCTION.—Section 30 of the Secu-*
20 *rities Exchange Act of 1934 (15 U.S.C. 78dd) is amended*
21 *by adding at the end the following:*

22 *“(c) RULE OF CONSTRUCTION.—No provision of this*
23 *title that was added by the Wall Street Transparency and*
24 *Accountability Act of 2010, or any rule or regulation there-*
25 *under, shall apply to any person insofar as such person*

1 *transacts a business in security-based swaps without the ju-*
2 *isdiction of the United States, unless such person transacts*
3 *such business in contravention of such rules and regulations*
4 *as the Commission may prescribe as necessary or appro-*
5 *priate to prevent the evasion of any provision of this title*
6 *that was added by the Wall Street Transparency and Ac-*
7 *countability Act of 2010. This subsection shall not be con-*
8 *strued to limit the jurisdiction of the Commission under*
9 *any provision of this title, as in effect prior to the date*
10 *of enactment of the Wall Street Transparency and Account-*
11 *ability Act of 2010.”.*

12 **SEC. 773. EFFECTIVE DATE.**

13 *Unless otherwise specifically provided in this subtitle,*
14 *this subtitle, the provisions of this subtitle, and the amend-*
15 *ments made by this subtitle shall become effective 180 days*
16 *after the date of enactment of this Act.*

17 **TITLE VIII—PAYMENT, CLEAR-**
18 **ING, AND SETTLEMENT SU-**
19 **PERVISION**

20 **SEC. 801. SHORT TITLE.**

21 *This title may be cited as the “Payment, Clearing, and*
22 *Settlement Supervision Act of 2010”.*

23 **SEC. 802. FINDINGS AND PURPOSES.**

24 *(a) FINDINGS.—Congress finds the following:*

1 (1) *The proper functioning of the financial mar-*
2 *kets is dependent upon safe and efficient arrange-*
3 *ments for the clearing and settlement of payment, se-*
4 *curities, and other financial transactions.*

5 (2) *Financial market utilities that conduct or*
6 *support multilateral payment, clearing, or settlement*
7 *activities may reduce risks for their participants and*
8 *the broader financial system, but such utilities may*
9 *also concentrate and create new risks and thus must*
10 *be well designed and operated in a safe and sound*
11 *manner.*

12 (3) *Payment, clearing, and settlement activities*
13 *conducted by financial institutions also present im-*
14 *portant risks to the participating financial institu-*
15 *tions and to the financial system.*

16 (4) *Enhancements to the regulation and super-*
17 *vision of systemically important financial market*
18 *utilities and the conduct of systemically important*
19 *payment, clearing, and settlement activities by finan-*
20 *cial institutions are necessary—*

21 (A) *to provide consistency;*

22 (B) *to promote robust risk management and*
23 *safety and soundness;*

24 (C) *to reduce systemic risks; and*

1 (D) to support the stability of the broader
2 financial system.

3 (b) *PURPOSE.*—The purpose of this title is to mitigate
4 systemic risk in the financial system and promote financial
5 stability by—

6 (1) authorizing the Board of Governors to pre-
7 scribe uniform standards for the—

8 (A) management of risks by systemically
9 important financial market utilities; and

10 (B) conduct of systemically important pay-
11 ment, clearing, and settlement activities by fi-
12 nancial institutions;

13 (2) providing the Board of Governors an en-
14 hanced role in the supervision of risk management
15 standards for systemically important financial mar-
16 ket utilities;

17 (3) strengthening the liquidity of systemically
18 important financial market utilities; and

19 (4) providing the Board of Governors an en-
20 hanced role in the supervision of risk management
21 standards for systemically important payment, clear-
22 ing, and settlement activities by financial institu-
23 tions.

24 **SEC. 803. DEFINITIONS.**

25 In this title, the following definitions shall apply:

1 (1) *APPROPRIATE FINANCIAL REGULATOR.*—*The*
2 *term “appropriate financial regulator” means—*

3 (A) *the primary financial regulatory agen-*
4 *cy, as defined in section 2 of this Act;*

5 (B) *the National Credit Union Administra-*
6 *tion, with respect to any insured credit union*
7 *under the Federal Credit Union Act (12 U.S.C.*
8 *1751 et seq.); and*

9 (C) *the Board of Governors, with respect to*
10 *organizations operating under section 25A of the*
11 *Federal Reserve Act (12 U.S.C. 611), and any*
12 *other financial institution engaged in a des-*
13 *ignated activity.*

14 (2) *DESIGNATED ACTIVITY.*—*The term “des-*
15 *ignated activity” means a payment, clearing, or set-*
16 *tlement activity that the Council has designated as*
17 *systemically important under section 804.*

18 (3) *DESIGNATED FINANCIAL MARKET UTILITY.*—
19 *The term “designated financial market utility” means*
20 *a financial market utility that the Council has des-*
21 *ignated as systemically important under section 804.*

22 (4) *FINANCIAL INSTITUTION.*—*The term “finan-*
23 *cial institution” means—*

1 (A) a depository institution, as defined in
2 section 3 of the Federal Deposit Insurance Act
3 (12 U.S.C. 1813);

4 (B) a branch or agency of a foreign bank,
5 as defined in section 1(b) of the International
6 Banking Act of 1978 (12 U.S.C. 3101);

7 (C) an organization operating under section
8 25 or 25A of the Federal Reserve Act (12 U.S.C.
9 601–604a and 611 through 631);

10 (D) a credit union, as defined in section
11 101 of the Federal Credit Union Act (12 U.S.C.
12 1752);

13 (E) a broker or dealer, as defined in section
14 3 of the Securities Exchange Act of 1934 (15
15 U.S.C. 78c);

16 (F) an investment company, as defined in
17 section 3 of the Investment Company Act of 1940
18 (15 U.S.C. 80a–3);

19 (G) an insurance company, as defined in
20 section 2 of the Investment Company Act of 1940
21 (15 U.S.C. 80a–2);

22 (H) an investment adviser, as defined in
23 section 202 of the Investment Advisers Act of
24 1940 (15 U.S.C. 80b–2);

1 (I) a futures commission merchant, com-
2 modity trading advisor, or commodity pool oper-
3 ator, as defined in section 1a of the Commodity
4 Exchange Act (7 U.S.C. 1a); and

5 (J) any company engaged in activities that
6 are financial in nature or incidental to a finan-
7 cial activity, as described in section 4 of the
8 Bank Holding Company Act of 1956 (12 U.S.C.
9 1843(k)).

10 (5) *FINANCIAL MARKET UTILITY*.—The term “fi-
11 nancial market utility” means any person that man-
12 ages or operates a multilateral system for the purpose
13 of transferring, clearing, or settling payments, securi-
14 ties, or other financial transactions among financial
15 institutions or between financial institutions and the
16 person.

17 (6) *PAYMENT, CLEARING, OR SETTLEMENT ACTIV-*
18 *ITY*.—

19 (A) *IN GENERAL*.—The term “payment,
20 clearing, or settlement activity” means an activ-
21 ity carried out by 1 or more financial institu-
22 tions to facilitate the completion of financial
23 transactions.

1 (B) *FINANCIAL TRANSACTION.*—*For the*
2 *purposes of subparagraph (A), the term “finan-*
3 *cial transaction” includes—*

4 (i) *funds transfers;*

5 (ii) *securities contracts;*

6 (iii) *contracts of sale of a commodity*
7 *for future delivery;*

8 (iv) *forward contracts;*

9 (v) *repurchase agreements;*

10 (vi) *swaps;*

11 (vii) *security-based swaps;*

12 (viii) *swap agreements;*

13 (ix) *security-based swap agreements;*

14 (x) *foreign exchange contracts;*

15 (xi) *financial derivatives contracts;*

16 *and*

17 (xii) *any similar transaction that the*
18 *Council determines to be a financial trans-*
19 *action for purposes of this title.*

20 (C) *INCLUDED ACTIVITIES.*—*When con-*
21 *ducted with respect to a financial transaction,*
22 *payment, clearing, and settlement activities may*
23 *include—*

1 (i) *the calculation and communication*
2 *of unsettled financial transactions between*
3 *counterparties;*

4 (ii) *the netting of transactions;*

5 (iii) *provision and maintenance of*
6 *trade, contract, or instrument information;*

7 (iv) *the management of risks and ac-*
8 *tivities associated with continuing financial*
9 *transactions;*

10 (v) *transmittal and storage of payment*
11 *instructions;*

12 (vi) *the movement of funds;*

13 (vii) *the final settlement of financial*
14 *transactions; and*

15 (viii) *other similar functions that the*
16 *Council may determine.*

17 (7) *SUPERVISORY AGENCY.—*

18 (A) *IN GENERAL.—The term “Supervisory*
19 *Agency” means the Federal agency that has pri-*
20 *mary jurisdiction over a designated financial*
21 *market utility under Federal banking, securities,*
22 *or commodity futures laws, as follows:*

23 (i) *The Securities and Exchange Com-*
24 *mission, with respect to a designated finan-*
25 *cial market utility that is a clearing agency*

1 *registered with the Securities and Exchange*
2 *Commission.*

3 *(ii) The Commodity Futures Trading*
4 *Commission, with respect to a designated fi-*
5 *nancial market utility that is a derivatives*
6 *clearing organization registered with the*
7 *Commodity Futures Trading Commission.*

8 *(iii) The appropriate Federal banking*
9 *agency, with respect to a designated finan-*
10 *cial market utility that is an institution de-*
11 *scribed in section 3(q) of the Federal De-*
12 *posit Insurance Act.*

13 *(iv) The Board of Governors, with re-*
14 *spect to a designated financial market util-*
15 *ity that is otherwise not subject to the juris-*
16 *isdiction of any agency listed in clauses (i),*
17 *(ii), and (iii).*

18 *(B) MULTIPLE AGENCY JURISDICTION.—If a*
19 *designated financial market utility is subject to*
20 *the jurisdictional supervision of more than 1*
21 *agency listed in subparagraph (A), then such*
22 *agencies should agree on 1 agency to act as the*
23 *Supervisory Agency, and if such agencies cannot*
24 *agree on which agency has primary jurisdiction,*

1 *the Council shall decide which agency is the Su-*
2 *pervisory Agency for purposes of this title.*

3 (8) *SYSTEMICALLY IMPORTANT AND SYSTEMIC*
4 *IMPORTANCE.—The terms “systemically important”*
5 *and “systemic importance” mean a situation where*
6 *the failure of or a disruption to the functioning of a*
7 *financial market utility or the conduct of a payment,*
8 *clearing, or settlement activity could create, or in-*
9 *crease, the risk of significant liquidity or credit prob-*
10 *lems spreading among financial institutions or mar-*
11 *kets and thereby threaten the stability of the financial*
12 *system.*

13 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

14 (a) *DESIGNATION.—*

15 (1) *FINANCIAL STABILITY OVERSIGHT COUN-*
16 *CIL.—The Council, on a nondelegable basis and by a*
17 *vote of not fewer than $\frac{2}{3}$ of members then serving, in-*
18 *cluding an affirmative vote by the Chairperson of the*
19 *Council, shall designate those financial market utili-*
20 *ties or payment, clearing, or settlement activities that*
21 *the Council determines are, or are likely to become,*
22 *systemically important.*

23 (2) *CONSIDERATIONS.—In determining whether*
24 *a financial market utility or payment, clearing, or*
25 *settlement activity is, or is likely to become, system-*

1 *ically important, the Council shall take into consider-*
2 *ation the following:*

3 *(A) The aggregate monetary value of trans-*
4 *actions processed by the financial market utility*
5 *or carried out through the payment, clearing, or*
6 *settlement activity.*

7 *(B) The aggregate exposure of the financial*
8 *market utility or a financial institution engaged*
9 *in payment, clearing, or settlement activities to*
10 *its counterparties.*

11 *(C) The relationship, interdependencies, or*
12 *other interactions of the financial market utility*
13 *or payment, clearing, or settlement activity with*
14 *other financial market utilities or payment,*
15 *clearing, or settlement activities.*

16 *(D) The effect that the failure of or a dis-*
17 *ruption to the financial market utility or pay-*
18 *ment, clearing, or settlement activity would have*
19 *on critical markets, financial institutions, or the*
20 *broader financial system.*

21 *(E) Any other factors that the Council*
22 *deems appropriate.*

23 *(b) RESCISSION OF DESIGNATION.—*

24 *(1) IN GENERAL.—The Council, on a nondele-*
25 *gable basis and by a vote of not fewer than $\frac{2}{3}$ of*

1 *members then serving, including an affirmative vote*
2 *by the Chairperson of the Council, shall rescind a des-*
3 *ignation of systemic importance for a designated fi-*
4 *nancial market utility or designated activity if the*
5 *Council determines that the utility or activity no*
6 *longer meets the standards for systemic importance.*

7 (2) *EFFECT OF RESCISSION.—Upon rescission,*
8 *the financial market utility or financial institutions*
9 *conducting the activity will no longer be subject to the*
10 *provisions of this title or any rules or orders pre-*
11 *scribed by the Council under this title.*

12 (c) *CONSULTATION AND NOTICE AND OPPORTUNITY*
13 *FOR HEARING.—*

14 (1) *CONSULTATION.—Before making any deter-*
15 *mination under subsection (a) or (b), the Council*
16 *shall consult with the relevant Supervisory Agency*
17 *and the Board of Governors.*

18 (2) *ADVANCE NOTICE AND OPPORTUNITY FOR*
19 *HEARING.—*

20 (A) *IN GENERAL.—Before making any de-*
21 *termination under subsection (a) or (b), the*
22 *Council shall provide the financial market util-*
23 *ity or, in the case of a payment, clearing, or set-*
24 *tlement activity, financial institutions with ad-*

1 *vance notice of the proposed determination of the*
2 *Council.*

3 (B) *NOTICE IN FEDERAL REGISTER.*—*The*
4 *Council shall provide such advance notice to fi-*
5 *nancial institutions by publishing a notice in*
6 *the Federal Register.*

7 (C) *REQUESTS FOR HEARING.*—*Within 30*
8 *days from the date of any notice of the proposed*
9 *determination of the Council, the financial mar-*
10 *ket utility or, in the case of a payment, clearing,*
11 *or settlement activity, a financial institution en-*
12 *gaged in the designated activity may request, in*
13 *writing, an opportunity for a written or oral*
14 *hearing before the Council to demonstrate that*
15 *the proposed designation or rescission of designa-*
16 *tion is not supported by substantial evidence.*

17 (D) *WRITTEN SUBMISSIONS.*—*Upon receipt*
18 *of a timely request, the Council shall fix a time,*
19 *not more than 30 days after receipt of the re-*
20 *quest, unless extended at the request of the finan-*
21 *cial market utility or financial institution, and*
22 *place at which the financial market utility or fi-*
23 *nancial institution may appear, personally or*
24 *through counsel, to submit written materials, or,*

1 *at the sole discretion of the Council, oral testi-*
2 *mony or oral argument.*

3 (3) *EMERGENCY EXCEPTION.—*

4 (A) *WAIVER OR MODIFICATION BY VOTE OF*
5 *THE COUNCIL.—The Council may waive or mod-*
6 *ify the requirements of paragraph (2) if the*
7 *Council determines, by an affirmative vote of not*
8 *less than $\frac{2}{3}$ of all members then serving, includ-*
9 *ing an affirmative vote by the Chairperson of the*
10 *Council, that the waiver or modification is nec-*
11 *essary to prevent or mitigate an immediate*
12 *threat to the financial system posed by the finan-*
13 *cial market utility or the payment, clearing, or*
14 *settlement activity.*

15 (B) *NOTICE OF WAIVER OR MODIFICA-*
16 *TION.—The Council shall provide notice of the*
17 *waiver or modification to the financial market*
18 *utility concerned or, in the case of a payment,*
19 *clearing, or settlement activity, to financial in-*
20 *stitutions, as soon as practicable, which shall be*
21 *no later than 24 hours after the waiver or modi-*
22 *fication in the case of a financial market utility*
23 *and 3 business days in the case of financial in-*
24 *stitutions. The Council shall provide the notice to*
25 *financial institutions by posting a notice on the*

1 *website of the Council and by publishing a notice*
2 *in the Federal Register.*

3 *(d) NOTIFICATION OF FINAL DETERMINATION.—*

4 *(1) AFTER HEARING.—Within 60 days of any*
5 *hearing under subsection (c)(3), the Council shall no-*
6 *tify the financial market utility or financial institu-*
7 *tions of the final determination of the Council in*
8 *writing, which shall include findings of fact upon*
9 *which the determination of the Council is based.*

10 *(2) WHEN NO HEARING REQUESTED.—If the*
11 *Council does not receive a timely request for a hear-*
12 *ing under subsection (c)(3), the Council shall notify*
13 *the financial market utility or financial institutions*
14 *of the final determination of the Council in writing*
15 *not later than 30 days after the expiration of the date*
16 *by which a financial market utility or a financial in-*
17 *stitution could have requested a hearing. All notices*
18 *to financial institutions under this subsection shall be*
19 *published in the Federal Register.*

20 *(e) EXTENSION OF TIME PERIODS.—The Council may*
21 *extend the time periods established in subsections (c) and*
22 *(d) as the Council determines to be necessary or appro-*
23 *priate.*

1 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-**
2 **NANCIAL MARKET UTILITIES AND PAYMENT,**
3 **CLEARING, OR SETTLEMENT ACTIVITIES.**

4 (a) *AUTHORITY TO PRESCRIBE STANDARDS.*—The
5 Board, by rule or order, and in consultation with the Coun-
6 cil and the Supervisory Agencies, shall prescribe risk man-
7 agement standards, taking into consideration relevant
8 international standards and existing prudential require-
9 ments, governing—

10 (1) *the operations related to the payment, clear-*
11 *ing, and settlement activities of designated financial*
12 *market utilities; and*

13 (2) *the conduct of designated activities by finan-*
14 *cial institutions.*

15 (b) *OBJECTIVES AND PRINCIPLES.*—The objectives and
16 principles for the risk management standards prescribed
17 under subsection (a) shall be to—

18 (1) *promote robust risk management;*

19 (2) *promote safety and soundness;*

20 (3) *reduce systemic risks; and*

21 (4) *support the stability of the broader financial*
22 *system.*

23 (c) *SCOPE.*—The standards prescribed under sub-
24 section (a) may address areas such as—

25 (1) *risk management policies and procedures;*

26 (2) *margin and collateral requirements;*

1 (3) *participant or counterparty default policies*
 2 *and procedures;*

3 (4) *the ability to complete timely clearing and*
 4 *settlement of financial transactions;*

5 (5) *capital and financial resource requirements*
 6 *for designated financial market utilities; and*

7 (6) *other areas that the Board determines are*
 8 *necessary to achieve the objectives and principles in*
 9 *subsection (b).*

10 (d) **THRESHOLD LEVEL.**—*The standards prescribed*
 11 *under subsection (a) governing the conduct of designated*
 12 *activities by financial institutions shall, where appropriate,*
 13 *establish a threshold as to the level or significance of engage-*
 14 *ment in the activity at which a financial institution will*
 15 *become subject to the standards with respect to that activity.*

16 (e) **COMPLIANCE REQUIRED.**—*Designated financial*
 17 *market utilities and financial institutions subject to the*
 18 *standards prescribed by the Board of Governors for a des-*
 19 *ignated activity shall conduct their operations in compli-*
 20 *ance with the applicable risk management standards pre-*
 21 *scribed by the Board of Governors.*

22 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MAR-**
 23 **KET UTILITIES.**

24 (a) **FEDERAL RESERVE ACCOUNT AND SERVICES.**—
 25 *The Board of Governors may authorize a Federal Reserve*

1 *Bank to establish and maintain an account for a designated*
2 *financial market utility and provide services to the des-*
3 *ignated financial market utility that the Federal Reserve*
4 *Bank is authorized under the Federal Reserve Act to pro-*
5 *vide to a depository institution, subject to any applicable*
6 *rules, orders, standards, or guidelines prescribed by the*
7 *Board of Governors.*

8 (b) *ADVANCES.*—*The Board of Governors may author-*
9 *ize a Federal Reserve Bank to provide to a designated fi-*
10 *nancial market utility the same discount and borrowing*
11 *privileges as the Federal Reserve Bank may provide to a*
12 *depository institution under the Federal Reserve Act, sub-*
13 *ject to any applicable rules, orders, standards, or guidelines*
14 *prescribed by the Board of Governors.*

15 (c) *EARNINGS ON FEDERAL RESERVE BALANCES.*—*A*
16 *Federal Reserve Bank may pay earnings on balances main-*
17 *tained by or on behalf of a designated financial market util-*
18 *ity in the same manner and to the same extent as the Fed-*
19 *eral Reserve Bank may pay earnings to a depository insti-*
20 *tution under the Federal Reserve Act, subject to any appli-*
21 *cable rules, orders, standards, or guidelines prescribed by*
22 *the Board of Governors.*

23 (d) *RESERVE REQUIREMENTS.*—*The Board of Gov-*
24 *ernors may exempt a designated financial market utility*
25 *from, or modify any, reserve requirements under section 19*

1 *of the Federal Reserve Act (12 U.S.C. 461) applicable to*
2 *a designated financial market utility.*

3 (e) *CHANGES TO RULES, PROCEDURES, OR OPER-*
4 *ATIONS.—*

5 (1) *ADVANCE NOTICE.—*

6 (A) *ADVANCE NOTICE OF PROPOSED*
7 *CHANGES REQUIRED.—A designated financial*
8 *market utility shall provide notice 60 days in*
9 *advance advance notice to its Supervisory Agen-*
10 *cy and the Board of Governors of any proposed*
11 *change to its rules, procedures, or operations that*
12 *could, as defined in rules of the Board of Gov-*
13 *ernors, materially affect, the nature or level of*
14 *risks presented by the designated financial mar-*
15 *ket utility.*

16 (B) *TERMS AND STANDARDS PRESCRIBED*
17 *BY THE BOARD OF GOVERNORS.—The Board of*
18 *Governors shall prescribe regulations that define*
19 *and describe the standards for determining when*
20 *notice is required to be provided under subpara-*
21 *graph (A).*

22 (C) *CONTENTS OF NOTICE.—The notice of a*
23 *proposed change shall describe—*

24 (i) *the nature of the change and ex-*
25 *pected effects on risks to the designated fi-*

1 *financial market utility, its participants, or*
2 *the market; and*

3 *(ii) how the designated financial mar-*
4 *ket utility plans to manage any identified*
5 *risks.*

6 *(D) ADDITIONAL INFORMATION.—The Su-*
7 *pervisory Agency or the Board of Governors may*
8 *require a designated financial market utility to*
9 *provide any information necessary to assess the*
10 *effect the proposed change would have on the na-*
11 *ture or level of risks associated with the des-*
12 *ignated financial market utility’s payment,*
13 *clearing, or settlement activities and the suffi-*
14 *ciency of any proposed risk management tech-*
15 *niques.*

16 *(E) NOTICE OF OBJECTION.—The Super-*
17 *visory Agency or the Board of Governors shall*
18 *notify the designated financial market utility of*
19 *any objection regarding the proposed change*
20 *within 60 days from the later of—*

21 *(i) the date that the notice of the pro-*
22 *posed change is received; or*

23 *(ii) the date any further information*
24 *requested for consideration of the notice is*
25 *received.*

1 (F) *CHANGE NOT ALLOWED IF OBJEC-*
2 *TION.—A designated financial market utility*
3 *shall not implement a change to which the Board*
4 *of Governors or the Supervisory Agency has an*
5 *objection.*

6 (G) *CHANGE ALLOWED IF NO OBJECTION*
7 *WITHIN 60 DAYS.—A designated financial market*
8 *utility may implement a change if it has not re-*
9 *ceived an objection to the proposed change within*
10 *60 days of the later of—*

11 (i) *the date that the Supervisory Agen-*
12 *cy or the Board of Governors receives the*
13 *notice of proposed change; or*

14 (ii) *the date the Supervisory Agency or*
15 *the Board of Governors receives any further*
16 *information it requests for consideration of*
17 *the notice.*

18 (H) *REVIEW EXTENSION FOR NOVEL OR*
19 *COMPLEX ISSUES.—The Supervisory Agency or*
20 *the Board of Governors may, during the 60-day*
21 *review period, extend the review period for an*
22 *additional 60 days for proposed changes that*
23 *raise novel or complex issues, subject to the Su-*
24 *pervisory Agency or the Board of Governors pro-*
25 *viding the designated financial market utility*

1 with prompt written notice of the extension. Any
2 extension under this subparagraph will extend
3 the time periods under subparagraphs (D) and
4 (F).

5 (I) *CHANGE ALLOWED EARLIER IF NOTI-*
6 *FIED OF NO OBJECTION.*—A designated financial
7 market utility may implement a change in less
8 than 60 days from the date of receipt of the no-
9 tice of proposed change by the Supervisory Agen-
10 cy or the Board of Governors, or the date the Su-
11 pervisory Agency or the Board of Governors re-
12 ceives any further information it requested, if the
13 Supervisory Agency or the Board of Governors
14 notifies the designated financial market utility
15 in writing that it does not object to the proposed
16 change and authorizes the designated financial
17 market utility to implement the change on an
18 earlier date, subject to any conditions imposed
19 by the Supervisory Agency or the Board of Gov-
20 ernors.

21 (2) *EMERGENCY CHANGES.*—

22 (A) *IN GENERAL.*—A designated financial
23 market utility may implement a change that
24 would otherwise require advance notice under
25 this subsection if it determines that—

- 1 (i) *an emergency exists; and*
2 (ii) *immediate implementation of the*
3 *change is necessary for the designated fi-*
4 *ancial market utility to continue to pro-*
5 *vide its services in a safe and sound man-*
6 *ner.*

7 (B) *NOTICE REQUIRED WITHIN 24 HOURS.—*
8 *The designated financial market utility shall*
9 *provide notice of any such emergency change to*
10 *its Supervisory Agency and the Board of Gov-*
11 *ernors, as soon as practicable, which shall be no*
12 *later than 24 hours after implementation of the*
13 *change.*

14 (C) *CONTENTS OF EMERGENCY NOTICE.—In*
15 *addition to the information required for changes*
16 *requiring advance notice, the notice of an emer-*
17 *gency change shall describe—*

- 18 (i) *the nature of the emergency; and*
19 (ii) *the reason the change was nec-*
20 *essary for the designated financial market*
21 *utility to continue to provide its services in*
22 *a safe and sound manner.*

23 (D) *MODIFICATION OR RESCISSION OF*
24 *CHANGE MAY BE REQUIRED.—The Supervisory*
25 *Agency or the Board of Governors may require*

1 *modification or rescission of the change if it*
2 *finds that the change is not consistent with the*
3 *purposes of this Act or any rules, orders, or*
4 *standards prescribed by the Board of Governors*
5 *hereunder.*

6 (3) *COPYING THE BOARD OF GOVERNORS.—The*
7 *Supervisory Agency shall provide the Board of Gov-*
8 *ernors concurrently with a complete copy of any no-*
9 *tice, request, or other information it issues, submits,*
10 *or receives under this subsection.*

11 (4) *CONSULTATION WITH BOARD OF GOV-*
12 *ERNORS.—Before taking any action on, or completing*
13 *its review of, a change proposed by a designated fi-*
14 *nancial market utility, the Supervisory Agency shall*
15 *consult with the Board of Governors.*

16 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS**
17 **AGAINST DESIGNATED FINANCIAL MARKET**
18 **UTILITIES.**

19 (a) *EXAMINATION.—Notwithstanding any other provi-*
20 *sion of law and subject to subsection (d), the Supervisory*
21 *Agency shall conduct examinations of a designated finan-*
22 *cial market utility at least once annually in order to deter-*
23 *mine the following:*

24 (1) *The nature of the operations of, and the risks*
25 *borne by, the designated financial market utility.*

1 (2) *The financial and operational risks presented*
2 *by the designated financial market utility to finan-*
3 *cial institutions, critical markets, or the broader fi-*
4 *nancial system.*

5 (3) *The resources and capabilities of the des-*
6 *ignated financial market utility to monitor and con-*
7 *trol such risks.*

8 (4) *The safety and soundness of the designated*
9 *financial market utility.*

10 (5) *The designated financial market utility's*
11 *compliance with—*

12 (A) *this title; and*

13 (B) *the rules and orders prescribed by the*
14 *Board of Governors under this title.*

15 (b) *SERVICE PROVIDERS.—Whenever a service integral*
16 *to the operation of a designated financial market utility*
17 *is performed for the designated financial market utility by*
18 *another entity, whether an affiliate or non-affiliate and*
19 *whether on or off the premises of the designated financial*
20 *market utility, the Supervisory Agency may examine*
21 *whether the provision of that service is in compliance with*
22 *applicable law, rules, orders, and standards to the same ex-*
23 *tent as if the designated financial market utility were per-*
24 *forming the service on its own premises.*

1 (c) *ENFORCEMENT.*—*For purposes of enforcing the*
2 *provisions of this section, a designated financial market*
3 *utility shall be subject to, and the appropriate Supervisory*
4 *Agency shall have authority under the provisions of sub-*
5 *sections (b) through (n) of section 8 of the Federal Deposit*
6 *Insurance Act (12 U.S.C. 1818) in the same manner and*
7 *to the same extent as if the designated financial market util-*
8 *ity was an insured depository institution and the Super-*
9 *visory Agency was the appropriate Federal banking agency*
10 *for such insured depository institution.*

11 (d) *BOARD OF GOVERNORS INVOLVEMENT IN EXAMI-*
12 *NATIONS.*—

13 (1) *BOARD OF GOVERNORS CONSULTATION ON*
14 *EXAMINATION PLANNING.*—*The Supervisory Agency*
15 *shall consult with the Board of Governors regarding*
16 *the scope and methodology of any examination con-*
17 *ducted under subsections (a) and (b).*

18 (2) *BOARD OF GOVERNORS PARTICIPATION IN EX-*
19 *AMINATION.*—*The Board of Governors may, in its dis-*
20 *cretion, participate in any examination led by a Su-*
21 *pervisory Agency and conducted under subsections (a)*
22 *and (b).*

23 (e) *BOARD OF GOVERNORS ENFORCEMENT REC-*
24 *OMMENDATIONS.*—

1 (1) *RECOMMENDATION.*—*The Board of Governors*
2 *may at any time recommend to the Supervisory*
3 *Agency that such agency take enforcement action*
4 *against a designated financial market utility. Any*
5 *such recommendation for enforcement action shall*
6 *provide a detailed analysis supporting the rec-*
7 *ommendation of the Board of Governors.*

8 (2) *CONSIDERATION.*—*The Supervisory Agency*
9 *shall consider the recommendation of the Board of*
10 *Governors and submit a response to the Board of Gov-*
11 *ernors within 60 days.*

12 (3) *MEDIATION.*—*If the Supervisory Agency re-*
13 *jects, in whole or in part, the recommendation of the*
14 *Board of Governors, the Board of Governors may dis-*
15 *pute the matter by referring the recommendation to*
16 *the Council, which shall attempt to resolve the dis-*
17 *pute.*

18 (4) *ENFORCEMENT ACTION.*—*If the Council is*
19 *unable to resolve the dispute under paragraph (3)*
20 *within 30 days from the date of referral, the Board*
21 *of Governors may, upon a vote of its members—*

22 (A) *exercise the enforcement authority ref-*
23 *erenced in subsection (c) as if it were the Super-*
24 *visory Agency; and*

1 (B) take enforcement action against the des-
2 ignated financial market utility.

3 (f) *EMERGENCY ENFORCEMENT ACTIONS BY THE*
4 *BOARD OF GOVERNORS.—*

5 (1) *IMMINENT RISK OF SUBSTANTIAL HARM.—*

6 *The Board of Governors may, after consulting with*
7 *the Council and the Supervisory Agency, take enforce-*
8 *ment action against a designated financial market*
9 *utility if the Board of Governors has reasonable cause*
10 *to believe that—*

11 (A) *either—*

12 (i) *an action engaged in, or con-*
13 *templated by, a designated financial market*
14 *utility (including any change proposed by*
15 *the designated financial market utility to*
16 *its rules, procedures, or operations that*
17 *would otherwise be subject to section 806(e))*
18 *poses an imminent risk of substantial harm*
19 *to financial institutions, critical markets,*
20 *or the broader financial system; or*

21 (ii) *the condition of a designated fi-*
22 *nancial market utility poses an imminent*
23 *risk of substantial harm to financial insti-*
24 *tutions, critical markets, or the broader fi-*
25 *nancial system; and*

1 (B) *the imminent risk of substantial harm*
2 *precludes the Board of Governors' use of the pro-*
3 *cedures in subsection (e).*

4 (2) *ENFORCEMENT AUTHORITY.—For purposes of*
5 *taking enforcement action under paragraph (1), a*
6 *designated financial market utility shall be subject to,*
7 *and the Board of Governors shall have authority*
8 *under the provisions of subsections (b) through (n) of*
9 *section 8 of the Federal Deposit Insurance Act (12*
10 *U.S.C. 1818) in the same manner and to the same ex-*
11 *tent as if the designated financial market utility was*
12 *an insured depository institution and the Board of*
13 *Governors was the appropriate Federal banking agen-*
14 *cy for such insured depository institution.*

15 (3) *PROMPT NOTICE TO SUPERVISORY AGENCY OF*
16 *ENFORCEMENT ACTION.—Within 24 hours of taking*
17 *an enforcement action under this subsection, the*
18 *Board of Governors shall provide written notice to the*
19 *designated financial market utility's Supervisory*
20 *Agency containing a detailed analysis of the action of*
21 *the Board of Governors, with supporting documenta-*
22 *tion included.*

1 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS**
2 **AGAINST FINANCIAL INSTITUTIONS SUBJECT**
3 **TO STANDARDS FOR DESIGNATED ACTIVITIES.**
4 **TIES.**

5 (a) *EXAMINATION.*—*The appropriate financial regu-*
6 *lator is authorized to examine a financial institution sub-*
7 *ject to the standards prescribed by the Board of Governors*
8 *for a designated activity in order to determine the fol-*
9 *lowing:*

10 (1) *The nature and scope of the designated ac-*
11 *tivities engaged in by the financial institution.*

12 (2) *The financial and operational risks the des-*
13 *ignated activities engaged in by the financial institu-*
14 *tion may pose to the safety and soundness of the fi-*
15 *ancial institution.*

16 (3) *The financial and operational risks the des-*
17 *ignated activities engaged in by the financial institu-*
18 *tion may pose to other financial institutions, critical*
19 *markets, or the broader financial system.*

20 (4) *The resources available to and the capabili-*
21 *ties of the financial institution to monitor and con-*
22 *trol the risks described in paragraphs (2) and (3).*

23 (5) *The financial institution's compliance with*
24 *this title and the rules and orders prescribed by the*
25 *Board of Governors under this title.*

1 (b) *ENFORCEMENT.*—*For purposes of enforcing the*
2 *provisions of this section, and the rules and orders pre-*
3 *scribed by the Board of Governors under this section, a fi-*
4 *ancial institution subject to the standards prescribed by*
5 *the Board of Governors for a designated activity shall be*
6 *subject to, and the appropriate financial regulator shall*
7 *have authority under the provisions of subsections (b)*
8 *through (n) of section 8 of the Federal Deposit Insurance*
9 *Act (12 U.S.C. 1818) in the same manner and to the same*
10 *extent as if the financial institution was an insured deposi-*
11 *tory institution and the appropriate financial regulator*
12 *was the appropriate Federal banking agency for such in-*
13 *sured depository institution.*

14 (c) *TECHNICAL ASSISTANCE.*—*The Board of Governors*
15 *shall consult with and provide such technical assistance as*
16 *may be required by the appropriate financial regulators to*
17 *ensure that the rules and orders prescribed by the Board*
18 *of Governors under this title are interpreted and applied*
19 *in as consistent and uniform a manner as practicable.*

20 (d) *DELEGATION.*—

21 (1) *EXAMINATION.*—

22 (A) *REQUEST TO BOARD OF GOVERNORS.*—

23 *The appropriate financial regulator may request*
24 *the Board of Governors to conduct or participate*
25 *in an examination of a financial institution*

1 *subject to the standards prescribed by the Board*
2 *of Governors for a designated activity in order*
3 *to assess the compliance of such financial insti-*
4 *tution with—*

5 *(i) this title; or*

6 *(ii) the rules or orders prescribed by*
7 *the Board of Governors under this title.*

8 *(B) EXAMINATION BY BOARD OF GOV-*
9 *ERNORS.—Upon receipt of an appropriate writ-*
10 *ten request, the Board of Governors will conduct*
11 *the examination under such terms and condi-*
12 *tions to which the Board of Governors and the*
13 *appropriate financial regulator mutually agree.*

14 *(2) ENFORCEMENT.—*

15 *(A) REQUEST TO BOARD OF GOVERNORS.—*
16 *The appropriate financial regulator may request*
17 *the Board of Governors to enforce this title or the*
18 *rules or orders prescribed by the Board of Gov-*
19 *ernors under this title against a financial insti-*
20 *tution that is subject to the standards prescribed*
21 *by the Board of Governors for a designated activ-*
22 *ity.*

23 *(B) ENFORCEMENT BY BOARD OF GOV-*
24 *ERNORS.—Upon receipt of an appropriate writ-*
25 *ten request, the Board of Governors shall deter-*

1 *mine whether an enforcement action is war-*
2 *ranted, and, if so, it shall enforce compliance*
3 *with this title or the rules or orders prescribed*
4 *by the Board of Governors under this title and,*
5 *if so, the financial institution shall be subject to,*
6 *and the Board of Governors shall have authority*
7 *under the provisions of subsections (b) through*
8 *(n) of section 8 of the Federal Deposit Insurance*
9 *Act (12 U.S.C. 1818) in the same manner and*
10 *to the same extent as if the financial institution*
11 *was an insured depository institution and the*
12 *Board of Governors was the appropriate Federal*
13 *banking agency for such insured depository in-*
14 *stitution.*

15 *(e) BACK-UP AUTHORITY OF THE BOARD OF GOV-*
16 *ERNORS.—*

17 *(1) EXAMINATION AND ENFORCEMENT.—Notwith-*
18 *standing any other provision of law, the Board of*
19 *Governors may—*

20 *(A) conduct an examination of the type de-*
21 *scribed in subsection (a) of any financial insti-*
22 *tution that is subject to the standards prescribed*
23 *by the Board of Governors for a designated activ-*
24 *ity; and*

1 (B) enforce the provisions of this title or
2 any rules or orders prescribed by the Board of
3 Governors under this title against any financial
4 institution that is subject to the standards pre-
5 scribed by the Board of Governors for a des-
6 ignated activity.

7 (2) LIMITATIONS.—

8 (A) EXAMINATION.—The Board of Gov-
9 ernors may exercise the authority described in
10 paragraph (1)(A) only if the Board of Governors
11 has—

12 (i) reasonable cause to believe that a fi-
13 nancial institution is not in compliance
14 with this title or the rules or orders pre-
15 scribed by the Board of Governors under
16 this title with respect to a designated activ-
17 ity;

18 (ii) notified, in writing, the appro-
19 priate financial regulator and the Council
20 of its belief under clause (i) with supporting
21 documentation included;

22 (iii) requested the appropriate finan-
23 cial regulator to conduct a prompt exam-
24 ination of the financial institution; and

25 (iv) either—

1 (I) not been afforded a reasonable
2 opportunity to participate in an exam-
3 ination of the financial institution by
4 the appropriate financial regulator
5 within 30 days after the date of the
6 Board's notification under clause (ii);
7 or

8 (II) reasonable cause to believe
9 that the financial institution's non-
10 compliance with this title or the rules
11 or orders prescribed by the Board of
12 Governors under this title poses a sub-
13 stantial risk to other financial institu-
14 tions, critical markets, or the broader
15 financial system, subject to the Board
16 of Governors affording the appropriate
17 financial regulator a reasonable oppor-
18 tunity to participate in the examina-
19 tion.

20 (B) ENFORCEMENT.—The Board of Gov-
21 ernors may exercise the authority described in
22 paragraph (1)(B) only if the Board of Governors
23 has—

24 (i) reasonable cause to believe that a fi-
25 nancial institution is not in compliance

1 *with this title or the rules or orders pre-*
2 *scribed by the Board of Governors under*
3 *this title with respect to a designated activ-*
4 *ity;*

5 *(ii) notified, in writing, the appro-*
6 *propriate financial regulator and the Council*
7 *of its belief under clause (i) with supporting*
8 *documentation included and with a rec-*
9 *ommendation that the appropriate financial*
10 *regulator take 1 or more specific enforce-*
11 *ment actions against the financial institu-*
12 *tion; and*

13 *(iii) either—*

14 *(I) not been notified, in writing,*
15 *by the appropriate financial regulator*
16 *of the commencement of an enforcement*
17 *action recommended by the Board of*
18 *Governors against the financial insti-*
19 *tution within 60 days from the date of*
20 *the notification under clause (ii); or*

21 *(II) reasonable cause to believe*
22 *that the financial institution's non-*
23 *compliance with this title or the rules*
24 *or orders prescribed by the Board of*
25 *Governors under this title poses a sub-*

1 *stantial risk to other financial institu-*
2 *tions, critical markets, or the broader*
3 *financial system, subject to the Board*
4 *of Governors notifying the appropriate*
5 *financial regulator of the Board's en-*
6 *forcement action.*

7 (3) *ENFORCEMENT PROVISIONS.—For purposes*
8 *of taking enforcement action under paragraph (1), the*
9 *financial institution shall be subject to, and the*
10 *Board of Governors shall have authority under the*
11 *provisions of subsections (b) through (n) of section 8*
12 *of the Federal Deposit Insurance Act (12 U.S.C.*
13 *1818) in the same manner and to the same extent as*
14 *if the financial institution was an insured depository*
15 *institution and the Board of Governors was the ap-*
16 *propriate Federal banking agency for such insured*
17 *depository institution.*

18 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR**
19 **RECORDS.**

20 (a) *INFORMATION TO ASSESS SYSTEMIC IMPOR-*
21 *TANCE.—*

22 (1) *FINANCIAL MARKET UTILITIES.—The Council*
23 *is authorized to require any financial market utility*
24 *to submit such information as the Council may re-*
25 *quire for the sole purpose of assessing whether that fi-*

1 *financial market utility is systemically important, but*
2 *only if the Council has reasonable cause to believe*
3 *that the financial market utility meets the standards*
4 *for systemic importance set forth in section 804.*

5 (2) *FINANCIAL INSTITUTIONS ENGAGED IN PAY-*
6 *MENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The*
7 *Council is authorized to require any financial insti-*
8 *tution to submit such information as the Council may*
9 *require for the sole purpose of assessing whether any*
10 *payment, clearing, or settlement activity engaged in*
11 *or supported by a financial institution is system-*
12 *ically important, but only if the Council has reason-*
13 *able cause to believe that the activity meets the stand-*
14 *ards for systemic importance set forth in section 804.*

15 (b) *REPORTING AFTER DESIGNATION.—*

16 (1) *DESIGNATED FINANCIAL MARKET UTILI-*
17 *TIES.—The Board of Governors and the Council may*
18 *require a designated financial market utility to sub-*
19 *mit reports or data to the Board of Governors and the*
20 *Council in such frequency and form as deemed nec-*
21 *essary by the Board of Governors and the Council in*
22 *order to assess the safety and soundness of the utility*
23 *and the systemic risk that the utility's operations pose*
24 *to the financial system.*

1 (2) *FINANCIAL INSTITUTIONS SUBJECT TO*
2 *STANDARDS FOR DESIGNATED ACTIVITIES.*—*The*
3 *Board of Governors and the Council may require 1 or*
4 *more financial institutions subject to the standards*
5 *prescribed by the Board of Governors for a designated*
6 *activity to submit, in such frequency and form as*
7 *deemed necessary by the Board of Governors and the*
8 *Council, reports and data to the Board of Governors*
9 *and the Council solely with respect to the conduct of*
10 *the designated activity and solely to assess whether—*

11 (A) *the rules, orders, or standards pre-*
12 *scribed by the Board of Governors with respect*
13 *to the designated activity appropriately address*
14 *the risks to the financial system presented by*
15 *such activity; and*

16 (B) *the financial institutions are in compli-*
17 *ance with this title and the rules and orders pre-*
18 *scribed by the Board of Governors under this*
19 *title with respect to the designated activity.*

20 (c) *COORDINATION WITH APPROPRIATE FEDERAL SU-*
21 *PERVISORY AGENCY.*—

22 (1) *ADVANCE COORDINATION.*—*Before directly*
23 *requesting any material information from, or impos-*
24 *ing reporting or recordkeeping requirements on, any*
25 *financial market utility or any financial institution*

1 *engaged in a payment, clearing, or settlement activ-*
2 *ity, the Board of Governors and the Council shall co-*
3 *ordinate with the Supervisory Agency for a financial*
4 *market utility or the appropriate financial regulator*
5 *for a financial institution to determine if the infor-*
6 *mation is available from or may be obtained by the*
7 *agency in the form, format, or detail required by the*
8 *Board of Governors and the Council.*

9 (2) *SUPERVISORY REPORTS.*—*Notwithstanding*
10 *any other provision of law, the Supervisory Agency,*
11 *the appropriate financial regulator, and the Board of*
12 *Governors are authorized to disclose to each other and*
13 *the Council copies of its examination reports or simi-*
14 *lar reports regarding any financial market utility or*
15 *any financial institution engaged in payment, clear-*
16 *ing, or settlement activities.*

17 (d) *TIMING OF RESPONSE FROM APPROPRIATE FED-*
18 *ERAL SUPERVISORY AGENCY.*—*If the information, report,*
19 *records, or data requested by the Board of Governors or the*
20 *Council under subsection (c)(1) are not provided in full by*
21 *the Supervisory Agency or the appropriate financial regu-*
22 *lator in less than 15 days after the date on which the mate-*
23 *rial is requested, the Board of Governors or the Council may*
24 *request the information or impose recordkeeping or report-*

1 *ing requirements directly on such persons as provided in*
2 *subsections (a) and (b) with notice to the agency.*

3 *(e) SHARING OF INFORMATION.—*

4 *(1) MATERIAL CONCERNS.—Notwithstanding any*
5 *other provision of law, the Board of Governors, the*
6 *Council, the appropriate financial regulator, and any*
7 *Supervisory Agency are authorized to—*

8 *(A) promptly notify each other of material*
9 *concerns about a designated financial market*
10 *utility or any financial institution engaged in*
11 *designated activities; and*

12 *(B) share appropriate reports, information,*
13 *or data relating to such concerns.*

14 *(2) OTHER INFORMATION.—Notwithstanding any*
15 *other provision of law, the Board of Governors, the*
16 *Council, the appropriate financial regulator, or any*
17 *Supervisory Agency may, under such terms and con-*
18 *ditions as it deems appropriate, provide confidential*
19 *supervisory information and other information ob-*
20 *tained under this title to other persons it deems ap-*
21 *propriate, including the Secretary, State financial in-*
22 *stitution supervisory agencies, foreign financial su-*
23 *pervisors, foreign central banks, and foreign finance*
24 *ministries, subject to reasonable assurances of con-*
25 *fidentiality.*

1 (f) *PRIVILEGE MAINTAINED.*—*The Board of Governors,*
2 *the Council, the appropriate financial regulator, and any*
3 *Supervisory Agency providing reports or data under this*
4 *section shall not be deemed to have waived any privilege*
5 *applicable to those reports or data, or any portion thereof,*
6 *by providing the reports or data to the other party or by*
7 *permitting the reports or data, or any copies thereof, to be*
8 *used by the other party.*

9 (g) *DISCLOSURE EXEMPTION.*—*Information obtained*
10 *by the Board of Governors or the Council under this section*
11 *and any materials prepared by the Board of Governors or*
12 *the Council regarding its assessment of the systemic impor-*
13 *tance of financial market utilities or any payment, clear-*
14 *ing, or settlement activities engaged in by financial institu-*
15 *tions, and in connection with its supervision of designated*
16 *financial market utilities and designated activities, shall be*
17 *confidential supervisory information exempt from disclo-*
18 *sure under section 552 of title 5, United States Code. For*
19 *purposes of such section 552, this subsection shall be consid-*
20 *ered a statute described in subsection (b)(3) of such section*
21 *552.*

22 **SEC. 810. RULEMAKING.**

23 *The Board of Governors and the Council are author-*
24 *ized to prescribe such rules and issue such orders as may*
25 *be necessary to administer and carry out the authorities*

1 *and duties granted to the Board of Governors or the Coun-*
2 *cil, respectively, and prevent evasions thereof.*

3 **SEC. 811. OTHER AUTHORITY.**

4 *Unless otherwise provided by its terms, this title does*
5 *not divest any appropriate financial regulator, any Super-*
6 *visory Agency, or any other Federal or State agency, of any*
7 *authority derived from any other applicable law, except*
8 *that any standards prescribed by the Board of Governors*
9 *under section 805 shall supersede any less stringent require-*
10 *ments established under other authority to the extent of any*
11 *conflict.*

12 **SEC. 812. EFFECTIVE DATE.**

13 *This title is effective as of the date of enactment of this*
14 *Act.*

15 **TITLE IX—INVESTOR PROTEC-**
16 **TIONS AND IMPROVEMENTS**
17 **TO THE REGULATION OF SE-**
18 **CURITIES**

19 **Subtitle A—Increasing Investor**
20 **Protection**

21 **SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

22 *Title I of the Securities Exchange Act of 1934 (15*
23 *U.S.C. 78a et seq.) is amended by adding at the end the*
24 *following:*

1 **“SEC. 39. INVESTOR ADVISORY COMMITTEE.**

2 “(a) *ESTABLISHMENT AND PURPOSE.*—

3 “(1) *ESTABLISHMENT.*—*There is established*
4 *within the Commission the Investor Advisory Com-*
5 *mittee (referred to in this section as the ‘Committee’).*

6 “(2) *PURPOSE.*—*The Committee shall—*

7 “(A) *advise and consult with the Commis-*
8 *sion on—*

9 “(i) *regulatory priorities of the Com-*
10 *mission;*

11 “(ii) *issues relating to the regulation of*
12 *securities products, trading strategies, and*
13 *fee structures, and the effectiveness of disclo-*
14 *sure;*

15 “(iii) *initiatives to protect investor in-*
16 *terest; and*

17 “(iv) *initiatives to promote investor*
18 *confidence and the integrity of the securities*
19 *marketplace; and*

20 “(B) *submit to the Commission such find-*
21 *ings and recommendations as the Committee de-*
22 *termines are appropriate, including rec-*
23 *ommendations for proposed legislative changes.*

24 “(b) *MEMBERSHIP.*—

25 “(1) *IN GENERAL.*—*The members of the Com-*
26 *mittee shall be—*

1 “(A) *the Investor Advocate;*

2 “(B) *a representative of State securities*
3 *commissions;*

4 “(C) *a representative of the interests of sen-*
5 *ior citizens; and*

6 “(D) *not fewer than 10, and not more than*
7 *20, members appointed by the Commission, from*
8 *among individuals who—*

9 “(i) *represent the interests of indi-*
10 *vidual equity and debt investors, including*
11 *investors in mutual funds;*

12 “(ii) *represent the interests of institu-*
13 *tional investors, including the interests of*
14 *pension funds and registered investment*
15 *companies;*

16 “(iii) *are knowledgeable about invest-*
17 *ment issues and decisions; and*

18 “(iv) *have reputations of integrity.*

19 “(2) *TERM.—Each member of the Committee ap-*
20 *pointed under paragraph (1)(B) shall serve for a term*
21 *of 4 years.*

22 “(3) *MEMBERS NOT COMMISSION EMPLOYEES.—*
23 *Members appointed under paragraph (1)(B) shall not*
24 *be deemed to be employees or agents of the Commis-*
25 *sion solely because of membership on the Committee.*

1 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
2 SISTANT SECRETARY.—

3 “(1) IN GENERAL.—The members of the Com-
4 mittee shall elect, from among the members of the
5 Committee—

6 “(A) a chairman, who may not be employed
7 by an issuer;

8 “(B) a vice chairman, who may not be em-
9 ployed by an issuer;

10 “(C) a secretary; and

11 “(D) an assistant secretary.

12 “(2) TERM.—Each member elected under para-
13 graph (1) shall serve for a term of 3 years in the ca-
14 pacity for which the member was elected under para-
15 graph (1).

16 “(d) MEETINGS.—

17 “(1) FREQUENCY OF MEETINGS.—The Committee
18 shall meet—

19 “(A) not less frequently than twice annu-
20 ally, at the call of the chairman of the Com-
21 mittee; and

22 “(B) from time to time, at the call of the
23 Commission.

24 “(2) NOTICE.—The chairman of the Committee
25 shall give the members of the Committee written no-

1 *tice of each meeting, not later than 2 weeks before the*
2 *date of the meeting.*

3 “(e) *COMPENSATION AND TRAVEL EXPENSES.—Each*
4 *member of the Committee who is not a full-time employee*
5 *of the United States shall—*

6 “(1) *be compensated at a rate not to exceed the*
7 *daily equivalent of the annual rate of basic pay in*
8 *effect for a position at level V of the Executive Sched-*
9 *ule under section 5316 of title 5, United States Code,*
10 *for each day during which the member is engaged in*
11 *the actual performance of the duties of the Committee;*
12 *and*

13 “(2) *while away from the home or regular place*
14 *of business of the member in the performance of serv-*
15 *ices for the Committee, be allowed travel expenses, in-*
16 *cluding per diem in lieu of subsistence, in the same*
17 *manner as persons employed intermittently in the*
18 *Government service are allowed expenses under sec-*
19 *tion 5703(b) of title 5, United States Code.*

20 “(f) *STAFF.—The Commission shall make available to*
21 *the Committee such staff as the chairman of the Committee*
22 *determines are necessary to carry out this section.*

23 “(g) *REVIEW BY COMMISSION.—The Commission*
24 *shall—*

1 “(1) review the findings and recommendations of
2 the Committee; and

3 “(2) each time the Committee submits a finding
4 or recommendation to the Commission, issue a public
5 statement—

6 “(A) assessing the finding or recommenda-
7 tion of the Committee; and

8 “(B) disclosing the action, if any, the Com-
9 mission intends to take with respect to the find-
10 ing or recommendation.

11 “(h) *COMMITTEE FINDINGS.*—Nothing in this section
12 shall require the Commission to agree to or act upon any
13 finding or recommendation of the Committee.

14 “(i) *FEDERAL ADVISORY COMMITTEE ACT.*—The Fed-
15 eral Advisory Committee Act (5 U.S.C. App.) shall not
16 apply with respect to the Committee and its activities.

17 “(j) *AUTHORIZATION OF APPROPRIATIONS.*—There is
18 authorized to be appropriated to the Commission such sums
19 as are necessary to carry out this section.”.

20 **SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMIS-**
21 **SION TO ENGAGE IN INVESTOR TESTING.**

22 Section 19 of the Securities Act of 1933 (15 U.S.C.
23 77s) is amended by adding at the end the following:

24 “(e) *EVALUATION OF RULES OR PROGRAMS.*—For the
25 purpose of evaluating any rule or program of the Commis-

1 *sion issued or carried out under any provision of the securi-*
2 *ties laws, as defined in section 3 of the Securities Exchange*
3 *Act of 1934 (15 U.S.C. 78c), and the purposes of consid-*
4 *ering, proposing, adopting, or engaging in any such rule*
5 *or program or developing new rules or programs, the Com-*
6 *mission may—*

7 “(1) *gather information from and communicate*
8 *with investors or other members of the public;*

9 “(2) *engage in such temporary investor testing*
10 *programs as the Commission determines are in the*
11 *public interest or would protect investors; and*

12 “(3) *consult with academics and consultants, as*
13 *necessary to carry out this subsection.*

14 “(f) *RULE OF CONSTRUCTION.—For purposes of the*
15 *Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any ac-*
16 *tion taken under subsection (e) shall not be construed to*
17 *be a collection of information.”.*

18 **SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGA-**
19 **TIONS OF BROKERS, DEALERS, AND INVEST-**
20 **MENT ADVISERS.**

21 (a) *DEFINITIONS.—In this section—*

22 (1) *the term “FINRA” means the Financial In-*
23 *dustry Regulatory Authority; and*

24 (2) *the term “retail customer” means an indi-*
25 *vidual customer of a broker, dealer, investment ad-*

1 *viser, person associated with a broker or dealer, or a*
2 *person associated with an investment adviser.*

3 *(b) IN GENERAL.—The Commission shall conduct a*
4 *study to evaluate—*

5 *(1) the effectiveness of existing legal or regulatory*
6 *standards of care for brokers, dealers, investment ad-*
7 *visers, persons associated with brokers or dealers, and*
8 *persons associated with investment advisers for pro-*
9 *viding personalized investment advice and rec-*
10 *ommendations about securities to retail customers im-*
11 *posed by the Commission and FINRA, and other Fed-*
12 *eral and State legal or regulatory standards; and*

13 *(2) whether there are legal or regulatory gaps or*
14 *overlap in legal or regulatory standards in the protec-*
15 *tion of retail customers relating to the standards of*
16 *care for brokers, dealers, investment advisers, persons*
17 *associated with brokers or dealers, and persons associ-*
18 *ated with investment advisers for providing personal-*
19 *ized investment advice about securities to retail cus-*
20 *tomers that should be addressed by rule or statute.*

21 *(c) CONSIDERATIONS.—In conducting the study re-*
22 *quired under subsection (b), the Commission shall con-*
23 *sider—*

24 *(1) the regulatory, examination, and enforcement*
25 *resources devoted to, and activities of, the Commission*

1 *and FINRA to enforce the standards of care for bro-*
2 *kers, dealers, investment advisers, persons associated*
3 *with brokers or dealers, and persons associated with*
4 *investment advisers when providing personalized in-*
5 *vestment advice and recommendations about securi-*
6 *ties to retail customers, including—*

7 *(A) the frequency of examinations of bro-*
8 *kers, dealers, and investment advisers; and*

9 *(B) the length of time of the examinations;*

10 *(2) the substantive differences, compared and*
11 *contrasted in detail, in the regulation of brokers, deal-*
12 *ers, and investment advisers, when providing person-*
13 *alized investment advice and recommendations about*
14 *securities to retail customers, including the differences*
15 *in the amount of resources devoted to the regulation*
16 *and examination of brokers, dealers, and investment*
17 *advisers, by the Commission and FINRA;*

18 *(3) the specific instances in which—*

19 *(A) the regulation and oversight of invest-*
20 *ment advisers provide greater protection to retail*
21 *customers than the regulation and oversight of*
22 *brokers and dealers; and*

23 *(B) the regulation and oversight of brokers*
24 *and dealers provide greater protection to retail*

1 *customers than the regulation and oversight of*
2 *investment advisers;*

3 (4) *the existing legal or regulatory standards of*
4 *State securities regulators and other regulators in-*
5 *tended to protect retail customers;*

6 (5) *the potential impact on retail customers, in-*
7 *cluding the potential impact on access of retail cus-*
8 *tomers to the range of products and services offered by*
9 *brokers and dealers, of imposing upon brokers, deal-*
10 *ers, and persons associated with brokers or dealers—*

11 (A) *the standard of care applied under the*
12 *Investment Advisers Act of 1940 (15 U.S.C. 80b-*
13 *1 et seq.) for providing personalized investment*
14 *advice about securities to retail customers of in-*
15 *vestment advisers; and*

16 (B) *other requirements of the Investment*
17 *Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);*

18 (6) *the potential impact of—*

19 (A) *imposing on investment advisers the*
20 *standard of care applied by the Commission and*
21 *FINRA under the Securities Exchange Act of*
22 *1934 (15 U.S.C. 78a et seq.) for providing rec-*
23 *ommendations about securities to retail cus-*
24 *tomers of brokers and dealers and other Commis-*

1 *sion and FINRA requirements applicable to bro-*
2 *kers and dealers; and*

3 *(B) authorizing the Commission to des-*
4 *ignate 1 or more self-regulatory organizations to*
5 *augment the efforts of the Commission to oversee*
6 *investment advisers;*

7 *(7) the potential impact of eliminating the*
8 *broker and dealer exclusion from the definition of “in-*
9 *vestment adviser” under section 202(a)(11)(C) of the*
10 *Investment Advisers Act of 1940 (15 U.S.C. 80b-*
11 *2(a)(11)(C)), in terms of—*

12 *(A) the potential benefits or harm to retail*
13 *customers that could result from such a change,*
14 *including any potential impact on access to per-*
15 *sonalized investment advice and recommenda-*
16 *tions about securities to retail customers or the*
17 *availability of such advice and recommenda-*
18 *tions;*

19 *(B) the number of additional entities and*
20 *individuals that would be required to register*
21 *under, or become subject to, the Investment Ad-*
22 *visers Act of 1940 (15 U.S.C. 80b–1 et seq.), and*
23 *the additional requirements to which brokers,*
24 *dealers, and persons associated with brokers and*
25 *dealers would become subject, including—*

1 (i) any potential additional associated
2 person licensing, registration, and examina-
3 tion requirements; and

4 (ii) the additional costs, if any, to the
5 additional entities and individuals; and

6 (C) the impact on Commission resources
7 to—

8 (i) conduct examinations of registered
9 investment advisers and the representatives
10 of registered investment advisers, including
11 the impact on the examination cycle; and

12 (ii) enforce the standard of care and
13 other applicable requirements imposed
14 under the Investment Advisers Act of 1940
15 (15 U.S.C. 80b–1 et seq.);

16 (8) the ability of investors to understand the dif-
17 ferences in terms of regulatory oversight and exami-
18 nations between brokers, dealers, and investment ad-
19 visers;

20 (9) the varying level of services provided by bro-
21 kers, dealers, investment advisers, persons associated
22 with brokers or dealers, and persons associated with
23 investment advisers to retail customers and the vary-
24 ing scope and terms of retail customer relationships
25 of brokers, dealers, investment advisers, persons asso-

1 *ciated with brokers or dealers, and persons associated*
2 *with investment advisers with such retail customers;*

3 *(10) any potential benefits or harm to retail cus-*
4 *tomers that could result from any potential changes*
5 *in the regulatory requirements or legal standards af-*
6 *fecting brokers, dealers, investment advisers, persons*
7 *associated with brokers or dealers, and persons associ-*
8 *ated with investment advisers relating to their obliga-*
9 *tions to retail customers, including any potential im-*
10 *pact on—*

11 *(A) protection from fraud;*

12 *(B) access to personalized investment ad-*
13 *vice, and recommendations about securities to re-*
14 *tail customers; or*

15 *(C) the availability of such advice and rec-*
16 *ommendations;*

17 *(11) the additional costs and expenses to retail*
18 *customers and to brokers, dealers, and investment ad-*
19 *visers resulting from potential changes in the regu-*
20 *latory requirements or legal standards affecting bro-*
21 *kers, dealers, investment advisers, persons associated*
22 *with brokers or dealers, and persons associated with*
23 *investment advisers relating to their obligations to re-*
24 *tail customers; and*

1 (12) *any other consideration that the Commis-*
2 *sion deems necessary and appropriate to effectively*
3 *execute the study required under subsection (b).*

4 (d) *REPORT.—*

5 (1) *IN GENERAL.—Not later than 1 year after*
6 *the date of enactment of this Act, the Commission*
7 *shall submit a report on the study required under*
8 *subsection (b) to—*

9 (A) *the Committee on Banking, Housing,*
10 *and Urban Affairs of the Senate; and*

11 (B) *the Committee on Financial Services of*
12 *the House of Representatives.*

13 (2) *CONTENT REQUIREMENTS.—The report re-*
14 *quired under paragraph (1) shall describe the find-*
15 *ings, conclusions, and recommendations of the Com-*
16 *mission from the study required under subsection (b),*
17 *including—*

18 (A) *a description of the considerations,*
19 *analysis, and public and industry input that the*
20 *Commission considered, as required under sub-*
21 *section (e), to make such findings, conclusions,*
22 *and policy recommendations; and*

23 (B) *an analysis of—*

24 (i) *whether any identified legal or reg-*
25 *ulatory gaps or overlap in legal or regu-*

1 *latory standards in the protection of retail*
2 *customers relating to the standards of care*
3 *for brokers, dealers, investment advisers,*
4 *persons associated with brokers or dealers,*
5 *and persons associated with investment ad-*
6 *visers for providing personalized investment*
7 *advice about securities to retail customers*
8 *can be addressed by rule; and*

9 *(ii) whether, and the extent to which,*
10 *the Commission would require additional*
11 *statutory authority to address such gaps or*
12 *overlap.*

13 *(e) PUBLIC COMMENT.—The Commission shall seek*
14 *and consider public input, comments, and data in order*
15 *to prepare the report required under subsection (d).*

16 *(f) RULEMAKING.—*

17 *(1) IN GENERAL.—If the study required under*
18 *subsection (b) identifies any gaps or overlap in the*
19 *legal or regulatory standards in the protection of re-*
20 *tail customers relating to the standards of care for*
21 *brokers, dealers, investment advisers, persons associ-*
22 *ated with brokers or dealers, and persons associated*
23 *with investment advisers for providing personalized*
24 *investment advice about securities to such retail cus-*

1 *tomers, the Commission, not later than 2 years after*
 2 *the date of enactment of this Act, shall—*

3 *(A) commence a rulemaking, as necessary*
 4 *or appropriate in the public interest and for the*
 5 *protection of retail customers, to address such*
 6 *regulatory gaps and overlap that can be ad-*
 7 *dressed by rule, using its authority under the Se-*
 8
 9 *seq.) and the Investment Advisers Act of 1940*
 10 *(15 U.S.C. 80b–1 et seq.); and*

11 *(B) consider and take into account the find-*
 12 *ings, conclusions, and recommendations of the*
 13 *study required under this section.*

14 *(2) RULE OF CONSTRUCTION.—Nothing in this*
 15 *section shall be construed to limit the rulemaking au-*
 16 *thority of the Commission under any other provision*
 17 *of Federal law.*

18 **SEC. 914. OFFICE OF THE INVESTOR ADVOCATE.**

19 *Section 4 of the Securities Exchange Act of 1934 (15*
 20 *U.S.C. 78d) is amended by adding at the end the following:*

21 *“(g) OFFICE OF THE INVESTOR ADVOCATE.—*

22 *“(1) OFFICE ESTABLISHED.—There is established*
 23 *within the Commission the Office of the Investor Ad-*
 24 *vocate (in this subsection referred to as the ‘Office’).*

25 *“(2) INVESTOR ADVOCATE.—*

1 “(A) *IN GENERAL.*—*The head of the Office*
2 *shall be the Investor Advocate, who shall—*

3 “(i) *report directly to the Chairman;*
4 *and*

5 “(ii) *be appointed by the Chairman, in*
6 *consultation with the Commission, from*
7 *among individuals having experience in ad-*
8 *vocating for the interests of investors in se-*
9 *curities and investor protection issues, from*
10 *the perspective of investors.*

11 “(B) *COMPENSATION.*—*The annual rate of*
12 *pay for the Investor Advocate shall be equal to*
13 *the highest rate of annual pay for a Senior Exec-*
14 *utive Service position within the Commission.*

15 “(C) *LIMITATION ON SERVICE.*—*An indi-*
16 *vidual who serves as the Investor Advocate may*
17 *not be employed by the Commission—*

18 “(i) *during the 2-year period ending*
19 *on the date of appointment as Investor Ad-*
20 *vocate; or*

21 “(ii) *during the 5-year period begin-*
22 *ning on the date on which the person ceases*
23 *to serve as the Investor Advocate.*

24 “(3) *STAFF OF OFFICE.*—*The Investor Advocate*
25 *may retain or employ independent counsel, research*

1 *staff, and service staff, as the Investor Advocate deems*
2 *necessary to carry out the functions, powers, and du-*
3 *ties of the Office.*

4 “(4) *FUNCTIONS OF THE INVESTOR ADVOCATE.—*
5 *The Investor Advocate shall—*

6 “(A) *assist retail investors in resolving sig-*
7 *nificant problems such investors may have with*
8 *the Commission or with self-regulatory organiza-*
9 *tions;*

10 “(B) *identify areas in which investors*
11 *would benefit from changes in the regulations of*
12 *the Commission or the rules of self-regulatory or-*
13 *ganizations;*

14 “(C) *identify problems that investors have*
15 *with financial service providers and investment*
16 *products;*

17 “(D) *analyze the potential impact on inves-*
18 *tors of—*

19 “(i) *proposed regulations of the Com-*
20 *mission; and*

21 “(ii) *proposed rules of self-regulatory*
22 *organizations registered under this title;*
23 *and*

24 “(E) *to the extent practicable, propose to the*
25 *Commission changes in the regulations or orders*

1 *of the Commission and to Congress any legisla-*
2 *tive, administrative, or personnel changes that*
3 *may be appropriate to mitigate problems identi-*
4 *fied under this paragraph and to promote the in-*
5 *terests of investors.*

6 “(5) *ACCESS TO DOCUMENTS.*—*The Commission*
7 *shall ensure that the Investor Advocate has full access*
8 *to the documents of the Commission and any self-reg-*
9 *ulatory organization, as necessary to carry out the*
10 *functions of the Office.*

11 “(6) *ANNUAL REPORTS.*—

12 “(A) *REPORT ON OBJECTIVES.*—

13 “(i) *IN GENERAL.*—*Not later than*
14 *June 30 of each year after 2010, the Inves-*
15 *tor Advocate shall submit to the Committee*
16 *on Banking, Housing, and Urban Affairs of*
17 *the Senate and the Committee on Financial*
18 *Services of the House of Representatives a*
19 *report on the objectives of the Investor Advoca-*
20 *te for the following fiscal year.*

21 “(ii) *CONTENTS.*—*Each report re-*
22 *quired under clause (i) shall contain full*
23 *and substantive analysis and explanation.*

24 “(B) *REPORT ON ACTIVITIES.*—

1 “(i) *IN GENERAL.*—Not later than De-
2 *cember 31 of each year after 2010, the In-*
3 *vestor Advocate shall submit to the Com-*
4 *mittee on Banking, Housing, and Urban*
5 *Affairs of the Senate and the Committee on*
6 *Financial Services of the House of Rep-*
7 *resentatives a report on the activities of the*
8 *Investor Advocate during the immediately*
9 *preceding fiscal year.*

10 “(ii) *CONTENTS.*—Each report re-
11 *quired under clause (i) shall include—*

12 “(I) *appropriate statistical infor-*
13 *mation and full and substantive anal-*
14 *ysis;*

15 “(II) *information on steps that*
16 *the Investor Advocate has taken during*
17 *the reporting period to improve inves-*
18 *tor services and the responsiveness of*
19 *the Commission and self-regulatory or-*
20 *ganizations to investor concerns;*

21 “(III) *a summary of the most se-*
22 *rious problems encountered by inves-*
23 *tors during the reporting period;*

1 “(IV) an inventory of the items
2 described in subclauses (III) that in-
3 cludes—

4 “(aa) identification of any
5 action taken by the Commission
6 or the self-regulatory organization
7 and the result of such action;

8 “(bb) the length of time that
9 each item has remained on such
10 inventory; and

11 “(cc) for items on which no
12 action has been taken, the reasons
13 for inaction, and an identifica-
14 tion of any official who is respon-
15 sible for such action;

16 “(V) recommendations for such
17 administrative and legislative actions
18 as may be appropriate to resolve prob-
19 lems encountered by investors; and

20 “(VI) any other information, as
21 determined appropriate by the Investor
22 Advocate.

23 “(iii) INDEPENDENCE.—Each report
24 required under this paragraph shall be pro-
25 vided directly to the Committees listed in

1 *clause (i) without any prior review or com-*
2 *ment from the Commission, any commis-*
3 *sioner, any other officer or employee of the*
4 *Commission, or the Office of Management*
5 *and Budget.*

6 “(iv) *CONFIDENTIALITY.*—No report re-
7 *quired under clause (i) may contain con-*
8 *fidential information.*

9 “(7) *REGULATIONS.*—The Commission shall, by
10 *regulation, establish procedures requiring a formal re-*
11 *sponse to all recommendations submitted to the Com-*
12 *mission by the Investor Advocate, not later than 3*
13 *months after the date of such submission.”.*

14 **SEC. 915. STREAMLINING OF FILING PROCEDURES FOR**
15 **SELF-REGULATORY ORGANIZATIONS.**

16 (a) *FILING PROCEDURES.*—Section 19(b) of the *Secu-*
17 *rities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended*
18 *by striking paragraph (2) (including the undesignated mat-*
19 *ter immediately following subparagraph (B)) and inserting*
20 *the following:*

21 “(2) *APPROVAL PROCESS.*—

22 “(A) *APPROVAL PROCESS ESTABLISHED.*—

23 “(i) *IN GENERAL.*—Except as provided
24 *in clause (ii), not later than 45 days after*
25 *the date of publication of a proposed rule*

1 *change under paragraph (1), the Commis-*
2 *sion shall—*

3 “(I) *by order, approve the pro-*
4 *posed rule change; or*

5 “(II) *institute proceedings under*
6 *subparagraph (B) to determine wheth-*
7 *er the proposed rule change should be*
8 *disapproved.*

9 “(i) *EXTENSION OF TIME PERIOD.—*
10 *The Commission may extend the period es-*
11 *tablished under clause (i) by not more than*
12 *an additional 45 days, if—*

13 “(I) *the Commission determines*
14 *that a longer period is appropriate*
15 *and publishes the reasons for such de-*
16 *termination; or*

17 “(II) *the self-regulatory organiza-*
18 *tion that filed the proposed rule change*
19 *consents to the longer period.*

20 “(B) *PROCEEDINGS.—*

21 “(i) *NOTICE AND HEARING.—If the*
22 *Commission does not approve a proposed*
23 *rule change under subparagraph (A), the*
24 *Commission shall provide to the self-regu-*

1 *latory organization that filed the proposed*
2 *rule change—*

3 *“(I) notice of the grounds for dis-*
4 *approval under consideration; and*

5 *“(II) opportunity for hearing, to*
6 *be concluded not later than 180 days*
7 *after the date of publication of notice*
8 *of the filing of the proposed rule*
9 *change.*

10 *“(ii) ORDER OF APPROVAL OR DIS-*
11 *APPROVAL.—*

12 *“(I) IN GENERAL.—Except as pro-*
13 *vided in subclause (II), not later than*
14 *180 days after the date of publication*
15 *under paragraph (1), the Commission*
16 *shall issue an order approving or dis-*
17 *approving the proposed rule change.*

18 *“(II) EXTENSION OF TIME PE-*
19 *RIOD.—The Commission may extend*
20 *the period for issuance under clause (I)*
21 *by not more than 60 days, if—*

22 *“(aa) the Commission deter-*
23 *mines that a longer period is ap-*
24 *propriate and publishes the rea-*
25 *sons for such determination; or*

1 “(bb) *the self-regulatory orga-*
2 *nization that filed the proposed*
3 *rule change consents to the longer*
4 *period.*

5 “(C) *STANDARDS FOR APPROVAL AND DIS-*
6 *APPROVAL.—*

7 “(i) *APPROVAL.—The Commission*
8 *shall approve a proposed rule change of a*
9 *self-regulatory organization if it finds that*
10 *such proposed rule change is consistent with*
11 *the requirements of this title and the rules*
12 *and regulations issued under this title that*
13 *are applicable to such organization.*

14 “(ii) *DISAPPROVAL.—The Commission*
15 *shall disapprove a proposed rule change of*
16 *a self-regulatory organization if it does not*
17 *make a finding described in clause (i).*

18 “(iii) *TIME FOR APPROVAL.—The*
19 *Commission may not approve a proposed*
20 *rule change earlier than 30 days after the*
21 *date of publication under paragraph (1),*
22 *unless the Commission finds good cause for*
23 *so doing and publishes the reason for the*
24 *finding.*

1 “(D) *RESULT OF FAILURE TO INSTITUTE OR*
2 *CONCLUDE PROCEEDINGS.—A proposed rule*
3 *change shall be deemed to have been approved by*
4 *the Commission, if—*

5 “(i) *the Commission does not approve*
6 *the proposed rule change or begin pro-*
7 *ceedings under subparagraph (B) within the*
8 *period described in subparagraph (A); or*

9 “(ii) *the Commission does not issue an*
10 *order approving or disapproving the pro-*
11 *posed rule change under subparagraph (B)*
12 *within the period described in subpara-*
13 *graph (B)(ii).*

14 “(E) *PUBLICATION DATE BASED ON FED-*
15 *ERAL REGISTER PUBLISHING.—For purposes of*
16 *this paragraph, if, after filing a proposed rule*
17 *change with the Commission pursuant to para-*
18 *graph (1), a self-regulatory organization pub-*
19 *lishes a notice of the filing of such proposed rule*
20 *change, together with the substantive terms of*
21 *such proposed rule change, on a publicly acces-*
22 *sible website, the Commission shall thereafter*
23 *send the notice to the Federal Register for publi-*
24 *cation thereof under paragraph (1) within 15*
25 *days of the date on which such website publica-*

1 tion is made. If the Commission fails to send the
2 notice for publication thereof within such 15 day
3 period, then the date of publication shall be
4 deemed to be the date on which such website pub-
5 lication was made.”.

6 **(b) CLARIFICATION OF FILING DATE.—**

7 **(1) RULE OF CONSTRUCTION.—**Section 19(b) of
8 the Securities Exchange Act of 1934 (15 U.S.C.
9 78s(b)) is amended by adding at the end the fol-
10 lowing:

11 **“(10) RULE OF CONSTRUCTION RELATING TO**
12 **FILING DATE OF PROPOSED RULE CHANGES.—**

13 **“(A) IN GENERAL.—**For purposes of this
14 subsection, the date of filing of a proposed rule
15 change shall be deemed to be the date on which
16 the Commission receives the proposed rule
17 change.

18 **“(B) EXCEPTION.—**A proposed rule change
19 has not been received by the Commission for pur-
20 poses of subparagraph (A) if, not later than 7
21 days after the date of receipt by the Commission,
22 the Commission notifies the self-regulatory orga-
23 nization that such proposed rule change does not
24 comply with the rules of the Commission relating
25 to the required form of a proposed rule change.”.

1 (2) *PUBLICATION.*—Section 19(b)(1) of the *Secu-*
2 *rities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))* is
3 amended by striking “upon” and inserting “as soon
4 as practicable after the date of”.

5 (c) *EFFECTIVE DATE OF PROPOSED RULES.*—Section
6 19(b)(3) of the *Securities Exchange Act of 1934 (15 U.S.C.*
7 *78s(b)(3))* is amended—

8 (1) in subparagraph (A)—

9 (A) by striking “may take effect” and in-
10 serting “shall take effect”; and

11 (B) by inserting “on any person, whether or
12 not the person is a member of the self-regulatory
13 organization” after “charge imposed by the self-
14 regulatory organization”; and

15 (2) in subparagraph (C)—

16 (A) by amending the second sentence to read
17 as follows: “At any time within the 60-day pe-
18 riod beginning on the date of filing of such a
19 proposed rule change in accordance with the pro-
20 visions of paragraph (1), the Commission sum-
21 marily may temporarily suspend the change in
22 the rules of the self-regulatory organization made
23 thereby, if it appears to the Commission that
24 such action is necessary or appropriate in the
25 public interest, for the protection of investors, or

1 otherwise in furtherance of the purposes of this
2 title.”;

3 (B) by inserting after the second sentence
4 the following: “If the Commission takes such ac-
5 tion, the Commission shall institute proceedings
6 under paragraph (2)(B) to determine whether
7 the proposed rule should be approved or dis-
8 approved.”; and

9 (C) in the third sentence, by striking “the
10 preceding sentence” and inserting “this subpara-
11 graph”.

12 (d) *CONFORMING CHANGE.*—Section 19(b)(4)(D) of the
13 *Securities Exchange Act of 1934* (15 U.S.C. 78s(b)(4)(D))
14 is amended to read as follows:

15 “(D)(i) The Commission shall order the
16 temporary suspension of any change in the rules
17 of a clearing agency made by a proposed rule
18 change that has taken effect under paragraph
19 (3), if the appropriate regulatory agency for the
20 clearing agency notifies the Commission not
21 later than 30 days after the date on which the
22 proposed rule change was filed of—

23 “(I) the determination by the appro-
24 priate regulatory agency that the rules of
25 such clearing agency, as so changed, may be

1 *inconsistent with the safeguarding of securi-*
2 *ties or funds in the custody or control of*
3 *such clearing agency or for which it is re-*
4 *sponsible; and*

5 *“(II) the reasons for the determination*
6 *described in subclause (I).*

7 *“(i) If the Commission takes action under*
8 *clause (i), the Commission shall institute pro-*
9 *ceedings under paragraph (2)(B) to determine if*
10 *the proposed rule change should be approved or*
11 *disapproved.”.*

12 **SEC. 916. STUDY REGARDING FINANCIAL LITERACY AMONG**
13 **INVESTORS.**

14 *(a) IN GENERAL.—The Commission shall conduct a*
15 *study to identify—*

16 *(1) the existing level of financial literacy among*
17 *retail investors, including subgroups of investors iden-*
18 *tified by the Commission;*

19 *(2) methods to improve the timing, content, and*
20 *format of disclosures to investors with respect to fi-*
21 *nancial intermediaries, investment products, and in-*
22 *vestment services;*

23 *(3) the most useful and understandable relevant*
24 *information that retail investors need to make in-*
25 *formed financial decisions before engaging a financial*

1 *intermediary or purchasing an investment product or*
2 *service that is typically sold to retail investors, in-*
3 *cluding shares of open-end companies, as that term is*
4 *defined in section 5 of the Investment Company Act*
5 *of 1940 (15 U.S.C. 80a-5) that are registered under*
6 *section 8 of that Act;*

7 *(4) methods to increase the transparency of ex-*
8 *penses and conflicts of interests in transactions in-*
9 *volving investment services and products, including*
10 *shares of open-end companies described in paragraph*
11 *(3);*

12 *(5) the most effective existing private and public*
13 *efforts to educate investors; and*

14 *(6) in consultation with the Financial Literacy*
15 *and Education Commission, a strategy (including, to*
16 *the extent practicable, measurable goals and objec-*
17 *tives) to increase the financial literacy of investors in*
18 *order to bring about a positive change in investor be-*
19 *havior.*

20 *(b) REPORT.—Not later than 2 years after the date*
21 *of enactment of this Act, the Commission shall submit a*
22 *report on the study required under subsection (a) to—*

23 *(1) the Committee on Banking, Housing, and*
24 *Urban Affairs of the Senate; and*

1 (2) *the Committee on Financial Services of the*
2 *House of Representatives.*

3 **SEC. 917. STUDY REGARDING MUTUAL FUND ADVERTISING.**

4 (a) *IN GENERAL.*—*The Comptroller General of the*
5 *United States shall conduct a study on mutual fund adver-*
6 *tising to identify—*

7 (1) *existing and proposed regulatory require-*
8 *ments for open-end investment company advertise-*
9 *ments;*

10 (2) *current marketing practices for the sale of*
11 *open-end investment company shares, including the*
12 *use of past performance data, funds that have merged,*
13 *and incubator funds;*

14 (3) *the impact of such advertising on consumers;*
15 *and*

16 (4) *recommendations to improve investor protec-*
17 *tions in mutual fund advertising and additional in-*
18 *formation necessary to ensure that investors can make*
19 *informed financial decisions when purchasing shares.*

20 (b) *REPORT.*—*Not later than 1 year after the date of*
21 *enactment of this Act, the Comptroller General of the United*
22 *States shall submit a report on the results of the study con-*
23 *ducted under subsection (a) to—*

24 (1) *the Committee on Banking, Housing, and*
25 *Urban Affairs of the United States Senate; and*

1 (2) *the Committee on Financial Services of the*
2 *House of Representatives.*

3 **SEC. 918. CLARIFICATION OF COMMISSION AUTHORITY TO**
4 **REQUIRE INVESTOR DISCLOSURES BEFORE**
5 **PURCHASE OF INVESTMENT PRODUCTS AND**
6 **SERVICES.**

7 *Section 15 of the Securities Exchange Act of 1934 (15*
8 *U.S.C. 78o) is amended by adding at the end the following:*

9 “(k) **DISCLOSURES TO RETAIL INVESTORS.**—

10 “(1) **IN GENERAL.**—*Notwithstanding any other*
11 *provision of the securities laws, the Commission may*
12 *issue rules designating documents or information that*
13 *shall be provided by a broker or dealer to a retail in-*
14 *vestor before the purchase of an investment product or*
15 *service by the retail investor.*

16 “(2) **CONSIDERATIONS.**—*In developing any rules*
17 *under paragraph (1), the Commission shall consider*
18 *whether the rules will promote investor protection, ef-*
19 *iciency, competition, and capital formation.*

20 “(3) **FORM AND CONTENTS OF DOCUMENTS AND**
21 **INFORMATION.**—*Any documents or information des-*
22 *ignated under a rule promulgated under paragraph*
23 *(1) shall—*

24 “(A) *be in a summary format; and*

1 “(B) contain clear and concise information
2 about—

3 “(i) investment objectives, strategies,
4 costs, and risks; and

5 “(ii) any compensation or other finan-
6 cial incentive received by a broker, dealer,
7 or other intermediary in connection with
8 the purchase of retail investment products.”.

9 **SEC. 919. STUDY ON CONFLICTS OF INTEREST.**

10 (a) *IN GENERAL.*—*The Comptroller General of the*
11 *United States shall conduct a study—*

12 (1) *to identify and examine potential conflicts of*
13 *interest that exist between the staffs of the investment*
14 *banking and equity and fixed income securities ana-*
15 *lyst functions within the same firm; and*

16 (2) *to make recommendations to Congress de-*
17 *signed to protect investors in light of such conflicts.*

18 (b) *CONSIDERATIONS.*—*In conducting the study under*
19 *subsection (a), the Comptroller General shall—*

20 (1) *consider—*

21 (A) *the potential for investor harm resulting*
22 *from conflicts, including consideration of the*
23 *forms of misconduct engaged in by the several se-*
24 *curities firms and individuals that entered into*

1 *the Global Analyst Research Settlements in 2003*
2 *(also known as the “Global Settlement”);*

3 *(B) the nature and benefits of the under-*
4 *takings to which those firms agreed in enforce-*
5 *ment proceedings, including firewalls between re-*
6 *search and investment banking, separate report-*
7 *ing lines, dedicated legal and compliance staffs,*
8 *allocation of budget, physical separation, com-*
9 *penetration, employee performance evaluations,*
10 *coverage decisions, limitations on soliciting in-*
11 *vestment banking business, disclosures, trans-*
12 *parency, and other measures;*

13 *(C) whether any such undertakings should*
14 *be codified and applied permanently to securities*
15 *firms, or whether the Commission should adopt*
16 *rules applying any such undertakings to securi-*
17 *ties firms; and*

18 *(D) whether to recommend regulatory or*
19 *legislative measures designed to mitigate possible*
20 *adverse consequences to investors arising from*
21 *the conflicts of interest or to enhance investor*
22 *protection or confidence in the integrity of the*
23 *securities markets; and*

24 *(2) consult with State attorneys general, State*
25 *securities officials, the Commission, the Financial In-*

1 *dustry Regulatory Authority (“FINRA”), NYSE Reg-*
2 *ulation, investor advocates, brokers, dealers, retail in-*
3 *vestors, institutional investors, and academics.*

4 *(c) REPORT.—The Comptroller General shall submit*
5 *a report on the results of the study required by this section*
6 *to the Committee on Banking, Housing, and Urban Affairs*
7 *of the Senate and the Committee on Financial Services of*
8 *the House of Representatives, not later than 18 months after*
9 *the date of enactment of this Act.*

10 **SEC. 919A. STUDY ON IMPROVED INVESTOR ACCESS TO IN-**
11 **FORMATION ON INVESTMENT ADVISERS AND**
12 **BROKER-DEALERS.**

13 *(a) STUDY.—*

14 *(1) IN GENERAL.—Not later than 6 months after*
15 *the date of enactment of this Act, the Commission*
16 *shall complete a study, including recommendations, of*
17 *ways to improve the access of investors to registration*
18 *information (including disciplinary actions, regu-*
19 *latory, judicial, and arbitration proceedings, and*
20 *other information) about registered and previously*
21 *registered investment advisers, associated persons of*
22 *investment advisers, brokers and dealers and their as-*
23 *sociated persons on the existing Central Registration*
24 *Depository and Investment Adviser Registration De-*

1 *pository systems, as well as identify additional infor-*
2 *mation that should be made publicly available.*

3 (2) *CONTENTS.—The study required by sub-*
4 *section (a) shall include an analysis of the advantages*
5 *and disadvantages of further centralizing access to the*
6 *information contained in the 2 systems, including—*

7 (A) *identification of those data pertinent to*
8 *investors; and*

9 (B) *the identification of the method and for-*
10 *mat for displaying and publishing such data to*
11 *enhance accessibility by and utility to investors.*

12 (b) *IMPLEMENTATION.—Not later than 18 months after*
13 *the date of completion of the study required by subsection*
14 *(a), the Commission shall implement any recommendations*
15 *of the study.*

16 **SEC. 919B. STUDY ON FINANCIAL PLANNERS AND THE USE**
17 **OF FINANCIAL DESIGNATIONS.**

18 (a) *IN GENERAL.—The Comptroller General of the*
19 *United States shall conduct a study to evaluate—*

20 (1) *the effectiveness of State and Federal regula-*
21 *tions to protect consumers from individuals who hold*
22 *themselves out as financial planners through the use*
23 *of misleading designations;*

24 (2) *current State and Federal oversight structure*
25 *and regulations for financial planners; and*

1 (3) *legal or regulatory gaps in the regulation of*
2 *financial planners and other individuals who provide*
3 *or offer to provide financial planning services to con-*
4 *sumers.*

5 (b) *CONSIDERATIONS.—In conducting the study re-*
6 *quired under subsection (a), the Comptroller General shall*
7 *consider—*

8 (1) *the role of financial planners in providing*
9 *advice regarding the management of financial re-*
10 *sources, including investment planning, income tax*
11 *planning, education planning, retirement planning,*
12 *estate planning, and risk management;*

13 (2) *whether current regulations at the State and*
14 *Federal level provide adequate ethical and profes-*
15 *sional standards for financial planners;*

16 (3) *the use of the title “financial planner” and*
17 *misleading designations in connection with sale of fi-*
18 *nancial products, including insurance and securities;*

19 (4) *the possible risk posed to consumers by indi-*
20 *viduals who hold themselves out as financial planners*
21 *through the use of misleading designations, including*
22 *“financial advisor” and “financial consultant”;*

23 (5) *the ability of consumers to understand licens-*
24 *ing requirements and standards of care that apply to*
25 *individuals who provide financial advice;*

1 (6) *the possible benefits to consumers of regula-*
2 *tion and professional oversight of financial planners;*
3 *and*

4 (7) *any other consideration that the Comptroller*
5 *General deems necessary or appropriate to effectively*
6 *execute the study required under subsection (a).*

7 (c) *RECOMMENDATIONS.—In providing recommenda-*
8 *tions for the appropriate regulation of financial planners*
9 *and other individuals who provide or offer to provide finan-*
10 *cial planning services, in order to protect consumers of fi-*
11 *nancial planning services, the Comptroller General shall*
12 *consider—*

13 (1) *the appropriate structure for regulation of fi-*
14 *nancial planners and individuals providing financial*
15 *planning services; and*

16 (2) *the appropriate scope of the regulations need-*
17 *ed to protect consumers, including but not limited to*
18 *the need to establish competency standards, practice*
19 *standards, ethical guidelines, disciplinary authority,*
20 *and transparency to consumers.*

21 (d) *REPORT.—*

22 (1) *IN GENERAL.—Not later than 180 days after*
23 *the date of enactment of this Act, the Comptroller*
24 *General shall submit a report on the study required*
25 *under subsection (a) to—*

1 (A) *the Committee on Banking, Housing,*
2 *and Urban Affairs of the Senate;*

3 (B) *the Special Committee on Aging of the*
4 *Senate; and*

5 (C) *the Committee on Financial Services of*
6 *the House of Representatives.*

7 (2) *CONTENT REQUIREMENTS.—The report re-*
8 *quired under paragraph (1) shall describe the find-*
9 *ings and determinations made by the Comptroller*
10 *General in carrying out the study required under sub-*
11 *section (a), including a description of the consider-*
12 *ations, analysis, and government, public, industry,*
13 *nonprofit and consumer input that the Comptroller*
14 *General considered to make such findings, conclu-*
15 *sions, and legislative, regulatory, or other rec-*
16 *ommendations.*

17 ***Subtitle B—Increasing Regulatory***
18 ***Enforcement and Remedies***

19 ***SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MAN-***
20 ***DATORY PREDISPUTE ARBITRATION.***

21 (a) *AMENDMENT TO SECURITIES EXCHANGE ACT OF*
22 *1934.—Section 15 of the Securities Exchange Act of 1934*
23 *(15 U.S.C. 78o), as amended by section 918, is amended*
24 *by adding at the end the following:*

1 “(l) *AUTHORITY TO RESTRICT MANDATORY*
2 *PREDISPUTE ARBITRATION.*—*The Commission may con-*
3 *duct a rulemaking to reaffirm or prohibit, or impose or not*
4 *impose conditions or limitations on the use of, agreements*
5 *that require customers or clients of any broker, dealer, or*
6 *municipal securities dealer to arbitrate any dispute between*
7 *them and such broker, dealer, or municipal securities dealer*
8 *that arises under the securities laws or the rules of a self-*
9 *regulatory organization, if the Commission finds that such*
10 *reaffirmation, prohibition, imposition of conditions or limi-*
11 *tations, or other action is in the public interest and for*
12 *the protection of investors.”.*

13 (b) *AMENDMENT TO INVESTMENT ADVISERS ACT OF*
14 *1940.*—*Section 205 of the Investment Advisers Act of 1940*
15 *(15 U.S.C. 80b–5) is amended by adding at the end the*
16 *following:*

17 “(f) *AUTHORITY TO ISSUE RULES RELATED TO MAN-*
18 *DATORY PREDISPUTE ARBITRATION.*—*The Commission*
19 *may conduct rulemaking to reaffirm or prohibit, or impose*
20 *or not impose conditions or limitations on the use of, agree-*
21 *ments that require customers or clients of any investment*
22 *adviser to arbitrate any dispute between them and such in-*
23 *vestment adviser that arises under the securities laws, as*
24 *defined in section 3 of the Securities Exchange Act of 1934*
25 *(15 U.S.C. 78c), or the rules of a self-regulatory organiza-*

1 *tion, if the Commission finds that such reaffirmation, pro-*
 2 *hibition, imposition of conditions or limitations, or other*
 3 *action is in the public interest and for the protection of*
 4 *investors.”.*

5 **SEC. 922. WHISTLEBLOWER PROTECTION.**

6 (a) *IN GENERAL.*—*The Securities Exchange Act of*
 7 *1934 (15 U.S.C. 78a et seq.) is amended by inserting after*
 8 *section 21E the following:*

9 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
 10 **PROTECTION.**

11 “(a) *DEFINITIONS.*—*In this section the following defi-*
 12 *nitions shall apply:*

13 “(1) *COVERED JUDICIAL OR ADMINISTRATIVE AC-*
 14 *TION.*—*The term ‘covered judicial or administrative*
 15 *action’ means any judicial or administrative action*
 16 *brought by the Commission under the securities laws*
 17 *that results in monetary sanctions exceeding*
 18 *\$1,000,000.*

19 “(2) *FUND.*—*The term ‘Fund’ means the Securi-*
 20 *ties and Exchange Commission Investor Protection*
 21 *Fund.*

22 “(3) *ORIGINAL INFORMATION.*—*The term ‘origi-*
 23 *nal information’ means information that—*

24 “(A) *is derived from the independent knowl-*
 25 *edge or analysis of a whistleblower;*

1 “(B) is not known to the Commission from
2 any other source, unless the whistleblower is the
3 original source of the information; and

4 “(C) is not exclusively derived from an alle-
5 gation made in a judicial or administrative
6 hearing, in a governmental report, hearing,
7 audit, or investigation, or from the news media,
8 unless the whistleblower is a source of the infor-
9 mation.

10 “(4) *MONETARY SANCTIONS.*—The term ‘mone-
11 tary sanctions’, when used with respect to any judi-
12 cial or administrative action, means—

13 “(A) any monies, including penalties,
14 disgorgement, and interest, ordered to be paid;
15 and

16 “(B) any monies deposited into a
17 disgorgement fund or other fund pursuant to sec-
18 tion 308(b) of the Sarbanes-Oxley Act of 2002
19 (15 U.S.C. 7246(b)), as a result of such action
20 or any settlement of such action.

21 “(5) *RELATED ACTION.*—The term ‘related ac-
22 tion’, when used with respect to any judicial or ad-
23 ministrative action brought by the Commission under
24 the securities laws, means any judicial or administra-
25 tive action brought by an entity described in sub-

1 *clauses (I) through (IV) of subsection (h)(2)(D)(i) that*
2 *is based upon the original information provided by a*
3 *whistleblower pursuant to subsection (a) that led to*
4 *the successful enforcement of the Commission action.*

5 “(6) *WHISTLEBLOWER.*—*The term ‘whistle-*
6 *blower’ means any individual, or 2 or more individ-*
7 *uals acting jointly, who provides information relating*
8 *to a violation of the securities laws to the Commis-*
9 *sion, in a manner established, by rule or regulation,*
10 *by the Commission.*

11 “(b) *AWARDS.*—

12 “(1) *IN GENERAL.*—*In any covered judicial or*
13 *administrative action, or related action, the Commis-*
14 *sion, under regulations prescribed by the Commission*
15 *and subject to subsection (c), shall pay an award or*
16 *awards to 1 or more whistleblowers who voluntarily*
17 *provided original information to the Commission that*
18 *led to the successful enforcement of the covered judi-*
19 *cial or administrative action, or related action, in an*
20 *aggregate amount equal to—*

21 “(A) *not less than 10 percent, in total, of*
22 *what has been collected of the monetary sanctions*
23 *imposed in the action or related actions; and*

1 “(B) not more than 30 percent, in total, of
2 what has been collected of the monetary sanctions
3 imposed in the action or related actions.

4 “(2) PAYMENT OF AWARDS.—Any amount paid
5 under paragraph (1) shall be paid from the Fund.

6 “(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL
7 OF AWARD.—

8 “(1) DETERMINATION OF AMOUNT OF AWARD.—

9 “(A) DISCRETION.—The determination of
10 the amount of an award made under subsection
11 (b) shall be in the discretion of the Commission.

12 “(B) CRITERIA.—In determining the
13 amount of an award made under subsection (b),
14 the Commission shall take into account—

15 “(i) the significance of the information
16 provided by the whistleblower to the success
17 of the covered judicial or administrative ac-
18 tion;

19 “(ii) the degree of assistance provided
20 by the whistleblower and any legal rep-
21 resentative of the whistleblower in a covered
22 judicial or administrative action;

23 “(iii) the programmatic interest of the
24 Commission in deterring violations of the
25 securities laws by making awards to whis-

1 *tleblowers who provide information that*
2 *lead to the successful enforcement of such*
3 *laws; and*

4 *“(iv) such additional relevant factors*
5 *as the Commission may establish by rule or*
6 *regulation.*

7 *“(2) DENIAL OF AWARD.—No award under sub-*
8 *section (b) shall be made—*

9 *“(A) to any whistleblower who is, or was at*
10 *the time the whistleblower acquired the original*
11 *information submitted to the Commission, a*
12 *member, officer, or employee of—*

13 *“(i) an appropriate regulatory agency;*

14 *“(ii) the Department of Justice;*

15 *“(iii) a self-regulatory organization;*

16 *“(iv) the Public Company Accounting*
17 *Oversight Board; or*

18 *“(v) a law enforcement organization;*

19 *“(B) to any whistleblower who is convicted*
20 *of a criminal violation related to the judicial or*
21 *administrative action for which the whistle-*
22 *blower otherwise could receive an award under*
23 *this section;*

24 *“(C) to any whistleblower who gains the in-*
25 *formation through the performance of an audit*

1 *of financial statements required under the securi-*
2 *ties laws and for whom such submission would*
3 *be contrary to the requirements of section 101A*
4 *of the Securities Exchange Act of 1934 (15*
5 *U.S.C. 78j-1); or*

6 *“(D) to any whistleblower who fails to sub-*
7 *mit information to the Commission in such form*
8 *as the Commission may, by rule, require.*

9 “(d) REPRESENTATION.—

10 “(1) PERMITTED REPRESENTATION.—*Any whis-*
11 *tleblower who makes a claim for an award under sub-*
12 *section (b) may be represented by counsel.*

13 “(2) REQUIRED REPRESENTATION.—

14 “(A) IN GENERAL.—*Any whistleblower who*
15 *anonymously makes a claim for an award under*
16 *subsection (b) shall be represented by counsel if*
17 *the whistleblower anonymously submits the in-*
18 *formation upon which the claim is based.*

19 “(B) DISCLOSURE OF IDENTITY.—*Prior to*
20 *the payment of an award, a whistleblower shall*
21 *disclose the identity of the whistleblower and*
22 *provide such other information as the Commis-*
23 *sion may require, directly or through counsel for*
24 *the whistleblower.*

1 “(e) *NO CONTRACT NECESSARY.*—No contract with the
2 Commission is necessary for any whistleblower to receive
3 an award under subsection (b), unless otherwise required
4 by the Commission by rule or regulation.

5 “(f) *APPEALS.*—Any determination made under this
6 section, including whether, to whom, or in what amount
7 to make awards, shall be in the discretion of the Commis-
8 sion. Any such determination may be appealed to the ap-
9 propriate court of appeals of the United States not more
10 than 30 days after the determination is issued by the Com-
11 mission. The court shall review the determination made by
12 the Commission in accordance with section 706 of title 5,
13 United States Code.

14 “(g) *INVESTOR PROTECTION FUND.*—

15 “(1) *FUND ESTABLISHED.*—There is established
16 in the Treasury of the United States a fund to be
17 known as the ‘Securities and Exchange Commission
18 Investor Protection Fund’.

19 “(2) *USE OF FUND.*—The Fund shall be avail-
20 able to the Commission, without further appropria-
21 tion or fiscal year limitation, for—

22 “(A) paying awards to whistleblowers as
23 provided in subsection (b); and

24 “(B) funding the activities of the Inspector
25 General of the Commission under section 4(i).

1 “(3) *DEPOSITS AND CREDITS.*—*There shall be*
2 *deposited into or credited to the Fund an amount*
3 *equal to—*

4 “(A) *the amount awarded under subsection*
5 *(b) from any monetary sanction collected by the*
6 *Commission in any judicial or administrative*
7 *action brought by the Commission that is based*
8 *on information provided by a whistleblower*
9 *under the securities laws, unless, the balance of*
10 *the Fund at the time the monetary sanction is*
11 *collected exceeds \$200,000,000;*

12 “(B) *any monetary sanction added to a*
13 *disgorgement fund or other fund pursuant to sec-*
14 *tion 308 of the Sarbanes-Oxley Act of 2002 (15*
15 *U.S.C. 7246) that is not distributed to the vic-*
16 *tims for whom the disgorgement fund was estab-*
17 *lished, unless the balance of the disgorgement*
18 *fund at the time the determination is made not*
19 *to distribute the monetary sanction to such vic-*
20 *tims exceeds \$100,000,000; and*

21 “(C) *all income from investments made*
22 *under paragraph (4).*

23 “(4) *INVESTMENTS.*—

24 “(A) *AMOUNTS IN FUND MAY BE IN-*
25 *VESTED.*—*The Commission may request the Sec-*

1 *retary of the Treasury to invest the portion of*
2 *the Fund that is not, in the discretion of the*
3 *Commission, required to meet the current needs*
4 *of the Fund.*

5 “(B) *ELIGIBLE INVESTMENTS.*—*Investments*
6 *shall be made by the Secretary of the Treasury*
7 *in obligations of the United States or obligations*
8 *that are guaranteed as to principal and interest*
9 *by the United States, with maturities suitable to*
10 *the needs of the Fund as determined by the Com-*
11 *mission on the record.*

12 “(C) *INTEREST AND PROCEEDS CRED-*
13 *ITED.*—*The interest on, and the proceeds from*
14 *the sale or redemption of, any obligations held in*
15 *the Fund shall be credited to the Fund.*

16 “(5) *REPORTS TO CONGRESS.*—*Not later than*
17 *October 30 of each fiscal year beginning after the date*
18 *of enactment of this subsection, the Commission shall*
19 *submit to the Committee on Banking, Housing, and*
20 *Urban Affairs of the Senate, and the Committee on*
21 *Financial Services of the House of Representatives a*
22 *report on—*

23 “(A) *the whistleblower award program, es-*
24 *tablished under this section, including—*

1 “(i) a description of the number of
2 awards granted; and

3 “(ii) the types of cases in which
4 awards were granted during the preceding
5 fiscal year;

6 “(B) the balance of the Fund at the begin-
7 ning of the preceding fiscal year;

8 “(C) the amounts deposited into or credited
9 to the Fund during the preceding fiscal year;

10 “(D) the amount of earnings on investments
11 made under paragraph (4) during the preceding
12 fiscal year;

13 “(E) the amount paid from the Fund dur-
14 ing the preceding fiscal year to whistleblowers
15 pursuant to subsection (b);

16 “(F) the balance of the Fund at the end of
17 the preceding fiscal year; and

18 “(G) a complete set of audited financial
19 statements, including—

20 “(i) a balance sheet;

21 “(ii) income statement; and

22 “(iii) cash flow analysis.

23 “(h) PROTECTION OF WHISTLEBLOWERS.—

24 “(1) PROHIBITION AGAINST RETALIATION.—

1 “(A) *IN GENERAL.*—No employer may dis-
2 charge, demote, suspend, threaten, harass, di-
3 rectly or indirectly, or in any other manner dis-
4 criminate against, a whistleblower in the terms
5 and conditions of employment because of any
6 lawful act done by the whistleblower—

7 “(i) in providing information to the
8 Commission in accordance with subsection
9 (a); or

10 “(ii) in assisting in any investigation
11 or judicial or administrative action of the
12 Commission based upon or related to such
13 information.

14 “(B) *ENFORCEMENT.*—

15 “(i) *CAUSE OF ACTION.*—An indi-
16 vidual who alleges discharge or other dis-
17 crimination in violation of subparagraph
18 (A) may bring an action under this sub-
19 section in the appropriate district court of
20 the United States for the relief provided in
21 subparagraph (C).

22 “(ii) *SUBPOENAS.*—A subpoena requir-
23 ing the attendance of a witness at a trial or
24 hearing conducted under this section may
25 be served at any place in the United States.

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“(iii) *STATUTE OF LIMITATIONS.*—

“(I) *IN GENERAL.*—An action under this subsection may not be brought—

“(aa) more than 6 years after the date on which the violation of subparagraph (A) occurred; or

“(bb) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).

“(II) *REQUIRED ACTION WITHIN 10 YEARS.*—Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

“(C) *RELIEF.*—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

1 “(i) reinstatement with the same se-
2 niority status that the individual would
3 have had, but for the discrimination;

4 “(ii) 2 times the amount of back pay
5 otherwise owed to the individual, with in-
6 terest; and

7 “(iii) compensation for litigation costs,
8 expert witness fees, and reasonable attor-
9 neys’ fees.

10 “(2) CONFIDENTIALITY.—

11 “(A) IN GENERAL.—Unless and until re-
12 quired to be disclosed to a defendant or respond-
13 ent in connection with a proceeding instituted by
14 the Commission or any entity described in sub-
15 paragraph (D), all information provided to the
16 Commission by a whistleblower—

17 “(i) in any proceeding in any Federal
18 or State court or administrative agency—

19 “(I) shall be confidential and
20 privileged as an evidentiary matter;
21 and

22 “(II) shall not be subject to civil
23 discovery or other legal process; and

24 “(ii) shall not be subject to disclosure
25 under section 552 of title 5, United States

1 Code (commonly referred to as the Freedom
2 of Information Act) or under any pro-
3 ceeding under that section.

4 “(B) *EXEMPTED STATUTE.*—For purposes
5 of section 552 of title 5, United States Code, this
6 paragraph shall be considered a statute described
7 in subsection (b)(3)(B) of such section 552.

8 “(C) *RULE OF CONSTRUCTION.*—Nothing in
9 this section is intended to limit, or shall be con-
10 strued to limit, the ability of the Attorney Gen-
11 eral to present such evidence to a grand jury or
12 to share such evidence with potential witnesses or
13 defendants in the course of an ongoing criminal
14 investigation.

15 “(D) *AVAILABILITY TO GOVERNMENT AGEN-*
16 *CIES.*—

17 “(i) *IN GENERAL.*—Without the loss of
18 its status as confidential and privileged in
19 the hands of the Commission, all informa-
20 tion referred to in subparagraph (A) may,
21 in the discretion of the Commission, when
22 determined by the Commission to be nec-
23 essary to accomplish the purposes of this
24 Act and to protect investors, be made avail-
25 able to—

1 “(I) *the Attorney General of the*
2 *United States;*

3 “(II) *an appropriate regulatory*
4 *authority;*

5 “(III) *a self-regulatory organiza-*
6 *tion;*

7 “(IV) *a State attorney general in*
8 *connection with any criminal inves-*
9 *tigation;*

10 “(V) *any appropriate State regu-*
11 *latory authority;*

12 “(VI) *the Public Company Ac-*
13 *counting Oversight Board;*

14 “(VII) *a foreign securities author-*
15 *ity; and*

16 “(VIII) *a foreign law enforcement*
17 *authority.*

18 “(i) *CONFIDENTIALITY.—*

19 “(I) *IN GENERAL.—Each of the*
20 *entities described in subclauses (I)*
21 *through (VI) of clause (i) shall main-*
22 *tain such information as confidential*
23 *and privileged, in accordance with the*
24 *requirements established under sub-*
25 *paragraph (A).*

1 “(II) *FOREIGN AUTHORITIES.*—
2 *Each of the entities described in sub-*
3 *clauses (VII) and (VIII) of clause (i)*
4 *shall maintain such information in ac-*
5 *cordance with such assurances of con-*
6 *fidentiality as the Commission deter-*
7 *mines appropriate.*

8 “(3) *RIGHTS RETAINED.*—*Nothing in this section*
9 *shall be deemed to diminish the rights, privileges, or*
10 *remedies of any whistleblower under any Federal or*
11 *State law, or under any collective bargaining agree-*
12 *ment.*

13 “(i) *PROVISION OF FALSE INFORMATION.*—*A whistle-*
14 *blower shall not be entitled to an award under this section*
15 *if the whistleblower—*

16 “(1) *knowingly and willfully makes any false,*
17 *fictitious, or fraudulent statement or representation;*
18 *or*

19 “(2) *uses any false writing or document knowing*
20 *the writing or document contains any false, fictitious,*
21 *or fraudulent statement or entry.*

22 “(j) *RULEMAKING AUTHORITY.*—*The Commission*
23 *shall have the authority to issue such rules and regulations*
24 *as may be necessary or appropriate to implement the provi-*

1 *sions of this section consistent with the purposes of this sec-*
 2 *tion.”.*

3 (b) *PROTECTION FOR EMPLOYEES OF NATIONALLY*
 4 *RECOGNIZED STATISTICAL RATING ORGANIZATIONS.*—*Sec-*
 5 *tion 1514A(a) of title 18, United States Code, is amended—*

6 (1) *by inserting “or nationally recognized statis-*
 7 *tical rating organization (as defined in section 3(a)*
 8 *of the Securities Exchange Act of 1934 (15 U.S.C.*
 9 *78c),” after “78o(d),”; and*

10 (2) *by inserting “or nationally recognized statis-*
 11 *tical rating organization” after “such company”.*

12 **SEC. 923. CONFORMING AMENDMENTS FOR WHISTLE-**
 13 **BLOWER PROTECTION.**

14 (a) *IN GENERAL.*—

15 (1) *SECURITIES ACT OF 1933.*—*Section*
 16 *20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C.*
 17 *77t(d)(3)(A)) is amended by inserting “and section*
 18 *21F of the Securities Exchange Act of 1934” after*
 19 *“the Sarbanes-Oxley Act of 2002”.*

20 (2) *INVESTMENT COMPANY ACT OF 1940.*—*Section*
 21 *42(e)(3)(A) of the Investment Company Act of 1940*
 22 *(15 U.S.C. 80a–41(e)(3)(A)) is amended by inserting*
 23 *“and section 21F of the Securities Exchange Act of*
 24 *1934” after “the Sarbanes-Oxley Act of 2002”.*

1 (3) *INVESTMENT ADVISERS ACT OF 1940.*—Section
2 *209(e)(3)(A) of the Investment Advisers Act of*
3 *1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by in-*
4 *serting “and section 21F of the Securities Exchange*
5 *Act of 1934” after “the Sarbanes-Oxley Act of 2002”.*

6 **(b) SECURITIES EXCHANGE ACT.**—

7 (1) *SECTION 21.*—Section 21(d)(3)(C)(i) of the
8 *Securities Exchange Act of 1934 (15 U.S.C.*
9 *78u(d)(3)(C)(i)) is amended by inserting “and section*
10 *21F of this title” after “the Sarbanes-Oxley Act of*
11 *2002”.*

12 (2) *SECTION 21A.*—Section 21A of the *Securities*
13 *Exchange Act of 1934 (15 U.S.C. 78u–1) is amend-*
14 *ed—*

15 (A) *in subsection (d)(1) by—*

16 (i) *striking “(subject to subsection*
17 *(e))”;* and

18 (ii) *inserting “and section 21F of this*
19 *title” after “the Sarbanes-Oxley Act of*
20 *2002”;*

21 (B) *by striking subsection (e); and*

22 (C) *by redesignating subsections (f) and (g)*
23 *as subsections (e) and (f), respectively.*

1 **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS**
2 **FOR WHISTLEBLOWER PROTECTION.**

3 (a) *IMPLEMENTING RULES.*—*The Commission shall*
4 *issue final regulations implementing the provisions of sec-*
5 *tion 21F of the Securities Exchange Act of 1934, as added*
6 *by this subtitle, not later than 270 days after the date of*
7 *enactment of this Act.*

8 (b) *ORIGINAL INFORMATION.*—*Information provided*
9 *to the Commission by a whistleblower in accordance with*
10 *the regulations referenced in subsection (a) shall not lose*
11 *the status of original information (as defined in section*
12 *21F(i)(1) of the Securities Exchange Act of 1934, as added*
13 *by this subtitle) solely because the whistleblower provided*
14 *the information prior to the effective date of the regulations,*
15 *provided that the information is—*

16 (1) *provided by the whistleblower after the date*
17 *of enactment of this subtitle, or monetary sanctions*
18 *are collected after the date of enactment of this sub-*
19 *title; or*

20 (2) *related to a violation for which an award*
21 *under section 21F of the Securities Exchange Act of*
22 *1934, as added by this subtitle, could have been paid*
23 *at the time the information was provided by the whis-*
24 *tleblower.*

25 (c) *AWARDS.*—*A whistleblower may receive an award*
26 *pursuant to section 21F of the Securities Exchange Act of*

1 1934, as added by this subtitle, regardless of whether any
2 violation of a provision of the securities laws, or a rule or
3 regulation thereunder, underlying the judicial or adminis-
4 trative action upon which the award is based, occurred
5 prior to the date of enactment of this subtitle.

6 **SEC. 925. COLLATERAL BARS.**

7 (a) *SECURITIES EXCHANGE ACT OF 1934.*—

8 (1) *SECTION 15.*—Section 15(b)(6)(A) of the Se-
9 curities Exchange Act of 1934 (15 U.S.C.
10 780(b)(6)(A)) is amended by striking “12 months, or
11 bar such person from being associated with a broker
12 or dealer,” and inserting “12 months, or bar any
13 such person from being associated with a broker, deal-
14 er, investment adviser, municipal securities dealer,
15 municipal advisor, transfer agent, or nationally rec-
16 ognized statistical rating organization,”.

17 (2) *SECTION 15B.*—Section 15B(c)(4) of the Se-
18 curities Exchange Act of 1934 (15 U.S.C. 780-
19 4(c)(4)) is amended by striking “twelve months or bar
20 any such person from being associated with a munic-
21 ipal securities dealer,” and inserting “12 months or
22 bar any such person from being associated with a
23 broker, dealer, investment adviser, municipal securi-
24 ties dealer, municipal advisor, transfer agent, or na-
25 tionally recognized statistical rating organization,”.

1 (1) *are substantially similar to the provisions of*
2 *section 230.262 of title 17, Code of Federal Regula-*
3 *tions, or any successor thereto; and*

4 (2) *disqualify any offering or sale of securities*
5 *by a person that—*

6 (A) *is subject to a final order of a State se-*
7 *curities commission (or an agency or officer of a*
8 *State performing like functions), a State author-*
9 *ity that supervises or examines banks, savings*
10 *associations, or credit unions, a State insurance*
11 *commission (or an agency or officer of a State*
12 *performing like functions), an appropriate Fed-*
13 *eral banking agency, or the National Credit*
14 *Union Administration, that—*

15 (i) *bars the person from—*

16 (I) *association with an entity reg-*
17 *ulated by such commission, authority,*
18 *agency, or officer;*

19 (II) *engaging in the business of*
20 *securities, insurance, or banking; or*

21 (III) *engaging in savings associa-*
22 *tion or credit union activities; or*

23 (ii) *constitutes a final order based on*
24 *a violation of any law or regulation that*
25 *prohibits fraudulent, manipulative, or de-*

1 *ceptive conduct within the 10-year period*
2 *ending on the date of the filing of the offer*
3 *or sale; or*

4 *(B) has been convicted of any felony or mis-*
5 *demeanor in connection with the purchase or*
6 *sale of any security or involving the making of*
7 *any false filing with the Commission.*

8 **SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGA-**
9 **NIZATION RULES.**

10 *Section 29(a) of the Securities Exchange Act of 1934*
11 *(15 U.S.C. 78cc(a)) is amended by striking “an exchange*
12 *required thereby” and inserting “a self-regulatory organiza-*
13 *tion,”.*

14 **SEC. 928. CLARIFICATION THAT SECTION 205 OF THE IN-**
15 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**
16 **APPLY TO STATE-REGISTERED ADVISERS.**

17 *Section 205(a) of the Investment Advisers Act of 1940*
18 *(15 U.S.C. 80b-5(a)) is amended, in the matter preceding*
19 *paragraph (1)—*

20 *(1) by striking “, unless exempt from registra-*
21 *tion pursuant to section 203(b),” and inserting “reg-*
22 *istered or required to be registered with the Commis-*
23 *sion”;*

1 (2) by striking “make use of the mails or any
2 means or instrumentality of interstate commerce, di-
3 rectly or indirectly, to”; and

4 (3) by striking “to” after “in any way”.

5 **SEC. 929. UNLAWFUL MARGIN LENDING.**

6 Section 7(c)(1)(A) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;
8 and” and inserting “; or”.

9 **SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDIARIES**
10 **AND AFFILIATES OF PUBLICLY TRADED COM-**
11 **PANIES.**

12 Section 1514A of title 18, United States Code, is
13 amended by inserting “including any subsidiary or affiliate
14 whose financial information is included in the consolidated
15 financial statements of such company” after “the Securities
16 Exchange Act of 1934 (15 U.S.C. 78o(d))”.

17 **SEC. 929B. FAIR FUND AMENDMENTS.**

18 Section 308 of the Sarbanes-Oxley Act of 2002 (15
19 U.S.C. 7246(a)) is amended—

20 (1) by striking subsection (a) and inserting the
21 following:

22 “(a) **CIVIL PENALTIES TO BE USED FOR THE RELIEF**
23 **OF VICTIMS.**—If, in any judicial or administrative action
24 brought by the Commission under the securities laws, the
25 Commission obtains a civil penalty against any person for

1 *a violation of such laws, or such person agrees, in settlement*
 2 *of any such action, to such civil penalty, the amount of*
 3 *such civil penalty shall, on the motion or at the direction*
 4 *of the Commission, be added to and become part of a*
 5 *disgorgement fund or other fund established for the benefit*
 6 *of the victims of such violation.”;*

7 (2) *in subsection (b)—*

8 (A) *by striking “for a disgorgement fund*
 9 *described in subsection (a)” and inserting “for a*
 10 *disgorgement fund or other fund described in*
 11 *subsection (a)”;* and

12 (B) *by striking “in the disgorgement fund”*
 13 *and inserting “in such fund”;* and

14 (3) *by striking subsection (e).*

15 **SEC. 929C. INCREASING THE BORROWING LIMIT ON TREAS-**
 16 **URY LOANS.**

17 *Section 4(h) of the Securities Investor Protection Act*
 18 *of 1970 (15 U.S.C. 78ddd(h)) is amended in the first sen-*
 19 *tence, by striking “\$1,000,000,000” and inserting*
 20 *“\$2,500,000,000”.*

21 **Subtitle C—Improvements to the**
 22 **Regulation of Credit Rating**
 23 **Agencies**

24 **SEC. 931. FINDINGS.**

25 *Congress finds the following:*

1 (1) *Because of the systemic importance of credit*
2 *ratings and the reliance placed on credit ratings by*
3 *individual and institutional investors and financial*
4 *regulators, the activities and performances of credit*
5 *rating agencies, including nationally recognized sta-*
6 *tistical rating organizations, are matters of national*
7 *public interest, as credit rating agencies are central*
8 *to capital formation, investor confidence, and the effi-*
9 *cient performance of the United States economy.*

10 (2) *Credit rating agencies, including nationally*
11 *recognized statistical rating organizations, play a*
12 *critical “gatekeeper” role in the debt market that is*
13 *functionally similar to that of securities analysts, who*
14 *evaluate the quality of securities in the equity market,*
15 *and auditors, who review the financial statements of*
16 *firms. Such role justifies a similar level of public*
17 *oversight and accountability.*

18 (3) *Because credit rating agencies perform eval-*
19 *uative and analytical services on behalf of clients,*
20 *much as other financial “gatekeepers” do, the activi-*
21 *ties of credit rating agencies are fundamentally com-*
22 *mercial in character and should be subject to the same*
23 *standards of liability and oversight as apply to audi-*
24 *tors, securities analysts, and investment bankers.*

1 (4) *In certain activities, particularly in advising*
2 *arrangers of structured financial products on poten-*
3 *tial ratings of such products, credit rating agencies*
4 *face conflicts of interest that need to be carefully mon-*
5 *itored and that therefore should be addressed explic-*
6 *itly in legislation in order to give clearer authority*
7 *to the Securities and Exchange Commission.*

8 (5) *In the recent financial crisis, the ratings on*
9 *structured financial products have proven to be inac-*
10 *curate. This inaccuracy contributed significantly to*
11 *the mismanagement of risks by financial institutions*
12 *and investors, which in turn adversely impacted the*
13 *health of the economy in the United States and*
14 *around the world. Such inaccuracy necessitates in-*
15 *creased accountability on the part of credit rating*
16 *agencies.*

17 **SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND**
18 **TRANSPARENCY OF NATIONALLY RECOG-**
19 **NIZED STATISTICAL RATING ORGANIZA-**
20 **TIONS.**

21 *Section 15E of the Securities Exchange Act of 1934*
22 *(15 U.S.C. 78o-7) is amended—*

23 (1) *in subsection (c)—*

24 (A) *in paragraph (2)—*

1 (i) *in the second sentence, by inserting*
2 *“any other provision of this section, or”*
3 *after “Notwithstanding”; and*

4 (ii) *by inserting after the period at the*
5 *end the following: “Nothing in this para-*
6 *graph may be construed to afford a defense*
7 *against any action or proceeding brought by*
8 *the Commission to enforce the antifraud*
9 *provisions of the securities laws.”; and*

10 (B) *by adding at the end the following:*

11 “(3) *INTERNAL CONTROLS OVER PROCESSES FOR*
12 *DETERMINING CREDIT RATINGS.—*

13 “(A) *IN GENERAL.—Each nationally recog-*
14 *nized statistical rating organization shall estab-*
15 *lish, maintain, enforce, and document an effec-*
16 *tive internal control structure governing the im-*
17 *plementation of and adherence to policies, proce-*
18 *dures, and methodologies for determining credit*
19 *ratings, taking into consideration such factors as*
20 *the Commission may prescribe, by rule.*

21 “(B) *ATTESTATION REQUIREMENT.—The*
22 *Commission shall prescribe rules requiring each*
23 *nationally recognized statistical rating organiza-*
24 *tion to submit to the Commission an annual in-*
25 *ternal controls report, which shall contain—*

1 “(i) a description of the responsibility
2 of the management of the nationally recog-
3 nized statistical rating organization in es-
4 tablishing and maintaining an effective in-
5 ternal control structure under subparagraph
6 (A);

7 “(ii) an assessment of the effectiveness
8 of the internal control structure of the na-
9 tionally recognized statistical rating organi-
10 zation; and

11 “(iii) the attestation of the chief execu-
12 tive officer, or equivalent individual, of the
13 nationally recognized statistical rating or-
14 ganization.”;

15 (2) in subsection (d)—

16 (A) in the subsection heading, by inserting
17 “FINE,” after “CENSURE,”;

18 (B) by inserting “fine,” after “censure,”
19 each place that term appears;

20 (C) in paragraph (2), by redesignating sub-
21 paragraphs (A) and (B) as clauses (i) and (ii),
22 respectively, and adjusting the clause margins
23 accordingly;

24 (D) by redesignating paragraphs (1)
25 through (5) as subparagraphs (A) through (E),

1 *respectively, and adjusting the subparagraph*
2 *margins accordingly;*

3 *(E) in the matter preceding subparagraph*
4 *(A), as so redesignated, by striking “The Com-*
5 *mission” and inserting the following:*

6 *“(1) IN GENERAL.—The Commission”;*

7 *(F) in subparagraph (D), as so redesign-*
8 *ated, by striking “or” at the end;*

9 *(G) in subparagraph (E), as so redesign-*
10 *ated, by striking the period at the end and in-*
11 *serting a semicolon; and*

12 *(H) by adding at the end the following:*

13 *“(F) has failed reasonably to supervise,*
14 *with a view to preventing a violation of the secu-*
15 *rities laws, an individual who commits such a*
16 *violation, if the individual is subject to the su-*
17 *pervision of that person.*

18 *“(2) SUSPENSION OR REVOCATION FOR PAR-*
19 *TICULAR CLASS OF SECURITIES.—*

20 *“(A) IN GENERAL.—The Commission may*
21 *temporarily suspend or permanently revoke the*
22 *registration of a nationally recognized statistical*
23 *rating organization with respect to a particular*
24 *class or subclass of securities, if the Commission*
25 *finds, on the record after notice and opportunity*

1 *for hearing, that the nationally recognized statis-*
2 *tical rating organization does not have adequate*
3 *financial and managerial resources to consist-*
4 *ently produce credit ratings with integrity.*

5 “(B) *CONSIDERATIONS.—In making any*
6 *determination under subparagraph (A), the*
7 *Commission shall consider—*

8 “(i) *whether the nationally recognized*
9 *statistical rating organization has failed*
10 *over a sustained period of time, as deter-*
11 *mined by the Commission, to produce rat-*
12 *ings that are accurate for that class or sub-*
13 *class of securities; and*

14 “(ii) *such other factors as the Commis-*
15 *sion may determine.”;*

16 (3) *in subsection (h), by adding at the end the*
17 *following:*

18 “(3) *SEPARATION OF RATINGS FROM SALES AND*
19 *MARKETING.—*

20 “(A) *RULES REQUIRED.—The Commission*
21 *shall issue rules to prevent the sales and mar-*
22 *keting considerations of a nationally recognized*
23 *statistical rating organization from influencing*
24 *the production of ratings by the nationally recog-*
25 *nized statistical rating organization.*

1 “(B) *CONTENTS OF RULES.*—*The rules*
2 *issued under subparagraph (A) shall provide*
3 *for—*

4 “(i) *exceptions for small nationally*
5 *recognized statistical rating organizations*
6 *with respect to which the Commission deter-*
7 *mines that the separation of the production*
8 *of ratings and sales and marketing activi-*
9 *ties is not appropriate; and*

10 “(ii) *suspension or revocation of the*
11 *registration of a nationally recognized sta-*
12 *tistical rating organization, if the Commis-*
13 *sion finds, on the record, after notice and*
14 *opportunity for a hearing, that—*

15 “(I) *the nationally recognized sta-*
16 *tistical rating organization has com-*
17 *mitted a violation of a rule issued*
18 *under this subsection; and*

19 “(II) *the violation of a rule issued*
20 *under this subsection affected a rat-*
21 *ing.”;*

22 (4) *in subsection (j)—*

23 (A) *by striking “Each” and inserting the*
24 *following:*

25 “(1) *IN GENERAL.*—*Each*”; *and*

1 *(B) by adding at the end the following:*

2 “(2) *LIMITATIONS.*—

3 “(A) *IN GENERAL.*—*Except as provided in*
4 *subparagraph (B), an individual designated*
5 *under paragraph (1) may not, while serving in*
6 *the designated capacity—*

7 “(i) *perform credit ratings;*

8 “(ii) *participate in the development of*
9 *ratings methodologies or models;*

10 “(iii) *perform marketing or sales func-*
11 *tions; or*

12 “(iv) *participate in establishing com-*
13 *ensation levels, other than for employees*
14 *working for that individual.*

15 “(B) *EXCEPTION.*—*The Commission may*
16 *exempt a small nationally recognized statistical*
17 *rating organization from the limitations under*
18 *this paragraph, if the Commission finds that*
19 *compliance with such limitations would impose*
20 *an unreasonable burden on the nationally recog-*
21 *nized statistical rating organization.*

22 “(3) *OTHER DUTIES.*—*Each individual des-*
23 *ignated under paragraph (1) shall establish proce-*
24 *dures for the receipt, retention, and treatment of—*

1 “(A) *complaints regarding credit ratings,*
2 *models, methodologies, and compliance with the*
3 *securities laws and the policies and procedures*
4 *developed under this section; and*

5 “(B) *confidential, anonymous complaints*
6 *by employees or users of credit ratings.*

7 “(4) *ANNUAL REPORTS REQUIRED.—*

8 “(A) *ANNUAL REPORTS REQUIRED.—Each*
9 *individual designated under paragraph (1) shall*
10 *submit to the nationally recognized statistical*
11 *rating organization an annual report on the*
12 *compliance of the nationally recognized statis-*
13 *tical rating organization with the securities laws*
14 *and the policies and procedures of the nationally*
15 *recognized statistical rating organization that*
16 *includes—*

17 “(i) *a description of any material*
18 *changes to the code of ethics and conflict of*
19 *interest policies of the nationally recognized*
20 *statistical rating organization; and*

21 “(ii) *a certification that the report is*
22 *accurate and complete.*

23 “(B) *SUBMISSION OF REPORTS TO THE*
24 *COMMISSION.—Each nationally recognized statis-*
25 *tical rating organization shall file the reports re-*

1 *quired under subparagraph (A) together with the*
2 *financial report that is required to be submitted*
3 *to the Commission under this section.”; and*

4 *(5) by striking subsection (p) and inserting the*
5 *following:*

6 “*(p) REGULATION OF NATIONALLY RECOGNIZED STA-*
7 *TISTICAL RATING ORGANIZATIONS.—*

8 “*(1) ESTABLISHMENT OF OFFICE OF CREDIT*
9 *RATINGS.—*

10 “*(A) OFFICE ESTABLISHED.—The Commis-*
11 *sion shall establish within the Commission an*
12 *Office of Credit Ratings (referred to in this sub-*
13 *section as the ‘Office’) to administer the rules of*
14 *the Commission—*

15 “*(i) with respect to the practices of na-*
16 *tionally recognized statistical rating organi-*
17 *zations in determining ratings, for the pro-*
18 *tection of users of credit ratings and in the*
19 *public interest;*

20 “*(ii) to promote accuracy in credit rat-*
21 *ings issued by nationally recognized statis-*
22 *tical rating organizations; and*

23 “*(iii) to ensure that such ratings are*
24 *not unduly influenced by conflicts of inter-*
25 *est.*

1 “(B) *DIRECTOR OF THE OFFICE.*—*The head*
2 *of the Office shall be the Director, who shall re-*
3 *port to the Chairman.*

4 “(2) *STAFFING.*—*The Office established under*
5 *this subsection shall be staffed sufficiently to carry*
6 *out fully the requirements of this section. The staff*
7 *shall include persons with knowledge of and expertise*
8 *in corporate, municipal, and structured debt finance.*

9 “(3) *COMMISSION EXAMINATIONS.*—

10 “(A) *ANNUAL EXAMINATIONS REQUIRED.*—
11 *The Office shall conduct an examination of each*
12 *nationally recognized statistical rating organiza-*
13 *tion at least annually.*

14 “(B) *CONDUCT OF EXAMINATIONS.*—*Each*
15 *examination under subparagraph (A) shall in-*
16 *clude a review of—*

17 “(i) *whether the nationally recognized*
18 *statistical rating organization conducts*
19 *business in accordance with the policies,*
20 *procedures, and rating methodologies of the*
21 *nationally recognized statistical rating or-*
22 *ganization;*

23 “(ii) *the management of conflicts of in-*
24 *terest by the nationally recognized statis-*
25 *tical rating organization;*

1 “(iii) implementation of ethics policies
2 by the nationally recognized statistical rat-
3 ing organization;

4 “(iv) the internal supervisory controls
5 of the nationally recognized statistical rat-
6 ing organization;

7 “(v) the governance of the nationally
8 recognized statistical rating organization;

9 “(vi) the activities of the individual
10 designated by the nationally recognized sta-
11 tistical rating organization under sub-
12 section (j)(1);

13 “(vii) the processing of complaints by
14 the nationally recognized statistical rating
15 organization; and

16 “(viii) the policies of the nationally
17 recognized statistical rating organization
18 governing the post-employment activities of
19 former staff of the nationally recognized sta-
20 tistical rating organization.

21 “(C) INSPECTION REPORTS.—The Commis-
22 sion shall make available to the public, in an
23 easily understandable format, an annual report
24 summarizing—

1 “(i) the essential findings of all exami-
2 nations conducted under subparagraph (A),
3 as deemed appropriate by the Commission;

4 “(ii) the responses by the nationally
5 recognized statistical rating organizations
6 to any material regulatory deficiencies
7 identified by the Commission under clause
8 (i); and

9 “(iii) whether the nationally recognized
10 statistical rating organizations have appro-
11 priately addressed the recommendations of
12 the Commission contained in previous re-
13 ports under this subparagraph.

14 “(4) *RULEMAKING AUTHORITY.*—The Commis-
15 sion shall—

16 “(A) establish, by rule, fines, and other pen-
17 alties applicable to any nationally recognized
18 statistical rating organization that violates the
19 requirements of this subsection and the rules
20 thereunder; and

21 “(B) issue such rules as may be necessary
22 to carry out this subsection.

23 “(q) *TRANSPARENCY OF RATINGS PERFORMANCE.*—

24 “(1) *RULEMAKING REQUIRED.*—The Commission
25 shall, by rule, require that each nationally recognized

1 *statistical rating organization publicly disclose infor-*
2 *mation on the initial credit ratings determined by the*
3 *nationally recognized statistical rating organization*
4 *for each type of obligor, security, and money market*
5 *instrument, and any subsequent changes to such cred-*
6 *it ratings, for the purpose of allowing users of credit*
7 *ratings to evaluate the accuracy of ratings and com-*
8 *pare the performance of ratings by different nation-*
9 *ally recognized statistical rating organizations.*

10 “(2) *CONTENT.*—*The rules of the Commission*
11 *under this subsection shall require, at a minimum,*
12 *disclosures that—*

13 “(A) *are comparable among nationally rec-*
14 *ognized statistical rating organizations, to allow*
15 *users of credit ratings to compare the perform-*
16 *ance of credit ratings across nationally recog-*
17 *nized statistical rating organizations;*

18 “(B) *are clear and informative for investors*
19 *who use or might use credit ratings;*

20 “(C) *include performance information over*
21 *a range of years and for a variety of types of*
22 *credit ratings, including for credit ratings with-*
23 *drawn by the nationally recognized statistical*
24 *rating organization;*

1 “(D) are published and made freely avail-
2 able by the nationally recognized statistical rat-
3 ing organization, on an easily accessible portion
4 of its website, and in writing, when requested;
5 and

6 “(E) are appropriate to the business model
7 of a nationally recognized statistical rating orga-
8 nization.

9 “(r) CREDIT RATINGS METHODOLOGIES.—The Com-
10 mission shall prescribe rules, for the protection of investors
11 and in the public interest, with respect to the procedures
12 and methodologies, including qualitative and quantitative
13 data and models, used by nationally recognized statistical
14 rating organizations that require each nationally recog-
15 nized statistical rating organization—

16 “(1) to ensure that credit ratings are determined
17 using procedures and methodologies, including quali-
18 tative and quantitative data and models, that are—

19 “(A) approved by the board of the nation-
20 ally recognized statistical rating organization, a
21 body performing a function similar to that of a
22 board, or the senior credit officer of the nation-
23 ally recognized statistical rating organization;
24 and

1 “(B) in accordance with the policies and
2 procedures of the nationally recognized statistical
3 rating organization for the development and
4 modification of credit rating procedures and
5 methodologies;

6 “(2) to ensure that when material changes to
7 credit rating procedures and methodologies (including
8 changes to qualitative and quantitative data and
9 models) are made, that—

10 “(A) the changes are applied consistently to
11 all credit ratings to which the changed proce-
12 dures and methodologies apply;

13 “(B) to the extent that changes are made to
14 credit rating surveillance procedures and meth-
15 odologies, the changes are applied to then-current
16 credit ratings by the nationally recognized statis-
17 tical rating organization within a reasonable
18 time period determined by the Commission, by
19 rule; and

20 “(C) the nationally recognized statistical
21 rating organization publicly discloses the reason
22 for the change; and

23 “(3) to notify users of credit ratings—

24 “(A) of the version of a procedure or meth-
25 odology, including the qualitative methodology or

1 *quantitative inputs, used with respect to a par-*
2 *ticular credit rating;*

3 *“(B) when a material change is made to a*
4 *procedure or methodology, including to a quali-*
5 *tative model or quantitative inputs;*

6 *“(C) when a significant error is identified*
7 *in a procedure or methodology, including a qual-*
8 *itative or quantitative model, that may result in*
9 *credit rating actions; and*

10 *“(D) of the likelihood of a material change*
11 *described in subparagraph (B) resulting in a*
12 *change in current credit ratings.*

13 *“(s) TRANSPARENCY OF CREDIT RATING METHODOLO-*
14 *GIES AND INFORMATION REVIEWED.—*

15 *“(1) FORM FOR DISCLOSURES.—The Commission*
16 *shall require, by rule, each nationally recognized sta-*
17 *tistical rating organization to prescribe a form to ac-*
18 *company the publication of each credit rating that*
19 *discloses—*

20 *“(A) information relating to—*

21 *“(i) the assumptions underlying the*
22 *credit rating procedures and methodologies;*

23 *“(ii) the data that was relied on to de-*
24 *termine the credit rating; and*

1 “(iii) if applicable, how the nationally
2 recognized statistical rating organization
3 used servicer or remittance reports, and
4 with what frequency, to conduct surveillance
5 of the credit rating; and

6 “(B) information that can be used by inves-
7 tors and other users of credit ratings to better
8 understand credit ratings in each class of credit
9 rating issued by the nationally recognized statis-
10 tical rating organization.

11 “(2) *FORMAT.*—The form developed under para-
12 graph (1) shall—

13 “(A) be easy to use and helpful for users of
14 credit ratings to understand the information
15 contained in the report;

16 “(B) require the nationally recognized sta-
17 tistical rating organization to provide the con-
18 tent described in paragraph (3)(B) in a manner
19 that is directly comparable across types of secu-
20 rities; and

21 “(C) be made readily available to users of
22 credit ratings, in electronic or paper form, as the
23 Commission may, by rule, determine.

24 “(3) *CONTENT OF FORM.*—

1 “(A) *QUALITATIVE CONTENT.*—*Each na-*
2 *tionally recognized statistical rating organiza-*
3 *tion shall disclose on the form developed under*
4 *paragraph (1)—*

5 “(i) *the credit ratings produced by the*
6 *nationally recognized statistical rating or-*
7 *ganization;*

8 “(ii) *the main assumptions and prin-*
9 *ciples used in constructing procedures and*
10 *methodologies, including qualitative meth-*
11 *odologies and quantitative inputs and as-*
12 *sumptions about the correlation of defaults*
13 *across obligors used in rating structured*
14 *products;*

15 “(iii) *the potential limitations of the*
16 *credit ratings, and the types of risks ex-*
17 *cluded from the credit ratings that the na-*
18 *tionally recognized statistical rating organi-*
19 *zation does not comment on, including li-*
20 *quidity, market, and other risks;*

21 “(iv) *information on the uncertainty of*
22 *the credit rating, including—*

23 “(I) *information on the reli-*
24 *ability, accuracy, and quality of the*

1 *data relied on in determining the cred-*
2 *it rating; and*

3 *“(II) a statement relating to the*
4 *extent to which data essential to the*
5 *determination of the credit rating were*
6 *reliable or limited, including—*

7 *“(aa) any limits on the scope*
8 *of historical data; and*

9 *“(bb) any limits in accessi-*
10 *bility to certain documents or*
11 *other types of information that*
12 *would have better informed the*
13 *credit rating;*

14 *“(v) whether and to what extent third*
15 *party due diligence services have been used*
16 *by the nationally recognized statistical rat-*
17 *ing organization, a description of the infor-*
18 *mation that such third party reviewed in*
19 *conducting due diligence services, and a de-*
20 *scription of the findings or conclusions of*
21 *such third party;*

22 *“(vi) a description of the data about*
23 *any obligor, issuer, security, or money mar-*
24 *ket instrument that were relied upon for the*
25 *purpose of determining the credit rating;*

1 “(vii) a statement containing an over-
2 all assessment of the quality of information
3 available and considered in producing a
4 rating for an obligor, security, or money
5 market instrument, in relation to the qual-
6 ity of information available to the nation-
7 ally recognized statistical rating organiza-
8 tion in rating similar issuances;

9 “(viii) information relating to conflicts
10 of interest of the nationally recognized sta-
11 tistical rating organization; and

12 “(ix) such additional information as
13 the Commission may require.

14 “(B) QUANTITATIVE CONTENT.—Each na-
15 tionally recognized statistical rating organiza-
16 tion shall disclose on the form developed under
17 this subsection—

18 “(i) an explanation or measure of the
19 potential volatility of the credit rating, in-
20 cluding—

21 “(I) any factors that might lead
22 to a change in the credit ratings; and

23 “(II) the magnitude of the change
24 that a user can expect under different
25 market conditions;

1 “(ii) information on the content of the
2 rating, including—

3 “(I) the historical performance of
4 the rating; and

5 “(II) the expected probability of
6 default and the expected loss in the
7 event of default;

8 “(iii) information on the sensitivity of
9 the rating to assumptions made by the na-
10 tionally recognized statistical rating organi-
11 zation; and

12 “(iv) such additional information as
13 may be required by the Commission.

14 “(4) DUE DILIGENCE SERVICES FOR ASSET-
15 BACKED SECURITIES.—

16 “(A) FINDINGS.—The issuer or underwriter
17 of any asset-backed security shall make publicly
18 available the findings and conclusions of any
19 third-party due diligence report obtained by the
20 issuer or underwriter.

21 “(B) CERTIFICATION REQUIRED.—In any
22 case in which third-party due diligence services
23 are employed by a nationally recognized statis-
24 tical rating organization, an issuer, or an un-
25 derwriter, the person providing the due diligence

1 *services shall provide to any nationally recog-*
2 *nized statistical rating organization that pro-*
3 *duces a rating to which such services relate,*
4 *written certification, as provided in subpara-*
5 *graph (C).*

6 *“(C) FORMAT AND CONTENT.—The Commis-*
7 *sion shall establish the appropriate format and*
8 *content for the written certifications required*
9 *under subparagraph (B), to ensure that pro-*
10 *viders of due diligence services have conducted a*
11 *thorough review of data, documentation, and*
12 *other relevant information necessary for a na-*
13 *tionally recognized statistical rating organiza-*
14 *tion to provide an accurate rating.*

15 *“(D) DISCLOSURE OF CERTIFICATION.—The*
16 *Commission shall adopt rules requiring a na-*
17 *tionally recognized statistical rating organiza-*
18 *tion, at the time at which the nationally recog-*
19 *nized statistical rating organization produces a*
20 *rating, to disclose the certification described in*
21 *subparagraph (B) to the public in a manner*
22 *that allows the public to determine the adequacy*
23 *and level of due diligence services provided by a*
24 *third party.*

1 “(t) *CORPORATE GOVERNANCE, ORGANIZATION, AND*
2 *MANAGEMENT OF CONFLICTS OF INTEREST.*—

3 “(1) *BOARD OF DIRECTORS.*—*Each nationally*
4 *recognized statistical rating organization shall have a*
5 *board of directors.*

6 “(2) *INDEPENDENT DIRECTORS.*—

7 “(A) *IN GENERAL.*—*At least 1/2 of the board*
8 *of directors, but not fewer than 2 of the members*
9 *thereof, shall be independent of the nationally*
10 *recognized statistical rating agency. A portion of*
11 *the independent directors shall include users of*
12 *ratings from a nationally recognized statistical*
13 *rating organization.*

14 “(B) *INDEPENDENCE DETERMINATION.*—*In*
15 *order to be considered independent for purposes*
16 *of this subsection, a member of the board of di-*
17 *rectors of a nationally recognized statistical rat-*
18 *ing organization—*

19 “(i) *may not, other than in his or her*
20 *capacity as a member of the board of direc-*
21 *tors or any committee thereof—*

22 “(I) *accept any consulting, advi-*
23 *sory, or other compensatory fee from*
24 *the nationally recognized statistical*
25 *rating organization; or*

1 “(II) be a person associated with
2 the nationally recognized statistical
3 rating organization or with any affili-
4 ated company thereof; and

5 “(ii) shall be disqualified from any de-
6 liberation involving a specific rating in
7 which the independent board member has a
8 financial interest in the outcome of the rat-
9 ing.

10 “(C) COMPENSATION AND TERM.—The com-
11 pensation of the independent members of the
12 board of directors of a nationally recognized sta-
13 tistical rating organization shall not be linked to
14 the business performance of the nationally recog-
15 nized statistical rating organization, and shall
16 be arranged so as to ensure the independence of
17 their judgment. The term of office of the inde-
18 pendent directors shall be for a pre-agreed fixed
19 period, not to exceed 5 years, and shall not be re-
20 newable.

21 “(3) DUTIES OF BOARD OF DIRECTORS.—In ad-
22 dition to the overall responsibilities of the board of di-
23 rectors, the board shall oversee—

1 “(A) *the establishment, maintenance, and*
2 *enforcement of policies and procedures for deter-*
3 *mining credit ratings;*

4 “(B) *the establishment, maintenance, and*
5 *enforcement of policies and procedures to ad-*
6 *dress, manage, and disclose any conflicts of in-*
7 *terest;*

8 “(C) *the effectiveness of the internal control*
9 *system with respect to policies and procedures*
10 *for determining credit ratings; and*

11 “(D) *the compensation and promotion poli-*
12 *cies and practices of the nationally recognized*
13 *statistical rating organization.*

14 “(4) *TREATMENT OF NRSRO SUBSIDIARIES.—If a*
15 *nationally recognized statistical rating organization*
16 *is a subsidiary of a parent entity, the board of the*
17 *directors of the parent entity may satisfy the require-*
18 *ments of this subsection by assigning to a committee*
19 *of such board of directors the duties under paragraph*
20 *(3), if—*

21 “(A) *at least 1/2 of the members of the com-*
22 *mittee (including the chairperson of the com-*
23 *mittee) are independent, as defined in this sec-*
24 *tion; and*

1 “(B) at least 1 member of the committee is
2 a user of ratings from a nationally recognized
3 statistical rating organization.

4 “(5) *EXCEPTION AUTHORITY.*—If the Commis-
5 sion finds that compliance with the provisions of this
6 subsection present an unreasonable burden on a small
7 nationally recognized statistical rating organization,
8 the Commission may permit the nationally recognized
9 statistical rating organization to delegate such re-
10 sponsibilities to a committee that includes at least one
11 individual who is a user of ratings of a nationally
12 recognized statistical rating organization.”.

13 **SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.**

14 (a) *ACCOUNTABILITY.*—Section 15E(m) of the Securi-
15 ties Exchange Act of 1934 (15 U.S.C. 78o–7(m)) is amended
16 to read as follows:

17 “(m) *ACCOUNTABILITY.*—

18 “(1) *IN GENERAL.*—The enforcement and penalty
19 provisions of this title shall apply to statements made
20 by a credit rating agency in the same manner and
21 to the same extent as such provisions apply to state-
22 ments made by a registered public accounting firm or
23 a securities analyst under the securities laws, and
24 such statements shall not be deemed forward-looking
25 statements for the purposes of section 21E.

1 “(2) *RULEMAKING.*—*The Commission shall issue*
2 *such rules as may be necessary to carry out this sub-*
3 *section.*”.

4 (b) *STATE OF MIND.*—*Section 21D(b)(2) of the Securi-*
5 *ties Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is*
6 *amended—*

7 (1) *by striking “In any” and inserting the fol-*
8 *lowing:*

9 “(A) *IN GENERAL.*—*Except as provided in*
10 *subparagraph (B), in any*”; and

11 (2) *by adding at the end the following:*

12 “(B) *EXCEPTION.*—*In the case of an action*
13 *for money damages brought against a credit rat-*
14 *ing agency or a controlling person under this*
15 *title, it shall be sufficient, for purposes of plead-*
16 *ing any required state of mind in relation to*
17 *such action, that the complaint state with par-*
18 *ticularity facts giving rise to a strong inference*
19 *that the credit rating agency knowingly or reck-*
20 *lessly failed—*

21 “(i) *to conduct a reasonable investiga-*
22 *tion of the rated security with respect to the*
23 *factual elements relied upon by its own*
24 *methodology for evaluating credit risk; or*

1 “(ii) to obtain reasonable verification
2 of such factual elements (which verification
3 may be based on a sampling technique that
4 does not amount to an audit) from other
5 sources that the credit rating agency consid-
6 ered to be competent and that were inde-
7 pendent of the issuer and underwriter.”.

8 **SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR REG-**
9 **ULATORY AUTHORITIES.**

10 Section 15E of the Securities Exchange Act of 1934
11 (15 U.S.C. 78o-7), as amended by this subtitle, is amended
12 by adding at the end the following:

13 “(u) **DUTY TO REPORT TIPS ALLEGING MATERIAL**
14 **VIOLATIONS OF LAW.**—

15 “(1) **DUTY TO REPORT.**—Each nationally recog-
16 nized statistical rating organization shall refer to the
17 appropriate law enforcement or regulatory authorities
18 any information that the nationally recognized statis-
19 tical rating organization receives from a third party
20 and finds credible that alleges that an issuer of secu-
21 rities rated by the nationally recognized statistical
22 rating organization has committed or is committing
23 a material violation of law that has not been adju-
24 dicated by a Federal or State court.

1 “(2) *RULE OF CONSTRUCTION.*—*Nothing in*
2 *paragraph (1) may be construed to require a nation-*
3 *ally recognized statistical rating organization to*
4 *verify the accuracy of the information described in*
5 *paragraph (1).”.*

6 **SEC. 935. CONSIDERATION OF INFORMATION FROM**
7 **SOURCES OTHER THAN THE ISSUER IN RAT-**
8 **ING DECISIONS.**

9 *Section 15E of the Securities Exchange Act of 1934*
10 *(15 U.S.C. 78o–7), as amended by this subtitle, is amended*
11 *by adding at the end the following:*

12 “(v) *INFORMATION FROM SOURCES OTHER THAN THE*
13 *ISSUER.*—*In producing a credit rating, a nationally recog-*
14 *nized statistical rating organization shall consider informa-*
15 *tion about an issuer that the nationally recognized statis-*
16 *tical rating organization has, or receives from a source*
17 *other than the issuer, that the nationally recognized statis-*
18 *tical rating organization finds credible and potentially sig-*
19 *nificant to a rating decision.”.*

20 **SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RATING**
21 **ANALYSTS.**

22 *Not later than 1 year after the date of enactment of*
23 *this Act, the Commission shall issue rules that are reason-*
24 *ably designed to ensure that any person employed by a na-*

1 *nationally recognized statistical rating organization to per-*
2 *form credit ratings—*

3 *(1) meets standards of training, experience, and*
4 *competence necessary to produce accurate ratings for*
5 *the categories of issuers whose securities the person*
6 *rates; and*

7 *(2) is tested for knowledge of the credit rating*
8 *process.*

9 **SEC. 937. TIMING OF REGULATIONS.**

10 *Unless otherwise specifically provided in this subtitle,*
11 *the Commission shall issue final regulations, as required*
12 *by this subtitle and the amendments made by this subtitle,*
13 *not later than 1 year after the date of enactment of this*
14 *Act.*

15 **SEC. 938. UNIVERSAL RATINGS SYMBOLS.**

16 *(a) RULEMAKING.—The Commission shall require, by*
17 *rule, each nationally recognized statistical rating organiza-*
18 *tion to establish, maintain, and enforce written policies and*
19 *procedures that—*

20 *(1) assess the probability that an issuer of a se-*
21 *curity or money market instrument will default, fail*
22 *to make timely payments, or otherwise not make pay-*
23 *ments to investors in accordance with the terms of the*
24 *security or money market instrument;*

1 (2) *clearly define and disclose the meaning of*
2 *any symbol used by the nationally recognized statis-*
3 *tical rating organization to denote a credit rating;*
4 *and*

5 (3) *apply any symbol described in paragraph (2)*
6 *in a manner that is consistent for all types of securi-*
7 *ties and money market instruments for which the*
8 *symbol is used.*

9 (b) *RULE OF CONSTRUCTION.*—*Nothing in this section*
10 *shall prohibit a nationally recognized statistical rating or-*
11 *ganization from using distinct sets of symbols to denote*
12 *credit ratings for different types of securities or money mar-*
13 *ket instruments.*

14 **SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CRED-**
15 **IT RATINGS.**

16 (a) *FEDERAL DEPOSIT INSURANCE ACT.*—*The Federal*
17 *Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amend-*
18 *ed—*

19 (1) *in section 7(b)(1)(E)(i), by striking “credit*
20 *rating entities, and other private economic” and in-*
21 *sert “private economic, credit,”;*

22 (2) *in section 28(d)—*

23 (A) *in the subsection heading, by striking*
24 *“NOT OF INVESTMENT GRADE”;*

1 (B) in paragraph (1), by striking “not of
2 investment grade” and inserting “that does not
3 meet standards of credit-worthiness as estab-
4 lished by the Corporation”;

5 (C) in paragraph (2), by striking “not of
6 investment grade”;

7 (D) by striking paragraph (3);

8 (E) by redesignating paragraph (4) as
9 paragraph (3); and

10 (F) in paragraph (3), as so redesignated—

11 (i) by striking subparagraph (A);

12 (ii) by redesignating subparagraphs
13 (B) and (C) as subparagraphs (A) and (B),
14 respectively; and

15 (iii) in subparagraph (B), as so redesi-
16 gnated, by striking “not of investment
17 grade” and inserting “that does not meet
18 standards of credit-worthiness as established
19 by the Corporation”; and

20 (3) in section 28(e)—

21 (A) in the subsection heading, by striking
22 “NOT OF INVESTMENT GRADE”;

23 (B) in paragraph (1), by striking “not of
24 investment grade” and inserting “that does not

1 *meet standards of credit-worthiness as estab-*
2 *lished by the Corporation*”; and

3 (C) *in paragraphs (2) and (3), by striking*
4 *“not of investment grade” each place that it ap-*
5 *pears and inserting “that does not meet stand-*
6 *ards of credit-worthiness established by the Cor-*
7 *poration”.*

8 (b) *FEDERAL HOUSING ENTERPRISES FINANCIAL*
9 *SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of*
10 *the Federal Housing Enterprises Financial Safety and*
11 *Soundness Act of 1992 (12 U.S.C. 4519) is amended by*
12 *striking “that is a nationally registered statistical rating*
13 *organization, as such term is defined in section 3(a) of the*
14 *Securities Exchange Act of 1934,”.*

15 (c) *INVESTMENT COMPANY ACT OF 1940.—Section*
16 *6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15*
17 *U.S.C. 80a–6(a)(5)(A)(iv)(I)) is amended by striking “is*
18 *rated investment grade by not less than 1 nationally reg-*
19 *istered statistical rating organization” and inserting*
20 *“meets such standards of credit-worthiness as the Commis-*
21 *sion shall adopt”.*

22 (d) *REVISED STATUTES.—Section 5136A of title LXII*
23 *of the Revised Statutes of the United States (12 U.S.C. 24a)*
24 *is amended—*

1 (1) *in subsection (a)(2)(E), by striking “any ap-*
2 *plicable rating” and inserting “standards of credit-*
3 *worthiness established by the Comptroller of the Cur-*
4 *rency”;*

5 (2) *in the heading for subsection (a)(3) by strik-*
6 *ing “RATING OR COMPARABLE REQUIREMENT” and*
7 *inserting “REQUIREMENT”;*

8 (3) *subsection (a)(3), by amending subparagraph*
9 *(A) to read as follows:*

10 “(A) *IN GENERAL.—A national bank meets*
11 *the requirements of this paragraph if the bank is*
12 *one of the 100 largest insured banks and has not*
13 *fewer than 1 issue of outstanding debt that meets*
14 *standards of credit-worthiness or other criteria*
15 *as the Secretary of the Treasury and the Board*
16 *of Governors of the Federal Reserve System may*
17 *jointly establish.”.*

18 (4) *in the heading for subsection (f), by striking*
19 *“MAINTAIN PUBLIC RATING OR” and inserting*
20 *“MEET STANDARDS OF CREDIT-WORTHINESS”;* and

21 (5) *in subsection (f)(1), by striking “any appli-*
22 *cable rating” and inserting “standards of credit-wor-*
23 *thiness established by the Comptroller of the Cur-*
24 *rency”.*

1 (e) *SECURITIES EXCHANGE ACT OF 1934.*—Section
2 3(a) *Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a))*
3 is amended—

4 (1) in paragraph (41), by striking “is rated in
5 one of the two highest rating categories by at least one
6 nationally registered statistical rating organization”
7 and inserting “meets standards of credit-worthiness
8 as established by the Commission”; and

9 (2) in paragraph (53)(A), by striking “is rated
10 in 1 of the 4 highest rating categories by at least 1
11 nationally registered statistical rating organization”
12 and inserting “meets standards of credit-worthiness
13 as established by the Commission”.

14 (f) *WORLD BANK DISCUSSIONS.*—Section 3(a)(6) of
15 the amendment in the nature of a substitute to the text of
16 H.R. 4645, as ordered reported from the Committee on
17 Banking, Finance and Urban Affairs on September 22,
18 1988, as enacted into law by section 555 of Public Law
19 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking
20 “credit rating” and inserting “credit-worthiness”.

21 (g) *EFFECTIVE DATE.*—The amendments made by this
22 section shall take effect 2 years after the date of enactment
23 of this Act.

24 (1) *IN GENERAL.*—Commission shall undertake a
25 study on the feasibility and desirability of—

1 (A) *standardizing credit ratings termi-*
2 *nology, so that all credit rating agencies issue*
3 *credit ratings using identical terms;*

4 (B) *standardizing the market stress condi-*
5 *tions under which ratings are evaluated;*

6 (C) *requiring a quantitative correspondence*
7 *between credit ratings and a range of default*
8 *probabilities and loss expectations under stand-*
9 *ardized conditions of economic stress; and*

10 (D) *standardizing credit rating terminology*
11 *across asset classes, so that named ratings cor-*
12 *respond to a standard range of default prob-*
13 *abilities and expected losses independent of asset*
14 *class and issuing entity.*

15 (2) *REPORT.—Not later than 1 year after the*
16 *date of enactment of this Act, the Commission shall*
17 *submit to Congress a report containing the findings*
18 *of the study under paragraph (1) and the rec-*
19 *ommendations, if any, of the Commission with respect*
20 *to the study.*

21 **SEC. 939A. SECURITIES AND EXCHANGE COMMISSION**
22 **STUDY ON STRENGTHENING CREDIT RATING**
23 **AGENCY INDEPENDENCE.**

24 (a) *STUDY.—The Commission shall conduct a study*
25 *of—*

1 (1) *the independence of nationally recognized*
2 *statistical rating organizations; and*

3 (2) *how the independence of nationally recog-*
4 *nized statistical rating organizations affects the rat-*
5 *ings issued by the nationally recognized statistical*
6 *rating organizations.*

7 (b) *SUBJECTS FOR EVALUATION.*—*In conducting the*
8 *study under subsection (a), the Commission shall evalu-*
9 *ate—*

10 (1) *the management of conflicts of interest raised*
11 *by a nationally recognized statistical rating organiza-*
12 *tion providing other services, including risk manage-*
13 *ment advisory services, ancillary assistance, or con-*
14 *sulting services;*

15 (2) *the potential impact of rules prohibiting a*
16 *nationally recognized statistical rating organization*
17 *that provides a rating to an issuer from providing*
18 *other services to the issuer; and*

19 (3) *any other issue relating to nationally recog-*
20 *nized statistical rating organizations, as the Chair-*
21 *man of the Commission determines is appropriate.*

22 (c) *REPORT.*—*Not later than 3 years after the date of*
23 *enactment of this Act, the Chairman of the Commission*
24 *shall submit to the Committee on Banking, Housing, and*
25 *Urban Affairs of the Senate and the Committee on Finan-*

1 *cial Services of the House of Representatives a report on*
2 *the results of the study conducted under subsection (a), in-*
3 *cluding recommendations, if any, for improving the integ-*
4 *erty of ratings issued by nationally recognized statistical*
5 *rating organizations.*

6 **SEC. 939B. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
7 **ON ALTERNATIVE BUSINESS MODELS.**

8 (a) *STUDY.*—*The Comptroller General of the United*
9 *States shall conduct a study on alternative means for com-*
10 *pensating nationally recognized statistical rating organiza-*
11 *tions in order to create incentives for nationally recognized*
12 *statistical rating organizations to provide more accurate*
13 *credit ratings, including any statutory changes that would*
14 *be required to facilitate the use of an alternative means of*
15 *compensation.*

16 (b) *REPORT.*—*Not later than 1 year after the date of*
17 *enactment of this Act, the Comptroller General shall submit*
18 *to the Committee on Banking, Housing, and Urban Affairs*
19 *of the Senate and the Committee on Financial Services of*
20 *the House of Representatives a report on the results of the*
21 *study conducted under subsection (a), including rec-*
22 *ommendations, if any, for providing incentives to credit*
23 *rating agencies to improve the credit rating process.*

1 **SEC. 939C. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **ON THE CREATION OF AN INDEPENDENT**
3 **PROFESSIONAL ANALYST ORGANIZATION.**

4 (a) *STUDY.*—*The Comptroller General of the United*
5 *States shall conduct a study on the feasibility and merits*
6 *of creating an independent professional organization for*
7 *rating analysts employed by nationally recognized statis-*
8 *tical rating organizations that would be responsible for—*

9 (1) *establishing independent standards for gov-*
10 *erning the profession of rating analysts;*

11 (2) *establishing a code of ethical conduct; and*

12 (3) *overseeing the profession of rating analysts.*

13 (b) *REPORT.*—*Not later than 1 year after the date of*
14 *enactment of this Act, the Comptroller General shall submit*
15 *to the Committee on Banking, Housing, and Urban Affairs*
16 *of the Senate and the Committee on Financial Services of*
17 *the House of Representatives a report on the results of the*
18 *study conducted under subsection (a).*

19 **SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.**

20 *Section 15E of the Securities Exchange Act of 1934*
21 *(15 U.S.C. 78o–7), as amended by this Act, is amended by*
22 *adding at the end the following:*

23 “(w) **INITIAL CREDIT RATING ASSIGNMENTS.**—

24 “(1) **DEFINITIONS.**—*In this subsection the fol-*
25 *lowing definitions shall apply:*

1 “(A) *BOARD*.—The term ‘Board’ means the
2 *Credit Rating Agency Board* established under
3 paragraph (2).

4 “(B) *QUALIFIED NATIONALLY RECOGNIZED*
5 *STATISTICAL RATING ORGANIZATION*.—The term
6 ‘qualified nationally recognized statistical rating
7 organization’, with respect to a category of struc-
8 tured finance products, means a nationally rec-
9 ognized statistical rating organization that the
10 Board determines, under paragraph (3)(B), to be
11 qualified to issue initial credit ratings with re-
12 spect to such category.

13 “(C) *REGULATIONS*.—

14 “(i) *CATEGORY OF STRUCTURED FI-*
15 *NANCE PRODUCTS*.—

16 “(I) *IN GENERAL*.—The term ‘cat-
17 egory of structured finance products’—

18 “(aa) shall include any asset
19 backed security and any struc-
20 tured product based on an asset-
21 backed security; and

22 “(bb) shall be further defined
23 and expanded by the Commission,
24 by rule, as necessary.

1 “(II) CONSIDERATIONS.—*In*
2 *issuing the regulations required under*
3 *subclause (I), the Commission shall*
4 *consider—*

5 “*(aa) the types of issuers*
6 *that issue structured finance prod-*
7 *ucts;*

8 “*(bb) the types of investors*
9 *who purchase structured finance*
10 *products;*

11 “*(cc) the different categories*
12 *of structured finance products ac-*
13 *ording to—*

14 “*(AA) the types of cap-*
15 *ital flow and legal structure*
16 *used;*

17 “*(BB) the types of un-*
18 *derlying products used; and*

19 “*(CC) the types of terms*
20 *used in debt securities;*

21 “*(dd) the different values of*
22 *debt securities; and*

23 “*(ee) the different numbers of*
24 *units of debt securities that are*
25 *issued together.*

1 “(i) *REASONABLE FEE.*—*The Board*
2 *shall issue regulations to define the term*
3 *‘reasonable fee’.*

4 “(2) *CREDIT RATING AGENCY BOARD.*—

5 “(A) *IN GENERAL.*—*Not later than 180*
6 *days after the date of enactment of the Restoring*
7 *American Financial Stability Act of 2010, the*
8 *Commission shall—*

9 “(i) *establish the Credit Rating Agency*
10 *Board, which shall be a self-regulatory orga-*
11 *nization;*

12 “(ii) *subject to subparagraph (C), se-*
13 *lect the initial members of the Board; and*

14 “(iii) *establish a schedule to ensure*
15 *that the Board begins assigning qualified*
16 *nationally recognized statistical rating or-*
17 *ganizations to provide initial ratings not*
18 *later than 1 year after the selection of the*
19 *members of the Board.*

20 “(B) *SCHEDULE.*—*The schedule established*
21 *under subparagraph (A)(iii) shall prescribe*
22 *when—*

23 “(i) *the Board will conduct a study of*
24 *the securitization and ratings process and*

1 *provide recommendations to the Commis-*
2 *sion;*

3 “(ii) *the Commission will issue rules*
4 *and regulations under this section;*

5 “(iii) *the Board may issue rules under*
6 *this subsection; and*

7 “(iv) *the Board will—*

8 “(I) *begin accepting applications*
9 *to select qualified national recognized*
10 *statistical rating organizations; and*

11 “(II) *begin assigning qualified*
12 *national recognized statistical rating*
13 *organizations to provide initial rat-*
14 *ings.*

15 “(C) *MEMBERSHIP.—*

16 “(i) *IN GENERAL.—The Board shall*
17 *initially be composed of an odd number of*
18 *members selected from the industry, with*
19 *the total numerical membership of the*
20 *Board to be determined by the Commission.*

21 “(ii) *SPECIFICATIONS.—Of the mem-*
22 *bers initially selected to serve on the*
23 *Board—*

24 “(I) *not less than a majority of*
25 *the members shall be representatives of*

1 *the investor industry who do not rep-*
2 *resent issuers;*

3 “(II) *not less than 1 member*
4 *should be a representative of the issuer*
5 *industry;*

6 “(III) *not less than 1 member*
7 *should be a representative of the credit*
8 *rating agency industry; and*

9 “(IV) *not less than 1 member*
10 *should be an independent member.*

11 “(iii) *TERMS.—Initial members shall*
12 *be appointed by the Commission for a term*
13 *of 4 years.*

14 “(iv) *NOMINATION AND ELECTION OF*
15 *MEMBERS.—*

16 “(I) *IN GENERAL.—Prior to the*
17 *expiration of the terms of office of the*
18 *initial members, the Commission shall*
19 *establish fair procedures for the nomi-*
20 *nation and election of future members*
21 *of the Board.*

22 “(II) *MODIFICATIONS OF THE*
23 *BOARD.—Prior to the expiration of the*
24 *terms of office of the initial members,*
25 *the Commission—*

1 “(aa) may increase the size
2 of the board to a larger odd num-
3 ber and adjust the length of future
4 terms; and

5 “(bb) shall retain the com-
6 position of members described in
7 clause (ii).

8 “(v) *RESPONSIBILITIES OF MEM-*
9 *BERS.—Members shall perform, at a min-*
10 *imum, the duties described in this sub-*
11 *section.*

12 “(vi) *RULEMAKING AUTHORITY.—The*
13 *Commission shall, if it determines necessary*
14 *and appropriate, issue further rules and*
15 *regulations on the composition of the mem-*
16 *bership of the Board and the responsibilities*
17 *of the members.*

18 “(D) *OTHER AUTHORITIES OF THE*
19 *BOARD.—The Board shall have the authority to*
20 *levy fees from qualified nationally recognized*
21 *statistical rating organization applicants, and*
22 *periodically from qualified nationally recognized*
23 *statistical rating organizations as necessary to*
24 *fund expenses of the Board.*

1 “(E) *REGULATION.*—*The Commission has*
2 *the authority to regulate the activities of the*
3 *Board, and issue any further regulations of the*
4 *Board it deems necessary, not in contravention*
5 *with the intent of this section.*

6 “(3) *BOARD SELECTION OF QUALIFIED NATION-*
7 *ALLY RECOGNIZED STATISTICAL RATING ORGANIZA-*
8 *TION.*—

9 “(A) *APPLICATION.*—

10 “(i) *IN GENERAL.*—*A nationally recog-*
11 *nized statistical rating organization may*
12 *submit an application to the Board, in such*
13 *form and manner as the Board may re-*
14 *quire, to become a qualified nationally rec-*
15 *ognized statistical rating organization with*
16 *respect to a category of structured finance*
17 *products.*

18 “(ii) *CONTENTS.*—*An application sub-*
19 *mitted under clause (i) shall contain—*

20 “(I) *information regarding the in-*
21 *stitutional and technical capacity of*
22 *the nationally recognized statistical*
23 *rating organization to issue credit rat-*
24 *ings;*

1 “(II) information on whether the
2 nationally recognized statistical rating
3 organization has been exempted by the
4 Commission from any requirements
5 under any other provision of this sec-
6 tion; and

7 “(III) any additional information
8 the Board may require.

9 “(iii) *REJECTION OF APPLICATIONS.*—
10 The Board may reject an application sub-
11 mitted under this paragraph if the nation-
12 ally recognized statistical rating organiza-
13 tion has been exempted by the Commission
14 from any requirements under any other
15 provision of this section.

16 “(B) *SELECTION.*—The Board shall select
17 qualified national recognized statistical rating
18 organizations with respect to each category of
19 structured finance products from among nation-
20 ally recognized statistical rating organizations
21 that submit applications under subparagraph
22 (A).

23 “(C) *RETENTION OF STATUS AND OBLIGA-*
24 *TIONS AFTER SELECTION.*—An entity selected as
25 a qualified nationally recognized statistical rat-

1 *ing organization shall retain its status and obli-*
2 *gations under the law as a nationally recognized*
3 *statistical rating organization, and nothing in*
4 *this subsection grants authority to the Commis-*
5 *sion or the Board to exempt qualified nationally*
6 *recognized statistical rating organizations from*
7 *obligations or requirements otherwise imposed by*
8 *Federal law on nationally recognized statistical*
9 *rating organizations.*

10 “(4) *REQUESTING AN INITIAL CREDIT RATING.*—

11 *An issuer that seeks an initial credit rating for a*
12 *structured finance product—*

13 “(A) *may not request an initial credit rat-*
14 *ing from a nationally recognized statistical rat-*
15 *ing organization; and*

16 “(B) *shall submit a request for an initial*
17 *credit rating to the Board, in such form and*
18 *manner as the Board may prescribe.*

19 “(5) *ASSIGNMENT OF RATING DUTIES.*—

20 “(A) *IN GENERAL.*—*For each request re-*
21 *ceived by the Board under paragraph (4)(B), the*
22 *Board shall select a qualified nationally recog-*
23 *nized statistical rating organization to provide*
24 *the initial credit rating to the issuer.*

25 “(B) *METHOD OF SELECTION.*—

1 “(i) *IN GENERAL.*—*The Board shall—*

2 “(I) *evaluate a number of selec-*
3 *tion methods, including a lottery or ro-*
4 *tating assignment system, incor-*
5 *porating the factors described in clause*
6 *(ii), to reduce the conflicts of interest*
7 *that exist under the issuer-pays model;*
8 *and*

9 “(II) *prescribe and publish the se-*
10 *lection method to be used under sub-*
11 *paragraph (A).*

12 “(ii) *CONSIDERATION.*—*In evaluating*
13 *a selection method described in clause (i)(I),*
14 *the Board shall consider—*

15 “(I) *the information submitted by*
16 *the qualified nationally recognized sta-*
17 *tistical rating organization under*
18 *paragraph (3)(A)(ii) regarding the in-*
19 *stitutional and technical capacity of*
20 *the qualified nationally recognized sta-*
21 *tistical rating organization to issue*
22 *credit ratings;*

23 “(II) *evaluations conducted under*
24 *paragraph (7);*

1 “(III) *formal feedback from insti-*
2 *tutional investors; and*

3 “(IV) *information from subclauses*
4 *(I) and (II) to implement a mecha-*
5 *nism which increases or decreases as-*
6 *signments based on past performance.*

7 “(iii) *PROHIBITION.—The Board, in*
8 *choosing a selection method, may not use a*
9 *method that would allow for the solicitation*
10 *or consideration of the preferred national*
11 *recognized statistical rating organizations*
12 *of the issuer.*

13 “(iv) *ADJUSTMENT OF PROCESS.—The*
14 *Board shall issue rules describing the proc-*
15 *ess by which it can modify the assignment*
16 *process described in clause (i).*

17 “(C) *RIGHT OF REFUSAL.—*

18 “(i) *REFUSAL.—A qualified nationally*
19 *recognized statistical rating organization*
20 *selected under subparagraph (A) may refuse*
21 *to accept a selection for a particular request*
22 *by—*

23 “(I) *notifying the Board of such*
24 *refusal; and*

1 “(II) submitting to the Board a
2 written explanation of the refusal.

3 “(ii) *SELECTION*.—Upon receipt of a
4 notification under clause (i), the Board
5 shall make an additional selection under
6 subparagraph (A).

7 “(iii) *INSPECTION REPORTS*.—The
8 Board shall annually submit any expla-
9 nations of refusals received under clause
10 (i)(II) to the Commission, and such explan-
11 atory submissions shall be published in the
12 annual inspection reports required under
13 subsection (p)(3)(C).

14 “(6) *DISCLAIMER REQUIRED*.—Each initial
15 credit rating issued under this subsection shall in-
16 clude, in writing, the following disclaimer: ‘This ini-
17 tial rating has not been evaluated, approved, or cer-
18 tified by the Government of the United States or by
19 a Federal agency.’

20 “(7) *EVALUATION OF PERFORMANCE*.—

21 “(A) *IN GENERAL*.—The Board shall pre-
22 scribe rules by which the Board will evaluate the
23 performance of each qualified nationally recog-
24 nized statistical rating organization, including
25 rules that require, at a minimum, an annual

1 *evaluation of each qualified nationally recog-*
2 *nized statistical rating organization.*

3 “(B) *CONSIDERATIONS.—The Board, in*
4 *conducting an evaluation under subparagraph*
5 *(A), shall consider—*

6 “(i) *the results of the annual examina-*
7 *tion conducted under subsection (p)(3);*

8 “(ii) *surveillance of credit ratings con-*
9 *ducted by the qualified nationally recog-*
10 *nized statistical rating organization after*
11 *the credit ratings are issued, including—*

12 “(I) *how the rated instruments*
13 *perform;*

14 “(II) *the accuracy of the ratings*
15 *provided by the qualified nationally*
16 *recognized statistical rating organiza-*
17 *tion as compared to the other nation-*
18 *ally recognized statistical rating orga-*
19 *nizations; and*

20 “(III) *the effectiveness of the*
21 *methodologies used by the qualified na-*
22 *tionally recognized statistical rating*
23 *organization; and*

24 “(iii) *any additional factors the Board*
25 *determines to be relevant.*

1 “(C) *REQUEST FOR REEVALUATION.*—Sub-
2 *ject to rules prescribed by the Board, and not less*
3 *frequently than once a year, a qualified nation-*
4 *ally recognized statistical rating organization*
5 *may request that the Board conduct an evalua-*
6 *tion under this paragraph.*

7 “(D) *DISCLOSURE.*—*The Board shall make*
8 *the evaluations conducted under this paragraph*
9 *available to Congress.*

10 “(8) *RATING FEES CHARGED TO ISSUERS.*—

11 “(A) *LIMITED TO REASONABLE FEES.*—*A*
12 *qualified nationally recognized statistical rating*
13 *organization shall charge an issuer a reasonable*
14 *fee, as determined by the Commission, for an*
15 *initial credit rating provided under this section.*

16 “(B) *FEES.*—*Fees may be determined by*
17 *the qualified national recognized statistical rat-*
18 *ing organizations unless the Board determines it*
19 *is necessary to issue rules on fees.*

20 “(9) *NO PROHIBITION ON ADDITIONAL RAT-*
21 *INGS.*—*Nothing in this section shall prohibit an*
22 *issuer from requesting or receiving additional credit*
23 *ratings with respect to a debt security, if the initial*
24 *credit rating is provided in accordance with this sec-*
25 *tion.*

1 “(10) *NO PROHIBITION ON INDEPENDENT RAT-*
2 *INGS OFFERED BY NATIONALLY RECOGNIZED STATIS-*
3 *TICAL RATING ORGANIZATIONS.—*

4 “(A) *IN GENERAL.—Nothing in this section*
5 *shall prohibit a nationally recognized statistical*
6 *rating organization from independently pro-*
7 *viding a credit rating with respect to a debt se-*
8 *curity, if—*

9 “(i) *the nationally recognized statis-*
10 *tical rating organization does not enter into*
11 *a contract with the issuer of the debt secu-*
12 *rity to provide the initial credit rating; and*

13 “(ii) *the nationally recognized statis-*
14 *tical rating organization is not paid by the*
15 *issuer of the debt security to provide the ini-*
16 *tial credit rating.*

17 “(B) *RULE OF CONSTRUCTION.—For pur-*
18 *poses of this section, a credit rating described in*
19 *subparagraph (A) may not be construed to be an*
20 *initial credit rating.*

21 “(11) *PUBLIC COMMUNICATIONS.—Any commu-*
22 *nications made with the public by an issuer with re-*
23 *spect to the credit rating of a debt security shall*
24 *clearly specify whether the credit rating was made*
25 *by—*

1 “(A) a qualified nationally recognized sta-
2 tistical rating organization selected under para-
3 graph (5)(A) to provide the initial credit rating
4 for such debt security; or

5 “(B) a nationally recognized statistical rat-
6 ing organization not selected under paragraph
7 (5)(A).

8 “(12) *PROHIBITION ON MISREPRESENTATION.*—
9 With respect to a debt security, it shall be unlawful
10 for any person to misrepresent any subsequent credit
11 rating provided for such debt security as an initial
12 credit rating provided for such debt security by a
13 qualified nationally recognized statistical rating orga-
14 nization selected under paragraph (5)(A).

15 “(13) *INITIAL CREDIT RATING REVISION AFTER*
16 *MATERIAL CHANGE IN CIRCUMSTANCE.*—If the Board
17 determines that it is necessary or appropriate in the
18 public interest or for the protection of investors, the
19 Board may issue regulations requiring that an issuer
20 that has received an initial credit rating under this
21 subsection request a revised initial credit rating,
22 using the same method as provided under paragraph
23 (4), each time the issuer experiences a material
24 change in circumstances, as defined by the Board.

25 “(14) *CONFLICTS.*—

1 “(A) *MEMBERS OR EMPLOYEES OF THE*
2 *BOARD.*—

3 “(i) *LOAN OF MONEY OR SECURITIES*
4 *PROHIBITED.*—

5 “(I) *IN GENERAL.*—*A member or*
6 *employee of the Board shall not accept*
7 *any loan of money or securities, or*
8 *anything above nominal value, from*
9 *any nationally recognized statistical*
10 *rating organization, issuer, or investor.*

11 “(II) *EXCEPTION.*—*The prohibi-*
12 *tion in subclause (I) does not apply to*
13 *a loan made in the context of disclosed,*
14 *routine banking and brokerage agree-*
15 *ments, or a loan that is clearly moti-*
16 *vated by a personal or family relation-*
17 *ship.*

18 “(ii) *EMPLOYMENT NEGOTIATIONS*
19 *PROHIBITION.*—*A member or employee of*
20 *the Board shall not engage in employment*
21 *negotiations with any nationally recognized*
22 *statistical rating organization, issuer, or in-*
23 *vestor, unless the member or employee—*

1 “(I) *discloses the negotiations im-*
2 *mediately upon initiation of the nego-*
3 *tiations; and*

4 “(II) *recuses himself from all pro-*
5 *ceedings concerning the entity involved*
6 *in the negotiations until termination*
7 *of negotiations or until termination of*
8 *his employment by the Board, if an*
9 *offer of employment is accepted.*

10 “(B) *CREDIT ANALYSTS.—*

11 “(i) *IN GENERAL.—A credit analyst of*
12 *a qualified nationally recognized statistical*
13 *rating organization shall not accept any*
14 *loan of money or securities, or anything*
15 *above nominal value, from any issuer or in-*
16 *vestor.*

17 “(ii) *EXCEPTION.—The prohibition de-*
18 *scribed in clause (i) does not apply to a*
19 *loan made in the context of disclosed, rou-*
20 *tine banking and brokerage agreements, or*
21 *a loan that is clearly motivated by a per-*
22 *sonal or family relationship.*

23 “(15) *EVALUATION OF CREDIT RATING AGENCY*
24 *BOARD.—Not later than 5 years after the date that*
25 *the Board begins assigning qualified nationally recog-*

1 *nized statistical rating organizations to provide ini-*
 2 *tial ratings, the Commission shall submit to Congress*
 3 *a report that provides recommendations of—*

4 “(A) *the continuation of the Board;*

5 “(B) *any modification to the procedures of*
 6 *the Board; and*

7 “(C) *modifications to the provisions in this*
 8 *subsection.*”.

9 ***Subtitle D—Improvements to the***
 10 ***Asset-Backed Securitization Process***

11 ***SEC. 941. REGULATION OF CREDIT RISK RETENTION.***

12 *(a) DEFINITION OF ASSET-BACKED SECURITY.—Sec-*
 13 *tion 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.*
 14 *78c(a)) is amended by adding at the end the following:*

15 “(77) *ASSET-BACKED SECURITY.—The term*
 16 *‘asset-backed security’—*

17 “(A) *means a fixed-income or other security*
 18 *collateralized by any type of self-liquidating fi-*
 19 *nancial asset (including a loan, a lease, a mort-*
 20 *gage, or a secured or unsecured receivable) that*
 21 *allows the holder of the security to receive pay-*
 22 *ments that depend primarily on cash flow from*
 23 *the asset, including—*

24 “(i) *a collateralized mortgage obliga-*
 25 *tion;*

1 “(ii) a collateralized debt obligation;
 2 “(iii) a collateralized bond obligation;
 3 “(iv) a collateralized debt obligation of
 4 asset-backed securities;
 5 “(v) a collateralized debt obligation of
 6 collateralized debt obligations; and
 7 “(vi) a security that the Commission,
 8 by rule, determines to be an asset-backed se-
 9 curity for purposes of this section; and
 10 “(B) does not include a security issued by
 11 a finance subsidiary held by the parent company
 12 or a company controlled by the parent company,
 13 if none of the securities issued by the finance
 14 subsidiary are held by an entity that is not con-
 15 trolled by the parent company.”.

16 (b) *CREDIT RISK RETENTION.*—*The Securities Ex-*
 17 *change Act of 1934 (15 U.S.C. 78a et seq.) is amended by*
 18 *inserting after section 15F, as added by this Act, the fol-*
 19 *lowing:*

20 **“SEC. 15G. CREDIT RISK RETENTION.**

21 “(a) *DEFINITIONS.*—*In this section—*

22 “(1) the term ‘Federal banking agencies’ means
 23 the Office of the Comptroller of the Currency, the
 24 Board of Governors of the Federal Reserve System,
 25 and the Federal Deposit Insurance Corporation;

1 “(2) *the term ‘insured depository institution’ has*
2 *the same meaning as in section 3(c) of the Federal*
3 *Deposit Insurance Act (12 U.S.C. 1813(c));*

4 “(3) *the term ‘securitizer’ means—*

5 “(A) *an issuer of an asset-backed security;*

6 *or*

7 “(B) *a person who organizes and initiates*
8 *an asset-backed securities transaction by selling*
9 *or transferring assets, either directly or indi-*
10 *rectly, including through an affiliate, to the*
11 *issuer; and*

12 “(4) *the term ‘originator’ means a person who—*

13 “(A) *through the extension of credit or oth-*
14 *erwise, creates a financial asset that*
15 *collateralizes an asset-backed security; and*

16 “(B) *sells an asset to a securitizer.*

17 “(b) *IN GENERAL.—Not later than 270 days after the*
18 *date of enactment of this section, the Federal banking agen-*
19 *cies and the Commission shall jointly prescribe regulations*
20 *to require any securitizer to retain an economic interest in*
21 *a portion of the credit risk for any asset that the securitizer,*
22 *through the issuance of an asset-backed security, transfers,*
23 *sells, or conveys to a third party.*

24 “(c) *STANDARDS FOR REGULATIONS.—*

1 “(1) *STANDARDS.*—*The regulations prescribed*
2 *under subsection (b) shall—*

3 “(A) *prohibit a securitizer from directly or*
4 *indirectly hedging or otherwise transferring the*
5 *credit risk that the securitizer is required to re-*
6 *tain with respect to an asset;*

7 “(B) *require a securitizer to retain—*

8 “(i) *not less than 5 percent of the cred-*
9 *it risk for any asset—*

10 “(I) *that is not a qualified resi-*
11 *dential mortgage that is transferred,*
12 *sold, or conveyed through the issuance*
13 *of an asset-backed security by the*
14 *securitizer; or*

15 “(II) *that is a qualified residen-*
16 *tial mortgage that is transferred, sold,*
17 *or conveyed through the issuance of an*
18 *asset-backed security by the securitizer,*
19 *if 1 or more of the assets that*
20 *collateralize the asset-backed security*
21 *are not qualified residential mortgages;*
22 *or*

23 “(ii) *less than 5 percent of the credit*
24 *risk for an asset that is not a qualified resi-*
25 *dential mortgage that is transferred, sold, or*

1 *conveyed through the issuance of an asset-*
2 *backed security by the securitizer, if the*
3 *originator of the asset meets the under-*
4 *writing standards prescribed under para-*
5 *graph (2)(B);*

6 “(C) specify—

7 “(i) *the permissible forms of risk reten-*
8 *tion for purposes of this section;*

9 “(ii) *the minimum duration of the risk*
10 *retention required under this section; and*

11 “(iii) *that a securitizer is not required*
12 *to retain any part of the credit risk for an*
13 *asset that is transferred, sold or conveyed*
14 *through the issuance of an asset-backed se-*
15 *curity by the securitizer, if all of the assets*
16 *that collateralize the asset-backed security*
17 *are qualified residential mortgages;*

18 “(D) *apply, regardless of whether the*
19 *securitizer is an insured depository institution;*
20 *and*

21 “(E) *with respect to a commercial mort-*
22 *gage, specify the permissible types, forms, and*
23 *amounts of risk retention that would meet the re-*
24 *quirements of subparagraph (B), such as—*

1 “(i) retention of a specified amount or
2 percentage of the total credit risk of the
3 asset;

4 “(ii) retention of the first-loss position
5 by a third-party purchaser that specifically
6 negotiates for the purchase of such first-loss
7 position and provides due diligence on all
8 individual assets in the pool before the
9 issuance of the asset-backed securities;

10 “(iii) a determination by a Federal
11 banking agency or the Commission that the
12 underwriting standards and controls for the
13 asset are adequate; and

14 “(iv) provision of adequate representa-
15 tions and warranties and related enforce-
16 ment mechanisms; and

17 “(F) provide for—

18 “(i) a total or partial exemption of
19 any securitization, as may be appropriate
20 in the public interest and for the protection
21 of investors; and

22 “(ii) the allocation of risk retention ob-
23 ligations between a securitizer and an origi-
24 nator in the case of a securitizer that pur-
25 chases assets from an originator, as the Fed-

1 *eral banking agencies and the Commission*
2 *jointly determine appropriate.*

3 “(2) *ASSET CLASSES.*—

4 “(A) *ASSET CLASSES.*—*The regulations pre-*
5 *scribed under subsection (b) shall establish asset*
6 *classes with separate rules for securitizers of dif-*
7 *ferent classes of assets, including residential*
8 *mortgages, commercial mortgages, commercial*
9 *loans, auto loans, and any other class of assets*
10 *that the Federal banking agencies and the Com-*
11 *mission deem appropriate.*

12 “(B) *CONTENTS.*—*For each asset class es-*
13 *tablished under subparagraph (A), the regula-*
14 *tions prescribed under subsection (b) shall estab-*
15 *lish underwriting standards that specify the*
16 *terms, conditions, and characteristics of a loan*
17 *within the asset class that indicate a reduced*
18 *credit risk with respect to the loan.*

19 “(d) *ORIGINATORS.*—*In determining how to allocate*
20 *risk retention obligations between a securitizer and an*
21 *originator under subsection (c)(1)(E)(ii), the Federal bank-*
22 *ing agencies and the Commission shall—*

23 “(1) *reduce the percentage of risk retention obli-*
24 *gations required of the securitizer by the percentage of*

1 *risk retention obligations required of the originator;*
2 *and*

3 “(2) *consider—*

4 “(A) *whether the assets sold to the*
5 *securitizer have terms, conditions, and character-*
6 *istics that reflect reduced credit risk;*

7 “(B) *whether the form or volume of trans-*
8 *actions in securitization markets creates incen-*
9 *tives for imprudent origination of the type of*
10 *loan or asset to be sold to the securitizer; and*

11 “(C) *the potential impact of the risk reten-*
12 *tion obligations on the access of consumers and*
13 *businesses to credit on reasonable terms, which*
14 *may not include the transfer of credit risk to a*
15 *third party.*

16 “(e) *EXEMPTIONS, EXCEPTIONS, AND ADJUST-*
17 *MENTS.—*

18 “(1) *IN GENERAL.—The Federal banking agen-*
19 *cies and the Commission may jointly adopt or issue*
20 *exemptions, exceptions, or adjustments to the rules*
21 *issued under this section, including exemptions, ex-*
22 *ceptions, or adjustments for classes of institutions or*
23 *assets relating to the risk retention requirement and*
24 *the prohibition on hedging under subsection (c)(1).*

1 “(2) *APPLICABLE STANDARDS.*—*Any exemption,*
2 *exception, or adjustment adopted or issued by the*
3 *Federal banking agencies and the Commission under*
4 *this paragraph shall—*

5 “(A) *help ensure high quality underwriting*
6 *standards for the securitizers and originators of*
7 *assets that are securitized or available for*
8 *securitization; and*

9 “(B) *encourage appropriate risk manage-*
10 *ment practices by the securitizers and origina-*
11 *tors of assets, improve the access of consumers*
12 *and businesses to credit on reasonable terms, or*
13 *otherwise be in the public interest and for the*
14 *protection of investors.*

15 “(3) *FARM CREDIT SYSTEM INSTITUTIONS.*—*A*
16 *Farm Credit System institution, including the Fed-*
17 *eral Agricultural Mortgage Corporation, that is char-*
18 *tered and subject to the provisions of the Farm Credit*
19 *Act of 1971, as amended (12 U.S.C. 2001 et seq.),*
20 *shall be exempt from the risk retention provisions of*
21 *this subsection.*

22 “(4) *EXEMPTION FOR QUALIFIED RESIDENTIAL*
23 *MORTGAGES.*—

24 “(A) *IN GENERAL.*—*The Federal banking*
25 *agencies, the Commission, the Secretary of Hous-*

1 *ing and Urban Development, and the Director of*
2 *the Federal Housing Finance Agency shall joint-*
3 *ly issue regulations to exempt qualified residen-*
4 *tial mortgages from the risk retention require-*
5 *ments of this subsection.*

6 “(B) *QUALIFIED RESIDENTIAL MORT-*
7 *GAGE.—The Federal banking agencies, the Com-*
8 *mission, the Secretary of Housing and Urban*
9 *Development, and the Director of the Federal*
10 *Housing Finance Agency shall jointly define the*
11 *term ‘qualified residential mortgage’ for purposes*
12 *of this subsection, taking into consideration un-*
13 *derwriting and product features that historical*
14 *loan performance data indicate result in a lower*
15 *risk of default, such as—*

16 *“(i) documentation and verification of*
17 *the financial resources relied upon to qual-*
18 *ify the mortgagor;*

19 *“(ii) standards with respect to—*

20 *“(I) the residual income of the*
21 *mortgagor after all monthly obliga-*
22 *tions;*

23 *“(II) the ratio of the housing pay-*
24 *ments of the mortgagor to the monthly*
25 *income of the mortgagor;*

1 “(III) *the ratio of total monthly*
2 *installment payments of the mortgagor*
3 *to the income of the mortgagor;*

4 “(iii) *mitigating the potential for pay-*
5 *ment shock on adjustable rate mortgages*
6 *through product features and underwriting*
7 *standards;*

8 “(iv) *mortgage guarantee insurance ob-*
9 *tained at the time of origination for loans*
10 *with combined loan-to-value ratios of great-*
11 *er than 80 percent; and*

12 “(v) *prohibiting or restricting the use*
13 *of balloon payments, negative amortization,*
14 *prepayment penalties, interest-only pay-*
15 *ments, and other features that have been*
16 *demonstrated to exhibit a higher risk of bor-*
17 *rower default.*

18 “(5) *CONDITION FOR QUALIFIED RESIDENTIAL*
19 *MORTGAGE EXEMPTION.—The regulations issued*
20 *under paragraph (4) shall provide that an asset-*
21 *backed security that is collateralized by tranches of*
22 *other asset-backed securities shall not be exempt from*
23 *the risk retention requirements of this subsection.*

24 “(6) *CERTIFICATION.—The Commission shall re-*
25 *quire an issuer to certify, for each issuance of an*

1 *asset-backed security collateralized exclusively by*
2 *qualified residential mortgages, that the issuer has*
3 *evaluated the effectiveness of the internal supervisory*
4 *controls of the issuer with respect to the process for*
5 *ensuring that all assets that collateralize the asset-*
6 *backed security are qualified residential mortgages.*

7 “(f) *ENFORCEMENT.*—*The regulations issued under*
8 *this section shall be enforced by—*

9 “(1) *the appropriate Federal banking agency,*
10 *with respect to any securitizer that is an insured de-*
11 *pository institution; and*

12 “(2) *the Commission, with respect to any*
13 *securitizer that is not an insured depository institu-*
14 *tion.*

15 “(g) *AUTHORITY OF COMMISSION.*—*The authority of*
16 *the Commission under this section shall be in addition to*
17 *the authority of the Commission to otherwise enforce the*
18 *securities laws.*

19 “(h) *EFFECTIVE DATE OF REGULATIONS.*—*The regu-*
20 *lations issued under this section shall become effective—*

21 “(1) *with respect to securitizers and originators*
22 *of asset-backed securities backed by residential mort-*
23 *gages, 1 year after the date on which final rules under*
24 *this section are published in the Federal Register; and*

1 “(2) with respect to securitizers and originators
2 of all other classes of asset-backed securities, 2 years
3 after the date on which final rules under this section
4 are published in the Federal Register.”.

5 **SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-**
6 **BACKED SECURITIES.**

7 (a) *SECURITIES EXCHANGE ACT OF 1934.*—Section
8 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.
9 78o(d)) is amended—

10 (1) by striking “(d) Each” and inserting the fol-
11 lowing:

12 “(d) *SUPPLEMENTARY AND PERIODIC INFORMA-*
13 *TION.*—

14 “(1) *IN GENERAL.*—Each”;

15 (2) in the third sentence, by inserting after “se-
16 curities of each class” the following: “, other than any
17 class of asset-backed securities,”; and

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

19 “(2) *ASSET-BACKED SECURITIES.*—

20 “(A) *SUSPENSION OF DUTY TO FILE.*—The
21 Commission may, by rule or regulation, provide
22 for the suspension or termination of the duty to
23 file under this subsection for any class of asset-
24 backed security, on such terms and conditions
25 and for such period or periods as the Commis-

1 *sion deems necessary or appropriate in the pub-*
2 *lic interest or for the protection of investors.*

3 “(B) *CLASSIFICATION OF ISSUERS.*—*The*
4 *Commission may, for purposes of this subsection,*
5 *classify issuers and prescribe requirements ap-*
6 *propriate for each class of issuers of asset-backed*
7 *securities.”.*

8 (b) *SECURITIES ACT OF 1933.*—*Section 7 of the Secu-*
9 *rities Act of 1933 (15 U.S.C. 77g) is amended by adding*
10 *at the end the following:*

11 “(c) *DISCLOSURE REQUIREMENTS.*—

12 “(1) *IN GENERAL.*—*The Commission shall adopt*
13 *regulations under this subsection requiring each*
14 *issuer of an asset-backed security to disclose, for each*
15 *tranche or class of security, information regarding the*
16 *assets backing that security.*

17 “(2) *CONTENT OF REGULATIONS.*—*In adopting*
18 *regulations under this subsection, the Commission*
19 *shall—*

20 “(A) *set standards for the format of the*
21 *data provided by issuers of an asset-backed secu-*
22 *rity, which shall, to the extent feasible, facilitate*
23 *comparison of such data across securities in*
24 *similar types of asset classes; and*

1 “(B) require issuers of asset-backed securi-
2 ties, at a minimum, to disclose asset-level or
3 loan-level data necessary for investors to inde-
4 pendently perform due diligence, including—

5 “(i) data having unique identifiers re-
6 lating to loan brokers or originators;

7 “(ii) the nature and extent of the com-
8 pensation of the broker or originator of the
9 assets backing the security; and

10 “(iii) the amount of risk retention by
11 the originator and the securitizer of such as-
12 sets.”.

13 **SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-**
14 **BACKED OFFERINGS.**

15 *Not later than 180 days after the date of enactment*
16 *of this Act, the Securities and Exchange Commission shall*
17 *prescribe regulations on the use of representations and war-*
18 *ranties in the market for asset-backed securities (as that*
19 *term is defined in section 3(a)(77) of the Securities Ex-*
20 *change Act of 1934, as added by this subtitle) that—*

21 (1) *require each national recognized statistical*
22 *rating organization to include in any report accom-*
23 *panying a credit rating a description of—*

24 (A) *the representations, warranties, and en-*
25 *forcement mechanisms available to investors; and*

1 (B) how they differ from the representa-
2 tions, warranties, and enforcement mechanisms
3 in issuances of similar securities; and

4 (2) require any securitizer (as that term is de-
5 fined in section 15G(a) of the Securities Exchange
6 Act of 1934, as added by this subtitle) to disclose ful-
7 filled and unfulfilled repurchase requests across all
8 trusts aggregated by the securitizer, so that investors
9 may identify asset originators with clear under-
10 writing deficiencies.

11 **SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURI-**
12 **TIES ACT OF 1933.**

13 (a) *EXEMPTION ELIMINATED.*—Section 4 of the Secu-
14 rities Act of 1933 (15 U.S.C. 77d) is amended—

15 (1) by striking paragraph (5); and

16 (2) by striking “(6) transactions” and inserting
17 the following:

18 “(5) transactions”.

19 (b) **CONFORMING AMENDMENT.**—Section
20 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934
21 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking
22 “4(6)” and inserting “4(5)”.

1 **SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN**
2 **ASSET-BACKED SECURITIES ISSUES.**

3 *Section 7 of the Securities Act of 1933 (15 U.S.C. 77g),*
4 *as amended by this subtitle, is amended by adding at the*
5 *end the following:*

6 “(d) *REGISTRATION STATEMENT FOR ASSET-BACKED*
7 *SECURITIES.—Not later than 180 days after the date of en-*
8 *actment of this subsection, the Commission shall issue rules*
9 *relating to the registration statement required to be filed*
10 *by any issuer of an asset-backed security (as that term is*
11 *defined in section 3(a)(77) of the Securities Exchange Act*
12 *of 1934) that require any issuer of an asset-backed secu-*
13 *rity—*

14 *“(1) to perform a due diligence analysis of the*
15 *assets underlying the asset-backed security; and*

16 *“(2) to disclose the nature of the analysis under*
17 *paragraph (1).”.*

18 ***Subtitle E—Accountability and***
19 ***Executive Compensation***

20 **SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-**
21 **TION DISCLOSURES.**

22 *The Securities Exchange Act of 1934 (15 U.S.C. 78a*
23 *et seq.) is amended by inserting after section 14 (15 U.S.C.*
24 *78n) the following:*

1 **“SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECU-**
2 **TIVE COMPENSATION.**

3 “(a) *SEPARATE RESOLUTION REQUIRED.*—Any proxy
4 or consent or authorization for an annual or other meeting
5 of the shareholders occurring after the end of the 6-month
6 period beginning on the date of enactment of this section,
7 for which the proxy solicitation rules of the Commission
8 require compensation disclosure, shall include a separate
9 resolution subject to shareholder vote to approve the com-
10 pensation of executives, as disclosed pursuant to section
11 229.402 of title 17, Code of Federal Regulations, or any
12 successor thereto.

13 “(b) *RULE OF CONSTRUCTION.*—The shareholder vote
14 referred to in subsection (a) shall not be binding on the
15 issuer or the board of directors of an issuer, and may not
16 be construed—

17 “(1) as overruling a decision by such issuer or
18 board of directors;

19 “(2) to create or imply any change to the fidu-
20 ciary duties of such issuer or board of directors;

21 “(3) to create or imply any additional fiduciary
22 duties for such issuer or board of directors; or

23 “(4) to restrict or limit the ability of share-
24 holders to make proposals for inclusion in proxy ma-
25 terials related to executive compensation.”.

1 **SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.**

2 *The Securities Exchange Act of 1934 (15 U.S.C. 78*
3 *et seq.) is amended by inserting after section 10B, as added*
4 *by section 753, the following:*

5 **“SEC. 10C. COMPENSATION COMMITTEES.**

6 **“(a) INDEPENDENCE OF COMPENSATION COMMIT-**
7 **TEES.—**

8 **“(1) LISTING STANDARDS.—***The Commission*
9 *shall, by rule, direct the national securities exchanges*
10 *and national securities associations to prohibit the*
11 *listing of any security of an issuer that does not com-*
12 *ply with the requirements of this subsection.*

13 **“(2) INDEPENDENCE OF COMPENSATION COMMIT-**
14 **TEES.—***The rules of the Commission under paragraph*
15 *(1) shall require that each member of the compensa-*
16 *tion committee of the board of directors of an issuer*
17 *be—*

18 **“(A) a member of the board of directors of**
19 **the issuer; and**

20 **“(B) independent.**

21 **“(3) INDEPENDENCE.—***The rules of the Commis-*
22 *sion under paragraph (1) shall require that, in deter-*
23 *mining the definition of the term ‘independence’ for*
24 *purposes of paragraph (2), the national securities ex-*
25 *changes and the national securities associations shall*
26 *consider relevant factors, including—*

1 “(A) *the source of compensation of a mem-*
2 *ber of the board of directors of an issuer, includ-*
3 *ing any consulting, advisory, or other compen-*
4 *satory fee paid by the issuer to such member of*
5 *the board of directors; and*

6 “(B) *whether a member of the board of di-*
7 *rectors of an issuer is affiliated with the issuer,*
8 *a subsidiary of the issuer, or an affiliate of a*
9 *subsidiary of the issuer.*

10 “(4) *EXEMPTION AUTHORITY.—The rules of the*
11 *Commission under paragraph (1) shall permit a na-*
12 *tional securities exchange or a national securities as-*
13 *sociation to exempt a particular relationship from the*
14 *requirements of paragraph (2), with respect to the*
15 *members of a compensation committee, as the na-*
16 *tional securities exchange or national securities asso-*
17 *ciation determines is appropriate, taking into consid-*
18 *eration the size of an issuer and any other relevant*
19 *factors.*

20 “(b) *INDEPENDENCE OF COMPENSATION CONSULTANTS*
21 *AND OTHER COMPENSATION COMMITTEE ADVISERS.—*

22 “(1) *IN GENERAL.—The compensation committee*
23 *of an issuer may only select a compensation consult-*
24 *ant, legal counsel, or other adviser to the compensa-*
25 *tion committee after taking into consideration the fac-*

1 *tors identified by the Commission under paragraph*
2 *(2).*

3 “(2) *RULES.—The Commission shall identify*
4 *factors that affect the independence of a compensation*
5 *consultant, legal counsel, or other adviser to a com-*
6 *penetration committee of an issuer, including—*

7 “(A) *the provision of other services to the*
8 *issuer by the person that employs the compensa-*
9 *tion consultant, legal counsel, or other adviser;*

10 “(B) *the amount of fees received from the*
11 *issuer by the person that employs the compensa-*
12 *tion consultant, legal counsel, or other adviser,*
13 *as a percentage of the total revenue of the person*
14 *that employs the compensation consultant, legal*
15 *counsel, or other adviser;*

16 “(C) *the policies and procedures of the per-*
17 *son that employs the compensation consultant,*
18 *legal counsel, or other adviser that are designed*
19 *to prevent conflicts of interest;*

20 “(D) *any business or personal relationship*
21 *of the compensation consultant, legal counsel, or*
22 *other adviser with a member of the compensation*
23 *committee; and*

1 “(E) any stock of the issuer owned by the
2 compensation consultant, legal counsel, or other
3 adviser.

4 “(c) COMPENSATION COMMITTEE AUTHORITY RELAT-
5 ING TO COMPENSATION CONSULTANTS.—

6 “(1) AUTHORITY TO RETAIN COMPENSATION CON-
7 SULTANT.—

8 “(A) IN GENERAL.—The compensation com-
9 mittee of an issuer, in its capacity as a com-
10 mittee of the board of directors, may, in its sole
11 discretion, retain or obtain the advice of a com-
12 pensation consultant.

13 “(B) DIRECT RESPONSIBILITY OF COM-
14 PENSATION COMMITTEE.—The compensation
15 committee of an issuer shall be directly respon-
16 sible for the appointment, compensation, and
17 oversight of the work of a compensation consult-
18 ant.

19 “(C) RULE OF CONSTRUCTION.—This para-
20 graph may not be construed—

21 “(i) to require the compensation com-
22 mittee to implement or act consistently with
23 the advice or recommendations of the com-
24 pensation consultant; or

1 “(ii) to affect the ability or obligation
2 of a compensation committee to exercise its
3 own judgment in fulfillment of the duties of
4 the compensation committee.

5 “(2) *DISCLOSURE.*—In any proxy or consent so-
6 licitation material for an annual meeting of the
7 shareholders (or a special meeting in lieu of the an-
8 nual meeting) occurring on or after the date that is
9 1 year after the date of enactment of this section, each
10 issuer shall disclose in the proxy or consent material,
11 in accordance with regulations of the Commission,
12 whether—

13 “(A) the compensation committee of the
14 issuer retained or obtained the advice of a com-
15 pensation consultant; and

16 “(B) the work of the compensation consult-
17 ant has raised any conflict of interest and, if so,
18 the nature of the conflict and how the conflict is
19 being addressed.

20 “(d) *AUTHORITY TO ENGAGE INDEPENDENT LEGAL*
21 *COUNSEL AND OTHER ADVISERS.*—

22 “(1) *IN GENERAL.*—The compensation committee
23 of an issuer, in its capacity as a committee of the
24 board of directors, may, in its sole discretion, retain

1 *and obtain the advice of independent legal counsel*
2 *and other advisers.*

3 “(2) *DIRECT RESPONSIBILITY OF COMPENSATION*
4 *COMMITTEE.—The compensation committee of an*
5 *issuer shall be directly responsible for the appoint-*
6 *ment, compensation, and oversight of the work of*
7 *independent legal counsel and other advisers.*

8 “(3) *RULE OF CONSTRUCTION.—This subsection*
9 *may not be construed—*

10 “(A) *to require a compensation committee*
11 *to implement or act consistently with the advice*
12 *or recommendations of independent legal counsel*
13 *or other advisers under this subsection; or*

14 “(B) *to affect the ability or obligation of a*
15 *compensation committee to exercise its own judg-*
16 *ment in fulfillment of the duties of the compensa-*
17 *tion committee.*

18 “(e) *COMPENSATION OF COMPENSATION CONSULT-*
19 *ANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER ADVIS-*
20 *ERS.—Each issuer shall provide for appropriate funding,*
21 *as determined by the compensation committee in its capac-*
22 *ity as a committee of the board of directors, for payment*
23 *of reasonable compensation—*

24 “(1) *to a compensation consultant; and*

1 “(2) *to independent legal counsel or any other*
2 *adviser to the compensation committee.*

3 “(f) *COMMISSION RULES.—*

4 “(1) *IN GENERAL.—Not later than 360 days*
5 *after the date of enactment of this section, the Com-*
6 *mission shall, by rule, direct the national securities*
7 *exchanges and national securities associations to pro-*
8 *hibit the listing of any security of an issuer that is*
9 *not in compliance with the requirements of this sec-*
10 *tion.*

11 “(2) *OPPORTUNITY TO CURE DEFECTS.—The*
12 *rules of the Commission under paragraph (1) shall*
13 *provide for appropriate procedures for an issuer to*
14 *have a reasonable opportunity to cure any defects that*
15 *would be the basis for the prohibition under para-*
16 *graph (1), before the imposition of such prohibition.*

17 “(3) *EXEMPTION AUTHORITY.—*

18 “(A) *IN GENERAL.—The rules of the Com-*
19 *mission under paragraph (1) shall permit a na-*
20 *tional securities exchange or a national securi-*
21 *ties association to exempt a category of issuers*
22 *from the requirements under this section, as the*
23 *national securities exchange or the national secu-*
24 *rities association determines is appropriate.*

1 “(B) *CONSIDERATIONS.*—*In determining*
2 *appropriate exemptions under subparagraph (A),*
3 *the national securities exchange or the national*
4 *securities association shall take into account the*
5 *potential impact of the requirements of this sec-*
6 *tion on smaller reporting issuers.”.*

7 **SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.**

8 (a) *DISCLOSURE OF PAY VERSUS PERFORMANCE.*—
9 *Section 14 of the Securities Exchange Act of 1934 (15*
10 *U.S.C. 78n), as amended by this title, is amended by add-*
11 *ing at the end the following:*

12 “(i) *DISCLOSURE OF PAY VERSUS PERFORMANCE.*—
13 *The Commission shall, by rule, require each issuer to dis-*
14 *close in any proxy or consent solicitation material for an*
15 *annual meeting of the shareholders of the issuer a clear de-*
16 *scription of any compensation required to be disclosed by*
17 *the issuer under section 229.402 of title 17, Code of Federal*
18 *Regulations (or any successor thereto), including informa-*
19 *tion that shows the relationship between executive com-*
20 *penetration actually paid and the financial performance of*
21 *the issuer, taking into account any change in the value of*
22 *the shares of stock and dividends of the issuer and any dis-*
23 *tributions. The disclosure under this subsection may include*
24 *a graphic representation of the information required to be*
25 *disclosed.”.*

1 **(b) ADDITIONAL DISCLOSURE REQUIREMENTS.**—

2 **(1) IN GENERAL.**—*The Commission shall amend*
3 *section 229.402 of title 17, Code of Federal Regula-*
4 *tions, to require each issuer to disclose in any filing*
5 *of the issuer described in section 229.10(a) of title 17,*
6 *Code of Federal Regulations (or any successor there-*
7 *to)—*

8 **(A)** *the median of the annual total com-*
9 *penetration of all employees of the issuer, except*
10 *the chief executive officer (or any equivalent po-*
11 *sition) of the issuer;*

12 **(B)** *the annual total compensation of the*
13 *chief executive officer (or any equivalent posi-*
14 *tion) of the issuer; and*

15 **(C)** *the ratio of the amount described in*
16 *subparagraph (A) to the amount described in*
17 *subparagraph (B).*

18 **(2) TOTAL COMPENSATION.**—*For purposes of this*
19 *subsection, the total compensation of an employee of*
20 *an issuer shall be determined in accordance with sec-*
21 *tion 229.402(c)(2)(x) of title 17, Code of Federal Reg-*
22 *ulations, as in effect on the day before the date of en-*
23 *actment of this Act.*

1 **SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COM-**
2 **PENSATION.**

3 *The Securities Exchange Act of 1934 is amended by*
4 *inserting after section 10C, as added by section 952, the*
5 *following:*

6 **“SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COM-**
7 **PENSATION POLICY.**

8 *“(a) LISTING STANDARDS.—The Commission shall, by*
9 *rule, direct the national securities exchanges and national*
10 *securities associations to prohibit the listing of any security*
11 *of an issuer that does not comply with the requirements*
12 *of this section.*

13 *“(b) RECOVERY OF FUNDS.—The rules of the Commis-*
14 *sion under subsection (a) shall require each issuer to develop*
15 *and implement a policy providing—*

16 *“(1) for disclosure of the policy of the issuer on*
17 *incentive-based compensation that is based on finan-*
18 *cial information required to be reported under the se-*
19 *curities laws; and*

20 *“(2) that, in the event that the issuer is required*
21 *to prepare an accounting restatement due to the ma-*
22 *terial noncompliance of the issuer with any financial*
23 *reporting requirement under the securities laws, the*
24 *issuer will recover from any current or former execu-*
25 *tive officer of the issuer who received incentive-based*
26 *compensation (including stock options awarded as*

1 “(2) held, directly or indirectly, by the employee
2 or member of the board of directors.”.

3 **SEC. 956. EXCESSIVE COMPENSATION BY HOLDING COMPA-**
4 **NIES OF DEPOSITORY INSTITUTIONS.**

5 Section 5 of the Bank Holding Company Act of 1956
6 (12 U.S.C. 1844) is amended by adding at the end the fol-
7 lowing:

8 “(i) *EXCESSIVE COMPENSATION.*—

9 “(1) *IN GENERAL.*—Not later than 180 days
10 after the transfer date established under section 311
11 of the Restoring American Financial Stability Act of
12 2010, the Board of Governors, in consultation with
13 the Comptroller of the Currency and the Federal De-
14 posit Insurance Corporation, shall, by rule, establish
15 standards prohibiting as an unsafe and unsound
16 practice any compensation plan of a bank holding
17 company that—

18 “(A) provides an executive officer, employee,
19 director, or principal shareholder of the bank
20 holding company with excessive compensation,
21 fees, or benefits; or

22 “(B) could lead to material financial loss to
23 the bank holding company.

24 “(2) *CONSIDERATIONS.*—In establishing the
25 standards under paragraph (1), the Board of Gov-

1 *ernors shall take into consideration the compensation*
 2 *standards described in section 39(c) of the Federal*
 3 *Deposit Insurance Act (12 U.S.C. 1831p-1(c)) and*
 4 *the views and recommendations of the Comptroller of*
 5 *the Currency and the Federal Deposit Insurance Cor-*
 6 *poration.”.*

7 **SEC. 957. VOTING BY BROKERS.**

8 *Section 6(b) of the Securities Exchange Act of 1934*
 9 *(15 U.S.C. 78f(b)) is amended—*

10 *(1) in paragraph (9)—*

11 *(A) in subparagraph (A), by redesignating*
 12 *clauses (i) through (v) as subclauses (I) through*
 13 *(V), respectively, and adjusting the margins ac-*
 14 *cordingly;*

15 *(B) by redesignating subparagraphs (A)*
 16 *through (D) as clauses (i) through (iv), respec-*
 17 *tively, and adjusting the margins accordingly;*

18 *(C) by inserting “(A)” after “(9)”;* and

19 *(D) in the matter immediately following*
 20 *clause (iv), as so redesignated, by striking “As*
 21 *used” and inserting the following:*

22 *“(B) As used”.*

23 *(2) by adding at the end the following:*

24 *“(10)(A) The rules of the exchange prohibit any*
 25 *member that is not the beneficial owner of a security*

1 *registered under section 12 from granting a proxy to*
2 *vote the security in connection with a shareholder vote*
3 *described in subparagraph (B), unless the beneficial*
4 *owner of the security has instructed the member to*
5 *vote the proxy in accordance with the voting instruc-*
6 *tions of the beneficial owner.*

7 *“(B) A shareholder vote described in this sub-*
8 *paragraph is a shareholder vote with respect to the*
9 *election of a member of the board of directors of an*
10 *issuer, executive compensation, or any other signifi-*
11 *cant matter, as determined by the Commission, by*
12 *rule.*

13 *“(C) Nothing in this paragraph shall be con-*
14 *strued to prohibit a national securities exchange from*
15 *prohibiting a member that is not the beneficial owner*
16 *of a security registered under section 12 from grant-*
17 *ing a proxy to vote the security in connection with*
18 *a shareholder vote not described in subparagraph*
19 *(A).”.*

1 ***Subtitle F—Improvements to the***
2 ***Management of the Securities***
3 ***and Exchange Commission***

4 ***SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SU-***
5 ***PERVISORY CONTROLS.***

6 *(a) ANNUAL REPORTS AND CERTIFICATION.—Not later*
7 *than 90 days after the end of each fiscal year, the Commis-*
8 *sion shall submit a report to the Committee on Banking,*
9 *Housing, and Urban Affairs of the Senate and the Com-*
10 *mittee on Financial Services of the House of Representa-*
11 *tives on the conduct by the Commission of examinations*
12 *of registered entities, enforcement investigations, and review*
13 *of corporate financial securities filings.*

14 *(b) CONTENTS OF REPORTS.—Each report under sub-*
15 *section (a) shall contain—*

16 *(1) an assessment, as of the end of the most re-*
17 *cent fiscal year, of the effectiveness of—*

18 *(A) the internal supervisory controls of the*
19 *Commission; and*

20 *(B) the procedures of the Commission appli-*
21 *able to the staff of the Commission who perform*
22 *examinations of registered entities, enforcement*
23 *investigations, and reviews of corporate financial*
24 *securities filings;*

1 (2) *a certification that the Commission has ade-*
2 *quate internal supervisory controls to carry out the*
3 *duties of the Commission described in paragraph*
4 *(1)(B); and*

5 (3) *a summary by the Comptroller General of the*
6 *United States of the review carried out under sub-*
7 *section (d).*

8 (c) *CERTIFICATION.—*

9 (1) *SIGNATURE.—The certification under sub-*
10 *section (b)(2) shall be signed by the Director of the*
11 *Division of Enforcement, the Director of the Division*
12 *of Corporation Finance, and the Director of the Office*
13 *of Compliance Inspections and Examinations (or the*
14 *head of any successor division or office).*

15 (2) *CONTENT OF CERTIFICATION.—Each indi-*
16 *vidual described in paragraph (1) shall certify that*
17 *the individual—*

18 (A) *is directly responsible for establishing*
19 *and maintaining the internal supervisory con-*
20 *trols of the Division or Office of which the indi-*
21 *vidual is the head;*

22 (B) *is knowledgeable about the internal su-*
23 *pervisory controls of the Division or Office of*
24 *which the individual is the head;*

1 (C) has evaluated the effectiveness of the in-
 2 ternal supervisory controls during the 90-day pe-
 3 riod ending on the final day of the fiscal year
 4 to which the report relates; and

5 (D) has disclosed to the Commission any
 6 significant deficiencies in the design or operation
 7 of internal supervisory controls that could ad-
 8 versely affect the ability of the Division or Office
 9 to consistently conduct inspections, or investiga-
 10 tions, or reviews of filings with professional com-
 11 petence and integrity.

12 (d) *REVIEW BY THE COMPTROLLER GENERAL.*—Not
 13 later than the date on which the first report is submitted
 14 under subsection (a), the Comptroller General of the United
 15 States shall submit to the Committee on Banking, Housing,
 16 and Urban Affairs of the Senate and the Committee on Fi-
 17 nancial Services of the House of Representatives an initial
 18 report that contains a review of the adequacy and effective-
 19 ness of the internal supervisory control structure and proce-
 20 dures described in subsection (b)(1).

21 **SEC. 962. TRIENNIAL REPORT ON PERSONNEL MANAGE-**
 22 **MENT.**

23 (a) *TRIENNIAL REPORT REQUIRED.*—Once every 3
 24 years, the Comptroller General of the United States shall
 25 submit a report to the Committee on Banking, Housing,

1 *and Urban Affairs of the Senate and the Committee on Fi-*
2 *nancial Services of the House of Representatives on the*
3 *quality of personnel management by the Commission.*

4 (b) *CONTENTS OF REPORT.*—*Each report under sub-*
5 *section (a) shall include—*

6 (1) *an evaluation of—*

7 (A) *the effectiveness of supervisors in using*
8 *the skills, talents, and motivation of the employ-*
9 *ees of the Commission to achieve the goals of the*
10 *Commission;*

11 (B) *the criteria for promoting employees of*
12 *the Commission to supervisory positions;*

13 (C) *the fairness of the application of the*
14 *promotion criteria to the decisions of the Com-*
15 *mission;*

16 (D) *the competence of the professional staff*
17 *of the Commission;*

18 (E) *the efficiency of communication between*
19 *the units of the Commission regarding the work*
20 *of the Commission (including communication be-*
21 *tween divisions and between subunits of a divi-*
22 *sion) and the efforts by the Commission to pro-*
23 *mote such communication;*

24 (F) *the turnover within subunits of the*
25 *Commission, including the identification of su-*

1 *supervisors whose subordinates have an unusually*
2 *high rate of turnover;*

3 *(G) whether there are excessive numbers of*
4 *low-level, mid-level, or senior-level managers;*

5 *(H) any initiatives of the Commission that*
6 *increase the competence of the staff of the Com-*
7 *mission;*

8 *(I) the actions taken by the Commission re-*
9 *garding employees of the Commission who have*
10 *failed to perform their duties; and*

11 *(J) such other factors relating to the man-*
12 *agement of the Commission as the Comptroller*
13 *General determines are appropriate;*

14 *(2) an evaluation of any improvements made*
15 *with respect to the areas described in paragraph (1)*
16 *since the date of submission of the previous report;*
17 *and*

18 *(3) recommendations for how the Commission*
19 *can use the human resources of the Commission more*
20 *effectively and efficiently to carry out the mission of*
21 *the Commission.*

22 *(c) CONSULTATION.—In preparing the report under*
23 *subsection (a), the Comptroller General shall consult with*
24 *current employees of the Commission, retired employees and*
25 *other former employees of the Commission, the Inspector*

1 *General of the Commission, persons that have business be-*
2 *fore the Commission, any union representing the employees*
3 *of the Commission, private management consultants, aca-*
4 *demics, and any other source that the Comptroller General*
5 *deems appropriate.*

6 (d) *REPORT BY COMMISSION.*—Not later than 90 days
7 after the date on which the Comptroller General submits
8 each report under subsection (a), the Commission shall sub-
9 mit to the Committee on Banking, Housing, and Urban Af-
10 fairs of the Senate and the Committee on Financial Services
11 of the House of Representatives a report describing the ac-
12 tions taken by the Commission in response to the rec-
13 ommendations contained in the report under subsection (a).

14 (e) *REIMBURSEMENTS FOR COST OF REPORTS.*—

15 (1) *REIMBURSEMENTS REQUIRED.*—The Com-
16 mission shall reimburse the Government Account-
17 ability Office for the full cost of making the reports
18 under this section, as billed therefor by the Comp-
19 troller General.

20 (2) *CREDITING AND USE OF REIMBURSE-*
21 *MENTS.*—Such reimbursements shall—

22 (A) be credited to the appropriation account
23 “Salaries and Expenses, Government Account-
24 ability Office” current when the payment is re-
25 ceived; and

1 (B) remain available until expended.

2 **SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.**

3 (a) *REPORTS OF COMMISSION.*—

4 (1) *ANNUAL REPORTS REQUIRED.*—Not later
5 than 6 months after the end of each fiscal year, the
6 Commission shall publish and submit to Congress a
7 report that—

8 (A) describes the responsibility of the man-
9 agement of the Commission for establishing and
10 maintaining an adequate internal control struc-
11 ture and procedures for financial reporting; and

12 (B) contains an assessment of the effective-
13 ness of the internal control structure and proce-
14 dures for financial reporting of the Commission
15 during that fiscal year.

16 (2) *ATTESTATION.*—The reports required under
17 paragraph (1) shall be attested to by the Chairman
18 and chief financial officer of the Commission.

19 (b) *REPORT BY COMPTROLLER GENERAL.*—

20 (1) *REPORT REQUIRED.*—Not later than 6
21 months after the end of the first fiscal year after the
22 date of enactment of this Act, the Comptroller General
23 of the United States shall submit a report to Congress
24 that assesses—

1 (A) *the effectiveness of the internal control*
2 *structure and procedures of the Commission for*
3 *financial reporting; and*

4 (B) *the assessment of the Commission under*
5 *subsection (a)(1)(B).*

6 (2) *ATTESTATION.—The Comptroller General*
7 *shall attest to, and report on, the assessment made by*
8 *the Commission under subsection (a).*

9 (c) *REIMBURSEMENTS FOR COST OF REPORTS.—*

10 (1) *REIMBURSEMENTS REQUIRED.—The Com-*
11 *mission shall reimburse the Government Account-*
12 *ability Office for the full cost of making the reports*
13 *under subsection (b), as billed therefor by the Comp-*
14 *troller General.*

15 (2) *CREDITING AND USE OF REIMBURSE-*
16 *MENTS.—Such reimbursements shall—*

17 (A) *be credited to the appropriation account*
18 *“Salaries and Expenses, Government Account-*
19 *ability Office” current when the payment is re-*
20 *ceived; and*

21 (B) *remain available until expended.*

22 **SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURI-**
23 **TIES ASSOCIATIONS.**

24 (a) *REPORT REQUIRED.—Not later than 2 years after*
25 *the date of enactment of this Act, and every 3 years there-*

1 *after, the Comptroller General of the United States shall*
2 *submit to the Committee on Banking, Housing, and Urban*
3 *Affairs of the Senate and the Committee on Financial Serv-*
4 *ices of the House of Representatives a report that includes*
5 *an evaluation of the oversight by the Commission of na-*
6 *tional securities associations registered under section 15A*
7 *of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3)*
8 *with respect to—*

9 (1) *the governance of such national securities as-*
10 *sociations, including the identification and manage-*
11 *ment of conflicts of interest by such national securi-*
12 *ties associations, together with an analysis of the im-*
13 *port of any conflicts of interest on the regulatory en-*
14 *forcement or rulemaking by such national securities*
15 *associations;*

16 (2) *the examinations carried out by the national*
17 *securities associations, including the expertise of the*
18 *examiners;*

19 (3) *the executive compensation practices of such*
20 *national securities associations;*

21 (4) *the arbitration services provided by the na-*
22 *tional securities associations;*

23 (5) *the review performed by national securities*
24 *associations of advertising by the members of the na-*
25 *tional securities associations;*

1 (6) *the cooperation with and assistance to State*
2 *securities administrators by the national securities*
3 *associations to promote investor protection;*

4 (7) *how the funding of national securities asso-*
5 *ciations is used to support the mission of the national*
6 *securities associations, including—*

7 (A) *the methods of funding;*

8 (B) *the sufficiency of funds;*

9 (C) *how funds are invested by the national*
10 *securities association pending use; and*

11 (D) *the impact of the methods, sufficiency,*
12 *and investment of funds on regulatory enforce-*
13 *ment by the national securities associations;*

14 (8) *the policies regarding the employment of*
15 *former employees of national securities associations*
16 *by regulated entities;*

17 (9) *the ongoing effectiveness of the rules of the*
18 *national securities associations in achieving the goals*
19 *of the rules;*

20 (10) *the transparency of governance and activi-*
21 *ties of the national securities associations; and*

22 (11) *any other issue that has an impact, as de-*
23 *termined by the Comptroller General, on the effective-*
24 *ness of such national securities associations in per-*

1 *forming their mission and in dealing fairly with in-*
 2 *vestors and members;*

3 *(b) REIMBURSEMENTS FOR COST OF REPORTS.—*

4 *(1) REIMBURSEMENTS REQUIRED.—The Com-*
 5 *mission shall reimburse the Government Account-*
 6 *ability Office for the full cost of making the reports*
 7 *under subsection (a), as billed therefor by the Comp-*
 8 *troller General.*

9 *(2) CREDITING AND USE OF REIMBURSE-*
 10 *MENTS.—Such reimbursements shall—*

11 *(A) be credited to the appropriation account*
 12 *“Salaries and Expenses, Government Account-*
 13 *ability Office” current when the payment is re-*
 14 *ceived; and*

15 *(B) remain available until expended.*

16 **SEC. 965. COMPLIANCE EXAMINERS.**

17 *Section 4 of the Securities Exchange Act of 1934 (15*
 18 *U.S.C. 78d) is amended by adding at the end the following:*

19 *“(h) EXAMINERS.—*

20 *“(1) DIVISION OF TRADING AND MARKETS.—The*
 21 *Division of Trading and Markets of the Commission,*
 22 *or any successor organizational unit, shall have a*
 23 *staff of examiners who shall—*

1 “(A) perform compliance inspections and
2 examinations of entities under the jurisdiction of
3 that Division; and

4 “(B) report to the Director of that Division.

5 “(2) DIVISION OF INVESTMENT MANAGEMENT.—
6 *The Division of Investment Management of the Com-*
7 *mission, or any successor organizational unit, shall*
8 *have a staff of examiners who shall—*

9 “(A) perform compliance inspections and
10 examinations of entities under the jurisdiction of
11 that Division; and

12 “(B) report to the Director of that Divi-
13 sion.”.

14 **SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE**
15 **COMMISSION.**

16 *The Securities Exchange Act of 1934 (15 U.S.C. 78a*
17 *et seq.) is amended by inserting after section 4C (15 U.S.C.*
18 *78d–3) the following:*

19 **“SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.**

20 “(a) SUGGESTION SUBMISSIONS BY COMMISSION EM-
21 PLOYEES.—

22 “(1) HOTLINE ESTABLISHED.—*The Inspector*
23 *General of the Commission shall establish and main-*
24 *tain a telephone hotline or other electronic means for*
25 *the receipt of—*

1 “(A) suggestions by employees of the Com-
2 mission for improvements in the work efficiency,
3 effectiveness, and productivity, and the use of the
4 resources, of the Commission; and

5 “(B) allegations by employees of the Com-
6 mission of waste, abuse, misconduct, or mis-
7 management within the Commission.

8 “(2) CONFIDENTIALITY.—The Inspector General
9 shall maintain as confidential—

10 “(A) the identity of any individual who
11 provides information by the means established
12 under paragraph (1), unless the individual re-
13 quests otherwise, in writing; and

14 “(B) at the request of any such individual,
15 any specific information provided by the indi-
16 vidual.

17 “(b) CONSIDERATION OF REPORTS.—The Inspector
18 General shall consider any suggestions or allegations re-
19 ceived by the means established under subsection (a)(1), and
20 shall recommend appropriate action in relation to such sug-
21 gestions or allegations.

22 “(c) RECOGNITION.—The Inspector General may rec-
23 ognize any employee who makes a suggestion under sub-
24 section (a)(1) (or by other means) that would or does—

1 “(1) *increase the work efficiency, effectiveness, or*
2 *productivity of the Commission; or*

3 “(2) *reduce waste, abuse, misconduct, or mis-*
4 *management within the Commission.*

5 “(d) *REPORT.—The Inspector General of the Commis-*
6 *sion shall submit to Congress an annual report containing*
7 *a description of—*

8 “(1) *the nature, number, and potential benefits*
9 *of any suggestions received under subsection (a);*

10 “(2) *the nature, number, and seriousness of any*
11 *allegations received under subsection (a);*

12 “(3) *any recommendations made or actions*
13 *taken by the Inspector General in response to substan-*
14 *tiated allegations received under subsection (a); and*

15 “(4) *any action the Commission has taken in re-*
16 *sponse to suggestions or allegations received under*
17 *subsection (a).*

18 “(e) *FUNDING.—The activities of the Inspector General*
19 *under this subsection shall be funded by the Securities and*
20 *Exchange Commission Investor Protection Fund established*
21 *under section 21F.”.*

1 ***Subtitle G—Strengthening***
2 ***Corporate Governance***

3 ***SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN***
4 ***UNCONTESTED ELECTIONS.***

5 *The Securities Exchange Act of 1934 (15 U.S.C. 78a*
6 *et seq.) is amended by inserting after section 14A, as added*
7 *by this title, the following:*

8 ***“SEC. 14B. CORPORATE GOVERNANCE.***

9 ***“(a) CORPORATE GOVERNANCE STANDARDS.—***

10 ***“(1) LISTING STANDARDS.—***

11 ***“(A) IN GENERAL.—Not later than 1 year***
12 *after the date of enactment of this subsection, the*
13 *Commission shall, by rule, direct the national se-*
14 *curities exchanges and national securities asso-*
15 *ciations to prohibit the listing of any security of*
16 *an issuer that is not in compliance with any of*
17 *the requirements of this subsection.*

18 ***“(B) OPPORTUNITY TO COMPLY AND***
19 *CURE.—The rules established under this para-*
20 *graph shall allow an issuer to have an oppor-*
21 *tunity to come into compliance with the require-*
22 *ments of this subsection, and to cure any defect*
23 *that would be the basis for a prohibition under*
24 *subparagraph (A), before the imposition of such*
25 *prohibition.*

1 “(C) *AUTHORITY TO EXEMPT.*—*The Com-*
2 *mission may, by rule or order, exempt an issuer*
3 *from any or all of the requirements of this sub-*
4 *section and the rules issued under this sub-*
5 *section, based on the size of the issuer, the market*
6 *capitalization of the issuer, the number of share-*
7 *holders of record of the issuer, or any other cri-*
8 *teria, as the Commission deems necessary and*
9 *appropriate in the public interest or for the pro-*
10 *tection of investors.*

11 “(2) *COMMISSION RULES ON ELECTIONS.*—*In an*
12 *election for membership on the board of directors of*
13 *an issuer—*

14 “(A) *that is uncontested, each director who*
15 *receives a majority of the votes cast shall be*
16 *deemed to be elected;*

17 “(B) *that is contested, if the number of*
18 *nominees exceeds the number of directors to be*
19 *elected, each director shall be elected by the vote*
20 *of a plurality of the shares represented at a*
21 *meeting and entitled to vote; and*

22 “(C) *if a director of an issuer receives less*
23 *than a majority of the votes cast in an*
24 *uncontested election—*

1 “(i) the director shall tender the res-
2 ignation of the director to the board of di-
3 rectors; and

4 “(ii) the board of directors—

5 “(I) shall—

6 “(aa) accept the resignation
7 of the director;

8 “(bb) determine a date on
9 which the resignation will take ef-
10 fect, within a reasonable period of
11 time, as established by the Com-
12 mission; and

13 “(cc) make the date under
14 item (bb) public within a reason-
15 able period of time, as established
16 by the Commission; or

17 “(II) shall, upon a unanimous
18 vote of the board, decline to accept the
19 resignation and, not later than 30
20 days after the date of the vote (or with-
21 in such shorter period as the Commis-
22 sion may establish), make public, to-
23 gether with a discussion of the analysis
24 used in reaching the conclusion, the
25 specific reasons that—

1 “(aa) the board chose not to
2 accept the resignation; and

3 “(bb) the decision was in the
4 best interests of the issuer and the
5 shareholders of the issuer.”.

6 **SEC. 972. PROXY ACCESS.**

7 (a) *PROXY ACCESS*.—Section 14(a) of the Securities
8 *Exchange Act of 1934 (15 U.S.C. 78n(a))* is amended—

9 (1) by inserting “(1)” after “(a)”; and

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

11 “(2) The rules and regulations prescribed by the Com-
12 mission under paragraph (1) may include—

13 “(A) a requirement that a solicitation of proxy,
14 consent, or authorization by (or on behalf of) an
15 issuer include a nominee submitted by a shareholder
16 to serve on the board of directors of the issuer; and

17 “(B) a requirement that an issuer follow a cer-
18 tain procedure in relation to a solicitation described
19 in subparagraph (A).”.

20 (b) *REGULATIONS*.—The Commission may issue rules
21 permitting the use by shareholders of proxy solicitation ma-
22 terials supplied by an issuer of securities for the purpose
23 of nominating individuals to membership on the board of
24 directors of the issuer, under such terms and conditions as

1 *the Commission determines are in the interests of share-*
 2 *holders and for the protection of investors.*

3 **SEC. 973. DISCLOSURES REGARDING CHAIRMAN AND CEO**
 4 **STRUCTURES.**

5 *Section 14B of the Securities Exchange Act of 1934,*
 6 *as added by section 971, is amended by adding at the end*
 7 *the following:*

8 *“(b) DISCLOSURES REGARDING CHAIRMAN AND CEO*
 9 *STRUCTURES.—Not later than 180 days after the date of*
 10 *enactment of this subsection, the Commission shall issue*
 11 *rules that require an issuer to disclose in the annual proxy*
 12 *sent to investors the reasons why the issuer has chosen—*

13 *“(1) the same person to serve as chairman of the*
 14 *board of directors and chief executive officer (or in*
 15 *equivalent positions); or*

16 *“(2) different individuals to serve as chairman of*
 17 *the board of directors and chief executive officer (or*
 18 *in equivalent positions of the issuer).”.*

19 ***Subtitle H—Municipal Securities***

20 **SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND**
 21 **CHANGES TO THE BOARD OF THE MSRB.**

22 *(a) REGISTRATION OF MUNICIPAL SECURITIES DEAL-*
 23 *ERS AND MUNICIPAL ADVISORS.—Section 15B(a) of the Se-*
 24 *curities Exchange Act of 1934 (15 U.S.C. 78o–4(a)) is*
 25 *amended—*

1 (1) *in paragraph (1)—*

2 (A) *by inserting “(A)” after “(1)”;* and

3 (B) *by adding at the end the following:*

4 “*(B) It shall be unlawful for a municipal*
5 *advisor to provide advice to or on behalf of a*
6 *municipal entity or obligated person with respect*
7 *to municipal financial products or the issuance*
8 *of municipal securities, or to undertake a solici-*
9 *tation of a municipal entity or obligated person,*
10 *unless the municipal advisor is registered in ac-*
11 *cordance with this subsection.”;*

12 (2) *in paragraph (2), by inserting “or municipal*
13 *advisor” after “municipal securities dealer” each*
14 *place that term appears;*

15 (3) *in paragraph (3), by inserting “or municipal*
16 *advisor” after “municipal securities dealer” each*
17 *place that term appears;*

18 (4) *in paragraph (4), by striking “dealer, or mu-*
19 *nicipal securities dealer or class of brokers, dealers, or*
20 *municipal securities dealers” and inserting “dealer,*
21 *municipal securities dealer, or municipal advisor, or*
22 *class of brokers, dealers, municipal securities dealers,*
23 *or municipal advisors”;* and

24 (5) *by adding at the end the following:*

1 “(5) No municipal advisor shall make use of the
2 mails or any means or instrumentality of interstate
3 commerce to provide advice to or on behalf of a mu-
4 nicipal entity or obligated person with respect to mu-
5 nicipal financial products, the issuance of municipal
6 securities, or participation in the issuance of munic-
7 ipal securities, or to undertake a solicitation of a mu-
8 nicipal entity or obligated person, in connection with
9 which such municipal advisor engages in any fraudu-
10 lent, deceptive, or manipulative act or practice.”

11 (b) *MUNICIPAL SECURITIES RULEMAKING BOARD*.—
12 Section 15B(b) of the Securities Exchange Act of 1934 (15
13 U.S.C. 78o-4(b)) is amended—

14 (1) in paragraph (1)—

15 (A) in the first sentence, by striking “Not
16 later than” and all that follows through “ap-
17 pointed by the Commission” and inserting “The
18 Municipal Securities Rulemaking Board shall be
19 composed of 15 members, or such other number
20 of members as specified by rules of the Board
21 pursuant to paragraph (2)(B),”;

22 (B) by striking the second sentence and in-
23 serting the following: “The members of the Board
24 shall serve as members for a term of 3 years or
25 for such other terms as specified by rules of the

1 *Board pursuant to paragraph (2)(B), and shall*
2 *consist of (A) 8 individuals who are not associ-*
3 *ated with any broker, dealer, municipal securi-*
4 *ties dealer, or municipal advisor (other than by*
5 *reason of being under common control with, or*
6 *indirectly controlling, any broker or dealer*
7 *which is not a municipal securities broker or*
8 *municipal securities dealer), at least 1 of whom*
9 *shall be representative of institutional or retail*
10 *investors in municipal securities, at least 1 of*
11 *whom shall be representative of municipal enti-*
12 *tities, and at least 1 of whom shall be a member*
13 *of the public with knowledge of or experience in*
14 *the municipal industry (which members are*
15 *hereinafter referred to as ‘public representa-*
16 *tives’); and (B) 7 individuals who are associated*
17 *with a broker, dealer, municipal securities deal-*
18 *er, or municipal advisor, including at least 1 in-*
19 *dividual who is associated with and representa-*
20 *tive of brokers, dealers, or municipal securities*
21 *dealers that are not banks or subsidiaries or de-*
22 *partments or divisions of banks (which members*
23 *are hereinafter referred to as ‘broker-dealer rep-*
24 *resentatives’), at least 1 individual who is associ-*
25 *ated with and representative of municipal secu-*

1 *rities dealers which are banks or subsidiaries or*
2 *departments or divisions of banks (which mem-*
3 *bers are hereinafter referred to as ‘bank rep-*
4 *resentatives’), and at least 1 individual who is*
5 *associated with a municipal advisor (which*
6 *member is hereinafter referred to as the ‘advisor*
7 *representative’).’; and*

8 *(C) in the third sentence, by striking “ini-*
9 *tial”;*

10 *(2) in paragraph (2)—*

11 *(A) in the matter preceding subparagraph*

12 *(A)—*

13 *(i) by inserting before the period at the*
14 *end of the first sentence the following: “and*
15 *advice provided to or on behalf of municipal*
16 *entities or obligated persons by brokers,*
17 *dealers, municipal securities dealers, and*
18 *municipal advisors with respect to munic-*
19 *ipal financial products, the issuance of mu-*
20 *nicipal securities, or participation in the*
21 *issuance of municipal securities, and solici-*
22 *tations of municipal entities or obligated*
23 *persons undertaken by brokers, dealers, mu-*
24 *nicipal securities dealers, and municipal*
25 *advisors”;* and

1 (ii) by striking the second sentence;

2 (B) in subparagraph (A)—

3 (i) in the matter preceding clause (i)—

4 (I) by inserting “, and no broker,
5 dealer, municipal securities dealer, or
6 municipal advisor shall provide advice
7 to or on behalf of a municipal entity
8 or obligated person with respect to mu-
9 nicipal financial products, the issuance
10 of municipal securities, or participa-
11 tion in the issuance of municipal secu-
12 rities” after “sale of, any municipal
13 security”; and

14 (II) by inserting “and municipal
15 entities or obligated persons” after
16 “protection of investors”;

17 (ii) in clause (i), by striking “munic-
18 ipal securities brokers and municipal secu-
19 rities dealers” each place that term appears
20 and inserting “municipal securities brokers,
21 municipal securities dealers, and municipal
22 advisors”;

23 (iii) in clause (ii), by adding “and” at
24 the end;

1 *(iv) in clause (iii), by striking “; and”*

2 *and inserting a period; and*

3 *(v) by striking clause (iv);*

4 *(C) in subparagraph (B), by striking*
5 *“nominations and elections” and all that follows*
6 *through “specify” and inserting “nominations*
7 *and elections of public representatives, broker-*
8 *dealer representatives, bank representatives, and*
9 *advisor representatives. Such rules shall provide*
10 *that the membership of the Board shall at all*
11 *times be as evenly divided in number as possible*
12 *between entities or individuals who are subject to*
13 *regulation by the Board and entities or individ-*
14 *uals not subject to regulation by the Board, pro-*
15 *vided, however, that a majority of the members*
16 *of the Board shall at all times be public rep-*
17 *resentatives. Such rules shall also specify”;*

18 *(D) in subparagraph (C)—*

19 *(i) by inserting “and municipal finan-*
20 *cial products” after “municipal securities”*
21 *the first two times that term appears;*

22 *(ii) by inserting “, municipal entities,*
23 *obligated persons,” before “and the public*
24 *interest”;*

1 (iii) by striking “between” and insert-
2 ing “among”;

3 (iv) by striking “issuers, municipal se-
4 curities brokers, or municipal securities
5 dealers, to fix” and inserting “municipal
6 entities, obligated persons, municipal secu-
7 rities brokers, municipal securities dealers,
8 or municipal advisors, to fix”; and

9 (v) by striking “brokers or municipal
10 securities dealers, to regulate” and inserting
11 “brokers, municipal securities dealers, or
12 municipal advisors, to regulate”;

13 (E) in subparagraph (D)—

14 (i) by inserting “and advice con-
15 cerning municipal financial products” after
16 “transactions in municipal securities”;

17 (ii) by striking “That no” and insert-
18 ing “that no”;

19 (iii) by inserting “municipal advisor,”
20 before “or person associated”; and

21 (iv) by striking “a municipal securi-
22 ties broker or municipal securities dealer
23 may be compelled” and inserting “a munic-
24 ipal securities broker, municipal securities

1 *dealer, or municipal advisor may be com-*
2 *pelled”;*

3 *(F) in subparagraph (E)—*

4 *(i) by striking “municipal securities*
5 *brokers and municipal securities dealers”*
6 *and inserting “municipal securities brokers,*
7 *municipal securities dealers, and municipal*
8 *advisors”;* and

9 *(ii) by striking “municipal securities*
10 *broker or municipal securities dealer” and*
11 *inserting “municipal securities broker, mu-*
12 *nicipal securities dealer, or municipal advi-*
13 *sor”;*

14 *(G) in subparagraph (G), by striking “mu-*
15 *nicipal securities brokers and municipal securi-*
16 *ties dealers” and inserting “municipal securities*
17 *brokers, municipal securities dealers, and munic-*
18 *ipal advisors”;*

19 *(H) in subparagraph (J)—*

20 *(i) by striking “municipal securities*
21 *broker and each municipal securities deal-*
22 *er” and inserting “municipal securities*
23 *broker, municipal securities dealer, and mu-*
24 *nicipal advisor”;* and

1 (ii) by striking the period at the end of
2 the second sentence and inserting “, which
3 may include charges for failure to submit to
4 the Board required information or docu-
5 ments to any information system operated
6 by the Board in a full, accurate, or timely
7 manner, or any other failure to comply
8 with the rules of the Board.”;

9 (I) in subparagraph (K)—

10 (i) by inserting “broker, dealer, or” be-
11 fore “municipal securities dealer” each
12 place that term appears; and

13 (ii) by striking “municipal securities
14 investment portfolio” and inserting “related
15 account of a broker, dealer, or municipal se-
16 curities dealer”; and

17 (J) by adding at the end the following:

18 “(L) provide continuing education require-
19 ments for municipal advisors.

20 “(M) provide professional standards.

21 “(N) not impose a regulatory burden on
22 small municipal advisors that is not necessary
23 or appropriate in the public interest and for the
24 protection of investors, municipal entities, and
25 obligated persons.”;

1 (3) *by redesignating paragraph (3) as para-*
2 *graph (7); and*

3 (4) *by inserting after paragraph (2) the fol-*
4 *lowing:*

5 “(3) *The Board, in conjunction with or on behalf*
6 *of any Federal financial regulator or self-regulatory*
7 *organization, may—*

8 “(A) *establish information systems; and*

9 “(B) *assess such reasonable fees and charges*
10 *for the submission of information to, or the re-*
11 *ceipt of information from, such systems from any*
12 *persons which systems may be developed for the*
13 *purposes of serving as a repository of informa-*
14 *tion from municipal market participants or oth-*
15 *erwise in furtherance of the purposes of the*
16 *Board, a Federal financial regulator, or a self-*
17 *regulatory organization.*

18 “(4) *The Board shall provide guidance and as-*
19 *sistance in the enforcement of, and examination for,*
20 *compliance with the rules of the Board to the Com-*
21 *mission, a registered securities association under sec-*
22 *tion 15A, or any other appropriate regulatory agency,*
23 *as applicable.”.*

24 (c) *DISCIPLINE OF DEALERS AND MUNICIPAL ADVI-*
25 *SORS AND OTHER MATTERS.—Section 15B(c) of the Securi-*

1 *ties Exchange Act of 1934 (15 U.S.C. 78o–4(c)) is amend-*
2 *ed—*

3 (1) *in paragraph (1), by inserting “, and no*
4 *broker, dealer, municipal securities dealer, or munic-*
5 *ipal advisor shall make use of the mails or any means*
6 *or instrumentality of interstate commerce to provide*
7 *advice to or on behalf of a municipal entity or obli-*
8 *gated person with respect to municipal financial*
9 *products, the issuance of municipal securities, or par-*
10 *ticipation in the issuance of municipal securities, or*
11 *to undertake a solicitation of a municipal entity or*
12 *obligated person,” after “any municipal security”;*

13 (2) *in paragraph (2), by inserting “or municipal*
14 *advisor” after “municipal securities dealer” each*
15 *place that term appears;*

16 (3) *in paragraph (3)—*

17 (A) *by inserting “or municipal entities or*
18 *obligated person” after “protection of investors”*
19 *each place that term appears; and*

20 (B) *by inserting “or municipal advisor”*
21 *after “municipal securities dealer” each place*
22 *that term appears;*

23 (4) *in paragraph (4), by inserting “or municipal*
24 *advisor” after “municipal securities dealer or obli-*
25 *gated person” each place that term appears;*

1 (5) in paragraph (6)(B), by inserting “or mu-
2 nicipal entities” after “protection of investors”;

3 (6) in paragraph (7)—

4 (A) in subparagraph (A)—

5 (i) in clause (i), by striking “; and”
6 and inserting a semicolon;

7 (ii) in clause (ii), by striking the pe-
8 riod and inserting “; and”; and

9 (iii) by adding at the end the fol-
10 lowing:

11 “(iii) the Commission, or its designee,
12 in the case of municipal advisors.”.

13 (B) in subparagraph (B), by inserting “or
14 municipal entities or obligated person” after
15 “protection of investors”; and

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

17 “(9)(A) Fines collected by the Commission for
18 violations of the rules of the Board shall be equally
19 divided between the Commission and the Board.

20 “(B) Fines collected by a registered securities as-
21 sociation under section 15A(7) with respect to viola-
22 tions of the rules of the Board shall be accounted for
23 by such registered securities association separately
24 from other fines collected under section 15A(7) and
25 shall be allocated between such registered securities as-

1 *sociation and the Board at the direction of the Com-*
2 *mission.”.*

3 *(d) ISSUANCE OF MUNICIPAL SECURITIES.—Section*
4 *15B(d)(2) of the Securities Exchange Act of 1934 (15*
5 *U.S.C. 78o-4(d)) is amended—*

6 *(1) by striking “through a municipal securities*
7 *broker or municipal securities dealer or otherwise”*
8 *and inserting “through a municipal securities broker,*
9 *municipal securities dealer, municipal advisor, or*
10 *otherwise”; and*

11 *(2) by inserting “or municipal advisors” before*
12 *“to furnish”.*

13 *(e) DEFINITIONS.—Section 15B of the Securities Ex-*
14 *change Act of 1934 (15 U.S.C. 78o-4) is amended by adding*
15 *at the end the following:*

16 *“(e) DEFINITIONS.—For purposes of this section—*

17 *“(1) the term ‘Board’ means the Municipal Secu-*
18 *rities Rulemaking Board established under subsection*
19 *(b)(1);*

20 *“(2) the term ‘guaranteed investment contract’*
21 *includes any investment that has specified with-*
22 *drawal or reinvestment provisions and a specifically*
23 *negotiated or bid interest rate, and also includes any*
24 *agreement to supply investments on 2 or more future*
25 *dates, such as a forward supply contract;*

1 “(3) the term ‘investment strategies’ includes
2 plans or programs for the investment of the proceeds
3 of municipal securities that are not municipal de-
4 rivatives, guaranteed investment contracts, and the
5 recommendation of and brokerage of municipal es-
6 crow investments;

7 “(4) the term ‘municipal advisor’—

8 “(A) means a person (who is not a munic-
9 ipal entity or an employee of a municipal enti-
10 ty) that—

11 “(i) provides advice to or on behalf of
12 a municipal entity or obligated person with
13 respect to municipal financial products or
14 the issuance of municipal securities, includ-
15 ing advice with respect to the structure,
16 timing, terms, and other similar matters
17 concerning such financial products or
18 issues;

19 “(ii) participates in the issuance of
20 municipal securities; or

21 “(iii) undertakes a solicitation of a
22 municipal entity;

23 “(B) includes financial advisors, guaran-
24 teed investment contract brokers, third-party
25 marketers, placement agents, solicitors, finders,

1 *and swap advisors, if such persons are described*
2 *in any of clauses (i) through (iii) of subpara-*
3 *graph (A); and*

4 “(C) *does not include a broker, dealer, or*
5 *municipal securities dealer serving as an under-*
6 *writer (as defined in section 2(a)(11) of the Se-*
7 *curities Act of 1933) (15 U.S.C. 77b(a)(11)), any*
8 *investment adviser registered under the Invest-*
9 *ment Advisers Act of 1940, or persons associated*
10 *with such investment advisers who are providing*
11 *investment advice, attorneys offering legal advice*
12 *or providing services that are of a traditional*
13 *legal nature, or engineers providing engineering*
14 *advice;*

15 “(5) *the term ‘municipal derivative’ means any*
16 *financial instrument or contract designed to hedge a*
17 *risk (including interest rate swaps, basis swaps, cred-*
18 *it default swaps, caps, floors, and collars);*

19 “(6) *the term ‘municipal financial product’*
20 *means municipal derivatives, guaranteed investment*
21 *contracts, and investment strategies;*

22 “(7) *the term ‘rules of the Board’ means the rules*
23 *proposed and adopted by the Board under subsection*
24 *(b)(2);*

1 “(8) the term ‘person associated with a munic-
2 ipal advisor’ or ‘associated person of an advisor’
3 means—

4 “(A) any partner, officer, director, or
5 branch manager of such municipal advisor (or
6 any person occupying a similar status or per-
7 forming similar functions);

8 “(B) any other employee of such municipal
9 advisor who is engaged in the management, di-
10 rection, supervision, or performance of any ac-
11 tivities relating to the provision of advice to or
12 on behalf of a municipal entity or obligated per-
13 son with respect to municipal financial products,
14 the issuance of municipal securities, or partici-
15 pation in the issuance of municipal securities;
16 and

17 “(C) any person directly or indirectly con-
18 trolling, controlled by, or under common control
19 with such municipal advisor;

20 “(9) the term ‘municipal entity’ means any
21 State, political subdivision of a State, or municipal
22 corporate instrumentality of a State, including—

23 “(A) any agency, authority, or instrumen-
24 tality of the State, political subdivision, or mu-
25 nicipal corporate instrumentality;

1 “(B) any plan, program, or pool of assets
2 sponsored or established by the State, political
3 subdivision, or municipal corporate instrumen-
4 tality or any agency, authority, or instrumen-
5 tality thereof; and

6 “(C) any other issuer of municipal securi-
7 ties;

8 “(10) the term ‘solicitation of a municipal entity
9 or obligated person’ means a direct or indirect com-
10 munication with a municipal entity or obligated per-
11 son made by a person, for direct or indirect com-
12 pensation, on behalf of a broker, dealer, municipal se-
13 curities dealer, municipal advisor, or investment ad-
14 viser (as defined in section 202 of the Investment Ad-
15 visers Act of 1940) that does not control, is not con-
16 trolled by, or is not under common control with the
17 person undertaking such solicitation for the purpose
18 of obtaining or retaining an engagement by a munic-
19 ipal entity or obligated person of a broker, dealer,
20 municipal securities dealer, or municipal advisor for
21 or in connection with municipal financial products,
22 the issuance of municipal securities, or participation
23 in the issuance of municipal securities, or of an in-
24 vestment adviser to provide investment advisory serv-
25 ices to or on behalf of a municipal entity; and

1 “(11) the term ‘obligated person’ means any per-
2 son, including an issuer of municipal securities, who
3 is either generally or through an enterprise, fund, or
4 account of such person, committed by contract or
5 other arrangement to support the payment of all or
6 part of the obligations on the municipal securities to
7 be sold in an offering of municipal securities.”.

8 (f) REGISTERED SECURITIES ASSOCIATION.—Section
9 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C.
10 78o–3(b)) is amended by adding at the end the following:

11 “(15) The rules of the association provide that
12 the association shall—

13 “(A) request guidance from the Municipal
14 Securities Rulemaking Board in interpretation
15 of the rules of the Municipal Securities Rule-
16 making Board; and

17 “(B) provide information to the Municipal
18 Securities Rulemaking Board about the enforce-
19 ment actions and examinations of the associa-
20 tion under section 15B(b)(2)(E), so that the Mu-
21 nicipal Securities Rulemaking Board may—

22 “(i) assist in such enforcement actions
23 and examinations; and

24 “(ii) evaluate the ongoing effectiveness
25 of the rules of the Board.”.

1 (g) *REGISTRATION AND REGULATION OF BROKERS*
2 *AND DEALERS.*—Section 15 of the Securities Exchange Act
3 of 1934 is amended—

4 (1) in subsection (b)(4), by inserting “municipal
5 advisor,” after “municipal securities dealer” each
6 place that term appears; and

7 (2) in subsection (c), by inserting “broker, deal-
8 er, or” before “municipal securities dealer” each place
9 that term appears.

10 (h) *ACCOUNTS AND RECORDS, REPORTS, EXAMINA-*
11 *TIONS OF EXCHANGES, MEMBERS, AND OTHERS.*—Section
12 17(a)(1) of the Securities Exchange Act of 1934 is amended
13 by inserting “municipal advisor,” after “municipal securi-
14 ties dealer”.

15 (i) *SAVINGS CLAUSE.*—Notwithstanding any provision
16 of the Over-the-Counter Derivatives Markets Act of 2010,
17 or any amendment made pursuant to such Act, the provi-
18 sions of this section, and the amendments made pursuant
19 to this section, shall apply to any municipal derivative.

20 (j) *EFFECTIVE DATE.*—This section, and the amend-
21 ments made by this section, shall take effect on October 1,
22 2010.

1 **SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **OF INCREASED DISCLOSURE TO INVESTORS.**

3 (a) *STUDY.*—*The Comptroller General of the United*
4 *States shall conduct a study and review of the disclosure*
5 *required to be made by issuers of municipal securities.*

6 (b) *SUBJECTS FOR EVALUATION.*—*In conducting the*
7 *study under subsection (a), the Comptroller General of the*
8 *United States shall—*

9 (1) *broadly describe—*

10 (A) *the size of the municipal securities mar-*
11 *kets and the issuers and investors; and*

12 (B) *the disclosures provided by issuers to*
13 *investors;*

14 (2) *compare the amount, frequency, and quality*
15 *of disclosures that issuers of municipal securities are*
16 *required by law to provide for the benefit of munic-*
17 *ipal securities holders, including the amount of and*
18 *frequency of disclosures actually provided by issuers*
19 *of municipal securities, with the amount of and fre-*
20 *quency of disclosures that issuers of corporate securi-*
21 *ties provide for the benefit of corporate securities hold-*
22 *ers, taking into account the differences between issuers*
23 *of municipal securities and issuers of corporate secu-*
24 *rities;*

25 (3) *evaluate the costs and benefits to various*
26 *types of issuers of municipal securities of requiring*

1 *issuers of municipal bonds to provide additional fi-*
 2 *nancial disclosures for the benefit of investors;*

3 *(4) evaluate the potential benefit to investors*
 4 *from additional financial disclosures by issuers of*
 5 *municipal bonds; and*

6 *(5) make recommendations relating to disclosure*
 7 *requirements for municipal issuers, including the ad-*
 8 *visability of the repeal or retention of section 15B(d)*
 9 *of the Securities Exchange Act of 1934 (15 U.S.C.*
 10 *780-4(d)) (commonly known as the “Tower Amend-*
 11 *ment”).*

12 *(c) REPORT.—Not later than 1 year after the date of*
 13 *enactment of this Act, the Comptroller General of the United*
 14 *States shall submit a report to Congress on the results of*
 15 *the study conducted under subsection (a), including rec-*
 16 *ommendations for how to improve disclosure by issuers of*
 17 *municipal securities.*

18 **SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**

19 **ON THE MUNICIPAL SECURITIES MARKETS.**

20 *(a) STUDY.—The Comptroller General of the United*
 21 *States shall conduct a study of the municipal securities*
 22 *markets.*

23 *(b) REPORT.—Not later than 180 days after the date*
 24 *of enactment of this Act, the Comptroller General of the*
 25 *United States shall submit a report to the Committee on*

1 *Banking, Housing, and Urban Affairs of the Senate, and*
2 *the Committee on Financial Services of the House of Rep-*
3 *resentatives, with copies to the Special Committee on Aging*
4 *of the Senate and the Commission, on the results of the*
5 *study conducted under subsection (a), including—*

6 (1) *an analysis of the mechanisms for trading,*
7 *quality of trade executions, market transparency,*
8 *trade reporting, price discovery, settlement clearing,*
9 *and credit enhancements;*

10 (2) *the needs of the markets and investors and*
11 *the impact of recent innovations;*

12 (3) *recommendations for how to improve the*
13 *transparency, efficiency, fairness, and liquidity of*
14 *trading in the municipal securities markets, includ-*
15 *ing with reference to items listed in paragraph (1);*
16 *and*

17 (4) *potential uses of derivatives in the municipal*
18 *securities markets.*

19 (c) *RESPONSES.—Not later than 180 days after receipt*
20 *of the report required under subsection (b), the Commission*
21 *shall submit a response to the Committee on Banking,*
22 *Housing, and Urban Affairs of the Senate, and the Com-*
23 *mittee on Financial Services of the House of Representa-*
24 *tives, with a copy to the Special Committee on Aging of*
25 *the Senate, stating the actions the Commission has taken*

1 *in response to the recommendations contained in such re-*
2 *port.*

3 **SEC. 978. STUDY OF FUNDING FOR GOVERNMENT AC-**
4 **COUNTING STANDARDS BOARD.**

5 (a) *STUDY.*—*The Commission shall conduct a study*
6 *that evaluates—*

7 (1) *the role and importance of the Government*
8 *Accounting Standards Board in the municipal securi-*
9 *ties markets;*

10 (2) *the manner in which the Government Ac-*
11 *counting Standards Board is funded, and how such*
12 *manner of funding affects the financial information*
13 *available to securities investors;*

14 (3) *the advisability of changes to the manner in*
15 *which the Government Accounting Standards Board*
16 *is funded; and*

17 (4) *whether legislative changes to the manner in*
18 *which the Government Accounting Standards Board*
19 *is funded are necessary for the benefit of investors and*
20 *in the public interest.*

21 (b) *CONSULTATION.*—*In conducting the study required*
22 *under subsection (a), the Commission shall consult with*
23 *State and local government financial officers.*

24 (c) *REPORT.*—*Not later than 270 days after the date*
25 *of enactment of this Act, the Commission shall submit to*

1 *the Committee on Banking, Housing, and Urban Affairs*
2 *of the Senate and the Committee on Financial Services of*
3 *the House of Representatives a report on the study required*
4 *under subsection (a).*

5 **SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.**

6 *(a) IN GENERAL.—There shall be in the Commission*
7 *an Office of Municipal Securities, which shall—*

8 *(1) administer the rules of the Commission with*
9 *respect to the practices of municipal securities brokers*
10 *and dealers, municipal securities advisors, municipal*
11 *securities investors, and municipal securities issuers;*
12 *and*

13 *(2) coordinate with the Municipal Securities*
14 *Rulemaking Board for rulemaking and enforcement*
15 *actions as required by law.*

16 *(b) DIRECTOR OF THE OFFICE.—The head of the Office*
17 *of Municipal Securities shall be the Director, who shall re-*
18 *port to the Chairman.*

19 *(c) STAFFING.—*

20 *(1) IN GENERAL.—The Office of Municipal Secu-*
21 *rities shall be staffed sufficiently to carry out the re-*
22 *quirements of this section.*

23 *(2) REQUIREMENT.—The staff of the Office of*
24 *Municipal Securities shall include individuals with*
25 *knowledge of and expertise in municipal finance.*

1 ***Subtitle I—Public Company Ac-***
2 ***counting Oversight Board, Port-***
3 ***folio Margining, and Other Mat-***
4 ***ters***

5 ***SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION***
6 ***WITH FOREIGN AUTHORITIES.***

7 *(a) DEFINITION.—Section 2(a) of the Sarbanes-Oxley*
8 *Act of 2002 (15 U.S.C. 7201(a)) is amended by adding at*
9 *the end the following:*

10 *“(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-*
11 *ITY.—The term ‘foreign auditor oversight authority’*
12 *means any governmental body or other entity empow-*
13 *ered by a foreign government to conduct inspections*
14 *of public accounting firms or otherwise to administer*
15 *or enforce laws related to the regulation of public ac-*
16 *counting firms.”.*

17 *(b) AVAILABILITY TO SHARE INFORMATION.—Section*
18 *105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.*
19 *7215(b)(5)) is amended by adding at the end the following:*

20 *“(C) AVAILABILITY TO FOREIGN OVERSIGHT*
21 *AUTHORITIES.—Without the loss of its status as*
22 *confidential and privileged in the hands of the*
23 *Board, all information referred to in subpara-*
24 *graph (A) that relates to a public accounting*
25 *firm that a foreign government has empowered a*

1 *foreign auditor oversight authority to inspect or*
2 *otherwise enforce laws with respect to, may, at*
3 *the discretion of the Board, be made available to*
4 *the foreign auditor oversight authority, if—*

5 “(i) *the Board finds that it is nec-*
6 *essary to accomplish the purposes of this*
7 *Act or to protect investors;*

8 “(ii) *the foreign auditor oversight au-*
9 *thority provides—*

10 “(I) *such assurances of confiden-*
11 *tiality as the Board may request;*

12 “(II) *a description of the applica-*
13 *ble information systems and controls of*
14 *the foreign auditor oversight authority;*
15 *and*

16 “(III) *a description of the laws*
17 *and regulations of the foreign govern-*
18 *ment of the foreign auditor oversight*
19 *authority that are relevant to informa-*
20 *tion access; and*

21 “(iii) *the Board determines that it is*
22 *appropriate to share such information.”.*

23 (c) *CONFORMING AMENDMENT.—Section 105(b)(5)(A)*
24 *of the Sarbanes-Oxley Act of 2002 (15 U.S.C.*

1 7215(b)(5)(A)) is amended by striking “subparagraph (B)”
2 and inserting “subparagraphs (B) and (C)”.

3 **SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.**

4 (a) *DEFINITIONS.*—

5 (1) *DEFINITIONS AMENDED.*—*Title I of the Sar-*
6 *banes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.) is*
7 *amended by adding at the end the following new sec-*
8 *tion:*

9 **“SEC. 110. DEFINITIONS.**

10 *“For the purposes of this title, the following definitions*
11 *shall apply:*

12 *“(1) AUDIT.—The term ‘audit’ means an exam-*
13 *ination of the financial statements, reports, docu-*
14 *ments, procedures, controls, or notices of any issuer,*
15 *broker, or dealer by an independent public accounting*
16 *firm in accordance with the rules of the Board or the*
17 *Commission, for the purpose of expressing an opinion*
18 *on the financial statements or providing an audit re-*
19 *port.*

20 *“(2) AUDIT REPORT.—The term ‘audit report’*
21 *means a document, report, notice, or other record—*

22 *“(A) prepared following an audit performed*
23 *for purposes of compliance by an issuer, broker,*
24 *or dealer with the requirements of the securities*
25 *laws; and*

1 “(B) in which a public accounting firm ei-
2 ther—

3 “(i) sets forth the opinion of that firm
4 regarding a financial statement, report, no-
5 tice, or other document, procedures, or con-
6 trols; or

7 “(ii) asserts that no such opinion can
8 be expressed.

9 “(3) *BROKER.*—The term ‘broker’ means a
10 broker (as such term is defined in section 3(a)(4) of
11 the Securities Exchange Act of 1934 (15 U.S.C.
12 78c(a)(4))) that is required to file a balance sheet, in-
13 come statement, or other financial statement under
14 section 17(e)(1)(A) of such Act (15 U.S.C.
15 78q(e)(1)(A)), where such balance sheet, income state-
16 ment, or financial statement is required to be certified
17 by a registered public accounting firm.

18 “(4) *DEALER.*—The term ‘dealer’ means a dealer
19 (as such term is defined in section 3(a)(5) of the Se-
20 curities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)))
21 that is required to file a balance sheet, income state-
22 ment, or other financial statement under section
23 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)),
24 where such balance sheet, income statement, or finan-

1 *cial statement is required to be certified by a reg-*
2 *istered public accounting firm.*

3 “(5) *PROFESSIONAL STANDARDS.*—*The term*
4 *‘professional standards’ means—*

5 “(A) *accounting principles that are—*

6 “(i) *established by the standard setting*
7 *body described in section 19(b) of the Secu-*
8 *rities Act of 1933, as amended by this Act,*
9 *or prescribed by the Commission under sec-*
10 *tion 19(a) of that Act (15 U.S.C. 17a(s)) or*
11 *section 13(b) of the Securities Exchange Act*
12 *of 1934 (15 U.S.C. 78a(m)); and*

13 “(ii) *relevant to audit reports for par-*
14 *ticular issuers, brokers, or dealers, or dealt*
15 *with in the quality control system of a par-*
16 *ticular registered public accounting firm;*
17 *and*

18 “(B) *auditing standards, standards for at-*
19 *testation engagements, quality control policies*
20 *and procedures, ethical and competency stand-*
21 *ards, and independence standards (including*
22 *rules implementing title II) that the Board or*
23 *the Commission determines—*

1 “(i) relate to the preparation or
2 issuance of audit reports for issuers, bro-
3 kers, or dealers; and

4 “(ii) are established or adopted by the
5 Board under section 103(a), or are promul-
6 gated as rules of the Commission.

7 “(6) *SELF-REGULATORY ORGANIZATION.*—The
8 term ‘self-regulatory organization’ has the same
9 meaning as in section 3(a) of the Securities Exchange
10 Act of 1934 (15 U.S.C. 78c(a)).”.

11 (2) *CONFORMING AMENDMENT.*—Section 2(a) of
12 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a))
13 is amended in the matter preceding paragraph (1), by
14 striking “In this” and inserting “Except as otherwise
15 specifically provided in this Act, in this”.

16 (b) *ESTABLISHMENT AND ADMINISTRATION OF THE*
17 *PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.*—Sec-
18 tion 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
19 7211) is amended—

20 (1) by striking “issuers” each place that term
21 appears and inserting “issuers, brokers, and dealers”;
22 and

23 (2) in subsection (a)—

24 (A) by striking “public companies” and in-
25 serting “companies”; and

1 (B) by striking “for companies the securi-
2 ties of which are sold to, and held by and for,
3 public investors”.

4 (c) *REGISTRATION WITH THE BOARD.*—Section 102 of
5 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is amend-
6 ed—

7 (1) in subsection (a)—

8 (A) by striking “Beginning 180” and all
9 that follows through “101(d), it” and inserting
10 “It”; and

11 (B) by striking “issuer” and inserting
12 “issuer, broker, or dealer”;

13 (2) in subsection (b)—

14 (A) in paragraph (2)(A), by striking
15 “issuers” and inserting “issuers, brokers, and
16 dealers”; and

17 (B) by striking “issuer” each place that
18 term appears and inserting “issuer, broker, or
19 dealer”.

20 (d) *AUDITING AND INDEPENDENCE.*—Section 103(a) of
21 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)) is
22 amended—

23 (1) in paragraph (1), by striking “and such eth-
24 ics standards” and inserting “such ethics standards,
25 and such independence standards”;

1 (2) in paragraph (2)(A)(iii), by striking “de-
2 scribe in each audit report” and inserting “in each
3 audit report for an issuer, describe”; and

4 (3) in paragraph (2)(B)(i), by striking “issuers”
5 and inserting “issuers, brokers, and dealers”.

6 (e) *INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-*
7 *ING FIRMS.*—Section 104 of the Sarbanes-Oxley Act of 2002
8 (15 U.S.C. 7214) is amended—

9 (1) in subsection (a), by striking “issuers” and
10 inserting “issuers, brokers, and dealers”; and

11 (2) in subsection (b)(1)—

12 (A) by striking “audit reports for” each
13 place that term appears and inserting “audit re-
14 ports on annual financial statements for”;

15 (B) in subparagraph (A), by striking “and”
16 at the end;

17 (C) in subparagraph (B), by striking the
18 period at the end and inserting “; and”; and

19 (D) by adding at the end the following:

20 “(C) with respect to each registered public
21 accounting firm that regularly provides audit re-
22 ports and that is not described in subparagraph
23 (A) or (B), on a basis determined by the Board,
24 by rule, that is consistent with the public interest
25 and protection of investors.”.

1 (f) *INVESTIGATIONS AND DISCIPLINARY PRO-*
2 *CEEDINGS.*—Section 105(c)(7)(B) of the Sarbanes-Oxley
3 *Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—*

4 (1) *in the subparagraph heading, by inserting “,*
5 *BROKER, OR DEALER” after “ISSUER”;*

6 (2) *by striking “any issuer” each place that term*
7 *appears and inserting “any issuer, broker, or dealer”;*
8 *and*

9 (3) *by striking “an issuer under this subsection”*
10 *and inserting “a registered public accounting firm*
11 *under this subsection”.*

12 (g) *FOREIGN PUBLIC ACCOUNTING FIRMS.*—Section
13 *106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.*
14 *7216(a)) is amended—*

15 (1) *in paragraph (1), by striking “issuer” and*
16 *inserting “issuer, broker, or dealer”; and*

17 (2) *in paragraph (2), by striking “issuers” and*
18 *inserting “issuers, brokers, or dealers”.*

19 (h) *FUNDING.*—Section 109 of the Sarbanes-Oxley Act
20 *of 2002 (15 U.S.C. 7219) is amended—*

21 (1) *in subsection (c)(2), by striking “subsection*
22 *(i)” and inserting “subsection (j)”;*

23 (2) *in subsection (d)—*

24 (A) *in paragraph (2), by striking “allowing*
25 *for differentiation among classes of issuers, as*

1 *appropriate” and inserting “and among brokers*
2 *and dealers, in accordance with subsection (h),*
3 *and allowing for differentiation among classes of*
4 *issuers, brokers and dealers, as appropriate”;*
5 *and*

6 *(B) by adding at the end the following:*

7 “*(3) BROKERS AND DEALERS.—The Board shall*
8 *begin the allocation, assessment, and collection of fees*
9 *under paragraph (2) with respect to brokers and deal-*
10 *ers with the payment of support fees to fund the first*
11 *full fiscal year beginning after the effective date of*
12 *this paragraph.”;*

13 *(3) by redesignating subsections (h), (i), and (j)*
14 *as subsections (i), (j), and (k), respectively; and*

15 *(4) by inserting after subsection (g) the fol-*
16 *lowing:*

17 “*(h) ALLOCATION OF ACCOUNTING SUPPORT FEES*
18 *AMONG BROKERS AND DEALERS.—*

19 “*(1) OBLIGATION TO PAY.—Each broker or deal-*
20 *er shall pay to the Board the annual accounting sup-*
21 *port fee allocated to such broker or dealer under this*
22 *section.*

23 “*(2) ALLOCATION.—Any amount due from a*
24 *broker or dealer (or from a particular class of brokers*
25 *and dealers) under this section shall be allocated*

1 *among brokers and dealers and payable by the broker*
2 *or dealer (or the brokers and dealers in the particular*
3 *class, as applicable).*

4 “(3) *PROPORTIONALITY.*—*The amount due from*
5 *a broker or dealer shall be in proportion to the net*
6 *capital of the broker or dealer, compared to the total*
7 *net capital of all brokers and dealers, in accordance*
8 *with rules issued by the Board.”.*

9 *(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-*
10 *LATORY ORGANIZATION.*—*Section 105(b)(4)(B) of the Sar-*
11 *banes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B)) is*
12 *amended—*

13 (1) *by redesignating clauses (ii) and (iii) as*
14 *clauses (iii) and (iv), respectively; and*

15 (2) *by inserting after clause (i) the following:*

16 “(ii) *to a self-regulatory organization,*
17 *in the case of an investigation that concerns*
18 *an audit report for a broker or dealer that*
19 *is under the jurisdiction of such self-regu-*
20 *latory organization;”.*

21 *(j) USE OF DOCUMENTS RELATED TO AN INSPECTION*
22 *OR INVESTIGATION.*—*Section 105(b)(5)(B)(ii) of the Sar-*
23 *banes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii)) is*
24 *amended—*

1 (1) *in subclause (III), by striking “and” at the*
2 *end;*

3 (2) *in subclause (IV), by striking the comma and*
4 *inserting “; and”; and*

5 (3) *by inserting after subclause (IV) the fol-*
6 *lowing:*

7 *“(V) a self-regulatory organiza-*
8 *tion, with respect to an audit report*
9 *for a broker or dealer that is under the*
10 *jurisdiction of such self-regulatory or-*
11 *ganization,”.*

12 (k) *EFFECTIVE DATE.—The amendments made by this*
13 *section shall take effect 180 days after the date of enactment*
14 *of this Act.*

15 **SEC. 983. PORTFOLIO MARGINING.**

16 (a) *ADVANCES.—Section 9(a)(1) of the Securities In-*
17 *vestor Protection Act of 1970 (15 U.S.C. 78fff-3(a)(1)) is*
18 *amended by inserting “or options on commodity futures*
19 *contracts” after “claim for securities”.*

20 (b) *DEFINITIONS.—Section 16 of the Securities Inves-*
21 *tor Protection Act of 1970 (15 U.S.C. 78lll) is amended—*

22 (1) *by striking paragraph (2) and inserting the*
23 *following:*

24 *“(2) CUSTOMER.—*

1 “(A) *IN GENERAL.*—The term ‘customer’ of
2 a debtor means any person (including any per-
3 son with whom the debtor deals as principal or
4 agent) who has a claim on account of securities
5 received, acquired, or held by the debtor in the
6 ordinary course of its business as a broker or
7 dealer from or for the securities accounts of such
8 person for safekeeping, with a view to sale, to
9 cover consummated sales, pursuant to purchases,
10 as collateral, security, or for purposes of effecting
11 transfer.

12 “(B) *INCLUDED PERSONS.*—The term ‘cus-
13 tomer’ includes—

14 “(i) any person who has deposited cash
15 with the debtor for the purpose of pur-
16 chasing securities;

17 “(ii) any person who has a claim
18 against the debtor for cash, securities, fu-
19 tures contracts, or options on futures con-
20 tracts received, acquired, or held in a port-
21 folio margining account carried as a securi-
22 ties account pursuant to a portfolio mar-
23 ginning program approved by the Commis-
24 sion; and

1 “(iii) any person who has a claim
2 against the debtor arising out of sales or
3 conversions of such securities.

4 “(C) *EXCLUDED PERSONS.*—The term ‘cus-
5 tomer’ does not include any person, to the extent
6 that—

7 “(i) the claim of such person arises out
8 of transactions with a foreign subsidiary of
9 a member of SIPC; or

10 “(ii) such person has a claim for cash
11 or securities which by contract, agreement,
12 or understanding, or by operation of law, is
13 part of the capital of the debtor, or is subor-
14 dinated to the claims of any or all creditors
15 of the debtor, notwithstanding that some
16 ground exists for declaring such contract,
17 agreement, or understanding void or void-
18 able in a suit between the claimant and the
19 debtor.”;

20 (2) in paragraph (4)—

21 (A) in subparagraph (C), by striking “and”
22 at the end;

23 (B) by redesignating subparagraph (D) as
24 subparagraph (E); and

1 (C) by inserting after subparagraph (C) the
2 following:

3 “(D) in the case of a portfolio margining
4 account of a customer that is carried as a securi-
5 ties account pursuant to a portfolio margining
6 program approved by the Commission, a futures
7 contract or an option on a futures contract re-
8 ceived, acquired, or held by or for the account of
9 a debtor from or for such portfolio margining ac-
10 count, and the proceeds thereof; and”;

11 (3) in paragraph (9), in the matter following
12 subparagraph (L), by inserting after “Such term” the
13 following: “includes revenues earned by a broker or
14 dealer in connection with a transaction in the port-
15 folio margining account of a customer carried as se-
16 curities accounts pursuant to a portfolio margining
17 program approved by the Commission. Such term”;
18 and

19 (4) in paragraph (11)—

20 (A) in subparagraph (A)—

21 (i) by striking “filing date, all” and
22 all that follows through the end of the sub-
23 paragraph and inserting the following: “fil-
24 ing date—

1 “(i) all securities positions of such cus-
2 tomer (other than customer name securities
3 reclaimed by such customer); and

4 “(ii) all positions in futures contracts
5 and options on futures contracts held in a
6 portfolio margining account carried as a se-
7 curities account pursuant to a portfolio
8 margining program approved by the Com-
9 mission, including all property
10 collateralizing such positions, to the extent
11 that such property is not otherwise included
12 herein; minus”; and

13 (B) in the matter following subparagraph
14 (C), by striking “In determining” and inserting
15 the following: “A claim for a commodity futures
16 contract received, acquired, or held in a portfolio
17 margining account pursuant to a portfolio mar-
18 gining program approved by the Commission or
19 a claim for a security futures contract, shall be
20 deemed to be a claim with respect to such con-
21 tract as of the filing date, and such claim shall
22 be treated as a claim for cash. In determining”.

1 **SEC. 984. LOAN OR BORROWING OF SECURITIES.**

2 (a) *RULEMAKING AUTHORITY.*—Section 10 of the Se-
3 curities Exchange Act of 1934 (15 U.S.C. 78j) is amended
4 by adding at the end the following:

5 “(c)(1) To effect, accept, or facilitate a trans-
6 action involving the loan or borrowing of securities in
7 contravention of such rules and regulations as the
8 Commission may prescribe as necessary or appro-
9 priate in the public interest or for the protection of
10 investors.

11 “(2) Nothing in paragraph (1) may be construed
12 to limit the authority of the appropriate Federal
13 banking agency (as defined in section 3(q) of the Fed-
14 eral Deposit Insurance Act (12 U.S.C. 1813(q))), the
15 National Credit Union Administration, or any other
16 Federal department or agency having a responsibility
17 under Federal law to prescribe rules or regulations re-
18 stricting transactions involving the loan or borrowing
19 of securities in order to protect the safety and sound-
20 ness of a financial institution or to protect the finan-
21 cial system from systemic risk.”.

22 (b) *RULEMAKING REQUIRED.*—Not later than 2 years
23 after the date of enactment of this Act, the Commission shall
24 promulgate rules that are designed to increase the trans-
25 parency of information available to brokers, dealers, and
26 investors, with respect to the loan or borrowing of securities.

1 **SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURI-**
2 **TIES LAWS.**

3 (a) *SECURITIES ACT OF 1933.*—*The Securities Act of*
4 *1933 (15 U.S.C. 77a et seq.) is amended—*

5 (1) *in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by*
6 *striking “individual;” and inserting “individual;”;*

7 (2) *in section 18 (15 U.S.C. 77r)—*

8 (A) *in subsection (b)(1)(C), by striking “is*
9 *a security” and inserting “a security”; and*

10 (B) *in subsection (c)(2)(B)(i), by striking*
11 *“State, or” and inserting “State or”;*

12 (3) *in section 19(d)(6)(A) (15 U.S.C.*
13 *77s(d)(6)(A)), by striking “in paragraph (1) of (3)”*
14 *and inserting “in paragraph (1) or (3)”;* and

15 (4) *in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z-*
16 *2(c)(1)(B)(ii)), by striking “business entity;” and in-*
17 *serting “business entity.”*

18 (b) *SECURITIES EXCHANGE ACT OF 1934.*—*The Secu-*
19 *rities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is*
20 *amended—*

21 (1) *in section 2 (15 U.S.C. 78b), by striking “af-*
22 *ected” and inserting “effected”;*

23 (2) *in section 3 (15 U.S.C. 78c)—*

24 (A) *in subsection (a)(55)(A), by striking*
25 *“section 3(a)(12) of the Securities Exchange Act*

1 of 1934” and inserting “section 3(a)(12) of this
2 title”; and

3 (B) in subsection (g), by striking “com-
4 pany, account person, or entity” and inserting
5 “company, account, person, or entity”;

6 (3) in section 10A(i)(1)(B) (15 U.S.C. 78j-
7 1(i)(1)(B))—

8 (A) in the subparagraph heading, by strik-
9 ing “MINIMUS” and inserting “MINIMIS”; and

10 (B) in clause (i), by striking “nonaudit”
11 and inserting “non-audit”;

12 (4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by
13 striking “earning statement” and inserting “earnings
14 statement”;

15 (5) in section 15 (15 U.S.C. 78o)—

16 (A) in subsection (b)(1)—

17 (i) in subparagraph (B), by striking
18 “The order granting” and all that follows
19 through “from such membership.”; and

20 (ii) in the undesignated matter imme-
21 diately following subparagraph (B), by in-
22 serting after the first sentence the following:
23 “The order granting registration shall not
24 be effective until such broker or dealer has
25 become a member of a registered securities

1 *association, or until such broker or dealer*
2 *has become a member of a national securi-*
3 *ties exchange, if such broker or dealer effects*
4 *transactions solely on that exchange, unless*
5 *the Commission has exempted such broker*
6 *or dealer, by rule or order, from such mem-*
7 *bership.”;*

8 (6) *in section 15C(a)(2) (15 U.S.C. 780-*
9 *5(a)(2))—*

10 (A) *by redesignating clauses (i) and (ii) as*
11 *subparagraphs (A) and (B), respectively, and*
12 *adjusting the subparagraph margins accordingly;*

13 (B) *in subparagraph (B), as so redesign-*
14 *ated, by striking “The order granting” and all*
15 *that follows through “from such membership.”;*
16 *and*

17 (C) *in the matter following subparagraph*
18 *(B), as so redesignated, by inserting after the*
19 *first sentence the following: “The order granting*
20 *registration shall not be effective until such gov-*
21 *ernment securities broker or government securi-*
22 *ties dealer has become a member of a national*
23 *securities exchange registered under section 6 of*
24 *this title, or a securities association registered*
25 *under section 15A of this title, unless the Com-*

1 *mission has exempted such government securities*
2 *broker or government securities dealer, by rule or*
3 *order, from such membership.”;*

4 (7) *in section 17(b)(1)(B) (15 U.S.C.*
5 *78q(b)(1)(B)), by striking “15A(k) gives” and insert-*
6 *ing “15A(k), give”; and*

7 (8) *in section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)),*
8 *by striking “paragraph (1) subsection” and inserting*
9 *“Paragraph (1)”.*

10 (c) *TRUST INDENTURE ACT OF 1939.—The Trust In-*
11 *denture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—*

12 (1) *in section 304(b) (15 U.S.C. 77ddd(b)), by*
13 *striking “section 2 of such Act” and inserting “section*
14 *2(a) of such Act”; and*

15 (2) *in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)),*
16 *by striking “, in the” and inserting “in the”.*

17 (d) *INVESTMENT COMPANY ACT OF 1940.—The Invest-*
18 *ment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) is*
19 *amended—*

20 (1) *in section 2(a)(19) (15 U.S.C. 80a-2(a)(19)),*
21 *in the matter following subparagraph (B)(vii)—*

22 (A) *by striking “clause (vi)” each place that*
23 *term appears and inserting “clause (vii)”;* and

1 (B) in each of subparagraphs (A)(vi) and
2 (B)(vi), by adding “and” at the end of subclause
3 (III);

4 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
5 9(b)(4)(B)), by adding “or” after the semicolon at the
6 end;

7 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
8 12(d)(1)(J)), by striking “any provision of this sub-
9 section” and inserting “any provision of this para-
10 graph”;

11 (4) in section 17(f) (15 U.S.C. 80a–17(f))—

12 (A) in paragraph (4), by striking “No such
13 member” and inserting “No member of a na-
14 tional securities exchange”; and

15 (B) in paragraph (6), by striking “com-
16 pany may serve” and inserting “company, may
17 serve”; and

18 (5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
19 60(a)(3)(B)(iii))—

20 (A) by striking “paragraph (1) of section
21 205” and inserting “section 205(a)(1)”; and

22 (B) by striking “clause (A) or (B) of that
23 section” and inserting “paragraph (1) or (2) of
24 section 205(b)”.

1 (e) *INVESTMENT ADVISERS ACT OF 1940.*—*The Invest-*
2 *ment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is*
3 *amended—*

4 (1) *in section 203 (15 U.S.C. 80b–3)—*

5 (A) *in subsection (c)(1)(A), by striking*
6 *“principal business office and” and inserting*
7 *“principal office, principal place of business,*
8 *and”;* *and*

9 (B) *in subsection (k)(4)(B), in the matter*
10 *following clause (ii), by striking “principal place*
11 *of business” and inserting “principal office or*
12 *place of business”;*

13 (2) *in section 206(3) (15 U.S.C. 80b–6(3)), by*
14 *adding “or” after the semicolon at the end;*

15 (3) *in section 213(a) (15 U.S.C. 80b–13(a)), by*
16 *striking “principal place of business” and inserting*
17 *“principal office or place of business”;* *and*

18 (4) *in section 222 (15 U.S.C. 80b–18a), by strik-*
19 *ing “principal place of business” each place that term*
20 *appears and inserting “principal office and place of*
21 *business”.*

1 **SEC. 986. CONFORMING AMENDMENTS RELATING TO RE-**
2 **PEAL OF THE PUBLIC UTILITY HOLDING COM-**
3 **PANY ACT OF 1935.**

4 (a) *SECURITIES EXCHANGE ACT OF 1934.*—*The Secu-*
5 *rities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amend-*
6 *ed—*

7 (1) *in section 3(a)(47) (15 U.S.C. 78c(a)(47)),*
8 *by striking “the Public Utility Holding Company Act*
9 *of 1935 (15 U.S.C. 79a et seq.),”;*

10 (2) *in section 12(k) (15 U.S.C. 78l(k)), by*
11 *amending paragraph (7) to read as follows:*

12 “(7) *DEFINITION.*—*For purposes of this sub-*
13 *section, the term ‘emergency’ means—*

14 “(A) *a major market disturbance character-*
15 *ized by or constituting—*

16 “(i) *sudden and excessive fluctuations*
17 *of securities prices generally, or a substan-*
18 *tial threat thereof, that threaten fair and*
19 *orderly markets; or*

20 “(ii) *a substantial disruption of the*
21 *safe or efficient operation of the national*
22 *system for clearance and settlement of*
23 *transactions in securities, or a substantial*
24 *threat thereof; or*

25 “(B) *a major disturbance that substantially*
26 *disrupts, or threatens to substantially disrupt—*

1 “(i) the functioning of securities mar-
2 kets, investment companies, or any other
3 significant portion or segment of the securi-
4 ties markets; or

5 “(ii) the transmission or processing of
6 securities transactions.”; and

7 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by
8 striking “section 18(c) of the Public Utility Holding
9 Company Act of 1935,”.

10 (b) *TRUST INDENTURE ACT OF 1939.*—*The Trust In-*
11 *denture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—*

12 (1) in section 303 (15 U.S.C. 77ccc), by striking
13 paragraph (17) and inserting the following:

14 “(17) The terms ‘Securities Act of 1933’ and ‘Se-
15 curities Exchange Act of 1934’ shall be deemed to
16 refer, respectively, to such Acts, as amended, whether
17 amended prior to or after the enactment of this title.”;

18 (2) in section 308 (15 U.S.C. 77hhh), by striking
19 “Securities Act of 1933, the Securities Exchange Act
20 of 1934, or the Public Utility Holding Company Act
21 of 1935” each place that term appears and inserting
22 “Securities Act of 1933 or the Securities Exchange
23 Act of 1934”;

24 (3) in section 310 (15 U.S.C. 77jjj), by striking
25 subsection (c);

1 (4) in section 311 (15 U.S.C. 77kkk), by striking
2 subsection (c);

3 (5) in section 323(b) (15 U.S.C. 77www(b)), by
4 striking “Securities Act of 1933, or the Securities Ex-
5 change Act of 1934, or the Public Utility Holding
6 Company Act of 1935” and inserting “Securities Act
7 of 1933 or the Securities Exchange Act of 1934”; and

8 (6) in section 326 (15 U.S.C. 77zzz), by striking
9 “Securities Act of 1933, or the Securities Exchange
10 Act of 1934, or the Public Utility Holding Company
11 Act of 1935,” and inserting “Securities Act of 1933
12 or the Securities Exchange Act of 1934”.

13 (c) INVESTMENT COMPANY ACT OF 1940.—*The Invest-*
14 *ment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is*
15 *amended—*

16 (1) in section 2(a)(44) (15 U.S.C. 80a–2(a)(44)),
17 by striking “‘Public Utility Holding Company Act of
18 1935,’”;

19 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
20 striking paragraph (8) and inserting the following:

21 “(8) [Repealed]”;

22 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
23 striking “the Public Utility Holding Company Act of
24 1935,”; and

1 (4) *in section 50 (15 U.S.C. 80a-49), by striking*
 2 *“the Public Utility Holding Company Act of 1935,”.*

3 (d) *INVESTMENT ADVISERS ACT OF 1940.—Section*
 4 *202(a)(21) of the Investment Advisers Act of 1940 (15*
 5 *U.S.C. 80b-2(a)(21)) is amended by striking “‘Public Util-*
 6 *ity Holding Company Act of 1935’,”.*

7 **SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
 8 **AND NONMATERIAL LOSSES TO THE DEPOSIT**
 9 **INSURANCE FUND FOR PURPOSES OF IN-**
 10 **SPECTOR GENERAL REVIEWS.**

11 (a) *IN GENERAL.—Section 38(k) of the Federal De-*
 12 *posit Insurance Act (U.S.C. 1831o(k)) is amended—*

13 (1) *in paragraph (2), by striking subparagraph*
 14 *(B) and inserting the following:*

15 *“(B) MATERIAL LOSS DEFINED.—The term*
 16 *‘material loss’ means any estimated loss in ex-*
 17 *cess of—*

18 *“(i) \$100,000,000, if the loss occurs*
 19 *during the period beginning on September*
 20 *30, 2009, and ending on December 31,*
 21 *2010;*

22 *“(ii) \$75,000,000, if the loss occurs*
 23 *during the period beginning on January 1,*
 24 *2011, and ending on December 31, 2011;*
 25 *and*

1 “(iii) \$50,000,000, if the loss occurs on
2 or after January 1, 2012.”;

3 (2) in paragraph (4)(A) by striking “the report”
4 and inserting “any report on losses required under
5 this subsection,”;

6 (3) by striking paragraph (6);

7 (4) by redesignating paragraph (5) as para-
8 graph (6); and

9 (5) by inserting after paragraph (4) the fol-
10 lowing:

11 “(5) *LOSSES THAT ARE NOT MATERIAL.*—

12 “(A) *SEMIANNUAL REPORT.*—For the 6-
13 month period ending on March 31, 2010, and
14 each 6-month period thereafter, the Inspector
15 General of each Federal banking agency shall—

16 “(i) identify losses that the Inspector
17 General estimates have been incurred by the
18 Deposit Insurance Fund during that 6-
19 month period, with respect to the insured
20 depository institutions supervised by the
21 Federal banking agency;

22 “(ii) for each loss incurred by the De-
23 posit Insurance Fund that is not a material
24 loss, determine—

1 “(I) the grounds identified by the
2 Federal banking agency or State bank
3 supervisor for appointing the Corpora-
4 tion as receiver under section 11(c)(5);
5 and

6 “(II) whether any unusual cir-
7 cumstances exist that might warrant
8 an in-depth review of the loss; and

9 “(iii) prepare and submit a written re-
10 port to the appropriate Federal banking
11 agency and to Congress on the results of
12 any determination by the Inspector Gen-
13 eral, including—

14 “(I) an identification of any loss
15 that warrants an in-depth review, to-
16 gether with the reasons why such re-
17 view is warranted, or, if the Inspector
18 General determines that no review is
19 warranted, an explanation of such de-
20 termination; and

21 “(II) for each loss identified under
22 subclause (I) that warrants an in-
23 depth review, the date by which such
24 review, and a report on such review
25 prepared in a manner consistent with

1 *reports under paragraph (1)(A), will*
2 *be completed and submitted to the Fed-*
3 *eral banking agency and Congress.*

4 “(B) *DEADLINE FOR SEMIANNUAL RE-*
5 *PORT.—The Inspector General of each Federal*
6 *banking agency shall—*

7 *“(i) submit each report required under*
8 *paragraph (A) expeditiously, and not later*
9 *than 90 days after the end of the 6-month*
10 *period covered by the report; and*

11 *“(ii) provide a copy of the report re-*
12 *quired under paragraph (A) to any Member*
13 *of Congress, upon request.”.*

14 (b) *TECHNICAL AND CONFORMING AMENDMENT.—The*
15 *heading for subsection (k) of section 38 of the Federal De-*
16 *posit Insurance Act (U.S.C. 1831o(k)) is amended to read*
17 *as follows:*

18 “(k) *REVIEWS REQUIRED WHEN DEPOSIT INSURANCE*
19 *FUND INCURS LOSSES.—”.*

1 **SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
2 **AND NONMATERIAL LOSSES TO THE NA-**
3 **TIONAL CREDIT UNION SHARE INSURANCE**
4 **FUND FOR PURPOSES OF INSPECTOR GEN-**
5 **ERAL REVIEWS.**

6 (a) *IN GENERAL.*—Section 216(j) of the Federal Credit
7 Union Act (12 U.S.C. 1790d(j)) is amended to read as fol-
8 lows:

9 “(j) *REVIEWS REQUIRED WHEN SHARE INSURANCE*
10 *FUND EXPERIENCES LOSSES.*—

11 “(1) *IN GENERAL.*—If the Fund incurs a mate-
12 rial loss with respect to an insured credit union, the
13 Inspector General of the Board shall—

14 “(A) submit to the Board a written report
15 reviewing the supervision of the credit union by
16 the Administration (including the implementa-
17 tion of this section by the Administration),
18 which shall include—

19 “(i) a description of the reasons why
20 the problems of the credit union resulted in
21 a material loss to the Fund; and

22 “(ii) recommendations for preventing
23 any such loss in the future; and

24 “(B) submit a copy of the report under sub-
25 paragraph (A) to—

1 “(i) *the Comptroller General of the*
2 *United States;*

3 “(ii) *the Corporation;*

4 “(iii) *in the case of a report relating*
5 *to a State credit union, the appropriate*
6 *State supervisor; and*

7 “(iv) *to any Member of Congress, upon*
8 *request.*

9 “(2) *MATERIAL LOSS DEFINED.—For purposes of*
10 *determining whether the Fund has incurred a mate-*
11 *rial loss with respect to an insured credit union, a*
12 *loss is material if it exceeds the sum of—*

13 “(A) *\$25,000,000; and*

14 “(B) *an amount equal to 10 percent of the*
15 *total assets of the credit union on the date on*
16 *which the Board initiated assistance under sec-*
17 *tion 208 or was appointed liquidating agent.*

18 “(3) *PUBLIC DISCLOSURE REQUIRED.—*

19 “(A) *IN GENERAL.—The Board shall dis-*
20 *close a report under this subsection, upon request*
21 *under section 552 of title 5, United States Code,*
22 *without excising—*

23 “(i) *any portion under section*
24 *552(b)(5) of title 5, United States Code; or*

1 “(i) any information about the in-
2 sured credit union (other than trade secrets)
3 under section 552(b)(8) of title 5, United
4 States Code.

5 “(B) *RULE OF CONSTRUCTION.*—Subpara-
6 graph (A) may not be construed as requiring the
7 agency to disclose the name of any customer of
8 the insured credit union (other than an institu-
9 tion-affiliated party), or information from which
10 the identity of such customer could reasonably be
11 ascertained.

12 “(4) *LOSSES THAT ARE NOT MATERIAL.*—

13 “(A) *SEMIANNUAL REPORT.*—For the 6-
14 month period ending on March 31, 2010, and
15 each 6-month period thereafter, the Inspector
16 General of the Board shall—

17 “(i) identify any losses that the Inspec-
18 tor General estimates were incurred by the
19 Fund during such 6-month period, with re-
20 spect to insured credit unions;

21 “(ii) for each loss to the Fund that is
22 not a material loss, determine—

23 “(I) the grounds identified by the
24 Board or the State official having ju-
25 risdiction over a State credit union for

1 *appointing the Board as the liqui-*
2 *dating agent for any Federal or State*
3 *credit union; and*

4 *“(II) whether any unusual cir-*
5 *cumstances exist that might warrant*
6 *an in-depth review of the loss; and*

7 *“(iii) prepare and submit a written re-*
8 *port to the Board and to Congress on the re-*
9 *sults of the determinations of the Inspector*
10 *General that includes—*

11 *“(I) an identification of any loss*
12 *that warrants an in-depth review, and*
13 *the reasons such review is warranted,*
14 *or if the Inspector General determines*
15 *that no review is warranted, an expla-*
16 *nation of such determination; and*

17 *“(II) for each loss identified in*
18 *subclause (I) that warrants an in-*
19 *depth review, the date by which such*
20 *review, and a report on the review pre-*
21 *pared in a manner consistent with re-*
22 *ports under paragraph (1)(A), will be*
23 *completed.*

1 “(B) *DEADLINE FOR SEMIANNUAL RE-*
2 *PORT.—The Inspector General of the Board*
3 *shall—*

4 “(i) *submit each report required under*
5 *subparagraph (A) expeditiously, and not*
6 *later than 90 days after the end of the 6-*
7 *month period covered by the report; and*

8 “(ii) *provide a copy of the report re-*
9 *quired under subparagraph (A) to any*
10 *Member of Congress, upon request.*

11 “(5) *GAO REVIEW.—The Comptroller General of*
12 *the United States shall, under such conditions as the*
13 *Comptroller General determines to be appropriate—*

14 “(A) *review each report made under para-*
15 *graph (1), including the extent to which the In-*
16 *pector General of the Board complied with the*
17 *requirements under section 8L of the Inspector*
18 *General Act of 1978 (5 U.S.C. App.) with respect*
19 *to each such report; and*

20 “(B) *recommend improvements to the super-*
21 *vision of insured credit unions (including im-*
22 *provements relating to the implementation of*
23 *this section).”.*

1 **SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **ON PROPRIETARY TRADING.**

3 (a) *DEFINITIONS.*—*In this section—*

4 (1) *the term “covered entity” means—*

5 (A) *an insured depository institution, an*
6 *affiliate of an insured depository institution, a*
7 *bank holding company, a financial holding com-*
8 *pany, or a subsidiary of a bank holding com-*
9 *pany or a financial holding company, as those*
10 *terms are defined in the Bank Holding Company*
11 *Act of 1956 (12 U.S.C. 1841 et seq.); and*

12 (B) *any other entity, as the Comptroller*
13 *General of the United States may determine; and*

14 (2) *the term “proprietary trading” means the*
15 *act of a covered entity investing as a principal in se-*
16 *curities, commodities, derivatives, hedge funds, pri-*
17 *vate equity firms, or such other financial products or*
18 *entities as the Comptroller General may determine.*

19 (b) *STUDY.*—

20 (1) *IN GENERAL.*—*The Comptroller General of*
21 *the United States shall conduct a study regarding the*
22 *risks and conflicts associated with proprietary trad-*
23 *ing by and within covered entities, including an eval-*
24 *uation of—*

25 (A) *whether proprietary trading presents a*
26 *material systemic risk to the stability of the*

1 *United States financial system, and if so, the*
2 *costs and benefits of options for mitigating such*
3 *systemic risk;*

4 *(B) whether proprietary trading presents*
5 *material risks to the safety and soundness of the*
6 *covered entities that engage in such activities,*
7 *and if so, the costs and benefits of options for*
8 *mitigating such risks;*

9 *(C) whether proprietary trading presents*
10 *material conflicts of interest between covered en-*
11 *tities that engage in proprietary trading and the*
12 *clients of the institutions who use the firm to*
13 *execute trades or who rely on the firm to manage*
14 *assets, and if so, the costs and benefits of options*
15 *for mitigating such conflicts of interest;*

16 *(D) whether adequate disclosure regarding*
17 *the risks and conflicts of proprietary trading is*
18 *provided to the depositors, trading and asset*
19 *management clients, and investors of covered en-*
20 *tities that engage in proprietary trading, and if*
21 *not, the costs and benefits of options for the im-*
22 *provement of such disclosure; and*

23 *(E) whether the banking, securities, and*
24 *commodities regulators of institutions that en-*
25 *gage in proprietary trading have in place ade-*

1 *quate systems and controls to monitor and con-*
2 *tain any risks and conflicts of interest related to*
3 *proprietary trading, and if not, the costs and*
4 *benefits of options for the improvement of such*
5 *systems and controls.*

6 (2) *CONSIDERATIONS.—In carrying out the*
7 *study required under paragraph (1), the Comptroller*
8 *General shall consider—*

9 (A) *current practice relating to proprietary*
10 *trading;*

11 (B) *the advisability of a complete ban on*
12 *proprietary trading;*

13 (C) *limitations on the scope of activities*
14 *that covered entities may engage in with respect*
15 *to proprietary trading;*

16 (D) *the advisability of additional capital*
17 *requirements for covered entities that engage in*
18 *proprietary trading;*

19 (E) *enhanced restrictions on transactions*
20 *between affiliates related to proprietary trading;*

21 (F) *enhanced accounting disclosures relat-*
22 *ing to proprietary trading;*

23 (G) *enhanced public disclosure relating to*
24 *proprietary trading; and*

1 (H) any other options the Comptroller Gen-
2 eral deems appropriate.

3 (c) *REPORT TO CONGRESS.*—Not later than 15 months
4 after the date of enactment of this Act, the Comptroller Gen-
5 eral shall submit a report to Congress on the results of the
6 study conducted under subsection (b).

7 (d) *ACCESS BY COMPTROLLER GENERAL.*—For pur-
8 poses of conducting the study required under subsection (b),
9 the Comptroller General shall have access, upon request, to
10 any information, data, schedules, books, accounts, financial
11 records, reports, files, electronic communications, or other
12 papers, things, or property belonging to or in use by a cov-
13 ered entity that engages in proprietary trading, and to the
14 officers, directors, employees, independent public account-
15 ants, financial advisors, staff, and agents and representa-
16 tives of a covered entity (as related to the activities of the
17 agent or representative on behalf of the covered entity), at
18 such reasonable times as the Comptroller General may re-
19 quest. The Comptroller General may make and retain copies
20 of books, records, accounts, and other records, as the Comp-
21 troller General deems appropriate.

22 (e) *CONFIDENTIALITY OF REPORTS.*—

23 (1) *IN GENERAL.*—Except as provided in para-
24 graph (2), the Comptroller General may not disclose
25 information regarding—

1 (A) any proprietary trading activity of a
2 covered entity, unless such information is dis-
3 closed at a level of generality that does not reveal
4 the investment or trading position or strategy of
5 the covered entity for any specific security, com-
6 modity, derivative, or other investment or finan-
7 cial product; or

8 (B) any individual interviewed by the
9 Comptroller General for purposes of the study
10 under subsection (b), unless such information is
11 disclosed at a level of generality that does not re-
12 veal—

13 (i) the name of or identifying details
14 relating to such individual; or

15 (ii) in the case of an individual who is
16 an employee of a third party that provides
17 professional services to a covered entity be-
18 lieved to be engaged in proprietary trading,
19 the name of or any identifying details relat-
20 ing to such third party.

21 (2) *EXCEPTIONS.*—The Comptroller General may
22 disclose the information described in paragraph (1)—

23 (A) to a department, agency, or official of
24 the Federal Government, for official use, upon
25 request;

1 (B) to a committee of Congress, upon re-
2 quest; and

3 (C) to a court, upon an order of such court.

4 **SEC. 989A. SENIOR INVESTOR PROTECTIONS.**

5 (a) *DEFINITIONS.*—As used in this section—

6 (1) the term “eligible entity” means—

7 (A) a securities commission (or any agency
8 or office performing like functions) of a State
9 that the Office determines has adopted rules on
10 the appropriate use of designations in the offer
11 or sale of securities or investment advice that
12 meet or exceed the minimum requirements of the
13 NASAA Model Rule on the Use of Senior-Spe-
14 cific Certifications and Professional Designations
15 (or any successor thereto);

16 (B) the insurance commission (or any agen-
17 cy or office performing like functions) of any
18 State that the Office determines has—

19 (i) adopted rules on the appropriate
20 use of designations in the sale of insurance
21 products that, to the extent practicable, con-
22 form to the minimum requirements of the
23 National Association of Insurance Commis-
24 sioners Model Regulation on the Use of Sen-
25 ior-Specific Certifications and Professional

1 *Designations in the Sale of Life Insurance*
2 *and Annuities (or any successor thereto);*
3 *and*

4 *(ii) adopted rules with respect to fidu-*
5 *ciary or suitability requirements in the sale*
6 *of annuities that meet or exceed the min-*
7 *imum requirements established by the Suit-*
8 *ability in Annuity Transactions Model Reg-*
9 *ulation of the National Association of In-*
10 *surance Commissioners (or any successor*
11 *thereto); or*

12 *(C) a consumer protection agency of any*
13 *State, if—*

14 *(i) the securities commission (or any*
15 *agency or office performing like functions)*
16 *of the State is eligible under subparagraph*
17 *(A); or*

18 *(ii) the insurance commission (or any*
19 *agency or office performing like functions)*
20 *of the State is eligible under subparagraph*
21 *(B);*

22 *(2) the term “financial product” means a secu-*
23 *rity, an insurance product (including an insurance*
24 *product that pays a return, whether fixed or vari-*
25 *able), a bank product, and a loan product;*

1 (3) the term “misleading designation”—

2 (A) means a certification, professional des-
3 ignation, or other purported credential that indi-
4 cates or implies that a salesperson or adviser has
5 special certification or training in advising or
6 servicing seniors; and

7 (B) does not include a certification, profes-
8 sional designation, license, or other credential
9 that—

10 (i) was issued by or obtained from an
11 academic institution having regional ac-
12 creditation;

13 (ii) meets the standards for certifi-
14 cations, licenses, and professional designa-
15 tions outlined by the NASAA Model Rule on
16 the Use of Senior-Specific Certifications
17 and Professional Designations in the Sale of
18 Life Insurance and Annuities, adopted by
19 the National Association of Insurance Com-
20 missioners (or any successor thereto); or

21 (iii) was issued by or obtained from a
22 State;

23 (4) the term “misleading or fraudulent mar-
24 keting” means the use of a misleading designation by

1 *a person that sells to or advises a senior in connection*
2 *with the sale of a financial product;*

3 *(5) the term “NASAA” means the North Amer-*
4 *ican Securities Administrators Association;*

5 *(6) the term “Office” means the Office of Finan-*
6 *cial Literacy of the Bureau; and*

7 *(7) the term “senior” means any individual who*
8 *has attained the age of 62 years or older.*

9 *(b) GRANTS TO STATES FOR ENHANCED PROTECTION*
10 *OF SENIORS FROM BEING MISLED BY FALSE DESIGNA-*
11 *TIONS.—The Office shall establish a program under which*
12 *the Office may make grants to States or eligible entities—*

13 *(1) to hire staff to identify, investigate, and*
14 *prosecute (through civil, administrative, or criminal*
15 *enforcement actions) cases involving misleading or*
16 *fraudulent marketing;*

17 *(2) to fund technology, equipment, and training*
18 *for regulators, prosecutors, and law enforcement offi-*
19 *cers, in order to identify salespersons and advisers*
20 *who target seniors through the use of misleading des-*
21 *ignations;*

22 *(3) to fund technology, equipment, and training*
23 *for prosecutors to increase the successful prosecution*
24 *of salespersons and advisers who target seniors with*
25 *the use of misleading designations;*

1 (4) to provide educational materials and train-
2 ing to regulators on the appropriateness of the use of
3 designations by salespersons and advisers in connec-
4 tion with the sale and marketing of financial prod-
5 ucts;

6 (5) to provide educational materials and train-
7 ing to seniors to increase awareness and under-
8 standing of misleading or fraudulent marketing;

9 (6) to develop comprehensive plans to combat
10 misleading or fraudulent marketing of financial prod-
11 ucts to seniors; and

12 (7) to enhance provisions of State law to provide
13 protection for seniors against misleading or fraudu-
14 lent marketing.

15 (c) *APPLICATIONS.*—A State or eligible entity desiring
16 a grant under this section shall submit an application to
17 the Office, in such form and in such a manner as the Office
18 may determine, that includes—

19 (1) a proposal for activities to protect seniors
20 from misleading or fraudulent marketing that are
21 proposed to be funded using a grant under this sec-
22 tion, including—

23 (A) an identification of the scope of the
24 problem of misleading or fraudulent marketing
25 in the State;

1 (B) a description of how the proposed ac-
2 tivities would—

3 (i) protect seniors from misleading or
4 fraudulent marketing in the sale of finan-
5 cial products, including by proactively
6 identifying victims of misleading and
7 fraudulent marketing who are seniors;

8 (ii) assist in the investigation and
9 prosecution of those using misleading or
10 fraudulent marketing; and

11 (iii) discourage and reduce cases of
12 misleading or fraudulent marketing; and

13 (C) a description of how the proposed ac-
14 tivities would be coordinated with other State ef-
15 forts; and

16 (2) any other information, as the Office deter-
17 mines is appropriate.

18 (d) *PERFORMANCE OBJECTIVES AND REPORTING RE-*
19 *QUIREMENTS.*—The Office may establish such performance
20 objectives and reporting requirements for States and eligible
21 entities receiving a grant under this section as the Office
22 determines are necessary to carry out and assess the effec-
23 tiveness of the program under this section.

24 (e) *MAXIMUM AMOUNT.*—The amount of a grant under
25 this section may not exceed—

1 (1) \$500,000 for each of 3 consecutive fiscal
2 years, if the recipient is a State, or an eligible entity
3 of a State, that has adopted rules—

4 (A) on the appropriate use of designations
5 in the offer or sale of securities or investment ad-
6 vice that meet or exceed the minimum require-
7 ments of the NASAA Model Rule on the Use of
8 Senior-Specific Certifications and Professional
9 Designations (or any successor thereto);

10 (B) on the appropriate use of designations
11 in the sale of insurance products that, to the ex-
12 tent practicable, conform to the minimum re-
13 quirements of the National Association of Insur-
14 ance Commissioners Model Regulation on the
15 Use of Senior-Specific Certifications and Profes-
16 sional Designations in the Sale of Life Insurance
17 and Annuities (or any successor thereto); and

18 (C) with respect to fiduciary or suitability
19 requirements in the sale of annuities that meet
20 or exceed the minimum requirements established
21 by the Suitability in Annuity Transactions
22 Model Regulation of the National Association of
23 Insurance Commissioners (or any successor
24 thereto); and

1 (2) \$100,000 for each of 3 consecutive fiscal
2 years, if the recipient is a State, or an eligible entity
3 of a State, that has adopted—

4 (A) rules on the appropriate use of designa-
5 tions in the offer or sale of securities or invest-
6 ment advice that meet or exceed the minimum
7 requirements of the NASAA Model Rule on the
8 Use of Senior-Specific Certifications and Profes-
9 sional Designations (or any successor thereto); or

10 (B) rules—

11 (i) on the appropriate use of designa-
12 tions in the sale of insurance products that,
13 to the extent practicable, conform to the
14 minimum requirements of the National As-
15 sociation of Insurance Commissioners Model
16 Regulation on the Use of Senior-Specific
17 Certifications and Professional Designations
18 in the Sale of Life Insurance and Annuities
19 (or any successor thereto); and

20 (ii) with respect to fiduciary or suit-
21 ability requirements in the sale of annuities
22 that meet or exceed the minimum require-
23 ments established by the Suitability in An-
24 nuity Transactions Model Regulation of the

1 *National Association of Insurance Commis-*
 2 *sioners (or any successor thereto).*

3 (f) *SUBGRANTS.—A State or eligible entity that re-*
 4 *ceives a grant under this section may make a subgrant, as*
 5 *the State or eligible entity determines is necessary to carry*
 6 *out the activities funded using a grant under this section.*

7 (g) *REAPPLICATION.—A State or eligible entity that*
 8 *receives a grant under this section may reapply for a grant*
 9 *under this section, notwithstanding the limitations on grant*
 10 *amounts under subsection (e).*

11 (h) *AUTHORIZATION OF APPROPRIATIONS.—There are*
 12 *authorized to be appropriated to carry out this section,*
 13 *\$8,000,000 for each of fiscal years 2011 through 2015.*

14 **SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS**
 15 **GENERAL INDEPENDENCE.**

16 *Section 8G of the Inspector General Act of 1978 (5*
 17 *U.S.C. App.) is amended—*

18 (1) *in subsection (a)(4)—*

19 (A) *in the matter preceding subparagraph*
 20 *(A), by inserting “the board or commission of the*
 21 *designated Federal entity, or in the event the*
 22 *designated Federal entity does not have a board*
 23 *or commission,” after “means”;*

24 (B) *in subparagraph (A), by striking “and”*
 25 *after the semicolon; and*

1 (C) by adding after subparagraph (B) the
2 following:

3 “(C) with respect to the Federal Labor Re-
4 lations Authority, such term means the members
5 of the Authority (described under section 7104 of
6 title 5, United States Code);

7 “(D) with respect to the National Archives
8 and Records Administration, such term means
9 the Archivist of the United States;

10 “(E) with respect to the National Credit
11 Union Administration, such term means the Na-
12 tional Credit Union Administration Board (de-
13 scribed under section 102 of the Federal Credit
14 Union Act (12 U.S.C. 1752a);

15 “(F) with respect to the National Endow-
16 ment of the Arts, such term means the National
17 Council on the Arts;

18 “(G) with respect to the National Endow-
19 ment for the Humanities, such term means the
20 National Council on the Humanities; and

21 “(H) with respect to the Peace Corps, such
22 term means the Director of the Peace Corps;”;
23 and

1 (2) *in subsection (h), by inserting “if the des-*
2 *ignated Federal entity is not a board or commission,*
3 *include” after “designated Federal entities and”.*

4 **SEC. 989C. STRENGTHENING INSPECTOR GENERAL AC-**
5 **COUNTABILITY.**

6 *Section 5(a) of the Inspector General Act of 1978 (5*
7 *U.S.C. App.) is amended—*

8 (1) *in paragraph (12), by striking “and” after*
9 *the semicolon;*

10 (2) *in paragraph (13), by striking the period*
11 *and inserting a semicolon; and*

12 (3) *by adding at the end the following:*

13 “(14)(A) *an appendix containing the results of*
14 *any peer review conducted by another Office of In-*
15 *pector General during the reporting period; or*

16 “(B) *if no peer review was conducted within that*
17 *reporting period, a statement identifying the date of*
18 *the last peer review conducted by another Office of In-*
19 *pector General;*

20 “(15) *a list of any outstanding recommendations*
21 *from any peer review conducted by another Office of*
22 *Inspector General that have not been fully imple-*
23 *mented, including a statement describing the status of*
24 *the implementation and why implementation is not*
25 *complete; and*

1 “(16) a list of any peer reviews conducted by the
2 Inspector General of another Office of the Inspector
3 General during the reporting period, including a list
4 of any outstanding recommendations made from any
5 previous peer review (including any peer review con-
6 ducted before the reporting period) that remain out-
7 standing or have not been fully implemented.”.

8 **SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DES-**
9 **IGNATED FEDERAL ENTITIES.**

10 Section 8G(e) of the Inspector General Act of 1978 (5
11 U.S.C. App.) is amended—

12 (1) by redesignating the sentences following “(e)”
13 as paragraph (2); and

14 (2) by striking “(e)” and inserting the following:

15 “(e)(1) In the case of a designated Federal entity for
16 which a board or commission is the head of the designated
17 Federal entity, a removal under this subsection may only
18 be made upon the written concurrence of a $\frac{2}{3}$ majority of
19 the board or commission.”.

20 **SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGU-**
21 **LATORY SYSTEM.**

22 (a) **COUNCIL OF INSPECTORS GENERAL ON FINANCIAL**
23 **OVERSIGHT.**—

24 (1) **ESTABLISHMENT AND MEMBERSHIP.**—There
25 is established a Council of Inspectors General on Fi-

1 *nancial Oversight (in this section referred to as the*
2 *“Council of Inspectors General”)* chaired by the In-
3 *pector General of the Department of the Treasury*
4 *and composed of the inspectors general of the fol-*
5 *lowing:*

6 (A) *The Board of Governors of the Federal*
7 *Reserve System.*

8 (B) *The Commodity Futures Trading Com-*
9 *mission.*

10 (C) *The Department of Housing and Urban*
11 *Development.*

12 (D) *The Department of the Treasury.*

13 (E) *The Federal Deposit Insurance Cor-*
14 *poration.*

15 (F) *The Federal Housing Finance Agency.*

16 (G) *The National Credit Union Adminis-*
17 *tration.*

18 (H) *The Securities and Exchange Commis-*
19 *sion.*

20 (I) *The Troubled Asset Relief Program*
21 *(until the termination of the authority of the*
22 *Special Inspector General for such program*
23 *under section 121(k) of the Emergency Economic*
24 *Stabilization Act of 2008 (12 U.S.C. 5231(k))).*

25 (2) *DUTIES.—*

1 (A) *MEETINGS.*—*The Council of Inspectors*
2 *General shall meet not less than once each quar-*
3 *ter, or more frequently if the chair considers it*
4 *appropriate, to facilitate the sharing of informa-*
5 *tion among inspectors general and to discuss the*
6 *ongoing work of each inspector general who is a*
7 *member of the Council of Inspectors General,*
8 *with a focus on concerns that may apply to the*
9 *broader financial sector and ways to improve fi-*
10 *nancial oversight.*

11 (B) *ANNUAL REPORT.*—*Each year the*
12 *Council of Inspectors General shall submit to the*
13 *Council and to Congress a report including—*

14 (i) *for each inspector general who is a*
15 *member of the Council of Inspectors Gen-*
16 *eral, a section within the exclusive editorial*
17 *control of such inspector general that high-*
18 *lights the concerns and recommendations of*
19 *such inspector general in such inspector*
20 *general's ongoing and completed work, with*
21 *a focus on issues that may apply to the*
22 *broader financial sector; and*

23 (ii) *a summary of the general observa-*
24 *tions of the Council of Inspectors General*
25 *based on the views expressed by each inspec-*

1 *tor general as required by clause (i), with*
2 *a focus on measures that should be taken to*
3 *improve financial oversight.*

4 (3) *WORKING GROUPS TO EVALUATE COUNCIL.—*

5 (A) *CONVENING A WORKING GROUP.—The*
6 *Council of Inspectors General may, by majority*
7 *vote, convene a Council of Inspectors General*
8 *Working Group to evaluate the effectiveness and*
9 *internal operations of the Council.*

10 (B) *PERSONNEL AND RESOURCES.—The in-*
11 *spectors general who are members of the Council*
12 *of Inspectors General may detail staff and re-*
13 *sources to a Council of Inspectors General Work-*
14 *ing Group established under this paragraph to*
15 *enable it to carry out its duties.*

16 (C) *REPORTS.—A Council of Inspectors*
17 *General Working Group established under this*
18 *paragraph shall submit regular reports to the*
19 *Council and to Congress on its evaluations pur-*
20 *suant to this paragraph.*

21 (b) *RESPONSE TO REPORT BY COUNCIL.—The Council*
22 *shall respond to the concerns raised in the report of the*
23 *Council of Inspectors General under subsection (a)(2)(B)*
24 *for such year.*

1 ***Subtitle J—Self-funding of the Se-***
 2 ***curities and Exchange Commis-***
 3 ***sion***

4 ***SEC. 991. SECURITIES AND EXCHANGE COMMISSION SELF-***
 5 ***FUNDING.***

6 (a) *SELF-FUNDING AUTHORITY.*—Section 4 of the *Se-*
 7 *curities Exchange Act of 1934 (15 U.S.C. 78d)* is amend-
 8 *ed—*

9 (1) *in subsection (c), in the second sentence, by*
 10 *striking “credited to the appropriated funds of the*
 11 *Commission” and inserting “deposited in the account*
 12 *described in subsection (i)(4)”;*

13 (2) *in subsection (f), in the second sentence, by*
 14 *striking “considered a reimbursement to the appro-*
 15 *priated funds of the Commission” and inserting “de-*
 16 *posited in the account described in subsection (i)(4)”;*
 17 *and*

18 (3) *by adding at the end the following:*

19 “(i) *FUNDING OF THE COMMISSION.*—

20 (1) *BUDGET.*—*For each fiscal year, the Chair-*
 21 *man of the Commission shall prepare and submit to*
 22 *Congress a budget to Congress. Such budget shall be*
 23 *submitted at the same time the President submits a*
 24 *budget of the United States to Congress for such fiscal*
 25 *year. The budget submitted by the Chairman of the*

1 *Commission pursuant to this paragraph shall not be*
2 *considered a request for appropriations.*

3 “(2) *TREASURY PAYMENT.*—

4 “(A) *On the first day of each fiscal year, the*
5 *Treasury shall pay into the account described in*
6 *paragraph (4) an amount equal to the budget*
7 *submitted by the Chairman of the Commission*
8 *pursuant to paragraph (1) for such fiscal year.*

9 “(B) *At or prior to the end of each fiscal*
10 *year, the Commission shall pay to the Treasury*
11 *from fees and assessments deposited in the ac-*
12 *count described in paragraph (4) an amount*
13 *equal to the amount paid by the Treasury pursu-*
14 *ant to subparagraph (A) for such fiscal year, un-*
15 *less there are not sufficient fees and assessments*
16 *deposited in such account at or prior to the end*
17 *of the fiscal year to make such payment, in*
18 *which case the Commission shall make such pay-*
19 *ment in a subsequent fiscal year.*

20 “(3) *OBLIGATIONS AND EXPENSES.*—

21 “(A) *IN GENERAL.*—*The Commission shall*
22 *determine and prescribe the manner in which—*

23 “(i) *the obligations of the Commission*
24 *shall be incurred; and*

1 “(ii) *the disbursements and expenses of*
2 *the Commission allowed and paid.*

3 “(B) *INSUFFICIENT FUNDS.—If, in the*
4 *course of any fiscal year, the Chairman of the*
5 *Commission determines that, due to unforeseen*
6 *circumstances, the obligations of the Commission*
7 *will exceed those provided for in the budget sub-*
8 *mitted under paragraph (1), the Chairman of*
9 *the Commission may notify Congress of the*
10 *amount and expected uses of the additional obli-*
11 *gations.*

12 “(C) *AUTHORITY TO INCUR EXCESS OBLIGA-*
13 *TIONS.—The Commission may incur obligations*
14 *in excess of the budget submitted under para-*
15 *graph (1) from amounts available in the account*
16 *described in paragraph (4).*

17 “(D) *RULE OF CONSTRUCTION.—Any notifi-*
18 *cation to Congress under this paragraph shall*
19 *not be considered a request for appropriations.*

20 “(4) *ACCOUNT.—*

21 “(A) *ESTABLISHMENT.—Fees and assess-*
22 *ments collected under this title, section 6(b) of*
23 *the Securities Act of 1933 (15 U.S.C. 77f(b)),*
24 *and section 24(f) of the Investment Company Act*
25 *of 1940 (15 U.S.C. 80a-24(f)) and payments*

1 *made by the Treasury pursuant to paragraph*
2 *(2)(A) for any fiscal year shall be deposited into*
3 *an account established at any regular Govern-*
4 *ment depository or any State or national bank.*

5 “(B) *RULE OF CONSTRUCTION.—Any*
6 *amounts deposited into the account established*
7 *under subparagraph (A) shall not be construed*
8 *to be Government funds or appropriated monies.*

9 “(C) *NO APPORTIONMENT.—Any amounts*
10 *deposited into the account established under sub-*
11 *paragraph (A) shall not be subject to apporportion-*
12 *ment for the purpose of chapter 15 of title 31,*
13 *United States Code, or under any other author-*
14 *ity.*

15 “(5) *USE OF ACCOUNT FUNDS.—*

16 “(A) *PERMISSIBLE USES.—Amounts avail-*
17 *able in the account described in paragraph (4)*
18 *may be withdrawn by the Commission and used*
19 *for the purposes described in paragraphs (2) and*
20 *(3).*

21 “(B) *IMPERMISSIBLE USE.—Except as pro-*
22 *vided in paragraph (6), no amounts available in*
23 *the account described in paragraph (4) shall be*
24 *deposited and credited as general revenue of the*
25 *Treasury.*

1 “(6) *EXCESS FUNDS.*—*If, at the end of any fiscal*
 2 *year and after all payments have been made to the*
 3 *Treasury pursuant to paragraph (2)(B) for such fis-*
 4 *cal year and all prior fiscal years, the balance of the*
 5 *account described in paragraph (4) exceeds 25 percent*
 6 *of the budget of the Commission for the following fis-*
 7 *cal year, the amount by which the balance exceeds 25*
 8 *percent of such budget shall be credited as general rev-*
 9 *enue of the Treasury.*”.

10 **(b) CONFORMING AMENDMENTS TO TRANSACTION FEE**
 11 **PROVISIONS.**—*Section 31 of the Securities Exchange Act of*
 12 *1934 (15 U.S.C. 78ee) is amended—*

13 (1) *by amending subsection (a) to read as fol-*
 14 *lows:*

15 “(a) *RECOVERY OF COSTS AND EXPENSES.*—

16 “(1) *IN GENERAL.*—*The Commission shall, in*
 17 *accordance with this section, collect transaction fees*
 18 *and assessments that are designed—*

19 (1) *(A) to recover the reasonable costs and ex-*
 20 *penditures of the Commission, as set forth in the an-*
 21 *nuual budget of the Commission; and*

22 (2) *(B) to provide funds necessary to main-*
 23 *tain a reserve.*

24 “(2) *OVERPAYMENTS.*—*The authority to collect*
 25 *transaction fees and assessments in accordance with*

1 *this section shall include the authority to offset from*
2 *such collection any overpayment of transaction fees or*
3 *assessments, regardless of the fiscal year in which*
4 *such overpayment is made.”;*

5 (2) *in subsection (e)(2), by striking “September*
6 *30” and inserting “September 25”;*

7 (3) *in subsection (g), by striking “April 30” and*
8 *inserting “August 31”;*

9 (4) *by amending subsection (i) to read as fol-*
10 *lows:*

11 *“(i) FEE COLLECTIONS.—Fees and assessments col-*
12 *lected pursuant to this section shall be deposited and cred-*
13 *ited in accordance with section 4(g) of this title.”;*

14 (5) *by amending subsection (j) to read as follows:*

15 *“(j) ADJUSTMENTS TO TRANSACTION FEE RATES.—*

16 *“(1) ANNUAL ADJUSTMENT.—For each fiscal*
17 *year, the Commission shall by order adjust each of the*
18 *rates applicable under subsections (b) and (c) for such*
19 *fiscal year to a uniform adjusted rate that, when ap-*
20 *plied to the baseline estimate of the aggregate dollar*
21 *amount of sales for such fiscal year, is reasonably*
22 *likely to produce aggregate fee collections under this*
23 *section (including assessments collected under sub-*
24 *section (d)) that are equal to the budget of the Com-*

1 *mission for such fiscal year, plus amounts necessary*
2 *to maintain a reserve.*

3 “(2) *MID-YEAR ADJUSTMENT.*—*For each fiscal*
4 *year, the Commission shall determine, by March 1 of*
5 *such fiscal year, whether, based on the actual aggregate*
6 *dollar volume of sales during the first 4 months*
7 *of such fiscal year, the baseline estimate of the aggregate*
8 *dollar volume of sales used under paragraph (1)*
9 *for such fiscal year is reasonably likely to be 10 per-*
10 *cent (or more) greater or less than the actual aggregate*
11 *dollar volume of sales for such fiscal year. If the*
12 *Commission so determines, the Commission shall by*
13 *order, not later than March 1, adjust each of the rates*
14 *applicable under subsections (b) and (c) for such fiscal*
15 *year to a uniform adjusted rate that, when applied*
16 *to the revised estimate of the aggregate dollar*
17 *amount of sales for the remainder of such fiscal year,*
18 *is reasonably likely to produce aggregate fee collec-*
19 *tions under this section (including fees estimated to*
20 *be collected under subsections (b) and (c) during such*
21 *fiscal year prior to the effective date of the new uni-*
22 *form adjusted rate and assessments collected under*
23 *subsection (d)) that are equal to the budget of the*
24 *Commission for such fiscal year, plus amounts nec-*
25 *essary to maintain a reserve. In making such revised*

1 *estimate, the Commission shall, after consultation*
2 *with the Congressional Budget Office and the Office*
3 *of Management and Budget, use the same method-*
4 *ology required by paragraph (4).*

5 “(3) *REVIEW AND EFFECTIVE DATE.*—*In exer-*
6 *cising its authority under this subsection, the Com-*
7 *mission shall not be required to comply with the pro-*
8 *visions of section 553 of title 5 United States Code.*
9 *An adjusted rate prescribed under paragraph (1) or*
10 *(2) and published under subsection (g) shall not be*
11 *subject to judicial review. An adjusted rate prescribed*
12 *under paragraph (1) shall take effect on the first day*
13 *of the fiscal year to which such rate applies. An ad-*
14 *justed rate prescribed under paragraph (2) shall take*
15 *effect on April 1 of the fiscal year to which such rate*
16 *applies.*

17 “(4) *BASELINE ESTIMATE OF THE AGGREGATE*
18 *DOLLAR AMOUNT OF SALES.*—*For purposes of this*
19 *subsection, the baseline estimate of the aggregate dol-*
20 *lar amount of sales for any fiscal year is the baseline*
21 *estimate of the aggregate dollar amount of sales of se-*
22 *curities (other than bonds, debentures, other evidences*
23 *of indebtedness, security futures products, and options*
24 *on securities indexes excluding a narrow-based secu-*
25 *rity index) to be transacted on each national securi-*

1 *ties exchange and by or through any member of each*
 2 *national securities association (otherwise than on a*
 3 *national securities exchange) during such fiscal year*
 4 *as determined by the Commission, after consultation*
 5 *with the Congressional Budget Office and the Office*
 6 *of Management and Budget, using the methodology*
 7 *required for making projections pursuant to section*
 8 *907 of title 2.”; and*

9 *(6) by striking subsections (k) and (l).*

10 *(c) CONFORMING AMENDMENTS TO REGISTRATION*
 11 *FEE PROVISIONS.—*

12 *(1) SECTION 6(B) OF THE SECURITIES ACT OF*
 13 *1933.—Section 6(b) of the Securities Act of 1933 (15*
 14 *U.S.C. 77f(b)) is amended—*

15 *(A) by striking “offsetting” each place that*
 16 *term appears and inserting “fee”;*

17 *(B) in paragraph (3), in the paragraph*
 18 *heading, by striking “OFFSETTING” and insert-*
 19 *ing “FEE”;*

20 *(C) in paragraph (11)(A), in the subpara-*
 21 *graph heading, by striking “OFFSETTING” and*
 22 *inserting “FEE”;*

23 *(D) by striking paragraphs (1), (3), (4),*
 24 *(6), (8), and (9);*

1 (E) by redesignating paragraph (2) as
2 paragraph (1);

3 (F) in paragraph (1), as so redesignated, by
4 striking “(5) or (6)” and inserting “(3)”;

5 (G) by inserting after paragraph (1), as so
6 redesignated, the following:

7 “(2) *FEE COLLECTIONS.*—Fees collected pursuant
8 to this subsection shall be deposited and credited in
9 accordance with section 4(i) of the Securities Ex-
10 change Act of 1934.”;

11 (H) by redesignating paragraph (5) as
12 paragraph (3);

13 (I) in paragraph (3), as redesignated—

14 (i) by striking “of the fiscal years 2003
15 through 2011” and inserting “fiscal year”;
16 and

17 (ii) by striking “paragraph (2)” and
18 inserting “paragraph (1)”;

19 (J) by redesignating paragraph (7) as
20 paragraph (4);

21 (K) by inserting after paragraph (4), as so
22 redesignated, the following:

23 “(5) *REVIEW AND EFFECTIVE DATE.*—In exer-
24 cising its authority under this subsection, the Com-
25 mission shall not be required to comply with the pro-

1 *visions of section 553 of title 5, United States Code.*
 2 *An adjusted rate prescribed under paragraph (3) and*
 3 *published under paragraph (6) shall not be subject to*
 4 *judicial review. An adjusted rate prescribed under*
 5 *paragraph (3) shall take effect on the first day of the*
 6 *fiscal year to which such rate applies.”;*

7 *(L) by redesignating paragraphs (10) and*
 8 *(11), as paragraphs (6) and (7);*

9 *(M) in paragraph (6), as redesignated, by*
 10 *striking “April 30” and inserting “August 31”;*
 11 *and*

12 *(N) in paragraph (7), as redesignated—*

13 *(i) by striking “of the fiscal years 2002*
 14 *through 2011” and inserting “fiscal year”;*
 15 *and*

16 *(ii) by inserting at the end of the table*
 17 *in subparagraph (A) the following:*

2012 and each succeeding fiscal year	An amount that is equal to the target fee collection amount for the prior fiscal year adjusted by the rate of inflation.
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18 *(2) SECTION 13(E) OF THE SECURITIES EX-*
 19 *CHANGE ACT OF 1934.—Section 13(e) of the Securities*

1 *Exchange Act of 1934 (15 U.S.C. 78m(e)) is amend-*
2 *ed—*

3 (A) *by striking “offsetting” each place that*
4 *term appears and inserting “fee”;*

5 (B) *in paragraph (3) by striking “para-*
6 *graphs (5) and (6)” and inserting “paragraph*
7 *(5)”;*

8 (C) *by amending paragraph (4) to read as*
9 *follows:*

10 “(4) *FEE COLLECTIONS.—Fees collected pursuant*
11 *to this subsection shall be deposited and credited in*
12 *accordance with section 4(g) of this title.”;*

13 (D) *in paragraph (5), by striking “of the*
14 *fiscal years 2003 through 2011” and inserting*
15 *“fiscal year”;*

16 (E) *by striking paragraphs (6), (7), and*
17 *(8);*

18 (F) *by redesignating paragraph (7) as*
19 *paragraph (6);*

20 (G) *by inserting after paragraph (6), as so*
21 *redesignated, the following:*

22 “(7) *REVIEW AND EFFECTIVE DATE.—In exer-*
23 *cising its authority under this subsection, the Com-*
24 *mission shall not be required to comply with the pro-*
25 *visions of section 553 of title 5. An adjusted rate pre-*

1 *scribed under paragraph (5) and published under*
2 *paragraph (8) shall not be subject to judicial review.*
3 *An adjusted rate prescribed under paragraph (5)*
4 *shall take effect on the first day of the fiscal year to*
5 *which such rate applies.”;*

6 *(H) by striking paragraph (9);*

7 *(I) by redesignating paragraph (10) as*
8 *paragraph (8); and*

9 *(J) in paragraph (8), as so redesignated, by*
10 *striking “6(b)(10)” and inserting “6(b)(6)”.*

11 *(3) SECTION 14 OF THE SECURITIES EXCHANGE*
12 *ACT OF 1934.—Section 14(g) of the Securities Ex-*
13 *change Act of 1934 (15 U.S.C. 78n(g)) is amended—*

14 *(A) by striking the word “offsetting” each*
15 *time that it appears and inserting in its place*
16 *the word “fee”;*

17 *(B) in paragraph (1)(A), by striking “para-*
18 *graphs (5) and (6)” each time it appears and*
19 *inserting “paragraph (5)”;*

20 *(C) in paragraph (3), by striking “para-*
21 *graphs (5) and (6)” and inserting “paragraph*
22 *(5)”;*

23 *(D) by amending paragraph (4) to read as*
24 *follows:*

1 “(4) *FEE COLLECTIONS.*—*Fees collected pursuant*
2 *to this subsection shall be deposited and credited in*
3 *accordance with section 4(g) of this title.*”;

4 (E) *in paragraph (5), by striking “of the*
5 *fiscal years 2003 through 2011” and inserting*
6 *“fiscal year”;*

7 (F) *by striking paragraphs (6), (8), and*
8 *(9);*

9 (G) *by redesignating paragraph (7) as*
10 *paragraph (6);*

11 (H) *by inserting after paragraph (6), as so*
12 *redesignated, the following:*

13 “(7) *REVIEW AND EFFECTIVE DATE.*—*In exer-*
14 *cising its authority under this subsection, the Com-*
15 *mission shall not be required to comply with the pro-*
16 *visions of section 553 of title 5. An adjusted rate pre-*
17 *scribed under paragraph (5) and published under*
18 *paragraph (8) shall not be subject to judicial review.*
19 *An adjusted rate prescribed under paragraph (5)*
20 *shall take effect on the first day of the fiscal year to*
21 *which such rate applies.*”;

22 (I) *by redesignating paragraphs (10) and*
23 *(11) as paragraphs (8) and (9), respectively; and*

24 (J) *in paragraph (9), as so redesignated, by*
25 *striking “6(b)(10)” and inserting “6(b)(7)”.*

1 (d) *REPEAL OF AUTHORIZATION OF APPROPRIA-*
2 *TIONS.—Section 35 of the Securities Exchange Act of 1934*
3 *(15 U.S.C. 78kk) is repealed.*

4 (e) *EFFECTIVE DATE AND TRANSITION PROVISIONS.—*

5 (1) *IN GENERAL.—Except as provided in para-*
6 *graphs (2) and (3), the amendments made by this sec-*
7 *tion shall be effective on the first day of the fiscal*
8 *year following the fiscal year in which this Act is en-*
9 *acted.*

10 (2) *TRANSITION PERIOD.—For the fiscal year*
11 *following the fiscal year in which this Act is enacted,*
12 *the budget of the Commission shall be deemed to be*
13 *the budget submitted by the Chairman of the Commis-*
14 *sion to the President for such fiscal year in accord-*
15 *ance with the provisions of section 1108 of title 31,*
16 *United States Code.*

17 (3) *OTHER PROVISIONS.—The amendments made*
18 *by this section to subsections (g) and (j)(1) of section*
19 *31 of the Securities Exchange Act of 1934 (15 U.S.C.*
20 *78ee) shall be effective on the date of enactment of this*
21 *Act, and shall require the Commission to make and*
22 *publish an annual adjustment to the fee rates appli-*
23 *cable under subsections (b) and (c) of section 31 of the*
24 *Securities Exchange Act of 1934 (15 U.S.C. 78ee) for*
25 *the fiscal year following the fiscal year in which this*

1 *Act is enacted. The adjusted rate described in the pre-*
2 *ceding sentence shall supersede any previously pub-*
3 *lished adjusted rate applicable under subsections (b)*
4 *and (c) of section 31 of the Securities Exchange Act*
5 *of 1934 for the fiscal year following the fiscal year in*
6 *which this Act is enacted and shall take effect on the*
7 *first day of the fiscal year following the fiscal year in*
8 *which this Act is enacted, except that, if this Act is*
9 *enacted on or after August 31 and on or prior to Sep-*
10 *tember 30, the adjusted rate described in the first sen-*
11 *tence shall be published not later than 15 days after*
12 *the date of enactment of this Act and take effect 30*
13 *days thereafter, and the Commission shall continue to*
14 *collect fees under subsections (b) and (c) of section 31*
15 *of the Securities Exchange Act of 1934 at the rate in*
16 *effect during the preceding fiscal year until the ad-*
17 *justed rate is effective.*

18 **TITLE X—BUREAU OF CON-**
19 **SUMER FINANCIAL PROTEC-**
20 **TION**

21 **SEC. 1001. SHORT TITLE.**

22 *This title may be cited as the “Consumer Financial*
23 *Protection Act of 2010”.*

1 **SEC. 1002. DEFINITIONS.**

2 *Except as otherwise provided in this title, for purposes*
3 *of this title, the following definitions shall apply:*

4 (1) *AFFILIATE.*—*The term “affiliate” means any*
5 *person that controls, is controlled by, or is under com-*
6 *mon control with another person.*

7 (2) *BUREAU.*—*The term “Bureau” means the*
8 *Bureau of Consumer Financial Protection.*

9 (3) *BUSINESS OF INSURANCE.*—*The term “busi-*
10 *ness of insurance” means the writing of insurance or*
11 *the reinsuring of risks by an insurer, including all*
12 *acts necessary to such writing or reinsuring and the*
13 *activities relating to the writing of insurance or the*
14 *reinsuring of risks conducted by persons who act as,*
15 *or are, officers, directors, agents, or employees of in-*
16 *surers or who are other persons authorized to act on*
17 *behalf of such persons.*

18 (4) *CONSUMER.*—*The term “consumer” means*
19 *an individual or an agent, trustee, or representative*
20 *acting on behalf of an individual.*

21 (5) *CONSUMER FINANCIAL PRODUCT OR SERV-*
22 *ICE.*—*The term “consumer financial product or serv-*
23 *ice” means any financial product or service that is*
24 *described in one or more categories under—*

1 (A) paragraph (13) and is offered or pro-
2 vided for use by consumers primarily for per-
3 sonal, family, or household purposes; or

4 (B) clause (i), (iii), (ix), or (x) of para-
5 graph (13)(A), and is delivered, offered, or pro-
6 vided in connection with a consumer financial
7 product or service referred to in subparagraph
8 (A).

9 (6) *COVERED PERSON*.—The term “covered per-
10 son” means—

11 (A) any person that engages in offering or
12 providing a consumer financial product or serv-
13 ice; and

14 (B) any affiliate of a person described in
15 subparagraph (A) if such affiliate acts as a serv-
16 ice provider to such person.

17 (7) *CREDIT*.—The term “credit” means the right
18 granted by a person to a consumer to defer payment
19 of a debt, incur debt and defer its payment, or pur-
20 chase property or services and defer payment for such
21 purchase.

22 (8) *DEPOSIT-TAKING ACTIVITY*.—The term “de-
23 posit-taking activity” means—

24 (A) the acceptance of deposits, maintenance
25 of deposit accounts, or the provision of services

1 *related to the acceptance of deposits or the main-*
2 *tenance of deposit accounts;*

3 *(B) the acceptance of funds, the provision of*
4 *other services related to the acceptance of funds,*
5 *or the maintenance of member share accounts by*
6 *a credit union; or*

7 *(C) the receipt of funds or the equivalent*
8 *thereof, as the Bureau may determine by rule or*
9 *order, received or held by a covered person (or an*
10 *agent for a covered person) for the purpose of fa-*
11 *cilitating a payment or transferring funds or*
12 *value of funds between a consumer and a third*
13 *party.*

14 (9) *DESIGNATED TRANSFER DATE.*—*The term*
15 *“designated transfer date” means the date established*
16 *under section 1062.*

17 (10) *DIRECTOR.*—*The term “Director” means*
18 *the Director of the Bureau.*

19 (11) *ENUMERATED CONSUMER LAWS.*—*The term*
20 *“enumerated consumer laws” means—*

21 *(A) the Alternative Mortgage Transaction*
22 *Parity Act of 1982 (12 U.S.C. 3801 et seq.);*

23 *(B) the Consumer Leasing Act of 1976 (15*
24 *U.S.C. 1667 et seq.);*

1 (C) *the Electronic Fund Transfer Act (15*
2 *U.S.C. 1693 et seq.)*;

3 (D) *the Equal Credit Opportunity Act (15*
4 *U.S.C. 1691 et seq.)*;

5 (E) *the Fair Credit Billing Act (15 U.S.C.*
6 *1666 et seq.)*;

7 (F) *the Fair Credit Reporting Act (15*
8 *U.S.C. 1681 et seq.)*, *except with respect to sec-*
9 *tions 615(e) and 628 of that Act (15 U.S.C.*
10 *1681m(e), 1681w)*;

11 (G) *the Home Owners Protection Act of*
12 *1998 (12 U.S.C. 4901 et seq.)*;

13 (H) *the Fair Debt Collection Practices Act*
14 *(15 U.S.C. 1692 et seq.)*;

15 (I) *subsections (b) through (f) of section 43*
16 *of the Federal Deposit Insurance Act (12 U.S.C.*
17 *1831t(c)–(f))*;

18 (J) *sections 502 through 509 of the Gramm-*
19 *Leach-Bliley Act (15 U.S.C. 6802–6809) except*
20 *for section 505 as it applies to section 501(b)*;

21 (K) *the Home Mortgage Disclosure Act of*
22 *1975 (12 U.S.C. 2801 et seq.)*;

23 (L) *the Home Ownership and Equity Pro-*
24 *tection Act of 1994 (15 U.S.C. 1601 note)*;

1 (M) *the Real Estate Settlement Procedures*
2 *Act of 1974 (12 U.S.C. 2601 et seq.);*

3 (N) *the S.A.F.E. Mortgage Licensing Act of*
4 *2008 (12 U.S.C. 5101 et seq.);*

5 (O) *the Truth in Lending Act (15 U.S.C.*
6 *1601 et seq.);*

7 (P) *the Truth in Savings Act (12 U.S.C.*
8 *4301 et seq.); and*

9 (Q) *section 626 of the Omnibus Appropria-*
10 *tions Act, 2009 (Public Law 111–8).*

11 (12) *FEDERAL CONSUMER FINANCIAL LAW.—The*
12 *term “Federal consumer financial law” means the*
13 *provisions of this title, the enumerated consumer*
14 *laws, the laws for which authorities are transferred*
15 *under subtitles F and H, and any rule or order pre-*
16 *scribed by the Bureau under this title, an enumerated*
17 *consumer law, or pursuant to the authorities trans-*
18 *ferred under subtitles F and H. The term does not in-*
19 *clude the Federal Trade Commission Act.*

20 (13) *FINANCIAL PRODUCT OR SERVICE.—The*
21 *term “financial product or service”—*

22 (A) *means—*

23 (i) *extending credit and servicing*
24 *loans, including acquiring, purchasing, sell-*
25 *ing, brokering, or other extensions of credit*

1 *(other than solely extending commercial*
2 *credit to a person who originates consumer*
3 *credit transactions);*

4 *(ii) extending or brokering leases of*
5 *personal or real property that are the func-*
6 *tional equivalent of purchase finance ar-*
7 *rangements, if—*

8 *(I) the lease is on a non-operating*
9 *basis;*

10 *(II) the initial term of the lease is*
11 *at least 90 days; and*

12 *(III) in the case of a lease involv-*
13 *ing real property, at the inception of*
14 *the initial lease, the transaction is in-*
15 *tended to result in ownership of the*
16 *leased property to be transferred to the*
17 *lessee, subject to standards prescribed*
18 *by the Bureau;*

19 *(iii) providing real estate settlement*
20 *services or performing appraisals of real es-*
21 *tate or personal property;*

22 *(iv) engaging in deposit-taking activi-*
23 *ties, transmitting or exchanging funds, or*
24 *otherwise acting as a custodian of funds or*

1 *any financial instrument for use by or on*
2 *behalf of a consumer;*

3 *(v) selling, providing, or issuing stored*
4 *value or payment instruments, except that,*
5 *in the case of a sale of, or transaction to re-*
6 *load, stored value, only if the seller exercises*
7 *substantial control over the terms or condi-*
8 *tions of the stored value provided to the con-*
9 *sumer where, for purposes of this clause—*

10 *(I) a seller shall not be found to*
11 *exercise substantial control over the*
12 *terms or conditions of the stored value*
13 *if the seller is not a party to the con-*
14 *tract with the consumer for the stored*
15 *value product, and another person is*
16 *principally responsible for establishing*
17 *the terms or conditions of the stored*
18 *value; and*

19 *(II) advertising the nonfinancial*
20 *goods or services of the seller on the*
21 *stored value card or device is not in*
22 *itself an exercise of substantial control*
23 *over the terms or conditions;*

24 *(vi) providing check cashing, check col-*
25 *lection, or check guaranty services;*

1 (vii) providing payments or other fi-
2 nancial data processing products or services
3 to a consumer by any technological means,
4 including processing or storing financial or
5 banking data for any payment instrument,
6 or through any payments systems or net-
7 work used for processing payments data, in-
8 cluding payments made through an online
9 banking system or mobile telecommuni-
10 cations network, except that a person shall
11 not be deemed to be a covered person with
12 respect to financial data processing solely
13 because the person—

14 (I) unknowingly or incidentally
15 processes, stores, or transmits over the
16 Internet, telephone line, mobile net-
17 work, or any other mode of trans-
18 mission, as part of a stream of other
19 types of data, financial data in a
20 manner that such data is undifferen-
21 tiated from other types of data of the
22 same form that the person processes,
23 stores, or transmits;

24 (II) is a merchant, retailer, or
25 seller of any nonfinancial good or serv-

1 *ice who engages in financial data proc-*
2 *essing by transmitting or storing pay-*
3 *ments data about a consumer exclu-*
4 *sively for purpose of initiating pay-*
5 *ments instructions by the consumer to*
6 *pay such person for the purchase of, or*
7 *to complete a commercial transaction*
8 *for, such nonfinancial good or service*
9 *sold directly by such person to the con-*
10 *sumer; or*

11 *(III) provides access to a host*
12 *server to a person for purposes of ena-*
13 *bling that person to establish and*
14 *maintain a website;*

15 *(viii) providing financial advisory*
16 *services to consumers on individual finan-*
17 *cial matters or relating to proprietary fi-*
18 *nancial products or services (other than by*
19 *publishing any bona fide newspaper, news*
20 *magazine, or business or financial publica-*
21 *tion of general and regular circulation, in-*
22 *cluding publishing market data, news, or*
23 *data analytics or investment information or*
24 *recommendations that are not tailored to*

1 *the individual needs of a particular con-*
2 *sumer), including—*

3 *(I) providing credit counseling to*
4 *any consumer; and*

5 *(II) providing services to assist a*
6 *consumer with debt management or*
7 *debt settlement, modifying the terms of*
8 *any extension of credit, or avoiding*
9 *foreclosure;*

10 *(ix) collecting, analyzing, maintaining,*
11 *or providing consumer report information*
12 *or other account information, including in-*
13 *formation relating to the credit history of*
14 *consumers, used or expected to be used in*
15 *connection with any decision regarding the*
16 *offering or provision of a consumer finan-*
17 *cial product or service, except to the extent*
18 *that—*

19 *(I) a person—*

20 *(aa) collects, analyzes, or*
21 *maintains information that re-*
22 *lates solely to the transactions be-*
23 *tween a consumer and such per-*
24 *son; or*

1 *(bb) provides the information*
2 *described in item (aa) to an affil-*
3 *iate of such person; and*

4 *(II) the information described in*
5 *subclause (I)(aa) is not used by such*
6 *person or affiliate in connection with*
7 *any decision regarding the offering or*
8 *provision of a consumer financial*
9 *product or service to the consumer,*
10 *other than credit described in section*
11 *1027(a)(2)(A);*

12 *(x) collecting debt related to any con-*
13 *sumer financial product or service; and*

14 *(xi) such other financial product or*
15 *service as may be defined by the Bureau, by*
16 *regulation, for purposes of this title, if the*
17 *Bureau finds that such financial product or*
18 *service is—*

19 *(I) entered into or conducted as a*
20 *subterfuge or with a purpose to evade*
21 *any Federal consumer financial law;*
22 *or*

23 *(II) permissible for a bank or for*
24 *a financial holding company to offer*
25 *or to provide under any provision of a*

1 *Federal law or regulation applicable to*
2 *a bank or a financial holding com-*
3 *pany, and has, or likely will have, a*
4 *material impact on consumers; and*

5 *(B) does not include the business of insur-*
6 *ance.*

7 (14) *FOREIGN EXCHANGE.*—*The term “foreign*
8 *exchange” means the exchange, for compensation, of*
9 *currency of the United States or of a foreign govern-*
10 *ment for currency of another government.*

11 (15) *INSURED CREDIT UNION.*—*The term “in-*
12 *sured credit union” has the same meaning as in sec-*
13 *tion 101 of the Federal Credit Union Act (12 U.S.C.*
14 *1752).*

15 (16) *PAYMENT INSTRUMENT.*—*The term “pay-*
16 *ment instrument” means a check, draft, warrant,*
17 *money order, traveler’s check, electronic instrument,*
18 *or other instrument, payment of funds, or monetary*
19 *value (other than currency).*

20 (17) *PERSON.*—*The term “person” means an in-*
21 *dividual, partnership, company, corporation, associa-*
22 *tion (incorporated or unincorporated), trust, estate,*
23 *cooperative organization, or other entity.*

24 (18) *PERSON REGULATED BY THE COMMODITY*
25 *FUTURES TRADING COMMISSION.*—*The term “person*

1 *regulated by the Commodity Futures Trading Com-*
2 *mission” means any person that is registered, or re-*
3 *quired by statute or regulation to be registered, with*
4 *the Commodity Futures Trading Commission, but*
5 *only to the extent that the activities of such person*
6 *are subject to the jurisdiction of the Commodity Fu-*
7 *tures Trading Commission under the Commodity Ex-*
8 *change Act.*

9 (19) *PERSON REGULATED BY THE COMMIS-*
10 *SION.—The term “person regulated by the Commis-*
11 *sion” means a person who is—*

12 (A) *a broker or dealer that is required to be*
13 *registered under the Securities Exchange Act of*
14 *1934;*

15 (B) *an investment adviser that is registered*
16 *under the Investment Advisers Act of 1940;*

17 (C) *an investment company that is required*
18 *to be registered under the Investment Company*
19 *Act of 1940, and any company that has elected*
20 *to be regulated as a business development com-*
21 *pany under that Act;*

22 (D) *a national securities exchange that is*
23 *required to be registered under the Securities Ex-*
24 *change Act of 1934;*

1 (E) a transfer agent that is required to be
2 registered under the Securities Exchange Act of
3 1934;

4 (F) a clearing corporation that is required
5 to be registered under the Securities Exchange
6 Act of 1934;

7 (G) any self-regulatory organization that is
8 required to be registered with the Commission;

9 (H) any nationally recognized statistical
10 rating organization that is required to be reg-
11 istered with the Commission;

12 (I) any securities information processor
13 that is required to be registered with the Com-
14 mission;

15 (J) any municipal securities dealer that is
16 required to be registered with the Commission;

17 (K) any other person that is required to be
18 registered with the Commission under the Secu-
19 rities Exchange Act of 1934; and

20 (L) any employee, agent, or contractor act-
21 ing on behalf of, registered with, or providing
22 services to, any person described in any of sub-
23 paragraphs (A) through (K), but only to the ex-
24 tent that any person described in any of sub-
25 paragraphs (A) through (K), or the employee,

1 *agent, or contractor of such person, acts in a reg-*
2 *ulated capacity.*

3 (20) *PERSON REGULATED BY A STATE INSUR-*
4 *ANCE REGULATOR.—The term “person regulated by a*
5 *State insurance regulator” means any person that is*
6 *engaged in the business of insurance and subject to*
7 *regulation by any State insurance regulator, but only*
8 *to the extent that such person acts in such capacity.*

9 (21) *PERSON THAT PERFORMS INCOME TAX*
10 *PREPARATION ACTIVITIES FOR CONSUMERS.—The*
11 *term “person that performs income tax preparation*
12 *activities for consumers” means—*

13 (A) *any tax return preparer (as defined in*
14 *section 7701(a)(36) of the Internal Revenue Code*
15 *of 1986), regardless of whether compensated, but*
16 *only to the extent that the person acts in such*
17 *capacity;*

18 (B) *any person regulated by the Secretary*
19 *under section 330 of title 31, United States Code,*
20 *but only to the extent that the person acts in*
21 *such capacity; and*

22 (C) *any authorized IRS e-file Providers (as*
23 *defined for purposes of section 7216 of the Inter-*
24 *nal Revenue Code of 1986), but only to the extent*
25 *that the person acts in such capacity.*

1 (22) *PRUDENTIAL REGULATOR*.—*The term “pru-*
2 *dential regulator” means—*

3 (A) *in the case of an insured depository in-*
4 *stitution, the appropriate Federal banking agen-*
5 *cy, as that term is defined in section 3 of the*
6 *Federal Deposit Insurance Act; and*

7 (B) *in the case of an insured credit union,*
8 *the National Credit Union Administration.*

9 (23) *RELATED PERSON*.—*The term “related per-*
10 *son”—*

11 (A) *shall apply only with respect to a cov-*
12 *ered person that is not a bank holding company*
13 *(as that term is defined in section 2 of the Bank*
14 *Holding Company Act of 1956), credit union, or*
15 *depository institution;*

16 (B) *shall be deemed to mean a covered per-*
17 *son for all purposes of any provision of Federal*
18 *consumer financial law; and*

19 (C) *means—*

20 (i) *any director, officer, or employee*
21 *charged with managerial responsibility for,*
22 *or controlling shareholder of, or agent for,*
23 *such covered person;*

24 (ii) *any shareholder, consultant, joint*
25 *venture partner, or other person, as deter-*

1 *mined by the Bureau (by rule or on a case-*
2 *by-case basis) who materially participates*
3 *in the conduct of the affairs of such covered*
4 *person; and*

5 *(iii) any independent contractor (in-*
6 *cluding any attorney, appraiser, or ac-*
7 *countant) who knowingly or recklessly par-*
8 *ticipates in any—*

9 *(I) violation of any provision of*
10 *law or regulation; or*

11 *(II) breach of a fiduciary duty.*

12 *(24) SERVICE PROVIDER.—*

13 *(A) IN GENERAL.—The term “service pro-*
14 *vider” means any person that provides a mate-*
15 *rial service to a covered person in connection*
16 *with the offering or provision by such covered*
17 *person of a consumer financial product or serv-*
18 *ice, including a person that—*

19 *(i) participates in designing, oper-*
20 *ating, or maintaining the consumer finan-*
21 *cial product or service; or*

22 *(ii) processes transactions relating to*
23 *the consumer financial product or service*
24 *(other than unknowingly or incidentally*
25 *transmitting or processing financial data in*

1 *a manner that such data is undifferentiated*
2 *from other types of data of the same form*
3 *as the person transmits or processes).*

4 (B) *EXCEPTIONS.—The term “service pro-*
5 *vider” does not include a person solely by virtue*
6 *of such person offering or providing to a covered*
7 *person—*

8 *(i) a support service of a type provided*
9 *to businesses generally or a similar ministe-*
10 *rial service; or*

11 *(ii) time or space for an advertisement*
12 *for a consumer financial product or service*
13 *through print, newspaper, or electronic*
14 *media.*

15 (C) *RULE OF CONSTRUCTION.—A person*
16 *that is a service provider shall be deemed to be*
17 *a covered person to the extent that such person*
18 *engages in the offering or provision of its own*
19 *consumer financial product or service.*

20 (25) *STATE.—The term “State” means any*
21 *State, territory, or possession of the United States, the*
22 *District of Columbia, the Commonwealth of Puerto*
23 *Rico, the Commonwealth of the Northern Mariana Is-*
24 *lands, Guam, American Samoa, or the United States*
25 *Virgin Islands or any federally recognized Indian*

1 *tribe, as defined by the Secretary of the Interior*
2 *under section 104(a) of the Federally Recognized In-*
3 *Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).*

4 (26) *STORED VALUE.*—*The term “stored value”*
5 *means funds or monetary value represented in any*
6 *electronic format, whether or not specially encrypted,*
7 *and stored or capable of storage on electronic media*
8 *in such a way as to be retrievable and transferred*
9 *electronically, and includes a prepaid debit card or*
10 *product, or any other similar product, regardless of*
11 *whether the amount of the funds or monetary value*
12 *may be increased or reloaded.*

13 (27) *TRANSMITTING OR EXCHANGING FUNDS.*—
14 *The term “transmitting or exchanging funds” means*
15 *receiving currency, monetary value, or payment in-*
16 *struments from a consumer for the purpose of ex-*
17 *changing or transmitting the same by any means, in-*
18 *cluding transmission by wire, facsimile, electronic*
19 *transfer, courier, the Internet, or through bill pay-*
20 *ment services or through other businesses that facili-*
21 *tate third-party transfers within the United States or*
22 *to or from the United States.*

1 **Subtitle A—Bureau of Consumer**
2 **Financial Protection**

3 **SEC. 1011. ESTABLISHMENT OF THE BUREAU.**

4 (a) *BUREAU ESTABLISHED.*—*There is established in*
5 *the Federal Reserve System the Bureau of Consumer Finan-*
6 *cial Protection, which shall regulate the offering and provi-*
7 *sion of consumer financial products or services under the*
8 *Federal consumer financial laws.*

9 (b) *DIRECTOR AND DEPUTY DIRECTOR.*—

10 (1) *IN GENERAL.*—*There is established the posi-*
11 *tion of the Director, who shall serve as the head of the*
12 *Bureau.*

13 (2) *APPOINTMENT.*—*Subject to paragraph (3),*
14 *the Director shall be appointed by the President, by*
15 *and with the advice and consent of the Senate.*

16 (3) *QUALIFICATION.*—*The President shall nomi-*
17 *nate the Director from among individuals who are*
18 *citizens of the United States.*

19 (4) *COMPENSATION.*—*The Director shall be com-*
20 *pensated at the rate prescribed for level II of the Ex-*
21 *ecutive Schedule under section 5313 of title 5, United*
22 *States Code.*

23 (5) *DEPUTY DIRECTOR.*—*There is established the*
24 *position of Deputy Director, who shall—*

25 (A) *be appointed by the Director; and*

1 (B) *serve as acting Director in the absence*
2 *or unavailability of the Director.*

3 (c) *TERM.—*

4 (1) *IN GENERAL.—The Director shall serve for a*
5 *term of 5 years.*

6 (2) *EXPIRATION OF TERM.—An individual may*
7 *serve as Director after the expiration of the term for*
8 *which appointed, until a successor has been appointed*
9 *and qualified.*

10 (3) *REMOVAL FOR CAUSE.—The President may*
11 *remove the Director for inefficiency, neglect of duty,*
12 *or malfeasance in office.*

13 (d) *SERVICE RESTRICTION.—No Director or Deputy*
14 *Director may hold any office, position, or employment in*
15 *any Federal reserve bank, Federal home loan bank, covered*
16 *person, or service provider during the period of service of*
17 *such person as Director or Deputy Director.*

18 (e) *OFFICES.—The principal office of the Bureau shall*
19 *be in the District of Columbia. The Director may establish*
20 *regional offices of the Bureau, including in cities in which*
21 *the Federal reserve banks, or branches of such banks, are*
22 *located, in order to carry out the responsibilities assigned*
23 *to the Bureau under the Federal consumer financial laws.*

1 **SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.**

2 (a) *POWERS OF THE BUREAU.*—*The Bureau is author-*
3 *ized to establish the general policies of the Bureau with re-*
4 *spect to all executive and administrative functions, includ-*
5 *ing—*

6 (1) *the establishment of rules for conducting the*
7 *general business of the Bureau, in a manner not in-*
8 *consistent with this title;*

9 (2) *to bind the Bureau and enter into contracts;*

10 (3) *directing the establishment and maintenance*
11 *of divisions or other offices within the Bureau, in*
12 *order to carry out the responsibilities under the Fed-*
13 *eral consumer financial laws, and to satisfy the re-*
14 *quirements of other applicable law;*

15 (4) *to coordinate and oversee the operation of all*
16 *administrative, enforcement, and research activities of*
17 *the Bureau;*

18 (5) *to adopt and use a seal;*

19 (6) *to determine the character of and the neces-*
20 *sity for the obligations and expenditures of the Bu-*
21 *reau;*

22 (7) *the appointment and supervision of per-*
23 *sonnel employed by the Bureau;*

24 (8) *the distribution of business among personnel*
25 *appointed and supervised by the Director and among*
26 *administrative units of the Bureau;*

1 (9) *the use and expenditure of funds;*

2 (10) *implementing the Federal consumer finan-*
3 *cial laws through rules, orders, guidance, interpreta-*
4 *tions, statements of policy, examinations, and enforce-*
5 *ment actions; and*

6 (11) *performing such other functions as may be*
7 *authorized or required by law.*

8 (b) *DELEGATION OF AUTHORITY.*—*The Director of the*
9 *Bureau may delegate to any duly authorized employee, rep-*
10 *resentative, or agent any power vested in the Bureau by*
11 *law.*

12 (c) *AUTONOMY OF THE BUREAU.*—

13 (1) *COORDINATION WITH THE BOARD OF GOV-*
14 *ERNORS.*—*Notwithstanding section 18 of the Federal*
15 *Trade Commission Act (15 U.S.C. 57a) and any*
16 *other provision of law applicable to the supervision or*
17 *examination of persons with respect to Federal con-*
18 *sumer financial laws, the Board of Governors may*
19 *delegate to the Bureau the authorities to examine per-*
20 *sons subject to the jurisdiction of the Board of Gov-*
21 *ernors for compliance with the Federal consumer fi-*
22 *nancial laws.*

23 (2) *AUTONOMY.*—*Notwithstanding the authori-*
24 *ties granted to the Board of Governors under the Fed-*
25 *eral Reserve Act, the Board of Governors may not—*

1 (A) *intervene in any matter or proceeding*
2 *before the Director, including examinations or*
3 *enforcement actions, unless otherwise specifically*
4 *provided by law;*

5 (B) *appoint, direct, or remove any officer or*
6 *employee of the Bureau; or*

7 (C) *merge or consolidate the Bureau, or any*
8 *of the functions or responsibilities of the Bureau,*
9 *with any division or office of the Board of Gov-*
10 *ernors or the Federal reserve banks.*

11 (3) *RULES AND ORDERS.—No rule or order of*
12 *the Bureau shall be subject to approval or review by*
13 *the Board of Governors. The Board of Governors may*
14 *not delay or prevent the issuance of any rule or order*
15 *of the Bureau.*

16 (4) *RECOMMENDATIONS AND TESTIMONY.—No of-*
17 *ficer or agency of the United States shall have any*
18 *authority to require the Director or any other officer*
19 *of the Bureau to submit legislative recommendations,*
20 *or testimony or comments on legislation, to any offi-*
21 *cer or agency of the United States for approval, com-*
22 *ments, or review prior to the submission of such rec-*
23 *ommendations, testimony, or comments to the Con-*
24 *gress, if such recommendations, testimony, or com-*
25 *ments to the Congress include a statement indicating*

1 *that the views expressed therein are those of the Direc-*
2 *tor or such officer, and do not necessarily reflect the*
3 *views of the Board of Governors or the President.*

4 **SEC. 1013. ADMINISTRATION.**

5 *(a) PERSONNEL.—*

6 *(1) APPOINTMENT.—*

7 *(A) IN GENERAL.—The Director may fix the*
8 *number of, and appoint and direct, all employees*
9 *of the Bureau.*

10 *(B) EMPLOYEES OF THE BUREAU.—The Di-*
11 *rector is authorized to employ attorneys, compli-*
12 *ance examiners, compliance supervision ana-*
13 *lysts, economists, statisticians, and other employ-*
14 *ees as may be deemed necessary to conduct the*
15 *business of the Bureau. Notwithstanding any*
16 *other provision of law, all such employees shall*
17 *be appointed and compensated on terms and*
18 *conditions that are consistent with the terms and*
19 *conditions set forth in section 11(l) of the Fed-*
20 *eral Reserve Act (12 U.S.C. 248(l)).*

21 *(2) COMPENSATION.—The Director shall at all*
22 *times provide compensation and benefits to each class*
23 *of employees that, at a minimum, are equivalent to*
24 *the compensation and benefits then being provided by*

1 *the Board of Governors for the corresponding class of*
2 *employees.*

3 *(b) SPECIFIC FUNCTIONAL UNITS.—*

4 *(1) RESEARCH.—The Director shall establish a*
5 *unit whose functions shall include researching, ana-*
6 *lyzing, and reporting on—*

7 *(A) developments in markets for consumer*
8 *financial products or services, including market*
9 *areas of alternative consumer financial products*
10 *or services with high growth rates and areas of*
11 *risk to consumers;*

12 *(B) access to fair and affordable credit for*
13 *traditionally underserved communities;*

14 *(C) consumer awareness, understanding,*
15 *and use of disclosures and communications re-*
16 *garding consumer financial products or services;*

17 *(D) consumer awareness and understanding*
18 *of costs, risks, and benefits of consumer financial*
19 *products or services; and*

20 *(E) consumer behavior with respect to con-*
21 *sumer financial products or services.*

22 *(2) COMMUNITY AFFAIRS.—The Director shall es-*
23 *tablish a unit whose functions shall include providing*
24 *information, guidance, and technical assistance re-*
25 *garding the offering and provision of consumer finan-*

1 *cial products or services to traditionally underserved*
2 *consumers and communities.*

3 (3) *COLLECTING AND TRACKING COMPLAINTS.—*

4 (A) *IN GENERAL.—The Director shall estab-*
5 *lish a unit whose functions shall include estab-*
6 *lishing a single, toll-free telephone number, a*
7 *website, and a database or utilizing an existing*
8 *database to facilitate the centralized collection of,*
9 *monitoring of, and response to consumer com-*
10 *plaints regarding consumer financial products or*
11 *services. The Director shall coordinate with the*
12 *Federal Trade Commission or other Federal*
13 *agencies to route complaints to such agencies,*
14 *where appropriate.*

15 (B) *ROUTING CALLS TO STATES.—To the*
16 *extent practicable, State agencies may receive*
17 *appropriate complaints from the systems estab-*
18 *lished under subparagraph (A), if—*

19 (i) *the State agency system has the*
20 *functional capacity to receive calls or elec-*
21 *tronic reports routed by the Bureau systems;*
22 *and*

23 (ii) *the State agency has satisfied any*
24 *conditions of participation in the system*
25 *that the Bureau may establish, including*

1 *treatment of personally identifiable infor-*
2 *mation and sharing of information on com-*
3 *plaint resolution or related compliance pro-*
4 *cedures and resources.*

5 (C) *REPORTS TO THE CONGRESS.*—*The Di-*
6 *rector shall present an annual report to Congress*
7 *not later than March 31 of each year on the com-*
8 *plaints received by the Bureau in the prior year*
9 *regarding consumer financial products and serv-*
10 *ices. Such report shall include information and*
11 *analysis about complaint numbers, complaint*
12 *types, and, where applicable, information about*
13 *resolution of complaints.*

14 (D) *DATA SHARING REQUIRED.*—*To facili-*
15 *tate preparation of the reports required under*
16 *subparagraph (C), supervision and enforcement*
17 *activities, and monitoring of the market for con-*
18 *sumer financial products and services, the Bu-*
19 *reau shall share consumer complaint informa-*
20 *tion with prudential regulators, the Federal*
21 *Trade Commission, other Federal agencies, and*
22 *State agencies, consistent with Federal law ap-*
23 *licable to personally identifiable information.*
24 *The prudential regulators, the Federal Trade*
25 *Commission, and other Federal agencies shall*

1 *share data relating to consumer complaints re-*
2 *garding consumer financial products and serv-*
3 *ices with the Bureau, consistent with Federal*
4 *law applicable to personally identifiable infor-*
5 *mation.*

6 (c) *OFFICE OF FAIR LENDING AND EQUAL OPPOR-*
7 *TUNITY.—*

8 (1) *ESTABLISHMENT.—The Director shall estab-*
9 *lish within the Bureau the Office of Fair Lending*
10 *and Equal Opportunity.*

11 (2) *FUNCTIONS.—The Office of Fair Lending*
12 *and Equal Opportunity shall have such powers and*
13 *duties as the Director may delegate to the Office, in-*
14 *cluding—*

15 (A) *providing oversight and enforcement of*
16 *Federal laws intended to ensure the fair, equi-*
17 *table, and nondiscriminatory access to credit for*
18 *both individuals and communities that are en-*
19 *forced by the Bureau, including the Equal Credit*
20 *Opportunity Act and the Home Mortgage Disclo-*
21 *sure Act;*

22 (B) *coordinating fair lending and fair*
23 *housing efforts of the Bureau with other Federal*
24 *agencies and State regulators, as appropriate, to*

1 *promote consistent, efficient, and effective en-*
2 *forcement of Federal fair lending laws;*

3 (C) *working with private industry, fair*
4 *lending, civil rights, consumer and community*
5 *advocates on the promotion of fair lending com-*
6 *pliance and education; and*

7 (D) *providing annual reports to Congress*
8 *on the efforts of the Bureau to fulfill its fair*
9 *lending mandate.*

10 (3) *ADMINISTRATION OF OFFICE.—There is es-*
11 *tablished the position of Assistant Director of the Bu-*
12 *reau for Fair Lending and Equal Opportunity,*
13 *who—*

14 (A) *shall be appointed by the Director; and*

15 (B) *shall carry out such duties as the Direc-*
16 *tor may delegate to such Assistant Director.*

17 (d) *OFFICE OF FINANCIAL LITERACY.—*

18 (1) *ESTABLISHMENT.—The Director shall estab-*
19 *lish an Office of Financial Literacy, which shall be*
20 *responsible for developing and implementing initia-*
21 *tives intended to educate and empower consumers to*
22 *make better informed financial decisions.*

23 (2) *OTHER DUTIES.—The Office of Financial*
24 *Literacy shall develop and implement a strategy to*
25 *improve the financial literacy of consumers that in-*

1 *cludes measurable goals and objectives, in consulta-*
2 *tion with the Financial Literacy and Education*
3 *Commission, consistent with the National Strategy*
4 *for Financial Education, through activities including*
5 *providing opportunities for consumers to access—*

6 *(A) financial counseling;*

7 *(B) information to assist with the evalua-*
8 *tion of credit products and the understanding of*
9 *credit histories and scores;*

10 *(C) savings, borrowing, and other services*
11 *found at mainstream financial institutions;*

12 *(D) activities intended to—*

13 *(i) prepare the consumer for edu-*
14 *cational expenses and the submission of fi-*
15 *nancial aid applications, and other major*
16 *purchases;*

17 *(ii) reduce debt; and*

18 *(iii) improve the financial situation of*
19 *the consumer;*

20 *(E) assistance in developing long-term sav-*
21 *ings strategies; and*

22 *(F) wealth building and financial services*
23 *during the preparation process to claim earned*
24 *income tax credits and Federal benefits.*

1 (3) *COORDINATION.*—*The Office of Financial*
2 *Literacy shall coordinate with other units within the*
3 *Bureau in carrying out its functions, including—*

4 (A) *working with the Community Affairs*
5 *Office to implement the strategy to improve fi-*
6 *nancial literacy of consumers; and*

7 (B) *working with the research unit estab-*
8 *lished by the Director to conduct research related*
9 *to consumer financial education and counseling.*

10 (4) *REPORT.*—*Not later than 24 months after the*
11 *designated transfer date, and annually thereafter, the*
12 *Director shall submit a report on its financial lit-*
13 *eracy activities and strategy to improve financial lit-*
14 *eracy of consumers to—*

15 (A) *the Committee on Banking, Housing,*
16 *and Urban Affairs of the Senate; and*

17 (B) *the Committee on Financial Services of*
18 *the House of Representatives.*

19 (5) *MEMBERSHIP IN FINANCIAL LITERACY AND*
20 *EDUCATION COMMISSION.*—*Section 513(c)(1) of the*
21 *Financial Literacy and Education Improvement Act*
22 *(20 U.S.C. 9702(c)(1)) is amended—*

23 (A) *in subparagraph (B), by striking “and”*
24 *at the end;*

1 (B) by redesignating subparagraph (C) as
2 subparagraph (D); and

3 (C) by inserting after subparagraph (B) the
4 following new subparagraph:

5 “(C) the Director of the Bureau of Con-
6 sumer Financial Protection; and”.

7 (6) *CONFORMING AMENDMENT.*—Section 513(d)
8 of the *Financial Literacy and Education Improve-*
9 *ment Act (20 U.S.C. 9702(d))* is amended by adding
10 at the end the following: “The Director of the Bureau
11 of Consumer Financial Protection shall serve as the
12 Vice Chairman.”.

13 (e) *OFFICE OF SERVICE MEMBER AFFAIRS.*—

14 (1) *IN GENERAL.*—The Director shall establish
15 an Office of Service Member Affairs, which shall be
16 responsible for developing and implementing initia-
17 tives for service members and their families intended
18 to—

19 (A) educate and empower service members
20 and their families to make better informed deci-
21 sions regarding consumer financial products and
22 services;

23 (B) coordinate with the unit of the Bureau
24 established under subsection (b)(3), in order to
25 monitor complaints by service members and

1 *their families and responses to those complaints*
2 *by the Bureau or other appropriate Federal or*
3 *State agency; and*

4 *(C) coordinate efforts among Federal and*
5 *State agencies, as appropriate, regarding con-*
6 *sumer protection measures relating to consumer*
7 *financial products and services offered to, or*
8 *used by, service members and their families.*

9 *(2) COORDINATION.—*

10 *(A) REGIONAL SERVICES.—The Director is*
11 *authorized to assign employees of the Bureau as*
12 *may be deemed necessary to conduct the business*
13 *of the Office of Service Member Affairs, including*
14 *by establishing and maintaining the functions of*
15 *the Office in regional offices of the Bureau lo-*
16 *cated near military bases, military treatment fa-*
17 *ilities, or other similar military facilities.*

18 *(B) AGREEMENTS.—The Director is author-*
19 *ized to enter into memoranda of understanding*
20 *and similar agreements with the Department of*
21 *Defense, including any branch or agency as au-*
22 *thorized by the department, in order to carry out*
23 *the business of the Office of Service Member Af-*
24 *airs.*

1 (3) *DEFINITION.*—As used in this subsection, the
2 term “service member” means any member of the
3 United States Armed Forces and any member of the
4 National Guard or Reserves.

5 **SEC. 1014. CONSUMER ADVISORY BOARD.**

6 (a) *ESTABLISHMENT REQUIRED.*—The Director shall
7 establish a Consumer Advisory Board to advise and consult
8 with the Bureau in the exercise of its functions under the
9 Federal consumer financial laws, and to provide informa-
10 tion on emerging practices in the consumer financial prod-
11 ucts or services industry, including regional trends, con-
12 cerns, and other relevant information.

13 (b) *MEMBERSHIP.*—In appointing the members of the
14 Consumer Advisory Board, the Director shall seek to assem-
15 ble experts in consumer protection, financial services, com-
16 munity development, fair lending, and consumer financial
17 products or services and seek representation of the interests
18 of covered persons and consumers, without regard to party
19 affiliation. Not fewer than 6 members shall be appointed
20 upon the recommendation of the regional Federal Reserve
21 Bank Presidents, on a rotating basis.

22 (c) *MEETINGS.*—The Consumer Advisory Board shall
23 meet from time to time at the call of the Director, but, at
24 a minimum, shall meet at least twice in each year.

1 (d) *COMPENSATION AND TRAVEL EXPENSES.*—*Mem-*
2 *bers of the Consumer Advisory Board who are not full-time*
3 *employees of the United States shall—*

4 (1) *be entitled to receive compensation at a rate*
5 *fixed by the Director while attending meetings of the*
6 *Consumer Advisory Board, including travel time; and*

7 (2) *be allowed travel expenses, including trans-*
8 *portation and subsistence, while away from their*
9 *homes or regular places of business.*

10 **SEC. 1015. COORDINATION.**

11 *The Bureau shall coordinate with the Commission, the*
12 *Commodity Futures Trading Commission, the Federal*
13 *Trade Commission, and other Federal agencies and State*
14 *regulators, as appropriate, to promote consistent regulatory*
15 *treatment of consumer financial and investment products*
16 *and services.*

17 **SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CON-**
18 **GRESS.**

19 (a) *APPEARANCES BEFORE CONGRESS.*—*The Director*
20 *of the Bureau shall appear before the Committee on Bank-*
21 *ing, Housing, and Urban Affairs of the Senate and the*
22 *Committee on Financial Services of the House of Represent-*
23 *atives at semi-annual hearings regarding the reports re-*
24 *quired under subsection (b).*

1 **(b) REPORTS REQUIRED.**—*The Bureau shall, concur-*
2 *rent with each semi-annual hearing referred to in sub-*
3 *section (a), prepare and submit to the President and to the*
4 *Committee on Banking, Housing, and Urban Affairs of the*
5 *Senate and the Committee on Financial Services of the*
6 *House of Representatives, a report, beginning with the ses-*
7 *sion following the designated transfer date.*

8 **(c) CONTENTS.**—*The reports required by subsection (b)*
9 *shall include—*

10 (1) *a discussion of the significant problems faced*
11 *by consumers in shopping for or obtaining consumer*
12 *financial products or services;*

13 (2) *a justification of the budget request of the*
14 *previous year;*

15 (3) *a list of the significant rules and orders*
16 *adopted by the Bureau, as well as other significant*
17 *initiatives conducted by the Bureau, during the pre-*
18 *ceding year and the plan of the Bureau for rules, or-*
19 *ders, or other initiatives to be undertaken during the*
20 *upcoming period;*

21 (4) *an analysis of complaints about consumer fi-*
22 *nancial products or services that the Bureau has re-*
23 *ceived and collected in its central database on com-*
24 *plaints during the preceding year;*

1 (5) a list, with a brief statement of the issues, of
2 the public supervisory and enforcement actions to
3 which the Bureau was a party during the preceding
4 year;

5 (6) the actions taken regarding rules, orders, and
6 supervisory actions with respect to covered persons
7 which are not credit unions or depository institu-
8 tions;

9 (7) an assessment of significant actions by State
10 attorneys general or State regulators relating to Fed-
11 eral consumer financial law; and

12 (8) an analysis of the efforts of the Bureau to
13 fulfill the fair lending mission of the Bureau.

14 **SEC. 1017. FUNDING; PENALTIES AND FINES.**

15 (a) *TRANSFER OF FUNDS FROM BOARD OF GOV-*
16 *ERNORS.—*

17 (1) *IN GENERAL.—*Each year (or quarter of such
18 year), beginning on the designated transfer date, and
19 each quarter thereafter, the Board of Governors shall
20 transfer to the Bureau from the combined earnings of
21 the Federal Reserve System, the amount determined
22 by the Director to be reasonably necessary to carry
23 out the authorities of the Bureau under Federal con-
24 sumer financial law, taking into account such other

1 *sums made available to the Bureau from the pre-*
2 *ceding year (or quarter of such year).*

3 (2) *FUNDING CAP.*—

4 (A) *IN GENERAL.*—*Notwithstanding para-*
5 *graph (1), and in accordance with this para-*
6 *graph, the amount that shall be transferred to*
7 *the Bureau in each fiscal year shall not exceed*
8 *a fixed percentage of the total operating expenses*
9 *of the Federal Reserve System, as reported in the*
10 *Annual Report, 2009, of the Board of Governors,*
11 *equal to—*

12 (i) *10 percent of such expenses in fiscal*
13 *year 2011;*

14 (ii) *11 percent of such expenses in fis-*
15 *cal year 2012; and*

16 (iii) *12 percent of such expenses in fis-*
17 *cal year 2013, and in each year thereafter.*

18 (B) *AMOUNT ADJUSTED FOR INFLATION.*—

19 *The dollar amount referred to in subparagraph*
20 *(A)(iii) shall be adjusted annually, using the*
21 *percent by which the average urban consumer*
22 *price index for the quarter preceding the date of*
23 *the payment differs from the average of that*
24 *index for the same quarter in the prior year.*

1 (3) *TRANSITION PERIOD.*—Beginning on the date
2 of enactment of this Act and until the designated
3 transfer date, the Board of Governors shall transfer to
4 the Bureau the amount estimated by the Secretary
5 needed to carry out the authorities granted to the Bu-
6 reau under Federal consumer financial law, from the
7 date of enactment of this Act until the designated
8 transfer date.

9 (4) *BUDGET AND FINANCIAL MANAGEMENT.*—

10 (A) *FINANCIAL OPERATING PLANS AND*
11 *FORECASTS.*—The Director shall provide to the
12 Director of the Office of Management and Budget
13 copies of the financial operating plans and fore-
14 casts of the Director, as prepared by the Director
15 in the ordinary course of the operations of the
16 Bureau, and copies of the quarterly reports of the
17 financial condition and results of operations of
18 the Bureau, as prepared by the Director in the
19 ordinary course of the operations of the Bureau.

20 (B) *FINANCIAL STATEMENTS.*—The Bureau
21 shall prepare annually a statement of—

22 (i) *assets and liabilities and surplus or*
23 *deficit;*

24 (ii) *income and expenses; and*

25 (iii) *sources and application of funds.*

1 (C) *FINANCIAL MANAGEMENT SYSTEMS.*—

2 *The Bureau shall implement and maintain fi-*
3 *nancial management systems that comply sub-*
4 *stantially with Federal financial management*
5 *systems requirements and applicable Federal ac-*
6 *counting standards.*

7 (D) *ASSERTION OF INTERNAL CONTROLS.*—

8 *The Director shall provide to the Comptroller*
9 *General of the United States an assertion as to*
10 *the effectiveness of the internal controls that*
11 *apply to financial reporting by the Bureau,*
12 *using the standards established in section*
13 *3512(c) of title 31, United States Code.*

14 (E) *RULE OF CONSTRUCTION.*—*This sub-*
15 *section may not be construed as implying any*
16 *obligation on the part of the Director to consult*
17 *with or obtain the consent or approval of the Di-*
18 *rector of the Office of Management and Budget*
19 *with respect to any report, plan, forecast, or*
20 *other information referred to in subparagraph*
21 *(A) or any jurisdiction or oversight over the af-*
22 *fairs or operations of the Bureau.*

23 (5) *AUDIT OF THE BUREAU.*—

24 (A) *IN GENERAL.*—*The Comptroller General*
25 *shall annually audit the financial transactions*

1 *of the Bureau in accordance with the United*
2 *States generally accepted government auditing*
3 *standards, as may be prescribed by the Comp-*
4 *troller General of the United States. The audit*
5 *shall be conducted at the place or places where*
6 *accounts of the Bureau are normally kept. The*
7 *representatives of the Government Accountability*
8 *Office shall have access to the personnel and to*
9 *all books, accounts, documents, papers, records*
10 *(including electronic records), reports, files, and*
11 *all other papers, automated data, things, or*
12 *property belonging to or under the control of or*
13 *used or employed by the Bureau pertaining to its*
14 *financial transactions and necessary to facilitate*
15 *the audit, and such representatives shall be af-*
16 *forded full facilities for verifying transactions*
17 *with the balances or securities held by deposi-*
18 *tories, fiscal agents, and custodians. All such*
19 *books, accounts, documents, records, reports, files,*
20 *papers, and property of the Bureau shall remain*
21 *in possession and custody of the Bureau. The*
22 *Comptroller General may obtain and duplicate*
23 *any such books, accounts, documents, records,*
24 *working papers, automated data and files, or*
25 *other information relevant to such audit without*

1 *cost to the Comptroller General, and the right of*
2 *access of the Comptroller General to such infor-*
3 *mation shall be enforceable pursuant to section*
4 *716(c) of title 31, United States Code.*

5 *(B) REPORT.—The Comptroller General*
6 *shall submit to the Congress a report of each an-*
7 *annual audit conducted under this subsection. The*
8 *report to the Congress shall set forth the scope of*
9 *the audit and shall include the statement of as-*
10 *sets and liabilities and surplus or deficit, the*
11 *statement of income and expenses, the statement*
12 *of sources and application of funds, and such*
13 *comments and information as may be deemed*
14 *necessary to inform Congress of the financial op-*
15 *erations and condition of the Bureau, together*
16 *with such recommendations with respect thereto*
17 *as the Comptroller General may deem advisable.*
18 *A copy of each report shall be furnished to the*
19 *President and to the Bureau at the time sub-*
20 *mitted to the Congress.*

21 *(C) ASSISTANCE AND COSTS.—For the pur-*
22 *pose of conducting an audit under this sub-*
23 *section, the Comptroller General may, in the dis-*
24 *cretion of the Comptroller General, employ by*
25 *contract, without regard to section 3709 of the*

1 *Revised Statutes of the United States (41 U.S.C.*
2 *5), professional services of firms and organiza-*
3 *tions of certified public accountants for tem-*
4 *porary periods or for special purposes. Upon the*
5 *request of the Comptroller General, the Director*
6 *of the Bureau shall transfer to the Government*
7 *Accountability Office from funds available, the*
8 *amount requested by the Comptroller General to*
9 *cover the full costs of any audit and report con-*
10 *ducted by the Comptroller General. The Comp-*
11 *troller General shall credit funds transferred to*
12 *the account established for salaries and expenses*
13 *of the Government Accountability Office, and*
14 *such amount shall be available upon receipt and*
15 *without fiscal year limitation to cover the full*
16 *costs of the audit and report.*

17 **(b) CONSUMER FINANCIAL PROTECTION FUND.—**

18 **(1) SEPARATE FUND IN FEDERAL RESERVE**
19 **BOARD ESTABLISHED.—***There is established in the*
20 *Federal Reserve Board a separate fund, to be known*
21 *as the “Consumer Financial Protection Fund” (re-*
22 *ferred to in this section as the “Bureau Fund”).*

23 **(2) FUND RECEIPTS.—***All amounts transferred to*
24 *the Bureau under subsection (a) shall be deposited*
25 *into the Bureau Fund.*

1 (3) *INVESTMENT AUTHORITY.*—

2 (A) *AMOUNTS IN BUREAU FUND MAY BE IN-*
3 *VESTED.*—*The Bureau may request the Board of*
4 *Governors to invest the portion of the Bureau*
5 *Fund that is not, in the judgment of the Bureau,*
6 *required to meet the current needs of the Bureau.*

7 (B) *ELIGIBLE INVESTMENTS.*—*Investments*
8 *authorized by this paragraph shall be made by*
9 *the Board of Governors in obligations of the*
10 *United States or obligations that are guaranteed*
11 *as to principal and interest by the United*
12 *States, with maturities suitable to the needs of*
13 *the Bureau Fund, as determined by the Bureau.*

14 (C) *INTEREST AND PROCEEDS CREDITED.*—
15 *The interest on, and the proceeds from the sale*
16 *or redemption of, any obligations held in the Bu-*
17 *reau Fund shall be credited to the Bureau Fund.*

18 (c) *USE OF FUNDS.*—

19 (1) *IN GENERAL.*—*Funds obtained by, trans-*
20 *ferred to, or credited to the Bureau Fund shall be im-*
21 *mediately available to the Bureau and under the con-*
22 *trol of the Director, and shall remain available until*
23 *expended, to pay the expenses of the Bureau in car-*
24 *rying out its duties and responsibilities. The com-*
25 *ensation of the Director and other employees of the*

1 *Bureau and all other expenses thereof may be paid*
2 *from, obtained by, transferred to, or credited to the*
3 *Bureau Fund under this section.*

4 (2) *FUNDS THAT ARE NOT GOVERNMENT*
5 *FUNDS.—Funds obtained by or transferred to the Bu-*
6 *reau Fund shall not be construed to be Government*
7 *funds or appropriated monies.*

8 (3) *AMOUNTS NOT SUBJECT TO APPORTION-*
9 *MENT.—Notwithstanding any other provision of law,*
10 *amounts in the Bureau Fund and in the Civil Pen-*
11 *alty Fund established under subsection (d) shall not*
12 *be subject to apportionment for purposes of chapter 15*
13 *of title 31, United States Code, or under any other*
14 *authority.*

15 (d) *PENALTIES AND FINES.—*

16 (1) *ESTABLISHMENT OF VICTIMS RELIEF*
17 *FUND.—There is established in the Federal Reserve*
18 *Board a fund to be known as the “Consumer Finan-*
19 *cial Protection Civil Penalty Fund” (referred to in*
20 *this subsection as the “Civil Penalty Fund”). If the*
21 *Bureau obtains a civil penalty against any person in*
22 *any judicial or administrative action under Federal*
23 *consumer financial laws, the Bureau shall deposit*
24 *into the Civil Penalty Fund, the amount of the pen-*
25 *alty collected.*

1 (1) consumers are provided with timely and un-
2 derstandable information to make responsible deci-
3 sions about financial transactions;

4 (2) consumers are protected from unfair, decep-
5 tive, or abusive acts and practices and from discrimi-
6 nation;

7 (3) outdated, unnecessary, or unduly burdensome
8 regulations are regularly identified and addressed in
9 order to reduce unwarranted regulatory burdens;

10 (4) Federal consumer financial law is enforced
11 consistently, without regard to the status of a person
12 as a depository institution, in order to promote fair
13 competition; and

14 (5) markets for consumer financial products and
15 services operate transparently and efficiently to facili-
16 tate access and innovation.

17 (c) *FUNCTIONS.*—The primary functions of the Bureau
18 are—

19 (1) conducting financial education programs;

20 (2) collecting, investigating, and responding to
21 consumer complaints;

22 (3) collecting, researching, monitoring, and pub-
23 lishing information relevant to the functioning of
24 markets for consumer financial products and services

1 *to identify risks to consumers and the proper func-*
2 *tioning of such markets;*

3 *(4) subject to sections 1024 through 1026, super-*
4 *vising covered persons for compliance with Federal*
5 *consumer financial law, and taking appropriate en-*
6 *forcement action to address violations of Federal con-*
7 *sumer financial law;*

8 *(5) issuing rules, orders, and guidance imple-*
9 *menting Federal consumer financial law; and*

10 *(6) performing such support activities as may be*
11 *necessary or useful to facilitate the other functions of*
12 *the Bureau.*

13 **SEC. 1022. RULEMAKING AUTHORITY.**

14 *(a) IN GENERAL.—The Bureau is authorized to exer-*
15 *cise its authorities under Federal consumer financial law*
16 *to administer, enforce, and otherwise implement the provi-*
17 *sions of Federal consumer financial law.*

18 *(b) RULEMAKING, ORDERS, AND GUIDANCE.—*

19 *(1) GENERAL AUTHORITY.—The Director may*
20 *prescribe rules and issue orders and guidance, as may*
21 *be necessary or appropriate to enable the Bureau to*
22 *administer and carry out the purposes and objectives*
23 *of the Federal consumer financial laws, and to pre-*
24 *vent evasions thereof.*

1 (2) *STANDARDS FOR RULEMAKING.*—*In pre-*
2 *scribing a rule under the Federal consumer financial*
3 *laws—*

4 (A) *the Bureau shall consider the potential*
5 *benefits and costs to consumers and covered per-*
6 *sons, including the potential reduction of access*
7 *by consumers to consumer financial products or*
8 *services resulting from such rule;*

9 (B) *the Bureau shall consult with the ap-*
10 *propriate prudential regulators or other Federal*
11 *agencies prior to proposing a rule and during*
12 *the comment process regarding consistency with*
13 *prudential, market, or systemic objectives admin-*
14 *istered by such agencies; and*

15 (C) *if, during the consultation process de-*
16 *scribed in subparagraph (B), a prudential regu-*
17 *lator provides the Bureau with a written objec-*
18 *tion to the proposed rule of the Bureau or a por-*
19 *tion thereof, the Bureau shall include in the*
20 *adopting release a description of the objection*
21 *and the basis for the Bureau decision, if any, re-*
22 *garding such objection, except that nothing in*
23 *this clause shall be construed as altering or lim-*
24 *iting the procedures under section 1023 that may*
25 *apply to any rule prescribed by the Bureau.*

1 (3) *EXEMPTIONS.*—

2 (A) *IN GENERAL.*—*The Bureau, by rule,*
3 *may conditionally or unconditionally exempt*
4 *any class of covered persons, service providers, or*
5 *consumer financial products or services, from*
6 *any provision of this title, or from any rule*
7 *issued under this title, as the Bureau determines*
8 *necessary or appropriate to carry out the pur-*
9 *poses and objectives of this title, taking into con-*
10 *sideration the factors in subparagraph (B).*

11 (B) *FACTORS.*—*In issuing an exemption, as*
12 *permitted under subparagraph (A), the Bureau*
13 *shall, as appropriate, take into consideration—*

14 (i) *the total assets of the class of cov-*
15 *ered persons;*

16 (ii) *the volume of transactions involv-*
17 *ing consumer financial products or services*
18 *in which the class of covered persons en-*
19 *gages; and*

20 (iii) *existing provisions of law which*
21 *are applicable to the consumer financial*
22 *product or service and the extent to which*
23 *such provisions provide consumers with*
24 *adequate protections.*

1 (4) *EXCLUSIVE RULEMAKING AUTHORITY.*—*Not-*
2 *withstanding any other provisions of Federal law and*
3 *except as provided in section 1061(b)(5), to the extent*
4 *that a provision of Federal consumer financial law*
5 *authorizes the Bureau and another Federal agency to*
6 *issue regulations under that provision of law for pur-*
7 *poses of assuring compliance with Federal consumer*
8 *financial law and any regulations thereunder, the*
9 *Bureau shall have the exclusive authority to prescribe*
10 *rules subject to those provisions of law.*

11 (c) *MONITORING.*—

12 (1) *IN GENERAL.*—*In order to support its rule-*
13 *making and other functions, the Bureau shall monitor*
14 *for risks to consumers in the offering or provision of*
15 *consumer financial products or services, including de-*
16 *velopments in markets for such products or services.*

17 (2) *CONSIDERATIONS.*—*In allocating its re-*
18 *sources to perform the monitoring required by this*
19 *section, the Bureau may consider, among other fac-*
20 *tors—*

21 (A) *likely risks and costs to consumers asso-*
22 *ciated with buying or using a type of consumer*
23 *financial product or service;*

1 (B) *understanding by consumers of the risks*
2 *of a type of consumer financial product or serv-*
3 *ice;*

4 (C) *the legal protections applicable to the*
5 *offering or provision of a consumer financial*
6 *product or service, including the extent to which*
7 *the law is likely to adequately protect consumers;*

8 (D) *rates of growth in the offering or provi-*
9 *sion of a consumer financial product or service;*

10 (E) *the extent, if any, to which the risks of*
11 *a consumer financial product or service may dis-*
12 *proportionately affect traditionally underserved*
13 *consumers; or*

14 (F) *the types, number, and other pertinent*
15 *characteristics of covered persons that offer or*
16 *provide the consumer financial product or serv-*
17 *ice.*

18 (3) *REPORTS.—The Bureau shall publish not*
19 *fewer than 1 report of significant findings of its mon-*
20 *itoring required by this subsection in each calendar*
21 *year, beginning with the first calendar year that be-*
22 *gins at least 1 year after the designated transfer date.*

23 (4) *COLLECTION OF INFORMATION.—In con-*
24 *ducting research on the offering and provision of con-*
25 *sumer financial products or services, the Bureau shall*

1 *have the authority to gather information from time to*
2 *time regarding the organization, business conduct,*
3 *markets, and activities of persons operating in con-*
4 *sumer financial services markets. In order to gather*
5 *such information, the Bureau may—*

6 *(A) gather and compile information from*
7 *examination reports concerning covered persons*
8 *or service providers, assessment of consumer com-*
9 *plaints, surveys, and interviews of covered per-*
10 *sons and consumers, and review of available*
11 *databases;*

12 *(B) require persons to file with the Bureau,*
13 *under oath or otherwise, in such form and with-*
14 *in such reasonable period of time as the Bureau*
15 *may prescribe, by rule or order, annual or spe-*
16 *cial reports, or answers in writing to specific*
17 *questions, furnishing such information as the*
18 *Bureau may require; and*

19 *(C) make public such information obtained*
20 *by the Bureau under this section, as is in the*
21 *public interest in reports or otherwise in the*
22 *manner best suited for public information and*
23 *use.*

24 *(5) CONFIDENTIALITY RULES.—The Bureau shall*
25 *prescribe rules regarding the confidential treatment of*

1 *information obtained from persons in connection with*
2 *the exercise of its authorities under Federal consumer*
3 *financial law.*

4 (A) *ACCESS BY THE BUREAU TO REPORTS*
5 *OF OTHER REGULATORS.—*

6 (i) *EXAMINATION AND FINANCIAL CON-*
7 *DITION REPORTS.—Upon providing reason-*
8 *able assurances of confidentiality, the Bu-*
9 *reau shall have access to any report of ex-*
10 *amination or financial condition made by a*
11 *prudential regulator or other Federal agen-*
12 *cy having jurisdiction over a covered person*
13 *or service provider, and to all revisions*
14 *made to any such report.*

15 (ii) *PROVISION OF OTHER REPORTS TO*
16 *THE BUREAU.—In addition to the reports*
17 *described in clause (i), a prudential regu-*
18 *lator or other Federal agency having juris-*
19 *isdiction over a covered person or service pro-*
20 *vider may, in its discretion, furnish to the*
21 *Bureau any other report or other confiden-*
22 *tial supervisory information concerning*
23 *any insured depository institution, credit*
24 *union, or other entity examined by such*

1 *agency under authority of any provision of*
2 *Federal law.*

3 *(B) ACCESS BY OTHER REGULATORS TO RE-*
4 *PORTS OF THE BUREAU.—*

5 *(i) EXAMINATION REPORTS.—Upon*
6 *providing reasonable assurances of confiden-*
7 *tiality, a prudential regulator, a State reg-*
8 *ulator, or any other Federal agency having*
9 *jurisdiction over a covered person or service*
10 *provider shall have access to any report of*
11 *examination made by the Bureau with re-*
12 *spect to such person, and to all revisions*
13 *made to any such report.*

14 *(ii) PROVISION OF OTHER REPORTS TO*
15 *OTHER REGULATORS.—In addition to the*
16 *reports described in clause (i), the Bureau*
17 *may, in its discretion, furnish to a pruden-*
18 *tial regulator or other agency having juris-*
19 *isdiction over a covered person or service pro-*
20 *vider any other report or other confidential*
21 *supervisory information concerning such*
22 *person examined by the Bureau under the*
23 *authority of any other provision of Federal*
24 *law.*

1 (6) *PRIVACY CONSIDERATIONS.*—*In collecting in-*
2 *formation from any person, publicly releasing infor-*
3 *mation held by the Bureau, or requiring covered per-*
4 *sons to publicly report information, the Bureau shall*
5 *take steps to ensure that proprietary, personal, or*
6 *confidential consumer information that is protected*
7 *from public disclosure under section 552(b) or 552a*
8 *of title 5, United States Code, or any other provision*
9 *of law, is not made public under this title.*

10 (d) *ASSESSMENT OF SIGNIFICANT RULES.*—

11 (1) *IN GENERAL.*—*The Bureau shall conduct an*
12 *assessment of each significant rule or order adopted*
13 *by the Bureau under Federal consumer financial law.*
14 *The assessment shall address, among other relevant*
15 *factors, the effectiveness of the rule or order in meet-*
16 *ing the purposes and objectives of this title and the*
17 *specific goals stated by the Bureau. The assessment*
18 *shall reflect available evidence and any data that the*
19 *Bureau reasonably may collect.*

20 (2) *REPORTS.*—*The Bureau shall publish a re-*
21 *port of its assessment under this subsection not later*
22 *than 5 years after the effective date of the subject rule*
23 *or order.*

24 (3) *PUBLIC COMMENT REQUIRED.*—*Before pub-*
25 *lishing a report of its assessment, the Bureau shall in-*

1 *vite public comment on recommendations for modi-*
2 *fying, expanding, or eliminating the newly adopted*
3 *significant rule or order.*

4 *(e) INFORMATION GATHERING.—In conducting any*
5 *monitoring or assessment required by this section, the Bu-*
6 *reau may gather information through a variety of methods,*
7 *including by conducting surveys or interviews of consumers.*

8 **SEC. 1023. REVIEW OF BUREAU REGULATIONS.**

9 *(a) REVIEW OF BUREAU REGULATIONS.—On the peti-*
10 *tion of a member agency of the Council, the Council may*
11 *set aside a final regulation prescribed by the Bureau, or*
12 *any provision thereof, if the Council decides, in accordance*
13 *with subsection (c), that the regulation or provision would*
14 *put the safety and soundness of the United States banking*
15 *system or the stability of the financial system of the United*
16 *States at risk.*

17 *(b) PETITION.—*

18 *(1) PROCEDURE.—An agency represented by a*
19 *member of the Council may petition the Council, in*
20 *writing, and in accordance with rules prescribed pur-*
21 *suant to subsection (f), to stay the effectiveness of, or*
22 *set aside, a regulation if the member agency filing the*
23 *petition—*

24 *(A) has in good faith attempted to work*
25 *with the Bureau to resolve concerns regarding*

1 *the effect of the rule on the safety and soundness*
2 *of the United States banking system or the sta-*
3 *bility of the financial system of the United*
4 *States; and*

5 *(B) files the petition with the Council not*
6 *later than 10 days after the date on which the*
7 *regulation has been published in the Federal*
8 *Register.*

9 *(2) PUBLICATION.—Any petition filed with the*
10 *Council under this section shall be published in the*
11 *Federal Register and transmitted contemporaneously*
12 *with filing to the Committee on Banking, Housing,*
13 *and Urban Affairs of the Senate and the Committee*
14 *on Financial Services of the House of Representatives.*

15 *(c) STAYS AND SET ASIDES.—*

16 *(1) STAY.—*

17 *(A) IN GENERAL.—Upon the request of any*
18 *member agency, the Chairperson of the Council*
19 *may stay the effectiveness of a regulation for the*
20 *purpose of allowing appropriate consideration of*
21 *the petition by the Council.*

22 *(B) EXPIRATION.—A stay issued under this*
23 *paragraph shall expire on the earlier of—*

24 *(i) 90 days after the date of filing of*
25 *the petition under subsection (b); or*

1 (ii) the date on which the Council
2 makes a decision under paragraph (3).

3 (2) *NO ADVERSE INFERENCE.*—After the expira-
4 tion of any stay imposed under this section, no infer-
5 ence shall be drawn regarding the validity or enforce-
6 ability of a regulation which was the subject of the pe-
7 tition.

8 (3) *VOTE.*—

9 (A) *IN GENERAL.*—The decision to issue a
10 stay of, or set aside, any regulation under this
11 section shall be made only with the affirmative
12 vote in accordance with subparagraph (B) of $\frac{2}{3}$
13 of the members of the Council then serving.

14 (B) *AUTHORIZATION TO VOTE.*—A member
15 of the Council may vote to stay the effectiveness
16 of, or set aside, a final regulation prescribed by
17 the Bureau only if the agency or department
18 represented by that member has—

19 (i) considered any relevant informa-
20 tion provided by the agency submitting the
21 petition and by the Bureau; and

22 (ii) made an official determination, at
23 a public meeting where applicable, that the
24 regulation which is the subject of the peti-
25 tion would put the safety and soundness of

1 *the United States banking system or the*
2 *stability of the financial system of the*
3 *United States at risk.*

4 (4) *DECISIONS TO SET ASIDE.*—

5 (A) *EFFECT OF DECISION.*—*A decision by*
6 *the Council to set aside a regulation prescribed*
7 *by the Bureau, or provision thereof, shall render*
8 *such regulation, or provision thereof, unenforce-*
9 *able.*

10 (B) *TIMELY ACTION REQUIRED.*—*The Coun-*
11 *cil may not issue a decision to set aside a regu-*
12 *lation, or provision thereof, which is the subject*
13 *of a petition under this section after the expira-*
14 *tion of the later of—*

15 (i) *45 days following the date of filing*
16 *of the petition, unless a stay is issued under*
17 *paragraph (1); or*

18 (ii) *the expiration of a stay issued by*
19 *the Council under this section.*

20 (C) *SEPARATE AUTHORITY.*—*The issuance*
21 *of a stay under this section does not affect the*
22 *authority of the Council to set aside a regula-*
23 *tion.*

24 (5) *DISMISSAL DUE TO INACTION.*—*A petition*
25 *under this section shall be deemed dismissed if the*

1 *Council has not issued a decision to set aside a regu-*
2 *lation, or provision thereof, within the period for*
3 *timely action under paragraph (4)(B).*

4 (6) *PUBLICATION OF DECISION.*—*Any decision*
5 *under this subsection to issue a stay of, or set aside,*
6 *a regulation or provision thereof shall be published by*
7 *the Council in the Federal Register as soon as prac-*
8 *ticable after the decision is made, with an expla-*
9 *nation of the reasons for the decision.*

10 (7) *RULEMAKING PROCEDURES INAPPLICABLE.*—
11 *The notice and comment procedures under section 553*
12 *of title 5, United States Code, shall not apply to any*
13 *decision under this section of the Council to issue a*
14 *stay of, or set aside, a regulation.*

15 (8) *JUDICIAL REVIEW OF DECISIONS BY THE*
16 *COUNCIL.*—*A decision by the Council to set aside a*
17 *regulation prescribed by the Bureau, or provision*
18 *thereof, shall be subject to review under chapter 7 of*
19 *title 5, United States Code.*

20 (d) *APPLICATION OF OTHER LAW.*—*Nothing in this*
21 *section shall be construed as altering, limiting, or restrict-*
22 *ing the application of any other provision of law, except*
23 *as otherwise specifically provided in this section, including*
24 *chapter 5 and chapter 7 of title 5, United States Code, to*

1 *a regulation which is the subject of a petition filed under*
2 *this section.*

3 (e) *SAVINGS CLAUSE.*—*Nothing in this section shall be*
4 *construed as limiting or restricting the Bureau from engag-*
5 *ing in a rulemaking in accordance with applicable law.*

6 (f) *IMPLEMENTING RULES.*—*The Council shall pre-*
7 *scribe procedural rules to implement this section.*

8 **SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED**
9 **PERSONS.**

10 (a) *SCOPE OF COVERAGE.*—

11 (1) *APPLICABILITY.*—*Notwithstanding any other*
12 *provision of this title, and except as provided in*
13 *paragraph (3), this section shall apply to any covered*
14 *person who—*

15 (A) *offers or provides origination, broker-*
16 *age, or servicing of loans secured by real estate*
17 *for use by consumers primarily for personal,*
18 *family, or household purposes, or loan modifica-*
19 *tion or foreclosure relief services in connection*
20 *with such loans; or*

21 (B) *is a larger participant of a market for*
22 *other consumer financial products or services, as*
23 *defined by rule in accordance with paragraph*
24 *(2).*

1 (2) *RULEMAKING TO DEFINE COVERED PERSONS*
2 *SUBJECT TO THIS SECTION.—The Bureau shall con-*
3 *sult with the Federal Trade Commission prior to*
4 *issuing a rule to define covered persons subject to this*
5 *section, in accordance with paragraph (1)(B). The*
6 *Bureau shall issue its initial rule within 1 year of the*
7 *designated transfer date.*

8 (3) *RULES OF CONSTRUCTION.—*

9 (A) *CERTAIN PERSONS EXCLUDED.—This*
10 *section shall not apply to persons described in*
11 *section 1025(a) or 1026(a).*

12 (B) *ACTIVITY LEVELS.—For purposes of*
13 *computing activity levels under paragraph (1) or*
14 *rules issued thereunder, activities of affiliated*
15 *companies (other than insured depository insti-*
16 *tutions or insured credit unions) shall be aggre-*
17 *gated.*

18 (b) *SUPERVISION.—*

19 (1) *IN GENERAL.—The Bureau shall require re-*
20 *ports and conduct examinations on a periodic basis*
21 *of persons described in subsection (a)(1) for purposes*
22 *of—*

23 (A) *assessing compliance with the require-*
24 *ments of Federal consumer financial law;*

1 (B) obtaining information about the activi-
2 ties and compliance systems or procedures of
3 such person; and

4 (C) detecting and assessing risks to con-
5 sumers and to markets for consumer financial
6 products and services.

7 (2) *RISK-BASED SUPERVISION PROGRAM.*—The
8 Bureau shall exercise its authority under paragraph
9 (1) in a manner designed to ensure that such exercise,
10 with respect to persons described in subsection (a)(1),
11 is based on the assessment by the Bureau of the risks
12 posed to consumers in the relevant product markets
13 and geographic markets, and taking into consider-
14 ation, as applicable—

15 (A) the asset size of the covered person;

16 (B) the volume of transactions involving
17 consumer financial products or services in which
18 the covered person engages;

19 (C) the risks to consumers created by the
20 provision of such consumer financial products or
21 services;

22 (D) the extent to which such institutions are
23 subject to oversight by State authorities for con-
24 sumer protection; and

1 (E) any other factors that the Bureau deter-
2 mines to be relevant to a class of covered persons.

3 (3) *COORDINATION.*—To minimize regulatory
4 burden, the Bureau shall coordinate its supervisory
5 activities with the supervisory activities conducted by
6 prudential regulators and the State bank regulatory
7 authorities, including establishing their respective
8 schedules for examining persons described in sub-
9 section (a)(1) and requirements regarding reports to
10 be submitted by such persons.

11 (4) *USE OF EXISTING REPORTS.*—The Bureau
12 shall, to the fullest extent possible, use—

13 (A) reports pertaining to persons described
14 in subsection (a)(1) that have been provided or
15 required to have been provided to a Federal or
16 State agency; and

17 (B) information that has been reported pub-
18 licly.

19 (5) *PRESERVATION OF AUTHORITY.*—Nothing in
20 this title may be construed as limiting the authority
21 of the Director to require reports from persons de-
22 scribed in subsection (a)(1), as permitted under para-
23 graph (1), regarding information owned or under the
24 control of such person, regardless of whether such in-

1 *formation is maintained, stored, or processed by an-*
2 *other person.*

3 (6) *REPORTS OF TAX LAW NONCOMPLIANCE.—*

4 *The Bureau shall provide the Commissioner of Inter-*
5 *nal Revenue with any report of examination or re-*
6 *lated information identifying possible tax law non-*
7 *compliance.*

8 (7) *REGISTRATION, RECORDKEEPING, AND*
9 *OTHER REQUIREMENTS FOR CERTAIN PERSONS.—*

10 (A) *IN GENERAL.—The Bureau shall pre-*
11 *scribe rules to facilitate supervision of persons*
12 *described in subsection (a)(1) and assessment*
13 *and detection of risks to consumers.*

14 (B) *REGISTRATION.—*

15 (i) *IN GENERAL.—The Bureau shall*
16 *prescribe rules regarding registration re-*
17 *quirements for persons described in sub-*
18 *section (a)(1).*

19 (ii) *EXCEPTION FOR RELATED PER-*
20 *SONS.—The Bureau may not impose re-*
21 *quirements under this section regarding the*
22 *registration of a related person.*

23 (iii) *REGISTRATION INFORMATION.—*
24 *Subject to rules prescribed by the Bureau,*
25 *the Bureau shall publicly disclose the reg-*

1 *istration information about persons de-*
2 *scribed in subsection (a)(1) to facilitate the*
3 *ability of consumers to identify persons de-*
4 *scribed in subsection (a)(1) registered with*
5 *the Bureau.*

6 (C) *RECORDKEEPING.—The Bureau may*
7 *require a person described in subsection (a)(1),*
8 *to generate, provide, or retain records for the*
9 *purposes of facilitating supervision of such per-*
10 *sons and assessing and detecting risks to con-*
11 *sumers.*

12 (D) *REQUIREMENTS CONCERNING OBLIGA-*
13 *TIONS.—The Bureau may prescribe rules regard-*
14 *ing a person described in subsection (a)(1), to*
15 *ensure that such persons are legitimate entities*
16 *and are able to perform their obligations to con-*
17 *sumers. Such requirements may include back-*
18 *ground checks for principals, officers, directors,*
19 *or key personnel and bonding or other appro-*
20 *priate financial requirements.*

21 (E) *CONSULTATION WITH STATE AGEN-*
22 *CIES.—In developing and implementing require-*
23 *ments under this paragraph, the Bureau shall*
24 *consult with State agencies regarding require-*
25 *ments or systems (including coordinated or com-*

1 *bined systems for registration), where appro-*
2 *priate.*

3 *(c) ENFORCEMENT AUTHORITY.—*

4 *(1) THE BUREAU TO HAVE ENFORCEMENT AU-*
5 *THORITY.—Except as provided in paragraph (3) and*
6 *section 1061(b)(5), with respect to any person de-*
7 *scribed in subsection (a)(1), to the extent that Federal*
8 *law authorizes the Bureau and another Federal agen-*
9 *cy to enforce Federal consumer financial law, the Bu-*
10 *reau shall have exclusive authority to enforce that*
11 *Federal consumer financial law.*

12 *(2) REFERRAL.—Any Federal agency authorized*
13 *to enforce a Federal consumer financial law described*
14 *in paragraph (1) may recommend in writing to the*
15 *Bureau that the Bureau initiate an enforcement pro-*
16 *ceeding, as the Bureau is authorized by that Federal*
17 *law or by this title.*

18 *(3) COORDINATION WITH THE FEDERAL TRADE*
19 *COMMISSION.—*

20 *(A) IN GENERAL.—The Bureau and the*
21 *Federal Trade Commission shall negotiate an*
22 *agreement for coordinating with respect to en-*
23 *forcement actions by each agency regarding the*
24 *offering or provision of consumer financial prod-*
25 *ucts or services by any covered person that is de-*

1 scribed in subsection (a)(1), or service providers
2 thereto. The agreement shall include procedures
3 for notice to the other agency, where feasible,
4 prior to initiating a civil action to enforce any
5 Federal law regarding the offering or provision
6 of consumer financial products or services.

7 (B) CIVIL ACTIONS.—Whenever a civil ac-
8 tion has been filed by, or on behalf of, the Bu-
9 reau or the Federal Trade Commission for any
10 violation of any provision of Federal law de-
11 scribed in subparagraph (A), or any regulation
12 prescribed under such provision of law—

13 (i) the other agency may not, during
14 the pendency of that action, institute a civil
15 action under such provision of law against
16 any defendant named in the complaint in
17 such pending action for any violation al-
18 leged in the complaint; and

19 (ii) the Bureau or the Federal Trade
20 Commission may intervene as a party in
21 any such action brought by the other agen-
22 cy, and, upon intervening—

23 (I) be heard on all matters arising
24 in such enforcement action; and

1 (ii) *file petitions for appeal in*
2 *such actions.*

3 (C) *AGREEMENT TERMS.*—*The terms of any*
4 *agreement negotiated under subparagraph (A)*
5 *may modify or supersede the provisions of sub-*
6 *paragraph (B).*

7 (D) *DEADLINE.*—*The agencies shall reach*
8 *the agreement required under subparagraph (A)*
9 *not later than 6 months after the designated*
10 *transfer date.*

11 (d) *EXCLUSIVE RULEMAKING AND EXAMINATION AU-*
12 *THORITY.*—*Notwithstanding any other provision of Federal*
13 *law and except as provided in section 1061(b)(5), to the*
14 *extent that Federal law authorizes the Bureau and another*
15 *Federal agency to issue regulations or guidance, conduct ex-*
16 *aminations, or require reports from a person described in*
17 *subsection (a)(1) under such law for purposes of assuring*
18 *compliance with Federal consumer financial law and any*
19 *regulations thereunder, the Bureau shall have the exclusive*
20 *authority to prescribe rules, issue guidance, conduct exami-*
21 *nations, require reports, or issue exemptions with regard*
22 *to a person described in subsection (a)(1), subject to those*
23 *provisions of law.*

24 (e) *SERVICE PROVIDERS.*—*A service provider to a per-*
25 *son described in subsection (a)(1) shall be subject to the au-*

1 *thority of the Bureau under this section, to the same extent*
2 *as if such service provider were engaged in a service rela-*
3 *tionship with a bank, and the Bureau were an appropriate*
4 *Federal banking agency under section 7(c) of the Bank*
5 *Service Company Act (12 U.S.C. 1867(c)). In conducting*
6 *any examination or requiring any report from a service*
7 *provider subject to this subsection, the Bureau shall coordi-*
8 *nate with the appropriate prudential regulator, as applica-*
9 *ble.*

10 (f) *PRESERVATION OF FARM CREDIT ADMINISTRATION*
11 *AUTHORITY.—No provision of this title may be construed*
12 *as modifying, limiting, or otherwise affecting the authority*
13 *of the Farm Credit Administration.*

14 **SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS**
15 **ASSOCIATIONS, AND CREDIT UNIONS.**

16 (a) *SCOPE OF COVERAGE.—*

17 (1) *APPLICABILITY.—This section shall apply to*
18 *any covered person that is—*

19 (A) *an insured depository institution with*
20 *total assets of more than \$10,000,000,000 and*
21 *any affiliate thereof; or*

22 (B) *an insured credit union with total as-*
23 *sets of more than \$10,000,000,000 and any affil-*
24 *iate thereof.*

1 (2) *RULE OF CONSTRUCTION.*—*For purposes of*
2 *determining total assets under this section and section*
3 *1026, the Bureau shall rely on the same regulations*
4 *and interim methodologies specified in section 312(e).*

5 (b) *SUPERVISION.*—

6 (1) *IN GENERAL.*—*The Bureau shall require re-*
7 *ports and conduct examinations on a periodic basis*
8 *of persons described in subsection (a) for purposes*
9 *of—*

10 (A) *assessing compliance with the require-*
11 *ments of Federal consumer financial laws;*

12 (B) *obtaining information about the activi-*
13 *ties and compliance systems or procedures of*
14 *such persons; and*

15 (C) *detecting and assessing risks to con-*
16 *sumers and to markets for consumer financial*
17 *products and services.*

18 (2) *COORDINATION.*—*To minimize regulatory*
19 *burden, the Bureau shall coordinate its supervisory*
20 *activities with the supervisory activities conducted by*
21 *prudential regulators and the State bank regulatory*
22 *authorities, including establishing their respective*
23 *schedules for examining such persons described in*
24 *subsection (a) and requirements regarding reports to*
25 *be submitted by such persons.*

1 (3) *USE OF EXISTING REPORTS.*—*The Bureau*
2 *shall, to the fullest extent possible, use—*

3 (A) *reports pertaining to a person described*
4 *in subsection (a) that have been provided or re-*
5 *quired to have been provided to a Federal or*
6 *State agency; and*

7 (B) *information that has been reported pub-*
8 *licly.*

9 (4) *PRESERVATION OF AUTHORITY.*—*Nothing in*
10 *this title may be construed as limiting the authority*
11 *of the Director to require reports from a person de-*
12 *scribed in subsection (a), as permitted under para-*
13 *graph (1), regarding information owned or under the*
14 *control of such person, regardless of whether such in-*
15 *formation is maintained, stored, or processed by an-*
16 *other person.*

17 (5) *REPORTS OF TAX LAW NONCOMPLIANCE.*—
18 *The Bureau shall provide the Commissioner of Inter-*
19 *nal Revenue with any report of examination or re-*
20 *lated information identifying possible tax law non-*
21 *compliance.*

22 (c) *PRIMARY ENFORCEMENT AUTHORITY.*—

23 (1) *THE BUREAU TO HAVE PRIMARY ENFORCE-*
24 *MENT AUTHORITY.*—*To the extent that the Bureau*
25 *and another Federal agency are authorized to enforce*

1 *a Federal consumer financial law, the Bureau shall*
2 *have primary authority to enforce that Federal con-*
3 *sumer financial law with respect to any person de-*
4 *scribed in subsection (a).*

5 (2) *REFERRAL.—Any Federal agency, other than*
6 *the Federal Trade Commission, that is authorized to*
7 *enforce a Federal consumer financial law may rec-*
8 *ommend, in writing, to the Bureau that the Bureau*
9 *initiate an enforcement proceeding with respect to a*
10 *person described in subsection (a), as the Bureau is*
11 *authorized to do by that Federal consumer financial*
12 *law.*

13 (3) *BACKUP ENFORCEMENT AUTHORITY OF*
14 *OTHER FEDERAL AGENCY.—If the Bureau does not,*
15 *before the end of the 120-day period beginning on the*
16 *date on which the Bureau receives a recommendation*
17 *under paragraph (2), initiate an enforcement pro-*
18 *ceeding, the other agency referred to in paragraph (2)*
19 *may initiate an enforcement proceeding, as permitted*
20 *by the subject provision of Federal law.*

21 (d) *SERVICE PROVIDERS.—A service provider to a per-*
22 *son described in subsection (a) shall be subject to the author-*
23 *ity of the Bureau under this section, to the same extent as*
24 *if the Bureau were an appropriate Federal banking agency*
25 *under section 7(c) of the Bank Service Company Act 12*

1 *U.S.C. 1867(c). In conducting any examination or requir-*
2 *ing any report from a service provider subject to this sub-*
3 *section, the Bureau shall coordinate with the appropriate*
4 *prudential regulator.*

5 (e) *SIMULTANEOUS AND COORDINATED SUPERVISORY*
6 *ACTION.—*

7 (1) *EXAMINATIONS.—A prudential regulator and*
8 *the Bureau shall, with respect to each insured deposi-*
9 *tory institution, insured credit union, or other cov-*
10 *ered person described in subsection (a) that is super-*
11 *vised by the prudential regulator and the Bureau, re-*
12 *spectively—*

13 (A) *coordinate the scheduling of examina-*
14 *tions of the insured depository institution, in-*
15 *sured credit union, or other covered person de-*
16 *scribed in subsection (a);*

17 (B) *conduct simultaneous examinations of*
18 *each insured depository institution, insured cred-*
19 *it union, or other covered person described in*
20 *subsection (a), unless such institution requests*
21 *examinations to be conducted separately;*

22 (C) *share each draft report of examination*
23 *with the other agency and permit the receiving*
24 *agency a reasonable opportunity (which shall not*
25 *be less than a period of 30 days after the date*

1 *of receipt) to comment on the draft report before*
2 *such report is made final; and*

3 *(D) prior to issuing a final report of exam-*
4 *ination or taking supervisory action, take into*
5 *consideration concerns, if any, raised in the*
6 *comments made by the other agency.*

7 (2) *COORDINATION WITH STATE BANK SUPER-*
8 *VISORS.—The Bureau shall pursue arrangements and*
9 *agreements with State bank supervisors to coordinate*
10 *examinations, consistent with paragraph (1).*

11 (3) *AVOIDANCE OF CONFLICT IN SUPERVISION.—*

12 *(A) REQUEST.—If the proposed supervisory*
13 *determinations of the Bureau and a prudential*
14 *regulator (in this section referred to collectively*
15 *as the “agencies”) are conflicting, an insured de-*
16 *pository institution, insured credit union, or*
17 *other covered person described in subsection (a)*
18 *may request the agencies to coordinate and*
19 *present a joint statement of coordinated super-*
20 *visory action.*

21 *(B) JOINT STATEMENT.—The agencies shall*
22 *provide a joint statement under subparagraph*
23 *(A), not later than 30 days after the date of re-*
24 *ceipt of the request of the insured depository in-*

1 *stitution, credit union, or covered person de-*
2 *scribed in subsection (a).*

3 *(4) APPEALS TO GOVERNING PANEL.—*

4 *(A) IN GENERAL.—If the agencies do not re-*
5 *solve the conflict or issue a joint statement re-*
6 *quired by subparagraph (B), or if either of the*
7 *agencies takes or attempts to take any super-*
8 *visory action relating to the request for the joint*
9 *statement without the consent of the other agen-*
10 *cy, an insured depository institution, insured*
11 *credit union, or other covered person described in*
12 *subsection (a) may institute an appeal to a gov-*
13 *erning panel, as provided in this subsection, not*
14 *later than 30 days after the expiration of the pe-*
15 *riod during which a joint statement is required*
16 *to be filed under paragraph (3)(B).*

17 *(B) COMPOSITION OF GOVERNING PANEL.—*

18 *The governing panel for an appeal under this*
19 *paragraph shall be composed of—*

20 *(i) a representative from the Bureau*
21 *and a representative of the prudential regu-*
22 *lator, both of whom—*

23 *(I) have not participated in the*
24 *material supervisory determinations*
25 *under appeal; and*

1 (ii) do not directly or indirectly
2 report to the person who participated
3 materially in the supervisory deter-
4 minations under appeal; and

5 (ii) one individual representative, to be
6 determined on a rotating basis, from among
7 the Board of Governors, the Corporation,
8 the National Credit Union Administration,
9 and the Office of the Comptroller of the Cur-
10 rency, other than any agency involved in
11 the subject dispute.

12 (C) CONDUCT OF APPEAL.—In an appeal
13 under this paragraph—

14 (i) the insured depository institution,
15 insured credit union, or other covered per-
16 son described in subsection (a)—

17 (I) shall include in its appeal all
18 the facts and legal arguments per-
19 taining to the matter; and

20 (II) may, through counsel, em-
21 ployees, or representatives, appear be-
22 fore the governing panel in person or
23 by telephone; and

24 (ii) the governing panel—

1 (I) may request the insured depos-
2 itory institution, insured credit union,
3 or other covered person described in
4 subsection (a), the Bureau, or the pru-
5 dential regulator to produce additional
6 information relevant to the appeal;
7 and

8 (II) by a majority vote of its
9 members, shall provide a final deter-
10 mination, in writing, not later than 30
11 days after the date of filing of an
12 informationally complete appeal, or
13 such longer period as the panel and the
14 insured depository institution, insured
15 credit union, or other covered person
16 described in subsection (a) may jointly
17 agree.

18 (D) *PUBLIC AVAILABILITY OF DETERMINA-*
19 *TIONS.*—A governing panel shall publish all in-
20 formation contained in a determination by the
21 governing panel, with appropriate redactions of
22 information that would be subject to an exemp-
23 tion from disclosure under section 552 of title 5,
24 United States Code.

1 (E) *PROHIBITION AGAINST RETALIATION.*—

2 *The Bureau and the prudential regulators shall*
3 *prescribe rules to provide safeguards from retal-*
4 *iation against the insured depository institution,*
5 *insured credit union, or other covered person de-*
6 *scribed in subsection (a) instituting an appeal*
7 *under this paragraph, as well as their officers*
8 *and employees.*

9 (F) *LIMITATION.*—*The process provided in*
10 *this paragraph shall not apply to a determina-*
11 *tion by a prudential regulator to appoint a con-*
12 *servator or receiver for an insured depository in-*
13 *stitution or a liquidating agent for an insured*
14 *credit union, as the case may be, or a decision*
15 *to take action pursuant to section 38 of the Fed-*
16 *eral Deposit Insurance Act (12 U.S.C. 1831o) or*
17 *section 212 of the Federal Credit Union Act (112*
18 *U.S.C. 1790a), as applicable.*

19 (G) *EFFECT ON OTHER AUTHORITY.*—*Noth-*
20 *ing in this section shall modify or limit the au-*
21 *thority of the Bureau to interpret, or take en-*
22 *forcement action under, any Federal consumer*
23 *financial law.*

1 **SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND**
2 **CREDIT UNIONS.**

3 (a) *SCOPE OF COVERAGE.*—*This section shall apply*
4 *to any covered person that is—*

5 (1) *an insured depository institution with total*
6 *assets of \$10,000,000,000 or less; or*

7 (2) *an insured credit union with total assets of*
8 *\$10,000,000,000 or less.*

9 (b) *REPORTS.*—*The Director may require reports from*
10 *a person described in subsection (a), as necessary to support*
11 *the role of the Bureau in implementing Federal consumer*
12 *financial law, to support its examination activities under*
13 *subsection (c), and to assess and detect risks to consumers*
14 *and consumer financial markets.*

15 (1) *USE OF EXISTING REPORTS.*—*The Bureau*
16 *shall, to the fullest extent possible, use—*

17 (A) *reports pertaining to a person described*
18 *in subsection (a) that have been provided or re-*
19 *quired to have been provided to a Federal or*
20 *State agency; and*

21 (B) *information that has been reported pub-*
22 *licly.*

23 (2) *PRESERVATION OF AUTHORITY.*—*Nothing in*
24 *this subsection may be construed as limiting the au-*
25 *thority of the Director from requiring from a person*
26 *described in subsection (a), as permitted under para-*

1 *graph (1), information owned or under the control of*
2 *such person, regardless of whether such information is*
3 *maintained, stored, or processed by another person.*

4 (3) *REPORTS OF TAX LAW NONCOMPLIANCE.—*

5 *The Bureau shall provide the Commissioner of Inter-*
6 *nal Revenue with any report of examination or re-*
7 *lated information identifying possible tax law non-*
8 *compliance.*

9 (c) *EXAMINATIONS.—*

10 (1) *IN GENERAL.—The Bureau may, at its dis-*
11 *cretion, include examiners on a sampling basis of the*
12 *examinations performed by the prudential regulator*
13 *of persons described in subsection (a).*

14 (2) *AGENCY COORDINATION.—The prudential*
15 *regulator shall—*

16 (A) *provide all reports, records, and docu-*
17 *mentation related to the examination process for*
18 *any institution included in the sample referred*
19 *to in paragraph (1) to the Bureau on a timely*
20 *and continual basis;*

21 (B) *involve such Bureau examiner in the*
22 *entire examination process for such person; and*

23 (C) *consider input of the Bureau concerning*
24 *the scope of an examination, conduct of the ex-*
25 *amination, the contents of the examination re-*

1 *port, the designation of matters requiring atten-*
2 *tion, and examination ratings.*

3 *(d) ENFORCEMENT.—*

4 *(1) IN GENERAL.—Except for requiring reports*
5 *under subsection (b), the prudential regulator shall*
6 *have exclusive authority to enforce compliance with*
7 *respect to a person described in subsection (a).*

8 *(2) COORDINATION WITH PRUDENTIAL REGU-*
9 *LATOR.—*

10 *(A) REFERRAL.—When the Bureau has rea-*
11 *son to believe that a person described in sub-*
12 *section (a) has engaged in a material violation*
13 *of a Federal consumer financial law, the Bureau*
14 *shall notify the prudential regulator in writing*
15 *and recommend appropriate action to respond.*

16 *(B) RESPONSE.—Upon receiving a rec-*
17 *ommendation under subparagraph (A), the pru-*
18 *dential regulator shall provide a written re-*
19 *sponse to the Bureau not later than 60 days*
20 *thereafter.*

21 *(e) SERVICE PROVIDERS.—A service provider to a sub-*
22 *stantial number of persons described in subsection (a) shall*
23 *be subject to the authority of the Bureau under section 1025*
24 *to the same extent as if the Bureau were an appropriate*
25 *Federal bank agency under section 7(c) of the Bank Service*

1 *Company Act (12 U.S.C. 1867(c)). When conducting any*
2 *examination or requiring any report from a service pro-*
3 *vider subject to this subsection, the Bureau shall coordinate*
4 *with the appropriate prudential regulator.*

5 **SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU;**

6 **PRESERVATION OF AUTHORITIES.**

7 (a) *EXCLUSION FOR MERCHANTS, RETAILERS, AND*
8 *OTHER SELLERS OF NONFINANCIAL GOODS OR SERV-*
9 *ICES.—*

10 (1) *SALE OR BROKERAGE OF NONFINANCIAL*
11 *GOOD OR SERVICE.—The Bureau may not exercise*
12 *any rulemaking, supervisory, enforcement or other*
13 *authority under this title with respect to a person*
14 *who is a merchant, retailer, or seller of any non-*
15 *financial good or service and is engaged in the sale*
16 *or brokerage of such nonfinancial good or service, ex-*
17 *cept to the extent that such person is engaged in offer-*
18 *ing or providing any consumer financial product or*
19 *service, or is otherwise subject to any enumerated con-*
20 *sumer law or any law for which authorities are*
21 *transferred under subtitle F or H.*

22 (2) *OFFERING OR PROVISION OF CERTAIN CON-*
23 *SUMER FINANCIAL PRODUCTS OR SERVICES IN CON-*
24 *NECTION WITH THE SALE OR BROKERAGE OF NON-*
25 *FINANCIAL GOOD OR SERVICE.—*

1 (A) *IN GENERAL.*—*Except as provided in*
2 *subparagraph (B), and subject to subparagraph*
3 *(C), the Bureau may not exercise any rule-*
4 *making, supervisory, enforcement, or other au-*
5 *thority under this title with respect to a mer-*
6 *chant, retailer, or seller of nonfinancial goods or*
7 *services, but only to the extent that such per-*
8 *son—*

9 (i) *extends credit directly to a con-*
10 *sumer, in a case in which the good or serv-*
11 *ice being provided is not itself a consumer*
12 *financial product or service (other than*
13 *credit described in this subparagraph), ex-*
14 *clusively for the purpose of enabling that*
15 *consumer to purchase such nonfinancial*
16 *good or service directly from the merchant,*
17 *retailer, or seller;*

18 (ii) *directly, or through an agreement*
19 *with another person, collects debt arising*
20 *from credit extended as described in clause*
21 *(i); or*

22 (iii) *sells or conveys debt described in*
23 *clause (i) that is delinquent or otherwise in*
24 *default.*

1 (B) *APPLICABILITY.*—Subparagraph (A)
2 *does not apply to any credit transaction or col-*
3 *lection of debt, other than as described in sub-*
4 *paragraph (C)(i), arising from a transaction de-*
5 *scribed in subparagraph (A)—*

6 (i) *in which the merchant, retailer, or*
7 *seller of nonfinancial goods or services as-*
8 *signs, sells or otherwise conveys to another*
9 *person such debt owed by the consumer (ex-*
10 *cept for a sale of debt that is delinquent or*
11 *otherwise in default, as described in sub-*
12 *paragraph (A)(iii));*

13 (ii) *in which the credit extended ex-*
14 *ceeds the market value of the nonfinancial*
15 *good or service provided, or the Bureau oth-*
16 *erwise finds that the sale of the non-*
17 *financial good or service is done as a sub-*
18 *terfuge, so as to evade or circumvent the*
19 *provisions of this title; or*

20 (iii) *in which the merchant, retailer, or*
21 *seller of nonfinancial goods or services regu-*
22 *larly extends credit and the credit is subject*
23 *to a finance charge.*

24 (C) *LIMITATIONS.*—

1 (i) *IN GENERAL.*—Notwithstanding
2 subparagraph (B), and except as provided
3 in clause (ii), the Bureau may not exercise
4 any rulemaking, supervisory, enforcement,
5 or other authority under this title with re-
6 spect to a merchant, retailer, or seller of
7 nonfinancial goods or services that is not
8 engaged significantly in offering or pro-
9 viding consumer financial products or serv-
10 ices.

11 (ii) *EXCEPTION.*—Subparagraph (A)
12 and clause (i) of this subparagraph do not
13 apply to any merchant, retailer, or seller of
14 nonfinancial goods or services, to the extent
15 that such person is subject to any enumer-
16 ated consumer law or any law for which
17 authorities are transferred under subtitle F
18 or H.

19 (D) *RULES.*—

20 (i) *AUTHORITY OF OTHER AGEN-*
21 *CIES.*—No provision of this title shall be
22 construed as modifying, limiting, or super-
23 seding the supervisory or enforcement au-
24 thority of the Federal Trade Commission or
25 any other agency (other than the Bureau)

1 *with respect to credit extended, or the collec-*
2 *tion of debt arising from such extension, di-*
3 *rectly by a merchant or retailer to a con-*
4 *sumer exclusively for the purpose of ena-*
5 *bling that consumer to purchase non-*
6 *financial goods or services directly from the*
7 *merchant or retailer.*

8 *(ii) SMALL BUSINESSES.—A merchant,*
9 *retailer, or seller of nonfinancial goods or*
10 *services that would otherwise be subject to*
11 *the authority of the Bureau solely by virtue*
12 *of the application of subparagraph (B)(iii)*
13 *shall be deemed not to be engaged signifi-*
14 *cantly in offering or providing consumer fi-*
15 *nancial products or services under subpara-*
16 *graph (C)(i), if such person—*

17 *(I) only extends credit for the sale*
18 *of nonfinancial goods or services, as*
19 *described in subparagraph (A)(i);*

20 *(II) retains such credit on its own*
21 *accounts (except to sell or convey such*
22 *debt that is delinquent or otherwise in*
23 *default); and*

24 *(III) meets the relevant industry*
25 *size threshold to be a small business*

1 *concern, based on annual receipts, pur-*
2 *suant to section 3 of the Small Busi-*
3 *ness Act (15 U.S.C. 632) and the im-*
4 *plementing rules thereunder.*

5 *(iii) INITIAL YEAR.—A merchant, re-*
6 *tailer, or seller of nonfinancial goods or*
7 *services shall be deemed to meet the relevant*
8 *industry size threshold described in clause*
9 *(ii)(III) during the first year of operations*
10 *of that business concern if, during that*
11 *year, the receipts of that business concern*
12 *reasonably are expected to meet that size*
13 *threshold.*

14 *(E) EXCEPTION FROM STATE ENFORCE-*
15 *MENT.—To the extent that the Bureau may not*
16 *exercise authority under this subsection with re-*
17 *spect to a merchant, retailer, or seller of non-*
18 *financial goods or services, no action by a State*
19 *attorney general or State regulator with respect*
20 *to a claim made under this title may be brought*
21 *under subsection 1042(a), with respect to an ac-*
22 *tivity described in any of clauses (i) through*
23 *(iii) of subparagraph (A) by such merchant, re-*
24 *tailer, or seller of nonfinancial goods or services.*

1 **(b) EXCLUSION FOR REAL ESTATE BROKERAGE AC-**
2 **TIVITIES.—**

3 **(1) REAL ESTATE BROKERAGE ACTIVITIES EX-**
4 **CLUDED.—***Without limiting subsection (a), and ex-*
5 *cept as permitted in paragraph (2), the Bureau may*
6 *not exercise any rulemaking, supervisory, enforce-*
7 *ment, or other authority under this title with respect*
8 *to a person that is licensed or registered as a real es-*
9 *tate broker or real estate agent, in accordance with*
10 *State law, to the extent that such person—*

11 **(A) acts as a real estate agent or broker for**
12 **a buyer, seller, lessor, or lessee of real property;**

13 **(B) brings together parties interested in the**
14 **sale, purchase, lease, rental, or exchange of real**
15 **property;**

16 **(C) negotiates, on behalf of any party, any**
17 **portion of a contract relating to the sale, pur-**
18 **chase, lease, rental, or exchange of real property**
19 **(other than in connection with the provision of**
20 **financing with respect to any such transaction);**

21 **or**

22 **(D) offers to engage in any activity, or act**
23 **in any capacity, described in subparagraph (A),**
24 **(B), or (C).**

1 (2) *DESCRIPTION OF ACTIVITIES.*—Paragraph
2 (1) shall not apply to any person to the extent that
3 such person is engaged in the offering or provision of
4 any consumer financial product or service or is other-
5 wise subject to any enumerated consumer law or any
6 law for which authorities are transferred under sub-
7 title F or H.

8 (c) *EXCLUSION FOR MANUFACTURED HOME RETAIL-*
9 *ERS AND MODULAR HOME RETAILERS.*—

10 (1) *IN GENERAL.*—The Director may not exercise
11 any rulemaking, supervisory, enforcement, or other
12 authority over a person to the extent that—

13 (A) such person is not described in para-
14 graph (2); and

15 (B) such person—

16 (i) acts as an agent or broker for a
17 buyer or seller of a manufactured home or
18 a modular home;

19 (ii) facilitates the purchase by a con-
20 sumer of a manufactured home or modular
21 home, by negotiating the purchase price or
22 terms of the sales contract (other than pro-
23 viding financing with respect to such trans-
24 action); or

1 (iii) offers to engage in any activity
2 described in clause (i) or (ii).

3 (2) *DESCRIPTION OF ACTIVITIES.*—A person is
4 described in this paragraph to the extent that such
5 person is engaged in the offering or provision of any
6 consumer financial product or service or is otherwise
7 subject to any enumerated consumer law or any law
8 for which authorities are transferred under subtitle F
9 or H.

10 (3) *DEFINITIONS.*—For purposes of this sub-
11 section, the following definitions shall apply:

12 (A) *MANUFACTURED HOME.*—The term
13 “manufactured home” has the same meaning as
14 in section 603 of the National Manufactured
15 Housing Construction and Safety Standards Act
16 of 1974 (42 U.S.C. 5402).

17 (B) *MODULAR HOME.*—The term “modular
18 home” means a house built in a factory in 2 or
19 more modules that meet the State or local build-
20 ing codes where the house will be located, and
21 where such modules are transported to the build-
22 ing site, installed on foundations, and completed.

23 (d) *EXCLUSION FOR ACCOUNTANTS AND TAX PRE-*
24 *PARERS.*—

1 (1) *IN GENERAL.*—*Except as permitted in para-*
2 *graph (2), the Bureau may not exercise any rule-*
3 *making, supervisory, enforcement, or other authority*
4 *over—*

5 (A) *any person that is a certified public ac-*
6 *countant, permitted to practice as a certified*
7 *public accounting firm, or certified or licensed*
8 *for such purpose by a State, or any individual*
9 *who is employed by or holds an ownership inter-*
10 *est with respect to a person described in this sub-*
11 *paragraph, when such person is performing or*
12 *offering to perform—*

13 (i) *customary and usual accounting*
14 *activities, including the provision of ac-*
15 *counting, tax, advisory, or other services*
16 *that are subject to the regulatory authority*
17 *of a State board of accountancy or a Fed-*
18 *eral authority; or*

19 (ii) *other services that are incidental to*
20 *such customary and usual accounting ac-*
21 *tivities, to the extent that such incidental*
22 *services are not offered or provided—*

23 (I) *by the person separate and*
24 *apart from such customary and usual*
25 *accounting activities; or*

1 (II) to consumers who are not re-
2 ceiving such customary and usual ac-
3 counting activities; or

4 (B) any person, other than a person de-
5 scribed in subparagraph (A) that performs in-
6 come tax preparation activities for consumers.

7 (2) DESCRIPTION OF ACTIVITIES.—

8 (A) IN GENERAL.—Paragraph (1) shall not
9 apply to any person described in paragraph
10 (1)(A) or (1)(B) to the extent that such person
11 is engaged in any activity which is not a cus-
12 tomary and usual accounting activity described
13 in paragraph (1)(A) or incidental thereto but
14 which is the offering or provision of any con-
15 sumer financial product or service, except to the
16 extent that a person described in paragraph
17 (1)(A) is engaged in an activity which is a cus-
18 tomary and usual accounting activity described
19 in paragraph (1)(A), or incidental thereto.

20 (B) NOT A CUSTOMARY AND USUAL AC-
21 COUNTING ACTIVITY.—For purposes of this sub-
22 section, extending or brokering credit is not a
23 customary and usual accounting activity, or in-
24 cidental thereto.

1 (C) *RULE OF CONSTRUCTION.*—For pur-
2 poses of subparagraphs (A) and (B), a person de-
3 scribed in paragraph (1)(A) shall not be deemed
4 to be extending credit, if such person is only ex-
5 tending credit directly to a consumer, exclusively
6 for the purpose of enabling such consumer to
7 purchase services described in clause (i) or (ii)
8 of paragraph (1)(A) directly from such person,
9 and such credit is—

10 (i) not subject to a finance charge; and

11 (ii) not payable by written agreement
12 in more than 4 installments.

13 (D) *OTHER LIMITATIONS.*—Paragraph (1)
14 does not apply to any person described in para-
15 graph (1)(A) or (1)(B) that is otherwise subject
16 to any enumerated consumer law or any law for
17 which authorities are transferred under subtitle
18 F or H.

19 (e) *EXCLUSION FOR ATTORNEYS.*—

20 (1) *IN GENERAL.*—The Bureau may not exercise
21 any authority to conduct examinations of an attorney
22 licensed by a State, to the extent that the attorney is
23 engaged in the practice of law under the laws of such
24 State.

1 (2) *EXCEPTION FOR ENUMERATED CONSUMER*
2 *LAWS AND TRANSFERRED AUTHORITIES.*—Paragraph
3 *(1) shall not apply to an attorney who is engaged in*
4 *the offering or provision of any consumer financial*
5 *product or service, or is otherwise subject to any enu-*
6 *merated consumer law or any law for which authori-*
7 *ties are transferred under subtitle F or H.*

8 (f) *EXCLUSION FOR PERSONS REGULATED BY A STATE*
9 *INSURANCE REGULATOR.*—

10 (1) *IN GENERAL.*—No provision of this title shall
11 *be construed as altering, amending, or affecting the*
12 *authority of any State insurance regulator to adopt*
13 *rules, initiate enforcement proceedings, or take any*
14 *other action with respect to a person regulated by a*
15 *State insurance regulator. Except as provided in*
16 *paragraph (2), the Bureau shall have no authority to*
17 *exercise any power to enforce this title with respect to*
18 *a person regulated by a State insurance regulator.*

19 (2) *DESCRIPTION OF ACTIVITIES.*—Paragraph
20 *(1) does not apply to any person described in such*
21 *paragraph to the extent that such person is engaged*
22 *in the offering or provision of any consumer financial*
23 *product or service or is otherwise subject to any enu-*
24 *merated consumer law or any law for which authori-*
25 *ties are transferred under subtitle F or H.*

1 (g) *EXCLUSION FOR EMPLOYEE BENEFIT AND COM-*
2 *PENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS*
3 *UNDER THE INTERNAL REVENUE CODE OF 1986.—*

4 (1) *PRESERVATION OF AUTHORITY OF OTHER*
5 *AGENCIES.—No provision of this title shall be con-*
6 *strued as altering, amending, or affecting the author-*
7 *ity of the Secretary of the Treasury, the Secretary of*
8 *Labor, or the Commissioner of Internal Revenue to*
9 *adopt regulations, initiate enforcement proceedings,*
10 *or take any actions with respect to any specified plan*
11 *or arrangement.*

12 (2) *ACTIVITIES NOT CONSTITUTING THE OFFER-*
13 *ING OR PROVISION OF ANY CONSUMER FINANCIAL*
14 *PRODUCT OR SERVICE.—For purposes of this title, a*
15 *person shall not be treated as having engaged in the*
16 *offering or provision of any consumer financial prod-*
17 *uct or service solely because such person is a specified*
18 *plan or arrangement, or is engaged in the activity of*
19 *establishing or maintaining, for the benefit of employ-*
20 *ees of such person (or for members of an employee or-*
21 *ganization), any specified plan or arrangement.*

22 (3) *LIMITATION ON BUREAU AUTHORITY.—*

23 (A) *IN GENERAL.—Except as provided*
24 *under subparagraphs (B) and (C), the Bureau*
25 *may not exercise any rulemaking or enforcement*

1 *authority with respect to products or services*
2 *that relate to any specified plan or arrangement.*

3 *(B) BUREAU ACTION ONLY PURSUANT TO*
4 *AGENCY REQUEST.—The Secretary and the Sec-*
5 *retary of Labor may jointly issue a written re-*
6 *quest to the Bureau regarding implementation of*
7 *appropriate consumer protection standards*
8 *under this title with respect to the provision of*
9 *services relating to any specified plan or ar-*
10 *rangement. Subject to a request made under this*
11 *subparagraph, the Bureau may exercise rule-*
12 *making authority, and may act to enforce a rule*
13 *prescribed pursuant to such request, in accord-*
14 *ance with the provisions of this title. A request*
15 *made by the Secretary and the Secretary of*
16 *Labor under this subparagraph shall describe the*
17 *basis for, and scope of, appropriate consumer*
18 *protection standards to be implemented under*
19 *this title with respect to the provision of services*
20 *relating to any specified plan or arrangement.*

21 *(C) DESCRIPTION OF PRODUCTS OR SERV-*
22 *ICES.—To the extent that a person engaged in*
23 *providing products or services relating to any*
24 *specified plan or arrangement is subject to any*
25 *enumerated consumer law or any law for which*

1 *authorities are transferred under subtitle F or*
2 *H, subparagraph (A) shall not apply with re-*
3 *spect to that law.*

4 (4) *SPECIFIED PLAN OR ARRANGEMENT.*—*For*
5 *purposes of this subsection, the term “specified plan*
6 *or arrangement” means any plan, account, or ar-*
7 *rangement described in section 220, 223, 401(a),*
8 *403(a), 403(b), 408, 408A, 529, or 530 of the Internal*
9 *Revenue Code of 1986, or any employee benefit or*
10 *compensation plan or arrangement, including a plan*
11 *that is subject to title I of the Employee Retirement*
12 *Income Security Act of 1974.*

13 (h) *PERSONS REGULATED BY A STATE SECURITIES*
14 *COMMISSION.*—

15 (1) *IN GENERAL.*—*No provision of this title shall*
16 *be construed as altering, amending, or affecting the*
17 *authority of any securities commission (or any agen-*
18 *cy or office performing like functions) of any State to*
19 *adopt rules, initiate enforcement proceedings, or take*
20 *any other action with respect to a person regulated by*
21 *any securities commission (or any agency or office*
22 *performing like functions) of any State. Except as*
23 *permitted in paragraph (2) and subsection (f), the*
24 *Bureau shall have no authority to exercise any power*
25 *to enforce this title with respect to a person regulated*

1 *by any securities commission (or any agency or office*
2 *performing like functions) of any State, but only to*
3 *the extent that the person acts in such regulated ca-*
4 *capacity.*

5 (2) *DESCRIPTION OF ACTIVITIES.*—*Paragraph*
6 *(1) shall not apply to any person to the extent such*
7 *person is engaged in the offering or provision of any*
8 *consumer financial product or service, or is otherwise*
9 *subject to any enumerated consumer law or any law*
10 *for which authorities are transferred under subtitle F*
11 *or H.*

12 (i) *EXCLUSION FOR PERSONS REGULATED BY THE*
13 *COMMISSION.*—

14 (1) *IN GENERAL.*—*No provision of this title may*
15 *be construed as altering, amending, or affecting the*
16 *authority of the Commission to adopt rules, initiate*
17 *enforcement proceedings, or take any other action*
18 *with respect to a person regulated by the Commission.*
19 *The Bureau shall have no authority to exercise any*
20 *power to enforce this title with respect to a person*
21 *regulated by the Commission.*

22 (2) *CONSULTATION AND COORDINATION.*—*Not-*
23 *withstanding paragraph (1), the Commission shall*
24 *consult and coordinate, where feasible, with the Bu-*
25 *reau with respect to any rule (including any advance*

1 *notice of proposed rulemaking) regarding an invest-*
2 *ment product or service that is the same type of prod-*
3 *uct as, or that competes directly with, a consumer fi-*
4 *nancial product or service that is subject to the juris-*
5 *isdiction of the Bureau under this title or under any*
6 *other law. In carrying out this paragraph, the agen-*
7 *cies shall negotiate an agreement to establish proce-*
8 *dures for such coordination, including procedures for*
9 *providing advance notice to the Bureau when the*
10 *Commission is initiating a rulemaking.*

11 *(j) EXCLUSION FOR PERSONS REGULATED BY THE*
12 *COMMODITY FUTURES TRADING COMMISSION.—*

13 *(1) IN GENERAL.—No provision of this title shall*
14 *be construed as altering, amending, or affecting the*
15 *authority of the Commodity Futures Trading Com-*
16 *mission to adopt rules, initiate enforcement pro-*
17 *ceedings, or take any other action with respect to a*
18 *person regulated by the Commodity Futures Trading*
19 *Commission. The Bureau shall have no authority to*
20 *exercise any power to enforce this title with respect to*
21 *a person regulated by the Commodity Futures Trad-*
22 *ing Commission.*

23 *(2) CONSULTATION AND COORDINATION.—Not-*
24 *withstanding paragraph (1), the Commodity Futures*
25 *Trading Commission shall consult and coordinate*

1 *with the Bureau with respect to any rule (including*
2 *any advance notice of proposed rulemaking) regard-*
3 *ing a product or service that is the same type of prod-*
4 *uct as, or that competes directly with, a consumer fi-*
5 *nancial product or service that is subject to the juris-*
6 *isdiction of the Bureau under this title or under any*
7 *other law.*

8 *(k) EXCLUSION FOR PERSONS REGULATED BY THE*
9 *FARM CREDIT ADMINISTRATION.—*

10 *(1) IN GENERAL.—No provision of this title shall*
11 *be construed as altering, amending, or affecting the*
12 *authority of the Farm Credit Administration to adopt*
13 *rules, initiate enforcement proceedings, or take any*
14 *other action with respect to a person regulated by the*
15 *Farm Credit Administration. The Bureau shall have*
16 *no authority to exercise any power to enforce this title*
17 *with respect to a person regulated by the Farm Credit*
18 *Administration.*

19 *(2) DEFINITION.—For purposes of this sub-*
20 *section, the term “person regulated by the Farm Cred-*
21 *it Administration” means any Farm Credit System*
22 *institution that is chartered and subject to the provi-*
23 *sions of the Farm Credit Act of 1971 (12 U.S.C. 2001*
24 *et seq.).*

1 *(l) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.*—

3 *(1) IN GENERAL.*—*The Director and the Bureau*
4 *may not exercise any rulemaking, supervisory, en-*
5 *forcement, or other authority, including authority to*
6 *order penalties, over any activities related to the so-*
7 *licitation or making of voluntary contributions to a*
8 *tax-exempt organization as recognized by the Internal*
9 *Revenue Service, by any agent, volunteer, or rep-*
10 *resentative of such organizations to the extent the or-*
11 *ganization, agent, volunteer, or representative thereof*
12 *is soliciting or providing advice, information, edu-*
13 *cation, or instruction to any donor or potential donor*
14 *relating to a contribution to the organization.*

15 *(2) LIMITATION.*—*The exclusion in paragraph*
16 *(1) does not apply to other activities not described in*
17 *paragraph (1) that are the offering or provision of*
18 *any consumer financial product or service, or are oth-*
19 *erwise subject to any enumerated consumer law or*
20 *any law for which authorities are transferred under*
21 *subtitle F or H.*

22 *(m) INSURANCE.*—*The Bureau may not define as a fi-*
23 *nancial product or service, by regulation or otherwise, en-*
24 *gaging in the business of insurance.*

1 (n) *LIMITED AUTHORITY OF THE BUREAU.*—Notwith-
2 *standing subsections (a) through (h) and (l), a person sub-*
3 *ject to or described in one or more of such subsections—*

4 (1) *may be a service provider; and*

5 (2) *may be subject to requests from, or require-*
6 *ments imposed by, the Bureau regarding information*
7 *in order to carry out the responsibilities and func-*
8 *tions of the Bureau and in accordance with section*
9 *1022, 1052, or 1053.*

10 (o) *NO AUTHORITY TO IMPOSE USURY LIMIT.*—No
11 *provision of this title shall be construed as conferring au-*
12 *thority on the Bureau to establish a usury limit applicable*
13 *to an extension of credit offered or made by a covered person*
14 *to a consumer, unless explicitly authorized by law.*

15 (p) *ATTORNEY GENERAL.*—No provision of this title,
16 *including section 1024(c)(1), shall affect the authorities of*
17 *the Attorney General under otherwise applicable provisions*
18 *of law.*

19 (q) *SECRETARY OF THE TREASURY.*—No provision of
20 *this title shall affect the authorities of the Secretary, includ-*
21 *ing with respect to prescribing rules, initiating enforcement*
22 *proceedings, or taking other actions with respect to a person*
23 *that performs income tax preparation activities for con-*
24 *sumers.*

1 (r) *DEPOSIT INSURANCE AND SHARE INSURANCE.*—
2 *Nothing in this title shall affect the authority of the Cor-*
3 *poration under the Federal Deposit Insurance Act or the*
4 *National Credit Union Administration Board under the*
5 *Federal Credit Union Act as to matters related to deposit*
6 *insurance and share insurance, respectively.*

7 **SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
8 **PUTE ARBITRATION.**

9 (a) *STUDY AND REPORT.*—*The Bureau shall conduct*
10 *a study of, and shall provide a report to Congress con-*
11 *cerning, the use of agreements providing for arbitration of*
12 *any future dispute between covered persons and consumers*
13 *in connection with the offering or providing of consumer*
14 *financial products or services.*

15 (b) *FURTHER AUTHORITY.*—*The Bureau, by regula-*
16 *tion, may prohibit or impose conditions or limitations on*
17 *the use of an agreement between a covered person and a*
18 *consumer for a consumer financial product or service pro-*
19 *viding for arbitration of any future dispute between the*
20 *parties, if the Bureau finds that such a prohibition or im-*
21 *position of conditions or limitations is in the public interest*
22 *and for the protection of consumers. The findings in such*
23 *rule shall be consistent with the study conducted under sub-*
24 *section (a).*

1 (c) *LIMITATION.*—*The authority described in sub-*
 2 *section (b) may not be construed to prohibit or restrict a*
 3 *consumer from entering into a voluntary arbitration agree-*
 4 *ment with a covered person after a dispute has arisen.*

5 (d) *EFFECTIVE DATE.*—*Notwithstanding any other*
 6 *provision of law, any regulation prescribed by the Bureau*
 7 *under subsection (a) shall apply, consistent with the terms*
 8 *of the regulation, to any agreement between a consumer and*
 9 *a covered person entered into after the end of the 180-day*
 10 *period beginning on the effective date of the regulation, as*
 11 *established by the Bureau.*

12 **SEC. 1029. EFFECTIVE DATE.**

13 *This subtitle shall become effective on the designated*
 14 *transfer date.*

15 ***Subtitle C—Specific Bureau***
 16 ***Authorities***

17 **SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**
 18 ***ACTS OR PRACTICES.***

19 (a) *IN GENERAL.*—*The Bureau may take any action*
 20 *authorized under subtitle E to prevent a covered person or*
 21 *service provider from committing or engaging in an unfair,*
 22 *deceptive, or abusive act or practice under Federal law in*
 23 *connection with any transaction with a consumer for a con-*
 24 *sumer financial product or service, or the offering of a con-*
 25 *sumer financial product or service.*

1 (b) *RULEMAKING.*—*The Bureau may prescribe rules*
2 *applicable to a covered person or service provider identi-*
3 *fying as unlawful unfair, deceptive, or abusive acts or prac-*
4 *tices in connection with any transaction with a consumer*
5 *for a consumer financial product or service, or the offering*
6 *of a consumer financial product or service. Rules under this*
7 *section may include requirements for the purpose of pre-*
8 *venting such acts or practices.*

9 (c) *UNFAIRNESS.*—

10 (1) *IN GENERAL.*—*The Bureau shall have no au-*
11 *thority under this section to declare an act or practice*
12 *in connection with a transaction with a consumer for*
13 *a consumer financial product or service, or the offer-*
14 *ing of a consumer financial product or service, to be*
15 *unlawful on the grounds that such act or practice is*
16 *unfair, unless the Bureau has a reasonable basis to*
17 *conclude that—*

18 (A) *the act or practice causes or is likely to*
19 *cause substantial injury to consumers which is*
20 *not reasonably avoidable by consumers; and*

21 (B) *such substantial injury is not out-*
22 *weighed by countervailing benefits to consumers*
23 *or to competition.*

24 (2) *CONSIDERATION OF PUBLIC POLICIES.*—*In*
25 *determining whether an act or practice is unfair, the*

1 *Bureau may consider established public policies as*
2 *evidence to be considered with all other evidence. Such*
3 *public policy considerations may not serve as a pri-*
4 *mary basis for such determination.*

5 *(d) ABUSIVE.—The Bureau shall have no authority*
6 *under this section to declare an act or practice abusive in*
7 *connection with the provision of a consumer financial prod-*
8 *uct or service, unless the act or practice—*

9 *(1) materially interferes with the ability of a*
10 *consumer to understand a term or condition of a con-*
11 *sumer financial product or service; or*

12 *(2) takes unreasonable advantage of—*

13 *(A) a lack of understanding on the part of*
14 *the consumer of the material risks, costs, or con-*
15 *ditions of the product or service;*

16 *(B) the inability of the consumer to protect*
17 *the interests of the consumer in selecting or using*
18 *a consumer financial product or service; or*

19 *(C) the reasonable reliance by the consumer*
20 *on a covered person to act in the interests of the*
21 *consumer.*

22 *(e) CONSULTATION.—In prescribing rules under this*
23 *section, the Bureau shall consult with the Federal banking*
24 *agencies, or other Federal agencies, as appropriate, con-*
25 *cerning the consistency of the proposed rule with pruden-*

1 *tial, market, or systemic objectives administered by such*
2 *agencies.*

3 (f) *CONSIDERATION OF SEASONAL INCOME.*—*The rules*
4 *of the Bureau under this section shall provide, with respect*
5 *to an extension of credit secured by residential real estate*
6 *or a dwelling, if documented income of the borrower, includ-*
7 *ing income from a small business, is a repayment source*
8 *for an extension of credit secured by residential real estate*
9 *or a dwelling, the creditor may consider the seasonality and*
10 *irregularity of such income in the underwriting of and*
11 *scheduling of payments for such credit.*

12 **SEC. 1032. DISCLOSURES.**

13 (a) *IN GENERAL.*—*The Bureau may prescribe rules to*
14 *ensure that the features of any consumer financial product*
15 *or service, both initially and over the term of the product*
16 *or service, are fully, accurately, and effectively disclosed to*
17 *consumers in a manner that permits consumers to under-*
18 *stand the costs, benefits, and risks associated with the prod-*
19 *uct or service, in light of the facts and circumstances.*

20 (b) *MODEL DISCLOSURES.*—

21 (1) *IN GENERAL.*—*Any final rule prescribed by*
22 *the Bureau under this section requiring disclosures*
23 *may include a model form that may be used at the*
24 *option of the covered person for provision of the re-*
25 *quired disclosures.*

1 (2) *FORMAT.*—A model form issued pursuant to
2 paragraph (1) shall contain a clear and conspicuous
3 disclosure that, at a minimum—

4 (A) uses plain language comprehensible to
5 consumers;

6 (B) contains a clear format and design,
7 such as an easily readable type font; and

8 (C) succinctly explains the information that
9 must be communicated to the consumer.

10 (3) *CONSUMER TESTING.*—Any model form
11 issued pursuant to this subsection shall be validated
12 through consumer testing.

13 (c) *BASIS FOR RULEMAKING.*—In prescribing rules
14 under this section, the Bureau shall consider available evi-
15 dence about consumer awareness, understanding of, and re-
16 sponses to disclosures or communications about the risks,
17 costs, and benefits of consumer financial products or serv-
18 ices.

19 (d) *SAFE HARBOR.*—Any covered person that uses a
20 model form included with a rule issued under this section
21 shall be deemed to be in compliance with the disclosure re-
22 quirements of this section with respect to such model form.

23 (e) *TRIAL DISCLOSURE PROGRAMS.*—

24 (1) *IN GENERAL.*—The Bureau may permit a
25 covered person to conduct a trial program that is lim-

1 *ited in time and scope, subject to specified standards*
2 *and procedures, for the purpose of providing trial dis-*
3 *closures to consumers that are designed to improve*
4 *upon any model form issued pursuant to subsection*
5 *(b)(1), or any other model form issued to implement*
6 *an enumerated statute, as applicable.*

7 (2) *SAFE HARBOR.—The standards and proce-*
8 *dures issued by the Bureau shall be designed to en-*
9 *courage covered persons to conduct trial disclosure*
10 *programs. For the purposes of administering this sub-*
11 *section, the Bureau may establish a limited period*
12 *during which a covered person conducting a trial dis-*
13 *closure program shall be deemed to be in compliance*
14 *with, or may be exempted from, a requirement of a*
15 *rule or an enumerated consumer law.*

16 (3) *PUBLIC DISCLOSURE.—The rules of the Bu-*
17 *reau shall provide for public disclosure of trial disclo-*
18 *sure programs, which public disclosure may be lim-*
19 *ited, to the extent necessary to encourage covered per-*
20 *sons to conduct effective trials.*

21 (f) *COMBINED MORTGAGE LOAN DISCLOSURE.—Not*
22 *later than 1 year after the designated transfer date, the Bu-*
23 *reau shall propose for public comment rules and model dis-*
24 *closures that combine the disclosures required under the*
25 *Truth in Lending Act and the Real Estate Settlement Pro-*

1 *cedures Act of 1974, into a single, integrated disclosure for*
2 *mortgage loan transactions covered by those laws, unless the*
3 *Bureau determines that any proposal issued by the Board*
4 *of Governors and the Secretary of Housing and Urban De-*
5 *velopment carries out the same purpose.*

6 **SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.**

7 (a) *IN GENERAL.*—Subject to rules prescribed by the
8 Bureau, a covered person shall make available to a con-
9 sumer, upon request, information in the control or posses-
10 sion of the covered person concerning the consumer finan-
11 cial product or service that the consumer obtained from such
12 covered person, including information relating to any
13 transaction, series of transactions, or to the account includ-
14 ing costs, charges and usage data. The information shall
15 be made available in an electronic form usable by con-
16 sumers.

17 (b) *EXCEPTIONS.*—A covered person may not be re-
18 quired by this section to make available to the consumer—

19 (1) *any confidential commercial information, in-*
20 *cluding an algorithm used to derive credit scores or*
21 *other risk scores or predictors;*

22 (2) *any information collected by the covered per-*
23 *son for the purpose of preventing fraud or money*
24 *laundering, or detecting, or making any report re-*

1 *garding other unlawful or potentially unlawful con-*
2 *duct;*

3 *(3) any information required to be kept con-*
4 *fidential by any other provision of law; or*

5 *(4) any information that the covered person can-*
6 *not retrieve in the ordinary course of its business with*
7 *respect to that information.*

8 *(c) NO DUTY TO MAINTAIN RECORDS.—Nothing in*
9 *this section shall be construed to impose any duty on a cov-*
10 *ered person to maintain or keep any information about a*
11 *consumer.*

12 *(d) STANDARDIZED FORMATS FOR DATA.—The Bu-*
13 *reau, by rule, shall prescribe standards applicable to cov-*
14 *ered persons to promote the development and use of stand-*
15 *ardized formats for information, including through the use*
16 *of machine readable files, to be made available to consumers*
17 *under this section.*

18 *(e) CONSULTATION.—The Bureau shall, when pre-*
19 *scribing any rule under this section, consult with the Fed-*
20 *eral banking agencies and the Federal Trade Commission*
21 *to ensure, to the extent appropriate, that the rules—*

22 *(1) impose substantively similar requirements on*
23 *covered persons;*

1 (2) *take into account conditions under which*
2 *covered persons do business both in the United States*
3 *and in other countries; and*

4 (3) *do not require or promote the use of any par-*
5 *ticular technology in order to develop systems for*
6 *compliance.*

7 **SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND IN-**
8 **QUIRIES.**

9 (a) *TIMELY REGULATOR RESPONSE TO CON-*
10 *SUMERS.—The Bureau shall establish, in consultation with*
11 *the appropriate Federal regulatory agencies, reasonable*
12 *procedures to provide a timely response to consumers, in*
13 *writing where appropriate, to complaints against, or in-*
14 *quiries concerning, a covered person, including—*

15 (1) *steps that have been taken by the regulator*
16 *in response to the complaint or inquiry of the con-*
17 *sumer;*

18 (2) *any responses received by the regulator from*
19 *the covered person; and*

20 (3) *any follow-up actions or planned follow-up*
21 *actions by the regulator in response to the complaint*
22 *or inquiry of the consumer.*

23 (b) *TIMELY RESPONSE TO REGULATOR BY COVERED*
24 *PERSON.—A covered person subject to supervision and pri-*
25 *mary enforcement by the Bureau pursuant to section 1025*

1 *shall provide a timely response, in writing where appro-*
2 *priate, to the Bureau, the prudential regulators, and any*
3 *other agency having jurisdiction over such covered person*
4 *concerning a consumer complaint or inquiry, including—*

5 (1) *steps that have been taken by the covered per-*
6 *son to respond to the complaint or inquiry of the con-*
7 *sumer;*

8 (2) *responses received by the covered person from*
9 *the consumer; and*

10 (3) *follow-up actions or planned follow-up ac-*
11 *tions by the covered person to respond to the com-*
12 *plaint or inquiry of the consumer.*

13 *(c) PROVISION OF INFORMATION TO CONSUMERS.—*

14 (1) *IN GENERAL.—A covered person subject to*
15 *supervision and primary enforcement by the Bureau*
16 *pursuant to section 1025 shall, in a timely manner,*
17 *comply with a consumer request for information in*
18 *the control or possession of such covered person con-*
19 *cerning the consumer financial product or service that*
20 *the consumer obtained from such covered person, in-*
21 *cluding supporting written documentation, con-*
22 *cerning the account of the consumer.*

23 (2) *EXCEPTIONS.—A covered person subject to*
24 *supervision and primary enforcement by the Bureau*
25 *pursuant to section 1025, a prudential regulator, and*

1 *any other agency having jurisdiction over a covered*
2 *person subject to supervision and primary enforce-*
3 *ment by the Bureau pursuant to section 1025 may*
4 *not be required by this section to make available to*
5 *the consumer—*

6 *(A) any confidential commercial informa-*
7 *tion, including an algorithm used to derive cred-*
8 *it scores or other risk scores or predictors;*

9 *(B) any information collected by the covered*
10 *person for the purpose of preventing fraud or*
11 *money laundering, or detecting or making any*
12 *report regarding other unlawful or potentially*
13 *unlawful conduct;*

14 *(C) any information required to be kept*
15 *confidential by any other provision of law; or*

16 *(D) any nonpublic or confidential informa-*
17 *tion, including confidential supervisory informa-*
18 *tion.*

19 *(d) AGREEMENTS WITH OTHER AGENCIES.—The Bu-*
20 *reau shall enter into a memorandum of understanding with*
21 *any affected Federal regulatory agency regarding proce-*
22 *dures by which any covered person, and the prudential reg-*
23 *ulators, and any other agency having jurisdiction over a*
24 *covered person, including the Secretary of the Department*

1 *of Housing and Urban Development and the Secretary of*
2 *Education, shall comply with this section.*

3 **SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.**

4 (a) *ESTABLISHMENT.*—*The Secretary, in consultation*
5 *with the Director, shall designate a Private Education Loan*
6 *Ombudsman (in this section referred to as the “Ombuds-*
7 *man”)* *within the Bureau, to provide timely assistance to*
8 *borrowers of private education loans.*

9 (b) *PUBLIC INFORMATION.*—*The Secretary and the Di-*
10 *rector shall disseminate information about the availability*
11 *and functions of the Ombudsman to borrowers and poten-*
12 *tial borrowers, as well as institutions of higher education,*
13 *lenders, guaranty agencies, loan servicers, and other par-*
14 *ticipants in private education student loan programs.*

15 (c) *FUNCTIONS OF OMBUDSMAN.*—*The Ombudsman*
16 *designated under this subsection shall—*

17 (1) *in accordance with regulations of the Direc-*
18 *tor, receive, review, and attempt to resolve informally*
19 *complaints from borrowers of loans described in sub-*
20 *section (a), including, as appropriate, attempts to re-*
21 *solve such complaints in collaboration with the De-*
22 *partment of Education and with institutions of high-*
23 *er education, lenders, guaranty agencies, loan*
24 *servicers, and other participants in private education*
25 *loan programs;*

1 (2) *not later than 90 days after the designated*
2 *transfer date, establish a memorandum of under-*
3 *standing with the student loan ombudsman estab-*
4 *lished under section 141(f) of the Higher Education*
5 *Act of 1965 (20 U.S.C. 1018(f)), to ensure coordina-*
6 *tion in providing assistance to and serving borrowers*
7 *seeking to resolve complaints related to their private*
8 *education or Federal student loans;*

9 (3) *compile and analyze data on borrower com-*
10 *plaints regarding private education loans; and*

11 (4) *make appropriate recommendations to the*
12 *Director, the Secretary, the Secretary of Education,*
13 *the Committee on Banking, Housing, and Urban Af-*
14 *airs and the Committee on Health, Education,*
15 *Labor, and Pensions of the Senate and the Committee*
16 *on Financial Services and the Committee on Edu-*
17 *cation and Labor of the House of Representatives.*

18 (d) *ANNUAL REPORTS.—*

19 (1) *IN GENERAL.—The Ombudsman shall pre-*
20 *pare an annual report that describes the activities,*
21 *and evaluates the effectiveness of the Ombudsman*
22 *during the preceding year.*

23 (2) *SUBMISSION.—The report required by para-*
24 *graph (1) shall be submitted on the same date annu-*
25 *ally to the Secretary, the Secretary of Education, the*

1 *Committee on Banking, Housing, and Urban Affairs*
2 *and the Committee on Health, Education, Labor, and*
3 *Pensions of the Senate and the Committee on Finan-*
4 *cial Services and the Committee on Education and*
5 *Labor of the House of Representatives.*

6 (e) *DEFINITIONS.*—*For purposes of this section, the*
7 *terms “private education loan” and “institution of higher*
8 *education” have the same meanings as in section 140 of*
9 *the Truth in Lending Act (15 U.S.C. 1650).*

10 **SEC. 1036. PROHIBITED ACTS.**

11 *It shall be unlawful for any person—*

12 (1) *to—*

13 (A) *advertise, market, offer, or sell a con-*
14 *sumer financial product or service not in con-*
15 *formity with this title or applicable rules or or-*
16 *ders issued by the Bureau;*

17 (B) *enforce, or attempt to enforce, any*
18 *agreement with a consumer (including any term*
19 *or change in terms in respect of such agreement),*
20 *or impose, or attempt to impose, any fee or*
21 *charge on a consumer in connection with a con-*
22 *sumer financial product or service that is not in*
23 *conformity with this title or applicable rules or*
24 *orders issued by the Bureau; or*

1 (C) engage in any unfair, deceptive, or abu-
2 sive act or practice,
3 except that no person shall be held to have vio-
4 lated this paragraph solely by virtue of pro-
5 viding or selling time or space to a person plac-
6 ing an advertisement;

7 (2) to fail or refuse, as required by Federal con-
8 sumer financial law, or any rule or order issued by
9 the Bureau thereunder—

10 (A) to permit access to or copying of
11 records;

12 (B) to establish or maintain records; or

13 (C) to make reports or provide information
14 to the Bureau; or

15 (3) knowingly or recklessly to provide substantial
16 assistance to another person in violation of the provi-
17 sions of section 1031, or any rule or order issued
18 thereunder, and notwithstanding any provision of
19 this title, the provider of such substantial assistance
20 shall be deemed to be in violation of that section to
21 the same extent as the person to whom such assistance
22 is provided.

23 **SEC. 1037. EFFECTIVE DATE.**

24 This subtitle shall take effect on the designated transfer
25 date.

1 ***Subtitle D—Preservation of State***
2 ***Law***

3 **SEC. 1041. RELATION TO STATE LAW.**

4 (a) *IN GENERAL.*—

5 (1) *RULE OF CONSTRUCTION.*—*This title, other*
6 *than sections 1044 through 1048, may not be con-*
7 *strued as annulling, altering, or affecting, or exempt-*
8 *ing any person subject to the provisions of this title*
9 *from complying with, the statutes, regulations, orders,*
10 *or interpretations in effect in any State, except to the*
11 *extent that any such provision of law is inconsistent*
12 *with the provisions of this title, and then only to the*
13 *extent of the inconsistency.*

14 (2) *GREATER PROTECTION UNDER STATE LAW.*—
15 *For purposes of this subsection, a statute, regulation,*
16 *order, or interpretation in effect in any State is not*
17 *inconsistent with the provisions of this title if the pro-*
18 *tection that such statute, regulation, order, or inter-*
19 *pretation affords to consumers is greater than the*
20 *protection provided under this title. A determination*
21 *regarding whether a statute, regulation, order, or in-*
22 *terpretation in effect in any State is inconsistent with*
23 *the provisions of this title may be made by the Bu-*
24 *reau on its own motion or in response to a nonfrivo-*
25 *lous petition initiated by any interested person.*

1 **(b) RELATION TO OTHER PROVISIONS OF ENUMER-**
2 **ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—**
3 *No provision of this title, except as provided in section*
4 *1083, shall be construed as modifying, limiting, or super-*
5 *seding the operation of any provision of an enumerated con-*
6 *sumer law that relates to the application of a law in effect*
7 *in any State with respect to such Federal law.*

8 **(c) ADDITIONAL CONSUMER PROTECTION REGULA-**
9 **TIONS IN RESPONSE TO STATE ACTION.—**

10 **(1) NOTICE OF PROPOSED RULE REQUIRED.—**
11 *The Bureau shall issue a notice of proposed rule-*
12 *making whenever a majority of the States has enacted*
13 *a resolution in support of the establishment or modi-*
14 *fication of a consumer protection regulation by the*
15 *Bureau.*

16 **(2) BUREAU CONSIDERATIONS REQUIRED FOR**
17 **ISSUANCE OF FINAL REGULATION.—***Before prescribing*
18 *a final regulation based upon a notice issued pursu-*
19 *ant to paragraph (1), the Bureau shall take into ac-*
20 *count whether—*

21 **(A)** *the proposed regulation would afford*
22 *greater protection to consumers than any exist-*
23 *ing regulation;*

24 **(B)** *the intended benefits of the proposed*
25 *regulation for consumers would outweigh any in-*

1 *created costs or inconveniences for consumers,*
2 *and would not discriminate unfairly against*
3 *any category or class of consumers; and*

4 *(C) a Federal banking agency has advised*
5 *that the proposed regulation is likely to present*
6 *an unacceptable safety and soundness risk to in-*
7 *sured depository institutions.*

8 (3) *EXPLANATION OF CONSIDERATIONS.—The*
9 *Bureau—*

10 *(A) shall include a discussion of the consid-*
11 *erations required in paragraph (2) in the Fed-*
12 *eral Register notice of a final regulation pre-*
13 *scribed pursuant to this subsection; and*

14 *(B) whenever the Bureau determines not to*
15 *prescribe a final regulation, shall publish an ex-*
16 *planation of such determination in the Federal*
17 *Register, and provide a copy of such explanation*
18 *to each State that enacted a resolution in sup-*
19 *port of the proposed regulation, the Committee*
20 *on Financial Services of the House of Represent-*
21 *atives, and the Committee on Banking, Housing,*
22 *and Urban Affairs of the Senate.*

23 (4) *RESERVATION OF AUTHORITY.—No provision*
24 *of this subsection shall be construed as limiting or re-*
25 *stricting the authority of the Bureau to enhance con-*

1 *sumer protection standards established pursuant to*
2 *this title in response to its own motion or in response*
3 *to a request by any other interested person.*

4 (5) *RULE OF CONSTRUCTION.*—*No provision of*
5 *this subsection shall be construed as exempting the*
6 *Bureau from complying with subchapter II of chapter*
7 *5 of title 5, United States Code.*

8 (6) *DEFINITION.*—*For purposes of this sub-*
9 *section, the term “consumer protection regulation”*
10 *means a regulation that the Bureau is authorized to*
11 *prescribe under the Federal consumer financial laws.*

12 **SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF**
13 **STATES.**

14 (a) *IN GENERAL.*—

15 (1) *ACTION BY STATE.*—*Except as provided in*
16 *paragraph (2), the attorney general (or the equivalent*
17 *thereof) of any State may bring a civil action in the*
18 *name of such State in any district court of the United*
19 *States in that State or in State court that is located*
20 *in that State and that has jurisdiction over the de-*
21 *fendant, to enforce provisions of this title or regula-*
22 *tions issued under this title, and to secure remedies*
23 *under provisions of this title or remedies otherwise*
24 *provided under other law. A State regulator may*
25 *bring a civil action or other appropriate proceeding*

1 *to enforce the provisions of this title or regulations*
2 *issued under this title with respect to any entity that*
3 *is State-chartered, incorporated, licensed, or otherwise*
4 *authorized to do business under State law (except as*
5 *provided in paragraph (2)), and to secure remedies*
6 *under provisions of this title or remedies otherwise*
7 *provided under other provisions of law with respect to*
8 *such an entity.*

9 (2) *ACTION BY STATE AGAINST NATIONAL BANK*
10 *OR FEDERAL SAVINGS ASSOCIATION TO ENFORCE*
11 *RULES.—*

12 (A) *IN GENERAL.—Except as permitted*
13 *under subparagraph (B), the attorney general*
14 *(or equivalent thereof) of any State may not*
15 *bring a civil action in the name of such State*
16 *against a national bank or Federal savings asso-*
17 *ciation with respect to an act or omission that*
18 *would be a violation of a provision of this title.*

19 (B) *ENFORCEMENT OF RULES PER-*
20 *MITTED.—The attorney general (or the equiva-*
21 *lent thereof) of any State may bring a civil ac-*
22 *tion in the name of such State against a na-*
23 *tional bank or Federal savings association in*
24 *any district court of the United States in the*
25 *State or in State court that is located in that*

1 *State and that has jurisdiction over the defend-*
2 *ant to enforce a regulation prescribed by the Bu-*
3 *reau under a provision of this title and to secure*
4 *remedies under provisions of this title or rem-*
5 *edies otherwise provided under other law.*

6 (3) *RULE OF CONSTRUCTION.*—*No provision of*
7 *this title shall be construed as modifying, limiting, or*
8 *superseding the operation of any provision of an enu-*
9 *merated consumer law that relates to the authority of*
10 *a State attorney general or State regulator to enforce*
11 *such Federal law.*

12 (b) *CONSULTATION REQUIRED.*—

13 (1) *NOTICE.*—

14 (A) *IN GENERAL.*—*Before initiating any*
15 *action in a court or other administrative or reg-*
16 *ulatory proceeding against any covered person as*
17 *authorized by subsection (a) to enforce any pro-*
18 *vision of this title, including any regulation pre-*
19 *scribed by the Bureau under this title, a State*
20 *attorney general or State regulator shall timely*
21 *provide a copy of the complete complaint to be*
22 *filed and written notice describing such action or*
23 *proceeding to the Bureau and the prudential reg-*
24 *ulator, if any, or the designee thereof.*

1 (B) *EMERGENCY ACTION.*—*If prior notice is*
2 *not practicable, the State attorney general or*
3 *State regulator shall provide a copy of the com-*
4 *plete complaint and the notice to the Bureau and*
5 *the prudential regulator, if any, immediately*
6 *upon instituting the action or proceeding.*

7 (C) *CONTENTS OF NOTICE.*—*The notifica-*
8 *tion required under this paragraph shall, at a*
9 *minimum, describe—*

10 (i) *the identity of the parties;*

11 (ii) *the alleged facts underlying the*
12 *proceeding; and*

13 (iii) *whether there may be a need to*
14 *coordinate the prosecution of the proceeding*
15 *so as not to interfere with any action, in-*
16 *cluding any rulemaking, undertaken by the*
17 *Bureau, a prudential regulator, or another*
18 *Federal agency.*

19 (2) *BUREAU RESPONSE.*—*In any action de-*
20 *scribed in paragraph (1), the Bureau may—*

21 (A) *intervene in the action as a party;*

22 (B) *upon intervening—*

23 (i) *remove the action to the appro-*
24 *priate United States district court, if the*
25 *action was not originally brought there; and*

1 (ii) be heard on all matters arising in
2 the action; and

3 (C) appeal any order or judgment, to the
4 same extent as any other party in the proceeding
5 may.

6 (c) *REGULATIONS.*—The Bureau shall prescribe regu-
7 lations to implement the requirements of this section and,
8 from time to time, provide guidance in order to further co-
9 ordinate actions with the State attorneys general and other
10 regulators.

11 (d) *PRESERVATION OF STATE AUTHORITY.*—

12 (1) *STATE CLAIMS.*—No provision of this section
13 shall be construed as altering, limiting, or affecting
14 the authority of a State attorney general or any other
15 regulatory or enforcement agency or authority to
16 bring an action or other regulatory proceeding aris-
17 ing solely under the law in effect in that State.

18 (2) *STATE SECURITIES REGULATORS.*—No provi-
19 sion of this title shall be construed as altering, lim-
20 iting, or affecting the authority of a State securities
21 commission (or any agency or office performing like
22 functions) under State law to adopt rules, initiate en-
23 forcement proceedings, or take any other action with
24 respect to a person regulated by such commission or
25 authority.

1 (3) *STATE INSURANCE REGULATORS.*—No provi-
2 sion of this title shall be construed as altering, lim-
3 iting, or affecting the authority of a State insurance
4 commission or State insurance regulator under State
5 law to adopt rules, initiate enforcement proceedings,
6 or take any other action with respect to a person reg-
7 ulated by such commission or regulator.

8 **SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.**

9 This title, and regulations, orders, guidance, and in-
10 terpretations prescribed, issued, or established by the Bu-
11 reau, shall not be construed to alter or affect the applica-
12 bility of any regulation, order, guidance, or interpretation
13 prescribed, issued, and established by the Comptroller of the
14 Currency or the Director of the Office of Thrift Supervision
15 regarding the applicability of State law under Federal
16 banking law to any contract entered into on or before the
17 date of enactment of this Act, by national banks, Federal
18 savings associations, or subsidiaries thereof that are regu-
19 lated and supervised by the Comptroller of the Currency
20 or the Director of the Office of Thrift Supervision, respec-
21 tively.

1 **SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NA-**
2 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
3 **FIED.**

4 (a) *IN GENERAL.*—Chapter one of title LXII of the Re-
5 vised Statutes of the United States (12 U.S.C. 21 et seq.)
6 is amended by inserting after section 5136B the following
7 new section:

8 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
9 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
10 **FIED.**

11 “(a) *DEFINITIONS.*—For purposes of this section, the
12 following definitions shall apply:

13 “(1) *NATIONAL BANK.*—The term ‘national bank’
14 includes—

15 “(A) any bank organized under the laws of
16 the United States; and

17 “(B) any Federal branch established in ac-
18 cordance with the International Banking Act of
19 1978.

20 “(2) *STATE CONSUMER FINANCIAL LAWS.*—The
21 term ‘State consumer financial law’ means a State
22 law that does not directly or indirectly discriminate
23 against national banks and that directly and specifi-
24 cally regulates the manner, content, or terms and con-
25 ditions of any financial transaction (as may be au-

1 *thorized for national banks to engage in), or any ac-*
2 *count related thereto, with respect to a consumer.*

3 “(3) *OTHER DEFINITIONS.*—*The terms ‘affiliate’,*
4 *‘subsidiary’, ‘includes’, and ‘including’ have the same*
5 *meanings as in section 3 of the Federal Deposit In-*
6 *surance Act.*

7 “(b) *PREEMPTION STANDARD.*—

8 “(1) *IN GENERAL.*—*State consumer financial*
9 *laws are preempted, only if—*

10 “(A) *application of a State consumer finan-*
11 *cial law would have a discriminatory effect on*
12 *national banks, in comparison with the effect of*
13 *the law on a bank chartered by that State;*

14 “(B) *the State consumer financial law is*
15 *preempted in accordance with the legal standard*
16 *of the decision of the Supreme Court of the*
17 *United States in Barnett Bank of Marion Coun-*
18 *ty, N.A. v. Nelson, Florida Insurance Commis-*
19 *sioner, et al., 517 U.S. 25 (1996), and any pre-*
20 *emption determination under this subparagraph*
21 *may be made by a court, or by regulation or*
22 *order of the Comptroller of the Currency on a*
23 *case-by-case basis, in accordance with applicable*
24 *law; or*

1 “(C) *the State consumer financial law is*
2 *preempted by a provision of Federal law other*
3 *than this title.*

4 “(2) *SAVINGS CLAUSE.—This title and section 24*
5 *of the Federal Reserve Act (12 U.S.C. 371) do not*
6 *preempt, annul, or affect the applicability of any*
7 *State law to any subsidiary or affiliate of a national*
8 *bank (other than a subsidiary or affiliate that is*
9 *chartered as a national bank).*

10 “(3) *CASE-BY-CASE BASIS.—*

11 “(A) *DEFINITION.—As used in this section*
12 *the term ‘case-by-case basis’ refers to a deter-*
13 *mination pursuant to this section made by the*
14 *Comptroller concerning the impact of a par-*
15 *ticular State consumer financial law on any na-*
16 *tional bank that is subject to that law, or the law*
17 *of any other State with substantively equivalent*
18 *terms.*

19 “(B) *CONSULTATION.—When making a de-*
20 *termination on a case-by-case basis that a State*
21 *consumer financial law of another State has sub-*
22 *stantively equivalent terms as one that the*
23 *Comptroller is preempting, the Comptroller shall*
24 *first consult with the Bureau of Consumer Fi-*
25 *ancial Protection and shall take the views of the*

1 *Bureau into account when making the deter-*
2 *mination.*

3 “(4) *RULE OF CONSTRUCTION.*—*This title does*
4 *not occupy the field in any area of State law.*

5 “(5) *STANDARDS OF REVIEW.*—

6 “(A) *PREEMPTION.*—*A court reviewing any*
7 *determinations made by the Comptroller regard-*
8 *ing preemption of a State law by this title or*
9 *section 24 of the Federal Reserve Act (12 U.S.C.*
10 *371) shall assess the validity of such determina-*
11 *tions, depending upon the thoroughness evident*
12 *in the consideration of the agency, the validity*
13 *of the reasoning of the agency, the consistency*
14 *with other valid determinations made by the*
15 *agency, and other factors which the court finds*
16 *persuasive and relevant to its decision.*

17 “(B) *SAVINGS CLAUSE.*—*Except as provided*
18 *in subparagraph (A), nothing in this section*
19 *shall affect the deference that a court may afford*
20 *to the Comptroller in making determinations re-*
21 *garding the meaning or interpretation of title*
22 *LXII of the Revised Statutes of the United States*
23 *or other Federal laws.*

24 “(6) *COMPTROLLER DETERMINATION NOT DELE-*
25 *GABLE.*—*Any regulation, order, or determination*

1 *made by the Comptroller of the Currency under para-*
2 *graph (1)(B) shall be made by the Comptroller, and*
3 *shall not be delegable to another officer or employee*
4 *of the Comptroller of the Currency.*

5 “(c) *SUBSTANTIAL EVIDENCE.*—*No regulation or order*
6 *of the Comptroller of the Currency prescribed under sub-*
7 *section (b)(1)(B), shall be interpreted or applied so as to*
8 *invalidate, or otherwise declare inapplicable to a national*
9 *bank, the provision of the State consumer financial law,*
10 *unless substantial evidence, made on the record of the pro-*
11 *ceeding, supports the specific finding regarding the preemp-*
12 *tion of such provision in accordance with the legal standard*
13 *of the decision of the Supreme Court of the United States*
14 *in Barnett Bank of Marion County, N.A. v. Nelson, Florida*
15 *Insurance Commissioner, et al., 517 U.S. 25 (1996).*

16 “(d) *PERIODIC REVIEW OF PREEMPTION DETERMINA-*
17 *TIONS.*—

18 “(1) *IN GENERAL.*—*The Comptroller of the Cur-*
19 *rency shall periodically conduct a review, through no-*
20 *tice and public comment, of each determination that*
21 *a provision of Federal law preempts a State consumer*
22 *financial law. The agency shall conduct such review*
23 *within the 5-year period after prescribing or other-*
24 *wise issuing such determination, and at least once*
25 *during each 5-year period thereafter. After conducting*

1 *the review of, and inspecting the comments made on,*
2 *the determination, the agency shall publish a notice*
3 *in the Federal Register announcing the decision to*
4 *continue or rescind the determination or a proposal*
5 *to amend the determination. Any such notice of a*
6 *proposal to amend a determination and the subse-*
7 *quent resolution of such proposal shall comply with*
8 *the procedures set forth in subsections (a) and (b) of*
9 *section 5244 of the Revised Statutes of the United*
10 *States (12 U.S.C. 43 (a), (b)).*

11 “(2) *REPORTS TO CONGRESS.*—*At the time of*
12 *issuing a review conducted under paragraph (1), the*
13 *Comptroller of the Currency shall submit a report re-*
14 *garding such review to the Committee on Financial*
15 *Services of the House of Representatives and the Com-*
16 *mittee on Banking, Housing, and Urban Affairs of*
17 *the Senate. The report submitted to the respective*
18 *committees shall address whether the agency intends*
19 *to continue, rescind, or propose to amend any deter-*
20 *mination that a provision of Federal law preempts a*
21 *State consumer financial law, and the reasons there-*
22 *for.*

23 “(e) *APPLICATION OF STATE CONSUMER FINANCIAL*
24 *LAW TO SUBSIDIARIES AND AFFILIATES.*—*Notwithstanding*
25 *any provision of this title or section 24 of Federal Reserve*

1 *Act (12 U.S.C. 371), a State consumer financial law shall*
2 *apply to a subsidiary or affiliate of a national bank (other*
3 *than a subsidiary or affiliate that is chartered as a national*
4 *bank) to the same extent that the State consumer financial*
5 *law applies to any person, corporation, or other entity sub-*
6 *ject to such State law.*

7 “(f) *PRESERVATION OF POWERS RELATED TO CHARG-*
8 *ING INTEREST.*—*No provision of this title shall be construed*
9 *as altering or otherwise affecting the authority conferred by*
10 *section 5197 of the Revised Statutes of the United States*
11 *(12 U.S.C. 85) for the charging of interest by a national*
12 *bank at the rate allowed by the laws of the State, territory,*
13 *or district where the bank is located, including with respect*
14 *to the meaning of ‘interest’ under such provision.*

15 “(g) *TRANSPARENCY OF OCC PREEMPTION DETER-*
16 *MINATIONS.*—*The Comptroller of the Currency shall publish*
17 *and update no less frequently than quarterly, a list of pre-*
18 *emption determinations by the Comptroller of the Currency*
19 *then in effect that identifies the activities and practices cov-*
20 *ered by each determination and the requirements and con-*
21 *straints determined to be preempted.”.*

22 “(b) *CLERICAL AMENDMENT.*—*The table of sections for*
23 *chapter one of title LXII of the Revised Statutes of the*
24 *United States is amended by inserting after the item relat-*
25 *ing to section 5136B the following new item:*

“Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.”.

1 **SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NON-**
2 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

3 *Section 5136C of the Revised Statutes of the United*
4 *States (as added by this subtitle) is amended by adding*
5 *at the end the following:*

6 *“(h) CLARIFICATION OF LAW APPLICABLE TO NON-*
7 *DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES*
8 *OF NATIONAL BANKS.—*

9 *“(1) DEFINITIONS.—For purposes of this sub-*
10 *section, the terms ‘depository institution’, ‘sub-*
11 *subsidiary’, and ‘affiliate’ have the same meanings as in*
12 *section 3 of the Federal Deposit Insurance Act.*

13 *“(2) RULE OF CONSTRUCTION.—No provision of*
14 *this title or section 24 of the Federal Reserve Act (12*
15 *U.S.C. 371) shall be construed as preempting, annul-*
16 *ling, or affecting the applicability of State law to any*
17 *subsidiary, affiliate, or agent of a national bank*
18 *(other than a subsidiary, affiliate, or agent that is*
19 *chartered as a national bank).”.*

1 **SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FED-**
2 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**
3 **ARIES CLARIFIED.**

4 (a) *IN GENERAL.*—*The Home Owners’ Loan Act (12*
5 *U.S.C. 1461 et seq.) is amended by inserting after section*
6 *5 the following new section:*

7 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
8 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

9 “(a) *IN GENERAL.*—*Any determination by a court or*
10 *by the Director or any successor officer or agency regarding*
11 *the relation of State law to a provision of this Act or any*
12 *regulation or order prescribed under this Act shall be made*
13 *in accordance with the laws and legal standards applicable*
14 *to national banks regarding the preemption of State law.*

15 “(b) *PRINCIPLES OF CONFLICT PREEMPTION APPLICA-*
16 *BLE.*—*Notwithstanding the authorities granted under sec-*
17 *tions 4 and 5, this Act does not occupy the field in any*
18 *area of State law.”.*

19 (b) *CLERICAL AMENDMENT.*—*The table of sections for*
20 *the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is*
21 *amended by striking the item relating to section 6 and in-*
22 *serting the following new item:*

“*Sec. 6. State law preemption standards for Federal savings associations and*
subsidiaries clarified.”.

1 **SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS**
2 **AND SAVINGS ASSOCIATIONS.**

3 (a) *NATIONAL BANKS.*—Section 5136C of the Revised
4 *Statutes of the United States (as added by this subtitle)*
5 *is amended by adding at the end the following:*

6 “(i) *VISITORIAL POWERS.*—

7 “(1) *IN GENERAL.*—*In accordance with the deci-*
8 *sion of the Supreme Court of the United States in*
9 *Cuomo v. Clearing House Assn., L. L. C. (129 S. Ct.*
10 *2710 (2009)), no provision of this title which relates*
11 *to visitorial powers or otherwise limits or restricts the*
12 *visitorial authority to which any national bank is*
13 *subject shall be construed as limiting or restricting*
14 *the authority of any attorney general (or other chief*
15 *law enforcement officer) of any State to bring an ac-*
16 *tion against a national bank in a court of appro-*
17 *priate jurisdiction to enforce an applicable law and*
18 *to seek relief as authorized by such law.*

19 “(j) *ENFORCEMENT ACTIONS.*—*The ability of the*
20 *Comptroller of the Currency to bring an enforcement action*
21 *under this title or section 5 of the Federal Trade Commis-*
22 *sion Act does not preclude any private party from enforcing*
23 *rights granted under Federal or State law in the courts.”.*

24 (b) *SAVINGS ASSOCIATIONS.*—Section 6 of the *Home*
25 *Owners’ Loan Act (as added by this title) is amended by*
26 *adding at the end the following:*

1 “(c) *VISITORIAL POWERS.*—*The provisions of sections*
2 *5136C(i) of the Revised Statutes of the United States shall*
3 *apply to Federal savings associations, and any subsidiary*
4 *thereof, to the same extent and in the same manner as if*
5 *such savings associations, or subsidiaries thereof, were na-*
6 *tional banks or subsidiaries of national banks, respec-*
7 *tively.*”

8 “(d) *ENFORCEMENT ACTIONS.*—*The ability of the*
9 *Comptroller of the Currency to bring an enforcement action*
10 *under this Act or section 5 of the Federal Trade Commis-*
11 *sion Act does not preclude any private party from enforcing*
12 *rights granted under Federal or State law in the courts.*”.

13 **SEC. 1048. EFFECTIVE DATE.**

14 *This subtitle shall become effective on the designated*
15 *transfer date.*

16 ***Subtitle E—Enforcement Powers***

17 **SEC. 1051. DEFINITIONS.**

18 *For purposes of this subtitle, the following definitions*
19 *shall apply:*

20 (1) *BUREAU INVESTIGATION.*—*The term “Bureau*
21 *investigation” means any inquiry conducted by a Bu-*
22 *reau investigator for the purpose of ascertaining*
23 *whether any person is or has been engaged in any*
24 *conduct that is a violation, as defined in this section.*

1 (2) *BUREAU INVESTIGATOR.*—*The term “Bureau*
2 *investigator” means any attorney or investigator em-*
3 *ployed by the Bureau who is charged with the duty*
4 *of enforcing or carrying into effect any Federal con-*
5 *sumer financial law.*

6 (3) *CIVIL INVESTIGATIVE DEMAND AND DE-*
7 *MAND.*—*The terms “civil investigative demand” and*
8 *“demand” mean any demand issued by the Bureau.*

9 (4) *CUSTODIAN.*—*The term “custodian” means*
10 *the custodian or any deputy custodian designated by*
11 *the Bureau.*

12 (5) *DOCUMENTARY MATERIAL.*—*The term “docu-*
13 *mentary material” includes the original or any copy*
14 *of any book, document, record, report, memorandum,*
15 *paper, communication, tabulation, chart, logs, elec-*
16 *tronic files, or other data or data compilations stored*
17 *in any medium.*

18 (6) *VIOLATION.*—*The term “violation” means*
19 *any act or omission that, if proved, would constitute*
20 *a violation of any provision of Federal consumer fi-*
21 *nancial law.*

22 **SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DIS-**
23 **COVERY.**

24 (a) *JOINT INVESTIGATIONS.*—

1 (1) *IN GENERAL.*—*The Bureau or, where appro-*
2 *prate, a Bureau investigator, may engage in joint*
3 *investigations and requests for information, as au-*
4 *thorized under this title.*

5 (2) *FAIR LENDING.*—*The authority under para-*
6 *graph (1) includes matters relating to fair lending,*
7 *and where appropriate, joint investigations with, and*
8 *requests for information from, the Secretary of Hous-*
9 *ing and Urban Development, the Attorney General of*
10 *the United States, or both.*

11 (b) *SUBPOENAS.*—

12 (1) *IN GENERAL.*—*The Bureau or a Bureau in-*
13 *vestigator may issue subpoenas for the attendance and*
14 *testimony of witnesses and the production of relevant*
15 *papers, books, documents, or other material in connec-*
16 *tion with hearings under this title.*

17 (2) *FAILURE TO OBEY.*—*In the case of contu-*
18 *macy or refusal to obey a subpoena issued pursuant*
19 *to this paragraph and served upon any person, the*
20 *district court of the United States for any district in*
21 *which such person is found, resides, or transacts busi-*
22 *ness, upon application by the Bureau or a Bureau in-*
23 *vestigator and after notice to such person, may issue*
24 *an order requiring such person to appear and give*

1 *testimony or to appear and produce documents or*
2 *other material.*

3 (3) *CONTEMPT.*—*Any failure to obey an order of*
4 *the court under this subsection may be punished by*
5 *the court as a contempt thereof.*

6 (c) *DEMANDS.*—

7 (1) *IN GENERAL.*—*Whenever the Bureau has rea-*
8 *son to believe that any person may be in possession,*
9 *custody, or control of any documentary material or*
10 *tangible things, or may have any information, rel-*
11 *evant to a violation, the Bureau may, before the insti-*
12 *tution of any proceedings under the Federal consumer*
13 *financial law, issue in writing, and cause to be served*
14 *upon such person, a civil investigative demand re-*
15 *quiring such person to—*

16 (A) *produce such documentary material for*
17 *inspection and copying or reproduction in the*
18 *form or medium requested by the Bureau;*

19 (B) *submit such tangible things;*

20 (C) *file written reports or answers to ques-*
21 *tions;*

22 (D) *give oral testimony concerning docu-*
23 *mentary material, tangible things, or other in-*
24 *formation; or*

1 (E) furnish any combination of such mate-
2 rial, answers, or testimony.

3 (2) *REQUIREMENTS.*—Each civil investigative
4 demand shall state the nature of the conduct consti-
5 tuting the alleged violation which is under investiga-
6 tion and the provision of law applicable to such viola-
7 tion.

8 (3) *PRODUCTION OF DOCUMENTS.*—Each civil
9 investigative demand for the production of documen-
10 tary material shall—

11 (A) describe each class of documentary ma-
12 terial to be produced under the demand with
13 such definiteness and certainty as to permit such
14 material to be fairly identified;

15 (B) prescribe a return date or dates which
16 will provide a reasonable period of time within
17 which the material so demanded may be assem-
18 bled and made available for inspection and copy-
19 ing or reproduction; and

20 (C) identify the custodian to whom such
21 material shall be made available.

22 (4) *PRODUCTION OF THINGS.*—Each civil inves-
23 tigative demand for the submission of tangible things
24 shall—

1 (A) describe each class of tangible things to
2 be submitted under the demand with such defi-
3 niteness and certainty as to permit such things
4 to be fairly identified;

5 (B) prescribe a return date or dates which
6 will provide a reasonable period of time within
7 which the things so demanded may be assembled
8 and submitted; and

9 (C) identify the custodian to whom such
10 things shall be submitted.

11 (5) *DEMAND FOR WRITTEN REPORTS OR AN-*
12 *SWERS.*—Each civil investigative demand for written
13 reports or answers to questions shall—

14 (A) propound with definiteness and cer-
15 tainty the reports to be produced or the questions
16 to be answered;

17 (B) prescribe a date or dates at which time
18 written reports or answers to questions shall be
19 submitted; and

20 (C) identify the custodian to whom such re-
21 ports or answers shall be submitted.

22 (6) *ORAL TESTIMONY.*—Each civil investigative
23 demand for the giving of oral testimony shall—

24 (A) prescribe a date, time, and place at
25 which oral testimony shall be commenced; and

1 (B) identify a Bureau investigator who
2 shall conduct the investigation and the custodian
3 to whom the transcript of such investigation
4 shall be submitted.

5 (7) SERVICE.—Any civil investigative demand
6 and any enforcement petition filed under this section
7 may be served—

8 (A) by any Bureau investigator at any
9 place within the territorial jurisdiction of any
10 court of the United States; and

11 (B) upon any person who is not found
12 within the territorial jurisdiction of any court of
13 the United States—

14 (i) in such manner as the Federal
15 Rules of Civil Procedure prescribe for serv-
16 ice in a foreign nation; and

17 (ii) to the extent that the courts of the
18 United States have authority to assert juris-
19 diction over such person, consistent with
20 due process, the United States District
21 Court for the District of Columbia shall
22 have the same jurisdiction to take any ac-
23 tion respecting compliance with this section
24 by such person that such district court
25 would have if such person were personally

1 *within the jurisdiction of such district*
2 *court.*

3 (8) *METHOD OF SERVICE.*—*Service of any civil*
4 *investigative demand or any enforcement petition*
5 *filed under this section may be made upon a person,*
6 *including any legal entity, by—*

7 (A) *delivering a duly executed copy of such*
8 *demand or petition to the individual or to any*
9 *partner, executive officer, managing agent, or*
10 *general agent of such person, or to any agent of*
11 *such person authorized by appointment or by*
12 *law to receive service of process on behalf of such*
13 *person;*

14 (B) *delivering a duly executed copy of such*
15 *demand or petition to the principal office or*
16 *place of business of the person to be served; or*

17 (C) *depositing a duly executed copy in the*
18 *United States mails, by registered or certified*
19 *mail, return receipt requested, duly addressed to*
20 *such person at the principal office or place of*
21 *business of such person.*

22 (9) *PROOF OF SERVICE.*—

23 (A) *IN GENERAL.*—*A verified return by the*
24 *individual serving any civil investigative de-*
25 *mand or any enforcement petition filed under*

1 *this section setting forth the manner of such serv-*
2 *ice shall be proof of such service.*

3 (B) *RETURN RECEIPTS.—In the case of*
4 *service by registered or certified mail, such re-*
5 *turn shall be accompanied by the return post of-*
6 *fice receipt of delivery of such demand or en-*
7 *forcement petition.*

8 (10) *PRODUCTION OF DOCUMENTARY MATE-*
9 *RIAL.—The production of documentary material in*
10 *response to a civil investigative demand shall be made*
11 *under a sworn certificate, in such form as the demand*
12 *designates, by the person, if a natural person, to*
13 *whom the demand is directed or, if not a natural per-*
14 *son, by any person having knowledge of the facts and*
15 *circumstances relating to such production, to the ef-*
16 *fect that all of the documentary material required by*
17 *the demand and in the possession, custody, or control*
18 *of the person to whom the demand is directed has*
19 *been produced and made available to the custodian.*

20 (11) *SUBMISSION OF TANGIBLE THINGS.—The*
21 *submission of tangible things in response to a civil*
22 *investigative demand shall be made under a sworn*
23 *certificate, in such form as the demand designates, by*
24 *the person to whom the demand is directed or, if not*
25 *a natural person, by any person having knowledge of*

1 *the facts and circumstances relating to such produc-*
2 *tion, to the effect that all of the tangible things re-*
3 *quired by the demand and in the possession, custody,*
4 *or control of the person to whom the demand is di-*
5 *rected have been submitted to the custodian.*

6 (12) *SEPARATE ANSWERS.—Each reporting re-*
7 *quirement or question in a civil investigative demand*
8 *shall be answered separately and fully in writing*
9 *under oath, unless it is objected to, in which event the*
10 *reasons for the objection shall be stated in lieu of an*
11 *answer, and it shall be submitted under a sworn cer-*
12 *tificate, in such form as the demand designates, by*
13 *the person, if a natural person, to whom the demand*
14 *is directed or, if not a natural person, by any person*
15 *responsible for answering each reporting requirement*
16 *or question, to the effect that all information required*
17 *by the demand and in the possession, custody, control,*
18 *or knowledge of the person to whom the demand is di-*
19 *rected has been submitted.*

20 (13) *TESTIMONY.—*

21 (A) *IN GENERAL.—*

22 (i) *OATH OR AFFIRMATION.—Any Bu-*
23 *reau investigator before whom oral testi-*
24 *mony is to be taken shall put the witness*
25 *under oath or affirmation, and shall per-*

1 sonally, or by any individual acting under
2 the direction of and in the presence of the
3 Bureau investigator, record the testimony of
4 the witness.

5 (ii) *TRANSCRIPTION.*—*The testimony*
6 *shall be taken stenographically and tran-*
7 *scribed.*

8 (iii) *TRANSMISSION TO CUSTODIAN.*—
9 *After the testimony is fully transcribed, the*
10 *Bureau investigator before whom the testi-*
11 *mony is taken shall promptly transmit a*
12 *copy of the transcript of the testimony to*
13 *the custodian.*

14 (B) *PARTIES PRESENT.*—*Any Bureau in-*
15 *vestigator before whom oral testimony is to be*
16 *taken shall exclude from the place where the tes-*
17 *timony is to be taken all other persons, except*
18 *the person giving the testimony, the attorney of*
19 *that person, the officer before whom the testi-*
20 *mony is to be taken, and any stenographer tak-*
21 *ing such testimony.*

22 (C) *LOCATION.*—*The oral testimony of any*
23 *person taken pursuant to a civil investigative de-*
24 *mand shall be taken in the judicial district of the*
25 *United States in which such person resides, is*

1 *found, or transacts business, or in such other*
2 *place as may be agreed upon by the Bureau in-*
3 *vestigator before whom the oral testimony of such*
4 *person is to be taken and such person.*

5 (D) *ATTORNEY REPRESENTATION.*—

6 (i) *IN GENERAL.*—*Any person com-*
7 *pelled to appear under a civil investigative*
8 *demand for oral testimony pursuant to this*
9 *section may be accompanied, represented,*
10 *and advised by an attorney.*

11 (ii) *AUTHORITY.*—*The attorney may*
12 *advise a person described in clause (i), in*
13 *confidence, either upon the request of such*
14 *person or upon the initiative of the attor-*
15 *ney, with respect to any question asked of*
16 *such person.*

17 (iii) *OBJECTIONS.*—*A person described*
18 *in clause (i), or the attorney for that per-*
19 *son, may object on the record to any ques-*
20 *tion, in whole or in part, and such person*
21 *shall briefly state for the record the reason*
22 *for the objection. An objection may properly*
23 *be made, received, and entered upon the*
24 *record when it is claimed that such person*
25 *is entitled to refuse to answer the question*

1 *on grounds of any constitutional or other*
2 *legal right or privilege, including the privi-*
3 *lege against self-incrimination, but such*
4 *person shall not otherwise object to or refuse*
5 *to answer any question, and such person or*
6 *attorney shall not otherwise interrupt the*
7 *oral examination.*

8 *(iv) REFUSAL TO ANSWER.—If a per-*
9 *son described in clause (i) refuses to answer*
10 *any question—*

11 *(I) the Bureau may petition the*
12 *district court of the United States pur-*
13 *suant to this section for an order com-*
14 *PELLING such person to answer such*
15 *question; and*

16 *(II) on grounds of the privilege*
17 *against self-incrimination, the testi-*
18 *mony of such person may be compelled*
19 *in accordance with the provisions of*
20 *section 6004 of title 18, United States*
21 *Code.*

22 *(E) TRANSCRIPTS.—For purposes of this*
23 *subsection—*

24 *(i) after the testimony of any witness*
25 *is fully transcribed, the Bureau investigator*

1 *shall afford the witness (who may be accom-*
2 *panied by an attorney) a reasonable oppor-*
3 *tunity to examine the transcript;*

4 *(ii) the transcript shall be read to or*
5 *by the witness, unless such examination and*
6 *reading are waived by the witness;*

7 *(iii) any changes in form or substance*
8 *which the witness desires to make shall be*
9 *entered and identified upon the transcript*
10 *by the Bureau investigator, with a state-*
11 *ment of the reasons given by the witness for*
12 *making such changes;*

13 *(iv) the transcript shall be signed by*
14 *the witness, unless the witness in writing*
15 *waives the signing, is ill, cannot be found,*
16 *or refuses to sign; and*

17 *(v) if the transcript is not signed by*
18 *the witness during the 30-day period fol-*
19 *lowing the date on which the witness is first*
20 *afforded a reasonable opportunity to exam-*
21 *ine the transcript, the Bureau investigator*
22 *shall sign the transcript and state on the*
23 *record the fact of the waiver, illness, absence*
24 *of the witness, or the refusal to sign, to-*

1 *gether with any reasons given for the failure*
2 *to sign.*

3 *(F) CERTIFICATION BY INVESTIGATOR.—The*
4 *Bureau investigator shall certify on the tran-*
5 *script that the witness was duly sworn by him*
6 *or her and that the transcript is a true record*
7 *of the testimony given by the witness, and the*
8 *Bureau investigator shall promptly deliver the*
9 *transcript or send it by registered or certified*
10 *mail to the custodian.*

11 *(G) COPY OF TRANSCRIPT.—The Bureau in-*
12 *vestigator shall furnish a copy of the transcript*
13 *(upon payment of reasonable charges for the*
14 *transcript) to the witness only, except that the*
15 *Bureau may for good cause limit such witness to*
16 *inspection of the official transcript of his testi-*
17 *mony.*

18 *(H) WITNESS FEES.—Any witness appear-*
19 *ing for the taking of oral testimony pursuant to*
20 *a civil investigative demand shall be entitled to*
21 *the same fees and mileage which are paid to wit-*
22 *nesses in the district courts of the United States.*

23 *(d) CONFIDENTIAL TREATMENT OF DEMAND MATE-*
24 *RIAL.—*

1 (1) *IN GENERAL.*—*Documentary materials and*
2 *tangible things received as a result of a civil inves-*
3 *tigative demand shall be subject to requirements and*
4 *procedures regarding confidentiality, in accordance*
5 *with rules established by the Bureau.*

6 (2) *DISCLOSURE TO CONGRESS.*—*No rule estab-*
7 *lished by the Bureau regarding the confidentiality of*
8 *materials submitted to, or otherwise obtained by, the*
9 *Bureau shall be intended to prevent disclosure to ei-*
10 *ther House of Congress or to an appropriate com-*
11 *mittee of the Congress, except that the Bureau is per-*
12 *mitted to adopt rules allowing prior notice to any*
13 *party that owns or otherwise provided the material to*
14 *the Bureau and had designated such material as con-*
15 *fidential.*

16 (e) *PETITION FOR ENFORCEMENT.*—

17 (1) *IN GENERAL.*—*Whenever any person fails to*
18 *comply with any civil investigative demand duly*
19 *served upon him under this section, or whenever satis-*
20 *factory copying or reproduction of material requested*
21 *pursuant to the demand cannot be accomplished and*
22 *such person refuses to surrender such material, the*
23 *Bureau, through such officers or attorneys as it may*
24 *designate, may file, in the district court of the United*
25 *States for any judicial district in which such person*

1 *resides, is found, or transacts business, and serve*
2 *upon such person, a petition for an order of such*
3 *court for the enforcement of this section.*

4 (2) *SERVICE OF PROCESS.*—*All process of any*
5 *court to which application may be made as provided*
6 *in this subsection may be served in any judicial dis-*
7 *trict.*

8 (f) *PETITION FOR ORDER MODIFYING OR SETTING*
9 *ASIDE DEMAND.*—

10 (1) *IN GENERAL.*—*Not later than 20 days after*
11 *the service of any civil investigative demand upon*
12 *any person under subsection (b), or at any time be-*
13 *fore the return date specified in the demand, which-*
14 *ever period is shorter, or within such period exceeding*
15 *20 days after service or in excess of such return date*
16 *as may be prescribed in writing, subsequent to serv-*
17 *ice, by any Bureau investigator named in the de-*
18 *mand, such person may file with the Bureau a peti-*
19 *tion for an order by the Bureau modifying or setting*
20 *aside the demand.*

21 (2) *COMPLIANCE DURING PENDENCY.*—*The time*
22 *permitted for compliance with the demand in whole*
23 *or in part, as determined proper and ordered by the*
24 *Bureau, shall not run during the pendency of a peti-*
25 *tion under paragraph (1) at the Bureau, except that*

1 *such person shall comply with any portions of the de-*
2 *mand not sought to be modified or set aside.*

3 (3) *SPECIFIC GROUNDS.*—*A petition under para-*
4 *graph (1) shall specify each ground upon which the*
5 *petitioner relies in seeking relief, and may be based*
6 *upon any failure of the demand to comply with the*
7 *provisions of this section, or upon any constitutional*
8 *or other legal right or privilege of such person.*

9 (g) *CUSTODIAL CONTROL.*—*At any time during which*
10 *any custodian is in custody or control of any documentary*
11 *material, tangible things, reports, answers to questions, or*
12 *transcripts of oral testimony given by any person in com-*
13 *pliance with any civil investigative demand, such person*
14 *may file, in the district court of the United States for the*
15 *judicial district within which the office of such custodian*
16 *is situated, and serve upon such custodian, a petition for*
17 *an order of such court requiring the performance by such*
18 *custodian of any duty imposed upon him by this section*
19 *or rule promulgated by the Bureau.*

20 (h) *JURISDICTION OF COURT.*—

21 (1) *IN GENERAL.*—*Whenever any petition is filed*
22 *in any district court of the United States under this*
23 *section, such court shall have jurisdiction to hear and*
24 *determine the matter so presented, and to enter such*

1 *order or orders as may be required to carry out the*
2 *provisions of this section.*

3 (2) *APPEAL.*—*Any final order entered as de-*
4 *scribed in paragraph (1) shall be subject to appeal*
5 *pursuant to section 1291 of title 28, United States*
6 *Code.*

7 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

8 (a) *IN GENERAL.*—*The Bureau is authorized to con-*
9 *duct hearings and adjudication proceedings with respect to*
10 *any person in the manner prescribed by chapter 5 of title*
11 *5, United States Code in order to ensure or enforce compli-*
12 *ance with—*

13 (1) *the provisions of this title, including any*
14 *rules prescribed by the Bureau under this title; and*

15 (2) *any other Federal law that the Bureau is au-*
16 *thorized to enforce, including an enumerated con-*
17 *sumer law, and any regulations or order prescribed*
18 *thereunder, unless such Federal law specifically limits*
19 *the Bureau from conducting a hearing or adjudica-*
20 *tion proceeding and only to the extent of such limita-*
21 *tion.*

22 (b) *SPECIAL RULES FOR CEASE-AND-DESIST PRO-*
23 *CEEDINGS.*—

24 (1) *ORDERS AUTHORIZED.*—

1 (A) *IN GENERAL.*—If, in the opinion of the
2 Bureau, any covered person or service provider
3 is engaging or has engaged in an activity that
4 violates a law, rule, or any condition imposed in
5 writing on the person by the Bureau, the Bureau
6 may, subject to sections 1024, 1025, and 1026,
7 issue and serve upon the covered person or serv-
8 ice provider a notice of charges in respect thereof.

9 (B) *CONTENT OF NOTICE.*—The notice
10 under subparagraph (A) shall contain a state-
11 ment of the facts constituting the alleged viola-
12 tion or violations, and shall fix a time and place
13 at which a hearing will be held to determine
14 whether an order to cease and desist should issue
15 against the covered person or service provider,
16 such hearing to be held not earlier than 30 days
17 nor later than 60 days after the date of service
18 of such notice, unless an earlier or a later date
19 is set by the Bureau, at the request of any party
20 so served.

21 (C) *CONSENT.*—Unless the party or parties
22 served under subparagraph (B) appear at the
23 hearing personally or by a duly authorized rep-
24 resentative, such person shall be deemed to have

1 *consented to the issuance of the cease-and-desist*
2 *order.*

3 (D) *PROCEDURE.*—*In the event of consent*
4 *under subparagraph (C), or if, upon the record,*
5 *made at any such hearing, the Bureau finds that*
6 *any violation specified in the notice of charges*
7 *has been established, the Bureau may issue and*
8 *serve upon the covered person or service provider*
9 *an order to cease and desist from the violation*
10 *or practice. Such order may, by provisions which*
11 *may be mandatory or otherwise, require the cov-*
12 *ered person or service provider to cease and de-*
13 *sist from the subject activity, and to take affirm-*
14 *ative action to correct the conditions resulting*
15 *from any such violation.*

16 (2) *EFFECTIVENESS OF ORDER.*—*A cease-and-de-*
17 *sist order shall become effective at the expiration of 30*
18 *days after the date of service of an order under para-*
19 *graph (1) upon the covered person or service provider*
20 *concerned (except in the case of a cease-and-desist*
21 *order issued upon consent, which shall become effec-*
22 *tive at the time specified therein), and shall remain*
23 *effective and enforceable as provided therein, except to*
24 *such extent as the order is stayed, modified, termi-*

1 *nated, or set aside by action of the Bureau or a re-*
2 *viewing court.*

3 (3) *DECISION AND APPEAL.*—*Any hearing pro-*
4 *vided for in this subsection shall be held in the Fed-*
5 *eral judicial district or in the territory in which the*
6 *residence or principal office or place of business of the*
7 *person is located unless the person consents to another*
8 *place, and shall be conducted in accordance with the*
9 *provisions of chapter 5 of title 5 of the United States*
10 *Code. After such hearing, and within 90 days after*
11 *the Bureau has notified the parties that the case has*
12 *been submitted to the Bureau for final decision, the*
13 *Bureau shall render its decision (which shall include*
14 *findings of fact upon which its decision is predicated)*
15 *and shall issue and serve upon each party to the pro-*
16 *ceeding an order or orders consistent with the provi-*
17 *sions of this section. Judicial review of any such*
18 *order shall be exclusively as provided in this sub-*
19 *section. Unless a petition for review is timely filed in*
20 *a court of appeals of the United States, as provided*
21 *in paragraph (4), and thereafter until the record in*
22 *the proceeding has been filed as provided in para-*
23 *graph (4), the Bureau may at any time, upon such*
24 *notice and in such manner as the Bureau shall deter-*
25 *mine proper, modify, terminate, or set aside any such*

1 order. Upon filing of the record as provided, the Bu-
2 reau may modify, terminate, or set aside any such
3 order with permission of the court.

4 (4) APPEAL TO COURT OF APPEALS.—Any party
5 to any proceeding under this subsection may obtain
6 a review of any order served pursuant to this sub-
7 section (other than an order issued with the consent
8 of the person concerned) by the filing in the court of
9 appeals of the United States for the circuit in which
10 the principal office of the covered person is located, or
11 in the United States Court of Appeals for the District
12 of Columbia Circuit, within 30 days after the date of
13 service of such order, a written petition praying that
14 the order of the Bureau be modified, terminated, or
15 set aside. A copy of such petition shall be forthwith
16 transmitted by the clerk of the court to the Bureau,
17 and thereupon the Bureau shall file in the court the
18 record in the proceeding, as provided in section 2112
19 of title 28 of the United States Code. Upon the filing
20 of such petition, such court shall have jurisdiction,
21 which upon the filing of the record shall except as
22 provided in the last sentence of paragraph (3) be ex-
23 clusive, to affirm, modify, terminate, or set aside, in
24 whole or in part, the order of the Bureau. Review of
25 such proceedings shall be had as provided in chapter

1 7 of title 5 of the United States Code. The judgment
2 and decree of the court shall be final, except that the
3 same shall be subject to review by the Supreme Court
4 of the United States, upon certiorari, as provided in
5 section 1254 of title 28 of the United States Code.

6 (5) *NO STAY.*—The commencement of proceedings
7 for judicial review under paragraph (4) shall not, un-
8 less specifically ordered by the court, operate as a
9 stay of any order issued by the Bureau.

10 (c) *SPECIAL RULES FOR TEMPORARY CEASE-AND-DE-*
11 *SIST PROCEEDINGS.*—

12 (1) *IN GENERAL.*—Whenever the Bureau deter-
13 mines that the violation specified in the notice of
14 charges served upon a person, including a service pro-
15 vider, pursuant to subsection (b), or the continuation
16 thereof, is likely to cause the person to be insolvent or
17 otherwise prejudice the interests of consumers before
18 the completion of the proceedings conducted pursuant
19 to subsection (b), the Bureau may issue a temporary
20 order requiring the person to cease and desist from
21 any such violation or practice and to take affirmative
22 action to prevent or remedy such insolvency or other
23 condition pending completion of such proceedings.
24 Such order may include any requirement authorized
25 under this subtitle. Such order shall become effective

1 upon service upon the person and, unless set aside,
2 limited, or suspended by a court in proceedings au-
3 thorized by paragraph (2), shall remain effective and
4 enforceable pending the completion of the administra-
5 tive proceedings pursuant to such notice and until
6 such time as the Bureau shall dismiss the charges
7 specified in such notice, or if a cease-and-desist order
8 is issued against the person, until the effective date of
9 such order.

10 (2) *APPEAL.*—Not later than 10 days after the
11 covered person or service provider concerned has been
12 served with a temporary cease-and-desist order, the
13 person may apply to the United States district court
14 for the judicial district in which the residence or
15 principal office or place of business of the person is
16 located, or the United States District Court for the
17 District of Columbia, for an injunction setting aside,
18 limiting, or suspending the enforcement, operation, or
19 effectiveness of such order pending the completion of
20 the administrative proceedings pursuant to the notice
21 of charges served upon the person under subsection
22 (b), and such court shall have jurisdiction to issue
23 such injunction.

24 (3) *INCOMPLETE OR INACCURATE RECORDS.*—

1 (A) *TEMPORARY ORDER.*—*If a notice of*
2 *charges served under subsection (b) specifies, on*
3 *the basis of particular facts and circumstances,*
4 *that the books and records of a covered person or*
5 *service provider are so incomplete or inaccurate*
6 *that the Bureau is unable to determine the fi-*
7 *ancial condition of that person or the details or*
8 *purpose of any transaction or transactions that*
9 *may have a material effect on the financial con-*
10 *dition of that person, the Bureau may issue a*
11 *temporary order requiring—*

12 (i) *the cessation of any activity or*
13 *practice which gave rise, whether in whole*
14 *or in part, to the incomplete or inaccurate*
15 *state of the books or records; or*

16 (ii) *affirmative action to restore such*
17 *books or records to a complete and accurate*
18 *state, until the completion of the pro-*
19 *ceedings under subsection (b)(1).*

20 (B) *EFFECTIVE PERIOD.*—*Any temporary*
21 *order issued under subparagraph (A)—*

22 (i) *shall become effective upon service;*
23 *and*

24 (ii) *unless set aside, limited, or sus-*
25 *pending by a court in proceedings under*

1 *paragraph (2), shall remain in effect and*
2 *enforceable until the earlier of—*

3 *(I) the completion of the pro-*
4 *ceeding initiated under subsection (b)*
5 *in connection with the notice of*
6 *charges; or*

7 *(II) the date the Bureau deter-*
8 *mines, by examination or otherwise,*
9 *that the books and records of the cov-*
10 *ered person or service provider are ac-*
11 *curate and reflect the financial condi-*
12 *tion thereof.*

13 *(d) SPECIAL RULES FOR ENFORCEMENT OF OR-*
14 *DERS.—*

15 *(1) IN GENERAL.—The Bureau may in its dis-*
16 *cretion apply to the United States district court with-*
17 *in the jurisdiction of which the principal office or*
18 *place of business of the person is located, for the en-*
19 *forcement of any effective and outstanding notice or*
20 *order issued under this section, and such court shall*
21 *have jurisdiction and power to order and require*
22 *compliance herewith.*

23 *(2) EXCEPTION.—Except as otherwise provided*
24 *in this subsection, no court shall have jurisdiction to*
25 *affect by injunction or otherwise the issuance or en-*

1 *forcement of any notice or order or to review, modify,*
2 *suspend, terminate, or set aside any such notice or*
3 *order.*

4 *(e) RULES.—The Bureau shall prescribe rules estab-*
5 *lishing such procedures as may be necessary to carry out*
6 *this section.*

7 **SEC. 1054. LITIGATION AUTHORITY.**

8 *(a) IN GENERAL.—If any person violates a Federal*
9 *consumer financial law, the Bureau may, subject to sections*
10 *1024, 1025, and 1026, commence a civil action against such*
11 *person to impose a civil penalty or to seek all appropriate*
12 *legal and equitable relief including a permanent or tem-*
13 *porary injunction as permitted by law.*

14 *(b) REPRESENTATION.—The Bureau may act in its*
15 *own name and through its own attorneys in enforcing any*
16 *provision of this title, rules thereunder, or any other law*
17 *or regulation, or in any action, suit, or proceeding to which*
18 *the Bureau is a party.*

19 *(c) COMPROMISE OF ACTIONS.—The Bureau may com-*
20 *promise or settle any action if such compromise is approved*
21 *by the court.*

22 *(d) NOTICE TO THE ATTORNEY GENERAL.—When*
23 *commencing a civil action under Federal consumer finan-*
24 *cial law, or any rule thereunder, the Bureau shall notify*
25 *the Attorney General and, with respect to a civil action*

1 *against an insured depository institution or insured credit*
2 *union, the appropriate prudential regulator.*

3 (e) *APPEARANCE BEFORE THE SUPREME COURT.—*
4 *The Bureau may represent itself in its own name before*
5 *the Supreme Court of the United States, provided that the*
6 *Bureau makes a written request to the Attorney General*
7 *within the 10-day period which begins on the date of entry*
8 *of the judgment which would permit any party to file a*
9 *petition for writ of certiorari, and the Attorney General*
10 *concurs with such request or fails to take action within 60*
11 *days of the request of the Bureau.*

12 (f) *FORUM.—Any civil action brought under this title*
13 *may be brought in a United States district court or in any*
14 *court of competent jurisdiction of a state in a district in*
15 *which the defendant is located or resides or is doing busi-*
16 *ness, and such court shall have jurisdiction to enjoin such*
17 *person and to require compliance with any Federal con-*
18 *sumer financial law.*

19 (g) *TIME FOR BRINGING ACTION.—*

20 (1) *IN GENERAL.—Except as otherwise permitted*
21 *by law or equity, no action may be brought under*
22 *this title more than 3 years after the date of discovery*
23 *of the violation to which an action relates.*

24 (2) *LIMITATIONS UNDER OTHER FEDERAL*
25 *LAWS.—*

1 (A) *IN GENERAL.*—For purposes of this sub-
2 section, an action arising under this title does
3 not include claims arising solely under enumer-
4 ated consumer laws.

5 (B) *BUREAU AUTHORITY.*—In any action
6 arising solely under an enumerated consumer
7 law, the Bureau may commence, defend, or inter-
8 vene in the action in accordance with the re-
9 quirements of that provision of law, as applica-
10 ble.

11 (C) *TRANSFERRED AUTHORITY.*—In any
12 action arising solely under laws for which au-
13 thorities were transferred under subtitles F and
14 H, the Bureau may commence, defend, or inter-
15 vene in the action in accordance with the re-
16 quirements of that provision of law, as applica-
17 ble.

18 **SEC. 1055. RELIEF AVAILABLE.**

19 (a) *ADMINISTRATIVE PROCEEDINGS OR COURT AC-*
20 *TIONS.*—

21 (1) *JURISDICTION.*—The court (or the Bureau, as
22 the case may be) in an action or adjudication pro-
23 ceeding brought under Federal consumer financial
24 law, shall have jurisdiction to grant any appropriate
25 legal or equitable relief with respect to a violation of

1 *Federal consumer financial law, including a violation*
2 *of a rule or order prescribed under a Federal con-*
3 *sumer financial law.*

4 (2) *RELIEF.—Relief under this section may in-*
5 *clude, without limitation—*

6 (A) *rescission or reformation of contracts;*

7 (B) *refund of moneys or return of real*
8 *property;*

9 (C) *restitution;*

10 (D) *disgorgement or compensation for un-*
11 *just enrichment;*

12 (E) *payment of damages or other monetary*
13 *relief;*

14 (F) *public notification regarding the viola-*
15 *tion, including the costs of notification;*

16 (G) *limits on the activities or functions of*
17 *the person; and*

18 (H) *civil money penalties, as set forth more*
19 *fully in subsection (c).*

20 (3) *NO EXEMPLARY OR PUNITIVE DAMAGES.—*

21 *Nothing in this subsection shall be construed as au-*
22 *thorizing the imposition of exemplary or punitive*
23 *damages.*

24 (b) *RECOVERY OF COSTS.—In any action brought by*
25 *the Bureau, a State attorney general, or any State regulator*

1 *to enforce any Federal consumer financial law, the Bureau,*
2 *the State attorney general, or the State regulator may re-*
3 *cover its costs in connection with prosecuting such action*
4 *if the Bureau, the State attorney general, or the State regu-*
5 *lator is the prevailing party in the action.*

6 (c) *CIVIL MONEY PENALTY IN COURT AND ADMINIS-*
7 *TRATIVE ACTIONS.—*

8 (1) *IN GENERAL.—Any person that violates,*
9 *through any act or omission, any provision of Federal*
10 *consumer financial law shall forfeit and pay a civil*
11 *penalty pursuant to this subsection.*

12 (2) *PENALTY AMOUNTS.—*

13 (A) *FIRST TIER.—For any violation of a*
14 *law, rule, or final order or condition imposed in*
15 *writing by the Bureau, a civil penalty may not*
16 *exceed \$5,000 for each day during which such*
17 *violation or failure to pay continues.*

18 (B) *SECOND TIER.—Notwithstanding para-*
19 *graph (A), for any person that recklessly engages*
20 *in a violation of a Federal consumer financial*
21 *law, a civil penalty may not exceed \$25,000 for*
22 *each day during which such violation continues.*

23 (C) *THIRD TIER.—Notwithstanding sub-*
24 *paragraphs (A) and (B), for any person that*
25 *knowingly violates a Federal consumer financial*

1 *law, a civil penalty may not exceed \$1,000,000*
2 *for each day during which such violation con-*
3 *tinues.*

4 (3) *MITIGATING FACTORS.*—*In determining the*
5 *amount of any penalty assessed under paragraph (2),*
6 *the Bureau or the court shall take into account the*
7 *appropriateness of the penalty with respect to—*

8 (A) *the size of financial resources and good*
9 *faith of the person charged;*

10 (B) *the gravity of the violation or failure to*
11 *pay;*

12 (C) *the severity of the risks to or losses of*
13 *the consumer, which may take into account the*
14 *number of products or services sold or provided;*

15 (D) *the history of previous violations; and*

16 (E) *such other matters as justice may re-*
17 *quire.*

18 (4) *AUTHORITY TO MODIFY OR REMIT PEN-*
19 *ALTY.*—*The Bureau may compromise, modify, or*
20 *remit any penalty which may be assessed or had al-*
21 *ready been assessed under paragraph (2). The amount*
22 *of such penalty, when finally determined, shall be ex-*
23 *clusive of any sums owed by the person to the United*
24 *States in connection with the costs of the proceeding,*

1 *and may be deducted from any sums owing by the*
2 *United States to the person charged.*

3 (5) *NOTICE AND HEARING.*—*No civil penalty*
4 *may be assessed under this subsection with respect to*
5 *a violation of any Federal consumer financial law,*
6 *unless—*

7 (A) *the Bureau gives notice and an oppor-*
8 *tunity for a hearing to the person accused of the*
9 *violation; or*

10 (B) *the appropriate court has ordered such*
11 *assessment and entered judgment in favor of the*
12 *Bureau.*

13 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

14 *If the Bureau obtains evidence that any person, domes-*
15 *tic or foreign, has engaged in conduct that may constitute*
16 *a violation of Federal criminal law, the Bureau shall have*
17 *the power to transmit such evidence to the Attorney General*
18 *of the United States, who may institute criminal pro-*
19 *ceedings under appropriate law. Nothing in this section af-*
20 *fects any other authority of the Bureau to disclose informa-*
21 *tion.*

22 **SEC. 1057. EMPLOYEE PROTECTION.**

23 (a) *IN GENERAL.*—*No covered person or service pro-*
24 *vider shall terminate or in any other way discriminate*
25 *against, or cause to be terminated or discriminated against,*

1 *any covered employee or any authorized representative of*
2 *covered employees by reason of the fact that such employee*
3 *or representative, whether at the initiative of the employee*
4 *or in the ordinary course of the duties of the employee (or*
5 *any person acting pursuant to a request of the employee),*
6 *has—*

7 (1) *provided, caused to be provided, or is about*
8 *to provide or cause to be provided, information to the*
9 *employer, the Bureau, or any other State, local, or*
10 *Federal, government authority or law enforcement*
11 *agency relating to any violation of, or any act or*
12 *omission that the employee reasonably believes to be*
13 *a violation of, any provision of this title or any other*
14 *provision of law that is subject to the jurisdiction of*
15 *the Bureau, or any rule, order, standard, or prohibi-*
16 *tion prescribed by the Bureau;*

17 (2) *testified or will testify in any proceeding re-*
18 *sulting from the administration or enforcement of*
19 *any provision of this title or any other provision of*
20 *law that is subject to the jurisdiction of the Bureau,*
21 *or any rule, order, standard, or prohibition prescribed*
22 *by the Bureau;*

23 (3) *filed, instituted, or caused to be filed or insti-*
24 *tuted any proceeding under any Federal consumer fi-*
25 *nancial law; or*

1 (4) *objected to, or refused to participate in, any*
2 *activity, policy, practice, or assigned task that the*
3 *employee (or other such person) reasonably believed to*
4 *be in violation of any law, rule, order, standard, or*
5 *prohibition, subject to the jurisdiction of, or enforce-*
6 *able by, the Bureau.*

7 (b) *DEFINITION OF COVERED EMPLOYEE.—For the*
8 *purposes of this section, the term “covered employee” means*
9 *any individual performing tasks related to the offering or*
10 *provision of a consumer financial product or service.*

11 (c) *PROCEDURES AND TIMETABLES.—*

12 (1) *COMPLAINT.—*

13 (A) *IN GENERAL.—A person who believes*
14 *that he or she has been discharged or otherwise*
15 *discriminated against by any person in viola-*
16 *tion of subsection (a) may, not later than 180*
17 *days after the date on which such alleged viola-*
18 *tion occurs, file (or have any person file on his*
19 *or her behalf) a complaint with the Secretary of*
20 *Labor alleging such discharge or discrimination*
21 *and identifying the person responsible for such*
22 *act.*

23 (B) *ACTIONS OF SECRETARY OF LABOR.—*

24 *Upon receipt of such a complaint, the Secretary*
25 *of Labor shall notify, in writing, the person*

1 *named in the complaint who is alleged to have*
2 *committed the violation, of—*

3 *(i) the filing of the complaint;*

4 *(ii) the allegations contained in the*
5 *complaint;*

6 *(iii) the substance of evidence sup-*
7 *porting the complaint; and*

8 *(iv) opportunities that will be afforded*
9 *to such person under paragraph (2).*

10 (2) *INVESTIGATION BY SECRETARY OF LABOR.—*

11 (A) *IN GENERAL.—Not later than 60 days*
12 *after the date of receipt of a complaint filed*
13 *under paragraph (1), and after affording the*
14 *complainant and the person named in the com-*
15 *plaint who is alleged to have committed the vio-*
16 *lation that is the basis for the complaint an oppor-*
17 *tunity to submit to the Secretary of Labor a*
18 *written response to the complaint and an oppor-*
19 *tunity to meet with a representative of the Sec-*
20 *retary of Labor to present statements from wit-*
21 *nesses, the Secretary of Labor shall—*

22 *(i) initiate an investigation and deter-*
23 *mine whether there is reasonable cause to*
24 *believe that the complaint has merit; and*

1 (ii) notify the complainant and the
2 person alleged to have committed the viola-
3 tion of subsection (a), in writing, of such
4 determination.

5 (B) NOTICE OF RELIEF AVAILABLE.—If the
6 Secretary of Labor concludes that there is rea-
7 sonable cause to believe that a violation of sub-
8 section (a) has occurred, the Secretary of Labor
9 shall, together with the notice under subpara-
10 graph (A)(ii), issue a preliminary order pro-
11 viding the relief prescribed by paragraph (4)(B).

12 (C) REQUEST FOR HEARING.—Not later
13 than 30 days after the date of receipt of notifica-
14 tion of a determination of the Secretary of Labor
15 under this paragraph, either the person alleged
16 to have committed the violation or the complain-
17 ant may file objections to the findings or pre-
18 liminary order, or both, and request a hearing
19 on the record. The filing of such objections shall
20 not operate to stay any reinstatement remedy
21 contained in the preliminary order. Any such
22 hearing shall be conducted expeditiously, and if
23 a hearing is not requested in such 30-day period,
24 the preliminary order shall be deemed a final
25 order that is not subject to judicial review.

1 (3) *GROUND*S *FOR DETERMINATION OF COM-*
2 *PLAINTS.*—

3 (A) *IN GENERAL.*—*The Secretary of Labor*
4 *shall dismiss a complaint filed under this sub-*
5 *section, and shall not conduct an investigation*
6 *otherwise required under paragraph (2), unless*
7 *the complainant makes a prima facie showing*
8 *that any behavior described in paragraphs (1)*
9 *through (4) of subsection (a) was a contributing*
10 *factor in the unfavorable personnel action alleged*
11 *in the complaint.*

12 (B) *REBUTTAL EVIDENCE.*—*Notwith-*
13 *standing a finding by the Secretary of Labor*
14 *that the complainant has made the showing re-*
15 *quired under subparagraph (A), no investigation*
16 *otherwise required under paragraph (2) shall be*
17 *conducted, if the employer demonstrates, by clear*
18 *and convincing evidence, that the employer*
19 *would have taken the same unfavorable personnel*
20 *action in the absence of that behavior.*

21 (C) *EVIDENTIARY STANDARDS.*—*The Sec-*
22 *retary of Labor may determine that a violation*
23 *of subsection (a) has occurred only if the com-*
24 *plainant demonstrates that any behavior de-*
25 *scribed in paragraphs (1) through (4) of sub-*

1 *section (a) was a contributing factor in the unfa-*
2 *vorable personnel action alleged in the com-*
3 *plaint. Relief may not be ordered under subpara-*
4 *graph (A) if the employer demonstrates by clear*
5 *and convincing evidence that the employer would*
6 *have taken the same unfavorable personnel ac-*
7 *tion in the absence of that behavior.*

8 *(4) ISSUANCE OF FINAL ORDERS; REVIEW PROCE-*
9 *DURES.—*

10 *(A) TIMING.—Not later than 120 days after*
11 *the date of conclusion of any hearing under*
12 *paragraph (2), the Secretary of Labor shall issue*
13 *a final order providing the relief prescribed by*
14 *this paragraph or denying the complaint. At any*
15 *time before issuance of a final order, a pro-*
16 *ceeding under this subsection may be terminated*
17 *on the basis of a settlement agreement entered*
18 *into by the Secretary of Labor, the complainant,*
19 *and the person alleged to have committed the*
20 *violation.*

21 *(B) PENALTIES.—*

22 *(i) ORDER OF SECRETARY OF*
23 *LABOR.—If, in response to a complaint filed*
24 *under paragraph (1), the Secretary of*
25 *Labor determines that a violation of sub-*

1 *section (a) has occurred, the Secretary of*
2 *Labor shall order the person who committed*
3 *such violation—*

4 *(I) to take affirmative action to*
5 *abate the violation;*

6 *(II) to reinstate the complainant*
7 *to his or her former position, together*
8 *with compensation (including back*
9 *pay) and restore the terms, conditions,*
10 *and privileges associated with his or*
11 *her employment; and*

12 *(III) to provide compensatory*
13 *damages to the complainant.*

14 *(ii) PENALTY.—If an order is issued*
15 *under clause (i), the Secretary of Labor, at*
16 *the request of the complainant, shall assess*
17 *against the person against whom the order*
18 *is issued, a sum equal to the aggregate*
19 *amount of all costs and expenses (including*
20 *attorney fees and expert witness fees) rea-*
21 *sonably incurred, as determined by the Sec-*
22 *retary of Labor, by the complainant for, or*
23 *in connection with, the bringing of the com-*
24 *plaint upon which the order was issued.*

1 (C) *PENALTY FOR FRIVOLOUS CLAIMS.*—If
2 the Secretary of Labor finds that a complaint
3 under paragraph (1) is frivolous or has been
4 brought in bad faith, the Secretary of Labor may
5 award to the prevailing employer a reasonable
6 attorney fee, not exceeding \$1,000, to be paid by
7 the complainant.

8 (D) *DE NOVO REVIEW.*—

9 (i) *FAILURE OF THE SECRETARY TO*
10 *ACT.*—If the Secretary of Labor has not
11 issued a final order within 210 days after
12 the date of filing of a complaint under this
13 subsection, or within 90 days after the date
14 of receipt of a written determination, the
15 complainant may bring an action at law or
16 equity for de novo review in the appropriate
17 district court of the United States having
18 jurisdiction, which shall have jurisdiction
19 over such an action without regard to the
20 amount in controversy, and which action
21 shall, at the request of either party to such
22 action, be tried by the court with a jury.

23 (ii) *PROCEDURES.*—A proceeding
24 under clause (i) shall be governed by the
25 same legal burdens of proof specified in

1 *paragraph (3). The court shall have juris-*
2 *isdiction to grant all relief necessary to make*
3 *the employee whole, including injunctive re-*
4 *lief and compensatory damages, includ-*
5 *ing—*

6 *(I) reinstatement with the same*
7 *seniority status that the employee*
8 *would have had, but for the discharge*
9 *or discrimination;*

10 *(II) the amount of back pay, with*
11 *interest; and*

12 *(III) compensation for any special*
13 *damages sustained as a result of the*
14 *discharge or discrimination, including*
15 *litigation costs, expert witness fees, and*
16 *reasonable attorney fees.*

17 *(E) OTHER APPEALS.—Unless the com-*
18 *plainant brings an action under subparagraph*
19 *(D), any person adversely affected or aggrieved*
20 *by a final order issued under subparagraph (A)*
21 *may file a petition for review of the order in the*
22 *United States Court of Appeals for the circuit in*
23 *which the violation with respect to which the*
24 *order was issued, allegedly occurred or the cir-*
25 *cuit in which the complainant resided on the*

1 *date of such violation, not later than 60 days*
2 *after the date of the issuance of the final order*
3 *of the Secretary of Labor under subparagraph*
4 *(A). Review shall conform to chapter 7 of title 5,*
5 *United States Code. The commencement of pro-*
6 *ceedings under this subparagraph shall not, un-*
7 *less ordered by the court, operate as a stay of the*
8 *order. An order of the Secretary of Labor with*
9 *respect to which review could have been obtained*
10 *under this subparagraph shall not be subject to*
11 *judicial review in any criminal or other civil*
12 *proceeding.*

13 (5) *FAILURE TO COMPLY WITH ORDER.—*

14 (A) *ACTIONS BY THE SECRETARY.—If any*
15 *person has failed to comply with a final order*
16 *issued under paragraph (4), the Secretary of*
17 *Labor may file a civil action in the United*
18 *States district court for the district in which the*
19 *violation was found to have occurred, or in the*
20 *United States district court for the District of*
21 *Columbia, to enforce such order. In actions*
22 *brought under this paragraph, the district courts*
23 *shall have jurisdiction to grant all appropriate*
24 *relief including injunctive relief and compen-*
25 *satory damages.*

1 (B) *CIVIL ACTIONS TO COMPEL COMPLI-*
2 *ANCE.—A person on whose behalf an order was*
3 *issued under paragraph (4) may commence a*
4 *civil action against the person to whom such*
5 *order was issued to require compliance with such*
6 *order. The appropriate United States district*
7 *court shall have jurisdiction, without regard to*
8 *the amount in controversy or the citizenship of*
9 *the parties, to enforce such order.*

10 (C) *AWARD OF COSTS AUTHORIZED.—The*
11 *court, in issuing any final order under this*
12 *paragraph, may award costs of litigation (in-*
13 *cluding reasonable attorney and expert witness*
14 *fees) to any party, whenever the court determines*
15 *such award is appropriate.*

16 (D) *MANDAMUS PROCEEDINGS.—Any non-*
17 *discretionary duty imposed by this section shall*
18 *be enforceable in a mandamus proceeding*
19 *brought under section 1361 of title 28, United*
20 *States Code.*

21 (d) *UNENFORCEABILITY OF CERTAIN AGREEMENTS.—*

22 (1) *NO WAIVER OF RIGHTS AND REMEDIES.—Ex-*
23 *cept as provided under paragraph (3), and notwith-*
24 *standing any other provision of law, the rights and*
25 *remedies provided for in this section may not be*

1 *waived by any agreement, policy, form, or condition*
 2 *of employment, including by any predispute arbitra-*
 3 *tion agreement.*

4 (2) *NO PREDISPUTE ARBITRATION AGREE-*
 5 *MENTS.—Except as provided under paragraph (3),*
 6 *and notwithstanding any other provision of law, no*
 7 *predispute arbitration agreement shall be valid or en-*
 8 *forceable to the extent that it requires arbitration of*
 9 *a dispute arising under this section.*

10 (3) *EXCEPTION.—Notwithstanding paragraphs*
 11 *(1) and (2), an arbitration provision in a collective*
 12 *bargaining agreement shall be enforceable as to dis-*
 13 *putes arising under subsection (a)(4), unless the Bu-*
 14 *reau determines, by rule, that such provision is incon-*
 15 *sistent with the purposes of this title.*

16 **SEC. 1058. EFFECTIVE DATE.**

17 *This subtitle shall become effective on the designated*
 18 *transfer date.*

19 **Subtitle F—Transfer of Functions**
 20 **and Personnel; Transitional**
 21 **Provisions**

22 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**
 23 **TION FUNCTIONS.**

24 (a) *DEFINED TERMS.—For purposes of this subtitle—*

1 (1) *the term “consumer financial protection*
2 *functions” means research, rulemaking, issuance of*
3 *orders or guidance, supervision, examination, and en-*
4 *forcement activities, powers, and duties relating to the*
5 *offering or provision of consumer financial products*
6 *or services; and*

7 (2) *the terms “transferor agency” and “trans-*
8 *feror agencies” mean, respectively—*

9 (A) *the Board of Governors (and any Fed-*
10 *eral reserve bank, as the context requires), the*
11 *Federal Deposit Insurance Corporation, the Fed-*
12 *eral Trade Commission, the National Credit*
13 *Union Administration, the Office of the Comp-*
14 *troller of the Currency, the Office of Thrift Su-*
15 *per vision, and the Department of Housing and*
16 *Urban Development, and the heads of those agen-*
17 *cies; and*

18 (B) *the agencies listed in subparagraph (A),*
19 *collectively.*

20 (b) *IN GENERAL.—Except as provided in subsection*
21 *(c), consumer financial protection functions are transferred*
22 *as follows:*

23 (1) *BOARD OF GOVERNORS.—*

24 (A) *TRANSFER OF FUNCTIONS.—All con-*
25 *sumer financial protection functions of the*

1 *Board of Governors are transferred to the Bu-*
2 *reau.*

3 *(B) BOARD OF GOVERNORS AUTHORITY.—*
4 *The Bureau shall have all powers and duties*
5 *that were vested in the Board of Governors, re-*
6 *lating to consumer financial protection func-*
7 *tions, on the day before the designated transfer*
8 *date.*

9 *(2) COMPTROLLER OF THE CURRENCY.—*

10 *(A) TRANSFER OF FUNCTIONS.—All con-*
11 *sumer financial protection functions of the*
12 *Comptroller of the Currency are transferred to*
13 *the Bureau.*

14 *(B) COMPTROLLER AUTHORITY.—The Bu-*
15 *reau shall have all powers and duties that were*
16 *vested in the Comptroller of the Currency, relat-*
17 *ing to consumer financial protection functions,*
18 *on the day before the designated transfer date.*

19 *(3) DIRECTOR OF THE OFFICE OF THRIFT SU-*
20 *PERVISION.—*

21 *(A) TRANSFER OF FUNCTIONS.—All con-*
22 *sumer financial protection functions of the Di-*
23 *rector of the Office of Thrift Supervision are*
24 *transferred to the Bureau.*

1 (B) *DIRECTOR AUTHORITY.*—*The Bureau*
2 *shall have all powers and duties that were vested*
3 *in the Director of the Office of Thrift Super-*
4 *vision, relating to consumer financial protection*
5 *functions, on the day before the designated trans-*
6 *fer date.*

7 (4) *FEDERAL DEPOSIT INSURANCE CORPORA-*
8 *TION.*—

9 (A) *TRANSFER OF FUNCTIONS.*—*All con-*
10 *sumer financial protection functions of the Fed-*
11 *eral Deposit Insurance Corporation are trans-*
12 *ferred to the Bureau.*

13 (B) *CORPORATION AUTHORITY.*—*The Bu-*
14 *reau shall have all powers and duties that were*
15 *vested in the Federal Deposit Insurance Corpora-*
16 *tion, relating to consumer financial protection*
17 *functions, on the day before the designated trans-*
18 *fer date.*

19 (5) *FEDERAL TRADE COMMISSION.*—

20 (A) *TRANSFER OF FUNCTIONS.*—*The au-*
21 *thority of the Federal Trade Commission under*
22 *an enumerated consumer law to prescribe rules,*
23 *issue guidelines, or conduct a study or issue a*
24 *report mandated under such law shall be trans-*
25 *ferred to the Bureau on the designated transfer*

1 *date. Nothing in this title shall be construed to*
2 *require a mandatory transfer of any employee of*
3 *the Federal Trade Commission.*

4 *(B) BUREAU AUTHORITY.—*

5 *(i) IN GENERAL.—The Bureau shall*
6 *have all powers and duties under the enu-*
7 *merated consumer laws to prescribe rules,*
8 *issue guidelines, or to conduct studies or*
9 *issue reports mandated by such laws, that*
10 *were vested in the Federal Trade Commis-*
11 *sion on the day before the designated trans-*
12 *fer date.*

13 *(ii) FEDERAL TRADE COMMISSION*
14 *ACT.—Subject to subtitle B, the Bureau*
15 *may enforce a rule prescribed under the*
16 *Federal Trade Commission Act by the Fed-*
17 *eral Trade Commission with respect to an*
18 *unfair or deceptive act or practice to the ex-*
19 *tent that such rule applies to a covered per-*
20 *son or service provider with respect to the*
21 *offering or provision of a consumer finan-*
22 *cial product or service as if it were a rule*
23 *prescribed under section 1031 of this title.*

24 *(C) AUTHORITY OF THE FEDERAL TRADE*
25 *COMMISSION.—*

1 (i) *IN GENERAL.*—No provision of this
2 title shall be construed as modifying, lim-
3 iting, or otherwise affecting the authority of
4 the Federal Trade Commission under the
5 Federal Trade Commission Act or any other
6 law, other than the authority under an enu-
7 merated consumer law to prescribe rules,
8 issue official guidelines, or conduct a study
9 or issue a report mandated under such law.

10 (ii) *COMMISSION AUTHORITY RELATING*
11 *TO RULES PRESCRIBED BY THE BUREAU.*—
12 Subject to subtitle B, the Federal Trade
13 Commission shall have authority to enforce
14 under the Federal Trade Commission Act
15 (15 U.S.C. 41 et seq.) a rule prescribed by
16 the Bureau under this title with respect to
17 a covered person subject to the jurisdiction
18 of the Federal Trade Commission under
19 that Act, and a violation of such a rule by
20 such a person shall be treated as a violation
21 of a rule issued under section 18 of that Act
22 (15 U.S.C. 57a) with respect to unfair or
23 deceptive acts or practices.

24 (D) *COORDINATION.*—To avoid duplication
25 of or conflict between rules prescribed by the Bu-

1 *reau under section 1031 of this title and the Fed-*
2 *eral Trade Commission under section*
3 *18(a)(1)(B) of the Federal Trade Commission*
4 *Act that apply to a covered person or service*
5 *provider with respect to the offering or provision*
6 *of consumer financial products or services, the*
7 *agencies shall negotiate an agreement with re-*
8 *spect to rulemaking by each agency, including*
9 *consultation with the other agency prior to pro-*
10 *posing a rule and during the comment period.*

11 *(E) DEFERENCE.—No provision of this title*
12 *shall be construed as altering, limiting, expand-*
13 *ing, or otherwise affecting the deference that a*
14 *court affords to the—*

15 *(i) Federal Trade Commission in mak-*
16 *ing determinations regarding the meaning*
17 *or interpretation of any provision of the*
18 *Federal Trade Commission Act, or of any*
19 *other Federal law for which the Commission*
20 *has authority to prescribe rules; or*

21 *(ii) Bureau in making determinations*
22 *regarding the meaning or interpretation of*
23 *any provision of a Federal consumer finan-*
24 *cial law (other than any law described in*
25 *clause (i)).*

1 (6) *NATIONAL CREDIT UNION ADMINISTRATION.*—
2

3 (A) *TRANSFER OF FUNCTIONS.*—*All consumer financial protection functions of the National Credit Union Administration are transferred to the Bureau.*

7 (B) *NATIONAL CREDIT UNION ADMINISTRATION AUTHORITY.*—*The Bureau shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.*

13 (7) *DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.*—
14

15 (A) *TRANSFER OF FUNCTIONS.*—*All consumer protection functions of the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.) are transferred to the Bureau.*

23 (B) *AUTHORITY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.*—*The Bureau shall have all powers and duties that were*

1 *vested in the Secretary of the Department of*
2 *Housing and Urban Development relating to the*
3 *Real Estate Settlement Procedures Act of 1974*
4 *(12 U.S.C. 2601 et seq.), and the Secure and*
5 *Fair Enforcement for Mortgage Licensing Act of*
6 *2008 (12 U.S.C. 5101 et seq.), on the day before*
7 *the designated transfer date.*

8 *(c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAMINA-*
9 *TION AND ENFORCEMENT AUTHORITY REMAINING WITH*
10 *TRANSFEROR AGENCIES.—The transfers of functions in*
11 *subsection (b) do not affect the authority of the agencies*
12 *identified in subsection (b) from conducting examinations*
13 *or initiating and maintaining enforcement proceedings, in-*
14 *cluding performing appropriate supervisory and support*
15 *functions relating thereto, in accordance with sections 1024,*
16 *1025, and 1026.*

17 *(d) EFFECTIVE DATE.—Subsections (b) and (c) shall*
18 *become effective on the designated transfer date.*

19 **SEC. 1062. DESIGNATED TRANSFER DATE.**

20 *(a) IN GENERAL.—Not later than 60 days after the*
21 *date of enactment of this Act, the Secretary shall—*

22 *(1) in consultation with the Chairman of the*
23 *Board of Governors, the Chairperson of the Corpora-*
24 *tion, the Chairman of the Federal Trade Commission,*
25 *the Chairman of the National Credit Union Adminis-*

1 *tration Board, the Comptroller of the Currency, the*
2 *Director of the Office of Thrift Supervision, the Sec-*
3 *retary of the Department of Housing and Urban De-*
4 *velopment, and the Director of the Office of Manage-*
5 *ment and Budget, designate a single calendar date for*
6 *the transfer of functions to the Bureau under section*
7 *1061; and*

8 *(2) publish notice of that designated date in the*
9 *Federal Register.*

10 *(b) CHANGING DESIGNATION.—The Secretary—*

11 *(1) may, in consultation with the Chairman of*
12 *the Board of Governors, the Chairperson of the Fed-*
13 *eral Deposit Insurance Corporation, the Chairman of*
14 *the Federal Trade Commission, the Chairman of the*
15 *National Credit Union Administration Board, the*
16 *Comptroller of the Currency, the Director of the Office*
17 *of Thrift Supervision, the Secretary of the Depart-*
18 *ment of Housing and Urban Development, and the*
19 *Director of the Office of Management and Budget,*
20 *change the date designated under subsection (a); and*

21 *(2) shall publish notice of any changed des-*
22 *ignated date in the Federal Register.*

23 *(c) PERMISSIBLE DATES.—*

24 *(1) IN GENERAL.—Except as provided in para-*
25 *graph (2), any date designated under this section*

1 *shall be not earlier than 180 days, nor later than 18*
2 *months, after the date of enactment of this Act.*

3 (2) *EXTENSION OF TIME.*—*The Secretary may*
4 *designate a date that is later than 18 months after the*
5 *date of enactment of this Act if the Secretary trans-*
6 *mits to appropriate committees of Congress—*

7 (A) *a written determination that orderly*
8 *implementation of this title is not feasible before*
9 *the date that is 18 months after the date of en-*
10 *actment of this Act;*

11 (B) *an explanation of why an extension is*
12 *necessary for the orderly implementation of this*
13 *title; and*

14 (C) *a description of the steps that will be*
15 *taken to effect an orderly and timely implemen-*
16 *tation of this title within the extended time pe-*
17 *riod.*

18 (3) *EXTENSION LIMITED.*—*In no case may any*
19 *date designated under this section be later than 24*
20 *months after the date of enactment of this Act.*

21 **SEC. 1063. SAVINGS PROVISIONS.**

22 (a) *BOARD OF GOVERNORS.*—

23 (1) *EXISTING RIGHTS, DUTIES, AND OBLIGA-*
24 *TIONS NOT AFFECTED.*—*Section 1061(b)(1) does not*
25 *affect the validity of any right, duty, or obligation of*

1 *the United States, the Board of Governors (or any*
2 *Federal reserve bank), or any other person that—*

3 *(A) arises under any provision of law relat-*
4 *ing to any consumer financial protection func-*
5 *tion of the Board of Governors transferred to the*
6 *Bureau by this title; and*

7 *(B) existed on the day before the designated*
8 *transfer date.*

9 *(2) CONTINUATION OF SUITS.—No provision of*
10 *this Act shall abate any proceeding commenced by or*
11 *against the Board of Governors (or any Federal re-*
12 *serve bank) before the designated transfer date with*
13 *respect to any consumer financial protection function*
14 *of the Board of Governors (or any Federal reserve*
15 *bank) transferred to the Bureau by this title, except*
16 *that the Bureau, subject to sections 1024, 1025, and*
17 *1026, shall be substituted for the Board of Governors*
18 *(or Federal reserve bank) as a party to any such pro-*
19 *ceeding as of the designated transfer date.*

20 *(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—*

21 *(1) EXISTING RIGHTS, DUTIES, AND OBLIGA-*
22 *TIONS NOT AFFECTED.—Section 1061(b)(4) does not*
23 *affect the validity of any right, duty, or obligation of*
24 *the United States, the Federal Deposit Insurance Cor-*

1 *poration, the Board of Directors of that Corporation,*
2 *or any other person, that—*

3 *(A) arises under any provision of law relat-*
4 *ing to any consumer financial protection func-*
5 *tion of the Federal Deposit Insurance Corpora-*
6 *tion transferred to the Bureau by this title; and*

7 *(B) existed on the day before the designated*
8 *transfer date.*

9 (2) *CONTINUATION OF SUITS.—No provision of*
10 *this Act shall abate any proceeding commenced by or*
11 *against the Federal Deposit Insurance Corporation*
12 *(or the Board of Directors of that Corporation) before*
13 *the designated transfer date with respect to any con-*
14 *sumer financial protection function of the Federal De-*
15 *posit Insurance Corporation transferred to the Bu-*
16 *reau by this title, except that the Bureau, subject to*
17 *sections 1024, 1025, and 1026, shall be substituted for*
18 *the Federal Deposit Insurance Corporation (or Board*
19 *of Directors) as a party to any such proceeding as of*
20 *the designated transfer date.*

21 (c) *FEDERAL TRADE COMMISSION.—Section*
22 *1061(b)(5) does not affect the validity of any right, duty,*
23 *or obligation of the United States, the Federal Trade Com-*
24 *mission, or any other person, that—*

1 (1) *arises under any provision of law relating to*
2 *any consumer financial protection function of the*
3 *Federal Trade Commission transferred to the Bureau*
4 *by this title; and*

5 (2) *existed on the day before the designated*
6 *transfer date.*

7 *(d) NATIONAL CREDIT UNION ADMINISTRATION.—*

8 (1) *EXISTING RIGHTS, DUTIES, AND OBLIGA-*
9 *TIONS NOT AFFECTED.—Section 1061(b)(6) does not*
10 *affect the validity of any right, duty, or obligation of*
11 *the United States, the National Credit Union Admin-*
12 *istration, the National Credit Union Administration*
13 *Board, or any other person, that—*

14 (A) *arises under any provision of law relat-*
15 *ing to any consumer financial protection func-*
16 *tion of the National Credit Union Administra-*
17 *tion transferred to the Bureau by this title; and*

18 (B) *existed on the day before the designated*
19 *transfer date.*

20 (2) *CONTINUATION OF SUITS.—No provision of*
21 *this Act shall abate any proceeding commenced by or*
22 *against the National Credit Union Administration*
23 *(or the National Credit Union Administration Board)*
24 *before the designated transfer date with respect to any*
25 *consumer financial protection function of the Na-*

1 *tional Credit Union Administration transferred to the*
2 *Bureau by this title, except that the Bureau, subject*
3 *to sections 1024, 1025, and 1026, shall be substituted*
4 *for the National Credit Union Administration (or*
5 *National Credit Union Administration Board) as a*
6 *party to any such proceeding as of the designated*
7 *transfer date.*

8 (e) *OFFICE OF THE COMPTROLLER OF THE CUR-*
9 *RENCY.—*

10 (1) *EXISTING RIGHTS, DUTIES, AND OBLIGA-*
11 *TIONS NOT AFFECTED.—Section 1061(b)(2) does not*
12 *affect the validity of any right, duty, or obligation of*
13 *the United States, the Comptroller of the Currency,*
14 *the Office of the Comptroller of the Currency, or any*
15 *other person, that—*

16 (A) *arises under any provision of law relat-*
17 *ing to any consumer financial protection func-*
18 *tion of the Comptroller of the Currency trans-*
19 *ferred to the Bureau by this title; and*

20 (B) *existed on the day before the designated*
21 *transfer date.*

22 (2) *CONTINUATION OF SUITS.—No provision of*
23 *this Act shall abate any proceeding commenced by or*
24 *against the Comptroller of the Currency (or the Office*
25 *of the Comptroller of the Currency) with respect to*

1 *any consumer financial protection function of the*
2 *Comptroller of the Currency transferred to the Bureau*
3 *by this title before the designated transfer date, except*
4 *that the Bureau, subject to sections 1024, 1025, and*
5 *1026, shall be substituted for the Comptroller of the*
6 *Currency (or the Office of the Comptroller of the Cur-*
7 *rency) as a party to any such proceeding as of the*
8 *designated transfer date.*

9 *(f) OFFICE OF THRIFT SUPERVISION.—*

10 *(1) EXISTING RIGHTS, DUTIES, AND OBLIGA-*
11 *TIONS NOT AFFECTED.—Section 1061(b)(3) does not*
12 *affect the validity of any right, duty, or obligation of*
13 *the United States, the Director of the Office of Thrift*
14 *Supervision, the Office of Thrift Supervision, or any*
15 *other person, that—*

16 *(A) arises under any provision of law relat-*
17 *ing to any consumer financial protection func-*
18 *tion of the Director of the Office of Thrift Super-*
19 *vision transferred to the Bureau by this title;*
20 *and*

21 *(B) that existed on the day before the des-*
22 *ignated transfer date.*

23 *(2) CONTINUATION OF SUITS.—No provision of*
24 *this Act shall abate any proceeding commenced by or*
25 *against the Director of the Office of Thrift Super-*

1 *vision (or the Office of Thrift Supervision) with re-*
2 *spect to any consumer financial protection function of*
3 *the Director of the Office of Thrift Supervision trans-*
4 *ferred to the Bureau by this title before the designated*
5 *transfer date, except that the Bureau, subject to sec-*
6 *tions 1024, 1025, and 1026, shall be substituted for*
7 *the Director (or the Office of Thrift Supervision) as*
8 *a party to any such proceeding as of the designated*
9 *transfer date.*

10 *(g) DEPARTMENT OF HOUSING AND URBAN DEVELOP-*
11 *MENT.—*

12 *(1) EXISTING RIGHTS, DUTIES, AND OBLIGA-*
13 *TIONS NOT AFFECTED.—Section 1061(b)(7) shall not*
14 *affect the validity of any right, duty, or obligation of*
15 *the United States, the Secretary of the Department of*
16 *Housing and Urban Development (or the Department*
17 *of Housing and Urban Development), or any other*
18 *person, that—*

19 *(A) arises under any provision of law relat-*
20 *ing to any function of the Secretary of the De-*
21 *partment of Housing and Urban Development*
22 *with respect to the Real Estate Settlement Proce-*
23 *dures Act of 1974 (12 U.S.C. 2601 et seq.) or the*
24 *Secure and Fair Enforcement for Mortgage Li-*

1 *censing Act of 2008 (12 U.S.C. 5102 et seq.)*
2 *transferred to the Bureau by this title; and*

3 *(B) existed on the day before the designated*
4 *transfer date.*

5 (2) *CONTINUATION OF SUITS.*—*This title shall*
6 *not abate any proceeding commenced by or against*
7 *the Secretary of the Department of Housing and*
8 *Urban Development (or the Department of Housing*
9 *and Urban Development) with respect to any con-*
10 *sumer financial protection function of the Secretary*
11 *of the Department of Housing and Urban Develop-*
12 *ment transferred to the Bureau by this title before the*
13 *designated transfer date, except that the Bureau, sub-*
14 *ject to sections 1024, 1025, and 1026, shall be sub-*
15 *stituted for the Secretary of the Department of Hous-*
16 *ing and Urban Development (or the Department of*
17 *Housing and Urban Development) as a party to any*
18 *such proceeding as of the designated transfer date.*

19 (i) *CONTINUATION OF EXISTING ORDERS, RULES, DE-*
20 *TERMINATIONS, AGREEMENTS, AND RESOLUTIONS.*—*All or-*
21 *ders, resolutions, determinations, agreements, and rules that*
22 *have been issued, made, prescribed, or allowed to become*
23 *effective by any transferor agency or by a court of com-*
24 *petent jurisdiction, in the performance of consumer finan-*
25 *cial protection functions that are transferred by this title*

1 *and that are in effect on the day before the designated trans-*
2 *fer date, shall continue in effect according to the terms of*
3 *those orders, resolutions, determinations, agreements, and*
4 *rules, and shall not be enforceable by or against the Bureau.*

5 (i) *IDENTIFICATION OF RULES CONTINUED.*—*Not later*
6 *than the designated transfer date, the Bureau—*

7 (1) *shall, after consultation with the head of each*
8 *transferor agency, identify the rules continued under*
9 *subsection (h) that will be enforced by the Bureau;*
10 *and*

11 (2) *shall publish a list of such rules in the Fed-*
12 *eral Register.*

13 (j) *STATUS OF RULES PROPOSED OR NOT YET EFFEC-*
14 *TIVE.*—

15 (1) *PROPOSED RULES.*—*Any proposed rule of a*
16 *transferor agency which that agency, in performing*
17 *consumer financial protection functions transferred*
18 *by this title, has proposed before the designated trans-*
19 *fer date, but has not been published as a final rule*
20 *before that date, shall be deemed to be a proposed rule*
21 *of the Bureau.*

22 (2) *RULES NOT YET EFFECTIVE.*—*Any interim*
23 *or final rule of a transferor agency which that agen-*
24 *cy, in performing consumer financial protection func-*
25 *tions transferred by this title, has published before the*

1 *designated transfer date, but which has not become ef-*
2 *fective before that date, shall become effective as a rule*
3 *of the Bureau according to its terms.*

4 **SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.**

5 *(a) IN GENERAL.—*

6 *(1) CERTAIN FEDERAL RESERVE SYSTEM EM-*
7 *PLOYEES TRANSFERRED.—*

8 *(A) IDENTIFYING EMPLOYEES FOR TRANS-*
9 *FER.—The Bureau and the Board of Governors*
10 *shall—*

11 *(i) jointly determine the number of em-*
12 *ployees of the Board of Governors necessary*
13 *to perform or support the consumer finan-*
14 *cial protection functions of the Board of*
15 *Governors that are transferred to the Bu-*
16 *reau by this title; and*

17 *(ii) consistent with the number deter-*
18 *mined under clause (i), jointly identify em-*
19 *ployees of the Board of Governors for trans-*
20 *fer to the Bureau, in a manner that the Bu-*
21 *reau and the Board of Governors, in their*
22 *sole discretion, determine equitable.*

23 *(B) IDENTIFIED EMPLOYEES TRANS-*
24 *FERRED.—All employees of the Board of Gov-*
25 *ernors identified under subparagraph (A)(ii)*

1 *shall be transferred to the Bureau for employ-*
2 *ment.*

3 (C) *FEDERAL RESERVE BANK EMPLOY-*
4 *EES.—Employees of any Federal reserve bank*
5 *who, on the day before the designated transfer*
6 *date, are performing consumer financial protec-*
7 *tion functions on behalf of the Board of Gov-*
8 *ernors shall be treated as employees of the Board*
9 *of Governors for purposes of subparagraphs (A)*
10 *and (B).*

11 (2) *CERTAIN FDIC EMPLOYEES TRANSFERRED.—*

12 (A) *IDENTIFYING EMPLOYEES FOR TRANS-*
13 *FER.—The Bureau and the Board of Directors of*
14 *the Federal Deposit Insurance Corporation*
15 *shall—*

16 (i) *jointly determine the number of em-*
17 *ployees of that Corporation necessary to*
18 *perform or support the consumer financial*
19 *protection functions of the Corporation that*
20 *are transferred to the Bureau by this title;*
21 *and*

22 (ii) *consistent with the number deter-*
23 *mined under clause (i), jointly identify em-*
24 *ployees of the Corporation for transfer to the*
25 *Bureau, in a manner that the Bureau and*

1 *the Board of Directors of the Corporation,*
2 *in their sole discretion, determine equitable.*

3 *(B) IDENTIFIED EMPLOYEES TRANS-*
4 *FERRED.—All employees of the Corporation*
5 *identified under subparagraph (A)(i) shall be*
6 *transferred to the Bureau for employment.*

7 *(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—*

8 *(A) IDENTIFYING EMPLOYEES FOR TRANS-*
9 *FER.—The Bureau and the National Credit*
10 *Union Administration Board shall—*

11 *(i) jointly determine the number of em-*
12 *ployees of the National Credit Union Ad-*
13 *ministration necessary to perform or sup-*
14 *port the consumer financial protection func-*
15 *tions of the National Credit Union Admin-*
16 *istration that are transferred to the Bureau*
17 *by this title; and*

18 *(ii) consistent with the number deter-*
19 *mined under clause (i), jointly identify em-*
20 *ployees of the National Credit Union Ad-*
21 *ministration for transfer to the Bureau, in*
22 *a manner that the Bureau and the National*
23 *Credit Union Administration Board, in*
24 *their sole discretion, determine equitable.*

1 (B) *IDENTIFIED EMPLOYEES TRANS-*
2 *FERRED.—All employees of the National Credit*
3 *Union Administration identified under subpara-*
4 *graph (A)(ii) shall be transferred to the Bureau*
5 *for employment.*

6 (4) *CERTAIN OFFICE OF THE COMPTROLLER OF*
7 *THE CURRENCY EMPLOYEES TRANSFERRED.—*

8 (A) *IDENTIFYING EMPLOYEES FOR TRANS-*
9 *FER.—The Bureau and the Comptroller of the*
10 *Currency shall—*

11 (i) *jointly determine the number of em-*
12 *ployees of the Office of the Comptroller of*
13 *the Currency necessary to perform or sup-*
14 *port the consumer financial protection func-*
15 *tions of the Office of the Comptroller of the*
16 *Currency that are transferred to the Bureau*
17 *by this title; and*

18 (ii) *consistent with the number deter-*
19 *mined under clause (i), jointly identify em-*
20 *ployees of the Office of the Comptroller of*
21 *the Currency for transfer to the Bureau, in*
22 *a manner that the Bureau and the Office of*
23 *the Comptroller of the Currency, in their*
24 *sole discretion, determine equitable.*

1 (B) *IDENTIFIED EMPLOYEES TRANS-*
2 *FERRED.—All employees of the Office of the*
3 *Comptroller of the Currency identified under*
4 *subparagraph (A)(ii) shall be transferred to the*
5 *Bureau for employment.*

6 (5) *CERTAIN OFFICE OF THRIFT SUPERVISION*
7 *EMPLOYEES TRANSFERRED.—*

8 (A) *IDENTIFYING EMPLOYEES FOR TRANS-*
9 *FER.—The Bureau and the Director of the Office*
10 *of Thrift Supervision shall—*

11 (i) *jointly determine the number of em-*
12 *ployees of the Office of Thrift Supervision*
13 *necessary to perform or support the con-*
14 *sumer financial protection functions of the*
15 *Office of Thrift Supervision that are trans-*
16 *ferred to the Bureau by this title; and*

17 (ii) *consistent with the number deter-*
18 *mined under clause (i), jointly identify em-*
19 *ployees of the Office of Thrift Supervision*
20 *for transfer to the Bureau, in a manner*
21 *that the Bureau and the Office of Thrift Su-*
22 *per vision, in their sole discretion, determine*
23 *equitable.*

24 (B) *IDENTIFIED EMPLOYEES TRANS-*
25 *FERRED.—All employees of the Office of Thrift*

1 *Supervision identified under subparagraph*
2 *(A)(ii) shall be transferred to the Bureau for em-*
3 *ployment.*

4 (6) *CERTAIN EMPLOYEES OF DEPARTMENT OF*
5 *HOUSING AND URBAN DEVELOPMENT TRANS-*
6 *FERRED.—*

7 (A) *IDENTIFYING EMPLOYEES FOR TRANS-*
8 *FER.—The Bureau and the Secretary of the De-*
9 *partment of Housing and Urban Development*
10 *shall—*

11 (i) *jointly determine the number of em-*
12 *ployees of the Department of Housing and*
13 *Urban Development necessary to perform or*
14 *support the consumer protection functions*
15 *of the Department that are transferred to*
16 *the Bureau by this title; and*

17 (ii) *consistent with the number deter-*
18 *mined under clause (i), jointly identify em-*
19 *ployees of the Department of Housing and*
20 *Urban Development for transfer to the Bu-*
21 *reau in a manner that the Bureau and the*
22 *Secretary of the Department of Housing*
23 *and Urban Development, in their sole dis-*
24 *cretion, deem equitable.*

1 (B) *IDENTIFIED EMPLOYEES TRANS-*
2 *FERRED.*—*All employees of the Department of*
3 *Housing and Urban Development identified*
4 *under subparagraph (A)(ii) shall be transferred*
5 *to the Bureau for employment.*

6 (7) *APPOINTMENT AUTHORITY FOR EXCEPTED*
7 *SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-*
8 *FERRED.*—

9 (A) *IN GENERAL.*—*In the case of an em-*
10 *ployee occupying a position in the excepted serv-*
11 *ice or the Senior Executive Service, any appoint-*
12 *ment authority established pursuant to law or*
13 *regulations of the Office of Personnel Manage-*
14 *ment for filling such positions shall be trans-*
15 *ferred, subject to subparagraph (B).*

16 (B) *DECLINING TRANSFERS ALLOWED.*—*An*
17 *agency or entity may decline to make a transfer*
18 *of authority under subparagraph (A) (and the*
19 *employees appointed pursuant thereto) to the ex-*
20 *tent that such authority relates to positions ex-*
21 *cepted from the competitive service because of*
22 *their confidential, policy-making, policy-deter-*
23 *mining, or policy-advocating character, and*
24 *non-career positions in the Senior Executive*

1 *Service (within the meaning of section*
2 *3132(a)(7) of title 5, United States Code).*

3 **(b) TIMING OF TRANSFERS AND POSITION ASSIGN-**
4 *MENTS.—Each employee to be transferred under this section*
5 *shall—*

6 (1) *be transferred not later than 90 days after*
7 *the designated transfer date; and*

8 (2) *receive notice of a position assignment not*
9 *later than 120 days after the effective date of his or*
10 *her transfer.*

11 **(c) TRANSFER OF FUNCTION.—**

12 (1) *IN GENERAL.—Notwithstanding any other*
13 *provision of law, the transfer of employees shall be*
14 *deemed a transfer of functions for the purpose of sec-*
15 *tion 3503 of title 5, United States Code.*

16 (2) *PRIORITY OF THIS TITLE.—If any provisions*
17 *of this title conflict with any protection provided to*
18 *transferred employees under section 3503 of title 5,*
19 *United States Code, the provisions of this title shall*
20 *control.*

21 **(d) EQUAL STATUS AND TENURE POSITIONS.—**

22 (1) *EMPLOYEES TRANSFERRED FROM FDIC, HUD,*
23 *NCUA, OCC, AND OTS.—Each employee transferred*
24 *from the Federal Deposit Insurance Corporation, the*
25 *National Credit Union Administration, the Office of*

1 *the Comptroller of the Currency, the Office of Thrift*
2 *Supervision, or the Department of Housing and*
3 *Urban Development shall be placed in a position at*
4 *the Bureau with the same status and tenure as that*
5 *employee held on the day before the designated trans-*
6 *fer date.*

7 (2) *EMPLOYEES TRANSFERRED FROM THE FED-*
8 *ERAL RESERVE SYSTEM.—*

9 (A) *COMPARABILITY.—Each employee*
10 *transferred from the Board of Governors or from*
11 *a Federal reserve bank shall be placed in a posi-*
12 *tion with the same status and tenure as that of*
13 *an employee transferring to the Bureau from the*
14 *Office of the Comptroller of the Currency who*
15 *perform similar functions and have similar peri-*
16 *ods of service.*

17 (B) *SERVICE PERIODS CREDITED.—For*
18 *purposes of this paragraph, periods of service*
19 *with the Board of Governors or a Federal reserve*
20 *bank shall be credited as periods of service with*
21 *a Federal agency.*

22 (e) *ADDITIONAL CERTIFICATION REQUIREMENTS LIM-*
23 *ITED.—Examiners transferred to the Bureau are not subject*
24 *to any additional certification requirements before being*
25 *placed in a comparable examiner position at the Bureau*

1 *examining the same types of institutions as they examined*
2 *before they were transferred.*

3 (f) *PERSONNEL ACTIONS LIMITED.—*

4 (1) *2-YEAR PROTECTION.—Except as provided in*
5 *paragraph (2), each transferred employee holding a*
6 *permanent position on the day before the designated*
7 *transfer date may not, during the 2-year period be-*
8 *ginning on the designated transfer date, be involun-*
9 *tarily separated, or involuntarily reassigned outside*
10 *his or her locality pay area, as defined by the Office*
11 *of Personnel Management.*

12 (2) *EXCEPTIONS.—Paragraph (1) does not limit*
13 *the right of the Bureau—*

14 (A) *to separate an employee for cause or for*
15 *unacceptable performance;*

16 (B) *to terminate an appointment to a posi-*
17 *tion excepted from the competitive service be-*
18 *cause of its confidential policy-making, policy-*
19 *determining, or policy-advocating character; or*

20 (C) *to reassign a supervisory employee out-*
21 *side his or her locality pay area, as defined by*
22 *the Office of Personnel Management, when the*
23 *Bureau determines that the reassignment is nec-*
24 *essary for the efficient operation of the Bureau.*

25 (g) *PAY.—*

1 (1) *2-YEAR PROTECTION.*—*Except as provided in*
2 *paragraph (2), each transferred employee shall, dur-*
3 *ing the 2-year period beginning on the designated*
4 *transfer date, receive pay at a rate equal to not less*
5 *than the basic rate of pay (including any geographic*
6 *differential) that the employee received during the*
7 *pay period immediately preceding the date of trans-*
8 *fer.*

9 (2) *EXCEPTIONS.*—*Paragraph (1) does not limit*
10 *the right of the Bureau to reduce the rate of basic pay*
11 *of a transferred employee—*

12 (A) *for cause;*

13 (B) *for unacceptable performance; or*

14 (C) *with the consent of the employee.*

15 (3) *PROTECTION ONLY WHILE EMPLOYED.*—
16 *Paragraph (1) applies to a transferred employee only*
17 *while that employee remains employed by the Bureau.*

18 (4) *PAY INCREASES PERMITTED.*—*Paragraph (1)*
19 *does not limit the authority of the Bureau to increase*
20 *the pay of a transferred employee.*

21 (h) *REORGANIZATION.*—

22 (1) *BETWEEN 1ST AND 3RD YEAR.*—

23 (A) *IN GENERAL.*—*If the Bureau deter-*
24 *mines, during the 2-year period beginning 1*
25 *year after the designated transfer date, that a re-*

1 *organization of the staff of the Bureau is re-*
2 *quired—*

3 *(i) that reorganization shall be deemed*
4 *a “major reorganization” for purposes of af-*
5 *fording affected employees retirement under*
6 *section 8336(d)(2) or 8414(b)(1)(B) of title*
7 *5, United States Code;*

8 *(ii) before the reorganization occurs,*
9 *all employees in the same locality pay area*
10 *as defined by the Office of Personnel Man-*
11 *agement shall be placed in a uniform posi-*
12 *tion classification system; and*

13 *(iii) any resulting reduction in force*
14 *shall be governed by the provisions of chap-*
15 *ter 35 of title 5, United States Code, except*
16 *that the Bureau shall—*

17 *(I) establish competitive areas (as*
18 *that term is defined in regulations*
19 *issued by the Office of Personnel Man-*
20 *agement) to include at a minimum all*
21 *employees in the same locality pay*
22 *area as defined by the Office of Per-*
23 *sonnel Management;*

24 *(II) establish competitive levels*
25 *(as that term is defined in regulations*

1 *issued by the Office of Personnel Man-*
2 *agement) without regard to whether the*
3 *particular employees have been ap-*
4 *pointed to positions in the competitive*
5 *service or the excepted service; and*

6 (III) *afford employees appointed*
7 *to positions in the excepted service*
8 *(other than to a position excepted from*
9 *the competitive service because of its*
10 *confidential policy-making, policy-de-*
11 *termining, or policy-advocating char-*
12 *acter) the same assignment rights to*
13 *positions within the Bureau as em-*
14 *ployees appointed to positions in the*
15 *competitive service.*

16 (B) *SERVICE CREDIT FOR REDUCTIONS IN*
17 *FORCE.—For purposes of this paragraph, periods*
18 *of service with a Federal home loan bank, a joint*
19 *office of the Federal home loan banks, the Board*
20 *of Governors, a Federal reserve bank, the Federal*
21 *Deposit Insurance Corporation, or the National*
22 *Credit Union Administration shall be credited as*
23 *periods of service with a Federal agency.*

24 (2) *AFTER 3RD YEAR.—*

1 (A) *IN GENERAL.*—*If the Bureau deter-*
2 *mines, at any time after the 3-year period begin-*
3 *ning on the designated transfer date, that a reor-*
4 *ganization of the staff of the Bureau is required,*
5 *any resulting reduction in force shall be governed*
6 *by the provisions of chapter 35 of title 5, United*
7 *States Code, except that the Bureau shall estab-*
8 *lish competitive levels (as that term is defined in*
9 *regulations issued by the Office of Personnel*
10 *Management) without regard to types of ap-*
11 *pointment held by particular employees trans-*
12 *ferred under this section.*

13 (B) *SERVICE CREDIT FOR REDUCTIONS IN*
14 *FORCE.*—*For purposes of this paragraph, periods*
15 *of service with a Federal home loan bank, a joint*
16 *office of the Federal home loan banks, the Board*
17 *of Governors, a Federal reserve bank, the Federal*
18 *Deposit Insurance Corporation, or the National*
19 *Credit Union Administration shall be credited as*
20 *periods of service with a Federal agency.*

21 (i) *BENEFITS.*—

22 (1) *RETIREMENT BENEFITS FOR TRANSFERRED*
23 *EMPLOYEES.*—

24 (A) *IN GENERAL.*—

1 (i) *CONTINUATION OF EXISTING RE-*
2 *TIREMENT PLAN.—Except as provided in*
3 *subparagraph (B), each transferred em-*
4 *ployee shall remain enrolled in his or her*
5 *existing retirement plan, through any pe-*
6 *riod of continuous employment with the Bu-*
7 *reau.*

8 (ii) *EMPLOYER CONTRIBUTION.—The*
9 *Bureau shall pay any employer contribu-*
10 *tions to the existing retirement plan of each*
11 *transferred employee, as required under that*
12 *plan.*

13 (B) *OPTION FOR EMPLOYEES TRANSFERRED*
14 *FROM FEDERAL RESERVE SYSTEM TO BE SUB-*
15 *JECT TO FEDERAL EMPLOYEE RETIREMENT PRO-*
16 *GRAM.—*

17 (i) *ELECTION.—Any transferred em-*
18 *ployee who was enrolled in a Federal Re-*
19 *serve System retirement plan on the day be-*
20 *fore his or her transfer to the Bureau may,*
21 *during the 1-year period beginning 6*
22 *months after the designated transfer date,*
23 *elect to be subject to the Federal employee*
24 *retirement program.*

1 (ii) *EFFECTIVE DATE OF COVERAGE.*—
2 *For any employee making an election under*
3 *clause (i), coverage by the Federal employee*
4 *retirement program shall begin 1 year after*
5 *the designated transfer date.*

6 (C) *BUREAU PARTICIPATION IN FEDERAL*
7 *RESERVE SYSTEM RETIREMENT PLAN.*—

8 (i) *SEPARATE ACCOUNT IN FEDERAL*
9 *RESERVE SYSTEM RETIREMENT PLAN ES-*
10 *TABLISHED.*—*Notwithstanding any other*
11 *provision of law, and subject to the terms*
12 *and conditions of this section, a separate*
13 *account in the Federal Reserve System re-*
14 *retirement plan shall be established for Bu-*
15 *reau employees who do not make the elec-*
16 *tion under subparagraph (B).*

17 (ii) *FUNDS ATTRIBUTABLE TO TRANS-*
18 *FERRED EMPLOYEES REMAINING IN FED-*
19 *ERAL RESERVE SYSTEM RETIREMENT PLAN*
20 *TRANSFERRED.*—*The proportionate share of*
21 *funds in the Federal Reserve System retire-*
22 *ment plan, including the proportionate*
23 *share of any funding surplus in that plan,*
24 *attributable to a transferred employee who*
25 *does not make the election under subpara-*

1 *graph (B), shall be transferred to the ac-*
2 *count established under clause (i).*

3 *(iii) EMPLOYER CONTRIBUTIONS DE-*
4 *POSITED.—The Bureau shall deposit into*
5 *the account established under clause (i) the*
6 *employer contributions that the Bureau*
7 *makes on behalf of employees who do not*
8 *make the election under subparagraph (B).*

9 *(iv) ACCOUNT ADMINISTRATION.—The*
10 *Bureau shall administer the account estab-*
11 *lished under clause (i) as a participating*
12 *employer in the Federal Reserve System re-*
13 *tirement plan.*

14 *(D) DEFINITIONS.—For purposes of this*
15 *paragraph—*

16 *(i) the term “existing retirement plan”*
17 *means, with respect to any employee trans-*
18 *ferred under this section, the particular re-*
19 *tirement plan (including the Financial In-*
20 *stitutions Retirement Fund) and any asso-*
21 *ciated thrift savings plan of the agency or*
22 *Federal reserve bank from which the em-*
23 *ployee was transferred, in which the em-*
24 *ployee was enrolled on the day before the*
25 *designated transfer date; and*

1 (ii) the term “Federal employee retire-
2 ment program” means the retirement pro-
3 gram for Federal employees established by
4 chapter 84 of title 5, United States Code.

5 (2) *BENEFITS OTHER THAN RETIREMENT BENE-*
6 *FITS FOR TRANSFERRED EMPLOYEES.—*

7 (A) *DURING 1ST YEAR.—*

8 (i) *EXISTING PLANS CONTINUE.—Each*
9 *transferred employee may, for 1 year after*
10 *the designated transfer date, retain member-*
11 *ship in any other employee benefit program*
12 *of the agency or bank from which the em-*
13 *ployee transferred, including a dental, vi-*
14 *sion, long term care, or life insurance pro-*
15 *gram, to which the employee belonged on the*
16 *day before the designated transfer date.*

17 (ii) *EMPLOYER CONTRIBUTION.—The*
18 *Bureau shall reimburse the agency or bank*
19 *from which an employee was transferred for*
20 *any cost incurred by that agency or bank in*
21 *continuing to extend coverage in the benefit*
22 *program to the employee, as required under*
23 *that program or negotiated agreements.*

24 (B) *DENTAL, VISION, OR LIFE INSURANCE*
25 *AFTER 1ST YEAR.—If, after the 1-year period be-*

1 *ginning on the designated transfer date, the Bu-*
2 *reau decides not to continue participation in*
3 *any dental, vision, or life insurance program of*
4 *an agency or bank from which an employee*
5 *transferred, a transferred employee who is a*
6 *member of such a program may, before the deci-*
7 *sion of the Bureau takes effect, elect to enroll,*
8 *without regard to any regularly scheduled open*
9 *season, in—*

10 *(i) the enhanced dental benefits estab-*
11 *lished by chapter 89A of title 5, United*
12 *States Code;*

13 *(ii) the enhanced vision benefits estab-*
14 *lished by chapter 89B of title 5, United*
15 *States Code; or*

16 *(iii) the Federal Employees Group Life*
17 *Insurance Program established by chapter*
18 *87 of title 5, United States Code, without*
19 *regard to any requirement of insurability.*

20 *(C) LONG TERM CARE INSURANCE AFTER*
21 *1ST YEAR.—If, after the 1-year period beginning*
22 *on the designated transfer date, the Bureau de-*
23 *cides not to continue participation in any long*
24 *term care insurance program of an agency or*
25 *bank from which an employee transferred, a*

1 *transferred employee who is a member of such a*
2 *program may, before the decision of the Bureau*
3 *takes effect, elect to apply for coverage under the*
4 *Federal Long Term Care Insurance Program es-*
5 *tablished by chapter 90 of title 5, United States*
6 *Code, under the underwriting requirements ap-*
7 *licable to a new active workforce member (as*
8 *defined in part 875, title 5, Code of Federal Reg-*
9 *ulations).*

10 (D) *EMPLOYEE CONTRIBUTION.*—*An indi-*
11 *vidual enrolled in the Federal Employees Health*
12 *Benefits program shall pay any employee con-*
13 *tribution required by the plan.*

14 (E) *ADDITIONAL FUNDING.*—*The Bureau*
15 *shall transfer to the Federal Employees Health*
16 *Benefits Fund established under section 8909 of*
17 *title 5, United States Code, an amount deter-*
18 *mined by the Director of the Office of Personnel*
19 *Management, after consultation with the Bureau*
20 *and the Office of Management and Budget, to be*
21 *necessary to reimburse the Fund for the cost to*
22 *the Fund of providing benefits under this para-*
23 *graph.*

24 (F) *CREDIT FOR TIME ENROLLED IN OTHER*
25 *PLANS.*—*For employees transferred under this*

1 *title, enrollment in a health benefits plan admin-*
2 *istered by a transferor agency or a Federal re-*
3 *serve bank, as the case may be, immediately be-*
4 *fore enrollment in a health benefits plan under*
5 *chapter 89 of title 5, United States Code, shall*
6 *be considered as enrollment in a health benefits*
7 *plan under that chapter for purposes of section*
8 *8905(b)(1)(A) of title 5, United States Code.*

9 (G) *SPECIAL PROVISIONS TO ENSURE CON-*
10 *TINUATION OF LIFE INSURANCE BENEFITS.—*

11 (i) *IN GENERAL.—An annuitant (as*
12 *defined in section 8901(3) of title 5, United*
13 *States Code) who is enrolled in a life insur-*
14 *ance plan administered by a transferor*
15 *agency on the day before the designated*
16 *transfer date shall be eligible for coverage by*
17 *a life insurance plan under sections*
18 *8706(b), 8714a, 8714b, and 8714c of title 5,*
19 *United States Code, or in a life insurance*
20 *plan established by the Bureau, without re-*
21 *gard to any regularly scheduled open season*
22 *and requirement of insurability.*

23 (ii) *EMPLOYEE CONTRIBUTION.—An*
24 *individual enrolled in a life insurance plan*

1 *under this subparagraph shall pay any em-*
2 *ployee contribution required by the plan.*

3 *(iii) ADDITIONAL FUNDING.—The Bu-*
4 *reau shall transfer to the Employees' Life*
5 *Insurance Fund established under section*
6 *8714 of title 5, United States Code, an*
7 *amount determined by the Director of the*
8 *Office of Personnel Management, after con-*
9 *sultation with the Bureau and the Office of*
10 *Management and Budget, to be necessary to*
11 *reimburse the Fund for the cost to the Fund*
12 *of providing benefits under this subpara-*
13 *graph not otherwise paid for by the em-*
14 *ployee under clause (ii).*

15 *(iv) CREDIT FOR TIME ENROLLED IN*
16 *OTHER PLANS.—For employees transferred*
17 *under this title, enrollment in a life insur-*
18 *ance plan administered by a transferor*
19 *agency immediately before enrollment in a*
20 *life insurance plan under chapter 87 of title*
21 *5, United States Code, shall be considered*
22 *as enrollment in a life insurance plan*
23 *under that chapter for purposes of section*
24 *8706(b)(1)(A) of title 5, United States Code.*

1 (3) *OPM RULES.*—*The Office of Personnel Man-*
2 *agement shall issue such rules as are necessary to*
3 *carry out this subsection.*

4 (j) *IMPLEMENTATION OF UNIFORM PAY AND CLASSI-*
5 *FICATION SYSTEM.*—*Not later than 2 years after the des-*
6 *ignated transfer date, the Bureau shall implement a uni-*
7 *form pay and classification system for all employees trans-*
8 *ferred under this title.*

9 (k) *EQUITABLE TREATMENT.*—*In administering the*
10 *provisions of this section, the Bureau—*

11 (1) *shall take no action that would unfairly dis-*
12 *advantage transferred employees relative to each other*
13 *based on their prior employment by the Board of*
14 *Governors, the Federal Deposit Insurance Corpora-*
15 *tion, the Federal Trade Commission, the National*
16 *Credit Union Administration, the Office of the Comp-*
17 *troller of the Currency, the Office of Thrift Super-*
18 *vision, a Federal reserve bank, a Federal home loan*
19 *bank, or a joint office of the Federal home loan banks;*
20 *and*

21 (2) *may take such action as is appropriate in*
22 *individual cases so that employees transferred under*
23 *this section receive equitable treatment, with respect*
24 *to the status, tenure, pay, benefits (other than benefits*
25 *under programs administered by the Office of Per-*

1 *sonnel Management), and accrued leave or vacation*
2 *time of those employees, for prior periods of service*
3 *with any Federal agency, including the Board of Gov-*
4 *ernors, the Corporation, the Federal Trade Commis-*
5 *sion, the National Credit Union Administration, the*
6 *Office of the Comptroller of the Currency, the Office*
7 *of Thrift Supervision, a Federal reserve bank, a Fed-*
8 *eral home loan bank, or a joint office of the Federal*
9 *home loan banks.*

10 *(l) IMPLEMENTATION.—In implementing the provi-*
11 *sions of this section, the Bureau shall coordinate with the*
12 *Office of Personnel Management and other entities having*
13 *expertise in matters related to employment to ensure a fair*
14 *and orderly transition for affected employees.*

15 **SEC. 1065. INCIDENTAL TRANSFERS.**

16 *(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Di-*
17 *rector of the Office of Management and Budget, in consulta-*
18 *tion with the Secretary, shall make such additional inci-*
19 *dental transfers and dispositions of assets and liabilities*
20 *held, used, arising from, available, or to be made available,*
21 *in connection with the functions transferred by this title,*
22 *as the Director may determine necessary to accomplish the*
23 *purposes of this title.*

1 (b) *SUNSET.*—*The authority provided in this section*
2 *shall terminate 5 years after the date of enactment of this*
3 *Act.*

4 **SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.**

5 (a) *IN GENERAL.*—*The Secretary is authorized to per-*
6 *form the functions of the Bureau under this subtitle until*
7 *the Director of the Bureau is confirmed by the Senate in*
8 *accordance with section 1011.*

9 (b) *INTERIM ADMINISTRATIVE SERVICES BY THE DE-*
10 *PARTMENT OF THE TREASURY.*—*The Department of the*
11 *Treasury may provide administrative services necessary to*
12 *support the Bureau before the designated transfer date.*

13 **SEC. 1067. TRANSITION OVERSIGHT.**

14 (a) *PURPOSE.*—*The purpose of this section is to ensure*
15 *that the Bureau—*

16 (1) *has an orderly and organized startup;*

17 (2) *attracts and retains a qualified workforce;*

18 *and*

19 (3) *establishes comprehensive employee training*
20 *and benefits programs.*

21 (b) *REPORTING REQUIREMENT.*—

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

1 *representatives that includes the plans described in para-*
2 *graph (2).*

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

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

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

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

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

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

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

21 (i) *telework;*

22 (ii) *flexible work schedules;*

23 (iii) *phased retirement;*

24 (iv) *reemployed annuitants;*

25 (v) *part-time work;*

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

8 (C) *RECRUITMENT AND RETENTION PLAN.*—

9 *The Bureau shall submit a recruitment and re-*

10 *tion plan that includes, to the extent prac-*

11 *ticable, provisions relating to—*

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

22 (c) *EXPIRATION.*—*The reporting requirement under*

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

24 *actment of this Act.*

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

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

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

9 ***Subtitle G—Regulatory***
 10 ***Improvements***

11 ***SEC. 1071. SMALL BUSINESS DATA COLLECTION.***

12 (a) *IN GENERAL.*—*The Equal Credit Opportunity Act*
 13 *(15 U.S.C. 1691 et seq.) is amended by inserting after sec-*
 14 *tion 704A the following:*

15 ***“SEC. 740B. SMALL BUSINESS LOAN DATA COLLECTION.***

16 “(a) *PURPOSE.*—*The purpose of this section is to fa-*
 17 *cilitate enforcement of fair lending laws and enable commu-*
 18 *nities, governmental entities, and creditors to identify busi-*
 19 *ness and community development needs and opportunities*
 20 *of women-owned and minority-owned small businesses.*

21 “(b) *INFORMATION GATHERING.*—*Subject to the re-*
 22 *quirements of this section, in the case of any application*
 23 *to a financial institution for credit for a small business,*
 24 *the financial institution shall—*

1 “(1) *inquire whether the small business is a*
2 *women- or minority-owned small business, without*
3 *regard to whether such application is received in per-*
4 *son, by mail, by telephone, by electronic mail or other*
5 *form of electronic transmission, or by any other*
6 *means, and whether or not such application is in re-*
7 *sponse to a solicitation by the financial institution;*
8 *and*

9 “(2) *maintain a record of the responses to such*
10 *inquiry, separate from the application and accom-*
11 *panying information.*

12 “(c) *RIGHT TO REFUSE.—Any applicant for credit*
13 *may refuse to provide any information requested pursuant*
14 *to subsection (b) in connection with any application for*
15 *credit.*

16 “(d) *NO ACCESS BY UNDERWRITERS.—*

17 “(1) *LIMITATION.—Where feasible, no loan un-*
18 *derwriter or other officer or employee of a financial*
19 *institution, or any affiliate of a financial institution,*
20 *involved in making any determination concerning an*
21 *application for credit shall have access to any infor-*
22 *mation provided by the applicant pursuant to a re-*
23 *quest under subsection (b) in connection with such*
24 *application.*

1 “(2) *LIMITED ACCESS.*—*If a financial institu-*
2 *tion determines that a loan underwriter or other offi-*
3 *cer or employee of a financial institution, or any af-*
4 *iliate of a financial institution, involved in making*
5 *any determination concerning an application for*
6 *credit should have access to any information provided*
7 *by the applicant pursuant to a request under sub-*
8 *section (b), the financial institution shall provide no-*
9 *tice to the applicant of the access of the underwriter*
10 *to such information, along with notice that the finan-*
11 *cial institution may not discriminate on the basis of*
12 *such information.*

13 “(e) *FORM AND MANNER OF INFORMATION.*—

14 “(1) *IN GENERAL.*—*Each financial institution*
15 *shall compile and maintain, in accordance with regu-*
16 *lations of the Bureau, a record of the information*
17 *provided by any loan applicant pursuant to a request*
18 *under subsection (b).*

19 “(2) *ITEMIZATION.*—*Information compiled and*
20 *maintained under paragraph (1) shall be itemized in*
21 *order to clearly and conspicuously disclose—*

22 “(A) *the number of the application and the*
23 *date on which the application was received;*

24 “(B) *the type and purpose of the loan or*
25 *other credit being applied for;*

1 “(C) the amount of the credit or credit limit
2 applied for, and the amount of the credit trans-
3 action or the credit limit approved for such ap-
4 plicant;

5 “(D) the type of action taken with respect
6 to such application, and the date of such action;

7 “(E) the census tract in which is located the
8 principal place of business of the small business
9 loan applicant;

10 “(F) the gross annual revenue of the busi-
11 ness in the last fiscal year of the small business
12 loan applicant preceding the date of the applica-
13 tion;

14 “(G) the race and ethnicity of the principal
15 owners of the business; and

16 “(H) any additional data that the Bureau
17 determines would aid in fulfilling the purposes of
18 this section.

19 “(3) NO PERSONALLY IDENTIFIABLE INFORMA-
20 TION.—In compiling and maintaining any record of
21 information under this section, a financial institution
22 may not include in such record the name, specific ad-
23 dress (other than the census tract required under
24 paragraph (1)(E)), telephone number, electronic mail
25 address, or any other personally identifiable informa-

1 *tion concerning any individual who is, or is con-*
2 *ected with, the small business loan applicant.*

3 “(4) *DISCRETION TO DELETE OR MODIFY PUB-*
4 *LICLY AVAILABLE DATA.—The Bureau may, at its dis-*
5 *cretion, delete or modify data collected under this sec-*
6 *tion which is or will be available to the public, if the*
7 *Bureau determines that the deletion or modification*
8 *of the data would advance a compelling privacy in-*
9 *terest.*

10 “(f) *AVAILABILITY OF INFORMATION.—*

11 “(1) *SUBMISSION TO BUREAU.—The data re-*
12 *quired to be compiled and maintained under this sec-*
13 *tion by any financial institution shall be submitted*
14 *annually to the Bureau.*

15 “(2) *AVAILABILITY OF INFORMATION.—Informa-*
16 *tion compiled and maintained under this section*
17 *shall be—*

18 “(A) *retained for not less than 3 years after*
19 *the date of preparation;*

20 “(B) *made available to any member of the*
21 *public, upon request, in the form required under*
22 *regulations prescribed by the Bureau;*

23 “(C) *annually made available to the public*
24 *generally by the Bureau, in such form and in*

1 *such manner as is determined appropriate by*
2 *the Bureau.*

3 “(3) *COMPILATION OF AGGREGATE DATA.—The*
4 *Bureau may, at its discretion—*

5 “(A) *compile and aggregate data collected*
6 *under this section for its own use; and*

7 “(B) *make public such compilations of ag-*
8 *gregate data.*

9 “(g) *BUREAU ACTION.—*

10 “(1) *IN GENERAL.—The Bureau shall prescribe*
11 *such rules and issue such guidance as may be nec-*
12 *essary to carry out, enforce, and compile data pursu-*
13 *ant to this section.*

14 “(2) *EXCEPTIONS.—The Bureau, by rule or*
15 *order, may adopt exceptions to any requirement of*
16 *this section and may, conditionally or uncondition-*
17 *ally, exempt any financial institution or class of fi-*
18 *nancial institutions from the requirements of this sec-*
19 *tion, as the Bureau deems necessary or appropriate*
20 *to carry out the purposes of this section.*

21 “(3) *GUIDANCE.—The Bureau shall issue guid-*
22 *ance designed to facilitate compliance with the re-*
23 *quirements of this section, including assisting finan-*
24 *cial institutions in working with applicants to deter-*

1 *mine whether the applicants are women- or minority-*
2 *owned for purposes of this section.*

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

5 “(1) *FINANCIAL INSTITUTION.*—*The term ‘finan-*
6 *cial institution’ means any partnership, company,*
7 *corporation, association (incorporated or unincor-*
8 *porated), trust, estate, cooperative organization, or*
9 *other entity that engages in any financial activity.*

10 “(2) *MINORITY.*—*The term ‘minority’ has the*
11 *same meaning as in section 1204(c)(3) of the Finan-*
12 *cial Institutions Reform, Recovery, and Enforcement*
13 *Act of 1989.*

14 “(3) *MINORITY-OWNED SMALL BUSINESS.*—*The*
15 *term ‘minority-owned small business’ means a small*
16 *business—*

17 “(A) *more than 50 percent of the ownership*
18 *or control of which is held by 1 or more minority*
19 *individuals; and*

20 “(B) *more than 50 percent of the net profit*
21 *or loss of which accrues to 1 or more minority*
22 *individuals.*

23 “(4) *SMALL BUSINESS LOAN.*—*The term ‘small*
24 *business loan’ shall be defined by the Bureau, which*
25 *may take into account—*

1 “(A) *the gross revenues of the borrower;*

2 “(B) *the total number of employees of the*
3 *borrower;*

4 “(C) *the industry in which the borrower has*
5 *its primary operations; and*

6 “(D) *the size of the loan.*

7 “(5) *WOMEN-OWNED SMALL BUSINESS.—The*
8 *term ‘women-owned small business’ means a busi-*
9 *ness—*

10 “(A) *more than 50 percent of the ownership*
11 *or control of which is held by 1 or more women;*
12 *and*

13 “(B) *more than 50 percent of the net profit*
14 *or loss of which accrues to 1 or more women.”.*

15 (b) *TECHNICAL AND CONFORMING AMENDMENTS.—*
16 *Section 701(b) of the Equal Credit Opportunity Act (15*
17 *U.S.C. 1691(b)) is amended—*

18 (1) *in paragraph (3), by striking “or” at the*
19 *end;*

20 (2) *in paragraph (4), by striking the period at*
21 *the end and inserting “; or”; and*

22 (3) *by inserting after paragraph (4), the fol-*
23 *lowing:*

24 “(5) *to make an inquiry under section 704B, in*
25 *accordance with the requirements of that section.”.*

1 (c) *CLERICAL AMENDMENT.*—*The table of sections for*
2 *title VII of the Consumer Credit Protection Act is amended*
3 *by inserting after the item relating to section 704A the fol-*
4 *lowing new item:*

“704B. Small business loan data collection.”.

5 (d) *EFFECTIVE DATE.*—*This section shall become effec-*
6 *tive on the designated transfer date.*

7 **SEC. 1072. GAO STUDY ON THE EFFECTIVENESS AND IM-**
8 **PACT OF VARIOUS APPRAISAL METHODS.**

9 (a) *IN GENERAL.*—*The Government Accountability*
10 *Office shall conduct a study on the effectiveness and impact*
11 *of various appraisal methods, including the cost approach,*
12 *the comparative sales approach, the income approach, and*
13 *others that may be available.*

14 (b) *STUDY.*—*Not later than—*

15 (1) *1 year after the date of enactment of this Act,*
16 *the Government Accountability Office shall submit a*
17 *study to the Committee on Banking, Housing, and*
18 *Urban Affairs of the Senate and the Committee on*
19 *Financial Services of the House of Representatives;*

20 (2) *90 days after the date of enactment of this*
21 *Act, the Government Accountability Office shall pro-*
22 *vide a report on the status of the study and any pre-*
23 *liminary findings to the Committee on Banking,*
24 *Housing, and Urban Affairs of the Senate and the*

1 *Committee on Financial Services of the House of Rep-*
2 *resentatives.*

3 *(c) CONTENT OF STUDY.—The study required by this*
4 *section shall include an examination of—*

5 *(1) the prevalence, alone or in combination, of*
6 *these approaches in purchase-money and refinance*
7 *mortgage transactions;*

8 *(2) the accuracy of the various approaches in as-*
9 *sessing the property as collateral;*

10 *(3) whether and how the approaches contributed*
11 *to price speculation in the previous cycle;*

12 *(4) the costs to consumers of these approaches;*

13 *(5) the disclosure of fees to consumers in the ap-*
14 *praisal process;*

15 *(6) to what extent such approaches may be influ-*
16 *enced by a conflict of interest between the mortgage*
17 *lender and the appraiser and the mechanism by*
18 *which the lender selects and compensates the ap-*
19 *praiser; and*

20 *(7) the suitability of appraisal approaches in*
21 *rural versus urban areas.*

1 **SEC. 1073. PROHIBITED PAYMENTS TO MORTGAGE ORIGINA-**
2 **TORS.**

3 *Section 129 of the Truth in Lending Act (15 U.S.C.*
4 *1639) is amended by inserting after subsection (j) the fol-*
5 *lowing:*

6 “(k) *PROHIBITION ON STEERING INCENTIVES.—*

7 *“(1) IN GENERAL.—For any consumer credit*
8 *transaction secured by real property or a dwelling, no*
9 *loan originator shall receive from any person and no*
10 *person shall pay to a loan originator, directly or in-*
11 *directly, compensation that varies based on the terms*
12 *of the loan (other than the amount of the principal).*

13 *“(2) RESTRUCTURING OF FINANCING ORIGINA-*
14 *TION FEE.—*

15 *“(A) IN GENERAL.—For any consumer*
16 *credit transaction secured by real property or a*
17 *dwelling, a loan originator may not arrange for*
18 *a consumer to finance through the rate any*
19 *origination fee or cost except bona fide third*
20 *party settlement charges not retained by the*
21 *creditor or loan originator.*

22 *“(B) EXCEPTION.—Notwithstanding sub-*
23 *paragraph (A), a loan originator may arrange*
24 *for a consumer to finance through the rate an*
25 *origination fee or cost if—*

1 “(i) the loan originator does not re-
2 ceive any other compensation, directly or
3 indirectly, from the consumer except the
4 compensation that is financed through the
5 rate;

6 “(ii) no person who knows or has rea-
7 son to know of the consumer-paid com-
8 pensation to the loan originator, other than
9 the consumer, pays any compensation to the
10 loan originator, directly or indirectly, in
11 connection with the transaction; and

12 “(iii) the consumer does not make an
13 upfront payment of discount points, origi-
14 nation points, or fees, however denominated
15 (other than bona fide third party settlement
16 charges).

17 “(3) *RULES OF CONSTRUCTION.*—No provision of
18 this subsection shall be construed as—

19 “(A) limiting or affecting the amount of
20 compensation received by a creditor upon the
21 sale of a consummated loan to a subsequent pur-
22 chaser;

23 “(B) restricting a consumer’s ability to fi-
24 nance, at the option of the consumer, including
25 through principal or rate, any origination fees

1 *or costs permitted under this subsection, or the*
2 *loan originator’s right to receive such fees or*
3 *costs (including compensation) from any person,*
4 *subject to paragraph (2)(B), so long as such fees*
5 *or costs do not vary based on the terms of the*
6 *loan (other than the amount of the principal) or*
7 *the consumer’s decision about whether to finance*
8 *such fees or costs; or*

9 *“(C) prohibiting incentive payments to a*
10 *loan originator based on the number of loans*
11 *originated within a specified period of time.*

12 *“(4) LOAN ORIGINATOR.—For the purposes of*
13 *this section, the term ‘loan originator’—*

14 *“(A) means any person who, for direct or*
15 *indirect compensation or gain, or in the expecta-*
16 *tion of direct or indirect compensation or gain,*
17 *with respect to credit to be secured by real prop-*
18 *erty or a dwelling—*

19 *“(i) arranges for an extension, re-*
20 *newal, or continuation of such credit;*

21 *“(ii) takes an application for credit or*
22 *assists a consumer in applying for such*
23 *credit; or*

24 *“(iii) offers or negotiates terms of such*
25 *credit;*

1 “(B) does not include any person who is not
2 otherwise described in subparagraph (A) and
3 who performs purely administrative or clerical
4 tasks on behalf of a person who is described in
5 subparagraph (A); and

6 “(C) does not include a person that only
7 performs real estate brokerage activities and is
8 licensed or registered in accordance with appli-
9 cable State law, unless the person is compensated
10 by a lender or other loan originator or by any
11 agent of such lender or other loan originator.”.

12 **SEC. 1074. MINIMUM STANDARDS FOR RESIDENTIAL MORT-**
13 **GAGE LOANS.**

14 (a) *IN GENERAL.*—No rule, order, or guidance issued
15 by the Bureau under this title shall be construed as requir-
16 ing a depository institution to apply mortgage under-
17 writing standards that do not meet the minimum under-
18 writing standards required by the appropriate prudential
19 regulator of the depository institution.

20 (b) *ABILITY TO REPAY.*—

21 (1) *TILA AMENDMENT.*—Section 129 of the
22 *Truth in Lending Act* (15 U.S.C. 1639), as amended
23 by section 1074 of this Act, is further amended by in-
24 sserting after subsection (k) the following:

25 “(l) *ABILITY TO REPAY.*—

1 “(1) *IN GENERAL.*—No creditor may make a
2 loan secured by real property or a dwelling unless the
3 creditor, based on verified and documented informa-
4 tion, determines that, at the time the loan is con-
5 summated, the consumer has a reasonable ability to
6 repay the loan, according to its terms, and all appli-
7 cable taxes, insurance, and assessments.

8 “(2) *MULTIPLE LOANS.*—If the creditor knows,
9 or has reason to know, that 1 or more loans secured
10 by the same real property or dwelling will be made
11 to the same consumer, the creditor shall, based on
12 verified and documented information, determine that
13 the consumer has a reasonable ability to repay the
14 combined payments of all loans on the same real
15 property or dwelling according to the terms of those
16 loans and all applicable taxes, insurance, and assess-
17 ments.

18 “(3) *BASIS FOR DETERMINATION.*—A determina-
19 tion under this subsection of a consumer’s ability to
20 repay a loan described in paragraph (1) shall include
21 consideration of the consumer’s credit history, current
22 income, expected income the consumer is reasonably
23 assured of receiving, current obligations, debt-to-in-
24 come ratio or the residual income the consumer will
25 have after paying non-mortgage debt and mortgage-

1 *related obligations, employment status, and other fi-*
2 *nancial resources other than the consumer's equity in*
3 *the dwelling or real property that secures repayment*
4 *of the loan.*

5 “(4) *INCOME VERIFICATION.*—*A creditor shall*
6 *verify amounts of income or assets that such creditor*
7 *relies on to determine repayment ability, including*
8 *expected income or assets, by reviewing the con-*
9 *sumer's Internal Revenue Service Form W-2, tax re-*
10 *turns, payroll receipts, financial institution records,*
11 *or other third-party documents that provide reason-*
12 *ably reliable evidence of the consumer's income or as-*
13 *sets. In order to safeguard against fraudulent report-*
14 *ing, any consideration of a consumer's income history*
15 *in making a determination under this subsection*
16 *shall include the verification of such income by the*
17 *use of—*

18 “(A) *Internal Revenue Service transcripts*
19 *of tax returns; or*

20 “(B) *a method that quickly and effectively*
21 *verifies income documentation by a third party*
22 *subject to rules prescribed by the Board.*

23 “(5) *PRESUMPTION OF ABILITY TO REPAY.*—*Any*
24 *creditor with respect to any consumer loan secured by*
25 *real property or a dwelling is presumed to have com-*

1 *plied with this subsection with respect to such loan if*
2 *the creditor—*

3 *“(A) verifies the consumer’s ability to repay*
4 *as provided in paragraphs (1), (2), (3), and (4);*
5 *and*

6 *“(B) determines the consumer’s ability to*
7 *repay using the maximum rate permitted under*
8 *the loan during the first 5 years following con-*
9 *summation and a payment schedule that fully*
10 *amortizes the loan and taking into account cur-*
11 *rent obligations and all applicable taxes, insur-*
12 *ance, and assessments.*

13 *“(6) EXCEPTIONS TO PRESUMPTION.—Notwith-*
14 *standing paragraph (5), no presumption of compli-*
15 *ance shall be applied to a loan—*

16 *“(A) for which the regular periodic pay-*
17 *ments for the loan may—*

18 *“(i) result in an increase of the prin-*
19 *cipal balance; or*

20 *“(ii) allow the consumer to defer re-*
21 *payment of principal.*

22 *“(B) the terms of which result in a balloon*
23 *payment, where a ‘balloon payment’ is a sched-*
24 *uled payment that is more than twice as large*
25 *as the average of earlier scheduled payments; or*

1 “(C) for which the total points and fees
2 payable in connection with the loan exceed 3
3 percent of the total loan amount, where ‘points
4 and fees’ means points and fees as defined by
5 section 103(aa)(4) of the Truth in Lending Act
6 (15 U.S.C. 1602(aa)(4)), except that, for the pur-
7 poses of computing the total points and fees
8 under this subparagraph, the total points and
9 fees attributable to any premium for mortgage
10 guarantee insurance provided by an agency of
11 the Federal Government or an agency of a State
12 shall exclude any amount of the points and fees
13 for such insurance greater than 1 percent of the
14 total loan amount.

15 “(7) EXEMPTION.—

16 “(A) The Board may revise, add to, or sub-
17 tract from the criteria under paragraphs (5) and
18 (6) and subparagraphs (B) and (C) of this para-
19 graph upon a finding that such regulations are
20 necessary or appropriate to effectuate the pur-
21 poses of this title, to prevent circumvention or
22 evasion thereof, or to facilitate compliance with
23 this subsection.

24 “(B) BRIDGE LOANS.—This subsection does
25 not apply to a temporary or ‘bridge’ loan with

1 *a term of 12 months or less, including to any*
2 *loan to purchase a new dwelling where the con-*
3 *sumer plans to sell a current dwelling within 12*
4 *months.*

5 “(C) *REVERSE MORTGAGES.*—*This sub-*
6 *section does not apply with respect to any re-*
7 *verse mortgage.*

8 “(8) *SEASONAL INCOME.*—*If documented income,*
9 *including income from a small business, is a repay-*
10 *ment source for an extension of credit secured by resi-*
11 *dential real estate or a dwelling, a creditor may con-*
12 *sider the seasonality and irregularity of such income*
13 *in the underwriting of and scheduling of payments*
14 *for such credit.”.*

15 (2) *CONFORMING AMENDMENT.*—*Section 129 of*
16 *the Truth in Lending Act (15 U.S.C. 1639), as*
17 *amended by this Act, is amended—*

18 (A) *by redesignating subsections (k), (l),*
19 *and (m) as subsections (m), (n), and (o), respec-*
20 *tively; and*

21 (B) *in subsection (o), as so redesignated, by*
22 *striking “(l)(2)” and inserting “(n)(2)”.*

1 **SEC. 1075. PROHIBITION ON CERTAIN PREPAYMENT PEN-**
 2 **ALTIES.**

3 (a) *IN GENERAL.*—Chapter 2 of the Truth in Lending
 4 Act (15 U.S.C. 1631 et seq.) is amended by inserting after
 5 section 129A (15 U.S.C. 1639a) the following new section:

6 **“SEC. 129B. PROHIBITION ON CERTAIN PREPAYMENT PEN-**
 7 **ALTIES.**

8 “(a) *PROHIBITED ON CERTAIN LOANS.*—A residential
 9 mortgage loan that is not a qualified mortgage may not
 10 contain terms under which a consumer is required to pay
 11 a prepayment penalty for paying all or part of the prin-
 12 cipal after the loan is consummated.

13 “(b) *PHASED-OUT PENALTIES ON QUALIFIED MORT-*
 14 *GAGES.*—

15 “(1) *IN GENERAL.*—A qualified mortgage may
 16 not contain terms under which a consumer is re-
 17 quired to pay a prepayment penalty for paying all
 18 or part of the principal after the loan is con-
 19 summated in excess of—

20 “(A) during the 1-year period beginning on
 21 the date on which the loan is consummated, an
 22 amount equal to 3 percent of the outstanding
 23 balance on the loan;

24 “(B) during the 1-year period beginning
 25 immediately after the end of the period described

1 in subparagraph (A), an amount equal to 2 per-
2 cent of the outstanding balance on the loan; and

3 “(C) during the 1-year period beginning
4 immediately after the end of the 1-year period
5 described in subparagraph (B), an amount equal
6 to 1 percent of the outstanding balance on the
7 loan.

8 “(2) *PROHIBITION.*—After the end of the 3-year
9 period beginning on the date on which the loan is
10 consummated, no prepayment penalty may be im-
11 posed on a qualified mortgage.

12 “(c) *OPTION FOR NO PREPAYMENT PENALTY RE-*
13 *QUIRED.*—A creditor may not offer a consumer a residen-
14 tial mortgage loan product that has a prepayment penalty
15 for paying all or part of the principal after the loan is
16 consummated as a term of the loan, without offering to the
17 consumer a residential mortgage loan product that does not
18 have a prepayment penalty as a term of the loan.

19 “(d) *PROHIBITIONS ON EVASIONS, STRUCTURING OF*
20 *TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.*—A
21 creditor may not take any action in connection with a resi-
22 dential mortgage loan—

23 “(1) to structure a loan transaction as an open
24 end consumer credit plan or another form of loan for

1 *the purpose and with the intent of evading the provi-*
2 *sions of this section; or*

3 *“(2) to divide any loan transaction into separate*
4 *parts for the purpose and with the intent of evading*
5 *provisions of this section.*

6 *“(e) PUBLICATION OF AVERAGE PRIME OFFER RATE*
7 *AND APR THRESHOLDS.—The Board—*

8 *“(1) shall publish, and update at least weekly,*
9 *average prime offer rates;*

10 *“(2) may publish multiple rates based on vary-*
11 *ing types of mortgage transactions; and*

12 *“(3) shall adjust the thresholds of 1.50 percentage*
13 *points in subsection (g)(3)(A)(v)(I), 2.50 percentage*
14 *points in subsection (g)(3)(A)(v)(II), and 3.50 per-*
15 *centage points in subsection (g)(3)(A)(v)(III), as nec-*
16 *essary to reflect significant changes in market condi-*
17 *tions and to effectuate the purposes of this section.*

18 *“(f) REGULATIONS.—*

19 *“(1) IN GENERAL.—The Bureau shall prescribe*
20 *regulations to carry out this section.*

21 *“(2) REVISION OF SAFE HARBOR CRITERIA.—The*
22 *Bureau may prescribe regulations that revise, add to,*
23 *or subtract from the criteria that define a qualified*
24 *mortgage, upon a finding that such regulations are*
25 *necessary or appropriate—*

1 “(A) to ensure that responsible, affordable
2 mortgage credit remains available to consumers
3 in a manner consistent with the purposes of this
4 section;

5 “(B) to effectuate the purposes of this sec-
6 tion;

7 “(C) to prevent circumvention or evasion
8 thereof; or

9 “(D) to facilitate compliance with this sec-
10 tion.

11 “(3) *INTERAGENCY HARMONIZATION.*—

12 “(A) *DETERMINATION OF QUALIFYING*
13 *MORTGAGE TREATMENT.*—*The agencies and offi-*
14 *cial*s described in subparagraph (B) shall, in
15 consultation with the Bureau, prescribe rules de-
16 fining the types of loans they insure, guarantee,
17 or administer, as the case may be, that are
18 qualified mortgages for purposes of this section,
19 upon a finding that such rules are consistent
20 with the purposes of this section or are appro-
21 priate to prevent circumvention or evasion there-
22 of or to facilitate compliance with this section.

23 “(B) *AGENCIES AND OFFICIALS.*—*The agen-*
24 *cies and officials described in this subparagraph*
25 *are—*

1 “(i) *the Secretary of the Department of*
2 *Housing and Urban Development, with re-*
3 *gard to mortgages insured under title II of*
4 *the National Housing Act (12 U.S.C. 1707*
5 *et seq.);*

6 “(ii) *the Secretary of Veterans Affairs,*
7 *with regard to a loan made or guaranteed*
8 *by the Secretary of Veterans Affairs;*

9 “(iii) *the Secretary of Agriculture,*
10 *with regard to loans guaranteed by the Sec-*
11 *retary of Agriculture pursuant to section*
12 *502 of the Housing Act of 1949 (42 U.S.C.*
13 *1472(h));*

14 “(iv) *the Federal Housing Finance*
15 *Agency, with regard to loans meeting the*
16 *conforming loan standards of the Federal*
17 *National Mortgage Association or the Fed-*
18 *eral Home Loan Mortgage Corporation; and*

19 “(v) *the Rural Housing Service, with*
20 *regard to loans insured by the Rural Hous-*
21 *ing Service.*

22 “(4) *IMPLEMENTATION.—Regulations required or*
23 *authorized to be prescribed under this subsection—*

1 “(A) shall be prescribed in final form before
2 the end of the 12-month period beginning on the
3 date of enactment of this section; and

4 “(B) shall take effect not later than 18
5 months after the date of enactment of this sec-
6 tion.

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

9 “(1) *AVERAGE PRIME OFFER RATE.*—The term
10 ‘average prime offer rate’ means an annual percent-
11 age rate that is derived from average interest rates,
12 points, and other loan pricing terms currently offered
13 to consumers by a representative sample of creditors
14 for mortgage transactions that have low-risk pricing
15 characteristics.

16 “(2) *PREPAYMENT PENALTY.*—The term ‘prepay-
17 ment penalty’ means any penalty for paying all or
18 part of the principal on an extension of credit before
19 the date on which the principal is due, including a
20 computation of a refund of unearned interest by a
21 method that is less favorable to the consumer than the
22 actuarial method, as defined in section 933(d) of the
23 Housing and Community Development Act of 1992
24 (15 U.S.C. 1615(d)).

1 “(3) *QUALIFIED MORTGAGE.*—*The term ‘quali-*
2 *fied mortgage’ means—*

3 “(A) *any residential mortgage loan—*

4 “(i) *that does not have an adjustable*
5 *rate;*

6 “(ii) *that does not allow a consumer to*
7 *defer repayment of principal or interest, or*
8 *is not otherwise deemed a ‘non-traditional*
9 *mortgage’ under guidance, advisories, or*
10 *regulations prescribed by the Bureau;*

11 “(iii) *that does not provide for a re-*
12 *payment schedule that results in negative*
13 *amortization at any time;*

14 “(iv) *for which the terms are fully am-*
15 *ortizing and which does not result in a bal-*
16 *loon payment, where a ‘balloon payment’ is*
17 *a scheduled payment that is more than*
18 *twice as large as the average of earlier*
19 *scheduled payments;*

20 “(v) *which has an annual percentage*
21 *rate that does not exceed the average prime*
22 *offer rate for a comparable transaction, as*
23 *of the date on which the interest rate is*
24 *set—*

1 “(I) by 1.5 or more percentage
2 points, in the case of a first lien resi-
3 dential mortgage loan having an origi-
4 nal principal obligation amount that
5 is equal to or less than the amount of
6 the maximum limitation on the origi-
7 nal principal obligation of a mortgage
8 in effect for a residence of the applica-
9 ble size, as of the date on which such
10 interest rate is set, pursuant to the
11 sixth sentence of section 305(a)(2) of
12 the Federal Home Loan Mortgage Cor-
13 poration Act (12 U.S.C. 1454(a)(2));

14 “(II) by 2.5 or more percentage
15 points, in the case of a first lien resi-
16 dential mortgage loan having an origi-
17 nal principal obligation amount that
18 is more than the amount of the max-
19 imum limitation on the original prin-
20 cipal obligation of a mortgage in effect
21 for a residence of the applicable size, as
22 of the date on which such interest rate
23 is set, pursuant to the sixth sentence of
24 section 305(a)(2) of the Federal Home

1 *Loan Mortgage Corporation Act (12*
2 *U.S.C. 1454(a)(2)); or*

3 *“(III) by 3.5 or more percentage*
4 *points, in the case of a subordinate*
5 *lien residential mortgage loan;*

6 *“(vi) for which the income and finan-*
7 *cial resources relied upon to qualify the ob-*
8 *ligors on the loan are verified and docu-*
9 *mented;*

10 *“(vii) for which the underwriting proc-*
11 *ess is based on a payment schedule that*
12 *fully amortizes the loan over the loan term*
13 *and takes into account all applicable taxes,*
14 *insurance, and assessments;*

15 *“(viii) that does not cause the total*
16 *monthly debts of the consumer, including*
17 *amounts under the loan, to exceed a per-*
18 *centage established by regulation of the*
19 *monthly gross income of the consumer, or*
20 *such other maximum percentage of such in-*
21 *come, as may be prescribed by regulation*
22 *under subsection (g), which rules shall take*
23 *into consideration the income of the con-*
24 *sumer available to pay regular expenses*

1 *after payment of all installment and revolving*
2 *debt;*

3 *“(ix) for which the total points and*
4 *fees payable in connection with the loan do*
5 *not exceed 2 percent of the total loan*
6 *amount, where the term ‘points and fees’*
7 *means points and fees as defined by Section*
8 *103(aa)(4) of the Truth in Lending Act (15*
9 *U.S.C. 1602(aa)(4)); and*

10 *“(x) for which the term of the loan does*
11 *not exceed 30 years, except as such term*
12 *may be extended under subsection (g); and*

13 *“(B) any reverse mortgage that is insured*
14 *by the Federal Housing Administration or com-*
15 *plies with the condition established in subpara-*
16 *graph (A)(v).*

17 *“(4) RESIDENTIAL MORTGAGE LOAN.—The term*
18 *‘residential mortgage loan’ means any consumer cred-*
19 *it transaction that is secured by a mortgage, deed of*
20 *trust, or other equivalent consensual security interest*
21 *on a dwelling or on residential real property that in-*
22 *cludes a dwelling, other than a consumer credit trans-*
23 *action under an open end credit plan or an extension*
24 *of credit relating to a plan described in section*
25 *101(53D) of title 11, United States Code.”.*

1 **(b) CONFORMING AMENDMENTS.**—Section 129(c) of the
 2 *Truth in Lending Act* (15 U.S.C. 1639(c)) is amended—
 3 (1) by striking paragraph (2);
 4 (2) by striking “(1) *IN GENERAL.*—”; and
 5 (3) by redesignating subparagraphs (A) and (B)
 6 as paragraphs (1) and (2), respectively.

7 **SEC. 1076. ASSISTANCE FOR ECONOMICALLY VULNERABLE**
 8 **INDIVIDUALS AND FAMILIES.**

9 **(a) HERA AMENDMENTS.**—Section 1132 of the *Hous-*
 10 *ing and Economic Recovery Act of 2008* (12 U.S.C. 1701x
 11 *note*) is amended—

12 (1) in subsection (a), by inserting in each of
 13 paragraphs (1), (2), (3), and (4) “or economically
 14 vulnerable individuals and families” after “home-
 15 buyers” each place that term appears;

16 (2) in subsection (b)(1), by inserting “or eco-
 17 nomically vulnerable individuals and families” after
 18 “homebuyers”;

19 (3) in subsection (c)(1)—

20 (A) in subparagraph (A), by striking “or”
 21 at the end;

22 (B) in subparagraph (B), by striking the
 23 period at the end and inserting “; or”; and

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

25 “(C) a nonprofit corporation that—

1 “(i) is exempt from taxation under sec-
2 tion 501(c)(3) of the Internal Revenue Code
3 of 1986; and

4 “(ii) specializes or has expertise in
5 working with economically vulnerable indi-
6 viduals and families, but whose primary
7 purpose is not provision of credit counseling
8 services.”; and

9 (4) in subsection (d)(1), by striking “not more
10 than 5”.

11 (b) *APPLICABILITY*.—Amendments made by subsection
12 (a) shall not apply to programs authorized by section 1132
13 of the Housing and Economic Recovery Act of 2008 (12
14 U.S.C. 1701x note) that are funded with appropriations
15 prior to fiscal year 2011.

16 **SEC. 1077. REMITTANCE TRANSFERS.**

17 (a) *TREATMENT OF REMITTANCE TRANSFERS*.—The
18 *Electronic Fund Transfer Act* (15 U.S.C. 1693 et seq.) is
19 amended—

20 (1) in section 902(b) (15 U.S.C. 1693(b)), by in-
21 serting “and remittance” after “electronic fund”;

22 (2) by redesignating sections 919, 920, 921, and
23 922 as sections 920, 921, 922, and 923, respectively;
24 and

25 (3) by inserting after section 918 the following:

1 **“SEC. 919. REMITTANCE TRANSFERS.**

2 “(a) *DISCLOSURES REQUIRED FOR REMITTANCE*
3 *TRANSFERS.*—

4 “(1) *IN GENERAL.*—*Each remittance transfer*
5 *provider shall make disclosures as required under this*
6 *section and in accordance with rules prescribed by the*
7 *Board.*

8 “(2) *STOREFRONT DISCLOSURES.*—

9 “(A) *IN GENERAL.*—*At every physical store-*
10 *front location owned or controlled by a remit-*
11 *tance transfer provider (with respect to remit-*
12 *tance transfer activities), the remittance transfer*
13 *provider shall prominently post, and update*
14 *daily, a notice describing a model transfer for*
15 *the amounts of \$100 and \$200 (in United States*
16 *dollars) showing the amount of currency that*
17 *will be received by the designated recipient,*
18 *using the values of the currency into which the*
19 *funds will be exchanged for the 3 currencies to*
20 *which that particular storefront sends the great-*
21 *est number of remittance transfer payments,*
22 *measured irrespective of the value of such pay-*
23 *ments. The values shall include all fees charged*
24 *by the remittance transfer provider, taken out of*
25 *the \$100 and \$200 amounts.*

1 “(B) *ELECTRONIC DISCLOSURE*.—Subject to
2 the rules prescribed by the Board, a remittance
3 transfer provider shall prominently post, and
4 update daily, a notice describing a model trans-
5 fer, as described in subparagraph (A), on the
6 Internet site owned or controlled by the remit-
7 tance transfer provider which senders use to elec-
8 tronically conduct remittance transfer trans-
9 actions.

10 “(3) *SPECIFIC DISCLOSURES*.—In addition to
11 any other disclosures applicable under this title, and
12 subject to paragraph (4), a remittance transfer pro-
13 vider shall provide, in writing and in a form that the
14 sender may keep, to each sender requesting a remit-
15 tance transfer, as applicable to the transaction—

16 “(A) at the time at which the sender re-
17 quests a remittance transfer to be initiated, and
18 prior to the sender making any payment in con-
19 nection with the remittance transfer, a disclosure
20 describing the amount of currency that will be
21 sent to the designated recipient, using the values
22 of the currency into which the funds will be ex-
23 changed; and

1 “(B) at the time at which the sender makes
2 payment in connection with the remittance
3 transfer—

4 “(i) a receipt showing—

5 “(I) the information described in
6 subparagraph (A);

7 “(II) the promised date of delivery
8 to the designated recipient; and

9 “(III) the name and either the
10 telephone number or the address of the
11 designated recipient; and

12 “(ii) a statement containing—

13 “(I) information about the rights
14 of the sender under this section regard-
15 ing the resolution of errors; and

16 “(II) appropriate contact infor-
17 mation for—

18 “(aa) the remittance transfer
19 provider; and

20 “(bb) each State or Federal
21 agency supervising the remittance
22 transfer provider, including its
23 State licensing authority or Fed-
24 eral regulator, as applicable.

1 “(4) *REQUIREMENTS RELATING TO DISCLOSURES.*—*With respect to each disclosure required to*
2 *be provided under paragraph (3), and subject to*
3 *paragraph (5), a remittance transfer provider shall—*

4 “(A) *provide an initial notice and receipt,*
5 *as required by subparagraphs (A) and (B) of*
6 *paragraph (3), and an error resolution state-*
7 *ment, as required by subsection (c), that clearly*
8 *and conspicuously describe the information re-*
9 *quired to be disclosed therein; and*

10 “(B) *with respect to any transaction that a*
11 *sender conducts electronically, comply with the*
12 *Electronic Signatures in Global and National*
13 *Commerce Act (15 U.S.C. 7001 et seq.).*

14 “(5) *EXEMPTION AUTHORITY.*—*The Board may,*
15 *by rule, permit a remittance transfer provider to sat-*
16 *isfy the requirements of—*

17 “(A) *paragraph (3)(A) orally, if the trans-*
18 *action is conducted entirely by telephone;*

19 “(B) *paragraph (3)(B), by mailing the doc-*
20 *uments required under such subparagraph to the*
21 *sender, not later than 1 business day after the*
22 *date on which the transaction is conducted, if the*
23 *transaction is conducted entirely by telephone;*
24

1 “(C) subparagraphs (A) and (B) of para-
2 graph (3) together in one written disclosure, but
3 only to the extent that the information provided
4 in accordance with paragraph (3)(A) is accurate
5 at the time at which payment is made in connec-
6 tion with the subject remittance transfer;

7 “(D) paragraph (3)(A), if a sender initiates
8 a transaction to one of those countries displayed,
9 in the exact amount of the transfers displayed
10 pursuant to paragraph (2), if the Board finds it
11 to be appropriate; and

12 “(E) paragraph (3)(A), without compliance
13 with section 101(c) of the *Electronic Signatures*
14 *in Global Commerce Act*, if a sender initiates the
15 transaction electronically and the information is
16 displayed electronically in a manner that the
17 sender can keep.

18 “(b) *FOREIGN LANGUAGE DISCLOSURES.*—

19 “(1) *IN GENERAL.*—The disclosures required
20 under this section shall be made in *English* and in
21 each of the same foreign languages principally used
22 by the remittance transfer provider, or any of its
23 agents, to advertise, solicit, or market, either orally or
24 in writing, at that office.

1 “(2) *ACCOUNTS.*—*In the case of a sender who*
2 *holds a demand deposit, savings deposit, or other*
3 *asset account with the remittance transfer provider*
4 *(other than an occasional or incidental credit balance*
5 *under an open end credit plan, as defined in section*
6 *103(i) of the Truth in Lending Act), the disclosures*
7 *required under this section shall be made in the lan-*
8 *guage or languages principally used by the remittance*
9 *transfer provider to communicate to the sender with*
10 *respect to the account.*

11 “(c) *REMITTANCE TRANSFER ERRORS.*—

12 “(1) *ERROR RESOLUTION.*—

13 “(A) *IN GENERAL.*—*If a remittance transfer*
14 *provider receives oral or written notice from the*
15 *sender within 180 days of the promised date of*
16 *delivery that an error occurred with respect to a*
17 *remittance transfer, including the amount of*
18 *currency designated in subsection (a)(3)(A) that*
19 *was to be sent to the designated recipient of the*
20 *remittance transfer, using the values of the cur-*
21 *rency into which the funds should have been ex-*
22 *changed, but was not made available to the des-*
23 *ignated recipient in the foreign country, the re-*
24 *mittance transfer provider shall resolve the error*

1 *pursuant to this subsection and investigate the*
2 *reason for the error.*

3 “(B) *REMEDIES.*—*Not later than 90 days*
4 *after the date of receipt of a notice from the*
5 *sender pursuant to subparagraph (A), the remit-*
6 *tance transfer provider shall, as applicable to the*
7 *error and as designated by the sender—*

8 “(i) *refund to the sender the total*
9 *amount of funds tendered by the sender in*
10 *connection with the remittance transfer*
11 *which was not properly transmitted;*

12 “(ii) *make available to the designated*
13 *recipient, without additional cost to the des-*
14 *ignated recipient or to the sender, the*
15 *amount appropriate to resolve the error;*

16 “(iii) *provide such other remedy, as de-*
17 *termined appropriate by rule of the Board*
18 *for the protection of senders; or*

19 “(iv) *provide written notice to the*
20 *sender that there was no error with an ex-*
21 *planation responding to the specific com-*
22 *plaint of the sender.*

23 “(2) *RULES.*—*The Board shall establish, by rule*
24 *issued not later than 1 calendar year after the date*
25 *of enactment of the Restoring American Financial*

1 *Stability Act of 2010, clear and appropriate stand-*
2 *ards for remittance transfer providers with respect to*
3 *error resolution relating to remittance transfers, to*
4 *protect senders from such errors. Standards prescribed*
5 *under this paragraph shall include appropriate*
6 *standards regarding record keeping, as required, in-*
7 *cluding documentation—*

8 “(A) *of the complaint of the sender;*

9 “(B) *that the sender provides the remittance*
10 *transfer provider with respect to the alleged*
11 *error; and*

12 “(C) *of the findings of the remittance trans-*
13 *fer provider regarding the investigation of the al-*
14 *leged error that the sender brought to their atten-*
15 *tion.*

16 “(d) *APPLICABILITY OF THIS TITLE.—*

17 “(1) *IN GENERAL.—A remittance transfer that is*
18 *not an electronic fund transfer, as defined in section*
19 *903, shall not be subject to any of the provisions of*
20 *sections 905 through 913. A remittance transfer that*
21 *is an electronic fund transfer, as defined in section*
22 *903, shall be subject to all provisions of this title, ex-*
23 *cept for section 908, that are otherwise applicable to*
24 *electronic fund transfers under this title.*

1 “(2) *RULE OF CONSTRUCTION.*—*Nothing in this*
2 *section shall be construed—*

3 “(A) *to affect the application to any trans-*
4 *action, to any remittance provider, or to any*
5 *other person of any of the provisions of sub-*
6 *chapter II of chapter 53 of title 31, United*
7 *States Code, section 21 of the Federal Deposit*
8 *Insurance Act (12 U.S.C. 1829b), or chapter 2 of*
9 *title I of Public Law 91–508 (12 U.S.C. 1951–*
10 *1959), or any regulations promulgated there-*
11 *under; or*

12 “(B) *to cause any fund transfer that would*
13 *not otherwise be treated as such under para-*
14 *graph (1) to be treated as an electronic fund*
15 *transfer, or as otherwise subject to this title, for*
16 *the purposes of any of the provisions referred to*
17 *in subparagraph (A) or any regulations promul-*
18 *gated thereunder.*

19 “(e) *ACTS OF AGENTS.*—*A remittance transfer pro-*
20 *vider shall be liable for any violation of this section by any*
21 *agent, authorized delegate, or person affiliated with such*
22 *provider, when such agent, authorized delegate, or affiliate*
23 *acts for that remittance transfer provider.*

24 “(f) *DEFINITIONS.*—*As used in this section—*

1 “(1) the term ‘designated recipient’ means any
2 person located in a foreign country and identified by
3 the sender as the authorized recipient of a remittance
4 transfer to be made by a remittance transfer provider,
5 except that a designated recipient shall not be deemed
6 to be a consumer for purposes of this Act;

7 “(2) the term ‘remittance transfer’ means the
8 electronic (as defined in section 106(2) of the Elec-
9 tronic Signatures in Global and National Commerce
10 Act (15 U.S.C. 7006(2))) transfer of funds requested
11 by a sender located in any State to a designated re-
12 cipient that is initiated by a remittance transfer pro-
13 vider, whether or not the sender holds an account
14 with the remittance transfer provider or whether or
15 not the remittance transfer is also an electronic fund
16 transfer, as defined in section 903;

17 “(3) the term ‘remittance transfer provider’
18 means any person or financial institution that pro-
19 vides remittance transfers for a consumer in the nor-
20 mal course of its business, whether or not the con-
21 sumer holds an account with such person or financial
22 institution; and

23 “(4) the term ‘sender’ means a consumer who re-
24 quests a remittance provider to send a remittance
25 transfer for the consumer to a designated recipient.”.

1 **(b) AUTOMATED CLEARINGHOUSE SYSTEM.**—

2 **(1) EXPANSION OF SYSTEM.**—*The Board of Gov-*
3 *ernors shall work with the Federal reserve banks to*
4 *expand the use of the automated clearinghouse system*
5 *for remittance transfers to foreign countries, with a*
6 *focus on countries that receive significant remittance*
7 *transfers from the United States, based on—*

8 **(A)** *the number, volume, and size of such*
9 *transfers;*

10 **(B)** *the significance of the volume of such*
11 *transfers relative to the external financial flows*
12 *of the receiving country, including—*

13 **(i)** *the total amount transferred; and*

14 **(ii)** *the total volume of payments made*
15 *by United States Government agencies to*
16 *beneficiaries and retirees living abroad;*

17 **(C)** *the feasibility of such an expansion;*
18 *and*

19 **(D)** *the ability of the Federal Reserve Sys-*
20 *tem to establish payment gateways in different*
21 *geographic regions and currency zones to receive*
22 *remittance transfers and route them through the*
23 *payments systems in the destination countries.*

24 **(2) REPORT TO CONGRESS.**—*Not later than one*
25 *calendar year after the date of enactment of this Act,*

1 *and on April 30 biennially thereafter during the 10-*
2 *year period beginning on that date of enactment, the*
3 *Board of Governors shall submit a report to the Com-*
4 *mittee on Banking, Housing, and Urban Affairs of*
5 *the Senate and the Committee on Financial Services*
6 *of the House of Representatives on the status of the*
7 *automated clearinghouse system and its progress in*
8 *complying with the requirements of this subsection.*
9 *The report shall include an analysis of adoption rates*
10 *of International ACH Transactions rules and for-*
11 *mats, the efficacy of increasing adoption rates, and*
12 *potential recommendations to increase adoption.*

13 *(c) EXPANSION OF FINANCIAL INSTITUTION PROVISION*
14 *OF REMITTANCE TRANSFERS.—*

15 *(1) PROVISION OF GUIDELINES TO INSTITU-*
16 *TIONS.—Each of the Federal banking agencies and the*
17 *National Credit Union Administration shall provide*
18 *guidelines to financial institutions under the jurisdic-*
19 *tion of the agency regarding the offering of low-cost*
20 *remittance transfers and no-cost or low-cost basic con-*
21 *sumer accounts, as well as agency services to remit-*
22 *tance transfer providers.*

23 *(2) ASSISTANCE TO FINANCIAL LITERACY COM-*
24 *MISSION.—As part of its duties as members of the Fi-*
25 *nanacial Literacy and Education Commission, the Bu-*

1 *reau, the Federal banking agencies, and the National*
2 *Credit Union Administration shall assist the Finan-*
3 *cial Literacy and Education Commission in exe-*
4 *cuting the Strategy for Assuring Financial Empower-*
5 *ment (or the “SAFE Strategy”), as it relates to re-*
6 *mittances.*

7 *(d) FEDERAL CREDIT UNION ACT CONFORMING*
8 *AMENDMENT.—Paragraph (12) of section 107 of the Fed-*
9 *eral Credit Union Act (12 U.S.C. 1757) is amended to read*
10 *as follows:*

11 *“(12) in accordance with regulations prescribed*
12 *by the Board—*

13 *“(A) to sell, to persons in the field of mem-*
14 *bership, negotiable checks (including travelers*
15 *checks), money orders, and other similar money*
16 *transfer instruments (including international*
17 *and domestic electronic fund transfers);*

18 *“(B) to provide remittance transfers, as de-*
19 *finied in section 919 of the Electronic Fund*
20 *Transfer Act, to persons in the field of member-*
21 *ship; and*

22 *“(C) to cash checks and money orders for*
23 *persons in the field of membership for a fee;”.*

1 **SEC. 1078. DEPARTMENT OF THE TREASURY STUDY ON**
2 **ENDING THE CONSERVATORSHIP OF FANNIE**
3 **MAE, FREDDIE MAC, AND REFORMING THE**
4 **HOUSING FINANCE SYSTEM.**

5 (a) *STUDY REQUIRED.*—

6 (1) *IN GENERAL.*—*The Secretary of the Treasury*
7 *shall conduct a study of and develop recommendations*
8 *regarding the options for ending the conservatorship*
9 *of the Federal National Mortgage Association (in this*
10 *section referred to as “Fannie Mae”) and the Federal*
11 *Home Loan Mortgage Corporation (in this section re-*
12 *ferred to as “Freddie Mac”), while minimizing the*
13 *cost to taxpayers, including such options as—*

14 (A) *the gradual wind-down and liquidation*
15 *of such entities;*

16 (B) *the privatization of such entities;*

17 (C) *the incorporation of the functions of*
18 *such entities into a Federal agency;*

19 (D) *the dissolution of Fannie Mae and*
20 *Freddie Mac into smaller companies; or*

21 (E) *any other measures the Secretary deter-*
22 *mines appropriate.*

23 (2) *ANALYSES.*—*The study required under para-*
24 *graph (1) shall include an analysis of—*

25 (A) *the role of the Federal Government in*
26 *supporting a stable, well-functioning housing fi-*

1 *nance system, and whether and to what extent*
2 *the Federal Government should bear risks in*
3 *meeting Federal housing finance objectives;*

4 *(B) how the current structure of the housing*
5 *finance system can be improved;*

6 *(C) how the housing finance system should*
7 *support the continued availability of mortgage*
8 *credit to all segments of the market;*

9 *(D) how the housing finance system should*
10 *be structured to ensure that consumers continue*
11 *to have access to 30-year, fixed rate, pre-payable*
12 *mortgages and other mortgage products that have*
13 *simple terms that can be easily understood;*

14 *(E) the role of the Federal Housing Admin-*
15 *istration and the Department of Veterans Affairs*
16 *in a future housing system;*

17 *(F) the impact of reforms of the housing fi-*
18 *nance system on the financing of rental housing;*

19 *(G) the impact of reforms of the housing fi-*
20 *nance system on secondary market liquidity;*

21 *(H) the role of standardization in the hous-*
22 *ing finance system;*

23 *(I) how housing finance systems in other*
24 *countries offer insights that can help inform op-*
25 *tions for reform in the United States; and*

1 *(J) the options for transition to a reformed*
 2 *housing finance system.*

3 ***(b) REPORT AND RECOMMENDATIONS.***—*Not later than*
 4 *January 31, 2011, the Secretary of the Treasury shall sub-*
 5 *mit the report and recommendations required under sub-*
 6 *section (a) to the Committee on Banking, Housing, and*
 7 *Urban Affairs of the Senate and the Committee on Finan-*
 8 *cial Services of the House of Representatives.*

9 **SEC. 1079. REASONABLE FEES AND RULES FOR PAYMENT**
 10 **CARD TRANSACTIONS.**

11 *The Electronic Fund Transfer Act (15 U.S.C. 1693 et*
 12 *seq.) is amended—*

13 *(1) by redesignating sections 920 and 921 as sec-*
 14 *tions 921 and 922, respectively; and*

15 *(2) by inserting after section 919 the following:*

16 **“SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT**
 17 **CARD TRANSACTIONS.**

18 **“(a) REASONABLE INTERCHANGE TRANSACTION FEES**
 19 **FOR ELECTRONIC DEBIT TRANSACTIONS.**—

20 **“(1) REGULATORY AUTHORITY.**—*The Board shall*
 21 *have authority to establish rules, pursuant to section*
 22 *553 of title 5, United States Code, regarding any*
 23 *interchange transaction fee that an issuer or payment*
 24 *card network may charge with respect to an electronic*
 25 *debit transaction.*

1 “(2) *REASONABLE FEES.*—*The amount of any*
2 *interchange transaction fee that an issuer or payment*
3 *card network may charge with respect to an electronic*
4 *debit transaction shall be reasonable and proportional*
5 *to the actual cost incurred by the issuer or payment*
6 *card network with respect to the transaction.*

7 “(3) *RULEMAKING REQUIRED.*—*The Board shall*
8 *issue final rules, not later than 9 months after the*
9 *date of enactment of the Consumer Financial Protec-*
10 *tion Act of 2010, to establish standards for assessing*
11 *whether the amount of any interchange transaction*
12 *fee described in paragraph (2) is reasonable and pro-*
13 *portional to the actual cost incurred by the issuer or*
14 *payment card network with respect to the transaction.*

15 “(4) *CONSIDERATIONS.*—*In issuing rules re-*
16 *quired by this section, the Board shall—*

17 “(A) *consider the functional similarity be-*
18 *tween—*

19 “(i) *electronic debit transactions; and*

20 “(ii) *checking transactions that are re-*
21 *quired within the Federal Reserve bank sys-*
22 *tem to clear at par;*

23 “(B) *distinguish between—*

24 “(i) *the actual incremental cost in-*
25 *curring by an issuer or payment card net-*

1 *work for the role of the issuer or the pay-*
2 *ment card network in the authorization,*
3 *clearance, or settlement of a particular elec-*
4 *tronic debit transaction, which cost shall be*
5 *considered under paragraph (2); and*

6 “(ii) *other costs incurred by an issuer*
7 *or payment card network which are not spe-*
8 *cific to a particular electronic debit trans-*
9 *action, which costs shall not be considered*
10 *under paragraph (2); and*

11 “(C) *consult, as appropriate, with the*
12 *Comptroller of the Currency, the Board of Direc-*
13 *tors of the Federal Deposit Insurance Corpora-*
14 *tion, the Director of the Office of Thrift Super-*
15 *vision, the National Credit Union Administra-*
16 *tion Board, the Administrator of the Small*
17 *Business Administration, and the Director of the*
18 *Bureau of Consumer Financial Protection.*

19 “(5) *EXEMPTION FOR SMALL ISSUERS.—This*
20 *subsection shall not apply to issuers that, together*
21 *with affiliates, have assets of less than*
22 *\$10,000,000,000, and the Board shall exempt such*
23 *issuers from rules issued under paragraph (3).*

1 “(6) *EFFECTIVE DATE.*—*Paragraph (2) shall be-*
2 *come effective 12 months after the date of enactment*
3 *of the Consumer Financial Protection Act of 2010.*

4 “(b) *LIMITATION ON ANTI-COMPETITIVE PAYMENT*
5 *CARD NETWORK RESTRICTIONS.*—

6 “(1) *NO RESTRICTIONS ON OFFERING DISCOUNTS*
7 *FOR USE OF A COMPETING PAYMENT CARD NET-*
8 *WORK.*—*A payment card network shall not, directly*
9 *or through any agent, processor, or licensed member*
10 *of the network, by contract, requirement, condition,*
11 *penalty, or otherwise, inhibit the ability of any per-*
12 *son to provide a discount or in-kind incentive for*
13 *payment through the use of a card or device of an-*
14 *other payment card network, provided that the dis-*
15 *count or in-kind incentive only differentiates between*
16 *payment card networks and not between other issuers.*

17 “(2) *NO RESTRICTIONS ON OFFERING DISCOUNTS*
18 *FOR USE OF A FORM OF PAYMENT.*—*A payment card*
19 *network shall not, directly or through any agent,*
20 *processor, or licensed member of the network, by con-*
21 *tract, requirement, condition, penalty, or otherwise,*
22 *inhibit the ability of any person to provide a discount*
23 *or in-kind incentive for payment by the use of cash,*
24 *check, debit card, or credit card.*

1 “(3) *NO RESTRICTIONS ON SETTING TRANS-*
2 *ACTION MINIMUMS OR MAXIMUMS.—A payment card*
3 *network shall not, directly or through any agent,*
4 *processor, or licensed member of the network, by con-*
5 *tract, requirement, condition, penalty, or otherwise,*
6 *inhibit the ability of any person to set a minimum*
7 *or maximum dollar value for the acceptance by that*
8 *person of credit cards, provided that such minimum*
9 *or maximum dollar value does not differentiate be-*
10 *tween issuers or between payment card networks.*

11 “(c) *DEFINITIONS.—For purposes of this section, the*
12 *following definitions shall apply:*

13 “(1) *DEBIT CARD.—The term ‘debit card’—*

14 “(A) *means any card, or other payment*
15 *code or device, issued or approved for use*
16 *through a payment card network to debit an*
17 *asset account for the purpose of transferring*
18 *money between accounts or obtaining goods or*
19 *services, whether authorization is based on signa-*
20 *ture, PIN, or other means;*

21 “(B) *includes general use prepaid cards, as*
22 *that term is defined in section 915(a)(2)(A) (15*
23 *U.S.C. 1693l–1(a)(2)(A)); and*

24 “(C) *does not include paper checks.*

1 “(2) *CREDIT CARD*.—*The term ‘credit card’ has*
2 *the same meaning as in section 103 of the Truth in*
3 *Lending Act (15 U.S.C. 1602).*

4 “(3) *DISCOUNT*.—*The term ‘discount’—*

5 “(A) *means a reduction made from the*
6 *price that customers are informed is the regular*
7 *price; and*

8 “(B) *does not include any means of increas-*
9 *ing the price that customers are informed is the*
10 *regular price.*

11 “(4) *ELECTRONIC DEBIT TRANSACTION*.—*The*
12 *term ‘electronic debit transaction’ means a trans-*
13 *action in which a person uses a debit card to debit*
14 *an asset account.*

15 “(5) *INTERCHANGE TRANSACTION FEE*.—*The*
16 *term ‘interchange transaction fee’ means any fee es-*
17 *tablished by a payment card network that has been*
18 *established for the purpose of compensating an issuer*
19 *or payment card network for its involvement in an*
20 *electronic debit transaction.*

21 “(6) *ISSUER*.—*The term ‘issuer’ means any per-*
22 *son who issues a debit card, or credit card, or the*
23 *agent of such person with respect to such card.*

24 “(7) *PAYMENT CARD NETWORK*.—*The term ‘pay-*
25 *ment card network’ means an entity that directly, or*

1 *through licensed members, processors, or agents, pro-*
2 *vides the proprietary services, infrastructure, and*
3 *software that route information and data to conduct*
4 *transaction authorization, clearance, and settlement,*
5 *and that a person uses in order to accept as a form*
6 *of payment a brand of debit card, credit card or other*
7 *device that may be used to carry out debit or credit*
8 *transactions.”.*

9 **SEC. 1079A. USE OF CONSUMER REPORTS.**

10 *Section 615 of the Fair Credit Reporting Act (15*
11 *U.S.C. 1681m) is amended—*

12 *(1) in subsection (a)—*

13 *(A) by redesignating paragraphs (2) and*
14 *(3) as paragraphs (3) and (4), respectively;*

15 *(B) by inserting after paragraph (1) the fol-*
16 *lowing:*

17 *“(2) provide to the consumer written or elec-*
18 *tronic disclosure—*

19 *“(A) of a numerical credit score as defined*
20 *in section 609(f)(2)(A) used by such person in*
21 *taking any adverse action based in whole or in*
22 *part on any information in a consumer report;*
23 *and*

1 “(B) of the information set forth in sub-
2 paragraphs (B) through (E) of section
3 609(f)(1);” and

4 (C) in paragraph (4) (as so redesignated),
5 by striking “paragraph (2)” and inserting
6 “paragraph (3)”; and
7 (2) in subsection (h)(5)—

8 (A) in subparagraph (C), by striking “;
9 and” and inserting a semicolon;

10 (B) in subparagraph (D), by striking the
11 period and inserting “; and”; and

12 (C) by inserting at the end the following:

13 “(E) include a statement informing the con-
14 sumer of—

15 “(i) a numerical credit score as defined
16 in section 609(f)(2)(A), used by such person
17 in connection with the credit decision de-
18 scribed in paragraph (1) based in whole or
19 in part on any information in a consumer
20 report; and

21 “(ii) the information set forth in sub-
22 paragraphs (B) through (E) of section
23 609(f)(1).”.

1 ***Subtitle H—Conforming***
2 ***Amendments***

3 **SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL**

4 **ACT.**

5 *Effective on the date of enactment of this Act, the In-*
6 *pector General Act of 1978 (5 U.S.C. App. 3) is amended—*

7 (1) *in section 8G(a)(2), by inserting “and the*
8 *Bureau of Consumer Financial Protection” after*
9 *“Board of Governors of the Federal Reserve System”;*

10 (2) *in section 8G(c), by adding at the end the*
11 *following: “For purposes of implementing this section,*
12 *the Chairman of the Board of Governors of the Fed-*
13 *eral Reserve System shall appoint the Inspector Gen-*
14 *eral of the Board of Governors of the Federal Reserve*
15 *System and the Bureau of Consumer Financial Pro-*
16 *tection. The Inspector General of the Board of Gov-*
17 *ernors of the Federal Reserve System and the Bureau*
18 *of Consumer Financial Protection shall have all of the*
19 *authorities and responsibilities provided by this Act*
20 *with respect to the Bureau of Consumer Financial*
21 *Protection, as if the Bureau were part of the Board*
22 *of Governors of the Federal Reserve System.”; and*

23 (3) *in section 8G(g)(3), by inserting “and the*
24 *Bureau of Consumer Financial Protection” after*

1 *“Board of Governors of the Federal Reserve System”*
 2 *the first place that term appears.*

3 **SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

4 *Effective on the date of enactment of this Act, section*
 5 *552a of title 5, United States Code, is amended by adding*
 6 *at the end the following:*

7 *“(w) APPLICABILITY TO BUREAU OF CONSUMER FI-*
 8 *NANCIAL PROTECTION.—Except as provided in the Con-*
 9 *sumer Financial Protection Act of 2010, this section shall*
 10 *apply with respect to the Bureau of Consumer Financial*
 11 *Protection.”.*

12 **SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORTGAGE**
 13 **TRANSACTION PARITY ACT OF 1982.**

14 *(a) IN GENERAL.—The Alternative Mortgage Trans-*
 15 *action Parity Act of 1982 (12 U.S.C. 3801 et seq.) is*
 16 *amended—*

17 *(1) in section 803 (12 U.S.C. 3802(1)), by strik-*
 18 *ing “1974” and all that follows through “described*
 19 *and defined” and inserting the following: “1974), in*
 20 *which the interest rate or finance charge may be ad-*
 21 *justed or renegotiated, described and defined”; and*

22 *(2) in section 804 (12 U.S.C. 3803)—*

23 *(A) in subsection (a)—*

24 *(i) in each of paragraphs (1), (2), and*
 25 *(3), by inserting after “transactions made”*

1 *each place that term appears “on or before*
2 *the designated transfer date, as determined*
3 *under section 1062 of the Consumer Finan-*
4 *cial Protection Act of 2010,”;*

5 *(ii) in paragraph (2), by striking*
6 *“and” at the end;*

7 *(iii) in paragraph (3), by striking the*
8 *period at the end and inserting “; and”;*
9 *and*

10 *(iv) by adding at the end the following*
11 *new paragraph:*

12 *“(4) with respect to transactions made after the*
13 *designated transfer date, only in accordance with reg-*
14 *ulations governing alternative mortgage transactions,*
15 *as issued by the Bureau of Consumer Financial Pro-*
16 *tection for federally chartered housing creditors, in*
17 *accordance with the rulemaking authority granted to*
18 *the Bureau of Consumer Financial Protection with*
19 *regard to federally chartered housing creditors under*
20 *provisions of law other than this section.”;*

21 *(B) by striking subsection (c) and inserting*
22 *the following:*

23 *“(c) PREEMPTION OF STATE LAW.—An alternative*
24 *mortgage transaction may be made by a housing creditor*
25 *in accordance with this section, notwithstanding any State*

1 *constitution, law, or regulation that prohibits an alter-*
2 *native mortgage transaction. For purposes of this sub-*
3 *section, a State constitution, law, or regulation that pro-*
4 *hibits an alternative mortgage transaction does not include*
5 *any State constitution, law, or regulation that regulates*
6 *mortgage transactions generally, including any restriction*
7 *on prepayment penalties or late charges.”; and*

8 (C) *by adding at the end the following:*

9 “(d) *BUREAU ACTIONS.—The Bureau of Consumer Fi-*
10 *nancial Protection shall—*

11 “(1) *review the regulations identified by the*
12 *Comptroller of the Currency and the National Credit*
13 *Union Administration, (as those rules exist on the*
14 *designated transfer date), as applicable under para-*
15 *graphs (1) through (3) of subsection (a);*

16 “(2) *determine whether such regulations are fair*
17 *and not deceptive and otherwise meet the objectives of*
18 *the Consumer Financial Protection Act of 2010; and*

19 “(3) *promulgate regulations under subsection*
20 *(a)(4) after the designated transfer date.*

21 “(e) *DESIGNATED TRANSFER DATE.—As used in this*
22 *section, the term ‘designated transfer date’ means the date*
23 *determined under section 1062 of the Consumer Financial*
24 *Protection Act of 2010.”.*

1 (b) *EFFECTIVE DATE.*—*This section and the amend-*
2 *ments made by this section shall become effective on the des-*
3 *ignated transfer date.*

4 (c) *RULE OF CONSTRUCTION.*—*The amendments made*
5 *by subsection (a) shall not affect any transaction covered*
6 *by the Alternative Mortgage Transaction Parity Act of 1982*
7 *(12 U.S.C. 3801 et seq.) and entered into on or before the*
8 *designated transfer date.*

9 **SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND**
10 **TRANSFER ACT.**

11 *The Electronic Fund Transfer Act (15 U.S.C. 1693 et*
12 *seq.) is amended—*

13 (1) *by striking “Board” each place that term ap-*
14 *pears and inserting “Bureau”, except in section 918*
15 *(as so designated by the Credit Card Act of 2009) (15*
16 *U.S.C. 1693o);*

17 (2) *in section 903 (15 U.S.C. 1693a), by striking*
18 *paragraph (3) and inserting the following:*

19 *“(3) the term ‘Bureau’ means the Bureau of*
20 *Consumer Financial Protection;”;*

21 (3) *in section 916(d) (as so designated by section*
22 *401 of the Credit CARD Act of 2009) (15 U.S.C.*
23 *1693m)—*

1 (A) by striking “*FEDERAL RESERVE SYS-*
2 *TEM*” and inserting “*BUREAU OF CONSUMER FI-*
3 *NANCIAL PROTECTION*”; and

4 (B) by striking “*Federal Reserve System*”
5 and inserting “*Bureau of Consumer Financial*
6 *Protection*”; and

7 (4) in section 918 (as so designated by the Credit
8 *CARD Act of 2009*) (15 U.S.C. 1693o)—

9 (A) in subsection (a)—

10 (i) by striking “*Compliance*” and in-
11 serting “*Except as otherwise provided by*
12 *subtitle B of the Consumer Financial Pro-*
13 *tection Act of 2010, compliance*”; and

14 (ii) by striking paragraph (2) and in-
15 serting the following:

16 “(2) subtitle E of the Consumer Financial Pro-
17 tection Act of 2010, by the Bureau;”; and

18 (B) by striking subsection (c) and inserting
19 the following:

20 “(c) *OVERALL ENFORCEMENT AUTHORITY OF THE*
21 *FEDERAL TRADE COMMISSION.—Except to the extent that*
22 *enforcement of the requirements imposed under this title is*
23 *specifically committed to some other Government agency*
24 *under subsection (a), and subject to subtitle B of the Con-*
25 *sumer Financial Protection Act of 2010, the Federal Trade*

1 *Commission shall enforce such requirements. For the pur-*
2 *pose of the exercise by the Federal Trade Commission of*
3 *its functions and powers under the Federal Trade Commis-*
4 *sion Act, a violation of any requirement imposed under this*
5 *title shall be deemed a violation of a requirement imposed*
6 *under that Act. All of the functions and powers of the Fed-*
7 *eral Trade Commission under the Federal Trade Commis-*
8 *sion Act are available to the Federal Trade Commission to*
9 *enforce compliance by any person subject to the jurisdiction*
10 *of the Federal Trade Commission with the requirements im-*
11 *posed under this title, irrespective of whether that person*
12 *is engaged in commerce or meets any other jurisdictional*
13 *tests under the Federal Trade Commission Act.”.*

14 **SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
15 **TUNITY ACT.**

16 *The Equal Credit Opportunity Act (15 U.S.C. 1691*
17 *et seq.) is amended—*

18 *(1) by striking “Board” each place that term ap-*
19 *pears and inserting “Bureau”;*

20 *(2) in section 702 (15 U.S.C. 1691a), by striking*
21 *subsection (c) and inserting the following:*

22 *“(c) The term ‘Bureau’ means the Bureau of Consumer*
23 *Financial Protection.”;*

24 *(3) in section 703 (15 U.S.C. 1691b)—*

1 (A) by striking the section heading and in-
2 serting the following:

3 **“SEC. 703. PROMULGATION OF REGULATIONS BY THE BU-**
4 **REAU.”;**

5 (B) by striking “(a) REGULATIONS.—”;

6 (C) by striking subsection (b);

7 (D) by redesignating paragraphs (1)
8 through (5) as subsections (a) through (e), re-
9 spectively; and

10 (E) in subsection (c), as so redesignated, by
11 striking “paragraph (2)” and inserting “sub-
12 section (b)”;

13 (4) in section 704 (15 U.S.C. 1691c)—

14 (A) in subsection (a)—

15 (i) by striking “Compliance” and in-
16 serting “Except as otherwise provided by
17 subtitle B of the Consumer Protection Fi-
18 nancial Protection Act of 2010”; and

19 (ii) by striking paragraph (2) and in-
20 serting the following:

21 “(2) Subtitle E of the Consumer Financial Pro-
22 tection Act of 2010, by the Bureau.”;

23 (B) by striking subsection (c) and inserting
24 the following:

1 “(c) *OVERALL ENFORCEMENT AUTHORITY OF FED-*
2 *ERAL TRADE COMMISSION.—Except to the extent that en-*
3 *forcement of the requirements imposed under this title is*
4 *specifically committed to some other Government agency*
5 *under subsection (a), and subject to subtitle B of the Con-*
6 *sumer Financial Protection Act of 2010, the Federal Trade*
7 *Commission shall enforce such requirements. For the pur-*
8 *pose of the exercise by the Federal Trade Commission of*
9 *its functions and powers under the Federal Trade Commis-*
10 *sion Act (15 U.S.C. 41 et seq.), a violation of any require-*
11 *ment imposed under this subchapter shall be deemed a vio-*
12 *lation of a requirement imposed under that Act. All of the*
13 *functions and powers of the Federal Trade Commission*
14 *under the Federal Trade Commission Act are available to*
15 *the Federal Trade Commission to enforce compliance by*
16 *any person with the requirements imposed under this title,*
17 *irrespective of whether that person is engaged in commerce*
18 *or meets any other jurisdictional tests under the Federal*
19 *Trade Commission Act, including the power to enforce any*
20 *rule prescribed by the Bureau under this title in the same*
21 *manner as if the violation had been a violation of a Federal*
22 *Trade Commission trade regulation rule.”; and*

23 (C) *in subsection (d), by striking “Board”*
24 *and inserting “Bureau”; and*

25 (5) *in section 706(e) (15 U.S.C. 1691e(e))—*

1 (A) *in the subsection heading—*

2 (i) *by striking “BOARD” each place*
 3 *that term appears and inserting “BU-*
 4 *REAU”;* and

5 (ii) *by striking “FEDERAL RESERVE*
 6 *SYSTEM” and inserting “BUREAU OF CON-*
 7 *SUMER FINANCIAL PROTECTION”;* and

8 (B) *by striking “Federal Reserve System”*
 9 *and inserting “Bureau of Consumer Financial*
 10 *Protection”.*

11 **SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS AVAIL-**
 12 **ABILITY ACT.**

13 (a) *AMENDMENT TO SECTION 603.—Section 603(d)(1)*
 14 *of the Expedited Funds Availability Act (12 U.S.C. 4002)*
 15 *is amended by inserting after “Board” the following “,*
 16 *jointly with the Director of the Bureau of Consumer Finan-*
 17 *cial Protection,”.*

18 (b) *AMENDMENTS TO SECTION 604.—Section 604 of*
 19 *the Expedited Funds Availability Act (12 U.S.C. 4003) is*
 20 *amended—*

21 (1) *by inserting after “Board” each place that*
 22 *term appears, other than in subsection (f), the fol-*
 23 *lowing: “, jointly with the Director of the Bureau of*
 24 *Consumer Financial Protection,”;* and

1 (2) *in subsection (f), by striking “Board.” each*
2 *place that term appears and inserting the following:*
3 *“Board, jointly with the Director of the Bureau of*
4 *Consumer Financial Protection.”.*

5 (c) *AMENDMENTS TO SECTION 605.—Section 605 of*
6 *the Expedited Funds Availability Act (12 U.S.C. 4004) is*
7 *amended—*

8 (1) *by inserting after “Board” each place that*
9 *term appears, other than in the heading for section*
10 *605(f)(1), the following: “, jointly with the Director of*
11 *the Bureau of Consumer Financial Protection,”; and*

12 (2) *in subsection (f)(1), in the paragraph head-*
13 *ing, by inserting “AND BUREAU” after “BOARD”.*

14 (d) *AMENDMENTS TO SECTION 609.—Section 609 of*
15 *the Expedited Funds Availability Act (12 U.S.C. 4008) is*
16 *amended:*

17 (1) *in subsection (a), by inserting after “Board”*
18 *the following “, jointly with the Director of the Bu-*
19 *reau of Consumer Financial Protection,”; and*

20 (2) *by striking subsection (e) and inserting the*
21 *following:*

22 “(e) *CONSULTATIONS.—In prescribing regulations*
23 *under subsections (a) and (b), the Board and the Director*
24 *of the Bureau of Consumer Financial Protection, in the case*
25 *of subsection (a), and the Board, in the case of subsection*

1 *(b), shall consult with the Comptroller of the Currency, the*
2 *Board of Directors of the Federal Deposit Insurance Cor-*
3 *poration, and the National Credit Union Administration*
4 *Board.”.*

5 *(e) EXPEDITED FUNDS AVAILABILITY IMPROVE-*
6 *MENTS.—Section 603 of the Expedited Funds Availability*
7 *Act (12 U.S.C. 4002) is amended—*

8 *(1) in subsection (a)(2)(D), by striking “\$100”*
9 *and inserting “\$200”; and*

10 *(2) in subsection (b)(3)(C), in the subparagraph*
11 *heading, by striking “\$100” and inserting “\$200”; and*

12 *(3) in subsection (c)(1)(B)(iii), in the clause*
13 *heading, by striking “\$100” and inserting “\$200”.*

14 *(f) REGULAR ADJUSTMENTS FOR INFLATION.—Section*
15 *607 of the Expedited Funds Availability Act (12 U.S.C.*
16 *4006) is amended by adding at the end the following:*

17 *“(f) ADJUSTMENTS TO DOLLAR AMOUNTS FOR INFLA-*
18 *TION.—The dollar amounts under this title shall be adjusted*
19 *every 5 years after December 31, 2011, by the annual per-*
20 *centage increase in the Consumer Price Index for Urban*
21 *Wage Earners and Clerical Workers, as published by the*
22 *Bureau of Labor Statistics, rounded to the nearest multiple*
23 *of \$25.”.*

1 **SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING**

2 **ACT.**

3 *The Fair Credit Billing Act (15 U.S.C. 1666–1666j)*
4 *is amended by striking “Board” each place that term ap-*
5 *pears and inserting “Bureau”.*

6 **SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING**

7 **ACT AND THE FAIR AND ACCURATE CREDIT**
8 **TRANSACTIONS ACT.**

9 *(a) FAIR CREDIT REPORTING ACT.—The Fair Credit*
10 *Reporting Act (15 U.S.C. 1681 et seq.) is amended—*

11 *(1) in section 603 (15 U.S.C. 1681a)—*

12 *(A) by redesignating subsections (w) and*
13 *(x) as subsections (x) and (y), respectively; and*

14 *(B) by inserting after subsection (v) the fol-*
15 *lowing:*

16 *“(w) The term ‘Bureau’ means the Bureau of Con-*
17 *sumer Financial Protection.”; and*

18 *(2) except as otherwise specifically provided in*
19 *this subsection—*

20 *(A) by striking “Federal Trade Commis-*
21 *sion” each place that term appears and inserting*
22 *“Bureau”;*

23 *(B) by striking “FTC” each place that term*
24 *appears and inserting “Bureau”;*

1 (C) by striking “the Commission” each
2 place that term appears and inserting “the Bu-
3 reau”; and

4 (D) by striking “The Federal banking agen-
5 cies, the National Credit Union Administration,
6 and the Commission shall jointly” each place
7 that term appears and inserting “The Bureau
8 shall”;

9 (3) in section 603(k)(2) (15 U.S.C. 1681a(k)(2)),
10 by striking “Board of Governors of the Federal Re-
11 serve System” and inserting “Bureau”;

12 (4) in section 604(g) (15 U.S.C. 1681b(g))—

13 (A) in paragraph (3), by striking subpara-
14 graph (C) and inserting the following:

15 “(C) as otherwise determined to be nec-
16 essary and appropriate, by regulation or order,
17 by the Bureau (consistent with the enforcement
18 authorities prescribed under section 621(b)), or
19 the applicable State insurance authority (with
20 respect to any person engaged in providing in-
21 surance or annuities).”;

22 (B) by striking paragraph (5) and inserting
23 the following:

24 “(5) REGULATIONS AND EFFECTIVE DATE FOR
25 PARAGRAPH (2).—

1 “(A) *REGULATIONS REQUIRED.*—*The Bu-*
2 *reau may, after notice and opportunity for com-*
3 *ment, prescribe regulations that permit trans-*
4 *actions under paragraph (2) that are determined*
5 *to be necessary and appropriate to protect legiti-*
6 *mate operational, transactional, risk, consumer,*
7 *and other needs (and which shall include permit-*
8 *ting actions necessary for administrative*
9 *verification purposes), consistent with the intent*
10 *of paragraph (2) to restrict the use of medical*
11 *information for inappropriate purposes.”; and*

12 (C) *by striking paragraph (6);*

13 (5) *in section 611(e)(2) (15 U.S.C. 1681i(e)), by*
14 *striking paragraph (2) and inserting the following:*

15 “(2) *EXCLUSION.*—*Complaints received or ob-*
16 *tained by the Bureau pursuant to its investigative*
17 *authority under the Consumer Financial Protection*
18 *Act of 2010 shall not be subject to paragraph (1).”;*

19 (6) *in section 615(h)(6) (15 U.S.C.*
20 *1681m(h)(6)), by striking subparagraph (A) and in-*
21 *serting the following:*

22 “(A) *RULES REQUIRED.*—*The Bureau shall*
23 *prescribe rules to carry out this subsection.”;*

24 (7) *in section 621 (15 U.S.C. 1681s)—*

1 (A) by striking subsection (a) and inserting
2 the following:

3 “(a) *ENFORCEMENT BY FEDERAL TRADE COMMIS-*
4 *SION.—*

5 “(1) *IN GENERAL.—Except as otherwise provided*
6 *by subtitle B of the Consumer Financial Protection*
7 *Act of 2010, compliance with the requirements im-*
8 *posed under this title shall be enforced under the Fed-*
9 *eral Trade Commission Act (15 U.S.C. 41 et seq.) by*
10 *the Federal Trade Commission, with respect to con-*
11 *sumer reporting agencies and all other persons subject*
12 *thereto, except to the extent that enforcement of the re-*
13 *quirements imposed under this title is specifically*
14 *committed to some other Government agency under*
15 *subsection (b). For the purpose of the exercise by the*
16 *Federal Trade Commission of its functions and pow-*
17 *ers under the Federal Trade Commission Act, a viola-*
18 *tion of any requirement or prohibition imposed under*
19 *this title shall constitute an unfair or deceptive act or*
20 *practice in commerce, in violation of section 5(a) of*
21 *the Federal Trade Commission Act (15 U.S.C. 45(a)),*
22 *and shall be subject to enforcement by the Federal*
23 *Trade Commission under section 5(b) of that Act with*
24 *respect to any consumer reporting agency or person*
25 *that is subject to enforcement by the Federal Trade*

1 *Commission pursuant to this subsection, irrespective*
2 *of whether that person is engaged in commerce or*
3 *meets any other jurisdictional tests under the Federal*
4 *Trade Commission Act. The Federal Trade Commis-*
5 *sion shall have such procedural, investigative, and en-*
6 *forcement powers (except as otherwise provided by*
7 *subtitle B of the Consumer Financial Protection Act*
8 *of 2010), including the power to issue procedural*
9 *rules in enforcing compliance with the requirements*
10 *imposed under this title and to require the filing of*
11 *reports, the production of documents, and the appear-*
12 *ance of witnesses, as though the applicable terms and*
13 *conditions of the Federal Trade Commission Act were*
14 *part of this title. Any person violating any of the pro-*
15 *visions of this title shall be subject to the penalties*
16 *and entitled to the privileges and immunities pro-*
17 *vided in the Federal Trade Commission Act as though*
18 *the applicable terms and provisions of such Act are*
19 *part of this title.*

20 “(2) *PENALTIES.*—

21 “(A) *KNOWING VIOLATIONS.*—*Except as oth-*
22 *erwise provided by subtitle B of the Consumer*
23 *Financial Protection Act of 2010, in the event of*
24 *a knowing violation, which constitutes a pattern*
25 *or practice of violations of this title, the Federal*

1 *Trade Commission may commence a civil action*
2 *to recover a civil penalty in a district court of*
3 *the United States against any person that vio-*
4 *lates this title. In such action, such person shall*
5 *be liable for a civil penalty of not more than*
6 *\$2,500 per violation.*

7 *“(B) DETERMINING PENALTY AMOUNT.—In*
8 *determining the amount of a civil penalty under*
9 *subparagraph (A), the court shall take into ac-*
10 *count the degree of culpability, any history of*
11 *such prior conduct, ability to pay, effect on abil-*
12 *ity to continue to do business, and such other*
13 *matters as justice may require.*

14 *“(C) LIMITATION.—Notwithstanding para-*
15 *graph (2), a court may not impose any civil*
16 *penalty on a person for a violation of section*
17 *623(a)(1), unless the person has been enjoined*
18 *from committing the violation, or ordered not to*
19 *commit the violation, in an action or proceeding*
20 *brought by or on behalf of the Federal Trade*
21 *Commission, and has violated the injunction or*
22 *order, and the court may not impose any civil*
23 *penalty for any violation occurring before the*
24 *date of the violation of the injunction or order.”;*

1 (8) by striking subsection (b) and inserting the
2 following:

3 “(b) *ENFORCEMENT BY OTHER AGENCIES.*—

4 “(1) *IN GENERAL.*—*Except as otherwise provided*
5 *by subtitle B of the Consumer Financial Protection*
6 *Act of 2010, compliance with the requirements im-*
7 *posed under this title with respect to consumer report-*
8 *ing agencies, persons who use consumer reports from*
9 *such agencies, persons who furnish information to*
10 *such agencies, and users of information that are sub-*
11 *ject to section 615(d) shall be enforced under—*

12 “(A) *section 8 of the Federal Deposit Insur-*
13 *ance Act (12 U.S.C. 1818), in the case of—*

14 “(i) *any national bank, and any Fed-*
15 *eral branch or Federal agency of a foreign*
16 *bank, by the Office of the Comptroller of the*
17 *Currency;*

18 “(ii) *any member bank of the Federal*
19 *Reserve System (other than a national*
20 *bank), a branch or agency of a foreign bank*
21 *(other than a Federal branch, Federal agen-*
22 *cy, or insured State branch of a foreign*
23 *bank), a commercial lending company*
24 *owned or controlled by a foreign bank, and*
25 *any organization operating under section*

1 *25 or 25A of the Federal Reserve Act, by the*
2 *Board of Governors of the Federal Reserve*
3 *System; and*

4 *“(iii) any bank insured by the Federal*
5 *Deposit Insurance Corporation (other than*
6 *a member of the Federal Reserve System)*
7 *and any insured State branch of a foreign*
8 *bank, by the Board of Directors of the Fed-*
9 *eral Deposit Insurance Corporation;*

10 *“(B) subtitle E of the Consumer Financial*
11 *Protection Act of 2010, by the Bureau;*

12 *“(C) the Federal Credit Union Act (12*
13 *U.S.C. 1751 et seq.), by the Administrator of the*
14 *National Credit Union Administration with re-*
15 *spect to any Federal credit union;*

16 *“(D) subtitle IV of title 49, United States*
17 *Code, by the Secretary of Transportation, with*
18 *respect to all carriers subject to the jurisdiction*
19 *of the Surface Transportation Board;*

20 *“(E) the Federal Aviation Act of 1958 (49*
21 *U.S.C. App. 1301 et seq.), by the Secretary of*
22 *Transportation, with respect to any air carrier*
23 *or foreign air carrier subject to that Act;*

24 *“(F) the Packers and Stockyards Act, 1921*
25 *(7 U.S.C. 181 et seq.) (except as provided in sec-*

1 *tion 406 of that Act), by the Secretary of Agri-*
2 *culture, with respect to any activities subject to*
3 *that Act;*

4 *“(G) the Commodity Exchange Act, with re-*
5 *spect to a person subject to the jurisdiction of the*
6 *Commodity Futures Trading Commission; and*

7 *“(H) the Federal securities laws, and any*
8 *other laws that are subject to the jurisdiction of*
9 *the Securities and Exchange Commission, with*
10 *respect to a person that is subject to the jurisdic-*
11 *tion of the Securities and Exchange Commission.*

12 *“(2) INCORPORATED DEFINITIONS.—The terms*
13 *used in paragraph (1) that are not defined in this*
14 *title or otherwise defined in section 3(s) of the Federal*
15 *Deposit Insurance Act (12 U.S.C. 1813(s)) have the*
16 *same meanings as in section 1(b) of the International*
17 *Banking Act of 1978 (12 U.S.C. 3101).”;*

18 *(9) by striking subsection (e) and inserting the*
19 *following:*

20 *“(e) REGULATORY AUTHORITY.—The Bureau shall*
21 *prescribe such regulations as are necessary to carry out the*
22 *purposes of this Act. The regulations prescribed by the Bu-*
23 *reau under this subsection shall apply to any person that*
24 *is subject to this Act, notwithstanding the enforcement au-*
25 *thorities granted to other agencies under this section.”; and*

1 (10) *in section 623 (15 U.S.C. 1681s-2)*—

2 (A) *in subsection (a)(7), by striking sub-*
3 *paragraph (D) and inserting the following:*

4 “(D) *MODEL DISCLOSURE.*—

5 “(i) *DUTY OF BUREAU.*—*The Bureau*
6 *shall prescribe a brief model disclosure that*
7 *a financial institution may use to comply*
8 *with subparagraph (A), which shall not ex-*
9 *ceed 30 words.*

10 “(ii) *USE OF MODEL NOT RE-*
11 *QUIRED.*—*No provision of this paragraph*
12 *may be construed to require a financial in-*
13 *stitution to use any such model form pre-*
14 *scribed by the Bureau.*

15 “(iii) *COMPLIANCE USING MODEL.*—*A*
16 *financial institution shall be deemed to be*
17 *in compliance with subparagraph (A) if the*
18 *financial institution uses any model form*
19 *prescribed by the Bureau under this sub-*
20 *paragraph, or the financial institution uses*
21 *any such model form and rearranges its for-*
22 *mat.”; and*

23 (B) *by striking subsection (e) and inserting*
24 *the following:*

1 “(e) *ACCURACY GUIDELINES AND REGULATIONS RE-*
2 *QUIRED.*—

3 “(1) *GUIDELINES.*—*The Bureau shall, with re-*
4 *spect to persons or entities that are subject to the en-*
5 *forcement authority of the Bureau under section*
6 *621—*

7 “(A) *establish and maintain guidelines for*
8 *use by each person that furnishes information to*
9 *a consumer reporting agency regarding the accu-*
10 *racy and integrity of the information relating to*
11 *consumers that such entities furnish to consumer*
12 *reporting agencies, and update such guidelines*
13 *as often as necessary; and*

14 “(B) *prescribe regulations requiring each*
15 *person that furnishes information to a consumer*
16 *reporting agency to establish reasonable policies*
17 *and procedures for implementing the guidelines*
18 *established pursuant to subparagraph (A).*

19 “(2) *CRITERIA.*—*In developing the guidelines re-*
20 *quired by paragraph (1)(A), the Bureau shall—*

21 “(A) *identify patterns, practices, and spe-*
22 *cific forms of activity that can compromise the*
23 *accuracy and integrity of information furnished*
24 *to consumer reporting agencies;*

1 “(B) review the methods (including techno-
2 logical means) used to furnish information relat-
3 ing to consumers to consumer reporting agencies;

4 “(C) determine whether persons that furnish
5 information to consumer reporting agencies
6 maintain and enforce policies to ensure the accu-
7 racy and integrity of information furnished to
8 consumer reporting agencies; and

9 “(D) examine the policies and processes that
10 persons that furnish information to consumer re-
11 porting agencies employ to conduct reinvestiga-
12 tions and correct inaccurate information relating
13 to consumers that has been furnished to con-
14 sumer reporting agencies.”.

15 (b) *FAIR AND ACCURATE CREDIT TRANSACTIONS ACT*
16 *OF 2003*.—Section 214(b)(1) of the Fair and Accurate Cred-
17 *it Transactions Act of 2003 (15 U.S.C. 1681s–3 note)* is
18 *amended by striking paragraph (1) and inserting the fol-*
19 *lowing:*

20 “(1) *IN GENERAL*.—Regulations to carry out sec-
21 tion 624 of the Fair Credit Reporting Act (15 U.S.C.
22 1681s–3), shall be prescribed, as described in para-
23 graph (2), by—

1 “(A) *the Commodity Futures Trading Com-*
 2 *mission, with respect to entities subject to its en-*
 3 *forcement authorities;*

4 “(B) *the Securities and Exchange Commis-*
 5 *sion, with respect to entities subject to its en-*
 6 *forcement authorities; and*

7 “(C) *the Bureau, with respect to other enti-*
 8 *ties subject to this Act.*”.

9 **SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION**
 10 **PRACTICES ACT.**

11 *The Fair Debt Collection Practices Act (15 U.S.C.*
 12 *1692 et seq.) is amended—*

13 (1) *by striking “Commission” each place that*
 14 *term appears and inserting “Bureau”;*

15 (2) *in section 803 (15 U.S.C. 1692a)—*

16 (A) *by striking paragraph (1) and inserting*
 17 *the following:*

18 “(1) *The term ‘Bureau’ means the Bureau of*
 19 *Consumer Financial Protection.*”;

20 (3) *in section 814 (15 U.S.C. 1692l)—*

21 (A) *by striking subsection (a) and inserting*
 22 *the following:*

23 “(a) *FEDERAL TRADE COMMISSION.—Except as other-*
 24 *wise provided by subtitle B of the Consumer Financial Pro-*
 25 *tection Act of 2010, compliance with this title shall be en-*

1 *forced by the Federal Trade Commission, except to the ex-*
2 *tent that enforcement of the requirements imposed under*
3 *this title is specifically committed to another Government*
4 *agency under subsection (b). For purpose of the exercise by*
5 *the Federal Trade Commission of its functions and powers*
6 *under the Federal Trade Commission Act (15 U.S.C. 41 et*
7 *seq.), a violation of this title shall be deemed an unfair or*
8 *deceptive act or practice in violation of that Act. All of the*
9 *functions and powers of the Federal Trade Commission*
10 *under the Federal Trade Commission Act are available to*
11 *the Federal Trade Commission to enforce compliance by*
12 *any person with this title, irrespective of whether that per-*
13 *son is engaged in commerce or meets any other jurisdic-*
14 *tional tests under the Federal Trade Commission Act, in-*
15 *cluding the power to enforce the provisions of this title, in*
16 *the same manner as if the violation had been a violation*
17 *of a Federal Trade Commission trade regulation rule.”; and*

18 *(B) in subsection (b)—*

19 *(i) by striking “Compliance” and in-*
20 *serting “Except as otherwise provided by*
21 *subtitle B of the Consumer Financial Pro-*
22 *tection Act of 2010, compliance”; and*

23 *(ii) by striking paragraph (2) and in-*
24 *serting the following:*

1 “(2) subtitle E of the Consumer Financial Pro-
2 tection Act of 2010, by the Bureau;”;

3 (4) in subsection (d), by striking “Neither the
4 Commission” and all that follows through the end of
5 the subsection and inserting the following: “The Bu-
6 reau may prescribe rules with respect to the collection
7 of debts by debt collectors, as defined in this Act.”.

8 **SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-**
9 **ANCE ACT.**

10 *The Federal Deposit Insurance Act (12 U.S.C. 1811*
11 *et seq.) is amended—*

12 (1) in section 8(t) (12 U.S.C. 1818(t)), by add-
13 ing at the end the following:

14 “(6) REFERRAL TO BUREAU OF CONSUMER FI-
15 NANCIAL PROTECTION.—Subject to subtitle B of the
16 Consumer Financial Protection Act of 2010, each ap-
17 propriate Federal banking agency shall make a refer-
18 ral to the Bureau of Consumer Financial Protection
19 when the Federal banking agency has a reasonable be-
20 lief that a violation of an enumerated consumer law,
21 as defined in the Consumer Financial Protection Act
22 of 2010, has been committed by any insured deposi-
23 tory institution or institution-affiliated party within
24 the jurisdiction of that appropriate Federal banking
25 agency.”; and

1 (2) *in section 43 (12 U.S.C. 1831t)—*

2 (A) *in subsection (c), by striking “Federal*
3 *Trade Commission” and inserting “Bureau”;*

4 (B) *in subsection (d), by striking “Federal*
5 *Trade Commission” and inserting “Bureau”;*

6 (C) *in subsection (e)—*

7 (i) *in paragraph (2), by striking “Fed-*
8 *eral Trade Commission” and inserting*
9 *“Bureau”; and*

10 (ii) *by adding at the end the following*
11 *new paragraph:*

12 “(5) *BUREAU.—The term ‘Bureau’ means the*
13 *Bureau of Consumer Financial Protection.”; and*

14 (D) *in subsection (f)—*

15 (i) *by striking paragraph (1) and in-*
16 *serting the following:*

17 “(1) *LIMITED ENFORCEMENT AUTHORITY.—Com-*
18 *pliance with the requirements of subsections (b), (c),*
19 *and (e), and any regulation prescribed or order issued*
20 *under such subsection, shall be enforced under the*
21 *Consumer Financial Protection Act of 2010, by the*
22 *Bureau, subject to subtitle B of the Consumer Finan-*
23 *cial Protection Act of 2010, and under the Federal*
24 *Trade Commission Act (15 U.S.C. 41 et seq.) by the*
25 *Federal Trade Commission.”; and*

1 (ii) in paragraph (2), by striking sub-
2 paragraph (C) and inserting the following:

3 “(C) *LIMITATION ON STATE ACTION WHILE*
4 *FEDERAL ACTION PENDING.*—*If the Bureau or*
5 *Federal Trade Commission has instituted an en-*
6 *forcement action for a violation of this section,*
7 *no appropriate State supervisory agency may,*
8 *during the pendency of such action, bring an ac-*
9 *tion under this section against any defendant*
10 *named in the complaint of the Bureau or Fed-*
11 *eral Trade Commission for any violation of this*
12 *section that is alleged in that complaint.”.*

13 **SEC. 1091. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
14 **ACT.**

15 *Title V of the Gramm-Leach-Bliley Act (15 U.S.C.*
16 *6801 et seq.) is amended—*

17 (1) in section 504(a)(1) (15 U.S.C.
18 6804(a)(1))—

19 (A) by striking “*The Federal banking agen-*
20 *cies, the National Credit Union Administration,*
21 *the Secretary of the Treasury,” and inserting*
22 *“The Bureau of Consumer Financial Protection*
23 *and”;* and

24 (B) by striking “, and the Federal Trade
25 Commission”;

1 (2) *in section 505(a) (15 U.S.C. 6805(a))—*

2 (A) *by striking “This subtitle” and all that*
3 *follows through “as follows:” and inserting “Ex-*
4 *cept as otherwise provided by subtitle B of the*
5 *Consumer Financial Protection Act of 2010, this*
6 *subtitle and the regulations prescribed there-*
7 *under shall be enforced by the Bureau of Con-*
8 *sumer Financial Protection, the Federal func-*
9 *tional regulators, the State insurance authorities,*
10 *and the Federal Trade Commission with respect*
11 *to financial institutions and other persons sub-*
12 *ject to their jurisdiction under applicable law, as*
13 *follows:”;*

14 (B) *in paragraph (1)—*

15 (i) *in subparagraph (B), by inserting*
16 *“and” after the semicolon;*

17 (ii) *in subparagraph (C), by striking*
18 *“; and” and inserting a period; and*

19 (iii) *by striking subparagraph (D);*
20 *and*

21 (C) *by adding at the end the following:*

22 “(8) *Under the Consumer Financial Protection*
23 *Act of 2010, by the Bureau of Consumer Financial*
24 *Protection, in the case of any financial institution*
25 *and other covered person or service provider that is*

1 *subject to the jurisdiction of the Bureau under that*
 2 *Act, but not with respect to the standards under sec-*
 3 *tion 501.”; and*

4 *(3) in section 505(b)(1) (15 U.S.C. 6805(b)(1)),*
 5 *by inserting “, other than the Bureau of Consumer*
 6 *Financial Protection,” after “subsection (a)”.*

7 **SEC. 1092. AMENDMENTS TO THE HOME MORTGAGE DIS-**
 8 **CLOSURE ACT.**

9 *The Home Mortgage Disclosure Act of 1975 (12 U.S.C.*
 10 *2801 et seq.) is amended—*

11 *(1) except as otherwise specifically provided in*
 12 *this section, by striking “Board” each place that term*
 13 *appears and inserting “Bureau”;*

14 *(2) in section 303 (12 U.S.C. 2802)—*

15 *(A) by redesignating paragraphs (1)*
 16 *through (6) as paragraphs (2) through (7), re-*
 17 *spectively; and*

18 *(B) by inserting before paragraph (2) the*
 19 *following:*

20 *“(1) the term ‘Bureau’ means the Bureau of*
 21 *Consumer Financial Protection;”;*

22 *(3) in section 304 (12 U.S.C. 2803)—*

23 *(A) in subsection (b)—*

24 *(i) in paragraph (4), by inserting*
 25 *“age,” before “and gender”;*

1 (ii) in paragraph (3), by striking
2 “and” at the end;

3 (iii) in paragraph (4), by striking the
4 period at the end and inserting a semicolon;
5 and

6 (iv) by adding at the end the following:

7 “(5) the number and dollar amount of mortgage
8 loans grouped according to measurements of—

9 “(A) the total points and fees payable at
10 origination in connection with the mortgage as
11 determined by the Bureau, taking into account
12 15 U.S.C. 1602(aa)(4);

13 “(B) the difference between the annual per-
14 centage rate associated with the loan and a
15 benchmark rate or rates for all loans;

16 “(C) the term in months of any prepayment
17 penalty or other fee or charge payable on repay-
18 ment of some portion of principal or the entire
19 principal in advance of scheduled payments; and

20 “(D) such other information as the Bureau
21 may require; and

22 “(6) the number and dollar amount of mortgage
23 loans and completed applications grouped according
24 to measurements of—

1 “(A) the value of the real property pledged
2 or proposed to be pledged as collateral;

3 “(B) the actual or proposed term in months
4 of any introductory period after which the rate
5 of interest may change;

6 “(C) the presence of contractual terms or
7 proposed contractual terms that would allow the
8 mortgagor or applicant to make payments other
9 than fully amortizing payments during any por-
10 tion of the loan term;

11 “(D) the actual or proposed term in months
12 of the mortgage loan;

13 “(E) the channel through which application
14 was made, including retail, broker, and other
15 relevant categories;

16 “(F) as the Bureau may determine to be
17 appropriate, a unique identifier that identifies
18 the loan originator as set forth in section 1503
19 of the S.A.F.E. Mortgage Licensing Act of 2008;

20 “(G) as the Bureau may determine to be
21 appropriate, a universal loan identifier;

22 “(H) as the Bureau may determine to be
23 appropriate, the parcel number that corresponds
24 to the real property pledged or proposed to be
25 pledged as collateral;

1 “(I) the credit score of mortgage applicants
2 and mortgagors, in such form as the Bureau
3 may prescribe, except that the Bureau shall mod-
4 ify or require modification of credit score data
5 that is or will be available to the public to pro-
6 tect the compelling privacy interest of the mort-
7 gage applicant or mortgagors; and

8 “(J) such other information as the Bureau
9 may require.”;

10 (B) in subsection (i), by striking “sub-
11 section (b)(4)” and inserting “subsections (b)(4),
12 (b)(5), and (b)(6)”;

13 (C) in subsection (j)—

14 (i) in paragraph (1), by striking “(as”
15 and inserting “(containing loan-level and
16 application-level information relating to
17 disclosures required under subsections (a)
18 and (b) and as otherwise”;

19 (ii) by striking paragraph (3) and in-
20 serting the following:

21 “(3) CHANGE OF FORM NOT REQUIRED.—A de-
22 pository institution meets the disclosure requirement
23 of paragraph (1) if the institution provides the infor-
24 mation required under such paragraph in such for-
25 mats as the Bureau may require”; and

1 (iii) in paragraph (2)(A), by striking
2 “in the format in which such information is
3 maintained by the institution” and insert-
4 ing “in such formats as the Bureau may re-
5 quire”;

6 (D) in subsection (m), by striking para-
7 graph (2) and inserting the following:

8 “(2) *FORM OF INFORMATION.*—In complying
9 with paragraph (1), a depository institution shall
10 provide the person requesting the information with a
11 copy of the information requested in such formats as
12 the Bureau may require”;

13 (E) by striking subsection (h) and inserting
14 the following:

15 “(h) *SUBMISSION TO AGENCIES.*—

16 “(1) *IN GENERAL.*—The data required to be dis-
17 closed under subsection (b) shall be submitted to the
18 Bureau or to the appropriate agency for the institu-
19 tion reporting under this title, in accordance with
20 rules prescribed by the Bureau. Notwithstanding the
21 requirement of subsection (a)(2)(A) for disclosure by
22 census tract, the Bureau, in cooperation with other
23 appropriate regulators described in paragraph (2),
24 shall develop regulations that—

1 “(A) prescribe the format for such disclo-
2 sures, the method for submission of the data to
3 the appropriate regulatory agency, and the pro-
4 cedures for disclosing the information to the pub-
5 lic;

6 “(B) require the collection of data required
7 to be disclosed under subsection (b) with respect
8 to loans sold by each institution reporting under
9 this title;

10 “(C) require disclosure of the class of the
11 purchaser of such loans; and

12 “(D) permit any reporting institution to
13 submit in writing to the Bureau or to the appro-
14 priate agency such additional data or expla-
15 nations as it deems relevant to the decision to
16 originate or purchase mortgage loans.

17 “(2) OTHER APPROPRIATE AGENCIES.—The ap-
18 propriate regulators described in this paragraph
19 are—

20 “(A) the Office of the Comptroller of the
21 Currency (hereafter referred to in this Act as
22 ‘Comptroller’) for national banks and Federal
23 branches, Federal agencies of foreign banks, and
24 savings associations;

1 “(B) the Federal Deposit Insurance Cor-
2 poration for banks insured by the Federal De-
3 posit Insurance Corporation (other than mem-
4 bers of the Federal Reserve System), mutual sav-
5 ings banks, insured State branches of foreign
6 banks, and any other depository institution de-
7 scribed in section 303(2)(A) which is not other-
8 wise referred to in this paragraph;

9 “(C) the National Credit Union Adminis-
10 tration Board for credit unions; and

11 “(D) the Secretary of Housing and Urban
12 Development for other lending institutions not
13 regulated by the agencies referred to in subpara-
14 graphs (A) through (C).”; and

15 (F) by adding at the end the following:

16 “(n) *TIMING OF CERTAIN DISCLOSURES.*—The data
17 required to be disclosed under subsection (b) shall be sub-
18 mitted to the Bureau or to the appropriate agency for any
19 institution reporting under this title, in accordance with
20 regulations prescribed by the Bureau. Institutions shall not
21 be required to report new data under paragraph (5) or (6)
22 of subsection (b) before the first January 1 that occurs after
23 the end of the 9-month period beginning on the date on
24 which regulations are issued by the Bureau in final form
25 with respect to such disclosures.”;

1 (4) *in section 305 (12 U.S.C. 2804)—*

2 (A) *by striking subsection (b) and inserting*
3 *the following:*

4 “(b) *POWERS OF CERTAIN OTHER AGENCIES.—*

5 “(1) *IN GENERAL.—Except as otherwise provided*
6 *by subtitle B of the Consumer Financial Protection*
7 *Act of 2010, compliance with the requirements of this*
8 *title shall be enforced—*

9 “(A) *under section 8 of the Federal Deposit*
10 *Insurance Act, in the case of—*

11 “(i) *any national bank, and any Fed-*
12 *eral branch or Federal agency of a foreign*
13 *bank, by the Office of the Comptroller of the*
14 *Currency;*

15 “(ii) *any member bank of the Federal*
16 *Reserve System (other than a national*
17 *bank), branch or agency of a foreign bank*
18 *(other than a Federal branch, Federal agen-*
19 *cy, and insured State branch of a foreign*
20 *bank), commercial lending company owned*
21 *or controlled by a foreign bank, and any or-*
22 *ganization operating under section 25 or*
23 *25(a) of the Federal Reserve Act, by the*
24 *Board; and*

1 “(iii) any bank insured by the Federal
2 Deposit Insurance Corporation (other than
3 a member of the Federal Reserve System),
4 any mutual savings bank as, defined in sec-
5 tion 3(f) of the Federal Deposit Insurance
6 Act (12 U.S.C. 1813(f)), any insured State
7 branch of a foreign bank, and any other de-
8 pository institution not referred to in this
9 paragraph or subparagraph (B) or (C), by
10 the Federal Deposit Insurance Corporation;

11 “(B) under subtitle E of the Consumer Fi-
12 nancial Protection Act of 2010, by the Bureau;

13 “(C) under the Federal Credit Union Act,
14 by the Administrator of the National Credit
15 Union Administration with respect to any in-
16 sured credit union; and

17 “(D) with respect to other lending institu-
18 tions, by the Secretary of Housing and Urban
19 Development.

20 “(2) *INCORPORATED DEFINITIONS.*—The terms
21 used in paragraph (1) that are not defined in this
22 title or otherwise defined in section 3(s) of the Federal
23 Deposit Insurance Act (12 U.S.C. 1813(s)) shall have
24 the same meanings as in section 1(b) of the Inter-

1 *national Banking Act of 1978 (12 U.S.C. 3101).”;*
2 *and*

3 *(B) by adding at the end the following:*

4 “(d) *OVERALL ENFORCEMENT AUTHORITY OF THE*
5 *BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject*
6 *to subtitle B of the Consumer Financial Protection Act of*
7 *2010, enforcement of the requirements imposed under this*
8 *title is committed to each of the agencies under subsection*
9 *(b). The Bureau may exercise its authorities under the Con-*
10 *sumer Financial Protection Act of 2010 to exercise prin-*
11 *cipal authority to examine and enforce compliance by any*
12 *person with the requirements of this title.”;*

13 *(5) in section 306 (12 U.S.C. 2805(b)), by strik-*
14 *ing subsection (b) and inserting the following:*

15 “(b) *EXEMPTION AUTHORITY.—The Bureau may, by*
16 *regulation, exempt from the requirements of this title any*
17 *State-chartered depository institution within any State or*
18 *subdivision thereof, if the agency determines that, under the*
19 *law of such State or subdivision, that institution is subject*
20 *to requirements that are substantially similar to those im-*
21 *posed under this title, and that such law contains adequate*
22 *provisions for enforcement. Notwithstanding any other pro-*
23 *vision of this subsection, compliance with the requirements*
24 *imposed under this subsection shall be enforced by the Office*
25 *of the Comptroller of the Currency under section 8 of the*

1 *Federal Deposit Insurance Act, in the case of national*
2 *banks and savings associations, the deposits of which are*
3 *insured by the Federal Deposit Insurance Corporation.”;*
4 *and*

5 (6) *by striking section 307 (12 U.S.C. 2806) and*
6 *inserting the following:*

7 **“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.**

8 “(a) *IN GENERAL.*—

9 “(1) *CONSULTATION REQUIRED.*—*The Director of*
10 *the Bureau of Consumer Financial Protection, with*
11 *the assistance of the Secretary, the Director of the Bu-*
12 *reau of the Census, the Board of Governors of the Fed-*
13 *eral Reserve System, the Federal Deposit Insurance*
14 *Corporation, and such other persons as the Bureau*
15 *deems appropriate, shall develop or assist in the im-*
16 *provement of, methods of matching addresses and cen-*
17 *sus tracts to facilitate compliance by depository insti-*
18 *tutions in as economical a manner as possible with*
19 *the requirements of this title.*

20 “(2) *AUTHORIZATION OF APPROPRIATIONS.*—
21 *There are authorized to be appropriated, such sums as*
22 *may be necessary to carry out this subsection.*

23 “(3) *CONTRACTING AUTHORITY.*—*The Director of*
24 *the Bureau of Consumer Financial Protection is au-*
25 *thorized to utilize, contract with, act through, or com-*

1 *pensate any person or agency in order to carry out*
2 *this subsection.*

3 “(b) *RECOMMENDATIONS TO CONGRESS.—The Direc-*
4 *tor of the Bureau of Consumer Financial Protection shall*
5 *recommend to the Committee on Banking, Housing, and*
6 *Urban Affairs of the Senate and the Committee on Finan-*
7 *cial Services of the House of Representatives, such addi-*
8 *tional legislation as the Director of the Bureau of Consumer*
9 *Financial Protection deems appropriate to carry out the*
10 *purpose of this title.”.*

11 **SEC. 1093. AMENDMENTS TO THE HOMEOWNERS PROTEC-**
12 **TION ACT OF 1998.**

13 *Section 10 of the Homeowners Protection Act of 1998*
14 *(12 U.S.C. 4909) is amended—*

15 *(1) in subsection (a)—*

16 *(A) by striking “Compliance” and inserting*
17 *“Except as otherwise provided by subtitle B of*
18 *the Consumer Financial Protection Act of 2010,*
19 *compliance”;*

20 *(B) in paragraph (2), by striking “and” at*
21 *the end;*

22 *(C) in paragraph (3), by striking the period*
23 *at the end and inserting “; and”; and*

24 *(D) by adding at the end the following:*

1 “(4) subtitle E of the Consumer Financial Pro-
2 tection Act of 2010, by the Bureau of Consumer Fi-
3 nancial Protection.”; and

4 (2) in subsection (b)(2), by inserting before the
5 period at the end the following: “, subject to subtitle
6 B of the Consumer Financial Protection Act of 2010”.

7 **SEC. 1094. AMENDMENTS TO THE HOME OWNERSHIP AND**
8 **EQUITY PROTECTION ACT OF 1994.**

9 *The Home Ownership and Equity Protection Act of*
10 1994 (15 U.S.C. 1601 note) is amended—

11 (1) in section 158(a), by striking “Consumer Ad-
12 visory Council of the Board” and inserting “Advisory
13 Board to the Bureau”; and

14 (2) by striking “Board” each place that term ap-
15 pears and inserting “Bureau”.

16 **SEC. 1095. AMENDMENTS TO THE OMNIBUS APPROPRIA-**
17 **TIONS ACT, 2009.**

18 *Section 626 of the Omnibus Appropriations Act, 2009*
19 (15 U.S.C. 1638 note) is amended—

20 (1) by striking subsection (a) and inserting the
21 following:

22 “(a)(1) The Bureau of Consumer Financial Protection
23 shall have authority to prescribe rules with respect to mort-
24 gage loans in accordance with section 553 of title 5, United
25 States Code. Such rulemaking shall relate to unfair or de-

1 *ceptive acts or practices regarding mortgage loans, which*
2 *may include unfair or deceptive acts or practices involving*
3 *loan modification and foreclosure rescue services. Any viola-*
4 *tion of a rule prescribed under this paragraph shall be*
5 *treated as a violation of a rule prohibiting unfair, decep-*
6 *tive, or abusive acts or practices under the Consumer Fi-*
7 *ancial Protection Act of 2010 and a violation of a rule*
8 *under section 18 of the Federal Trade Commission Act (15*
9 *U.S.C. 57a) regarding unfair or deceptive acts or practices.*

10 “(2) *The Bureau of Consumer Financial Protection*
11 *shall enforce the rules issued under paragraph (1) in the*
12 *same manner, by the same means, and with the same juris-*
13 *isdiction, powers, and duties, as though all applicable terms*
14 *and provisions of the Consumer Financial Protection Act*
15 *of 2010 were incorporated into and made part of this sub-*
16 *section.”; and*

17 (2) *in subsection (b)—*

18 (A) *by striking paragraph (1) and inserting*
19 *the following:*

20 “(1) *Except as provided in paragraph (6), in*
21 *any case in which the attorney general of a State has*
22 *reason to believe that an interest of the residents of*
23 *the State has been or is threatened or adversely af-*
24 *ected by the engagement of any person subject to a*
25 *rule prescribed under subsection (a) in practices that*

1 *violate such rule, the State, as parens patriae, may*
2 *bring a civil action on behalf of its residents in an*
3 *appropriate district court of the United States or*
4 *other court of competent jurisdiction—*

5 *“(A) to enjoin that practice;*

6 *“(B) to enforce compliance with the rule;*

7 *“(C) to obtain damages, restitution, or other*
8 *compensation on behalf of the residents of the*
9 *State; or*

10 *“(D) to obtain penalties and relief provided*
11 *under the Consumer Financial Protection Act of*
12 *2010, the Federal Trade Commission Act, and*
13 *such other relief as the court deems appro-*
14 *priate.”;*

15 *(B) in paragraphs (2) and (3), by striking*
16 *“the primary Federal regulator” each time the*
17 *term appears and inserting “the Bureau of Con-*
18 *sumer Financial Protection or the Commission,*
19 *as appropriate”;*

20 *(C) in paragraph (3), by inserting “and*
21 *subject to subtitle B of the Consumer Financial*
22 *Protection Act of 2010,” after “paragraph (2),”;*
23 *and*

24 *(D) in paragraph (6), by striking “the pri-*
25 *mary Federal regulator” each place that term*

1 *appears and inserting “the Bureau of Consumer*
2 *Financial Protection or the Commission”.*

3 **SEC. 1096. AMENDMENTS TO THE REAL ESTATE SETTLE-**
4 **MENT PROCEDURES ACT.**

5 *The Real Estate Settlement Procedures Act of 1974 (12*
6 *U.S.C. 2601 et seq.) is amended—*

7 (1) *in section 3 (12 U.S.C. 2602)—*

8 (A) *in paragraph (7), by striking “and” at*
9 *the end;*

10 (B) *in paragraph (8), by striking the period*
11 *at the end and inserting “; and”; and*

12 (C) *by adding at the end the following:*

13 “*(9) the term ‘Bureau’ means the Bureau of*
14 *Consumer Financial Protection.*”;

15 (2) *in section 4 (12 U.S.C. 2603)—*

16 (A) *in subsection (a), by striking the first*
17 *sentence and inserting the following: “The Bu-*
18 *reau shall publish a single, integrated disclosure*
19 *for mortgage loan transactions (including real*
20 *estate settlement cost statements) which includes*
21 *the disclosure requirements of this title, in con-*
22 *junction with the disclosure requirements of the*
23 *Truth in Lending Act that, taken together, may*
24 *apply to a transaction that is subject to both or*
25 *either provisions of law. The purpose of such*

1 *model disclosure shall be to facilitate compliance*
2 *with the disclosure requirements of this title and*
3 *the Truth in Lending Act, and to aid the bor-*
4 *rower or lessee in understanding the transaction*
5 *by utilizing readily understandable language to*
6 *simplify the technical nature of the disclosures.”;*

7 *(B) by striking “Secretary” each place that*
8 *term appears and inserting “Bureau”; and*

9 *(C) by striking “form” each place that term*
10 *appears and inserting “forms”;*

11 *(3) in section 5 (12 U.S.C. 2604)—*

12 *(A) by striking “Secretary” each place that*
13 *term appears and inserting “Bureau”; and*

14 *(B) in subsection (a), by striking the first*
15 *sentence and inserting the following: “The Bu-*
16 *reau shall prepare and distribute booklets jointly*
17 *addressing compliance with the requirements of*
18 *the Truth in Lending Act and the provisions of*
19 *this title, in order to help persons borrowing*
20 *money to finance the purchase of residential real*
21 *estate better to understand the nature and costs*
22 *of real estate settlement services.”;*

23 *(4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—*

24 *(A) by striking “Secretary” and inserting*
25 *“Bureau”; and*

1 (B) by striking “, by regulations that shall
2 take effect not later than April 20, 1991,”;

3 (5) in section 7(b) (12 U.S.C. 2606(b)) by strik-
4 ing “Secretary” and inserting “Bureau”;

5 (6) in section 8(d) (12 U.S.C. 2607(d))—

6 (A) in the subsection heading, by inserting
7 “BUREAU AND” before “SECRETARY”; and

8 (B) by striking paragraph (4), and insert-
9 ing the following:

10 “(4) The Bureau, the Secretary, or the attorney
11 general or the insurance commissioner of any State
12 may bring an action to enjoin violations of this sec-
13 tion. Except, to the extent that a person is subject to
14 the jurisdiction of the Bureau, the Secretary, or the
15 attorney general or the insurance commissioner of
16 any State, the Bureau shall have primary authority
17 to enforce or administer this section, subject to sub-
18 title B of the Consumer Financial Protection Act of
19 2010.”.

20 (7) in section 10(c) (12 U.S.C. 2609(c) and (d)),
21 by striking “Secretary” and inserting “Bureau”;

22 (8) in section 16 (12 U.S.C. 2614), by inserting
23 “the Bureau,” before “the Secretary”;

1 (9) in section 18 (12 U.S.C. 2616), by striking
2 “Secretary” each place that term appears and insert-
3 ing “Bureau”; and

4 (10) in section 19 (12 U.S.C. 2617)—

5 (A) in the section heading by striking
6 “**SECRETARY**” and inserting “**BUREAU**”;

7 (B) by striking “Secretary” each place that
8 term appears and inserting “Bureau”;

9 (C) in subsection (b), by inserting “the Bu-
10 reau” before “the Secretary”; and

11 (D) in subsection (c), by inserting “or the
12 Bureau” after “the Secretary” each time that
13 term appears.

14 **SEC. 1097. AMENDMENTS TO THE RIGHT TO FINANCIAL PRI-**
15 **VACY ACT OF 1978.**

16 *The Right to Financial Privacy Act of 1978 (12 U.S.C.*
17 *3401 et seq.) is amended—*

18 (1) in section 1101—

19 (A) in paragraph (6)—

20 (i) in subparagraph (A), by inserting
21 “and” after the semicolon;

22 (ii) in subparagraph (B), by striking
23 “and” at the end; and

24 (iii) by striking subparagraph (C);

25 and

1 (B) in paragraph (7), by striking subpara-
2 graph (E), and inserting the following:

3 “(E) the Bureau of Consumer Financial
4 Protection;”;

5 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
6 striking “and the Commodity Futures Trading Com-
7 mission is permitted” and inserting “the Commodity
8 Futures Trading Commission, and the Bureau of
9 Consumer Financial Protection is permitted”; and

10 (3) in section 1113 (12 U.S.C. 3413), by adding
11 at the end the following new subsection:

12 “(r) *DISCLOSURE TO THE BUREAU OF CONSUMER FI-*
13 *NANCIAL PROTECTION.*—Nothing in this title shall apply
14 to the examination by or disclosure to the Bureau of Con-
15 sumer Financial Protection of financial records or informa-
16 tion in the exercise of its authority with respect to a finan-
17 cial institution.”.

18 **SEC. 1098. AMENDMENTS TO THE SECURE AND FAIR EN-**
19 **FORCEMENT FOR MORTGAGE LICENSING ACT**
20 **OF 2008.**

21 The *S.A.F.E. Mortgage Licensing Act of 2008* (12
22 U.S.C. 5101 *et seq.*) is amended—

23 (1) by striking “a Federal banking agency” each
24 place that term appears, other than in paragraphs (7)

1 *and (11) of section 1503 and section 1507(a)(1), and*
2 *inserting “the Bureau”;*

3 *(2) by striking “Federal banking agencies” each*
4 *place that term appears and inserting “Bureau”; and*

5 *(3) by striking “Secretary” each place that term*
6 *appears and inserting “Director”;*

7 *(4) in section 1503 (12 U.S.C. 5102)—*

8 *(A) by redesignating paragraphs (2)*
9 *through (12) as (3) through (13), respectively;*

10 *(B) by striking paragraph (1) and inserting*
11 *the following:*

12 *“(1) BUREAU.—The term ‘Bureau’ means the*
13 *Bureau of Consumer Financial Protection.*

14 *“(2) FEDERAL BANKING AGENCY.—The term*
15 *‘Federal banking agency’ means the Board of Gov-*
16 *ernors of the Federal Reserve System, the Office of the*
17 *Comptroller of the Currency, the National Credit*
18 *Union Administration, and the Federal Deposit In-*
19 *surance Corporation.”; and*

20 *(C) by striking paragraph (10), as so des-*
21 *ignated by this section, and inserting the fol-*
22 *lowing:*

23 *“(10) DIRECTOR.—The term ‘Director’ means*
24 *the Director of the Bureau of Consumer Financial*
25 *Protection.”; and*

1 (5) *in section 1507 (12 U.S.C. 5106)*—

2 (A) *in subsection (a)*—

3 (i) *by striking paragraph (1) and in-*
4 *serting the following:*

5 “(1) *IN GENERAL.*—*The Bureau shall develop*
6 *and maintain a system for registering employees of a*
7 *depository institution, employees of a subsidiary that*
8 *is owned and controlled by a depository institution*
9 *and regulated by a Federal banking agency, or em-*
10 *ployees of an institution regulated by the Farm Cred-*
11 *it Administration, as registered loan originators with*
12 *the Nationwide Mortgage Licensing System and Reg-*
13 *istry. The system shall be implemented before the end*
14 *of the 1-year period beginning on the date of enact-*
15 *ment of the Consumer Financial Protection Act of*
16 *2010.”; and*

17 (ii) *in paragraph (2)*—

18 (I) *by striking “appropriate Fed-*
19 *eral banking agency and the Farm*
20 *Credit Administration” and inserting*
21 *“Bureau”; and*

22 (II) *by striking “employees’s iden-*
23 *tity” and inserting “identity of the*
24 *employee”; and*

1 (B) in subsection (b), by striking “through
2 the *Financial Institutions Examination Council*,
3 and the *Farm Credit Administration*”, and in-
4 serting “and the *Bureau of Consumer Financial*
5 *Protection*”;

6 (6) in section 1508 (12 U.S.C. 5107)—

7 (A) by striking the section heading and in-
8 serting the following: “**SEC. 1508. BUREAU OF**
9 **CONSUMER FINANCIAL PROTECTION**
10 **BACKUP AUTHORITY TO ESTABLISH LOAN**
11 **ORIGINATOR LICENSING SYSTEM.**”; and

12 (B) by adding at the end the following:

13 “(f) *REGULATION AUTHORITY.*—

14 “(1) *IN GENERAL.*—The Bureau is authorized to
15 promulgate regulations setting minimum net worth or
16 surety bond requirements for residential mortgage
17 loan originators and minimum requirements for re-
18 covery funds paid into by loan originators.

19 “(2) *CONSIDERATIONS.*—In issuing regulations
20 under paragraph (1), the Bureau shall take into ac-
21 count the need to provide originators adequate incen-
22 tives to originate affordable and sustainable mortgage
23 loans, as well as the need to ensure a competitive
24 origination market that maximizes consumer access to
25 affordable and sustainable mortgage loans.”;

1 (7) *by striking section 1510 (12 U.S.C. 5109)*
2 *and inserting the following:*

3 **“SEC. 1510. FEES.**

4 *“The Bureau, the Farm Credit Administration, and*
5 *the Nationwide Mortgage Licensing System and Registry*
6 *may charge reasonable fees to cover the costs of maintaining*
7 *and providing access to information from the Nationwide*
8 *Mortgage Licensing System and Registry, to the extent that*
9 *such fees are not charged to consumers for access to such*
10 *system and registry.”;*

11 (8) *by striking section 1513 (12 U.S.C. 5112)*
12 *and inserting the following:*

13 **“SEC. 1513. LIABILITY PROVISIONS.**

14 *“The Bureau, any State official or agency, or any or-*
15 *ganization serving as the administrator of the Nationwide*
16 *Mortgage Licensing System and Registry or a system estab-*
17 *lished by the Director under section 1509, or any officer*
18 *or employee of any such entity, shall not be subject to any*
19 *civil action or proceeding for monetary damages by reason*
20 *of the good faith action or omission of any officer or em-*
21 *ployee of any such entity, while acting within the scope of*
22 *office or employment, relating to the collection, furnishing,*
23 *or dissemination of information concerning persons who are*
24 *loan originators or are applying for licensing or registra-*
25 *tion as loan originators.”; and*

1 (9) in section 1514 (12 U.S.C. 5113) in the sec-
2 tion heading, by striking “**UNDER HUD BACKUP**
3 **LICENSING SYSTEM**” and inserting “**BY THE BU-**
4 **REAU**”.

5 **SEC. 1099. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

6 *The Truth in Lending Act (15 U.S.C. 1601 et seq.)*
7 is amended—

8 (1) in section 103 (5 U.S.C. 1602)—

9 (A) by redesignating subsections (b) through
10 (bb) as subsections (c) through (cc), respectively;
11 and

12 (B) by inserting after subsection (a) the fol-
13 lowing:

14 “(b) *BUREAU*.—The term ‘Bureau’ means the Bureau
15 of Consumer Financial Protection.”;

16 (2) by striking “Board” each place that term ap-
17 pears, other than in section 140(d) and section
18 108(a), as amended by this section, and inserting
19 “Bureau”;

20 (3) by striking “Federal Trade Commission”
21 each place that term appears, other than in section
22 108(c) and section 129(m), as amended by this Act,
23 and other than in the context of a reference to the
24 Federal Trade Commission Act, and inserting “Bu-
25 reau”;

1 (4) *in section 105(a) (15 U.S.C. 1604(a)), in the*
2 *second sentence—*

3 (A) *by striking “Except in the case of a*
4 *mortgage referred to in section 103(aa), these*
5 *regulations may contain such” and inserting*
6 *“Except with respect to the provisions of section*
7 *129 that apply to a mortgage referred to in sec-*
8 *tion 103(aa), such regulations may contain such*
9 *additional requirements,”; and*

10 (B) *by inserting “all or” after “exceptions*
11 *for”;*

12 (5) *in section 105(b) (15 U.S.C. 1604(b)), by*
13 *striking the first sentence and inserting the following:*
14 *“The Bureau shall publish a single, integrated disclo-*
15 *sure for mortgage loan transactions (including real*
16 *estate settlement cost statements) which includes the*
17 *disclosure requirements of this title in conjunction*
18 *with the disclosure requirements of the Real Estate*
19 *Settlement Procedures Act of 1974 that, taken to-*
20 *gether, may apply to a transaction that is subject to*
21 *both or either provisions of law. The purpose of such*
22 *model disclosure shall be to facilitate compliance with*
23 *the disclosure requirements of this title and the Real*
24 *Estate Settlement Procedures Act of 1974, and to aid*
25 *the borrower or lessee in understanding the trans-*

1 *action by utilizing readily understandable language*
2 *to simplify the technical nature of the disclosures.”;*

3 *(6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)),*
4 *by inserting “all or” after “from all or part of this*
5 *title”;*

6 *(7) in section 108 (15 U.S.C. 1607)—*

7 *(A) by striking subsection (a) and inserting*
8 *the following:*

9 *“(a) ENFORCING AGENCIES.—Except as otherwise pro-*
10 *vided in subtitle B of the Consumer Financial Protection*
11 *Act of 2010, compliance with the requirements imposed*
12 *under this title shall be enforced under—*

13 *“(1) section 8 of the Federal Deposit Insurance*
14 *Act, in the case of—*

15 *“(A) any national bank, and Federal*
16 *branch or Federal agency of a foreign bank, by*
17 *the Office of the Comptroller of the Currency;*

18 *“(B) any member bank of the Federal Re-*
19 *serve System (other than a national bank), any*
20 *branch or agency of a foreign bank (other than*
21 *a Federal branch, Federal agency, or insured*
22 *State branch of a foreign bank), any commercial*
23 *lending company owned or controlled by a for-*
24 *foreign bank, and organizations operating under*

1 *section 25 or 25(a) of the Federal Reserve Act,*
2 *by the Board; and*

3 *“(C) any bank insured by the Federal De-*
4 *posit Insurance Corporation (other than a mem-*
5 *ber of the Federal Reserve System) and an in-*
6 *sured State branch of a foreign bank, by the*
7 *Board of Directors of the Federal Deposit Insur-*
8 *ance Corporation;*

9 *“(2) subtitle E of the Consumer Financial Pro-*
10 *tection Act of 2010, by the Bureau;*

11 *“(3) the Federal Credit Union Act, by the Direc-*
12 *tor of the National Credit Union Administration,*
13 *with respect to any Federal credit union;*

14 *“(4) the Federal Aviation Act of 1958, by the*
15 *Secretary of Transportation, with respect to any air*
16 *carrier or foreign air carrier subject to that Act;*

17 *“(5) the Packers and Stockyards Act, 1921 (ex-*
18 *cept as provided in section 406 of that Act), by the*
19 *Secretary of Agriculture, with respect to any activi-*
20 *ties subject to that Act; and*

21 *“(6) the Farm Credit Act of 1971, by the Farm*
22 *Credit Administration with respect to any Federal*
23 *land bank, Federal land bank association, Federal in-*
24 *termediate credit bank, or production credit associa-*
25 *tion.”; and*

1 (B) by striking subsection (c) and inserting
2 the following:

3 “(c) *OVERALL ENFORCEMENT AUTHORITY OF THE*
4 *FEDERAL TRADE COMMISSION.—Except to the extent that*
5 *enforcement of the requirements imposed under this title is*
6 *specifically committed to some other Government agency*
7 *under subsection (a), and subject to subtitle B of the Con-*
8 *sumer Financial Protection Act of 2010, the Federal Trade*
9 *Commission shall enforce such requirements. For the pur-*
10 *pose of the exercise by the Federal Trade Commission of*
11 *its functions and powers under the Federal Trade Commis-*
12 *sion Act, a violation of any requirement imposed under this*
13 *title shall be deemed a violation of a requirement imposed*
14 *under that Act. All of the functions and powers of the Fed-*
15 *eral Trade Commission under the Federal Trade Commis-*
16 *sion Act are available to the Federal Trade Commission to*
17 *enforce compliance by any person with the requirements*
18 *under this title, irrespective of whether that person is en-*
19 *gaged in commerce or meets any other jurisdictional tests*
20 *under the Federal Trade Commission Act.”;*

21 (8) in section 129 (15 U.S.C. 1639), by striking
22 subsection (m) and inserting the following:

23 “(m) *CIVIL PENALTIES IN FEDERAL TRADE COMMIS-*
24 *SION ENFORCEMENT ACTIONS.—For purposes of enforce-*
25 *ment by the Federal Trade Commission, any violation of*

1 *a regulation issued by the Bureau pursuant to subsection*
2 *(l)(2) shall be treated as a violation of a rule promulgated*
3 *under section 18 of the Federal Trade Commission Act (15*
4 *U.S.C. 57a) regarding unfair or deceptive acts or prac-*
5 *tices.”; and*

6 *(9) in chapter 5 (15 U.S.C. 1667 et seq.)—*

7 *(A) by striking “the Board” each place that*
8 *term appears and inserting “the Bureau”; and*

9 *(B) by striking “The Board” each place*
10 *that term appears and inserting “The Bureau”.*

11 **SEC. 1100. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

12 *The Truth in Savings Act (12 U.S.C. 4301 et seq.) is*
13 *amended—*

14 *(1) by striking “Board” each place that term ap-*
15 *pears and inserting “Bureau”;*

16 *(2) in section 270(a) (12 U.S.C. 4309)—*

17 *(A) by striking “Compliance” and inserting*
18 *“Except as otherwise provided in subtitle B of*
19 *the Consumer Financial Protection Act of 2010,*
20 *compliance”;*

21 *(B) in paragraph (1)—*

22 *(i) in subparagraph (B), by striking*
23 *“and” at the end; and*

24 *(ii) by striking subparagraph (C);*

1 (C) in paragraph (2), by striking the period
2 at the end and inserting “; and”; and

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

4 “(3) subtitle E of the Consumer Financial Pro-
5 tection Act of 2010, by the Bureau.”;

6 (3) in section 272(b) (12 U.S.C. 4311(b)), by
7 striking “regulation prescribed by the Board” each
8 place that term appears and inserting “regulation
9 prescribed by the Bureau”; and

10 (4) in section 274 (12 U.S.C. 4313), by striking
11 paragraph (4) and inserting the following:

12 “(4) BUREAU.—The term ‘Bureau’ means the
13 Bureau of Consumer Financial Protection.”.

14 **SEC. 1101. AMENDMENTS TO THE TELEMARKETING AND**
15 **CONSUMER FRAUD AND ABUSE PREVENTION**
16 **ACT.**

17 (a) AMENDMENTS TO SECTION 3.—Section 3 of the
18 Telemarketing and Consumer Fraud and Abuse Prevention
19 Act (15 U.S.C. 6102) is amended by striking subsections
20 (b) and (c) and inserting the following:

21 “(b) RULEMAKING AUTHORITY.—The Commission
22 shall have authority to prescribe rules under subsection (a),
23 in accordance with section 553 of title 5, United States
24 Code. In prescribing a rule under this section that relates
25 to the provision of a consumer financial product or service

1 *that is subject to the Consumer Financial Protection Act*
2 *of 2010, including any enumerated consumer law there-*
3 *under, the Commission shall consult with the Bureau of*
4 *Consumer Financial Protection regarding the consistency*
5 *of a proposed rule with standards, purposes, or objectives*
6 *administered by the Bureau of Consumer Financial Protec-*
7 *tion.*

8 “(c) VIOLATIONS.—*Any violation of any rule pre-*
9 *scribed under subsection (a)—*

10 “(1) *shall be treated as a violation of a rule*
11 *under section 18 of the Federal Trade Commission*
12 *Act regarding unfair or deceptive acts or practices;*
13 *and*

14 “(2) *that is committed by a person subject to the*
15 *Consumer Financial Protection Act of 2010 shall be*
16 *treated as a violation of a rule under section 1031 of*
17 *that Act regarding unfair, deceptive, or abusive acts*
18 *or practices.”.*

19 (b) AMENDMENTS TO SECTION 4.—*Section 4(d) of the*
20 *Telemarketing and Consumer Fraud and Abuse Prevention*
21 *Act (15 U.S.C. 6103(d)) is amended by inserting after*
22 *“Commission” each place that term appears the following:*
23 *“or the Bureau of Consumer Financial Protection”.*

24 (c) AMENDMENTS TO SECTION 5.—*Section 5(c) of the*
25 *Telemarketing and Consumer Fraud and Abuse Prevention*

1 *Act (15 U.S.C. 6104(c)) is amended by inserting after*
2 *“Commission” each place that term appears the following:*
3 *“or the Bureau of Consumer Financial Protection”.*

4 (d) *AMENDMENT TO SECTION 6.—Section 6 of the Tele-*
5 *marketing and Consumer Fraud and Abuse Prevention Act*
6 *(15 U.S.C. 6105) is amended by adding at the end the fol-*
7 *lowing:*

8 “(d) *ENFORCEMENT BY BUREAU OF CONSUMER FI-*
9 *NANCIAL PROTECTION.—Except as otherwise provided in*
10 *sections 3(d), 3(e), 4, and 5, and subject to subtitle B of*
11 *the Consumer Financial Protection Act of 2010, this Act*
12 *shall be enforced by the Bureau of Consumer Financial Pro-*
13 *tection under subtitle E of the Consumer Financial Protec-*
14 *tion Act of 2010.”.*

15 **SEC. 1102. AMENDMENTS TO THE PAPERWORK REDUCTION**
16 **ACT.**

17 (a) *DESIGNATION AS AN INDEPENDENT AGENCY.—Sec-*
18 *tion 2(5) of the Paperwork Reduction Act (44 U.S.C.*
19 *3502(5)) is amended by inserting “the Bureau of Consumer*
20 *Financial Protection, the Office of Financial Research,”*
21 *after “the Securities and Exchange Commission,”.*

22 (b) *COMPARABLE TREATMENT.—Section 3513 of title*
23 *44, United States Code, is amended by adding at the end*
24 *the following:*

1 “(c) *COMPARABLE TREATMENT.*—*Notwithstanding*
2 *any other provision of law, the Director shall treat or re-*
3 *view a rule or order prescribed or proposed by the Director*
4 *of the Bureau of Consumer Financial Protection on the*
5 *same terms and conditions as apply to any rule or order*
6 *prescribed or proposed by the Board of Governors of the*
7 *Federal Reserve System.*”.

8 **SEC. 1103. ADJUSTMENTS FOR INFLATION IN THE TRUTH**
9 **IN LENDING ACT.**

10 (a) *CAPS.*—

11 (1) *CREDIT TRANSACTIONS.*—*Section 104(3) of*
12 *the Truth in Lending Act (15 U.S.C. 1603(3)) is*
13 *amended by striking “\$25,000” and inserting*
14 *“\$50,000”.*

15 (2) *CONSUMER LEASES.*—*Section 181(1) of the*
16 *Truth in Lending Act (15 U.S.C. 1667(1)) is amend-*
17 *ed by striking “\$25,000” and inserting “\$50,000”.*

18 (b) *ADJUSTMENTS FOR INFLATION.*—*On and after De-*
19 *cember 31, 2011, the Bureau may adjust annually the dol-*
20 *lar amounts described in sections 104(3) and 181(1) of the*
21 *Truth in Lending Act (as amended by this section), by the*
22 *annual percentage increase in the Consumer Price Index*
23 *for Urban Wage Earners and Clerical Workers, as published*
24 *by the Bureau of Labor Statistics, rounded to the nearest*
25 *multiple of \$100, or \$1,000, as applicable.*

1 **SEC. 1104. SMALL BUSINESS FAIRNESS AND REGULATORY**
2 **TRANSPARENCY.**

3 (a) *PANEL REQUIREMENT.*—Section 609(d) of title 5,
4 *United States Code*, is amended by striking “means the”
5 and all that follows and inserting the following: “means—

6 “(1) the Environmental Protection Agency;

7 “(2) the Consumer Financial Protection Bureau
8 of the Federal Reserve System; and

9 “(3) the Occupational Safety and Health Ad-
10 ministration of the Department of Labor.”.

11 (b) *INITIAL REGULATORY FLEXIBILITY ANALYSIS.*—
12 Section 603 of title 5, *United States Code*, is amended by
13 adding at the end the following:

14 “(d)(1) For a covered agency, as defined in section
15 609(d)(2), each initial regulatory flexibility analysis shall
16 include a description of—

17 “(A) any projected increase in the cost of credit
18 for small entities;

19 “(B) any significant alternatives to the proposed
20 rule which accomplish the stated objectives of applica-
21 ble statutes and which minimize any increase in the
22 cost of credit for small entities; and

23 “(C) advice and recommendations of representa-
24 tives of small entities relating to issues described in
25 subparagraphs (A) and (B) and subsection (b).

1 “(2) A covered agency, as defined in section 609(d)(2),
2 shall, for purposes of complying with paragraph (1)(C)—

3 “(A) identify representatives of small entities in
4 consultation with the Chief Counsel for Advocacy of
5 the Small Business Administration; and

6 “(B) collect advice and recommendations from
7 the representatives identified under subparagraph (A)
8 relating to issues described in subparagraphs (A) and
9 (B) of paragraph (1) and subsection (b).”.

10 (c) *FINAL REGULATORY FLEXIBILITY ANALYSIS*.—Sec-
11 tion 604(a) of title 5, United States Code, is amended—

12 (1) in paragraph (4), by striking “and” at the
13 end;

14 (2) in paragraph (5), by striking the period at
15 the end and inserting “; and”; and

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

17 “(6) for a covered agency, as defined in section
18 609(d)(2), a description of the steps the agency has
19 taken to minimize any additional cost of credit for
20 small entities.”.

21 **SEC. 1105. EFFECTIVE DATE.**

22 *Except as otherwise provided in this subtitle and the*
23 *amendments made by this subtitle, this subtitle and the*
24 *amendments made by this subtitle, other than sections 1081*

1 *and 1082, shall become effective on the designated transfer*
2 *date.*

3 **TITLE XI—FEDERAL RESERVE**
4 **SYSTEM PROVISIONS**

5 **SEC. 1151. FEDERAL RESERVE ACT AMENDMENTS ON EMER-**
6 **GENCY LENDING AUTHORITY.**

7 *(a) FEDERAL RESERVE ACT.—The third undesignated*
8 *paragraph of section 13 of the Federal Reserve Act (12*
9 *U.S.C. 343) (relating to emergency lending authority) is*
10 *amended—*

11 *(1) by inserting “(3)(A)” before “In unusual”;*

12 *(2) by striking “individual, partnership, or cor-*
13 *poration” the first place that term appears and in-*
14 *serting the following: “participant in any program or*
15 *facility with broad-based eligibility”;*

16 *(3) by striking “exchange for an individual or a*
17 *partnership or corporation” and inserting “ex-*
18 *change,”;*

19 *(4) by striking “such individual, partnership, or*
20 *corporation” and inserting the following: “such par-*
21 *ticipant in any program or facility with broad-based*
22 *eligibility”;*

23 *(5) by striking “for individuals, partnerships,*
24 *corporations” and inserting “for any participant in*
25 *any program or facility with broad-based eligibility”;*

1 (6) by striking “may prescribe.” and inserting
2 the following: “may prescribe.

3 “(B)(i) As soon as is practicable after the
4 date of enactment of this subparagraph, the
5 Board shall establish, by regulation, in consulta-
6 tion with the Secretary of the Treasury, the poli-
7 cies and procedures governing emergency lending
8 under this paragraph. Such policies and proce-
9 dures shall be designed to ensure that any emer-
10 gency lending program or facility is for the pur-
11 pose of providing liquidity to the financial sys-
12 tem, and not to aid a failing financial company,
13 and that the collateral for emergency loans is
14 sufficient to protect taxpayers from and that any
15 such program is terminated in a timely and or-
16 derly fashion losses. The policies and procedures
17 established by the Board shall require that a
18 Federal reserve bank assign, consistent with
19 sound risk management practices and to ensure
20 protection for the taxpayer, a lendable value to
21 all collateral for a loan executed by a Federal re-
22 serve bank under this paragraph in determining
23 whether the loan is secured satisfactorily for pur-
24 poses of this paragraph.

1 “(i) *The Board shall establish procedures to*
2 *prohibit borrowing from programs and facilities*
3 *by borrowers that are insolvent. Such procedures*
4 *may include a certification from the chief execu-*
5 *tive officer (or other authorized officer) of the*
6 *borrower, at the time the borrower initially bor-*
7 *rows under the program or facility (with a duty*
8 *by the borrower to update the certification if the*
9 *information in the certification materially*
10 *changes), that the borrower is not insolvent. A*
11 *borrower shall be considered insolvent for pur-*
12 *poses of this subparagraph, if the borrower is in*
13 *bankruptcy, resolution under title II of the Re-*
14 *storing American Financial Stability Act of*
15 *2010, or any other Federal or State insolvency*
16 *proceeding.*

17 “(iii) *A program or facility that is struc-*
18 *tured to remove assets from the balance sheet of*
19 *a single and specific company, or that is estab-*
20 *lished for the purpose of assisting a single and*
21 *specific company avoid bankruptcy, resolution*
22 *under title II of the Restoring American Finan-*
23 *cial Stability Act of 2010, or any other Federal*
24 *or State insolvency proceeding, shall not be con-*

1 *sidered a program or facility with broad-based*
2 *eligibility.*

3 “(iv) *The Board may not establish any pro-*
4 *gram or facility under this paragraph without*
5 *the prior approval of the Secretary of the Treas-*
6 *ury.*

7 “(C) *The Board shall provide to the Com-*
8 *mittee on Banking, Housing, and Urban Affairs*
9 *of the Senate and the Committee on Financial*
10 *Services of the House of Representatives—*

11 “(i) *not later than 7 days after pro-*
12 *viding any loan or other financial assist-*
13 *ance under this paragraph, a report that*
14 *includes—*

15 “(I) *the justification for the exer-*
16 *cise of authority to provide such assist-*
17 *ance;*

18 “(II) *the identity of the recipients*
19 *of such assistance;*

20 “(III) *the date and amount of the*
21 *assistance, and form in which the as-*
22 *sistance was provided; and*

23 “(IV) *the material terms of the as-*
24 *sistance, including—*

25 “(aa) *duration;*

1 “(bb) collateral pledged and
2 the value thereof;

3 “(cc) all interest, fees, and
4 other revenue or items of value to
5 be received in exchange for the as-
6 sistance;

7 “(dd) any requirements im-
8 posed on the recipient with respect
9 to employee compensation, dis-
10 tribution of dividends, or any
11 other corporate decision in ex-
12 change for the assistance; and

13 “(ee) the expected costs to the
14 taxpayers of such assistance; and

15 “(ii) once every 30 days, with respect
16 to any outstanding loan or other financial
17 assistance under this paragraph, written
18 updates on—

19 “(I) the value of collateral;

20 “(II) the amount of interest, fees,
21 and other revenue or items of value re-
22 ceived in exchange for the assistance;
23 and

24 “(III) the expected or final cost to
25 the taxpayers of such assistance.

1 “(D) *The information submitted to Congress*
2 *under subparagraph (C) related to—*

3 “(i) *the identity of the participants in*
4 *an emergency lending program or facility*
5 *commenced under this paragraph;*

6 “(ii) *the amounts borrowed by each*
7 *participant in any such program or facil-*
8 *ity;*

9 “(iii) *identifying details concerning*
10 *the assets or collateral held by, under, or in*
11 *connection with such a program or facility,*
12 *shall be kept confidential, upon the written re-*
13 *quest of the Chairman of the Board, in which*
14 *case such information shall be made available*
15 *only to the Chairpersons and Ranking Members*
16 *of the Committees described in subparagraph*
17 *(C).*

18 “(E) *If an entity to which a Federal reserve*
19 *bank has provided a loan under this paragraph*
20 *becomes a covered financial company, as defined*
21 *in section 203 of the Restoring American Finan-*
22 *cial Stability Act of 2010, at any time while*
23 *such loan is outstanding, and the Federal reserve*
24 *bank incurs a realized net loss on the loan, then*
25 *the Federal reserve bank shall have a claim equal*

1 *to the amount of the net realized loss against the*
2 *covered entity, with the same priority as an obli-*
3 *gation to the Secretary of the Treasury under*
4 *sections 210(n) and 210(o) of the Restoring*
5 *American Financial Stability Act of 2010.”.*

6 **(b) CONFORMING AMENDMENT.**—*Section 507(a)(2) of*
7 *title 11, United States Code, is amended by inserting*
8 *“claims of any Federal reserve bank related to loans made*
9 *through programs or facilities authorized under the third*
10 *undesignated paragraph of the Federal Reserve Act (12*
11 *U.S.C. 343),” after “this title,”.*

12 **SEC. 1152. REVIEWS OF SPECIAL FEDERAL RESERVE CREDIT**
13 **FACILITIES.**

14 **(a) REVIEWS.**—*Section 714 of title 31, United States*
15 *Code, is amended by adding at the end the following:*

16 **“(f) REVIEWS OF CREDIT FACILITIES OF THE FED-**
17 **ERAL RESERVE SYSTEM.—**

18 **“(1) DEFINITION.**—*In this subsection, the term*
19 *‘credit facility’ means a program or facility, includ-*
20 *ing any special purpose vehicle or other entity estab-*
21 *lished by or on behalf of the Board of Governors of*
22 *the Federal Reserve System or a Federal reserve bank,*
23 *authorized by the Board of Governors under the third*
24 *undesignated paragraph of section 13 of the Federal*

1 *Reserve Act (12 U.S.C. 343), that is not subject to*
2 *audit under subsection (e), including—*

3 “(A) *the Asset-Backed Commercial Paper*
4 *Money Market Mutual Fund Liquidity Facility;*

5 “(B) *the Term Asset-Backed Securities*
6 *Loan Facility;*

7 “(C) *the Primary Dealer Credit Facility;*

8 “(D) *the Commercial Paper Funding Facil-*
9 *ity; and*

10 “(E) *the Term Securities Lending Facility.*

11 “(2) *AUTHORITY FOR REVIEWS AND EXAMINA-*
12 *TIONS.—Subject to paragraph (3), and notwith-*
13 *standing any limitation in subsection (b) on the au-*
14 *diting and oversight of certain functions of the Board*
15 *of Governors of the Federal Reserve System or any*
16 *Federal reserve bank, the Comptroller General of the*
17 *United States may conduct reviews, including onsite*
18 *examinations, of the Board of Governors, a Federal*
19 *reserve bank, or a credit facility, if the Comptroller*
20 *General determines that such reviews are appropriate,*
21 *solely for the purposes of assessing, with respect to a*
22 *credit facility—*

23 “(A) *the operational integrity, accounting,*
24 *financial reporting, and internal controls of the*
25 *credit facility;*

1 “(B) *the effectiveness of the collateral poli-*
2 *cies established for the facility in mitigating risk*
3 *to the relevant Federal reserve bank and tax-*
4 *payers;*

5 “(C) *whether the credit facility inappropri-*
6 *ately favors one or more specific participants*
7 *over other institutions eligible to utilize the facil-*
8 *ity; and*

9 “(D) *the policies governing the use, selec-*
10 *tion, or payment of third-party contractors by or*
11 *for any credit facility.*

12 “(3) *REPORTS AND DELAYED DISCLOSURE.—*

13 “(A) *REPORTS REQUIRED.—A report on*
14 *each review conducted under paragraph (2) shall*
15 *be submitted by the Comptroller General to the*
16 *Congress before the end of the 90-day period be-*
17 *ginning on the date on which such review is*
18 *completed.*

19 “(B) *CONTENTS.—The report under sub-*
20 *paragraph (A) shall include a detailed descrip-*
21 *tion of the findings and conclusions of the Comp-*
22 *troller General with respect to the matters de-*
23 *scribed in paragraph (2) that were reviewed and*
24 *are the subject of the report, together with such*
25 *recommendations for legislative or administra-*

1 *tive action relating to such matters as the Comp-*
2 *troller General may determine to be appropriate.*

3 “(C) *DELAYED RELEASE OF CERTAIN IN-*
4 *FORMATION.—*

5 “(i) *IN GENERAL.—The Comptroller*
6 *General shall not disclose to any person or*
7 *entity, including to Congress, the names or*
8 *identifying details of specific participants*
9 *in any credit facility, the amounts borrowed*
10 *by specific participants in any credit facil-*
11 *ity, or identifying details regarding assets*
12 *or collateral held by, under, or in connec-*
13 *tion with any credit facility, and any re-*
14 *port provided under subparagraph (A) shall*
15 *be redacted to ensure that such names and*
16 *details are not disclosed.*

17 “(ii) *DELAYED RELEASE.—The non-*
18 *disclosure obligation under clause (i) shall*
19 *expire with respect to any participant on*
20 *the date on which the Board of Governors,*
21 *directly or through a Federal reserve bank,*
22 *publicly discloses the identity of the subject*
23 *participant or the identifying details of the*
24 *subject assets or collateral.*

1 “(iii) *GENERAL RELEASE.*—*The Comptroller General shall release a nonredacted*
2 *version of any report on a credit facility 1*
3 *year after the effective date of the termi-*
4 *nation by the Board of Governors of the au-*
5 *thorization for the credit facility. For pur-*
6 *poses of this clause, a credit facility shall be*
7 *deemed to have terminated 24 months after*
8 *the date on which the credit facility ceases*
9 *to make extensions of credit and loans, un-*
10 *less the credit facility is otherwise termi-*
11 *nated by the Board of Governors.*

13 “(iv) *EXCEPTIONS.*—*The nondisclosure*
14 *obligation under clause (i) shall not apply*
15 *to the credit facilities Maiden Lane, Maiden*
16 *Lane II, and Maiden Lane III.”*

17 (b) *ACCESS TO RECORDS.*—*Section 714(d) of title 31,*
18 *United States Code, is amended—*

19 (1) *in paragraph (2), by inserting “or any per-*
20 *son or entity described in paragraph (3)(A)” after*
21 *“used by an agency”;*

22 (2) *in paragraph (3), by inserting “or (f)” after*
23 *“subsection (e)” each place that term appears; and*

24 (3) *in paragraph (3)(B), by adding at the end*
25 *the following: “The Comptroller General may make*

1 *and retain copies of books, accounts, and other records*
2 *provided under subparagraph (A) as the Comptroller*
3 *General deems appropriate. The Comptroller General*
4 *shall provide to any person or entity described in sub-*
5 *paragraph (A) a current list of officers and employees*
6 *to whom, with proper identification, records and*
7 *property may be made available, and who may make*
8 *notes or copies necessary to carry out a review or ex-*
9 *amination under this subsection.”.*

10 **SEC. 1153. PUBLIC ACCESS TO INFORMATION.**

11 *Section 2B of the Federal Reserve Act (12 U.S.C. 225b)*
12 *is amended by adding at the end the following:*

13 “(c) *PUBLIC ACCESS TO INFORMATION.—The Board*
14 *shall place on its home Internet website, a link entitled*
15 *‘Audit’, which shall link to a webpage that shall serve as*
16 *a repository of information made available to the public*
17 *for a reasonable period of time, not less than 6 months fol-*
18 *lowing the date of release of the relevant information, in-*
19 *cluding—*

20 “(1) *the reports prepared by the Comptroller*
21 *General under section 714 of title 31, United States*
22 *Code;*

23 “(2) *the annual financial statements prepared*
24 *by an independent auditor for the Board in accord-*
25 *ance with section 11B;*

1 “(3) the reports to the Committee on Banking,
2 Housing, and Urban Affairs of the Senate required
3 under the third undesignated paragraph of section 13
4 (relating to emergency lending authority); and

5 “(4) such other information as the Board reason-
6 ably believes is necessary or helpful to the public in
7 understanding the accounting, financial reporting,
8 and internal controls of the Board and the Federal re-
9 serve banks.”.

10 **SEC. 1154. LIQUIDITY EVENT DETERMINATION.**

11 (a) *DETERMINATION AND WRITTEN RECOMMENDA-*
12 *TION.—*

13 (1) *DETERMINATION REQUEST.—The Secretary*
14 *may request the Corporation and the Board of Gov-*
15 *ernors to determine whether a liquidity event exists*
16 *that warrants use of the guarantee program author-*
17 *ized under section 1155.*

18 (2) *REQUIREMENTS OF DETERMINATION.—Any*
19 *determination pursuant to paragraph (1) shall—*

20 (A) *be written; and*

21 (B) *contain an evaluation of the evidence*
22 *that—*

23 (i) *a liquidity event exists;*

24 (ii) *failure to take action would have*
25 *serious adverse effects on financial stability*

1 *or economic conditions in the United States;*

2 *and*

3 *(iii) actions authorized under section*
4 *1155 are needed to avoid or mitigate poten-*
5 *tial adverse effects on the United States fi-*
6 *nancial system or economic conditions.*

7 *(b) PROCEDURES.—Notwithstanding any other provi-*
8 *sion of Federal or State law, upon the determination of both*
9 *the Corporation (upon a vote of not fewer than $\frac{2}{3}$ of the*
10 *members of the Corporation then serving) and the Board*
11 *of Governors (upon a vote of not fewer than $\frac{2}{3}$ of the mem-*
12 *bers of the Board of Governors then serving) under sub-*
13 *section (a) that a liquidity event exists that warrants use*
14 *of the guarantee program authorized under section 1155,*
15 *and with the written consent of the Secretary—*

16 *(1) the Corporation shall take action in accord-*
17 *ance with section 1155(a); and*

18 *(2) the Secretary (in consultation with the Presi-*
19 *dent) shall take action in accordance with section*
20 *1155(c).*

21 *(c) DOCUMENTATION AND REVIEW.—*

22 *(1) DOCUMENTATION.—The Secretary shall—*

23 *(A) maintain the written documentation of*
24 *each determination of the Corporation and the*
25 *Board of Governors under this section; and*

1 (B) provide the documentation for review
2 under paragraph (2).

3 (2) *GAO REVIEW.*—The Comptroller General of
4 the United States shall review and report to Congress
5 on any determination of the Corporation and the
6 Board of Governors under subsection (a), including—

7 (A) the basis for the determination; and

8 (B) the likely effect of the actions taken.

9 (d) *REPORT TO CONGRESS.*—On the earlier of the date
10 of a submission made to Congress under section 1155(c),
11 or within 30 days of the date of a determination under sub-
12 section (a), the Secretary shall provide written notice of the
13 determination of the Corporation and the Board of Gov-
14 ernors to the Committee on Banking, Housing, and Urban
15 Affairs of the Senate and the Committee on Financial Serv-
16 ices of the House of Representatives, including a description
17 of the basis for the determination.

18 **SEC. 1155. EMERGENCY FINANCIAL STABILIZATION.**

19 (a) *IN GENERAL.*—Upon the written determination of
20 the Corporation and the Board of Governors under section
21 1154, the Corporation shall create a widely available pro-
22 gram to guarantee obligations of solvent insured depository
23 institutions or solvent depository institution holding com-
24 panies (including any affiliates thereof) during times of se-
25 vere economic distress, except that a guarantee of obliga-

1 *tions under this section may not include the provision of*
2 *equity in any form.*

3 *(b) RULEMAKING AND TERMS AND CONDITIONS.—*

4 *(1) POLICIES AND PROCEDURES.—As soon as is*
5 *practicable after the date of enactment of this Act, the*
6 *Corporation shall establish, by regulation, and in*
7 *consultation with the Secretary, policies and proce-*
8 *dures governing the issuance of guarantees authorized*
9 *by this section. Such policies and procedures may in-*
10 *clude a requirement of collateral as a condition of*
11 *any such guarantee.*

12 *(2) TERMS AND CONDITIONS.—The terms and*
13 *conditions of any guarantee program shall be estab-*
14 *lished by the Corporation, with the concurrence of the*
15 *Secretary.*

16 *(c) DETERMINATION OF GUARANTEED AMOUNT.—*

17 *(1) IN GENERAL.—In connection with any pro-*
18 *gram established pursuant to subsection (a) and sub-*
19 *ject to paragraph (2) of this subsection, the Secretary*
20 *(in consultation with the President) shall determine*
21 *the maximum amount of debt outstanding that the*
22 *Corporation may guarantee under this section, and*
23 *the President may transmit to Congress a written re-*
24 *port on the plan of the Corporation to exercise the au-*
25 *thority under this section to issue guarantees up to*

1 *that maximum amount and a request for approval of*
2 *such plan. The Corporation shall exercise the author-*
3 *ity under this section to issue guarantees up to that*
4 *specified maximum amount upon passage of the joint*
5 *resolution of approval, as provided in subsection (d).*
6 *Absent such approval, the Corporation shall issue no*
7 *such guarantees.*

8 (2) *ADDITIONAL DEBT GUARANTEE AUTHOR-*
9 *ITY.—If the Secretary (in consultation with the Presi-*
10 *dent) determines, after a submission to Congress*
11 *under paragraph (1), that the maximum guarantee*
12 *amount should be raised, and the Council concurs*
13 *with that determination, the President may transmit*
14 *to Congress a written report on the plan of the Cor-*
15 *poration to exercise the authority under this section*
16 *to issue guarantees up to the increased maximum debt*
17 *guarantee amount. The Corporation shall exercise the*
18 *authority under this section to issue guarantees up to*
19 *that specified maximum amount upon passage of the*
20 *joint resolution of approval, as provided in subsection*
21 *(d). Absent such approval, the Corporation shall issue*
22 *no such guarantees.*

23 (d) *RESOLUTION OF APPROVAL.—*

24 (1) *ADDITIONAL DEBT GUARANTEE AUTHOR-*
25 *ITY.—A request by the President under this section*

1 *shall be considered granted by Congress upon adop-*
2 *tion of a joint resolution approving such request.*
3 *Such joint resolution shall be considered in the Senate*
4 *under expedited procedures.*

5 (2) *FAST TRACK CONSIDERATION IN SENATE.*—

6 (A) *RECONVENING.*—*Upon receipt of a re-*
7 *quest under subsection (c), if the Senate has ad-*
8 *journed or recessed for more than 2 days, the*
9 *majority leader of the Senate, after consultation*
10 *with the minority leader of the Senate, shall no-*
11 *tify the Members of the Senate that, pursuant to*
12 *this section, the Senate shall convene not later*
13 *than the second calendar day after receipt of*
14 *such message.*

15 (B) *PLACEMENT ON CALENDAR.*—*Upon in-*
16 *troduction in the Senate, the joint resolution*
17 *shall be placed immediately on the calendar.*

18 (C) *FLOOR CONSIDERATION.*—

19 (i) *IN GENERAL.*—*Notwithstanding*
20 *Rule XXII of the Standing Rules of the*
21 *Senate, it is in order at any time during*
22 *the period beginning on the 4th day after*
23 *the date on which Congress receives a re-*
24 *quest under subsection (c), and ending on*
25 *the 7th day after that date (even though a*

1 *previous motion to the same effect has been*
2 *disagreed to) to move to proceed to the con-*
3 *sideration of the joint resolution, and all*
4 *points of order against the joint resolution*
5 *(and against consideration of the joint reso-*
6 *lution) are waived. The motion to proceed is*
7 *not debatable. The motion is not subject to*
8 *a motion to postpone. A motion to recon-*
9 *sider the vote by which the motion is agreed*
10 *to or disagreed to shall not be in order. If*
11 *a motion to proceed to the consideration of*
12 *the resolution is agreed to, the joint resolu-*
13 *tion shall remain the unfinished business*
14 *until disposed of.*

15 (ii) *DEBATE.*—*Debate on the joint res-*
16 *olution, and on all debatable motions and*
17 *appeals in connection therewith, shall be*
18 *limited to not more than 10 hours, which*
19 *shall be divided equally between the major-*
20 *ity and minority leaders or their designees.*
21 *A motion further to limit debate is in order*
22 *and not debatable. An amendment to, or a*
23 *motion to postpone, or a motion to proceed*
24 *to the consideration of other business, or a*

1 *motion to recommit the joint resolution is*
2 *not in order.*

3 *(iii) VOTE ON PASSAGE.—The vote on*
4 *passage shall occur immediately following*
5 *the conclusion of the debate on the joint res-*
6 *olution, and a single quorum call at the*
7 *conclusion of the debate if requested in ac-*
8 *cordance with the rules of the Senate.*

9 *(iv) RULINGS OF THE CHAIR ON PRO-*
10 *CEDURE.—Appeals from the decisions of the*
11 *Chair relating to the application of the*
12 *rules of the Senate, as the case may be, to*
13 *the procedure relating to a joint resolution*
14 *shall be decided without debate.*

15 (3) *RULES.—*

16 (A) *COORDINATION WITH ACTION BY HOUSE*
17 *OF REPRESENTATIVES.—If, before the passage by*
18 *the Senate of a joint resolution of the Senate, the*
19 *Senate receives a joint resolution, from the*
20 *House of Representatives, then the following pro-*
21 *cedures shall apply:*

22 (i) *The joint resolution of the House of*
23 *Representatives shall not be referred to a*
24 *committee.*

1 (ii) *With respect to a joint resolution*
2 *of the Senate—*

3 (I) *the procedure in the Senate*
4 *shall be the same as if no joint resolu-*
5 *tion had been received from the other*
6 *House; but*

7 (II) *the vote on passage shall be*
8 *on the joint resolution of the House of*
9 *Representatives.*

10 (B) *TREATMENT OF JOINT RESOLUTION OF*
11 *HOUSE OF REPRESENTATIVES.—If the Senate*
12 *fails to introduce or consider a joint resolution*
13 *under this section, the joint resolution of the*
14 *House of Representatives shall be entitled to ex-*
15 *pedited floor procedures under this subsection.*

16 (C) *TREATMENT OF COMPANION MEAS-*
17 *URES.—If, following passage of the joint resolu-*
18 *tion in the Senate, the Senate then receives the*
19 *companion measure from the House of Rep-*
20 *resentatives, the companion measure shall not be*
21 *debatable.*

22 (D) *RULES OF THE SENATE.—This sub-*
23 *section is enacted by Congress—*

24 (i) *as an exercise of the rulemaking*
25 *power of the Senate, and as such it is*

1 *deemed a part of the rules of the Senate, but*
2 *applicable only with respect to the proce-*
3 *cedure to be followed in the Senate in the case*
4 *of a joint resolution, and it supersedes other*
5 *rules, only to the extent that it is incon-*
6 *sistent with such rules; and*

7 *(ii) with full recognition of the con-*
8 *stitutional right of the Senate to change the*
9 *rules (so far as relating to the procedure of*
10 *the Senate) at any time, in the same man-*
11 *ner, and to the same extent as in the case*
12 *of any other rule of the Senate.*

13 (4) *DEFINITION.*—*As used in this subsection, the*
14 *term “joint resolution” means only a joint resolu-*
15 *tion—*

16 *(A) that is introduced not later than 3 cal-*
17 *endar days after the date on which the request*
18 *referred to in subsection (c) is received by Con-*
19 *gress;*

20 *(B) that does not have a preamble;*

21 *(C) the title of which is as follows: “Joint*
22 *resolution relating to the approval of a plan to*
23 *guarantee obligations under section 1155 of the*
24 *Restoring American Financial Stability Act of*
25 *2010”; and*

1 (D) the matter after the resolving clause of
2 which is as follows: “That Congress approves the
3 obligation of any amount described in section
4 1155(c) of the Restoring American Financial
5 Stability Act of 2010.”.

6 (e) *FUNDING.*—

7 (1) *FEEES AND OTHER CHARGES.*—*The Corpora-*
8 *tion shall charge fees and other assessments to all par-*
9 *ticipants in the program established pursuant to this*
10 *section, in such amounts as are necessary to offset*
11 *projected losses and administrative expenses, includ-*
12 *ing amounts borrowed pursuant to paragraph (3),*
13 *and such amounts shall be available to the Corpora-*
14 *tion.*

15 (2) *EXCESS FUNDS.*—*If, at the conclusion of the*
16 *program established under this section, there are any*
17 *excess funds collected from the fees associated with*
18 *such program, the funds shall be deposited in the*
19 *General Fund of the Treasury.*

20 (3) *AUTHORITY OF CORPORATION.*—*The Cor-*
21 *poration—*

22 (A) *may borrow funds from the Secretary of*
23 *the Treasury and issue obligations of the Cor-*
24 *poration to the Secretary for amounts borrowed,*
25 *and the amounts borrowed shall be available to*

1 *the Corporation for purposes of carrying out a*
2 *program established pursuant to this section, in-*
3 *cluding the payment of reasonable costs of ad-*
4 *ministering the program, and the obligations*
5 *issued shall be repaid in full with interest*
6 *through fees and charges paid by participants in*
7 *accordance with paragraphs (1) and (4), as ap-*
8 *plicable; and*

9 *(B) may not borrow funds from the Deposit*
10 *Insurance Fund established pursuant to section*
11 *11(a)(4) of the Federal Deposit Insurance Act.*

12 *(4) BACKUP SPECIAL ASSESSMENTS.—To the ex-*
13 *tent that the funds collected pursuant to paragraph*
14 *(1) are insufficient to cover any losses or expenses, in-*
15 *cluding amounts borrowed pursuant to paragraph*
16 *(3), arising from a program established pursuant to*
17 *this section, the Corporation shall impose a special*
18 *assessment solely on participants in the program, in*
19 *amounts necessary to address such insufficiency, and*
20 *which shall be available to the Corporation to cover*
21 *such losses or expenses.*

22 *(5) AUTHORITY OF THE SECRETARY.—The Sec-*
23 *retary may purchase any obligations issued under*
24 *paragraph (3)(A). For such purpose, the Secretary*
25 *may use the proceeds of the sale of any securities*

1 *issued under chapter 31 of title 31, United States*
2 *Code, and the purposes for which securities may be*
3 *issued under that chapter 31 are extended to include*
4 *such purchases, and the amount of any securities*
5 *issued under that chapter 31 for such purpose shall*
6 *be treated in the same manner as securities issued*
7 *under section 208(n)(3)(B).*

8 *(f) RULE OF CONSTRUCTION.—For purposes of this*
9 *section, a guarantee of deposits held by insured depository*
10 *institutions shall not be treated as a debt guarantee pro-*
11 *gram.*

12 *(g) DEFINITIONS.—For purposes of this section, the*
13 *following definitions shall apply:*

14 *(1) COMPANY.—The term “company” means any*
15 *entity other than a natural person that is incor-*
16 *porated or organized under Federal law or the laws*
17 *of any State.*

18 *(2) DEPOSITORY INSTITUTION HOLDING COM-*
19 *PANY.—The term “depository institution holding com-*
20 *pany” has the same meaning as in section 3 of the*
21 *Federal Deposit Insurance Act (12 U.S.C. 1813).*

22 *(3) LIQUIDITY EVENT.—The term “liquidity*
23 *event” means—*

1 (A) an exceptional and broad reduction in
2 the general ability of financial market partici-
3 pants—

4 (i) to sell financial assets without an
5 unusual and significant discount; or

6 (ii) to borrow using financial assets as
7 collateral without an unusual and signifi-
8 cant increase in margin; or

9 (B) an unusual and significant reduction
10 in the ability of financial market participants to
11 obtain unsecured credit.

12 (4) *SOLVENT*.—The term “solvent” means that
13 the value of the assets of an entity exceed its obliga-
14 tions to creditors.

15 **SEC. 1156. ADDITIONAL RELATED AMENDMENTS.**

16 (a) *SUSPENSION OF PARALLEL FEDERAL DEPOSIT IN-*
17 *SURANCE ACT AUTHORITY*.—Effective upon the date of en-
18 *actment of this section, the Corporation may not exercise*
19 *its authority under section 13(c)(4)(G)(i) of the Federal De-*
20 *posit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to estab-*
21 *lish any widely available debt guarantee program for which*
22 *section 1155 would provide authority.*

23 (b) *FEDERAL DEPOSIT INSURANCE ACT*.—Section
24 *13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C.*
25 *1823(c)(4)(G)) is amended—*

1 (1) *in clause (i)*—

2 (A) *in subclause (I), by inserting “for which*
3 *the Corporation has been appointed receiver” be-*
4 *fore “would have serious”; and*

5 (B) *in the undesignated matter following*
6 *subclause (II), by inserting “for the purpose of*
7 *winding up the insured depository institution*
8 *for which the Corporation has been appointed re-*
9 *ceiver” after “provide assistance under this sec-*
10 *tion”; and*

11 (2) *in clause (v)(I), by striking “The” and in-*
12 *serting “Not later than 3 days after making a deter-*
13 *mination under clause (i), the”.*

14 (c) *EFFECT OF DEFAULT ON AN FDIC GUARANTEE.—*
15 *If an insured depository institution or depository institu-*
16 *tion holding company (as those terms are defined in section*
17 *3 of the Federal Deposit Insurance Act) participating in*
18 *a program under section 1155, or any participant in a debt*
19 *guarantee program established pursuant to section*
20 *13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults*
21 *on any obligation guaranteed by the Corporation after the*
22 *date of enactment of this Act, the Corporation shall—*

23 (1) *appoint itself as receiver for the insured de-*
24 *pository institution that defaults; and*

1 (2) *with respect to any other participating com-*
2 *pany that is not an insured depository institution*
3 *that defaults—*

4 (A) *require—*

5 (i) *consideration of whether a deter-*
6 *mination shall be made, as provided in sec-*
7 *tion 202 to resolve the company under sec-*
8 *tion 203; and*

9 (ii) *the company to file a petition for*
10 *bankruptcy under section 301 of title 11,*
11 *United States Code, if the Corporation is*
12 *not appointed receiver pursuant to section*
13 *203 within 30 days of the date of default;*
14 *or*

15 (B) *file a petition for involuntary bank-*
16 *ruptcy on behalf of the company under section*
17 *303 of title 11, United States Code.*

18 **SEC. 1157. FEDERAL RESERVE ACT AMENDMENTS ON FED-**
19 **ERAL RESERVE BANK GOVERNANCE.**

20 *The Federal Reserve Act (12 U.S.C. 221 et seq.) is*
21 *amended in section 4 by adding at the end the following:*

22 “(25) *SELECTION OF THE PRESIDENT OF THE*
23 *FEDERAL RESERVE BANK OF NEW YORK.—Notwith-*
24 *standing any other provision of this section, after the*
25 *date of enactment of the Restoring American Finan-*

1 *cial Stability Act of 2010, the president of the Federal*
2 *Reserve Bank of New York shall be appointed by the*
3 *President, by and with the advice and consent of the*
4 *Senate, for terms of 5 years.*

5 “(26) *LIMITATION ON ELIGIBILITY TO VOTE FOR*
6 *OR SERVE AS A FEDERAL RESERVE BANK DIREC-*
7 *TOR.—Notwithstanding any other provision of this*
8 *section, after the date of enactment of the Restoring*
9 *American Financial Stability Act of 2010, no com-*
10 *pany, or subsidiary or affiliate of a company that is*
11 *supervised by the Board, may vote for members of the*
12 *board of directors of a Federal reserve bank, and no*
13 *past or current officer, director, or employee of such*
14 *company, or subsidiary or affiliate of such company,*
15 *may serve as a member of the board of directors of*
16 *a Federal reserve bank.”.*

17 **SEC. 1158. AMENDMENTS TO THE FEDERAL RESERVE ACT**
18 **RELATING TO SUPERVISION AND REGULA-**
19 **TION POLICY.**

20 (a) *ESTABLISHMENT OF THE POSITION OF VICE*
21 *CHAIRMAN FOR SUPERVISION.—*

22 (1) *POSITION ESTABLISHED.—The second undes-*
23 *ignated paragraph of section 10 of the Federal Re-*
24 *serve Act (12 U.S.C. 242) (relating to the Chairman*
25 *and Vice Chairman of the Board) is amended by*

1 *striking the third sentence and inserting the fol-*
2 *lowing: “Of the persons thus appointed, 1 shall be*
3 *designated by the President, by and with the advice*
4 *and consent of the Senate, to serve as Chairman of*
5 *the Board for a term of 4 years, and 2 shall be des-*
6 *ignated by the President, by and with the advice and*
7 *consent of the Senate, to serve as Vice Chairmen of*
8 *the Board, each for a term of 4 years, 1 of whom shall*
9 *serve in the absence of the Chairman, as provided in*
10 *the fourth undesignated paragraph of this section,*
11 *and 1 of whom shall be designated Vice Chairman for*
12 *Supervision. The Vice Chairman for Supervision*
13 *shall develop policy recommendations for the Board*
14 *regarding supervision and regulation of depository*
15 *institution holding companies and other financial*
16 *firms supervised by the Board, and shall oversee the*
17 *supervision and regulation of such firms.”.*

18 (2) *EFFECTIVE DATE.*—*The amendment made by*
19 *subsection (a) takes effect on the date of enactment of*
20 *this title and applies to individuals who are des-*
21 *ignated by the President on or after that date to serve*
22 *as Vice Chairman of Supervision.*

23 (b) *FINANCIAL STABILITY AS BOARD FUNCTION.*—*Sec-*
24 *tion 10 of the Federal Reserve Act (12 U.S.C. 241) is*
25 *amended by adding at the end the following:*

1 “(11) *FINANCIAL STABILITY FUNCTION.*—*The*
2 *Board of Governors shall identify, measure, monitor,*
3 *and mitigate risks to the financial stability of the*
4 *United States.*”.

5 *(c) APPEARANCES BEFORE CONGRESS.*—*Section 10 of*
6 *the Federal Reserve Act (12 U.S.C. 241) is amended by add-*
7 *ing at the end the following:*

8 “(12) *APPEARANCES BEFORE CONGRESS.*—*The*
9 *Vice Chairman for Supervision shall appear before*
10 *the Committee on Banking, Housing, and Urban Af-*
11 *airs of the Senate and the Committee on Financial*
12 *Services of the House of Representatives and at semi-*
13 *annual hearings regarding the efforts, activities, ob-*
14 *jectives, and plans of the Board with respect to the*
15 *conduct of supervision and regulation of depository*
16 *institution holding companies and other financial*
17 *firms supervised by the Board.*”.

18 *(d) BOARD RESPONSIBILITY TO SET SUPERVISION*
19 *AND REGULATORY POLICY.*—*Section 11 of the Federal Re-*
20 *serve Act (12 U.S.C. 248) (relating to enumerated powers*
21 *of the Board) is amended by adding at the end of subsection*
22 *(k) (relating to delegation) the following: “The Board of*
23 *Governors may not delegate to a Federal reserve bank its*
24 *functions for the establishment of policies for the super-*
25 *vision and regulation of depository institution holding com-*

1 *panies and other financial firms supervised by the Board*
2 *of Governors.”.*

3 **SEC. 1159. GAO AUDIT OF THE FEDERAL RESERVE FACILI-**
4 **TIES; PUBLICATION OF BOARD ACTIONS.**

5 *(a) GAO AUDIT.—*

6 *(1) IN GENERAL.—Notwithstanding section*
7 *714(b) of title 31, United States Code, or any other*
8 *provision of law, the Comptroller General of the*
9 *United States (in this subsection referred to as the*
10 *“Comptroller General”) shall conduct a one-time*
11 *audit of all loans and other financial assistance pro-*
12 *vided during the period beginning on December 1,*
13 *2007 and ending on the date of enactment of this Act*
14 *by the Board of Governors under the Asset-Backed*
15 *Commercial Paper Money Market Mutual Fund Li-*
16 *quidity Facility, the Term Asset-Backed Securities*
17 *Loan Facility, the Primary Dealer Credit Facility,*
18 *the Commercial Paper Funding Facility, the Term*
19 *Securities Lending Facility, the Term Auction Facil-*
20 *ity, Maiden Lane, Maiden Lane II, Maiden Lane III,*
21 *the agency Mortgage-Backed Securities program, for-*
22 *foreign currency liquidity swap lines, and any other*
23 *program created as a result of the third undesignated*
24 *paragraph of section 13 of the Federal Reserve Act.*

1 (2) *ASSESSMENTS.*—*In conducting the audit*
2 *under paragraph (1), the Comptroller General shall*
3 *assess—*

4 (A) *the operational integrity, accounting,*
5 *financial reporting, and internal controls of the*
6 *credit facility;*

7 (B) *the effectiveness of the collateral policies*
8 *established for the facility in mitigating risk to*
9 *the relevant Federal reserve bank and taxpayers;*

10 (C) *whether the credit facility inappropri-*
11 *ately favors one or more specific participants*
12 *over other institutions eligible to utilize the facil-*
13 *ity;*

14 (D) *the policies governing the use, selection,*
15 *or payment of third-party contractors by or for*
16 *any credit facility; and*

17 (E) *whether there were conflicts of interest*
18 *with respect to the manner in which such facility*
19 *was established or operated.*

20 (3) *TIMING.*—*The audit required by this sub-*
21 *section shall be commenced not later than 30 days*
22 *after the date of enactment of this Act, and shall be*
23 *completed not later than 12 months after that date of*
24 *enactment.*

1 (4) *REPORT REQUIRED.*—*The Comptroller Gen-*
2 *eral shall submit a report on the audit conducted*
3 *under paragraph (1) to the Congress not later than*
4 *12 months after the date of enactment of this Act, and*
5 *such report shall be made available to—*

6 (A) *the Speaker of the House of Representa-*
7 *tives;*

8 (B) *the majority and minority leaders of*
9 *the House of Representatives;*

10 (C) *the majority and minority leaders of*
11 *the Senate;*

12 (D) *the Chairman and Ranking Member of*
13 *the Committee on Banking, Housing, and Urban*
14 *Affairs of the Senate and of the Committee on*
15 *Financial Services of the House of Representa-*
16 *tives; and*

17 (E) *any member of Congress who requests*
18 *it.*

19 (b) *AUDIT OF FEDERAL RESERVE BANK GOVERN-*
20 *ANCE.*—

21 (1) *AUDIT.*—

22 (A) *IN GENERAL.*—*Not later than 1 year*
23 *after the date of enactment of this Act, the*
24 *Comptroller General shall complete an audit of*

1 *the governance of the Federal reserve bank sys-*
2 *tem.*

3 (B) *REQUIRED EXAMINATIONS.—The audit*
4 *required under subparagraph (A) shall—*

5 (i) *examine the extent to which the*
6 *current system of appointing Federal re-*
7 *serve bank directors effectively represents*
8 *“the public, without discrimination on the*
9 *basis of race, creed, color, sex or national*
10 *origin, and with due but not exclusive con-*
11 *sideration to the interests of agriculture,*
12 *commerce, industry, services, labor, and*
13 *consumers” in the selection of bank direc-*
14 *tors, as such requirement is set forth under*
15 *section 4 of the Federal Reserve Act;*

16 (ii) *examine whether there are actual*
17 *or potential conflicts of interest created*
18 *when the directors of Federal reserve banks,*
19 *which execute the supervisory functions of*
20 *the Board of Governors of the Federal Re-*
21 *serve System, are elected by member banks;*

22 (iii) *examine the establishment and op-*
23 *erations of each facility described in sub-*
24 *section (a)(1) and each Federal reserve bank*

1 *involved in the establishment and oper-*
2 *ations thereof; and*

3 *(iv) identify changes to selection proce-*
4 *dures for Federal reserve bank directors, or*
5 *to other aspects of Federal reserve bank gov-*
6 *ernance, that would—*

7 *(I) improve how the public is rep-*
8 *resented;*

9 *(II) eliminate actual or potential*
10 *conflicts of interest in bank super-*
11 *vision;*

12 *(III) increase the availability of*
13 *information useful for the formation*
14 *and execution of monetary policy; or*

15 *(IV) in other ways increase the ef-*
16 *fectiveness or efficiency of reserve*
17 *banks.*

18 (2) *REPORT REQUIRED.—A report on the audit*
19 *conducted under paragraph (1) shall be submitted by*
20 *the Comptroller General to the Congress before the end*
21 *of the 90-day period beginning on the date on which*
22 *such audit is completed, and such report shall be*
23 *made available to—*

24 *(A) the Speaker of the House of Representa-*
25 *tives;*

1 (B) *the majority and minority leaders of*
2 *the House of Representatives;*

3 (C) *the majority and minority leaders of*
4 *the Senate;*

5 (D) *the Chairman and Ranking Member of*
6 *the Committee on Banking, Housing, and Urban*
7 *Affairs of the Senate and of the Committee on*
8 *Financial Services of the House of Representa-*
9 *tives; and*

10 (E) *any member of Congress who requests*
11 *it.*

12 (c) *PUBLICATION OF BOARD ACTIONS.—Notwith-*
13 *standing any other provision of law, the Board of Governors*
14 *shall publish on its website, not later than December 1,*
15 *2010, with respect to all loans and other financial assist-*
16 *ance it has provided during the period beginning on Decem-*
17 *ber 1, 2007 and ending on the date of enactment of this*
18 *Act under the Asset-Backed Commercial Paper Money Mar-*
19 *ket Mutual Fund Liquidity Facility, the Term Asset-*
20 *Backed Securities Loan Facility, the Primary Dealer Cred-*
21 *it Facility, the Commercial Paper Funding Facility, the*
22 *Term Securities Lending Facility, the Term Auction Facil-*
23 *ity, Maiden Lane, Maiden Lane II, Maiden Lane III, the*
24 *agency Mortgage-Backed Securities program, foreign cur-*
25 *rency liquidity swap lines, and any other program created*

1 *as a result of the third undesignated paragraph of section*
2 *13 of the Federal Reserve Act—*

3 *(1) the identity of each business, individual, en-*
4 *tity, or foreign central bank to which the Board of*
5 *Governors has provided such assistance;*

6 *(2) the type of financial assistance provided to*
7 *that business, individual, entity, or foreign central*
8 *bank;*

9 *(3) the value or amount of that financial assist-*
10 *ance;*

11 *(4) the date on which the financial assistance*
12 *was provided;*

13 *(5) the specific terms of any repayment expected,*
14 *including the repayment time period, interest charges,*
15 *collateral, limitations on executive compensation or*
16 *dividends, and other material terms; and*

17 *(6) the specific rationale for each such facility or*
18 *program.*

19 **TITLE XII—IMPROVING ACCESS**
20 **TO MAINSTREAM FINANCIAL**
21 **INSTITUTIONS**

22 **SEC. 1201. SHORT TITLE.**

23 *This title may be cited as the “Improving Access to*
24 *Mainstream Financial Institutions Act of 2010”.*

1 **SEC. 1202. PURPOSE.**

2 *The purpose of this title is to encourage initiatives for*
3 *financial products and services that are appropriate and*
4 *accessible for millions of Americans who are not fully incor-*
5 *porated into the financial mainstream.*

6 **SEC. 1203. DEFINITIONS.**

7 *In this title, the following definitions shall apply:*

8 (1) *ACCOUNT.*—*The term “account” means an*
9 *agreement between an individual and an eligible enti-*
10 *ty under which the individual obtains from or*
11 *through the entity 1 or more banking products and*
12 *services, and includes a deposit account, a savings ac-*
13 *count (including a money market savings account),*
14 *an account for a closed-end loan, and other products*
15 *or services, as the Secretary deems appropriate.*

16 (2) *COMMUNITY DEVELOPMENT FINANCIAL INSTI-*
17 *TUTION.*—*The term “community development finan-*
18 *cial institution” has the same meaning as in section*
19 *103(5) of the Community Development Banking and*
20 *Financial Institutions Act of 1994 (12 U.S.C.*
21 *4702(5)).*

22 (3) *ELIGIBLE ENTITY.*—*The term “eligible enti-*
23 *ty” means—*

24 (A) *an organization described in section*
25 *501(c)(3) of the Internal Revenue Code of 1986,*

1 *and exempt from tax under section 501(a) of*
2 *such Code;*

3 *(B) a federally insured depository institu-*
4 *tion;*

5 *(C) a community development financial in-*
6 *stitution;*

7 *(D) a State, local, or tribal government en-*
8 *tity; or*

9 *(E) a partnership or other joint venture*
10 *comprised of 1 or more of the entities described*
11 *in subparagraphs (A) through (D), in accord-*
12 *ance with regulations prescribed by the Secretary*
13 *under this title.*

14 (4) *FEDERALLY INSURED DEPOSITORY INSTITU-*
15 *TION.—The term “federally insured depository insti-*
16 *tution” means any insured depository institution (as*
17 *that term is defined in section 3 of the Federal De-*
18 *posit Insurance Act (12 U.S.C. 1813)) and any in-*
19 *sured credit union (as that term is defined in section*
20 *101 of the Federal Credit Union Act (12 U.S.C.*
21 *1752)).*

22 (5) *PAYDAY LOAN.—The term “payday loan”*
23 *means any transaction in which a small cash ad-*
24 *vance is made to a consumer in exchange for—*

1 (A) *the personal check or share draft of the*
 2 *consumer, in the amount of the advance plus a*
 3 *fee, where presentment or negotiation of such*
 4 *check or share draft is deferred by agreement of*
 5 *the parties until a designated future date; or*

6 (B) *the authorization of the consumer to*
 7 *debit the transaction account or share draft ac-*
 8 *count of the consumer, in the amount of the ad-*
 9 *vance plus a fee, where such account will be deb-*
 10 *ited on or after a designated future date.*

11 **SEC. 1204. EXPANDED ACCESS TO MAINSTREAM FINANCIAL**
 12 **INSTITUTIONS.**

13 (a) *IN GENERAL.*—*The Secretary is authorized to es-*
 14 *tablish a multiyear program of grants, cooperative agree-*
 15 *ments, financial agency agreements, and similar contracts*
 16 *or undertakings to promote initiatives designed—*

17 (1) *to enable low- and moderate-income individ-*
 18 *uals to establish one or more accounts in a federally*
 19 *insured depository institution that are appropriate to*
 20 *meet the financial needs of such individuals; and*

21 (2) *to improve access to the provision of ac-*
 22 *counts, on reasonable terms, for low- and moderate-*
 23 *income individuals.*

24 (b) *PROGRAM ELIGIBILITY AND ACTIVITIES.*—

1 (1) *IN GENERAL.*—*The Secretary shall restrict*
2 *participation in any program established under sub-*
3 *section (a) to an eligible entity. Subject to regulations*
4 *prescribed by the Secretary under this title, 1 or more*
5 *eligible entities may participate in 1 or several pro-*
6 *grams established under subsection (a).*

7 (2) *ACCOUNT ACTIVITIES.*—*Subject to regulations*
8 *prescribed by the Secretary, an eligible entity may, in*
9 *participating in a program established under sub-*
10 *section (a), offer or provide to low- and moderate-in-*
11 *come individuals products and services relating to ac-*
12 *counts, including—*

13 (A) *small-dollar value loans; and*

14 (B) *financial education and counseling re-*
15 *lating to conducting transactions in and man-*
16 *aging accounts.*

17 **SEC. 1205. LOW-COST ALTERNATIVES TO PAYDAY LOANS.**

18 (a) *GRANTS AUTHORIZED.*—*The Secretary is author-*
19 *ized to establish multiyear demonstration programs by*
20 *means of grants, cooperative agreements, financial agency*
21 *agreements, and similar contracts or undertakings, with eli-*
22 *gible entities to provide low-cost, small loans to consumers*
23 *that will provide alternatives to more costly payday loans.*

24 (b) *TERMS AND CONDITIONS.*—

1 (1) *IN GENERAL.*—*Loans under this section shall*
2 *be made on terms and conditions, and pursuant to*
3 *lending practices, that are reasonable for consumers.*

4 (2) *FINANCIAL LITERACY AND EDUCATION OP-*
5 *PORTUNITIES.*—

6 (A) *IN GENERAL.*—*Each eligible entity*
7 *awarded a grant under this section shall promote*
8 *and take appropriate steps to ensure the provi-*
9 *sion of financial literacy and education opportu-*
10 *nities, such as relevant counseling services, edu-*
11 *cational courses, or wealth building programs, to*
12 *each consumer provided with a loan pursuant to*
13 *this section.*

14 (B) *AUTHORITY TO EXPAND ACCESS.*—*As*
15 *part of the grants, agreements, and undertakings*
16 *established under this section, the Secretary may*
17 *implement reasonable measures or programs de-*
18 *signed to expand access to financial literacy and*
19 *education opportunities, including relevant*
20 *counseling services, educational courses, or*
21 *wealth building programs to be provided to indi-*
22 *viduals who obtain loans from eligible entities*
23 *under this section.*

1 **SEC. 1206. GRANTS TO ESTABLISH LOAN-LOSS RESERVE**
2 **FUNDS.**

3 *The Community Development Banking and Financial*
4 *Institutions Act of 1994 (12 U.S.C. 4701 et seq.) is amended*
5 *by adding at the end the following:*

6 **“SEC. 122. GRANTS TO ESTABLISH LOAN-LOSS RESERVE**
7 **FUNDS.**

8 “(a) *PURPOSES.—The purposes of this section are—*

9 *“(1) to make financial assistance available from*
10 *the Fund in order to help community development fi-*
11 *nancial institutions defray the costs of operating*
12 *small dollar loan programs, by providing the*
13 *amounts necessary for such institutions to establish*
14 *their own loan loss reserve funds to mitigate some of*
15 *the losses on such small dollar loan programs; and*

16 *“(2) to encourage community development finan-*
17 *cial institutions to establish and maintain small dol-*
18 *lar loan programs that would help give consumers ac-*
19 *cess to mainstream financial institutions and combat*
20 *payday lending.*

21 “(b) *GRANTS.—*

22 *“(1) LOAN-LOSS RESERVE FUND GRANTS.—The*
23 *Fund shall make grants to community development*
24 *financial institutions or to any partnership between*
25 *such community development financial institutions*
26 *and any other federally insured depository institution*

1 *with a primary mission to serve targeted investment*
2 *areas, as such areas are defined under section*
3 *103(16), to enable such institutions or any partner-*
4 *ship of such institutions to establish a loan-loss re-*
5 *serve fund in order to defray the costs of a small dol-*
6 *lar loan program established or maintained by such*
7 *institution.*

8 “(2) *MATCHING REQUIREMENT.*—*A community*
9 *development financial institution or any partnership*
10 *of institutions established pursuant to paragraph (1)*
11 *shall provide non-Federal matching funds in an*
12 *amount equal to 50 percent of the amount of any*
13 *grant received under this section.*

14 “(3) *USE OF FUNDS.*—*Any grant amounts re-*
15 *ceived by a community development financial institu-*
16 *tion or any partnership between or among such insti-*
17 *tutions under paragraph (1)—*

18 “(A) *may not be used by such institution to*
19 *provide direct loans to consumers;*

20 “(B) *may be used by such institution to*
21 *help recapture a portion or all of a defaulted*
22 *loan made under the small dollar loan program*
23 *of such institution; and*

1 “(C) may be used to designate and utilize
2 a fiscal agent for services normally provided by
3 such an agent.

4 “(4) TECHNICAL ASSISTANCE GRANTS.—The
5 Fund shall make technical assistance grants to com-
6 munity development financial institutions or any
7 partnership between or among such institutions to
8 support and maintain a small dollar loan program.
9 Any grant amounts received under this paragraph
10 may be used for technology, staff support, and other
11 costs associated with establishing a small dollar loan
12 program.

13 “(c) DEFINITIONS.—For purposes of this section—

14 “(1) the term ‘consumer reporting agency that
15 compiles and maintains files on consumers on a na-
16 tionwide basis’ has the same meaning given such term
17 in section 603(p) of the Fair Credit Reporting Act
18 (15 U.S.C. 1681a(p)); and

19 “(2) the term ‘small dollar loan program’ means
20 a loan program wherein a community development fi-
21 nancial institution or any partnership between or
22 among such institutions offers loans to consumers
23 that—

24 “(A) are made in amounts not exceeding
25 \$2,500;

1 “(B) must be repaid in installments;
2 “(C) have no pre-payment penalty;
3 “(D) the institution has to report payments
4 regarding the loan to at least 1 of the consumer
5 reporting agencies that compiles and maintains
6 files on consumers on a nationwide basis; and
7 “(E) meet any other affordability require-
8 ments as may be established by the Adminis-
9 trator.”.

10 **SEC. 1207. PROCEDURAL PROVISIONS.**

11 *An eligible entity desiring to participate in a program*
12 *or obtain a grant under this title shall submit an applica-*
13 *tion to the Secretary, in such form and containing such*
14 *information as the Secretary may require.*

15 **SEC. 1208. AUTHORIZATION OF APPROPRIATIONS.**

16 *(a) AUTHORIZATION TO THE SECRETARY.—There are*
17 *authorized to be appropriated to the Secretary, such sums*
18 *as are necessary to both administer and fund the programs*
19 *and projects authorized by this title, to remain available*
20 *until expended.*

21 *(b) AUTHORIZATION TO THE FUND.—There is author-*
22 *ized to be appropriated to the Fund for each fiscal year*
23 *beginning in fiscal year 2010, an amount equal to the*
24 *amount of the administrative costs of the Fund for the oper-*
25 *ation of the grant program established under this title.*

1 **SEC. 1209. REGULATIONS.**

2 (a) *IN GENERAL.*—*The Secretary is authorized to pro-*
3 *mulgate regulations to implement and administer the grant*
4 *programs and undertakings authorized by this title.*

5 (b) *REGULATORY AUTHORITY.*—*Regulations pre-*
6 *scribed under this section may contain such classifications,*
7 *differentiations, or other provisions, and may provide for*
8 *such adjustments and exceptions for any class of grant pro-*
9 *grams, undertakings, or eligible entities, as, in the judgment*
10 *of the Secretary, are necessary or proper to effectuate the*
11 *purposes of this title, to prevent circumvention or evasion*
12 *of this title, or to facilitate compliance with this title.*

13 **SEC. 1210. EVALUATION AND REPORTS TO CONGRESS.**

14 *For each fiscal year in which a program or project*
15 *is carried out under this title, the Secretary shall submit*
16 *a report to the Committee on Banking, Housing, and Urban*
17 *Affairs of the Senate and the Committee on Financial Serv-*
18 *ices of the House of Representatives containing a descrip-*
19 *tion of the activities funded, amounts distributed, and*
20 *measurable results, as appropriate and available.*

21 **TITLE XIII—PAY IT BACK ACT**

22 **SEC. 1301. SHORT TITLE.**

23 *This title may be cited as the “Pay It Back Act”.*

24 **SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZATION.**

25 *Section 115(a) of the Emergency Economic Stabiliza-*
26 *tion Act of 2008 (12 U.S.C. 5225(a)) is amended—*

1 (1) *in paragraph (3)—*

2 (A) *by striking “If” and inserting “Except*
3 *as provided in paragraph (4), if”;*

4 (B) *by striking “, \$700,000,000,000, as such*
5 *amount is reduced by \$1,259,000,000, as such*
6 *amount is reduced by \$1,244,000,000” and in-*
7 *serting “\$550,000,000,000”; and*

8 (C) *by striking “outstanding at any one*
9 *time”; and*

10 (2) *by adding at the end the following:*

11 “(4) *If the Secretary, with the concurrence of the*
12 *Chairman of the Board of Governors of the Federal*
13 *Reserve System, determines that there is an imme-*
14 *diately and substantial threat to the economy arising*
15 *from financial instability, the Secretary is authorized*
16 *to purchase troubled assets under this Act in an*
17 *amount equal to amounts received by the Secretary*
18 *before, on, or after the date of enactment of the Pay*
19 *It Back Act for repayment of the principal of finan-*
20 *cial assistance by an entity that has received finan-*
21 *cial assistance under the TARP or any other program*
22 *enacted by the Secretary under the authorities grant-*
23 *ed to the Secretary under this Act, but only—*

24 “(A) *to the extent necessary to address the*
25 *threat; and*

1 “(B) upon transmittal of such determina-
2 tion, in writing, to the appropriate committees
3 of Congress.”.

4 **SEC. 1303. REPORT.**

5 Section 106 of the *Emergency Economic Stabilization*
6 *Act of 2008* (12 U.S.C. 5216) is amended by inserting at
7 the end the following:

8 “(f) *REPORT*.—The Secretary of the Treasury shall re-
9 port to Congress every 6 months on amounts received and
10 transferred to the general fund under subsection (d).”.

11 **SEC. 1304. AMENDMENTS TO HOUSING AND ECONOMIC RE-**
12 **COVERY ACT OF 2008.**

13 (a) *SALE OF FANNIE MAE OBLIGATIONS AND SECURI-*
14 *TIES BY THE TREASURY; DEFICIT REDUCTION*.—Section
15 304(g)(2) of the *Federal National Mortgage Association*
16 *Charter Act* (12 U.S.C. 1719(g)(2)) is amended—

17 (1) by redesignating subparagraph (C) as sub-
18 paragraph (D); and

19 (2) by inserting after subparagraph (B) the fol-
20 lowing:

21 “(C) *DEFICIT REDUCTION*.—The Secretary
22 of the Treasury shall deposit in the General
23 Fund of the Treasury any amounts received by
24 the Secretary from the sale of any obligation ac-

1 *quired by the Secretary under this subsection,*
2 *where such amounts shall be—*

3 “(i) *dedicated for the sole purpose of*
4 *deficit reduction; and*

5 “(ii) *prohibited from use as an offset*
6 *for other spending increases or revenue re-*
7 *ductions.”.*

8 ***(b) SALE OF FREDDIE MAC OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Section***
9 ***306(l)(2) of the Federal Home Loan Mortgage Corporation***
10 ***Act (12 U.S.C. 1455(l)(2)) is amended—***

12 (1) *by redesignating subparagraph (C) as sub-*
13 *paragraph (D); and*

14 (2) *by inserting after subparagraph (B) the fol-*
15 *lowing:*

16 “(C) ***DEFICIT REDUCTION.—The Secretary***
17 *of the Treasury shall deposit in the General*
18 *Fund of the Treasury any amounts received by*
19 *the Secretary from the sale of any obligation ac-*
20 *quired by the Secretary under this subsection,*
21 *where such amounts shall be—*

22 “(i) *dedicated for the sole purpose of*
23 *deficit reduction; and*

1 “(ii) prohibited from use as an offset
2 for other spending increases or revenue re-
3 ductions.”.

4 (c) *SALE OF FEDERAL HOME LOAN BANKS OBLIGA-*
5 *TIONS BY THE TREASURY; DEFICIT REDUCTION.*—Section
6 *11(l)(2) of the Federal Home Loan Bank Act (12 U.S.C.*
7 *1431(l)(2)) is amended—*

8 (1) *by redesignating subparagraph (C) as sub-*
9 *paragraph (D); and*

10 (2) *by inserting after subparagraph (B) the fol-*
11 *lowing:*

12 “(C) *DEFICIT REDUCTION.*—*The Secretary*
13 *of the Treasury shall deposit in the General*
14 *Fund of the Treasury any amounts received by*
15 *the Secretary from the sale of any obligation ac-*
16 *quired by the Secretary under this subsection,*
17 *where such amounts shall be—*

18 “(i) *dedicated for the sole purpose of*
19 *deficit reduction; and*

20 “(ii) *prohibited from use as an offset*
21 *for other spending increases or revenue re-*
22 *ductions.”.*

23 (d) *REPAYMENT OF FEES.*—*Any periodic commitment*
24 *fee or any other fee or assessment paid by the Federal Na-*
25 *tional Mortgage Association or Federal Home Loan Mort-*

1 *gage Corporation to the Secretary of the Treasury as a re-*
2 *sult of any preferred stock purchase agreement, mortgage-*
3 *backed security purchase program, or any other program*
4 *or activity authorized or carried out pursuant to the au-*
5 *thorities granted to the Secretary of the Treasury under sec-*
6 *tion 1117 of the Housing and Economic Recovery Act of*
7 *2008 (Public Law 110–289; 122 Stat. 2683), including any*
8 *fee agreed to by contract between the Secretary and the As-*
9 *sociation or Corporation, shall be deposited in the General*
10 *Fund of the Treasury where such amounts shall be—*

11 (1) *dedicated for the sole purpose of deficit re-*
12 *duction; and*

13 (2) *prohibited from use as an offset for other*
14 *spending increases or revenue reductions.*

15 **SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.**

16 *The Director of the Federal Housing Finance Agency*
17 *shall submit to Congress a report on the plans of the Agency*
18 *to continue to support and maintain the Nation’s vital*
19 *housing industry, while at the same time guaranteeing that*
20 *the American taxpayer will not suffer unnecessary losses.*

21 **SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.**

22 (a) *REJECTION OF ARRA FUNDS BY STATE.—Section*
23 *1607 of the American Recovery and Reinvestment Act of*
24 *2009 (Public Law 111–5; 123 Stat. 305) is amended by*
25 *adding at the end the following:*

1 “(d) *STATEWIDE REJECTION OF FUNDS.*—If funds
2 provided to any State in any division of this Act are not
3 accepted for use by the Governor of the State pursuant to
4 subsection (a) or by the State legislature pursuant to sub-
5 section (b), then all such funds shall be—

6 “(1) rescinded; and

7 “(2) deposited in the General Fund of the Treas-
8 ury where such amounts shall be—

9 “(A) dedicated for the sole purpose of deficit
10 reduction; and

11 “(B) prohibited from use as an offset for
12 other spending increases or revenue reductions.”.

13 (b) *WITHDRAWAL OR RECAPTURE OF UNOBLIGATED*
14 *FUNDS.*—Title XVI of the American Recovery and Rein-
15 vestment Act of 2009 (Public Law 111–5; 123 Stat. 302)
16 is amended by adding at the end the following:

17 **“SEC. 1613. WITHDRAWAL OR RECAPTURE OF UNOBLIGATED**
18 **FUNDS.**

19 “Notwithstanding any other provision of this Act, if
20 the head of any executive agency withdraws or recaptures
21 for any reason funds appropriated or otherwise made avail-
22 able under this division, and such funds have not been obli-
23 gated by a State to a local government or for a specific
24 project, such recaptured funds shall be—

25 “(1) rescinded; and

1 “(2) deposited in the General Fund of the Treas-
2 ury where such amounts shall be—

3 “(A) dedicated for the sole purpose of deficit
4 reduction; and

5 “(B) prohibited from use as an offset for
6 other spending increases or revenue reductions.”.

7 (c) *RETURN OF UNOBLIGATED FUNDS BY END OF*
8 2012.—Section 1603 of the American Recovery and Rein-
9 vestment Act of 2009 (Public Law 111–5; 123 Stat. 302)
10 is amended by—

11 (1) striking “All funds” and inserting “(a) *IN*
12 *GENERAL.—All funds*”; and

13 (2) adding at the end the following:

14 “(b) *REPAYMENT OF UNOBLIGATED FUNDS.—Any dis-*
15 *cretionary appropriations made available in this division*
16 *that have not been obligated as of December 31, 2012, are*
17 *hereby rescinded, and such amounts shall be deposited in*
18 *the General Fund of the Treasury where such amounts shall*
19 *be—*

20 “(1) dedicated for the sole purpose of deficit re-
21 duction; and

22 “(2) prohibited from use as an offset for other
23 spending increases or revenue reductions.

24 “(c) *PRESIDENTIAL WAIVER AUTHORITY.—*

1 “(1) *IN GENERAL.*—*The President may waive the*
 2 *requirements under subsection (b), if the President de-*
 3 *termines that it is not in the best interest of the Na-*
 4 *tion to rescind a specific unobligated amount after*
 5 *December 31, 2012.*

6 “(2) *REQUESTS.*—*The head of an executive agen-*
 7 *cy may also apply to the President for a waiver from*
 8 *the requirements under subsection (b).”.*

9 **TITLE XIV—MISCELLANEOUS**

10 **SEC. 1401. RESTRICTIONS ON USE OF FEDERAL FUNDS TO**

11 **FINANCE BAILOUTS OF FOREIGN GOVERN-** 12 **MENTS.**

13 *The Bretton Woods Agreements Act (22 U.S.C. 286 et*
 14 *seq.) is amended by adding at the end the following:*

15 **“SEC. 68. RESTRICTIONS ON USE OF FEDERAL FUNDS TO FI-**

16 **NANCE BAILOUTS OF FOREIGN GOVERN-** 17 **MENTS.**

18 “(a) *IN GENERAL.*—*The President shall direct the*
 19 *United States Executive Director of the International Mon-*
 20 *etary Fund—*

21 “(1) *to evaluate any proposed loan to a country*
 22 *by the Fund if the amount of the public debt of the*
 23 *country exceeds the gross domestic product of the*
 24 *country;*

1 “(2) to determine whether or not the loan will be
2 repaid and certify that determination to Congress.

3 “(b) *OPPOSITION TO LOANS UNLIKELY TO BE RE-*
4 *PAID.*—If the Executive Director determines under sub-
5 section (a)(2) that a loan by the International Monetary
6 Fund to a country will not be repaid, the President shall
7 direct the Executive Director to use the voice and vote of
8 the United States to vote in opposition to the proposed
9 loan.”.

10 **TITLE XV—CONGO CONFLICT**
11 **MINERALS**

12 **SEC. 1501. SENSE OF CONGRESS ON EXPLOITATION AND**
13 **TRADE OF COLUMBITE-TANTALITE, CAS-**
14 **SITERITE, GOLD, AND WOLFRAMITE ORIGI-**
15 **NATING IN DEMOCRATIC REPUBLIC OF**
16 **CONGO.**

17 *It is the sense of Congress that the exploitation and*
18 *trade of columbite-tantalite, cassiterite, gold, and wolf-*
19 *ramite in the eastern Democratic Republic of Congo is help-*
20 *ing to finance extreme levels of violence in the eastern*
21 *Democratic Republic of Congo, particularly sexual and gen-*
22 *der-based violence, and contributing to an emergency hu-*
23 *manitarian situation therein, warranting the provisions of*
24 *section 13(o) of the Securities Exchange Act of 1934, as*
25 *added by section 1302.*

1 **SEC. 1502. DISCLOSURE TO SECURITIES AND EXCHANGE**
2 **COMMISSION RELATING TO COLUMBITE-TAN-**
3 **TALITE, CASSITERITE, GOLD, AND WOLF-**
4 **RAMITE ORIGINATING IN DEMOCRATIC RE-**
5 **PUBLIC OF CONGO.**

6 *Section 13 of the Securities Exchange Act of 1934 (15*
7 *U.S.C. 78m), as amended by section 763 of this Act, is fur-*
8 *ther amended by adding at the end the following new sub-*
9 *section:*

10 *“(o) DISCLOSURES TO COMMISSION RELATING TO CO-*
11 *LUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLF-*
12 *RAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF*
13 *CONGO.—*

14 *“(1) IN GENERAL.—Not later than 180 days*
15 *after the date of the enactment of this subsection, the*
16 *Commission shall promulgate rules requiring any*
17 *person described in paragraph (2)—*

18 *“(A) to disclose annually to the Commission*
19 *in a report—*

20 *“(i) whether the columbite-tantalite,*
21 *cassiterite, gold, or wolframite that was nec-*
22 *essary as described in paragraph (2)(A)(ii)*
23 *in the year for which such report is sub-*
24 *mitted originated or may have originated*
25 *in the Democratic Republic of Congo or an*
26 *adjoining country; and*

1 “(ii) a description of the measures
2 taken by the person, which may include an
3 independent audit, to exercise due diligence
4 on the source and chain of custody of such
5 columbite-tantalite, cassiterite, gold, or
6 wolframite, or derivatives of such minerals,
7 in order to ensure that the activities of such
8 person that involve such minerals or deriva-
9 tives did not directly or indirectly finance
10 or benefit armed groups in the Democratic
11 Republic of Congo or an adjoining country;
12 and

13 “(B) make the information disclosed under
14 subparagraph (A) available to the public on the
15 Internet website of the person.

16 “(2) PERSON DESCRIBED.—

17 “(A) IN GENERAL.—A person is described
18 in this paragraph if—

19 “(i) the person is required to file re-
20 ports to the Commission under subsection
21 (a)(2); and

22 “(ii) columbite-tantalite, cassiterite,
23 gold, or wolframite is necessary to the
24 functionality or production of a product
25 manufactured by such person.

1 “(B) *DERIVATIVES.*—*For purposes of this*
2 *paragraph, if a derivative of a mineral is nec-*
3 *essary to the functionality or production of a*
4 *product manufactured by a person, such mineral*
5 *shall also be considered necessary to the*
6 *functionality or production of a product manu-*
7 *factured by the person.*

8 “(3) *REVISIONS AND WAIVERS.*—*The Commis-*
9 *sion shall revise or temporarily waive the require-*
10 *ments described in paragraph (1) if the President de-*
11 *termines that such revision or waiver is in the public*
12 *interest.*

13 “(4) *TERMINATION OF DISCLOSURE REQUIRE-*
14 *MENTS.*—

15 “(A) *IN GENERAL.*—*Except as provided in*
16 *subparagraph (B), the requirements of para-*
17 *graph (1) shall terminate on the date that is 5*
18 *years after the date of the enactment of this sub-*
19 *section.*

20 “(B) *EXTENSION BY SECRETARY OF*
21 *STATE.*—*The date described in subparagraph (A)*
22 *shall be extended by 1 year for each year in*
23 *which the Secretary of State certifies that armed*
24 *parties to the ongoing armed conflict in the*
25 *Democratic Republic of Congo or adjoining*

1 *countries continue to be directly involved and*
2 *benefitting from commercial activity involving*
3 *columbite-tantalite, cassiterite, gold, or wolf-*
4 *ramite.*

5 “(5) *ADJOINING COUNTRY DEFINED.*—*In this*
6 *subsection, the term ‘adjoining country’, with respect*
7 *to the Democratic Republic of Congo, means a coun-*
8 *try that shares an internationally recognized border*
9 *with the Democratic Republic of Congo.”.*

10 **SEC. 1503. REPORT.**

11 *Not later than 2 years after the date of the enactment*
12 *of this Act, the Comptroller General of the United States*
13 *shall submit to Congress a report that includes the fol-*
14 *lowing:*

15 (1) *An assessment of the effectiveness of section*
16 *13(o) of the Securities Exchange Act of 1934, as*
17 *added by section 1302, in promoting peace and secu-*
18 *urity in the eastern Democratic Republic of Congo.*

19 (2) *A description of the problems, if any, encoun-*
20 *tered by the Securities and Exchange Commission in*
21 *carrying out the provisions of such section 13(o).*

22 (3) *A description of the adverse impacts of car-*
23 *rying out the provisions of such section 13(o), if any,*
24 *on communities in the eastern Democratic Republic*
25 *of Congo.*

1 (4) *Recommendations for legislative or regu-*
2 *latory actions that can be taken—*

3 (A) *to improve the effectiveness of the provi-*
4 *sions of such section 13(o) to promote peace and*
5 *security in the eastern Democratic Republic of*
6 *Congo;*

7 (B) *to resolve the problems described pursu-*
8 *ant to paragraph (2), if any; and*

9 (C) *to mitigate the adverse impacts de-*
10 *scribed pursuant paragraph (3), if any.*

Amend the title so as to read: “An Act to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ‘too big to fail’, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.”.

Attest:

Secretary.

11TH CONGRESS
2^D SESSION

H.R. 4173

AMENDMENTS