

AMENDMENT NO. **3739**Calendar No. **349**

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.**S. 3217**

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.

April 29, 2010

Ordered to be printed

Proposed by Mr. REID for (Mr. DODD (for himself and
Mrs. LINCOLN))

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Restoring American Financial Stability Act of 2010”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Severability.
- Sec. 4. Effective date.

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- Sec. 102. Definitions.

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- Sec. 113. Authority to require supervision and regulation of certain nonbank financial companies.
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- Sec. 115. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies.
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- Sec. 152. Office of Financial Research established.
- Sec. 153. Purpose and duties of the Office.
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- Sec. 156. Transition oversight.

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- Sec. 161. Reports by and examinations of nonbank financial companies supervised by the Board of Governors.
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- Sec. 163. Acquisitions.
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- Sec. 166. Early remediation requirements.
- Sec. 167. Affiliations.
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- Sec. 319. Contracting and leasing authority.

Subtitle B—Transitional Provisions

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- Sec. 322. Transfer of employees.
- Sec. 323. Property transferred.
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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
6 any company that controls, is controlled by, or is
7 under common control with another company.

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

14 (3) **BOARD OF GOVERNORS.**—The term “Board
15 of Governors” means the Board of Governors of the
16 Federal Reserve System.

17 (4) **BUREAU.**—The term “Bureau” means the
18 Bureau of Consumer Financial Protection estab-
19 lished under title X.

20 (5) **COMMISSION.**—The term “Commission”
21 means the Securities and Exchange Commission, ex-
22 cept in the context of the Commodity Futures Trad-
23 ing Commission.

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

1 (7) COUNCIL.—The term “Council” means the
2 Financial Stability Oversight Council established
3 under title I.

4 (8) CREDIT UNION.—The term “credit union”
5 means a Federal credit union, State credit union, or
6 State-chartered credit union, as those terms are de-
7 fined in section 101 of the Federal Credit Union Act
8 (12 U.S.C. 1752).

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

10 (A) “Federal banking agency” means, indi-
11 vidually, the Board of Governors, the Office of
12 the Comptroller of the Currency, and the Cor-
13 poration; and

14 (B) “Federal banking agencies” means all
15 of the agencies referred to in subparagraph (A),
16 collectively.

17 (10) FUNCTIONALLY REGULATED SUB-
18 SIDIARY.—The term “functionally regulated sub-
19 sidiary” has the same meaning as in section 5(c)(5)
20 of the Bank Holding Company Act of 1956 (12
21 U.S.C. 1844(c)(5)).

22 (11) PRIMARY FINANCIAL REGULATORY AGEN-
23 CY.—The term “primary financial regulatory agen-
24 cy” means—

1 (A) the appropriate Federal banking agen-
2 cy, with respect to institutions described in sec-
3 tion 3(q) of the Federal Deposit Insurance Act,
4 except to the extent that an institution is or the
5 activities of an institution are otherwise subject
6 to the jurisdiction of an agency listed in sub-
7 paragraph (B), (C), (D), or (E);

8 (B) the Securities and Exchange Commis-
9 sion, with respect to—

10 (i) any broker or dealer that is reg-
11 istered with the Commission under the Se-
12 curities Exchange Act of 1934;

13 (ii) any investment company that is
14 registered with the Commission under the
15 Investment Company Act of 1940;

16 (iii) any investment adviser that is
17 registered with the Commission under the
18 Investment Advisers Act of 1940, with re-
19 spect to the investment advisory activities
20 of such company and activities that are in-
21 cidental to such advisory activities; and

22 (iv) any clearing agency registered
23 with the Commission under the Securities
24 Exchange Act of 1934;

1 (C) the Commodity Futures Trading Com-
2 mission, with respect to any futures commission
3 merchant, any commodity trading adviser, and
4 any commodity pool operator registered with
5 the Commodity Futures Trading Commission
6 under the Commodity Exchange Act, with re-
7 spect to the commodities activities of such enti-
8 ty and activities that are incidental to such
9 commodities activities;

10 (D) the State insurance authority of the
11 State in which an insurance company is domi-
12 ciled, with respect to the insurance activities
13 and activities that are incidental to such insur-
14 ance activities of an insurance company that is
15 subject to supervision by the State insurance
16 authority under State insurance law; and

17 (E) the Federal Housing Finance Agency,
18 with respect to Federal Home Loan Banks or
19 the Federal Home Loan Bank System, and
20 with respect to the Federal National Mortgage
21 Association or the Federal Home Loan Mort-
22 gage Corporation.

23 (12) PRUDENTIAL STANDARDS.—The term
24 “prudential standards” means enhanced supervision

1 and regulatory standards developed by the Board of
2 Governors under section 115 or 165.

3 (13) SECRETARY.—The term “Secretary”
4 means the Secretary of the Treasury.

5 (14) SECURITIES TERMS.—The—

6 (A) terms “broker”, “dealer”, “issuer”,
7 “nationally recognized statistical ratings organi-
8 zation”, “security”, and “securities laws” have
9 the same meanings as in section 3 of the Secu-
10 rities Exchange Act of 1934 (15 U.S.C. 78c);

11 (B) term “investment adviser” has the
12 same meaning as in section 202 of the Invest-
13 ment Advisers Act of 1940 (15 U.S.C. 80b–2);
14 and

15 (C) term “investment company” has the
16 same meaning as in section 3 of the Investment
17 Company Act of 1940 (15 U.S.C. 80a–3).

18 (15) STATE.—The term “State” means any
19 State, commonwealth, territory, or possession of the
20 United States, the District of Columbia, the Com-
21 monwealth of Puerto Rico, the Commonwealth of the
22 Northern Mariana Islands, American Samoa, Guam,
23 or the United States Virgin Islands.

24 (16) TRANSFER DATE.—The term “transfer
25 date” means the date established under section 311.

1 (17) OTHER INCORPORATED DEFINITIONS.—

2 (A) FEDERAL DEPOSIT INSURANCE ACT.—

3 The terms “affiliate”, “bank”, “bank holding
4 company”, “control” (when used with respect to
5 a depository institution), “deposit”, “depository
6 institution”, “Federal depository institution”,
7 “Federal savings association”, “foreign bank”,
8 “including”, “insured branch”, “insured deposi-
9 tory institution”, “national member bank”,
10 “national nonmember bank”, “savings associa-
11 tion”, “State bank”, “State depository institu-
12 tion”, “State member bank”, “State non-
13 member bank”, “State savings association”,
14 and “subsidiary” have the same meanings as in
15 section 3 of the Federal Deposit Insurance Act
16 (12 U.S.C. 1813).

17 (B) HOLDING COMPANIES.—The term—

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

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

1 (iii) “savings and loan holding com-
2 pany” has the same meaning as in section
3 10 of the Home Owners’ Loan Act (12
4 U.S.C. 1467a(a)).

5 **SEC. 3. SEVERABILITY.**

6 If any provision of this Act, an amendment made by
7 this Act, or the application of such provision or amend-
8 ment to any person or circumstance is held to be unconsti-
9 tutional, the remainder of this Act, the amendments made
10 by this Act, and the application of the provisions of such
11 to any person or circumstance shall not be affected there-
12 by.

13 **SEC. 4. EFFECTIVE DATE.**

14 Except as otherwise specifically provided in this Act
15 or the amendments made by this Act, this Act and such
16 amendments shall take effect 1 day after the date of en-
17 actment of this Act.

18 **TITLE I—FINANCIAL STABILITY**

19 **SEC. 101. SHORT TITLE.**

20 This title may be cited as the “Financial Stability Act
21 of 2010”.

22 **SEC. 102. DEFINITIONS.**

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

1 (1) BANK HOLDING COMPANY.—The term
2 “bank holding company” has the same meaning as
3 in section 2 of the Bank Holding Company Act of
4 1956 (12 U.S.C. 1841). A foreign bank or company
5 that is treated as a bank holding company for pur-
6 poses of the Bank Holding Company Act of 1956,
7 pursuant to section 8(a) of the International Bank-
8 ing Act of 1978 (12 U.S.C. 3106(a)), shall be treat-
9 ed as a bank holding company for purposes of this
10 title.

11 (2) CHAIRPERSON.—The term “Chairperson”
12 means the Chairperson of the Council.

13 (3) MEMBER AGENCY.—The term “member
14 agency” means an agency represented by a voting
15 member of the Council.

16 (4) NONBANK FINANCIAL COMPANY DEFINI-
17 TIONS.—

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

24 (i) incorporated or organized in a
25 country other than the United States; and

1 (ii) substantially engaged in, including
2 through a branch in the United States, ac-
3 tivities in the United States that are finan-
4 cial in nature (as defined in section 4(k) of
5 the Bank Holding Company Act of 1956).

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

14 (i) incorporated or organized under
15 the laws of the United States or any State;
16 and

17 (ii) substantially engaged in activities
18 in the United States that are financial in
19 nature (as defined in section 4(k) of the
20 Bank Holding Company Act of 1956).

21 (C) NONBANK FINANCIAL COMPANY.—The
22 term “nonbank financial company” means a
23 U.S. nonbank financial company and a foreign
24 nonbank financial company.

1 (D) NONBANK FINANCIAL COMPANY SU-
2 PERVISED BY THE BOARD OF GOVERNORS.—

3 The term “nonbank financial company super-
4 vised by the Board of Governors” means a
5 nonbank financial company that the Council
6 has determined under section 113 shall be su-
7 pervised by the Board of Governors.

8 (5) OFFICE OF FINANCIAL RESEARCH.—The
9 term “Office of Financial Research” means the of-
10 fice established under section 152.

11 (6) SIGNIFICANT INSTITUTIONS.—The terms
12 “significant nonbank financial company” and “sig-
13 nificant bank holding company” have the meanings
14 given those terms by rule of the Board of Governors.

15 (b) DEFINITIONAL CRITERIA.—The Board of Gov-
16 ernors shall establish, by regulation, the criteria to deter-
17 mine whether a company is substantially engaged in activi-
18 ties in the United States that are financial in nature (as
19 defined in section 4(k) of the Bank Holding Company Act
20 of 1956) for purposes of the definitions of the terms “U.S.
21 nonbank financial company” and “foreign nonbank finan-
22 cial company” under subsection (a)(4).

23 (c) FOREIGN NONBANK FINANCIAL COMPANIES.—
24 For purposes of the authority of the Board of Governors
25 under this title with respect to foreign nonbank financial

1 companies, references in this title to “company” or “sub-
 2 sidiary” include only the United States activities and sub-
 3 sidiaries of such foreign company.

4 **Subtitle A—Financial Stability** 5 **Oversight Council**

6 **SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ES-** 7 **TABLISHED.**

8 (a) ESTABLISHMENT.—Effective on the date of en-
 9 actment of this Act, there is established the Financial Sta-
 10 bility Oversight Council.

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

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

15 (A) the Secretary of the Treasury, who
 16 shall serve as Chairperson of the Council;

17 (B) the Chairman of the Board of Gov-
 18 ernors;

19 (C) the Comptroller of the Currency;

20 (D) the Director of the Bureau;

21 (E) the Chairman of the Commission;

22 (F) the Chairperson of the Corporation;

23 (G) the Chairperson of the Commodity Fu-
 24 tures Trading Commission;

1 (H) the Director of the Federal Housing
2 Finance Agency; and

3 (I) an independent member appointed by
4 the President, by and with the advice and con-
5 sent of the Senate, having insurance expertise.

6 (2) NONVOTING MEMBERS.—The Director of
7 the Office of Financial Research—

8 (A) shall serve in an advisory capacity as
9 a nonvoting member of the Council; and

10 (B) may not be excluded from any of the
11 proceedings, meetings, discussions, or delibera-
12 tions of the Council.

13 (c) TERMS; VACANCY.—

14 (1) TERMS.—The independent member of the
15 Council shall serve for a term of 6 years.

16 (2) VACANCY.—Any vacancy on the Council
17 shall be filled in the manner in which the original
18 appointment was made.

19 (3) ACTING OFFICIALS MAY SERVE.—In the
20 event of a vacancy in the office of the head of a
21 member agency or department, and pending the ap-
22 pointment of a successor, or during the absence or
23 disability of the head of a member agency or depart-
24 ment, the acting head of the member agency or de-

1 partment shall serve as a member of the Council in
2 the place of that agency or department head.

3 (d) TECHNICAL AND PROFESSIONAL ADVISORY COM-
4 MITTEES.—The Council may appoint such special advi-
5 sory, technical, or professional committees as may be use-
6 ful in carrying out the functions of the Council, including
7 an advisory committee consisting of State regulators, and
8 the members of such committees may be members of the
9 Council, or other persons, or both.

10 (e) MEETINGS.—

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

14 (2) RULES FOR CONDUCTING BUSINESS.—The
15 Council shall adopt such rules as may be necessary
16 for the conduct of the business of the Council. Such
17 rules shall be rules of agency organization, proce-
18 dure, or practice for purposes of section 553 of title
19 5, United States Code.

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

23 (g) NONAPPLICABILITY OF FACA.—The Federal Ad-
24 visory Committee Act (5 U.S.C. App.) shall not apply to
25 the Council, or to any special advisory, technical, or pro-

1 fessional committee appointed by the Council, except that,
 2 if an advisory, technical, or professional committee has
 3 one or more members who are not employees of or affili-
 4 ated with the United States Government, the Council shall
 5 publish a list of the names of the members of such com-
 6 mittee.

7 (h) ASSISTANCE FROM FEDERAL AGENCIES.—Any
 8 department or agency of the United States may provide
 9 to the Council and any special advisory, technical, or pro-
 10 fessional committee appointed by the Council, such serv-
 11 ices, funds, facilities, staff, and other support services as
 12 the Council may determine advisable.

13 (i) COMPENSATION OF MEMBERS.—

14 (1) FEDERAL EMPLOYEE MEMBERS.—All mem-
 15 bers of the Council who are officers or employees of
 16 the United States shall serve without compensation
 17 in addition to that received for their services as offi-
 18 cers or employees of the United States.

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

22 “Independent Member of the Financial Stability
 23 Oversight Council (1).”.

24 (j) DETAIL OF GOVERNMENT EMPLOYEES.—Any em-
 25 ployee of the Federal Government may be detailed to the

1 Council without reimbursement, and such detail shall be
2 without interruption or loss of civil service status or privi-
3 lege. An employee of the Federal Government detailed to
4 the Council shall report to and be subject to oversight by
5 the Council during the assignment to the Council, and
6 shall be compensated by the department or agency from
7 which the employee was detailed.

8 **SEC. 112. COUNCIL AUTHORITY.**

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

10 (1) IN GENERAL.—The purposes of the Council
11 are—

12 (A) to identify risks to the financial sta-
13 bility of the United States that could arise from
14 the material financial distress or failure of
15 large, interconnected bank holding companies or
16 nonbank financial companies;

17 (B) to promote market discipline, by elimi-
18 nating expectations on the part of shareholders,
19 creditors, and counterparties of such companies
20 that the Government will shield them from
21 losses in the event of failure; and

22 (C) to respond to emerging threats to the
23 stability of the United States financial markets.

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

1 (A) collect information from member agen-
2 cies and other Federal and State financial regu-
3 latory agencies and, if necessary to assess risks
4 to the United States financial system, direct the
5 Office of Financial Research to collect informa-
6 tion from bank holding companies and nonbank
7 financial companies;

8 (B) provide direction to, and request data
9 and analyses from, the Office of Financial Re-
10 search to support the work of the Council;

11 (C) monitor the financial services market-
12 place in order to identify potential threats to
13 the financial stability of the United States;

14 (D) facilitate information sharing and co-
15 ordination among the member agencies and
16 other Federal and State agencies regarding do-
17 mestic financial services policy development,
18 rulemaking, examinations, reporting require-
19 ments, and enforcement actions;

20 (E) recommend to the member agencies
21 general supervisory priorities and principles re-
22 flecting the outcome of discussions among the
23 member agencies;

1 (F) identify gaps in regulation that could
2 pose risks to the financial stability of the
3 United States;

4 (G) require supervision by the Board of
5 Governors for nonbank financial companies that
6 may pose risks to the financial stability of the
7 United States in the event of their material fi-
8 nancial distress or failure, pursuant to section
9 113;

10 (H) make recommendations to the Board
11 of Governors concerning the establishment of
12 heightened prudential standards for risk-based
13 capital, leverage, liquidity, contingent capital,
14 resolution plans and credit exposure reports,
15 concentration limits, enhanced public disclo-
16 sures, and overall risk management for
17 nonbank financial companies and large, inter-
18 connected bank holding companies supervised
19 by the Board of Governors;

20 (I) identify systemically important finan-
21 cial market utilities and payment, clearing, and
22 settlement activities (as that term is defined in
23 title VIII), and require such utilities and activi-
24 ties to be subject to standards established by
25 the Board of Governors;

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

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

11 (L) provide a forum for—

12 (i) discussion and analysis of emerg-
13 ing market developments and financial reg-
14 ulatory issues; and

15 (ii) resolution of jurisdictional dis-
16 putes among the members of the Council;
17 and

18 (M) annually report to and testify before
19 Congress on—

20 (i) the activities of the Council;

21 (ii) significant financial market devel-
22 opments and potential emerging threats to
23 the financial stability of the United States;

1 (iii) all determinations made under
2 section 113 or title VIII, and the basis for
3 such determinations; and

4 (iv) recommendations—

5 (I) to enhance the integrity, effi-
6 ciency, competitiveness, and stability
7 of United States financial markets;

8 (II) to promote market discipline;
9 and

10 (III) to maintain investor con-
11 fidence.

12 (b) AUTHORITY TO OBTAIN INFORMATION.—

13 (1) IN GENERAL.—The Council may receive,
14 and may request the submission of, any data or in-
15 formation from the Office of Financial Research and
16 member agencies, as necessary—

17 (A) to monitor the financial services mar-
18 ketplace to identify potential risks to the finan-
19 cial stability of the United States; or

20 (B) to otherwise carry out any of the pro-
21 visions of this title.

22 (2) SUBMISSIONS BY THE OFFICE AND MEMBER
23 AGENCIES.—Notwithstanding any other provision of
24 law, the Office of Financial Research and any mem-

1 ber agency are authorized to submit information to
2 the Council.

3 (3) FINANCIAL DATA COLLECTION.—

4 (A) IN GENERAL.—The Council, acting
5 through the Office of Financial Research, may
6 require the submission of periodic and other re-
7 ports from any nonbank financial company or
8 bank holding company for the purpose of as-
9 sessing the extent to which a financial activity
10 or financial market in which the nonbank finan-
11 cial company or bank holding company partici-
12 pates, or the nonbank financial company or
13 bank holding company itself, poses a threat to
14 the financial stability of the United States.

15 (B) MITIGATION OF REPORT BURDEN.—

16 Before requiring the submission of reports from
17 any nonbank financial company or bank holding
18 company that is regulated by a member agency
19 or any primary financial regulatory agency, the
20 Council, acting through the Office of Financial
21 Research, shall coordinate with such agencies
22 and shall, whenever possible, rely on informa-
23 tion available from the Office of Financial Re-
24 search or such agencies.

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

14 (5) CONFIDENTIALITY.—

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

20 (B) RETENTION OF PRIVILEGE.—The sub-
 21 mission of any nonpublicly available data or in-
 22 formation under this subsection and subtitle B
 23 shall not constitute a waiver of, or otherwise af-
 24 fect, any privilege arising under Federal or
 25 State law (including the rules of any Federal or

1 State court) to which the data or information is
 2 otherwise subject.

3 (C) FREEDOM OF INFORMATION ACT.—
 4 Section 552 of title 5, United States Code, in-
 5 cluding the exceptions thereunder, shall apply
 6 to any data or information submitted under this
 7 subsection and subtitle B.

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

11 (a) U.S. NONBANK FINANCIAL COMPANIES SUPER-
 12 VISED BY THE BOARD OF GOVERNORS.—

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

12 (E) the extent and types of the trans-
13 actions and relationships of the company with
14 other significant nonbank financial companies
15 and significant 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 busi-
24 ness 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 man-
4 agement is diffuse; and
5 (J) any other factors that the Council
6 deems 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 $\frac{2}{3}$
11 of the members then serving, including an affirma-
12 tive vote by the Chairperson, may determine that a
13 foreign nonbank financial company that has sub-
14 stantial assets or operations in the United States
15 shall be supervised by the Board of Governors and
16 shall be subject to prudential standards in accord-
17 ance with this title, if the Council determines that
18 material financial distress at the foreign nonbank fi-
19 nancial company would pose a threat to the financial
20 stability of the 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 op-
5 erations in the United States, including the de-
6 gree 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
11 significant nonbank financial companies and
12 bank 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,
16 and as a source of liquidity for the United
17 States financial 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 man-
24 agement is diffuse; and

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

3 (c) REEVALUATION AND RESCISSION.—The Council
4 shall—

5 (1) not less frequently than annually, reevaluate
6 each determination made under subsections (a) and
7 (b) with respect to each nonbank financial company
8 supervised by the Board of Governors; and

9 (2) rescind any such determination, if the
10 Council, by a vote of not fewer than $\frac{2}{3}$ of the mem-
11 bers then serving, including an affirmative vote by
12 the Chairperson, determines that the nonbank finan-
13 cial company no longer meets the standards under
14 subsection (a) or (b), as applicable.

15 (d) NOTICE AND OPPORTUNITY FOR HEARING AND
16 FINAL DETERMINATION.—

17 (1) IN GENERAL.—The Council shall provide to
18 a nonbank financial company written notice of a
19 proposed determination of the Council, including an
20 explanation of the basis of the proposed determina-
21 tion of the Council, that such nonbank financial
22 company shall be supervised by the Board of Gov-
23 ernors and shall be subject to prudential standards
24 in accordance with this title.

1 (2) HEARING.—Not later than 30 days after
2 the date of receipt of any notice of a proposed deter-
3 mination under paragraph (1), the nonbank finan-
4 cial company may request, in writing, an oppor-
5 tunity for a written or oral hearing before the Coun-
6 cil to contest the proposed determination. Upon re-
7 ceipt of a timely request, the Council shall fix a time
8 (not later than 30 days after the date of receipt of
9 the request) and place at which such company may
10 appear, personally or through counsel, to submit
11 written materials (or, at the sole discretion of the
12 Council, oral testimony and oral argument).

13 (3) FINAL DETERMINATION.—Not later than 60
14 days after the date of a hearing under paragraph
15 (2), the Council shall notify the nonbank financial
16 company of the final determination of the Council,
17 which shall contain a statement of the basis for the
18 decision of the Council.

19 (4) NO HEARING REQUESTED.—If a nonbank
20 financial company does not make a timely request
21 for a hearing, the Council shall notify the nonbank
22 financial company, in writing, of the final determina-
23 tion of the Council under subsection (a) or (b), as
24 applicable, not later than 10 days after the date by

1 which the company may request a hearing under
2 paragraph (2).

3 (e) EMERGENCY EXCEPTION.—

4 (1) IN GENERAL.—The Council may waive or
5 modify the requirements of subsection (d) with re-
6 spect to a nonbank financial company, if the Council
7 determines, by a vote of not fewer than $\frac{2}{3}$ of the
8 members then serving, including an affirmative vote
9 by the Chairperson, that such waiver or modification
10 is necessary or appropriate to prevent or mitigate
11 threats posed by the nonbank financial company to
12 the financial stability of the United States.

13 (2) NOTICE.—The Council shall provide notice
14 of a waiver or modification under this paragraph to
15 the nonbank financial company concerned as soon as
16 practicable, but not later than 24 hours after the
17 waiver or modification is granted.

18 (3) OPPORTUNITY FOR HEARING.—The Council
19 shall allow a nonbank financial company to request,
20 in writing, an opportunity for a written or oral hear-
21 ing before the Council to contest a waiver or modi-
22 fication under this paragraph, not later than 10
23 days after the date of receipt of notice of the waiver
24 or modification by the company. Upon receipt of a
25 timely request, the Council shall fix a time (not later

1 than 15 days after the date of receipt of the request)
2 and place at which the nonbank financial company
3 may appear, personally or through counsel, to sub-
4 mit written materials (or, at the sole discretion of
5 the Council, oral testimony and oral argument).

6 (4) NOTICE OF FINAL DETERMINATION.—Not
7 later than 30 days after the date of any hearing
8 under paragraph (3), the Council shall notify the
9 subject nonbank financial company of the final de-
10 termination of the Council under this paragraph,
11 which shall contain a statement of the basis for the
12 decision of the Council.

13 (f) CONSULTATION.—The Council shall consult with
14 the primary financial regulatory agency, if any, for each
15 nonbank financial company or subsidiary of a nonbank fi-
16 nancial company that is being considered for supervision
17 by the Board of Governors under this section before the
18 Council makes any final determination with respect to
19 such nonbank financial company under subsection (a), (b),
20 or (c).

21 (g) JUDICIAL REVIEW.—If the Council makes a final
22 determination under this section with respect to a
23 nonbank financial company, such nonbank financial com-
24 pany may, not later than 30 days after the date of receipt
25 of the notice of final determination under subsection

1 (d)(3) or (e)(4), bring an action in the United States dis-
2 trict court for the judicial district in which the home office
3 of such nonbank financial company is located, or in the
4 United States District Court for the District of Columbia,
5 for an order requiring that the final determination be re-
6 scinded, and the court shall, upon review, dismiss such ac-
7 tion or direct the final determination to be rescinded. Re-
8 view of such an action shall be limited to whether the final
9 determination made under this section was arbitrary and
10 capricious.

11 **SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPA-**
12 **NIES SUPERVISED BY THE BOARD OF GOV-**
13 **ERNORS.**

14 Not later than 180 days after the date of a final
15 Council determination under section 113 that a nonbank
16 financial company is to be supervised by the Board of Gov-
17 ernors, such company shall register with the Board of
18 Governors, on forms prescribed by the Board of Gov-
19 ernors, which shall include such information as the Board
20 of Governors, in consultation with the Council, may deem
21 necessary or appropriate to carry out this title.

1 **SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL**
 2 **STANDARDS FOR NONBANK FINANCIAL COM-**
 3 **PANIES SUPERVISED BY THE BOARD OF GOV-**
 4 **ERNORS AND CERTAIN BANK HOLDING COM-**
 5 **PANIES.**

6 (a) IN GENERAL.—

7 (1) PURPOSE.—In order to prevent or mitigate
 8 risks to the financial stability of the United States
 9 that could arise from the material financial distress
 10 or failure of large, interconnected financial institu-
 11 tions, the Council may make recommendations to
 12 the Board of Governors concerning the establish-
 13 ment and refinement of prudential standards and re-
 14 porting and disclosure requirements applicable to
 15 nonbank financial companies supervised by the
 16 Board of Governors and large, interconnected bank
 17 holding companies, that—

18 (A) are more stringent than those applica-
 19 ble to other nonbank financial companies and
 20 bank holding companies that do not present
 21 similar risks to the financial stability of the
 22 United States; and

23 (B) increase in stringency, based on the
 24 considerations identified in subsection (b)(3).

25 (2) LIMITATION ON BANK HOLDING COMPA-
 26 NIES.—Any standards recommended under sub-

1 sections (b) through (f) shall not apply to any bank
 2 holding company with total consolidated assets of
 3 less than \$50,000,000,000. The Council may rec-
 4 ommend an asset threshold greater than
 5 \$50,000,000,000 for the applicability of any par-
 6 ticular standard under those subsections.

7 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

8 (1) IN GENERAL.—The recommendations of the
 9 Council under subsection (a) may include—

10 (A) risk-based capital requirements;

11 (B) leverage limits;

12 (C) liquidity requirements;

13 (D) resolution plan and credit exposure re-
 14 port requirements;

15 (E) concentration limits;

16 (F) a contingent capital requirement;

17 (G) enhanced public disclosures; and

18 (H) overall risk management requirements.

19 (2) PRUDENTIAL STANDARDS FOR FOREIGN FI-
 20 NANCIAL COMPANIES.—In making recommendations
 21 concerning the standards set forth in paragraph (1)
 22 that would apply to foreign nonbank financial com-
 23 panies supervised by the Board of Governors or for-
 24 eign-based bank holding companies, the Council

1 shall give due regard to the principle of national
2 treatment and competitive equity.

3 (3) CONSIDERATIONS.—In making rec-
4 ommendations concerning prudential standards
5 under paragraph (1), the Council shall—

6 (A) take into account differences among
7 nonbank financial companies supervised by the
8 Board of Governors and bank holding compa-
9 nies described in subsection (a), based on—

10 (i) the factors described in subsections
11 (a) and (b) of section 113;

12 (ii) whether the company owns an in-
13 sured depository institution;

14 (iii) nonfinancial activities and affili-
15 ations of the company; and

16 (iv) any other factors that the Council
17 determines appropriate; and

18 (B) to the extent possible, ensure that
19 small changes in the factors listed in sub-
20 sections (a) and (b) of section 113 would not
21 result in sharp, discontinuous changes in the
22 prudential standards established under para-
23 graph (1).

24 (c) CONTINGENT CAPITAL.—

1 (1) STUDY REQUIRED.—The Council shall con-
2 duct a study of the feasibility, benefits, costs, and
3 structure of a contingent capital requirement for
4 nonbank financial companies supervised by the
5 Board of Governors and bank holding companies de-
6 scribed in subsection (a), which study shall in-
7 clude—

8 (A) an evaluation of the degree to which
9 such requirement would enhance the safety and
10 soundness of companies subject to the require-
11 ment, promote the financial stability of the
12 United States, and reduce risks to United
13 States taxpayers;

14 (B) an evaluation of the characteristics
15 and amounts of convertible debt that should be
16 required;

17 (C) an analysis of potential prudential
18 standards that should be used to determine
19 whether the contingent capital of a company
20 would be converted to equity in times of finan-
21 cial stress;

22 (D) an evaluation of the costs to compa-
23 nies, the effects on the structure and operation
24 of credit and other financial markets, and other
25 economic effects of requiring contingent capital;

1 (E) an evaluation of the effects of such re-
2 quirement on the international competitiveness
3 of companies subject to the requirement and
4 the prospects for international coordination in
5 establishing such requirement; and

6 (F) recommendations for implementing
7 regulations.

8 (2) REPORT.—The Council shall submit a re-
9 port to Congress regarding the study required by
10 paragraph (1) not later than 2 years after the date
11 of enactment of this Act.

12 (3) RECOMMENDATIONS.—

13 (A) IN GENERAL.—Subsequent to submit-
14 ting a report to Congress under paragraph (2),
15 the Council may make recommendations to the
16 Board of Governors to require any nonbank fi-
17 nancial company supervised by the Board of
18 Governors and any bank holding company de-
19 scribed in subsection (a) to maintain a min-
20 imum amount of long-term hybrid debt that is
21 convertible to equity in times of financial stress.

22 (B) FACTORS TO CONSIDER.—In making
23 recommendations under this subsection, the
24 Council shall consider—

1 (i) an appropriate transition period
 2 for implementation of a conversion under
 3 this subsection;

4 (ii) the factors described in subsection
 5 (b)(3);

6 (iii) capital requirements applicable to
 7 a nonbank financial company supervised by
 8 the Board of Governors or a bank holding
 9 company described in subsection (a), and
 10 subsidiaries thereof;

11 (iv) results of the study required by
 12 paragraph (1); and

13 (v) any other factor that the Council
 14 deems appropriate.

15 (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-
 16 PORTS.—

17 (1) RESOLUTION PLAN.—The Council may
 18 make recommendations to the Board of Governors
 19 concerning the requirement that each nonbank fi-
 20 nancial company supervised by the Board of Gov-
 21 ernors and each bank holding company described in
 22 subsection (a) report periodically to the Council, the
 23 Board of Governors, and the Corporation, the plan
 24 of such company for rapid and orderly resolution in
 25 the event of material financial distress or failure.

1 (2) CREDIT EXPOSURE REPORT.—The Council
 2 may make recommendations to the Board of Gov-
 3 ernors concerning the advisability of requiring each
 4 nonbank financial company supervised by the Board
 5 of Governors and bank holding company described in
 6 subsection (a) to report periodically to the Council,
 7 the Board of Governors, and the Corporation on—

8 (A) the nature and extent to which the
 9 company has credit exposure to other signifi-
 10 cant nonbank financial companies and signifi-
 11 cant bank holding companies; and

12 (B) the nature and extent to which other
 13 such significant nonbank financial companies
 14 and significant bank holding companies have
 15 credit exposure to that company.

16 (e) CONCENTRATION LIMITS.—In order to limit the
 17 risks that the failure of any individual company could pose
 18 to nonbank financial companies supervised by the Board
 19 of Governors or bank holding companies described in sub-
 20 section (a), the Council may make recommendations to the
 21 Board of Governors to prescribe standards to limit such
 22 risks, as set forth in section 165.

23 (f) ENHANCED PUBLIC DISCLOSURES.—The Council
 24 may make recommendations to the Board of Governors
 25 to require periodic public disclosures by bank holding com-

panies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

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

- (1) the financial condition of the company;
- (2) systems for monitoring and controlling financial, operating, and other risks;
- (3) transactions with any subsidiary that is a depository institution; and
- (4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

- (1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the

1 Office of Financial Research, shall, to the fullest ex-
 2 tent possible, use—

3 (A) reports that a bank holding company,
 4 nonbank financial company supervised by the
 5 Board of Governors, or any functionally regu-
 6 lated subsidiary of such company has been re-
 7 quired to provide to other Federal or State reg-
 8 ulatory agencies;

9 (B) information that is otherwise required
 10 to be reported publicly; and

11 (C) externally audited financial statements.

12 (2) AVAILABILITY.—Each bank holding com-
 13 pany described in subsection (a) and nonbank finan-
 14 cial company supervised by the Board of Governors,
 15 and any subsidiary thereof, shall provide to the
 16 Council, at the request of the Council, copies of all
 17 reports referred to in paragraph (1).

18 (3) CONFIDENTIALITY.—The Council shall
 19 maintain the confidentiality of the reports obtained
 20 under subsection (a) and paragraph (1)(A) of this
 21 subsection.

22 **SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT**
 23 **CEASE TO BE BANK HOLDING COMPANIES.**

24 (a) APPLICABILITY.—This section shall apply to any
 25 entity or a successor entity that—

1 (1) was a bank holding company having total
2 consolidated assets equal to or greater than
3 \$50,000,000,000 as of January 1, 2010; and

4 (2) received financial assistance under or par-
5 ticipated in the Capital Purchase Program estab-
6 lished under the Troubled Asset Relief Program au-
7 thorized by the Emergency Economic Stabilization
8 Act of 2008.

9 (b) TREATMENT.—If an entity described in sub-
10 section (a) ceases to be a bank holding company at any
11 time after January 1, 2010, then such entity shall be
12 treated as a nonbank financial company supervised by the
13 Board of Governors, as if the Council had made a deter-
14 mination under section 113 with respect to that entity.

15 (c) APPEAL.—

16 (1) REQUEST FOR HEARING.—An entity may
17 request, in writing, an opportunity for a written or
18 oral hearing before the Council to appeal its treat-
19 ment as a nonbank financial company supervised by
20 the Board of Governors in accordance with this sec-
21 tion. Upon receipt of the request, the Council shall
22 fix a time (not later than 30 days after the date of
23 receipt of the request) and place at which such enti-
24 ty may appear, personally or through counsel, to

1 submit written materials (or, at the sole discretion
2 of the Council, oral testimony and oral argument).

3 (2) DECISION.—

4 (A) PROPOSED DECISION.—Not later than
5 60 days after the date of a hearing under para-
6 graph (1), the Council shall submit a report to,
7 and may testify before, the Committee on
8 Banking, Housing, and Urban Affairs of the
9 Senate and the Committee on Financial Serv-
10 ices of the House of Representatives on the pro-
11 posed decision of the Council regarding an ap-
12 peal under paragraph (1), which report shall in-
13 clude a statement of the basis for the proposed
14 decision of the Council.

15 (B) NOTICE OF FINAL DECISION.—The
16 Council shall notify the subject entity of the
17 final decision of the Council regarding an ap-
18 peal under paragraph (1), which notice shall
19 contain a statement of the basis for the final
20 decision of the Council, not later than 60 days
21 after the later of—

22 (i) the date of the submission of the
23 report under subparagraph (A); or

24 (ii) if the Committee on Banking,
25 Housing, and Urban Affairs of the Senate

1 or the Committee on Financial Services of
 2 the House of Representatives holds one or
 3 more hearings regarding such report, the
 4 date of the last such hearing.

5 (C) CONSIDERATIONS.—In making a deci-
 6 sion regarding an appeal under paragraph (1),
 7 the Council shall consider whether the company
 8 meets the standards under section 113(a) or
 9 113(b), as applicable, and the definition of the
 10 term “nonbank financial company” under sec-
 11 tion 102. The decision of the Council shall be
 12 final, subject to the review under paragraph
 13 (3).

14 (3) REVIEW.—If the Council denies an appeal
 15 under this subsection, the Council shall, not less fre-
 16 quently than annually, review and reevaluate the de-
 17 cision.

18 **SEC. 118. COUNCIL FUNDING.**

19 Any expenses of the Council shall be treated as ex-
 20 penses of, and paid by, the Office of Financial Research.

21 **SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL**
 22 **DISPUTES AMONG MEMBER AGENCIES.**

23 (a) REQUEST FOR DISPUTE RESOLUTION.—The
 24 Council shall resolve a dispute among 2 or more member
 25 agencies, if—

1 (1) a member agency has a dispute with an-
2 other member agency about the respective jurisdic-
3 tion over a particular bank holding company,
4 nonbank financial company, or financial activity or
5 product (excluding matters for which another dis-
6 pute mechanism specifically has been provided under
7 Federal law);

8 (2) the Council determines that the disputing
9 agencies cannot, after a demonstrated good faith ef-
10 fort, resolve the dispute without the intervention of
11 the Council; and

12 (3) any of the member agencies involved in the
13 dispute—

14 (A) provides all other disputants prior no-
15 tice of the intent to request dispute resolution
16 by the Council; and

17 (B) requests in writing, not earlier than 14
18 days after providing the notice described in sub-
19 paragraph (A), that the Council resolve the dis-
20 pute.

21 (b) COUNCIL DECISION.—The Council shall resolve
22 each dispute described in subsection (a)—

23 (1) within a reasonable time after receiving the
24 dispute resolution request;

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

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

6 (c) FORM AND BINDING EFFECT.—A Council deci-
 7 sion under this section shall—

8 (1) be in writing;

9 (2) include an explanation of the reasons there-
 10 for; and

11 (3) be binding on all Federal agencies that are
 12 parties to the dispute.

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

16 (a) IN GENERAL.—The Council may issue rec-
 17 ommendations to the primary financial regulatory agen-
 18 cies to apply new or heightened standards and safeguards,
 19 including standards enumerated in section 115, for a fi-
 20 nancial activity or practice conducted by bank holding
 21 companies or nonbank financial companies under their re-
 22 spective jurisdictions, if the Council determines that the
 23 conduct of such activity or practice could create or in-
 24 crease the risk of significant liquidity, credit, or other
 25 problems spreading among bank holding companies and

1 nonbank financial companies or the financial markets of
2 the United States.

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

5 (1) NOTICE AND OPPORTUNITY FOR COM-
6 MENT.—The Council shall consult with the primary
7 financial regulatory agencies and provide notice to
8 the public and opportunity for comment for any pro-
9 posed recommendation that the primary financial
10 regulatory agencies apply new or heightened stand-
11 ards and safeguards for a financial activity or prac-
12 tice.

13 (2) CRITERIA.—The new or heightened stand-
14 ards and safeguards for a financial activity or prac-
15 tice 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 cap-
21 ital 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 au-
10 thority under this paragraph is in addition to,
11 and does not limit, any other authority of a pri-
12 mary financial regulatory agency. Compliance
13 by an entity with actions taken by a primary fi-
14 nancial regulatory agency under this section
15 shall be enforceable in accordance with the stat-
16 utes governing the respective jurisdiction of the
17 primary financial regulatory agency over the en-
18 tity, as if the agency action were taken under
19 those statutes.

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

1 on which the Council issues the recommendation,
2 why the agency has determined not to follow the rec-
3 ommendation of the Council.

4 (d) REPORT TO CONGRESS.—The Council shall re-
5 port 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
15 legislation 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
 6 this 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
 11 which entities under its jurisdiction may appeal
 12 a determination by such agency under this
 13 paragraph that standards imposed under this
 14 section should remain in effect.

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

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

24 (1) to terminate one or more activities;

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

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

9 (b) NOTICE AND HEARING.—

10 (1) IN GENERAL.—The Board of Governors, in
11 consultation with the Council, shall provide to a
12 company described in subsection (a) written notice
13 that such company is being considered for mitiga-
14 tory action pursuant to this section, including an ex-
15 planation of the basis for, and description of, the
16 proposed mitigatory action.

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

1 through counsel, to submit written materials (or, at
2 the discretion of the Board of Governors, in con-
3 sultation with the Council, oral testimony and oral
4 argument).

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

13 (c) FACTORS FOR CONSIDERATION.—The Board of
14 Governors and the Council shall take into consideration
15 the factors set forth in subsection (a) or (b) of section
16 113, as applicable, in a determination described in sub-
17 section (a) and in a decision described in subsection (b).

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

Subtitle B—Office of Financial Research

SEC. 151. DEFINITIONS.

For purposes of this subtitle—

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

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

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

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

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

(6) the term “position data”—

(A) means data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or

1 changed by the execution of a financial trans-
2 action; and

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

8 (7) the term “financial contract” means a le-
9 gally binding agreement between 2 or more counter-
10 parties, describing rights and obligations relating to
11 the future delivery of items of intrinsic or extrinsic
12 value among the counterparties; and

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

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

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

25 (b) DIRECTOR.—

1 (1) IN GENERAL.—The Office shall be headed
2 by a Director, who shall be appointed by the Presi-
3 dent, by and with the advice and consent of the Sen-
4 ate.

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

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

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

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

22 (c) BUDGET.—The Director, in consultation with the
23 Chairperson, shall establish the annual budget of the Of-
24 fice.

25 (d) OFFICE PERSONNEL.—

1 (1) IN GENERAL.—The Director, in consulta-
2 tion with the Chairperson, may fix the number of,
3 and appoint and direct, all employees of the Office.

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

11 (3) COMPARABILITY.—Section 1206(a) of the
12 Financial Institutions Reform, Recovery, and En-
13 forcement Act of 1989 (12 U.S.C. 1833b(a)) is
14 amended—

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

19 (B) by striking “and the Office of Thrift
20 Supervision,”.

21 (e) ASSISTANCE FROM FEDERAL AGENCIES.—Any
22 department or agency of the United States may provide
23 to the Office and any special advisory, technical, or profes-
24 sional committees appointed by the Office, such services,
25 funds, facilities, staff, and other support services as the

1 Office may determine advisable. Any Federal Government
2 employee may be detailed to the Office without reimburse-
3 ment, and such detail shall be without interruption or loss
4 of civil service status or privilege.

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

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

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

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

1 (h) NON-COMPETE.—The Director and any staff of
2 the Office who has had access to the transaction or posi-
3 tion data maintained by the Data Center or other business
4 confidential information about financial entities required
5 to report to the Office, may not, for a period of 1 year
6 after last having access to such transaction or position
7 data or business confidential information, be employed by
8 or provide advice or consulting services to a financial com-
9 pany, regardless of whether that entity is required to re-
10 port to the Office. For staff whose access to business con-
11 fidential information was limited, the Director may pro-
12 vide, on a case-by-case basis, for a shorter period of post-
13 employment prohibition, provided that the shorter period
14 does not compromise business confidential information.

15 (i) TECHNICAL AND PROFESSIONAL ADVISORY COM-
16 MITTEES.—The Office, in consultation with the Chair-
17 person, may appoint such special advisory, technical, or
18 professional committees as may be useful in carrying out
19 the functions of the Office, and the members of such com-
20 mittees may be staff of the Office, or other persons, or
21 both.

22 (j) FELLOWSHIP PROGRAM.—The Office, in consulta-
23 tion with the Chairperson, may establish and maintain an
24 academic and professional fellowship program, under
25 which qualified academics and professionals shall be in-

1 vited to spend not longer than 2 years at the Office, to
 2 perform research and to provide advanced training for Of-
 3 fice personnel.

4 (k) EXECUTIVE SCHEDULE COMPENSATION.—Sec-
 5 tion 5314 of title 5, United States Code, is amended by
 6 adding at the end the following new item:

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

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

9 (a) PURPOSE AND DUTIES.—The purpose of the Of-
 10 fice is to support the Council in fulfilling the purposes and
 11 duties of the Council, as set forth in subtitle A, and to
 12 support member agencies, by—

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

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

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

20 (4) developing tools for risk measurement and
 21 monitoring;

22 (5) performing other related services;

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

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

4 (b) ADMINISTRATIVE AUTHORITY.—The Office
5 may—

6 (1) share data and information, including soft-
7 ware developed by the Office, with the Council and
8 member agencies, which shared data, information,
9 and software—

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

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

15 (2) sponsor and conduct research projects; and

16 (3) assist, on a reimbursable basis, with finan-
17 cial analyses undertaken at the request of other
18 Federal agencies that are not member agencies.

19 (c) RULEMAKING AUTHORITY.—

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

1 (2) STANDARDIZATION.—Member agencies, in
2 consultation with the Office, shall implement regula-
3 tions promulgated by the Office under paragraph (1)
4 to standardize the types and formats of data re-
5 ported and collected on behalf of the Council, as de-
6 scribed in subsection (a)(2). If a member agency
7 fails to implement such regulations prior to the expi-
8 ration of the 3-year period following the date of pub-
9 lication of final regulations, the Office, in consulta-
10 tion with the Chairperson, may implement such reg-
11 ulations with respect to the financial entities under
12 the jurisdiction of the member agency.

13 (d) TESTIMONY.—

14 (1) IN GENERAL.—The Director of the Office
15 shall report to and testify before the Committee on
16 Banking, Housing, and Urban Affairs of the Senate
17 and the Committee on Financial Services of the
18 House of Representatives annually on the activities
19 of the Office, including the work of the Data Center
20 and the Research and Analysis Center, and the as-
21 sessment of the Office of significant financial market
22 developments and potential emerging threats to the
23 financial stability of the United States.

24 (2) NO PRIOR REVIEW.—No officer or agency of
25 the United States shall have any authority to require

1 the Director to submit the testimony required under
2 paragraph (1) or other Congressional testimony to
3 any officer or agency of the United States for ap-
4 proval, comment, or review prior to the submission
5 of such testimony. Any such testimony to Congress
6 shall include a statement that the views expressed
7 therein are those of the Director and do not nec-
8 essarily represent the views of the President.

9 (e) ADDITIONAL REPORTS.—The Director may pro-
10 vide additional reports to Congress concerning the finan-
11 cial stability of the United States. The Director shall no-
12 tify the Council of any such additional reports provided
13 to Congress.

14 (f) SUBPOENA.—

15 (1) IN GENERAL.—The Director may require,
16 by subpoena, the production of the data requested
17 under subsection (a)(1) and section 154(b)(1), but
18 only upon a written finding by the Director that—

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

21 (B) the Office has coordinated with such
22 agency, as required under section
23 154(b)(1)(B)(ii).

24 (2) FORMAT.—Subpoenas under paragraph (1)
25 shall bear the signature of the Director, and shall be

1 served by any person or class of persons designated
2 by the Director for that purpose.

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

9 **SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBIL-**
10 **ITIES OF PRIMARY PROGRAMMATIC UNITS.**

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

14 (1) the Data Center; and

15 (2) the Research and Analysis Center.

16 (b) DATA CENTER.—

17 (1) GENERAL DUTIES.—

18 (A) DATA COLLECTION.—The Data Cen-
19 ter, on behalf of the Council, shall collect, vali-
20 date, and maintain all data necessary to carry
21 out the duties of the Data Center, as described
22 in this subtitle. The data assembled shall be ob-
23 tained from member agencies, commercial data
24 providers, publicly available data sources, and
25 financial entities under subparagraph (B).

1 (B) AUTHORITY.—

2 (i) IN GENERAL.—The Office may, as
3 determined by the Council or by the Direc-
4 tor in consultation with the Council, re-
5 quire the submission of periodic and other
6 reports from any financial company for the
7 purpose of assessing the extent to which a
8 financial activity or financial market in
9 which the financial company participates,
10 or the financial company itself, poses a
11 threat to the financial stability of the
12 United States.

13 (ii) MITIGATION OF REPORT BUR-
14 DEN.—Before requiring the submission of
15 a report from any financial company that
16 is regulated by a member agency or any
17 primary financial regulatory agency, the
18 Office shall coordinate with such agencies
19 and shall, whenever possible, rely on infor-
20 mation available from such agencies.

21 (C) RULEMAKING.—The Office shall pro-
22 mulgate regulations pursuant to subsections
23 (a)(1), (a)(2), (a)(7), and (c)(1) of section 153
24 regarding the type and scope of the data to be

1 collected by the Data Center under this para-
2 graph.

3 (2) RESPONSIBILITIES.—

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

7 (i) a financial company reference
8 database;

9 (ii) a financial instrument reference
10 database; and

11 (iii) formats and standards for Office
12 data, including standards for reporting fi-
13 nancial transaction and position data to
14 the Office.

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

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

22 (4) CATALOG OF FINANCIAL ENTITIES AND IN-
23 STRUMENTS.—The Data Center shall maintain a
24 catalog of the financial entities and instruments re-
25 ported to the Office.

1 (5) AVAILABILITY TO THE COUNCIL AND MEM-
2 BER AGENCIES.—The Data Center shall make data
3 collected and maintained by the Data Center avail-
4 able to the Council and member agencies, as nec-
5 essary to support their regulatory responsibilities.

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

16 (c) RESEARCH AND ANALYSIS CENTER.—

17 (1) GENERAL DUTIES.—The Research and
18 Analysis Center, on behalf of the Council, shall de-
19 velop and maintain independent analytical capabili-
20 ties and computing resources—

21 (A) to develop and maintain metrics and
22 reporting systems for risks to the financial sta-
23 bility of the United States;

1 (B) to monitor, investigate, and report on
2 changes in system-wide risk levels and patterns
3 to the Council and Congress;

4 (C) to conduct, coordinate, and sponsor re-
5 search to support and improve regulation of fi-
6 nancial entities and markets;

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

10 (E) to maintain expertise in such areas as
11 may be necessary to support specific requests
12 for advice and assistance from financial regu-
13 lators;

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

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

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

23 (d) REPORTING RESPONSIBILITIES.—

24 (1) REQUIRED REPORTS.—Not later than 2
25 years after the date of enactment of this Act, and

1 not later than 120 days after the end of each fiscal
 2 year thereafter, the Office shall prepare and submit
 3 a report to Congress.

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

7 (A) an analysis of any threats to the finan-
 8 cial stability of the United States;

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

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

13 **SEC. 155. FUNDING.**

14 (a) FINANCIAL RESEARCH FUND.—

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

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

22 (3) INVESTMENTS AUTHORIZED.—

23 (A) AMOUNTS IN FUND MAY BE IN-
 24 VESTED.—The Director may request the Sec-
 25 retary to invest the portion of the Financial Re-

1 search Fund that is not, in the judgment of the
2 Director, required to meet the needs of the Of-
3 fice.

4 (B) ELIGIBLE INVESTMENTS.—Invest-
5 ments shall be made by the Secretary in obliga-
6 tions of the United States or obligations that
7 are guaranteed as to principal and interest by
8 the United States, with maturities suitable to
9 the needs of the Financial Research Fund, as
10 determined by the Director.

11 (4) INTEREST AND PROCEEDS CREDITED.—The
12 interest on, and the proceeds from the sale or re-
13 demption of, any obligations held in the Financial
14 Research Fund shall be credited to and form a part
15 of the Financial Research Fund.

16 (b) USE OF FUNDS.—

17 (1) IN GENERAL.—Funds obtained by, trans-
18 ferred to, or credited to the Financial Research
19 Fund shall be immediately available to the Office,
20 and shall remain available until expended, to pay the
21 expenses of the Office in carrying out the duties and
22 responsibilities of the Office.

23 (2) FEES, ASSESSMENTS, AND OTHER FUNDS
24 NOT GOVERNMENT FUNDS.—Funds obtained by,
25 transferred to, or credited to the Financial Research

1 Fund shall not be construed to be Government funds
2 or appropriated monies.

3 (3) AMOUNTS NOT SUBJECT TO APPORTION-
4 MENT.—Notwithstanding any other provision of law,
5 amounts in the Financial Research Fund shall not
6 be subject to apportionment for purposes of chapter
7 15 of title 31, United States Code, or under any
8 other authority, or for any other purpose.

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

13 (d) PERMANENT SELF-FUNDING.—

14 (1) IN GENERAL.—Beginning 2 years after the
15 date of enactment of this Act, the Secretary shall es-
16 tablish, by regulation, and with the approval of the
17 Council, an assessment schedule, including the as-
18 sessment base and rates, applicable to bank holding
19 companies with total consolidated assets of
20 \$50,000,000,000 or greater and nonbank financial
21 companies supervised by the Board of Governors,
22 that takes into account differences among such com-
23 panies, based on the considerations for establishing
24 the prudential standards under section 115, to col-

1 lect assessments equal to the estimated total ex-
2 penses of the Office.

3 (2) SHORTFALL.—To the extent that the as-
4 sessments under paragraph (1) do not fully cover
5 the total expenses of the Office, the Board of Gov-
6 ernors shall provide to the Office an amount suffi-
7 cient to cover the difference.

8 **SEC. 156. TRANSITION OVERSIGHT.**

9 (a) PURPOSE.—The purpose of this section is to en-
10 sure that the Office—

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

16 (b) REPORTING REQUIREMENT.—

17 (1) IN GENERAL.—The Office shall submit an
18 annual report to the Committee on Banking, Hous-
19 ing, and Urban Affairs of the Senate and the Com-
20 mittee on Financial Services of the House of Rep-
21 resentatives that includes the plans described in
22 paragraph (2).

23 (2) PLANS.—The plans described in this para-
24 graph are as follows:

1 (A) TRAINING AND WORKFORCE DEVELOP-
2 MENT PLAN.—The Office shall submit a train-
3 ing and workforce development plan that in-
4 cludes, to the extent practicable—

5 (i) identification of skill and technical
6 expertise needs and actions taken to meet
7 those requirements;

8 (ii) steps taken to foster innovation
9 and creativity;

10 (iii) leadership development and suc-
11 cession planning; and

12 (iv) effective use of technology by em-
13 ployees.

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

17 (i) telework;

18 (ii) flexible work schedules;

19 (iii) phased retirement;

20 (iv) reemployed annuitants;

21 (v) part-time work;

22 (vi) job sharing;

23 (vii) parental leave benefits and
24 childcare assistance;

25 (viii) domestic partner benefits;

1 (ix) other workplace flexibilities; or

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

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

8 (i) the steps necessary to target highly
9 qualified applicant pools with diverse back-
10 grounds;

11 (ii) streamlined employment applica-
12 tion processes;

13 (iii) the provision of timely notifica-
14 tion of the status of employment applica-
15 tions to applicants; and

16 (iv) the collection of information to
17 measure indicators of hiring effectiveness.

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

21 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion may be construed to affect—

23 (1) a collective bargaining agreement, as that
24 term is defined in section 7103(a)(8) of title 5,

1 United States Code, that is in effect on the date of
 2 enactment of this Act; or

3 (2) the rights of employees under chapter 71 of
 4 title 5, United States Code.

5 **Subtitle C—Additional Board of**
 6 **Governors Authority for Certain**
 7 **Nonbank Financial Companies**
 8 **and Bank Holding Companies**

9 **SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK**
 10 **FINANCIAL COMPANIES BY THE BOARD OF**
 11 **GOVERNORS.**

12 (a) REPORTS.—

13 (1) IN GENERAL.—The Board of Governors
 14 may require each nonbank financial company super-
 15 vised by the Board of Governors, and any subsidiary
 16 thereof, to submit reports under oath, to keep the
 17 Board of Governors informed as to—

18 (A) the financial condition of the company
 19 or subsidiary, systems of the company or sub-
 20 sidiary for monitoring and controlling financial,
 21 operating, and other risks, and the extent to
 22 which the activities and operations of the com-
 23 pany or subsidiary pose a threat to the financial
 24 stability of the United States; and

1 (B) compliance by the company or sub-
 2 sidiary with the requirements of this subtitle.

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

6 (A) reports and supervisory information
 7 that a nonbank financial company or subsidiary
 8 thereof has been required to provide to other
 9 Federal or State regulatory agencies;

10 (B) information otherwise obtainable from
 11 Federal or State regulatory agencies;

12 (C) information that is otherwise required
 13 to be reported publicly; and

14 (D) externally audited financial statements
 15 of such company or subsidiary.

16 (3) AVAILABILITY.—Upon the request of the
 17 Board of Governors, a nonbank financial company
 18 supervised by the Board of Governors, or a sub-
 19 sidiary thereof, shall promptly provide to the Board
 20 of Governors any information described in para-
 21 graph (2).

22 (b) EXAMINATIONS.—

23 (1) IN GENERAL.—Subject to paragraph (2),
 24 the Board of Governors may examine any nonbank
 25 financial company supervised by the Board of Gov-

1 errors and any subsidiary of such company, to de-
 2 termine—

3 (A) the nature of the operations and finan-
 4 cial condition of the company and such sub-
 5 sidiary;

6 (B) the financial, operational, and other
 7 risks within the company that may pose a
 8 threat to the safety and soundness of such com-
 9 pany or to the financial stability of the United
 10 States;

11 (C) the systems for monitoring and con-
 12 trolling such risks; and

13 (D) compliance by the company with the
 14 requirements of this subtitle.

15 (2) USE OF EXAMINATION REPORTS AND IN-
 16 FORMATION.—For purposes of this subsection, the
 17 Board of Governors shall, to the fullest extent pos-
 18 sible, rely on reports of examination of any deposi-
 19 tory institution subsidiary or functionally regulated
 20 subsidiary made by the primary financial regulatory
 21 agency for that subsidiary, and on information de-
 22 scribed in subsection (a)(2).

23 (c) COORDINATION WITH PRIMARY FINANCIAL REG-
 24 ULATORY AGENCY.—The Board of Governors shall—

1 (1) provide to the primary financial regulatory
 2 agency for any company or subsidiary, reasonable
 3 notice before requiring a report, requesting informa-
 4 tion, or commencing an examination of such sub-
 5 sidiary under this section; and

6 (2) avoid duplication of examination activities,
 7 reporting requirements, and requests for informa-
 8 tion, to the extent possible.

9 **SEC. 162. ENFORCEMENT.**

10 (a) IN GENERAL.—Except as provided in subsection
 11 (b), a nonbank financial company supervised by the Board
 12 of Governors and any subsidiaries of such company (other
 13 than any depository institution subsidiary) shall be subject
 14 to the provisions of subsections (b) through (n) of section
 15 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818),
 16 in the same manner and to the same extent as if the com-
 17 pany were a bank holding company, as provided in section
 18 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C.
 19 1818(b)(3)).

20 (b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY
 21 REGULATED SUBSIDIARIES.—

22 (1) REFERRAL.—If the Board of Governors de-
 23 termines that a condition, practice, or activity of a
 24 depository institution subsidiary or functionally reg-
 25 ulated subsidiary of a nonbank financial company

1 supervised by the Board of Governors does not com-
2 ply with the regulations or orders prescribed by the
3 Board of Governors under this Act, or otherwise
4 poses a threat to the financial stability of the United
5 States, the Board of Governors may recommend, in
6 writing, to the primary financial regulatory agency
7 for the subsidiary that such agency initiate a super-
8 visory action or enforcement proceeding. The rec-
9 ommendation shall be accompanied by a written ex-
10 planation of the concerns giving rise to the rec-
11 ommendation.

12 (2) BACK-UP AUTHORITY OF THE BOARD OF
13 GOVERNORS.—If, during the 60-day period begin-
14 ning on the date on which the primary financial reg-
15 ulatory agency receives a recommendation under
16 paragraph (1), the primary financial regulatory
17 agency does not take supervisory or enforcement ac-
18 tion against a subsidiary that is acceptable to the
19 Board of Governors, the Board of Governors (upon
20 a vote of its members) may take the recommended
21 supervisory or enforcement action, as if the sub-
22 sidiary were a bank holding company subject to su-
23 pervision by the Board of Governors.

1 **SEC. 163. ACQUISITIONS.**

2 (a) ACQUISITIONS OF BANKS; TREATMENT AS A
3 BANK HOLDING COMPANY.—For purposes of section 3 of
4 the Bank Holding Company Act of 1956 (12 U.S.C.
5 1842), a nonbank financial company supervised by the
6 Board of Governors shall be deemed to be, and shall be
7 treated as, a bank holding company.

8 (b) ACQUISITION OF NONBANK COMPANIES.—

9 (1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—
10 Notwithstanding section 4(k)(6)(B) of the Bank
11 Holding Company Act of 1956 (12 U.S.C.
12 1843(k)(6)(B)), a bank holding company with total
13 consolidated assets equal to or greater than
14 \$50,000,000,000 or a nonbank financial company
15 supervised by the Board of Governors shall not ac-
16 quire direct or indirect ownership or control of any
17 voting shares of any company (other than an insured
18 depository institution) that is engaged in activities
19 described in section 4(k) of the Bank Holding Com-
20 pany Act of 1956 having total consolidated assets of
21 \$10,000,000,000 or more, without providing written
22 notice to the Board of Governors in advance of the
23 transaction.

24 (2) EXEMPTIONS.—The prior notice require-
25 ment in paragraph (1) shall not apply with regard
26 to the acquisition of shares that would qualify for

1 the exemptions in section 4(c) or section 4(k)(4)(E)
2 of the Bank Holding Company Act of 1956 (12
3 U.S.C. 1843(c) and (k)(4)(E)).

4 (3) NOTICE PROCEDURES.—The notice proce-
5 dures set forth in section 4(j)(1) of the Bank Hold-
6 ing Company Act of 1956 (12 U.S.C. 1843(j)(1)),
7 without regard to section 4(j)(3) of that Act, shall
8 apply to an acquisition of any company (other than
9 an insured depository institution) by a bank holding
10 company with total consolidated assets equal to or
11 greater than \$50,000,000,000 or a nonbank finan-
12 cial company supervised by the Board of Governors,
13 as described in paragraph (1), including any such
14 company engaged in activities described in section
15 4(k) of that Act.

16 (4) STANDARDS FOR REVIEW.—In addition to
17 the standards provided in section 4(j)(2) of the
18 Bank Holding Company Act of 1956 (12 U.S.C.
19 1843(j)(2)), the Board of Governors shall consider
20 the extent to which the proposed acquisition would
21 result in greater or more concentrated risks to global
22 or United States financial stability or the United
23 States economy.

1 **SEC. 164. PROHIBITION AGAINST MANAGEMENT INTER-**
2 **LOCKS BETWEEN CERTAIN FINANCIAL COM-**
3 **PANIES.**

4 A nonbank financial company supervised by the
5 Board of Governors shall be treated as a bank holding
6 company for purposes of the Depository Institutions Man-
7 agement Interlocks Act (12 U.S.C. 3201 et seq.), except
8 that the Board of Governors shall not exercise the author-
9 ity provided in section 7 of that Act (12 U.S.C. 3207)
10 to permit service by a management official of a nonbank
11 financial company supervised by the Board of Governors
12 as a management official of any bank holding company
13 with total consolidated assets equal to or greater than
14 \$50,000,000,000, or other nonaffiliated nonbank financial
15 company supervised by the Board of Governors (other
16 than to provide a temporary exemption for interlocks re-
17 sulting from a merger, acquisition, or consolidation).

18 **SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL**
19 **STANDARDS FOR NONBANK FINANCIAL COM-**
20 **PANIES SUPERVISED BY THE BOARD OF GOV-**
21 **ERNORS AND CERTAIN BANK HOLDING COM-**
22 **PANIES.**

23 (a) IN GENERAL.—

24 (1) PURPOSE.—In order to prevent or mitigate
25 risks to the financial stability of the United States
26 that could arise from the material financial distress

1 or failure of large, interconnected financial institu-
 2 tions, the Board of Governors shall, on its own or
 3 pursuant to recommendations by the Council under
 4 section 115, establish prudential standards and re-
 5 porting and disclosure requirements applicable to
 6 nonbank financial companies supervised by the
 7 Board of Governors and large, interconnected bank
 8 holding companies that—

9 (A) are more stringent than the standards
 10 and requirements applicable to nonbank finan-
 11 cial companies and bank holding companies
 12 that do not present similar risks to the financial
 13 stability of the United States; and

14 (B) increase in stringency, based on the
 15 considerations identified in subsection (b)(3).

16 (2) LIMITATION ON BANK HOLDING COMPA-
 17 NIES.—Any standards established under subsections
 18 (b) through (f) shall not apply to any bank holding
 19 company with total consolidated assets of less than
 20 \$50,000,000,000, but the Board of Governors may
 21 establish an asset threshold greater than
 22 \$50,000,000,000 for the applicability of any par-
 23 ticular standard under subsections (b) through (f).

24 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

25 (1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

- (i) risk-based capital requirements;
- (ii) leverage limits;
- (iii) liquidity requirements;
- (iv) resolution plan and credit exposure report requirements; and
- (v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

- (i) a contingent capital requirement;
- (ii) enhanced public disclosures; and
- (iii) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards

1 set forth in paragraph (1) to foreign nonbank finan-
 2 cial companies supervised by the Board of Governors
 3 and to foreign-based bank holding companies, the
 4 Board of Governors shall give due regard to the
 5 principle of national treatment and competitive eq-
 6 uity.

7 (3) CONSIDERATIONS.—In prescribing pruden-
 8 tial standards under paragraph (1), the Board of
 9 Governors shall—

10 (A) take into account differences among
 11 nonbank financial companies supervised by the
 12 Board of Governors and bank holding compa-
 13 nies described in subsection (a), based on—

14 (i) the factors described in subsections
 15 (a) and (b) of section 113;

16 (ii) whether the company owns an in-
 17 sured depository institution;

18 (iii) nonfinancial activities and affili-
 19 ations of the company; and

20 (iv) any other factors that the Board
 21 of Governors determines appropriate;

22 (B) to the extent possible, ensure that
 23 small changes in the factors listed in sub-
 24 sections (a) and (b) of section 113 would not
 25 result in sharp, discontinuous changes in the

1 prudential standards established under para-
2 graph (1) of this subsection; and

3 (C) take into account any recommenda-
4 tions of the Council under section 115.

5 (4) REPORT.—The Board of Governors shall
6 submit an annual report to Congress regarding the
7 implementation of the prudential standards required
8 pursuant to paragraph (1), including the use of such
9 standards to mitigate risks to the financial stability
10 of the United States.

11 (c) CONTINGENT CAPITAL.—

12 (1) IN GENERAL.—Subsequent to submission by
13 the Council of a report to Congress under section
14 115(c), the Board of Governors may promulgate reg-
15 ulations that require each nonbank financial com-
16 pany supervised by the Board of Governors and
17 bank holding companies described in subsection (a)
18 to maintain a minimum amount of long-term hybrid
19 debt that is convertible to equity in times of finan-
20 cial stress.

21 (2) FACTORS TO CONSIDER.—In establishing
22 regulations under this subsection, the Board of Gov-
23 ernors shall consider—

1 (A) the results of the study undertaken by
 2 the Council, and any recommendations of the
 3 Council, under section 115(c);

4 (B) an appropriate transition period for
 5 implementation of a conversion under this sub-
 6 section;

7 (C) the factors described in subsection
 8 (b)(3)(A);

9 (D) capital requirements applicable to the
 10 nonbank financial company supervised by the
 11 Board of Governors or a bank holding company
 12 described in subsection (a), and subsidiaries
 13 thereof; and

14 (E) any other factor that the Board of
 15 Governors deems appropriate.

16 (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-
 17 PORTS.—

18 (1) RESOLUTION PLAN.—The Board of Gov-
 19 ernors shall require each nonbank financial company
 20 supervised by the Board of Governors and bank
 21 holding companies described in subsection (a) to re-
 22 port periodically to the Board of Governors, the
 23 Council, and the Corporation the plan of such com-
 24 pany for rapid and orderly resolution in the event of
 25 material financial distress or failure.

1 (2) CREDIT EXPOSURE REPORT.—The Board of
2 Governors shall require each nonbank financial com-
3 pany supervised by the Board of Governors and
4 bank holding companies described in subsection (a)
5 to report periodically to the Board of Governors, the
6 Council, and the Corporation on—

7 (A) the nature and extent to which the
8 company has credit exposure to other signifi-
9 cant nonbank financial companies and signifi-
10 cant bank holding companies; and

11 (B) the nature and extent to which other
12 significant nonbank financial companies and
13 significant bank holding companies have credit
14 exposure to that company.

15 (3) REVIEW.—The Board of Governors and the
16 Corporation shall review the information provided in
17 accordance with this section by each nonbank finan-
18 cial company supervised by the Board of Governors
19 and bank holding company described in subsection
20 (a).

21 (4) NOTICE OF DEFICIENCIES.—If the Board of
22 Governors and the Corporation jointly determine,
23 based on their review under paragraph (3), that the
24 resolution plan of a nonbank financial company su-
25 pervised by the Board of Governors or a bank hold-

1 ing company described in subsection (a) is not cred-
2 ible or would not facilitate an orderly resolution of
3 the company under title 11, United States Code—

4 (A) the Board of Governors and the Cor-
5 poration shall notify the company, as applica-
6 ble, of the deficiencies in the resolution plan;
7 and

8 (B) the company shall resubmit the resolu-
9 tion plan within a time frame determined by the
10 Board of Governors and the Corporation, with
11 revisions demonstrating that the plan is credible
12 and would result in an orderly resolution under
13 title 11, United States Code, including any pro-
14 posed changes in business operations and cor-
15 porate structure to facilitate implementation of
16 the plan.

17 (5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

18 (A) IN GENERAL.—If a nonbank financial
19 company supervised by the Board of Governors
20 or a bank holding company described in sub-
21 section (a) fails to timely resubmit the resolu-
22 tion plan as required under paragraph (4), with
23 such revisions as are required under subpara-
24 graph (B), the Board of Governors and the
25 Corporation may jointly impose more stringent

1 capital, leverage, or liquidity requirements, or
2 restrictions on the growth, activities, or oper-
3 ations of the company, or any subsidiary there-
4 of, until such time as the company resubmits a
5 plan that remedies the deficiencies.

6 (B) DIVESTITURE.—The Board of Gov-
7 ernors and the Corporation, in consultation
8 with the Council, may direct a nonbank finan-
9 cial company supervised by the Board of Gov-
10 ernors or a bank holding company described in
11 subsection (a), by order, to divest certain assets
12 or operations identified by the Board of Gov-
13 ernors and the Corporation, to facilitate an or-
14 derly resolution of such company under title 11,
15 United States Code, in the event of the failure
16 of such company, in any case in which—

17 (i) the Board of Governors and the
18 Corporation have jointly imposed more
19 stringent requirements on the company
20 pursuant to subparagraph (A); and

21 (ii) the company has failed, within the
22 2-year period beginning on the date of the
23 imposition of such requirements under sub-
24 paragraph (A), to resubmit the resolution

1 plan with such revisions as were required
2 under paragraph (4)(B).

3 (6) RULES.—Not later than 18 months after
4 the date of enactment of this Act, the Board of Gov-
5 ernors and the Corporation shall jointly issue final
6 rules implementing this subsection.

7 (e) CONCENTRATION LIMITS.—

8 (1) STANDARDS.—In order to limit the risks
9 that the failure of any individual company could
10 pose to a nonbank financial company supervised by
11 the Board of Governors or a bank holding company
12 described in subsection (a), the Board of Governors,
13 by regulation, shall prescribe standards that limit
14 such risks.

15 (2) LIMITATION ON CREDIT EXPOSURE.—The
16 regulations prescribed by the Board of Governors
17 under paragraph (1) shall prohibit each nonbank fi-
18 nancial company supervised by the Board of Gov-
19 ernors and bank holding company described in sub-
20 section (a) from having credit exposure to any unaf-
21 filiated company that exceeds 25 percent of the cap-
22 ital stock and surplus (or such lower amount as the
23 Board of Governors may determine by regulation to
24 be necessary to mitigate risks to the financial sta-
25 bility of the United States) of the company.

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

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

5 (B) all repurchase agreements and reverse
6 repurchase agreements with the company;

7 (C) all securities borrowing and lending
8 transactions with the company, to the extent
9 that such transactions create credit exposure
10 for the nonbank financial company supervised
11 by the Board of Governors or a bank holding
12 company described in subsection (a);

13 (D) all guarantees, acceptances, or letters
14 of credit (including endorsement or standby let-
15 ters of credit) issued on behalf of the company;

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

18 (F) counterparty credit exposure to the
19 company in connection with a derivative trans-
20 action between the nonbank financial company
21 supervised by the Board of Governors or a bank
22 holding company described in subsection (a)
23 and the company; and

24 (G) any other similar transactions that the
25 Board of Governors, by regulation, determines

1 to be a credit exposure for purposes of this sec-
2 tion.

3 (4) ATTRIBUTION RULE.—For purposes of this
4 subsection, any transaction by a nonbank financial
5 company supervised by the Board of Governors or a
6 bank holding company described in subsection (a)
7 with any person is a transaction with a company, to
8 the extent that the proceeds of the transaction are
9 used for the benefit of, or transferred to, that com-
10 pany.

11 (5) RULEMAKING.—The Board of Governors
12 may issue such regulations and orders, including
13 definitions consistent with this section, as may be
14 necessary to administer and carry out this sub-
15 section.

16 (6) EXEMPTIONS.—The Board of Governors
17 may, by regulation or order, exempt transactions, in
18 whole or in part, from the definition of “credit expo-
19 sure” for purposes of this subsection, if the Board
20 of Governors finds that the exemption is in the pub-
21 lic interest and is consistent with the purpose of this
22 subsection.

23 (7) TRANSITION PERIOD.—

24 (A) IN GENERAL.—This subsection and
25 any regulations and orders of the Board of Gov-

1 ernors under this subsection shall not be effec-
2 tive until 3 years after the date of enactment
3 of this Act.

4 (B) EXTENSION AUTHORIZED.—The
5 Board of Governors may extend the period
6 specified in subparagraph (A) for not longer
7 than an additional 2 years.

8 (f) ENHANCED PUBLIC DISCLOSURES.—The Board
9 of Governors may prescribe, by regulation, periodic public
10 disclosures by nonbank financial companies supervised by
11 the Board of Governors and bank holding companies de-
12 scribed in subsection (a) in order to support market eval-
13 uation of the risk profile, capital adequacy, and risk man-
14 agement capabilities thereof.

15 (g) RISK COMMITTEE.—

16 (1) NONBANK FINANCIAL COMPANIES SUPER-
17 VISED BY THE BOARD OF GOVERNORS.—The Board
18 of Governors shall require each nonbank financial
19 company supervised by the Board of Governors that
20 is a publicly traded company to establish a risk com-
21 mittee, as set forth in paragraph (3), not later than
22 1 year after the date of receipt of a notice of final
23 determination under section 113(d)(3) with respect
24 to such nonbank financial company supervised by
25 the Board of Governors.

1 (2) CERTAIN BANK HOLDING COMPANIES.—

2 (A) MANDATORY REGULATIONS.—The
3 Board of Governors shall issue regulations re-
4 quiring each bank holding company that is a
5 publicly traded company and that has total con-
6 solidated assets of not less than
7 \$10,000,000,000 to establish a risk committee,
8 as set forth in paragraph (3).

9 (B) PERMISSIVE REGULATIONS.—The
10 Board of Governors may require each bank
11 holding company that is a publicly traded com-
12 pany and that has total consolidated assets of
13 less than \$10,000,000,000 to establish a risk
14 committee, as set forth in paragraph (3), as de-
15 termined necessary or appropriate by the Board
16 of Governors to promote sound risk manage-
17 ment practices.

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

20 (A) be responsible for the oversight of the
21 enterprise-wide risk management practices of
22 the nonbank financial company supervised by
23 the Board of Governors or bank holding com-
24 pany described in subsection (a), as applicable;

1 (B) include such number of independent
2 directors as the Board of Governors may deter-
3 mine appropriate, based on the nature of oper-
4 ations, size of assets, and other appropriate cri-
5 teria related to the nonbank financial company
6 supervised by the Board of Governors or a bank
7 holding company described in subsection (a), as
8 applicable; and

9 (C) include at least 1 risk management ex-
10 pert having experience in identifying, assessing,
11 and managing risk exposures of large, complex
12 firms.

13 (4) RULEMAKING.—The Board of Governors
14 shall issue final rules to carry out this subsection,
15 not later than 1 year after the transfer date, to take
16 effect not later than 15 months after the transfer
17 date.

18 (h) STRESS TESTS.—The Board of Governors shall
19 conduct analyses in which nonbank financial companies
20 supervised by the Board of Governors and bank holding
21 companies described in subsection (a) are subject to eval-
22 uation of whether the companies have the capital, on a
23 total consolidated basis, necessary to absorb losses as a
24 result of adverse economic conditions. The Board of Gov-
25 ernors may develop and apply such other analytic tech-

1 niques as are necessary to identify, measure, and monitor
2 risks to the financial stability of the United States.

3 **SEC. 166. EARLY REMEDIATION REQUIREMENTS.**

4 (a) IN GENERAL.—The Board of Governors, in con-
5 sultation with the Council and the Corporation, shall pre-
6 scribe regulations establishing requirements to provide for
7 the early remediation of financial distress of a nonbank
8 financial company supervised by the Board of Governors
9 or a bank holding company described in section 165(a),
10 except that nothing in this subsection authorizes the provi-
11 sion of financial assistance from the Federal Government.

12 (b) PURPOSE OF THE EARLY REMEDIATION RE-
13 QUIREMENTS.—The purpose of the early remediation re-
14 quirements under subsection (a) shall be to establish a se-
15 ries of specific remedial actions to be taken by a nonbank
16 financial company supervised by the Board of Governors
17 or a bank holding company described in section 165(a)
18 that is experiencing increasing financial distress, in order
19 to minimize the probability that the company will become
20 insolvent and the potential harm of such insolvency to the
21 financial stability of the United States.

22 (c) REMEDIATION REQUIREMENTS.—The regulations
23 prescribed by the Board of Governors under subsection (a)
24 shall—

1 (1) define measures of the financial condition of
 2 the company, including regulatory capital, liquidity
 3 measures, and other forward-looking indicators; and

4 (2) establish requirements that increase in
 5 stringency as the financial condition of the company
 6 declines, including—

7 (A) requirements in the initial stages of fi-
 8 nancial decline, including limits on capital dis-
 9 tributions, acquisitions, and asset growth; and

10 (B) requirements at later stages of finan-
 11 cial decline, including a capital restoration plan
 12 and capital-raising requirements, limits on
 13 transactions with affiliates, management
 14 changes, and asset sales.

15 **SEC. 167. AFFILIATIONS.**

16 (a) AFFILIATIONS.—Nothing in this subtitle shall be
 17 construed to require a nonbank financial company super-
 18 vised by the Board of Governors, or a company that con-
 19 trols a nonbank financial company supervised by the
 20 Board of Governors, to conform the activities thereof to
 21 the requirements of section 4 of the Bank Holding Com-
 22 pany Act of 1956 (12 U.S.C. 1843).

23 (b) REQUIREMENT.—

24 (1) IN GENERAL.—If a nonbank financial com-
 25 pany supervised by the Board of Governors conducts

1 activities other than those that are determined to be
2 financial in nature or incidental thereto under sec-
3 tion 4(k) of the Bank Holding Company Act of
4 1956, the Board of Governors may require such
5 company to establish and conduct such activities
6 that are determined to be financial in nature or inci-
7 dental thereto in an intermediate holding company
8 established pursuant to regulation of the Board of
9 Governors, not later than 90 days after the date on
10 which the nonbank financial company supervised by
11 the Board of Governors was notified of the deter-
12 mination under section 113(a).

13 (2) INTERNAL FINANCIAL ACTIVITIES.—For
14 purposes of this subsection, activities that are deter-
15 mined to be financial in nature or incidental thereto
16 under section 4(k) of the Bank Holding Company
17 Act of 1956, as described in paragraph (1), shall not
18 include internal financial activities conducted for a
19 nonbank financial company supervised by the Board
20 of Governors or any affiliate, including internal
21 treasury, investment, and employee benefit func-
22 tions. With respect to any internal financial activity
23 of such company during the year prior to the date
24 of enactment of this Act, such company may con-
25 tinue to engage in such activity as long as at least

1 $\frac{2}{3}$ of the assets or $\frac{2}{3}$ of the revenues generated
2 from the activity are from or attributable to such
3 company, subject to review by the Board of Gov-
4 ernors, to determine whether engaging in such activ-
5 ity presents undue risk to such company or to the
6 financial stability of the United States.

7 (c) REGULATIONS.—The Board of Governors—

8 (1) shall promulgate regulations to establish the
9 criteria for determining whether to require a
10 nonbank financial company supervised by the Board
11 of Governors to establish an intermediate holding
12 company under subsection (a); and

13 (2) may promulgate regulations to establish any
14 restrictions or limitations on transactions between
15 an intermediate holding company or a nonbank fi-
16 nancial company supervised by the Board of Gov-
17 ernors and its affiliates, as necessary to prevent un-
18 safe and unsound practices in connection with trans-
19 actions between such company, or any subsidiary
20 thereof, and its parent company or affiliates that are
21 not subsidiaries of such company, except that such
22 regulations shall not restrict or limit any transaction
23 in connection with the bona fide acquisition or lease
24 by an unaffiliated person of assets, goods, or serv-
25 ices.

1 **SEC. 168. REGULATIONS.**

2 Except as otherwise specified in this subtitle, not
3 later than 18 months after the transfer date, the Board
4 of Governors shall issue final regulations to implement
5 this subtitle and the amendments made by this subtitle.

6 **SEC. 169. AVOIDING DUPLICATION.**

7 The Board of Governors shall take any action that
8 the Board of Governors deems appropriate to avoid impos-
9 ing requirements under this subtitle that are duplicative
10 of requirements applicable to bank holding companies and
11 nonbank financial companies under other provisions of
12 law.

13 **SEC. 170. SAFE HARBOR.**

14 (a) REGULATIONS.—The Board of Governors shall
15 promulgate regulations on behalf of, and in consultation
16 with, the Council setting forth the criteria for exempting
17 certain types or classes of U.S. nonbank financial compa-
18 nies or foreign nonbank financial companies from super-
19 vision by the Board of Governors.

20 (b) CONSIDERATIONS.—In developing the criteria
21 under subsection (a), the Board of Governors shall take
22 into account the factors for consideration described in sub-
23 sections (a) and (b) of section 113 in determining whether
24 a U.S. nonbank financial company or foreign nonbank fi-
25 nancial company shall be supervised by the Board of Gov-
26 ernors.

1 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to require supervision by the Board
3 of Governors of a U.S. nonbank financial company or for-
4 eign nonbank financial company, if such company does not
5 meet the criteria for exemption established under sub-
6 section (a).

7 (d) UPDATE.—The Board of Governors shall, in con-
8 sultation with the Council, review the regulations promul-
9 gated under subsection (a), not less frequently than every
10 5 years, and based upon the review, the Board of Gov-
11 ernors may revise such regulations on behalf of, and in
12 consultation with, the Council to update as necessary the
13 criteria set forth in such regulations.

14 (e) TRANSITION PERIOD.—No revisions under sub-
15 section (d) shall take effect before the end of the 2-year
16 period after the date of publication of such revisions in
17 final form.

18 (f) REPORT.—The Chairperson of the Board of Gov-
19 ernors and the Chairperson of the Council shall submit
20 a joint report to the Committee on Banking, Housing, and
21 Urban Affairs of the Senate and the Committee on Finan-
22 cial Services of the House of Representatives not later
23 than 30 days after the date of the issuance in final form
24 of the regulations under subsection (a), or any subsequent
25 revision to such regulations under subsection (d), as appli-

1 cable. Such report shall include, at a minimum, the ration-
2 ale for exemption and empirical evidence to support the
3 criteria for exemption.

4 **TITLE II—ORDERLY** 5 **LIQUIDATION AUTHORITY**

6 **SEC. 201. DEFINITIONS.**

7 In this title, the following definitions shall apply:

8 (1) ADMINISTRATIVE EXPENSES OF THE RE-
9 CEIVER.—The term “administrative expenses of the
10 receiver” includes—

11 (A) the actual, necessary costs and ex-
12 penses incurred by the Corporation as receiver
13 for a covered financial company in liquidating a
14 covered financial company; and

15 (B) any obligations that the Corporation
16 as receiver for a covered financial company de-
17 termines are necessary and appropriate to fa-
18 cilitate the smooth and orderly liquidation of
19 the covered financial company.

20 (2) BANKRUPTCY CODE.—The term “Bank-
21 ruptcy Code” means title 11, United States Code.

22 (3) BRIDGE FINANCIAL COMPANY.—The term
23 “bridge financial company” means a new financial
24 company organized by the Corporation in accordance

1 with section 210(h) for the purpose of resolving a
2 covered financial company.

3 (4) CLAIM.—The term “claim” means any right
4 of payment, whether or not such right is reduced to
5 judgment, liquidated, unliquidated, fixed, contingent,
6 matured, unmatured, disputed, undisputed, legal, eq-
7 uitable, secured, or unsecured.

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

14 (6) COVERED BROKER OR DEALER.—The term
15 “covered broker or dealer” means a covered financial
16 company that is a broker or dealer that—

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

20 (B) is a member of SIPC.

21 (7) COVERED FINANCIAL COMPANY.—The term
22 “covered financial company”—

23 (A) means a financial company for which
24 a determination has been made under section
25 203(b); and

1 (B) does not include an insured depository
2 institution.

3 (8) COVERED SUBSIDIARY.—The term “covered
4 subsidiary” means a subsidiary of a covered finan-
5 cial company, other than—

6 (A) an insured depository institution;

7 (B) an insurance company; or

8 (C) a covered broker or dealer.

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

16 (10) FINANCIAL COMPANY.—The term “finan-
17 cial company” means any company that—

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

21 (B) is—

22 (i) a bank holding company, as de-
23 fined in section 2(a) of the Bank Holding
24 Company Act of 1956 (12 U.S.C.

1 1841(a)), and including any company de-
2 scribed in paragraph (5);

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

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

13 (iv) any subsidiary of any company
14 described in any of clauses (i) through (iii)
15 (other than a subsidiary that is an insured
16 depository institution or an insurance com-
17 pany); and

18 (C) is not a Farm Credit System institu-
19 tion chartered under and subject to the provi-
20 sions of the Farm Credit Act of 1971, as
21 amended (12 U.S.C. 2001 et seq.).

22 (11) FUND.—The term “Fund” means the Or-
23 derly Liquidation Fund established under section
24 210(n).

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

3 (A) engaged in the business of insurance;

4 (B) subject to regulation by a State insur-
5 ance regulator; and

6 (C) covered by a State law that is designed
7 to specifically deal with the rehabilitation, liq-
8 uidation, or insolvency of an insurance com-
9 pany.

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

13 (14) NONBANK FINANCIAL COMPANY SUPER-
14 VISED BY THE BOARD OF GOVERNORS.—The term
15 “nonbank financial company supervised by the
16 Board of Governors” has the same meaning as in
17 section 102(a)(3)(D).

18 (15) PANEL.—The term “Panel” means the Or-
19 derly Liquidation Authority Panel established under
20 section 202.

21 (16) SIPC.—The term “SIPC” means the Se-
22 curities Investor Protection Corporation.

23 **SEC. 202. ORDERLY LIQUIDATION AUTHORITY PANEL.**

24 (a) ORDERLY LIQUIDATION AUTHORITY PANEL.—

1 (1) ESTABLISHMENT.—There is established in
2 the United States Bankruptcy Court for the District
3 of Delaware, an Orderly Liquidation Authority
4 Panel. The Chief Judge of the United States Bank-
5 ruptcy Court for the District of Delaware shall ap-
6 point judges to the Panel, consistent with paragraph
7 (2). In making such appointments, the Chief Judge
8 shall consider the expertise in financial matters of
9 each judge.

10 (2) COMPOSITION.—The Panel shall be com-
11 posed of 3 judges from the United States Bank-
12 ruptcy Court for the District of Delaware.

13 (3) JURISDICTION.—The Panel shall have origi-
14 nal and exclusive jurisdiction of proceedings to con-
15 sider petitions by the Secretary under subsection
16 (b)(1).

17 (b) COMMENCEMENT OF ORDERLY LIQUIDATION.—

18 (1) PETITION TO PANEL.—

19 (A) ORDERLY LIQUIDATION AUTHORITY
20 PANEL.—

21 (i) PETITION TO PANEL.—Subsequent
22 to a determination by the Secretary under
23 section 203 that a financial company meets
24 the criteria in section 203(b), the Sec-
25 retary, upon notice to the Corporation and

1 the covered financial company, shall peti-
2 tion the Panel for an order authorizing the
3 Secretary to appoint the Corporation as re-
4 ceiver.

5 (ii) FORM AND CONTENT OF
6 ORDER.—The Secretary shall present all
7 relevant findings and the recommendation
8 made pursuant to section 203(a) to the
9 Panel. The petition shall be filed under
10 seal.

11 (iii) DETERMINATION.—On a strictly
12 confidential basis, and without any prior
13 public disclosure, the Panel, after notice to
14 the covered financial company and a hear-
15 ing in which the covered financial company
16 may oppose the petition, shall determine,
17 within 24 hours of receipt of the petition
18 filed by the Secretary, whether the deter-
19 mination of the Secretary that the covered
20 financial company is in default or in dan-
21 ger of default is supported by substantial
22 evidence.

23 (iv) ISSUANCE OF ORDER.—If the
24 Panel determines that the determination of
25 the Secretary that the covered financial

1 company is in default or in danger of de-
2 fault—

3 (I) is supported by substantial
4 evidence, the Panel shall issue an
5 order immediately authorizing the
6 Secretary to appoint the Corporation
7 as receiver of the covered financial
8 company; or

9 (II) is not supported by substan-
10 tial evidence, the Panel shall imme-
11 diately provide to the Secretary a
12 written statement of each reason sup-
13 porting its determination, and afford
14 the Secretary an immediate oppor-
15 tunity to amend and refile the petition
16 under clause (i).

17 (B) EFFECT OF DETERMINATION.—The
18 determination of the Panel under subparagraph
19 (A) shall be final, and shall be subject to appeal
20 only in accordance with paragraph (2). The de-
21 cision shall not be subject to any stay or injunc-
22 tion pending appeal. Upon conclusion of its pro-
23 ceedings under subparagraph (A), the Panel
24 shall provide immediately for the record a writ-
25 ten statement of each reason supporting the de-

1 cision of the Panel, and shall provide copies
2 thereof to the Secretary and the covered finan-
3 cial company.

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

12 (2) APPEAL OF DECISIONS OF THE PANEL.—

13 (A) APPEAL TO COURT OF APPEALS.—

14 (i) IN GENERAL.—Subject to clause
15 (ii), the United States Court of Appeals for
16 the Third Circuit shall have jurisdiction of
17 an appeal of a final decision of the Panel
18 filed by the Secretary or a covered finan-
19 cial company, through its board of direc-
20 tors, notwithstanding section
21 210(a)(1)(A)(i), not later than 30 days
22 after the date on which the decision of the
23 Panel is rendered or deemed rendered
24 under this subsection.

1 (ii) CONDITION OF JURISDICTION.—

2 The Court of Appeals shall have jurisdic-
3 tion of an appeal by a covered financial
4 company only if the covered financial com-
5 pany did not acquiesce or consent to the
6 appointment of a receiver by the Secretary
7 under paragraph (1)(A).

8 (iii) EXPEDITION.—The Court of Ap-
9 peals shall consider any appeal under this
10 subparagraph on an expedited basis.

11 (iv) SCOPE OF REVIEW.—For an ap-
12 peal taken under this subparagraph, review
13 shall be limited to whether the determina-
14 tion of the Secretary that a covered finan-
15 cial company is in default or in danger of
16 default is supported by substantial evi-
17 dence.

18 (B) APPEAL TO THE SUPREME COURT.—

19 (i) IN GENERAL.—A petition for a
20 writ of certiorari to review a decision of
21 the Court of Appeals under subparagraph
22 (A) may be filed by the Secretary or the
23 covered financial company, through its
24 board of directors, notwithstanding section
25 210(a)(1)(A)(i), with the Supreme Court

1 of the United States, not later than 30
2 days after the date of the final decision of
3 the Court of Appeals, and the Supreme
4 Court shall have discretionary jurisdiction
5 to review such decision.

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

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

14 (iv) SCOPE OF REVIEW.—Review by
15 the Supreme Court under this subpara-
16 graph shall be limited to whether the de-
17 termination of the Secretary that the cov-
18 ered financial company is in default or in
19 danger of default is supported by substan-
20 tial evidence.

21 (c) ESTABLISHMENT AND TRANSMITTAL OF RULES
22 AND PROCEDURES.—

23 (1) IN GENERAL.—Not later than 6 months
24 after the date of enactment of this Act, the Panel
25 shall establish such rules and procedures as may be

1 necessary to ensure the orderly conduct of pro-
2 ceedings, including rules and procedures to ensure
3 that the 24-hour deadline is met and that the Sec-
4 retary shall have an ongoing opportunity to amend
5 and refile petitions under subsection (b)(1). The
6 rules and procedures shall include provisions for the
7 appointment of judges to the Panel, such that the
8 composition of the Panel is established in advance of
9 the filing of a petition under subsection (b).

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

14 (A) each judge of the Panel;

15 (B) the Chief Judge of the United States
16 Bankruptcy Court for the District of Delaware;

17 (C) the Committee on the Judiciary of the
18 Senate;

19 (D) the Committee on Banking, Housing,
20 and Urban Affairs of the Senate;

21 (E) the Committee on the Judiciary of the
22 House of Representatives; and

23 (F) the Committee on Financial Services
24 of the House of Representatives.

1 (d) PROVISIONS APPLICABLE TO FINANCIAL COMPA-
2 NIES.—

3 (1) BANKRUPTCY CODE.—Except as provided in
4 this subsection, the provisions of the Bankruptcy
5 Code and rules issued thereunder, and not the provi-
6 sions of this title, shall apply to financial companies
7 that are not covered financial companies for which
8 the Corporation 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 (e) STUDY OF BANKRUPTCY AND ORDERLY LIQUIDA-
16 TION PROCESS FOR FINANCIAL COMPANIES.—

17 (1) STUDY.—

18 (A) IN GENERAL.—The Administrative Of-
19 fice of the United States Courts and the Comp-
20 troller General of the United States shall each
21 monitor the activities of the Panel, and each
22 such Office shall conduct separate studies re-
23 garding the bankruptcy and orderly liquidation
24 process for financial companies under the
25 Bankruptcy Code.

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

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

10 (ii) ways to maximize the efficiency
11 and effectiveness of the Panel; and

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

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

1 tives separate reports summarizing the results of the
2 studies conducted under paragraph (1).

3 (f) STUDY OF INTERNATIONAL COORDINATION RE-
4 LATING TO BANKRUPTCY PROCESS FOR FINANCIAL COM-
5 PANIES.—

6 (1) STUDY.—

7 (A) IN GENERAL.—The Comptroller Gen-
8 eral of the United States shall conduct a study
9 regarding international coordination relating to
10 the orderly liquidation of financial companies
11 under the Bankruptcy Code.

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

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

19 (ii) current mechanisms and struc-
20 tures for facilitating international coopera-
21 tion;

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 Gen-
3 eral of the United States shall submit to the Com-
4 mittee on Banking, Housing, and Urban Affairs and
5 the Committee on the Judiciary of the Senate and
6 the Committee on Financial Services and the Com-
7 mittee on the Judiciary of the House of Representa-
8 tives and the Secretary a report summarizing the re-
9 sults of the study conducted under paragraph (1).

10 **SEC. 203. SYSTEMIC RISK DETERMINATION.**

11 (a) WRITTEN RECOMMENDATION AND DETERMINA-
12 TION.—

13 (1) VOTE REQUIRED.—

14 (A) IN GENERAL.—On their own initiative,
15 or at the request of the Secretary, the Corpora-
16 tion and the Board of Governors shall consider
17 whether to make a written recommendation de-
18 scribed in paragraph (2) with respect to wheth-
19 er the Secretary should appoint the Corporation
20 as receiver for a financial company. 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 $\frac{2}{3}$ of the members
24 of the board of directors of the Corporation
25 then serving.

1 (B) CASES INVOLVING COVERED BROKERS
2 OR DEALERS.—In the case of a covered broker
3 or dealer, or in which the largest United States
4 subsidiary (as measured by total assets as of
5 the end of the previous calendar quarter) of a
6 financial company is a covered broker or dealer,
7 the Commission and the Board of Governors, at
8 the request of the Secretary, or on their own
9 initiative, shall consider whether to make the
10 written recommendation described in paragraph
11 (2) with respect to the financial company. Sub-
12 ject to the requirements in paragraph (2), such
13 recommendation shall be made upon a vote of
14 not fewer than $\frac{2}{3}$ of the members of the Board
15 of Governors then serving and the members of
16 the Commission then serving, and in consulta-
17 tion with the Corporation.

18 (2) RECOMMENDATION REQUIRED.—Any writ-
19 ten recommendation pursuant to paragraph (1) shall
20 contain—

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

23 (B) a description of the effect that the de-
24 fault of the financial company would have on fi-
25 nancial stability in the United States;

1 (C) a recommendation regarding the na-
2 ture and the extent of actions to be taken under
3 this title regarding the financial company;

4 (D) an evaluation of the likelihood of a pri-
5 vate sector alternative to prevent the default of
6 the financial company;

7 (E) an evaluation of why a case under the
8 Bankruptcy Code is not appropriate for the fi-
9 nancial company; and

10 (F) an evaluation of the effects on credi-
11 tors, counterparties, and shareholders of the fi-
12 nancial company and other market participants.

13 (b) DETERMINATION BY THE SECRETARY.—Notwith-
14 standing any other provision of Federal or State law, the
15 Secretary shall take action in accordance with section
16 202(b)(1)(A), if, upon the written recommendation under
17 subsection (a), the Secretary (in consultation with the
18 President) determines that—

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

21 (2) the failure of the financial company and its
22 resolution under otherwise applicable Federal or
23 State law would have serious adverse effects on fi-
24 nancial stability in the United States;

1 (3) no viable private sector alternative is avail-
2 able to prevent the default of the financial company;

3 (4) any effect on the claims or interests of
4 creditors, counterparties, and shareholders of the fi-
5 nancial company and other market participants as a
6 result of actions to be taken under this title is ap-
7 propriate, given the impact that any action taken
8 under this title would have on financial stability in
9 the United States;

10 (5) any action under section 204 would avoid or
11 mitigate such adverse effects, taking into consider-
12 ation the effectiveness of the action in mitigating po-
13 tential adverse effects on the financial system, the
14 cost to the general fund of the Treasury, and the po-
15 tential to increase excessive risk taking on the part
16 of creditors, counterparties, and shareholders in the
17 financial company; and

18 (6) a Federal regulatory agency has ordered the
19 financial company to convert all of its convertible
20 debt instruments that are subject to the regulatory
21 order.

22 (c) DOCUMENTATION AND REVIEW.—

23 (1) IN GENERAL.—The Secretary shall—

24 (A) document any determination under
25 subsection (b);

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

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

5 (2) REPORT TO CONGRESS.—Not later than 24
6 hours after the date of appointment of the Corpora-
7 tion as receiver for a covered financial company, the
8 Secretary shall provide written notice of the rec-
9 ommendations and determinations reached in ac-
10 cordance with subsections (a) and (b) to the Major-
11 ity Leader and the Minority Leader of the Senate
12 and the Speaker and the Minority Leader of the
13 House of Representatives, the Committee on Bank-
14 ing, Housing, and Urban Affairs of the Senate, and
15 the Committee on Financial Services of the House of
16 Representatives, which shall consist of a summary of
17 the basis for the determination, including, to the ex-
18 tent available at the time of the determination—

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

21 (B) the sources of capital and credit sup-
22 port that were available to the covered financial
23 company;

1 (C) the operations of the covered financial
2 company that could have had a significant im-
3 pact on financial stability, markets, or both;

4 (D) identification of the banks and finan-
5 cial companies which may be able to provide the
6 services offered by the covered financial com-
7 pany;

8 (E) any potential international ramifica-
9 tions of resolution of the covered financial com-
10 pany under other applicable insolvency law;

11 (F) an estimate of the potential effect of
12 the resolution of the covered financial company
13 under other applicable insolvency law on the fi-
14 nancial stability of the United States;

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

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

21 (I) whether resolution of the covered finan-
22 cial company under other applicable insolvency
23 law would cause banks or other financial com-
24 panies to experience severe liquidity distress.

1 (3) REPORTS TO CONGRESS AND THE PUB-
2 LIC.—

3 (A) IN GENERAL.—Not later than 60 days
4 after the date of appointment of the Corpora-
5 tion as receiver for a covered financial company,
6 the Corporation, as receiver, shall—

7 (i) prepare reports setting forth infor-
8 mation on the assets and liabilities of the
9 covered financial company as of the date of
10 the appointment;

11 (ii) file such reports with the Com-
12 mittee on Banking, Housing, and Urban
13 Affairs of the Senate, and the Committee
14 on Financial Services of the House of Rep-
15 resentatives; and

16 (iii) publish such reports on an online
17 website maintained by the Corporation.

18 (B) AMENDMENTS.—The Corporation
19 shall, on a timely basis, not less frequently than
20 quarterly, amend or revise and resubmit the re-
21 ports prepared under this paragraph, as nec-
22 essary.

23 (4) DEFAULT OR IN DANGER OF DEFAULT.—
24 For purposes of this title, a financial company shall
25 be considered to be in default or in danger of default

1 if, as determined in accordance with subsection
2 (b)—

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

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

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

14 (D) the financial company is, or is likely to
15 be, unable to pay its obligations (other than
16 those subject to a bona fide dispute) in the nor-
17 mal course of business.

18 (5) GAO REVIEW.—The Comptroller General of
19 the United States shall review and report to Con-
20 gress on any determination under subsection (b),
21 that results in the appointment of the Corporation
22 as receiver, including—

23 (A) the basis for the determination;

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

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

5 (D) the likely disruptive effect of the deter-
 6 mination and such action on the reasonable ex-
 7 pectations of creditors, counterparties, and
 8 shareholders, taking into account the impact
 9 any action under this title would have on finan-
 10 cial stability in the United States, including
 11 whether the rights of such parties will be dis-
 12 rupted.

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

21 (e) TREATMENT OF INSURANCE COMPANIES AND IN-
 22 SURANCE COMPANY SUBSIDIARIES.—

23 (1) IN GENERAL.—Notwithstanding subsection
 24 (b), if an insurance company is a covered financial
 25 company or a subsidiary or affiliate of a covered fi-

1 nancial company, the liquidation or rehabilitation of
2 such insurance company, and any subsidiary or affil-
3 iate of such company that is not excepted under
4 paragraph (2), shall be conducted as provided under
5 such State law.

6 (2) EXCEPTION FOR SUBSIDIARIES AND AFFILI-
7 ATES.—The requirement of paragraph (1) shall not
8 apply with respect to any subsidiary or affiliate of
9 an insurance company that is not itself an insurance
10 company.

11 (3) BACKUP AUTHORITY.—Notwithstanding
12 paragraph (1), with respect to a covered financial
13 company described in paragraph (1), if, after the
14 end of the 60-day period beginning on the date on
15 which a determination is made under section 202(b)
16 with respect to such company, the appropriate regu-
17 latory agency has not filed the appropriate judicial
18 action in the appropriate State court to place such
19 company into orderly liquidation under the laws and
20 requirements of the State, the Corporation shall
21 have the authority to stand in the place of the ap-
22 propriate regulatory agency and file the appropriate
23 judicial action in the appropriate State court to
24 place such company into orderly liquidation under
25 the laws and requirements of the State.

1 **SEC. 204. ORDERLY LIQUIDATION.**

2 (a) PURPOSE OF ORDERLY LIQUIDATION AUTHOR-
3 ITY.—It is the purpose of this title to provide the nec-
4 essary authority to liquidate failing financial companies
5 that pose a significant risk to the financial stability of the
6 United States in a manner that mitigates such risk and
7 minimizes moral hazard. The authority provided in this
8 title shall be exercised in the manner that best fulfills such
9 purpose, with the strong presumption that—

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

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

14 (3) the Corporation and other appropriate
15 agencies will take all steps necessary and appro-
16 priate to assure that all parties, including manage-
17 ment and third parties, having responsibility for the
18 condition of the financial company bear losses con-
19 sistent with their responsibility, including actions for
20 damages, restitution, and recoupment of compensa-
21 tion and other gains not compatible with such re-
22 sponsibility.

23 (b) CORPORATION AS RECEIVER.—Upon the appoint-
24 ment of the Corporation under section 202, the Corpora-
25 tion shall act as the receiver for the covered financial com-

1 pany, with all of the rights and obligations set forth in
2 this title.

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

4 (1) shall consult with the primary financial reg-
5 ulatory agency or agencies of the covered financial
6 company and its covered subsidiaries for purposes of
7 ensuring an orderly liquidation of the covered finan-
8 cial company;

9 (2) may consult with, or under subsection
10 (a)(1)(B)(v) or (a)(1)(L) of section 210, acquire the
11 services of, any outside experts, as appropriate to in-
12 form and aid the Corporation in the orderly liquida-
13 tion process;

14 (3) shall consult with the primary financial reg-
15 ulatory agency or agencies of any subsidiaries of the
16 covered financial company that are not covered sub-
17 sidiaries, and coordinate with such regulators re-
18 garding the treatment of such solvent subsidiaries
19 and the separate resolution of any such insolvent
20 subsidiaries under other governmental authority, as
21 appropriate; and

22 (4) shall consult with the Commission and the
23 Securities Investor Protection Corporation in the
24 case of any covered financial company for which the
25 Corporation has been appointed as receiver that is a

1 broker or dealer registered with the Commission
2 under section 15(b) of the Securities Exchange Act
3 of 1934 (15 U.S.C. 78o(b)) and is a member of the
4 Securities Investor Protection Corporation, for the
5 purpose of determining whether to transfer to a
6 bridge financial company organized by the Corpora-
7 tion as receiver, without consent of any customer,
8 customer accounts of the covered financial company.

9 (d) FUNDING FOR ORDERLY LIQUIDATION.—Upon
10 its appointment as receiver for a covered financial com-
11 pany, and thereafter as the Corporation may, in its discre-
12 tion, determine to be necessary or appropriate, the Cor-
13 poration may make available to the receivership, subject
14 to the conditions set forth in section 206 and subject to
15 the plan described in section 210(n)(13), funds for the or-
16 derly liquidation of the covered financial company.

17 **SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS**
18 **AND DEALERS.**

19 (a) APPOINTMENT OF SIPC AS TRUSTEE FOR PRO-
20 TECTION OF CUSTOMER SECURITIES AND PROPERTY.—
21 Upon the appointment of the Corporation as receiver for
22 any covered broker or dealer, the Corporation shall ap-
23 point, without any need for court approval, the Securities
24 Investor Protection Corporation to act as trustee for liq-
25 uidation under the Securities Investor Protection Act of

1 1970 (15 U.S.C. 78aaa et seq.) of the covered broker or
2 dealer.

3 (b) POWERS AND DUTIES OF SIPC.—

4 (1) IN GENERAL.—Except as provided in this
5 section, upon its appointment as trustee for the liq-
6 uidation of a covered broker or dealer, SIPC shall
7 have all of the powers and duties provided by the Se-
8 curities Investor Protection Act of 1970 (15 U.S.C.
9 78aaa et seq.), including, without limitation, all
10 rights of action against third parties, but shall have
11 no powers or duties with respect to assets and liabil-
12 ities transferred by the Corporation from the covered
13 broker or dealer to any bridge financial company es-
14 tablished in accordance with this title.

15 (2) LIMITATION OF POWERS.—The exercise by
16 SIPC of powers and functions as trustee under sub-
17 section (a) shall not impair or impede the exercise
18 of the powers and duties of the Corporation with re-
19 gard to—

20 (A) any action, except as otherwise pro-
21 vided in this title—

22 (i) to make funds available under sec-
23 tion 204(d);

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

- 1 (iii) to transfer assets and liabilities;
2 (iv) to enforce or repudiate contracts;
3 or
4 (v) to take any other action relating
5 to such bridge financial company under
6 section 210; or
7 (B) determining claims under subsection
8 (d).

9 (3) QUALIFIED FINANCIAL CONTRACTS.—Not-
10 withstanding any provision of the Securities Investor
11 Protection Act of 1970 to the contrary (including
12 section 5(b)(2)(C) of that Act (15 U.S.C.
13 78eee(b)(2)(C))), the rights and obligations of any
14 party to a qualified financial contract (as that term
15 is defined in section 210(c)(8)) to which a covered
16 broker or dealer described in subsection (a) is a
17 party shall be governed exclusively by section 210,
18 including the limitations and restrictions contained
19 in section 210(c)(10)(B).

20 (c) LIMITATION ON COURT ACTION.—Except as oth-
21 erwise provided in this title, no court may take any action,
22 including any action pursuant to the Securities Investor
23 Protection Act of 1970 or the Bankruptcy Code, to re-
24 strain or affect the exercise of powers or functions of the
25 Corporation as receiver for a covered broker or dealer and

1 any claims against the Corporation as such receiver shall
2 be determined in accordance with subsection (e) and such
3 claims shall be limited to money damages.

4 (d) ACTIONS BY CORPORATION AS RECEIVER.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of this title, no action taken by the Cor-
7 poration, as receiver with respect to a covered broker
8 or dealer, shall—

9 (A) adversely affect the rights of a cus-
10 tomer to customer property or customer name
11 securities;

12 (B) diminish the amount or timely pay-
13 ment of net equity claims of customers; or

14 (C) otherwise impair the recoveries pro-
15 vided to a customer under the Securities Inves-
16 tor Protection Act of 1970 (15 U.S.C. 78aaa et
17 seq.).

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

23 (e) CLAIMS AGAINST THE CORPORATION AS RE-
24 CEIVER.—Any claim against the Corporation as receiver
25 for a covered broker or dealer for assets transferred to

1 a bridge financial company established with respect to
2 such covered broker or dealer—

3 (1) shall be determined in accordance with sec-
4 tion 210(a)(2); and

5 (2) may be reviewed by the appropriate district
6 or territorial court of the United States in accord-
7 ance with section 210(a)(5).

8 (f) SATISFACTION OF CUSTOMER CLAIMS.—

9 (1) OBLIGATIONS TO CUSTOMERS.—Notwith-
10 standing any other provision of this title, all obliga-
11 tions of a covered broker or dealer or of any bridge
12 financial company established with respect to such
13 covered broker or dealer to a customer relating to,
14 or net equity claims based upon, customer property
15 shall be promptly discharged by the delivery of secu-
16 rities or the making of payments to or for the ac-
17 count of such customer, in a manner and in an
18 amount at least as beneficial to the customer as
19 would have been the case had the covered broker or
20 dealer been subject to a proceeding under the Secu-
21 rities Investor Protection Act of 1970 (15 U.S.C.
22 78aaa et seq.) without the appointment of the Cor-
23 poration as receiver, and with a filing date as of the
24 date on which the Corporation is appointed as re-
25 ceiver.

1 (2) SATISFACTION OF CLAIMS BY SIPC.—SIPC,
2 as trustee for a covered broker or dealer, shall sat-
3 isfy customer claims in the manner and amount pro-
4 vided under the Securities Investor Protection Act of
5 1970 (15 U.S.C. 78aaa et seq.), as if the appoint-
6 ment of the Corporation as receiver had not oc-
7 curred, and with a filing date as of the date on
8 which the Corporation is appointed as receiver. The
9 Corporation shall satisfy customer claims, to the ex-
10 tent that a customer would have received more secu-
11 rities or cash with respect to the allocation of cus-
12 tomer property had the covered financial company
13 been subject to a proceeding under the Securities In-
14 vestor Protection Act (15 U.S.C. 78aaa et seq.)
15 without the appointment of the Corporation as re-
16 ceiver, and with a filing date as of the date on which
17 the Corporation is appointed as receiver.

18 (g) PRIORITIES.—

19 (1) CUSTOMER PROPERTY.—As trustee for a
20 covered broker or dealer, SIPC shall allocate cus-
21 tomer property and deliver customer name securities
22 in accordance with section 8(c) of the Securities In-
23 vestor Protection Act of 1970 (15 U.S.C. 78fff-
24 2(c)).

1 (2) OTHER CLAIMS.—All claims other than
2 those described in paragraph (1) (including any un-
3 paid claim by a customer for the allowed net equity
4 claim of such customer from customer property)
5 shall be paid in accordance with the priorities in sec-
6 tion 210(b).

7 (h) RULEMAKING.—The Commission and the Cor-
8 poration, after consultation with SIPC, shall jointly issue
9 rules to implement this section.

10 **SEC. 206. MANDATORY TERMS AND CONDITIONS FOR ALL**
11 **ORDERLY LIQUIDATION ACTIONS.**

12 In taking action under this title, the Corporation
13 shall—

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

18 (2) ensure that the shareholders of a covered fi-
19 nancial company do not receive payment until after
20 all other claims and the Fund are fully paid;

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

24 (4) ensure that management responsible for the
25 failed condition of the covered financial company is

1 removed (if such management has not already been
2 removed at the time at which the Corporation is ap-
3 pointed receiver); and

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

7 **SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN**
8 **APPOINTMENT OF RECEIVER.**

9 The members of the board of directors (or body per-
10 forming similar functions) of a covered financial company
11 shall not be liable to the shareholders or creditors thereof
12 for acquiescing in or consenting in good faith to the ap-
13 pointment of the Corporation as receiver for the covered
14 financial company under section 203.

15 **SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.**

16 (a) IN GENERAL.—Effective as of the date of the ap-
17 pointment of the Corporation as receiver for the covered
18 financial company under section 202 or the appointment
19 of SIPC as trustee for a covered broker or dealer under
20 section 205, as applicable, any case or proceeding com-
21 menced with respect to the covered financial company
22 under the Bankruptcy Code or the Securities Investor
23 Protection Act of 1970 shall be dismissed, upon notice to
24 the Bankruptcy Court (with respect to a case commenced
25 under the Bankruptcy Code), and upon notice to SIPC

1 (with respect to a covered broker or dealer) and no such
2 case or proceeding may be commenced with respect to a
3 covered financial company at any time while the orderly
4 liquidation is pending.

5 (b) REVESTING OF ASSETS.—Effective as of the date
6 of appointment of the Corporation as receiver, the assets
7 of a covered financial company shall, to the extent they
8 have vested in any entity other than the covered financial
9 company as a result of any case or proceeding commenced
10 with respect to the covered financial company under the
11 Bankruptcy Code, the Securities Investor Protection Act
12 of 1970, or any similar provision of State liquidation or
13 insolvency law applicable to the covered financial company,
14 revert in the covered financial company.

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

20 **SEC. 209. RULEMAKING; NON-CONFLICTING LAW.**

21 The Corporation shall, in consultation with the Coun-
22 cil, prescribe such rules or regulations as the Corporation
23 considers necessary or appropriate to implement this title,
24 including rules and regulations with respect to the rights,
25 interests, and priorities of creditors, counterparties, secu-

1 rity entitlement holders, or other persons with respect to
 2 any covered financial company or any assets or other prop-
 3 erty of or held by such covered financial company. To the
 4 extent possible, the Corporation shall seek to harmonize
 5 applicable rules and regulations promulgated under this
 6 section with the insolvency laws that would otherwise
 7 apply to a covered financial company.

8 **SEC. 210. POWERS AND DUTIES OF THE CORPORATION.**

9 (a) POWERS AND AUTHORITIES.—

10 (1) GENERAL POWERS.—

11 (A) SUCCESSOR TO COVERED FINANCIAL
 12 COMPANY.—The Corporation shall, upon ap-
 13 pointment as receiver for a covered financial
 14 company under this title, succeed to—

15 (i) all rights, titles, powers, and privi-
 16 leges of the covered financial company and
 17 its assets, and of any stockholder, member,
 18 officer, or director of such company; and

19 (ii) title to the books, records, and as-
 20 sets of any previous receiver or other legal
 21 custodian of such covered financial com-
 22 pany.

23 (B) OPERATION OF THE COVERED FINAN-
 24 CIAL COMPANY DURING THE PERIOD OF OR-

1 DERLY LIQUIDATION.—The Corporation, as re-
2 ceiver for a covered financial company, may—

3 (i) take over the assets of and operate
4 the covered financial company with all of
5 the powers of the members or share-
6 holders, the directors, and the officers of
7 the covered financial company, and con-
8 duct all business of the covered financial
9 company;

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

12 (iii) perform all functions of the cov-
13 ered financial company, in the name of the
14 covered financial company;

15 (iv) manage the assets and property
16 of the covered financial company, con-
17 sistent with maximization of the value of
18 the assets in the context of the orderly liq-
19 uidation; and

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

23 (C) FUNCTIONS OF COVERED FINANCIAL
24 COMPANY OFFICERS, DIRECTORS, AND SHARE-
25 HOLDERS.—

1 (i) IN GENERAL.—The Corporation
2 may provide for the exercise of any func-
3 tion by any member or stockholder, direc-
4 tor, or officer of any covered financial com-
5 pany for which the Corporation has been
6 appointed as receiver under this title.

7 (ii) PRESUMPTION.—There shall be a
8 strong presumption that the Corporation,
9 as receiver for a covered financial com-
10 pany, will remove management responsible
11 for the failed condition of the covered fi-
12 nancial company.

13 (D) ADDITIONAL POWERS AS RECEIVER.—
14 The Corporation shall, as receiver for a covered
15 financial company, and subject to all legally en-
16 forceable and perfected security interests and
17 all legally enforceable security entitlements in
18 respect of assets held by the covered financial
19 company, liquidate, and wind-up the affairs of
20 a covered financial company, including taking
21 steps to realize upon the assets of the covered
22 financial company, in such manner as the Cor-
23 poration deems appropriate, including through
24 the sale of assets, the transfer of assets to a
25 bridge financial company established under sub-

1 section (h), or the exercise of any other rights
2 or privileges granted to the receiver under this
3 section.

4 (E) ADDITIONAL POWERS WITH RESPECT
5 TO FAILING SUBSIDIARIES OF A COVERED FI-
6 NANCIAL COMPANY.—

7 (i) IN GENERAL.—In any case in
8 which a receiver is appointed for a covered
9 financial company under section 202, the
10 Corporation may appoint itself as receiver
11 of any subsidiary (other than an insured
12 depository institution, any covered broker
13 or dealer, or an insurance company) of the
14 covered financial company that is orga-
15 nized under Federal law or the laws of any
16 State, if the Corporation and the Secretary
17 jointly determine that—

18 (I) the subsidiary is in default or
19 in danger of default;

20 (II) such action would avoid or
21 mitigate serious adverse effects on the
22 financial stability or economic condi-
23 tions of the United States; and

1 (III) such action would facilitate
2 the orderly liquidation of the covered
3 financial company.

4 (ii) TREATMENT AS COVERED FINAN-
5 CIAL COMPANY.—If the Corporation is ap-
6 pointed as receiver of a subsidiary of a cov-
7 ered financial company under clause (i),
8 the subsidiary shall thereafter be consid-
9 ered a covered financial company under
10 this title, and the Corporation shall there-
11 after have all the powers and rights with
12 respect to that subsidiary as it has with re-
13 spect to a covered financial company under
14 this title.

15 (F) ORGANIZATION OF BRIDGE COMPA-
16 NIES.—The Corporation, as receiver for a cov-
17 ered financial company, may organize a bridge
18 financial company under subsection (h).

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

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

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

1 (II) transfer any asset or liability
2 of the covered financial company (in-
3 cluding any assets and liabilities held
4 by the covered financial company for
5 security entitlement holders, any cus-
6 tomer property, or any assets and li-
7 abilities associated with any trust or
8 custody business) without obtaining
9 any approval, assignment, or consent
10 with respect to such transfer.

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

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

20 (II) if, in connection with any
21 such approval, a report on competitive
22 factors is required, the Federal agency
23 responsible for such approval shall
24 promptly notify the Attorney General
25 of the United States of the proposed

1 transaction, and the Attorney General
 2 shall provide the required report not
 3 later than 10 days after the date of
 4 the request; and

5 (III) if notification under section
 6 7A of the Clayton Act is required with
 7 respect to such transaction, then the
 8 required waiting period shall end on
 9 the 15th day after the date on which
 10 the Attorney General and the Federal
 11 Trade Commission receive such notifi-
 12 cation, unless the waiting period is
 13 terminated earlier under subsection
 14 (b)(2) of such section 7A, or is ex-
 15 tended pursuant to subsection (e)(2)
 16 of such section 7A.

17 (iii) SETOFF.—Subject to the other
 18 provisions of this title, any transferee of
 19 assets from a receiver, including a bridge
 20 financial company, shall be subject to such
 21 claims or rights as would prevail over the
 22 rights of such transferee in such assets
 23 under applicable noninsolvency law.

24 (H) PAYMENT OF VALID OBLIGATIONS.—

25 The Corporation, as receiver for a covered fi-

1 nancial company, shall, to the extent that funds
2 are available, pay all valid obligations of the
3 covered financial company that are due and
4 payable at the time of the appointment of the
5 Corporation as receiver, in accordance with the
6 prescriptions and limitations of this title.

7 (I) APPLICABLE NONINSOLVENCY LAW.—

8 Except as may otherwise be provided in this
9 title, the applicable noninsolvency law shall be
10 determined by the noninsolvency choice of law
11 rules otherwise applicable to the claims, rights,
12 titles, persons, or entities at issue.

13 (J) SUBPOENA AUTHORITY.—

14 (i) IN GENERAL.—The Corporation,
15 as receiver for a covered financial com-
16 pany, may, for purposes of carrying out
17 any power, authority, or duty with respect
18 to the covered financial company (includ-
19 ing determining any claim against the cov-
20 ered financial company and determining
21 and realizing upon any asset of any person
22 in the course of collecting money due the
23 covered financial company), exercise any
24 power established under section 8(n) of the
25 Federal Deposit Insurance Act, as if the

1 Corporation were the appropriate Federal
2 banking agency for the covered financial
3 company, and the covered financial com-
4 pany were an insured depository institu-
5 tion.

6 (ii) RULE OF CONSTRUCTION.—This
7 subparagraph may not be construed as
8 limiting any rights that the Corporation, in
9 any capacity, might otherwise have to exer-
10 cise any powers described in clause (i) or
11 under any other provision of law.

12 (K) INCIDENTAL POWERS.—The Corpora-
13 tion, as receiver for a covered financial com-
14 pany, may exercise all powers and authorities
15 specifically granted to receivers under this title,
16 and such incidental powers as shall be nec-
17 essary to carry out such powers under this title.

18 (L) UTILIZATION OF PRIVATE SECTOR.—
19 In carrying out its responsibilities in the man-
20 agement and disposition of assets from the cov-
21 ered financial company, the Corporation, as re-
22 ceiver for a covered financial company, may uti-
23 lize the services of private persons, including
24 real estate and loan portfolio asset manage-
25 ment, property management, auction mar-

1 keting, legal, and brokerage services, if such
2 services are available in the private sector, and
3 the Corporation determines that utilization of
4 such services is practicable, efficient, and cost
5 effective.

6 (M) SHAREHOLDERS AND CREDITORS OF
7 COVERED FINANCIAL COMPANY.—Notwith-
8 standing any other provision of law, the Cor-
9 poration, as receiver for a covered financial
10 company, shall succeed by operation of law to
11 the rights, titles, powers, and privileges de-
12 scribed in subparagraph (A), and shall termi-
13 nate all rights and claims that the stockholders
14 and creditors of the covered financial company
15 may have against the assets of the covered fi-
16 nancial company or the Corporation arising out
17 of their status as stockholders or creditors, ex-
18 cept for their right to payment, resolution, or
19 other satisfaction of their claims, as permitted
20 under this section. The Corporation shall en-
21 sure that shareholders and unsecured creditors
22 bear losses, consistent with the priority of
23 claims provisions under this section.

24 (N) COORDINATION WITH FOREIGN FINAN-
25 CIAL AUTHORITIES.—The Corporation, as re-

1 ceiver for a covered financial company, shall co-
2 ordinate, to the maximum extent possible, with
3 the appropriate foreign financial authorities re-
4 garding the orderly liquidation of any covered
5 financial company that has assets or operations
6 in a country other than the United States.

7 (O) RESTRICTION ON TRANSFERS TO
8 BRIDGE FINANCIAL COMPANY.—

9 (i) SECTION OF ACCOUNTS FOR
10 TRANSFER.—If the Corporation establishes
11 one or more bridge financial companies
12 with respect to a covered broker or dealer,
13 the Corporation shall transfer to a bridge
14 financial company, all customer accounts
15 of the covered financial company, unless
16 the Corporation, after consulting with the
17 Commission and SIPC, determines that—

18 (I) the customer accounts are
19 likely to be promptly transferred to
20 another covered broker or dealer; or

21 (II) the transfer of the accounts
22 to a bridge financial company would
23 materially interfere with the ability of
24 the Corporation to avoid or mitigate
25 serious adverse effects on financial

1 stability or economic conditions in the
2 United States.

3 (ii) TRANSFER OF PROPERTY.—SIPC,
4 as trustee for the liquidation of the covered
5 broker or dealer, and the Commission,
6 shall provide any and all reasonable assist-
7 ance necessary to complete such transfers
8 by the Corporation.

9 (iii) CUSTOMER CONSENT AND COURT
10 APPROVAL NOT REQUIRED.—Neither cus-
11 tomer consent nor court approval shall be
12 required to transfer any customer accounts
13 and associated customer property to a
14 bridge financial company in accordance
15 with this section.

16 (iv) NOTIFICATION OF SIPC AND
17 SHARING OF INFORMATION.—The Corpora-
18 tion shall identify to SIPC the customer
19 accounts and associated customer property
20 transferred to the bridge financial com-
21 pany. The Corporation and SIPC shall co-
22 operate in the sharing of any information
23 necessary for each entity to discharge its
24 obligations under this title and under the
25 Securities Investor Protection Act of 1970

1 (15 U.S.C. 78aaa et seq.) including by pro-
2 viding access to the books and records of
3 the covered financial company and any
4 bridge financial company established in ac-
5 cordance with this title.

6 (2) DETERMINATION OF CLAIMS.—

7 (A) IN GENERAL.—The Corporation, as re-
8 ceiver for a covered financial company, shall re-
9 port on claims, as set forth in section 203(c)(3).
10 Subject to paragraph (4) of this subsection, the
11 Corporation, as receiver for a covered financial
12 company, shall determine claims in accordance
13 with the requirements of this subsection and
14 regulations prescribed under section 209.

15 (B) NOTICE REQUIREMENTS.—The Cor-
16 poration, as receiver for a covered financial
17 company, in any case involving the liquidation
18 or winding up of the affairs of a covered finan-
19 cial company, shall—

20 (i) promptly publish a notice to the
21 creditors of the covered financial company
22 to present their claims, together with
23 proof, to the receiver by a date specified in
24 the notice, which shall be not earlier than

1 90 days after the date of publication of
2 such notice; and

3 (ii) republish such notice 1 month and
4 2 months, respectively, after the date of
5 publication under clause (i).

6 (C) MAILING REQUIRED.—The Corpora-
7 tion as receiver shall mail a notice similar to
8 the notice published under clause (i) or (ii) of
9 subparagraph (B), at the time of such publica-
10 tion, to any creditor shown on the books and
11 records of the covered financial company—

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

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

16 (iii) upon discovery of the name and
17 address of a claimant not appearing on the
18 books and records of the covered financial
19 company, not later than 30 days after the
20 date of the discovery of such name and ad-
21 dress.

22 (3) PROCEDURES FOR RESOLUTION OF
23 CLAIMS.—

24 (A) DECISION PERIOD.—

1 (i) IN GENERAL.—Prior to the 180th
2 day after the date on which a claim
3 against a covered financial company is
4 filed with the Corporation as receiver, or
5 such later date as may be agreed as pro-
6 vided in clause (ii), the Corporation shall
7 notify the claimant whether it accepts or
8 objects to the claim, in accordance with
9 subparagraphs (B), (C), and (D).

10 (ii) EXTENSION OF TIME.—By written
11 agreement executed not later than 180
12 days after the date on which a claim
13 against a covered financial company is
14 filed with the Corporation, the period de-
15 scribed in clause (i) may be extended by
16 written agreement between the claimant
17 and the Corporation. Failure to notify the
18 claimant of any disallowance within the
19 time period set forth in clause (i), as it
20 may be extended by agreement under this
21 clause, shall be deemed to be a disallow-
22 ance of such claim, and the claimant may
23 file or continue an action in court, as pro-
24 vided in paragraph (4).

1 (iii) MAILING OF NOTICE SUFFI-
2 CIENT.—The requirements of clause (i)
3 shall be deemed to be satisfied if the notice
4 of any decision with respect to any claim
5 is mailed to the last address of the claim-
6 ant which appears—

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

9 (II) in the claim filed by the
10 claimant; or

11 (III) in documents submitted in
12 proof of the claim.

13 (iv) CONTENTS OF NOTICE OF DIS-
14 ALLOWANCE.—If the Corporation as re-
15 ceiver objects to any claim filed under
16 clause (i), the notice to the claimant shall
17 contain—

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

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

23 (B) ALLOWANCE OF PROVEN CLAIM.—The
24 receiver shall allow any claim received by the
25 receiver on or before the date specified in the

1 notice under paragraph (2)(B)(i), which is
2 proved to the satisfaction of the receiver.

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

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

10 (ii) CERTAIN EXCEPTIONS.—Clause
11 (i) shall not apply with respect to any
12 claim filed by a claimant after the date
13 specified in the notice published under
14 paragraph (2)(B)(i), and such claim may
15 be considered by the receiver under sub-
16 paragraph (B), if—

17 (I) the claimant did not receive
18 notice of the appointment of the re-
19 ceiver in time to file such claim before
20 such date; and

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

23 (D) AUTHORITY TO DISALLOW CLAIMS.—

24 (i) IN GENERAL.—The Corporation
25 may object to any portion of any claim by

1 a creditor or claim of a security, pref-
2 erence, setoff, or priority which is not
3 proved to the satisfaction of the Corpora-
4 tion.

5 (ii) PAYMENTS TO UNDERSECURED
6 CREDITORS.—In the case of a claim
7 against a covered financial company that is
8 secured by any property or other asset of
9 such covered financial company, the re-
10 ceiver—

11 (I) may treat the portion of such
12 claim which exceeds an amount equal
13 to the fair market value of such prop-
14 erty or other asset as an unsecured
15 claim; and

16 (II) may not make any payment
17 with respect to such unsecured por-
18 tion of the claim, other than in con-
19 nection with the disposition of all
20 claims of unsecured creditors of the
21 covered financial company.

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

1 (I) any extension of credit from
2 any Federal reserve bank, or the Cor-
3 poration, to any covered financial
4 company; or

5 (II) subject to clause (ii), any le-
6 gally enforceable and perfected secu-
7 rity interest in the assets of the cov-
8 ered financial company securing any
9 such extension of credit.

10 (E) LEGAL EFFECT OF FILING.—

11 (i) STATUTE OF LIMITATIONS
12 TOLLED.—For purposes of any applicable
13 statute of limitations, the filing of a claim
14 with the receiver shall constitute a com-
15 mencement of an action.

16 (ii) NO PREJUDICE TO OTHER AC-
17 TIONS.—Subject to paragraph (8), the fil-
18 ing of a claim with the receiver shall not
19 prejudice any right of the claimant to con-
20 tinue any action which was filed before the
21 date of appointment of the receiver for the
22 covered financial company.

23 (4) JUDICIAL DETERMINATION OF CLAIMS.—

24 (A) IN GENERAL.—Subject to subpara-
25 graph (B), a claimant may file suit on a claim

1 (or continue an action commenced before the
2 date of appointment of the Corporation as re-
3 ceiver) in the district or territorial court of the
4 United States for the district within which the
5 principal place of business of the covered finan-
6 cial company is located (and such court shall
7 have jurisdiction to hear such claim).

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

11 (i) the end of the period described in
12 paragraph (3)(A)(i) (or, if extended by
13 agreement of the Corporation and the
14 claimant, the period described in para-
15 graph (3)(A)(ii)) with respect to any claim
16 against a covered financial company for
17 which the Corporation is receiver; or

18 (ii) the date of any notice of disallow-
19 ance of such claim pursuant to paragraph
20 (3)(A)(i).

21 (C) STATUTE OF LIMITATIONS.—If any
22 claimant fails to file suit on such claim (or to
23 continue an action on such claim commenced
24 before the date of appointment of the Corpora-
25 tion as receiver) prior to the end of the 60-day

1 period described in subparagraph (B), the claim
2 shall be deemed to be disallowed (other than
3 any portion of such claim which was allowed by
4 the receiver) as of the end of such period, such
5 disallowance shall be final, and the claimant
6 shall have no further rights or remedies with re-
7 spect to such claim.

8 (5) EXPEDITED DETERMINATION OF CLAIMS.—

9 (A) PROCEDURE REQUIRED.—The Cor-
10 poration shall establish a procedure for expe-
11 dited relief outside of the claims process estab-
12 lished under paragraph (3), for any claimant
13 that alleges—

14 (i) the existence of a legally valid and
15 enforceable or perfected security interest in
16 property of a covered financial company, or
17 is an entitlement holder that has obtained
18 control of any legally valid and enforceable
19 security entitlement in respect of any asset
20 held by the covered financial company for
21 which the Corporation has been appointed
22 receiver; and

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

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

6 (i) determine—

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

9 (II) whether such claim should be
10 determined pursuant to the proce-
11 dures established pursuant to para-
12 graph (3);

13 (ii) notify the claimant of the deter-
14 mination; and

15 (iii) if the claim is disallowed, provide
16 a statement of each reason for the dis-
17 allowance and the procedure for obtaining
18 a judicial determination.

19 (C) PERIOD FOR FILING OR RENEWING
20 SUIT.—Any claimant who files a request for ex-
21 pedited relief shall be permitted to file suit (or
22 continue a suit filed before the date of appoint-
23 ment of the Corporation as receiver seeking a
24 determination of the rights of the claimant with

1 respect to such security interest (or such secu-
2 rity entitlement) after the earlier of—

3 (i) the end of the 90-day period begin-
4 ning on the date of the filing of a request
5 for expedited relief; or

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

8 (D) STATUTE OF LIMITATIONS.—If an ac-
9 tion described in subparagraph (C) is not filed,
10 or the motion to renew a previously filed suit is
11 not made, before the end of the 30-day period
12 beginning on the date on which such action or
13 motion may be filed in accordance with sub-
14 paragraph (C), the claim shall be deemed to be
15 disallowed as of the end of such period (other
16 than any portion of such claim which was al-
17 lowed by the receiver), such disallowance shall
18 be final, and the claimant shall have no further
19 rights or remedies with respect to such claim.

20 (E) LEGAL EFFECT OF FILING.—

21 (i) STATUTE OF LIMITATIONS
22 TOLLED.—For purposes of any applicable
23 statute of limitations, the filing of a claim
24 with the receiver shall constitute a com-
25 mencement of an action.

1 (ii) NO PREJUDICE TO OTHER AC-
2 TIONS.—Subject to paragraph (8), the fil-
3 ing of a claim with the receiver shall not
4 prejudice any right of the claimant to con-
5 tinue any action which was filed before the
6 appointment of the Corporation as receiver
7 for the covered financial company.

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

14 (A) is in writing;

15 (B) was executed by an authorized officer
16 or representative of the covered financial com-
17 pany, or confirmed in the ordinary course of
18 business by the covered financial company; and

19 (C) has been, since the time of its execu-
20 tion, an official record of the company or the
21 party claiming under the agreement provides
22 documentation, acceptable to the receiver, of
23 such agreement and its authorized execution or
24 confirmation by the covered financial company.

25 (7) PAYMENT OF CLAIMS.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), the Corporation as receiver may, in
3 its discretion and to the extent that funds are
4 available, pay creditor claims, in such manner
5 and amounts as are authorized under this sec-
6 tion, which are—

7 (i) allowed by the receiver;

8 (ii) approved by the receiver pursuant
9 to a final determination pursuant to para-
10 graph (3) or (5), as applicable; or

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

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

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

1 (D) RULEMAKING BY THE CORPORA-
2 TION.—The Corporation may prescribe such
3 rules, including definitions of terms, as the Cor-
4 poration deems appropriate to establish an in-
5 terest rate for or to make payments of post-in-
6 solvency interest to creditors holding proven
7 claims against the receivership estate of a cov-
8 ered financial company, except that no such in-
9 terest shall be paid until the Corporation as re-
10 ceiver has satisfied the principal amount of all
11 creditor claims.

12 (8) SUSPENSION OF LEGAL ACTIONS.—

13 (A) IN GENERAL.—After the appointment
14 of the Corporation as receiver for a covered fi-
15 nancial company, the Corporation may request
16 a stay in any judicial action or proceeding in
17 which such covered financial company is or be-
18 comes a party, for a period of not to exceed 90
19 days.

20 (B) GRANT OF STAY BY ALL COURTS RE-
21 QUIRED.—Upon receipt of a request by the Cor-
22 poration pursuant to subparagraph (A), the
23 court shall grant such stay as to all parties.

24 (9) ADDITIONAL RIGHTS AND DUTIES.—

1 (A) PRIOR FINAL ADJUDICATION.—The
2 Corporation shall abide by any final, non-ap-
3 pealable judgment of any court of competent ju-
4 risdiction that was rendered before the appoint-
5 ment of the Corporation as receiver.

6 (B) RIGHTS AND REMEDIES OF RE-
7 CEIVER.—In the event of any appealable judg-
8 ment, the Corporation as receiver shall—

9 (i) have all the rights and remedies
10 available to the covered financial company
11 (before the date of appointment of the Cor-
12 poration as receiver under section 202)
13 and the Corporation, including removal to
14 Federal court and all appellate rights; and

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

17 (C) NO ATTACHMENT OR EXECUTION.—No
18 attachment or execution may be issued by any
19 court upon assets in the possession of the Cor-
20 poration as receiver for a covered financial com-
21 pany.

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

1 (i) any claim or action for payment
2 from, or any action seeking a determina-
3 tion of rights with respect to, the assets of
4 any covered financial company for which
5 the Corporation has been appointed re-
6 ceiver, including any assets which the Cor-
7 poration may acquire from itself as such
8 receiver; or

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

12 (E) DISPOSITION OF ASSETS.—In exer-
13 cising any right, power, privilege, or authority
14 as receiver in connection with any covered fi-
15 nancial company for which the Corporation is
16 acting as receiver under this section, the Cor-
17 poration shall, to the greatest extent prac-
18 ticable, conduct its operations in a manner
19 that—

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

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

- 1 (iii) mitigates the potential for serious
2 adverse effects to the financial system;
3 (iv) ensures timely and adequate com-
4 petition and fair and consistent treatment
5 of offerors; and
6 (v) prohibits discrimination on the
7 basis of race, sex, or ethnic group in the
8 solicitation and consideration of offers.

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

11 (A) IN GENERAL.—Notwithstanding any
12 provision of any contract, the applicable statute
13 of limitations with regard to any action brought
14 by the Corporation as receiver for a covered fi-
15 nancial company shall be—

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

18 (I) the 6-year period beginning
19 on the date on which the claim ac-
20 crues; or

21 (II) the period applicable under
22 State law; and

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

1 (I) the 3-year period beginning
2 on the date on which the claim ac-
3 crues; or

4 (II) the period applicable under
5 State law.

6 (B) DATE ON WHICH A CLAIM ACCRUES.—

7 For purposes of subparagraph (A), the date on
8 which the statute of limitations begins to run
9 on any claim described in subparagraph (A)
10 shall be the later of—

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

13 (ii) the date on which the cause of ac-
14 tion accrues.

15 (C) REVIVAL OF EXPIRED STATE CAUSES
16 OF ACTION.—

17 (i) IN GENERAL.—In the case of any
18 tort claim described in clause (ii) for which
19 the applicable statute of limitations under
20 State law has expired not more than 5
21 years before the date of appointment of the
22 Corporation as receiver for a covered fi-
23 nancial company, the Corporation may
24 bring an action as receiver on such claim

1 without regard to the expiration of the
2 statute of limitations.

3 (ii) CLAIMS DESCRIBED.—A tort
4 claim referred to in clause (i) is a claim
5 arising from fraud, intentional misconduct
6 resulting in unjust enrichment, or inten-
7 tional misconduct resulting in substantial
8 loss to the covered financial company.

9 (11) AVOIDABLE TRANSFERS.—

10 (A) FRAUDULENT TRANSFERS.—The Cor-
11 poration, as receiver for any covered financial
12 company, may avoid a transfer of any interest
13 of the covered financial company in property, or
14 any obligation incurred by the covered financial
15 company, that was made or incurred at or with-
16 in 2 years before the time of commencement,
17 if—

18 (i) the covered financial company vol-
19 untarily or involuntarily—

20 (I) made such transfer or in-
21 curred such obligation with actual in-
22 tent to hinder, delay, or defraud any
23 entity to which the covered financial
24 company was or became, on or after
25 the date on which such transfer was

1 made or such obligation was incurred,
2 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 obli-
10 gation was incurred, or became insol-
11 vent as a result of such transfer or
12 obligation;

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 fi-
23 nancial company to pay as such debts
24 matured; 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
6 of business.

7 (B) PREFERENTIAL TRANSFERS.—The
8 Corporation as receiver for any covered finan-
9 cial company may avoid a transfer of an inter-
10 est of the covered financial company in prop-
11 erty—

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

13 (ii) for or on account of an antecedent
14 debt that was owed by the covered finan-
15 cial company before the transfer was made;

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

18 (iv) that was made—

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

22 (II) more than 90 days, but less
23 than 1 year before the date on which
24 the Corporation was appointed re-

1 ceiver, if such creditor at the time of
2 the transfer was an insider; and

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

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

8 (II) the transfer had not been
9 made; and

10 (III) the creditor received pay-
11 ment of such debt to the extent pro-
12 vided by the provisions of chapter 7 of
13 the Bankruptcy Code.

14 (C) POST-RECEIVERSHIP TRANSACTIONS.—

15 The Corporation as receiver for any covered fi-
16 nancial company may avoid a transfer of prop-
17 erty of the receivership that occurred after the
18 Corporation was appointed receiver that was
19 not authorized under this title by the Corpora-
20 tion as receiver.

21 (D) RIGHT OF RECOVERY.—To the extent
22 that a transfer is avoided under subparagraph
23 (A), (B), or (C), the Corporation may recover,
24 for the benefit of the covered financial com-
25 pany, the property transferred or, if a court so

orders, the value of such property (at the time of such transfer) from—

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

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

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

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

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

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

(i) a transferee or obligee from which the Corporation seeks to recover a transfer or to avoid an obligation under subparagraph (A), (B), (C), or (D) shall have the same defenses available to a transferee or obligee from which a trustee seeks to re-

1 cover a transfer or avoid an obligation
2 under; and

3 (ii) the authority of the Corporation
4 to recover a transfer or avoid an obligation
5 shall be subject to subsections (b) and (c)
6 of section 546, section 547(c), and section
7 548(c) of the Bankruptcy Code.

8 (G) RIGHTS UNDER THIS SECTION.—The
9 rights of the Corporation as receiver under this
10 section shall be superior to any rights of a
11 trustee or any other party (other than a Fed-
12 eral agency) under the Bankruptcy Code.

13 (H) RULES OF CONSTRUCTION; DEFINI-
14 TIONS.—For purposes of—

15 (i) subparagraphs (A) and (B)—

16 (I) the term “insider” has the
17 same meaning as in section 101(31)
18 of the Bankruptcy Code;

19 (II) a transfer is made when
20 such transfer is so perfected that a
21 bona fide purchaser from the covered
22 financial company against whom ap-
23 plicable law permits such transfer to
24 be perfected cannot acquire an inter-
25 est in the property transferred that is

1 superior to the interest in such prop-
2 erty of the transferee, but if such
3 transfer is not so perfected before the
4 date on which the Corporation is ap-
5 pointed as receiver for the covered fi-
6 nancial company, such transfer is
7 made immediately before the date of
8 such appointment; and

9 (III) the term “value” means
10 property, or satisfaction or securing of
11 a present or antecedent debt of the
12 covered financial company, but does
13 not include an unperformed promise
14 to furnish support to the covered fi-
15 nancial company; and

16 (ii) subparagraph (B)—

17 (I) the covered financial company
18 is presumed to have been insolvent on
19 and during the 90-day period imme-
20 diately preceding the date of appoint-
21 ment of the Corporation as receiver;
22 and

23 (II) the term “insolvent” has the
24 same meaning as in section 101(32)
25 of the Bankruptcy Code.

1 (12) SETOFF.—

2 (A) GENERALLY.—Except as otherwise
3 provided in this title, any right of a creditor to
4 offset a mutual debt owed by the creditor to
5 any covered financial company that arose before
6 the Corporation was appointed as receiver for
7 the covered financial company against a claim
8 of such creditor may be asserted if enforceable
9 under applicable noninsolvency law, except to
10 the extent that—

11 (i) the claim of the creditor against
12 the covered financial company is dis-
13 allowed;

14 (ii) the claim was transferred, by an
15 entity other than the covered financial
16 company, to the creditor—

17 (I) after the Corporation was ap-
18 pointed as receiver of the covered fi-
19 nancial company; or

20 (II)(aa) after the 90-day period
21 preceding the date on which the Cor-
22 poration was appointed as receiver for
23 the covered financial company; and

24 (bb) while the covered financial
25 company was insolvent (except for a

1 setoff in connection with a qualified
2 financial contract); or

3 (iii) the debt owed to the covered fi-
4 nancial company was incurred by the cov-
5 ered financial company—

6 (I) after the 90-day period pre-
7 ceding the date on which the Corpora-
8 tion was appointed as receiver for the
9 covered financial company;

10 (II) while the covered financial
11 company was insolvent; and

12 (III) for the purpose of obtaining
13 a right of setoff against the covered
14 financial company (except for a setoff
15 in connection with a qualified finan-
16 cial contract).

17 (B) INSUFFICIENCY.—

18 (i) IN GENERAL.—Except with respect
19 to a setoff in connection with a qualified fi-
20 nancial contract, if a creditor offsets a mu-
21 tual debt owed to the covered financial
22 company against a claim of the covered fi-
23 nancial company on or within the 90-day
24 period preceding the date on which the
25 Corporation is appointed as receiver for

1 the covered financial company, the Cor-
2 poration may recover from the creditor the
3 amount so offset, to the extent that any in-
4 sufficiency on the date of such setoff is less
5 than the insufficiency on the later of—

6 (I) the date that is 90 days be-
7 fore the date on which the Corpora-
8 tion is appointed as receiver for the
9 covered financial company; or

10 (II) the first day on which there
11 is an insufficiency during the 90-day
12 period preceding the date on which
13 the Corporation is appointed as re-
14 ceiver for the covered financial com-
15 pany.

16 (ii) DEFINITION OF INSUFFI-
17 CIENCY.—In this subparagraph, the term
18 “insufficiency” means the amount, if any,
19 by which a claim against the covered finan-
20 cial company exceeds a mutual debt owed
21 to the covered financial company by the
22 holder of such claim.

23 (C) INSOLVENCY.—The term “insolvent”
24 has the same meaning as in section 101(32) of
25 the Bankruptcy Code.

1 (D) PRESUMPTION OF INSOLVENCY.—For
2 purposes of this paragraph, the covered finan-
3 cial company is presumed to have been insol-
4 vent on and during the 90-day period preceding
5 the date of appointment of the Corporation as
6 receiver.

7 (E) LIMITATION.—Nothing in this para-
8 graph (12) shall be the basis for any right of
9 setoff where no such right exists under applica-
10 ble noninsolvency law.

11 (F) PRIORITY CLAIM.—Except as other-
12 wise provided in this title, the Corporation as
13 receiver for the covered financial company may
14 sell or transfer any assets free and clear of the
15 setoff rights of any party, except that such
16 party shall be entitled to a claim, subordinate
17 to the claims payable under subparagraphs (A),
18 (B), and (C) of subsection (b)(1), but senior to
19 all other unsecured liabilities defined in sub-
20 section (b)(1)(D), in an amount equal to the
21 value of such setoff rights.

22 (13) ATTACHMENT OF ASSETS AND OTHER IN-
23 JUNCTIVE RELIEF.—Subject to paragraph (14), any
24 court of competent jurisdiction may, at the request
25 of the Corporation as receiver for a covered financial

1 company, issue an order in accordance with Rule 65
2 of the Federal Rules of Civil Procedure, including an
3 order placing the assets of any person designated by
4 the Corporation under the control of the court and
5 appointing a trustee to hold such assets.

6 (14) STANDARDS.—

7 (A) SHOWING.—Rule 65 of the Federal
8 Rules of Civil Procedure shall apply with re-
9 spect to any proceeding under paragraph (13),
10 without regard to the requirement that the ap-
11 plicant show that the injury, loss, or damage is
12 irreparable and immediate.

13 (B) STATE PROCEEDING.—If, in the case
14 of any proceeding in a State court, the court
15 determines that rules of civil procedure avail-
16 able under the laws of the State provide sub-
17 stantially similar protections of the right of the
18 parties to due process as provided under Rule
19 65 (as modified with respect to such proceeding
20 by subparagraph (A)), the relief sought by the
21 Corporation pursuant to paragraph (14) may be
22 requested under the laws of such State.

23 (15) TREATMENT OF CLAIMS ARISING FROM
24 BREACH OF CONTRACTS EXECUTED BY THE COR-
25 PORATION AS RECEIVER.—Notwithstanding any

1 other provision of this title, any final and non-ap-
2 pealable judgment for monetary damages entered
3 against the Corporation as receiver for a covered fi-
4 nancial company for the breach of an agreement exe-
5 cuted or approved by the Corporation after the date
6 of its appointment shall be paid as an administrative
7 expense of the receiver. Nothing in this paragraph
8 shall be construed to limit the power of a receiver
9 to exercise any rights under contract or law, includ-
10 ing to terminate, breach, cancel, or otherwise dis-
11 continue such agreement.

12 (16) ACCOUNTING AND RECORDKEEPING RE-
13 QUIREMENTS.—

14 (A) IN GENERAL.—The Corporation as re-
15 ceiver for a covered financial company shall,
16 consistent with the accounting and reporting
17 practices and procedures established by the
18 Corporation, maintain a full accounting of each
19 receivership or other disposition of any covered
20 financial company.

21 (B) ANNUAL ACCOUNTING OR REPORT.—
22 With respect to each receivership to which the
23 Corporation is appointed, the Corporation shall
24 make an annual accounting or report, as appro-

1 appropriate, available to the Secretary and the Comptroller General of the United States.

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3 (C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) and section 203(c)(3) shall be made available to the public by the Corporation.

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7 (D) RECORDKEEPING REQUIREMENT.—

8 (i) IN GENERAL.—The Corporation shall prescribe such regulations and establish such retention schedules as are necessary to maintain the documents and records of the Corporation generated in exercising the authorities of this title and the records of a covered financial company for which the Corporation is appointed receiver, with due regard for—

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16 (I) the avoidance of duplicative record retention; and

17 (II) the expected evidentiary needs of the Corporation as receiver for a covered financial company and the public regarding the records of covered financial companies.

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24 (ii) RETENTION OF RECORDS.—Unless otherwise required by applicable Fed-

1 eral law or court order, the Corporation
2 may not, at any time, destroy any records
3 that are subject to clause (i).

4 (iii) RECORDS DEFINED.—As used in
5 this subparagraph, the terms “records”
6 and “records of a covered financial com-
7 pany” mean any document, book, paper,
8 map, photograph, microfiche, microfilm,
9 computer or electronically-created record
10 generated or maintained by the covered fi-
11 nancial company in the course of and nec-
12 essary to its transaction of business.

13 (b) PRIORITY OF EXPENSES AND UNSECURED
14 CLAIMS.—

15 (1) IN GENERAL.—Unsecured claims against a
16 covered financial company, or the Corporation as re-
17 ceiver for such covered financial company under this
18 section, that are proven to the satisfaction of the re-
19 ceiver shall have priority in the following order:

20 (A) Administrative expenses of the re-
21 ceiver.

22 (B) Any amounts owed to the United
23 States, unless the United States agrees or con-
24 sents otherwise.

1 (C) Any other general or senior liability of
2 the covered financial company (which is not a
3 liability described under subparagraph (D) or
4 (E)).

5 (D) Any obligation subordinated to general
6 creditors (which is not an obligation described
7 under subparagraph (E)).

8 (E) Any obligation to shareholders, mem-
9 bers, general partners, limited partners, or
10 other persons, with interests in the equity of
11 the covered financial company arising as a re-
12 sult of their status as shareholders, members,
13 general partners, limited partners, or other per-
14 sons with interests in the equity of the covered
15 financial company.

16 (2) POST-RECEIVERSHIP FINANCING PRI-
17 ORITY.—In the event that the Corporation, as re-
18 ceiver for a covered financial company, is unable to
19 obtain unsecured credit for the covered financial
20 company from commercial sources, the Corporation
21 as receiver may obtain credit or incur debt on the
22 part of the covered financial company, which shall
23 have priority over any or all administrative expenses
24 of the receiver under paragraph (1)(A).

1 (3) CLAIMS OF THE UNITED STATES.—Unse-
2 cured claims of the United States shall, at a min-
3 imum, have a higher priority than liabilities of the
4 covered financial company that count as regulatory
5 capital.

6 (4) CREDITORS SIMILARLY SITUATED.—All
7 claimants of a covered financial company that are
8 similarly situated under paragraph (1) shall be
9 treated in a similar manner, except that the Cor-
10 poration as receiver may take any action (including
11 making payments, subject to subsection
12 (o)(1)(E)(ii)) that does not comply with this sub-
13 section, if—

14 (A) the Corporation determines that such
15 action is necessary—

16 (i) to maximize the value of the assets
17 of the covered financial company;

18 (ii) to maximize the present value re-
19 turn from the sale or other disposition of
20 the assets of the covered financial com-
21 pany; or

22 (iii) to minimize the amount of any
23 loss realized upon the sale or other disposi-
24 tion of the assets of the covered financial
25 company; and

1 (B) all claimants that are similarly situ-
2 ated under paragraph (1) receive not less than
3 the amount provided in paragraphs (2) and (3)
4 of subsection (d).

5 (5) SECURED CLAIMS UNAFFECTED.—This sec-
6 tion shall not affect secured claims or security enti-
7 tlements in respect of assets or property held by the
8 covered financial company, except to the extent that
9 the security is insufficient to satisfy the claim, and
10 then only with regard to the difference between the
11 claim and the amount realized from the security.

12 (6) PRIORITY OF EXPENSES AND UNSECURED
13 CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC
14 MEMBER.—Where the Corporation is appointed as
15 receiver for a covered broker or dealer, unsecured
16 claims against such covered broker or dealer, or the
17 Corporation as receiver for such covered broker or
18 dealer under this section, that are proven to the sat-
19 isfaction of the receiver under section 205(e), shall
20 have the priority prescribed in paragraph (1), except
21 that—

22 (A) SIPC shall be entitled to recover ad-
23 ministrative expenses incurred in performing its
24 responsibilities under section 205 on an equal

1 basis with the Corporation, in accordance with
2 paragraph (1)(A);

3 (B) the Corporation shall be entitled to re-
4 cover any amounts paid to customers or to
5 SIPC pursuant to section 205(f), in accordance
6 with paragraph (1)(B);

7 (C) SIPC shall be entitled to recover any
8 amounts paid out of the SIPC Fund to meet its
9 obligations under section 205 and under the Se-
10 curities Investor Protection Act of 1970 (15
11 U.S.C. 78aaa et seq.), which claim shall be sub-
12 ordinate to the claims payable under subpara-
13 graphs (A) and (B) of paragraph (1), but sen-
14 ior to all other claims; and

15 (D) the Corporation may, after paying any
16 proven claims to customers under section 205
17 and the Securities Investor Protection Act of
18 1970 (15 U.S.C. 78aaa et seq.), and as pro-
19 vided above, pay dividends on other proven
20 claims, in its discretion, and to the extent that
21 funds are available, in accordance with the pri-
22 orities set forth in paragraph (1).

23 (c) PROVISIONS RELATING TO CONTRACTS ENTERED

24 INTO BEFORE APPOINTMENT OF RECEIVER.—

1 (1) AUTHORITY TO REPUDIATE CONTRACTS.—

2 In addition to any other rights that a receiver may
3 have, the Corporation as receiver for any covered fi-
4 nancial company may disaffirm or repudiate any
5 contract or lease—

6 (A) to which the covered financial company
7 is a party;

8 (B) the performance of which the Corpora-
9 tion as receiver, in the discretion of the Cor-
10 poration, determines to be burdensome; and

11 (C) the disaffirmance or repudiation of
12 which the Corporation as receiver determines,
13 in the discretion of the Corporation, will pro-
14 mote the orderly administration of the affairs of
15 the covered financial company.

16 (2) TIMING OF REPUDIATION.—The Corpora-
17 tion, as receiver for any covered financial company,
18 shall determine whether or not to exercise the rights
19 of repudiation under this section within a reasonable
20 period of time.

21 (3) CLAIMS FOR DAMAGES FOR REPUDI-
22 ATION.—

23 (A) IN GENERAL.—Except as provided in
24 paragraphs (4), (5), and (6) and in subpara-
25 graphs (C), (D), and (E) of this paragraph, the

liability of the Corporation as receiver for a covered financial company for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the Corporation as receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—

In the case of any qualified financial contract

1 or agreement to which paragraph (8) applies,
2 compensatory damages shall be—

3 (i) deemed to include normal and rea-
4 sonable costs of cover or other reasonable
5 measures of damages utilized in the indus-
6 tries for such contract and agreement
7 claims; and

8 (ii) paid in accordance with this para-
9 graph and subsection (d), except as other-
10 wise specifically provided in this sub-
11 section.

12 (D) MEASURE OF DAMAGES FOR REPUDI-
13 ATION OR DISAFFIRMANCE OF DEBT OBLIGA-
14 TION.—In the case of any debt for borrowed
15 money or evidenced by a security, actual direct
16 compensatory damages shall be no less than the
17 amount lent plus accrued interest plus any
18 accreted original issue discount as of the date
19 the Corporation was appointed receiver of the
20 covered financial company and, to the extent
21 that an allowed secured claim is secured by
22 property the value of which is greater than the
23 amount of such claim and any accrued interest
24 through the date of repudiation or

1 disaffirmance, such accrued interest pursuant
2 to paragraph (1).

3 (E) MEASURE OF DAMAGES FOR REPUDI-
4 ATION OR DISAFFIRMANCE OF CONTINGENT OB-
5 LIGATION.—In the case of any contingent obli-
6 gation of a covered financial company con-
7 sisting of any obligation under a guarantee, let-
8 ter of credit, loan commitment, or similar credit
9 obligation, the Corporation may, by rule or reg-
10 ulation, prescribe that actual direct compen-
11 satory damages shall be no less than the esti-
12 mated value of the claim as of the date the Cor-
13 poration was appointed receiver of the covered
14 financial company, as such value is measured
15 based on the likelihood that such contingent
16 claim would become fixed and the probable
17 magnitude thereof.

18 (4) LEASES UNDER WHICH THE COVERED FI-
19 NANCIAL COMPANY IS THE LESSEE.—

20 (A) IN GENERAL.—If the Corporation as
21 receiver disaffirms or repudiates a lease under
22 which the covered financial company is the les-
23 see, the receiver shall not be liable for any dam-
24 ages (other than damages determined pursuant

1 to subparagraph (B)) for the disaffirmance or
2 repudiation of such lease.

3 (B) PAYMENTS OF RENT.—Notwith-
4 standing subparagraph (A), the lessor under a
5 lease to which subparagraph (A) would other-
6 wise apply shall—

7 (i) be entitled to the contractual rent
8 accruing before the later of the date on
9 which—

10 (I) the notice of disaffirmance or
11 repudiation is mailed; or

12 (II) the disaffirmance or repudi-
13 ation becomes effective, unless the les-
14 sor is in default or breach of the
15 terms of the lease;

16 (ii) have no claim for damages under
17 any acceleration clause or other penalty
18 provision in the lease; and

19 (iii) have a claim for any unpaid rent,
20 subject to all appropriate offsets and de-
21 fenses, due as of the date of the appoint-
22 ment which shall be paid in accordance
23 with this paragraph and subsection (d).

24 (5) LEASES UNDER WHICH THE COVERED FI-
25 NANCIAL COMPANY IS THE LESSOR.—

1 (A) IN GENERAL.—If the Corporation as
2 receiver for a covered financial company repudi-
3 ates an unexpired written lease of real property
4 of the covered financial company under which
5 the covered financial company is the lessor and
6 the lessee is not, as of the date of such repudi-
7 ation, in default, the lessee under such lease
8 may either—

9 (i) treat the lease as terminated by
10 such repudiation; or

11 (ii) remain in possession of the lease-
12 hold interest for the balance of the term of
13 the lease, unless the lessee defaults under
14 the terms of the lease after the date of
15 such repudiation.

16 (B) PROVISIONS APPLICABLE TO LESSEE
17 REMAINING IN POSSESSION.—If any lessee
18 under a lease described in subparagraph (A) re-
19 mains in possession of a leasehold interest pur-
20 suant to clause (ii) of subparagraph (A)—

21 (i) the lessee—

22 (I) shall continue to pay the con-
23 tractual rent pursuant to the terms of
24 the lease after the date of the repudi-
25 ation of such lease; and

1 (II) may offset against any rent
2 payment which accrues after the date
3 of the repudiation of the lease, any
4 damages which accrue after such date
5 due to the nonperformance of any ob-
6 ligation of the covered financial com-
7 pany under the lease after such date;
8 and

9 (ii) the Corporation as receiver shall
10 not be liable to the lessee for any damages
11 arising after such date as a result of the
12 repudiation, other than the amount of any
13 offset allowed under clause (i)(II).

14 (6) CONTRACTS FOR THE SALE OF REAL PROP-
15 erty.—

16 (A) IN GENERAL.—If the receiver repudi-
17 ates any contract (which meets the require-
18 ments of subsection (a)(6)) for the sale of real
19 property, and the purchaser of such real prop-
20 erty under such contract is in possession and is
21 not, as of the date of such repudiation, in de-
22 fault, such purchaser may either—

23 (i) treat the contract as terminated by
24 such repudiation; or

1 (ii) remain in possession of such real
2 property.

3 (B) PROVISIONS APPLICABLE TO PUR-
4 CHASER REMAINING IN POSSESSION.—If any
5 purchaser of real property under any contract
6 described in subparagraph (A) remains in pos-
7 session of such property pursuant to clause (ii)
8 of subparagraph (A)—

9 (i) the purchaser—

10 (I) shall continue to make all
11 payments due under the contract after
12 the date of the repudiation of the con-
13 tract; and

14 (II) may offset against any such
15 payments any damages which accrue
16 after such date due to the non-
17 performance (after such date) of any
18 obligation of the covered financial
19 company under the contract; and

20 (ii) the Corporation as receiver shall—

21 (I) not be liable to the purchaser
22 for any damages arising after such
23 date as a result of the repudiation,
24 other than the amount of any offset
25 allowed under clause (i)(II);

1 (II) deliver title to the purchaser
2 in accordance with the provisions of
3 the contract; and

4 (III) have no obligation under
5 the contract other than the perform-
6 ance required under subclause (II).

7 (C) ASSIGNMENT AND SALE ALLOWED.—

8 (i) IN GENERAL.—No provision of this
9 paragraph shall be construed as limiting
10 the right of the Corporation as receiver to
11 assign the contract described in subpara-
12 graph (A) and sell the property, subject to
13 the contract and the provisions of this
14 paragraph.

15 (ii) NO LIABILITY AFTER ASSIGNMENT
16 AND SALE.—If an assignment and sale de-
17 scribed in clause (i) is consummated, the
18 Corporation as receiver shall have no fur-
19 ther liability under the contract described
20 in subparagraph (A) or with respect to the
21 real property which was the subject of such
22 contract.

23 (7) PROVISIONS APPLICABLE TO SERVICE CON-
24 TRACTS.—

1 (A) SERVICES PERFORMED BEFORE AP-
2 POINTMENT.—In the case of any contract for
3 services between any person and any covered fi-
4 nancial company for which the Corporation has
5 been appointed receiver, any claim of such per-
6 son for services performed before the date of
7 appointment shall be—

8 (i) a claim to be paid in accordance
9 with subsections (a), (b), and (d); and

10 (ii) deemed to have arisen as of the
11 date on which the receiver was appointed.

12 (B) SERVICES PERFORMED AFTER AP-
13 POINTMENT AND PRIOR TO REPUDIATION.—If,
14 in the case of any contract for services de-
15 scribed in subparagraph (A), the Corporation as
16 receiver accepts performance by the other per-
17 son before making any determination to exer-
18 cise the right of repudiation of such contract
19 under this section—

20 (i) the other party shall be paid under
21 the terms of the contract for the services
22 performed; and

23 (ii) the amount of such payment shall
24 be treated as an administrative expense of
25 the receivership.

1 (C) ACCEPTANCE OF PERFORMANCE NO
2 BAR TO SUBSEQUENT REPUDIATION.—The ac-
3 ceptance by the Corporation as receiver for
4 services referred to in subparagraph (B) in con-
5 nection with a contract described in subpara-
6 graph (B) shall not affect the right of the Cor-
7 poration as receiver to repudiate such contract
8 under this section at any time after such per-
9 formance.

10 (8) CERTAIN QUALIFIED FINANCIAL CON-
11 TRACTS.—

12 (A) RIGHTS OF PARTIES TO CONTRACTS.—
13 Subject to subsection (a)(8) and paragraphs (9)
14 and (10) of this subsection, and notwith-
15 standing any other provision of this section, any
16 other provision of Federal law, or the law of
17 any State, no person shall be stayed or prohib-
18 ited from exercising—

19 (i) any right that such person has to
20 cause the termination, liquidation, or accel-
21 eration of any qualified financial contract
22 with a covered financial company which
23 arises upon the date of appointment of the
24 Corporation as receiver for such covered fi-

1 nancial company at any time after such
2 appointment;

3 (ii) any right under any security
4 agreement or arrangement or other credit
5 enhancement related to one or more quali-
6 fied financial contracts described in clause
7 (i); or

8 (iii) any right to offset or net out any
9 termination value, payment amount, or
10 other transfer obligation arising under or
11 in connection with 1 or more contracts or
12 agreements described in clause (i), includ-
13 ing any master agreement for such con-
14 tracts or agreements.

15 (B) APPLICABILITY OF OTHER PROVI-
16 SIONS.—Subsection (a)(8) shall apply in the
17 case of any judicial action or proceeding
18 brought against the Corporation as receiver re-
19 ferred to in subparagraph (A), or the subject
20 covered financial company, by any party to a
21 contract or agreement described in subpara-
22 graph (A)(i) with such covered financial com-
23 pany.

24 (C) CERTAIN TRANSFERS NOT AVOID-
25 ABLE.—

1 (i) IN GENERAL.—Notwithstanding
2 subsection (a)(11), (a)(12), or (c)(12), sec-
3 tion 5242 of the Revised Statutes of the
4 United States, or any other provision of
5 Federal or State law relating to the avoid-
6 ance of preferential or fraudulent trans-
7 fers, the Corporation, whether acting as
8 the Corporation or as receiver for a cov-
9 ered financial company, may not avoid any
10 transfer of money or other property in con-
11 nection with any qualified financial con-
12 tract with a covered financial company.

13 (ii) EXCEPTION FOR CERTAIN TRANS-
14 FERS.—Clause (i) shall not apply to any
15 transfer of money or other property in con-
16 nection with any qualified financial con-
17 tract with a covered financial company if
18 the transferee had actual intent to hinder,
19 delay, or defraud such company, the credi-
20 tors of such company, or the Corporation
21 as receiver appointed for such company.

22 (D) CERTAIN CONTRACTS AND AGREE-
23 MENTS DEFINED.—For purposes of this sub-
24 section, the following definitions shall apply:

1 (i) QUALIFIED FINANCIAL CON-
2 TRACT.—The term “qualified financial
3 contract” means any securities contract,
4 commodity contract, forward contract, re-
5 purchase agreement, swap agreement, and
6 any similar agreement that the Corpora-
7 tion determines by regulation, resolution,
8 or order to be a qualified financial contract
9 for purposes of this paragraph.

10 (ii) SECURITIES CONTRACT.—The
11 term “securities contract”—

12 (I) means a contract for the pur-
13 chase, sale, or loan of a security, a
14 certificate of deposit, a mortgage loan,
15 any interest in a mortgage loan, a
16 group or index of securities, certifi-
17 cates of deposit, or mortgage loans or
18 interests therein (including any inter-
19 est therein or based on the value
20 thereof), or any option on any of the
21 foregoing, including any option to
22 purchase or sell any such security,
23 certificate of deposit, mortgage loan,
24 interest, group or index, or option,
25 and including any repurchase or re-

verse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage

1 loans or interests therein (including
2 any interest therein or based on the
3 value thereof) or an option on any of
4 the foregoing, including any option to
5 purchase or sell any such security,
6 certificate of deposit, mortgage loan,
7 interest, group or index, or option
8 (whether or not such settlement is in
9 connection with any agreement or
10 transaction referred to in subclauses
11 (I) through (XII) (other than sub-
12 clause (II)));

13 (V) means any margin loan;

14 (VI) means any extension of
15 credit for the clearance or settlement
16 of securities transactions;

17 (VII) means any loan transaction
18 coupled with a securities collar trans-
19 action, any prepaid securities forward
20 transaction, or any total return swap
21 transaction coupled with a securities
22 sale transaction;

23 (VIII) means any other agree-
24 ment or transaction that is similar to

1 any agreement or transaction referred
2 to in this clause;

3 (IX) means any combination of
4 the agreements or transactions re-
5 ferred to in this clause;

6 (X) means any option to enter
7 into any agreement or transaction re-
8 ferred to in this clause;

9 (XI) means a master agreement
10 that provides for an agreement or
11 transaction referred to in any of sub-
12 clauses (I) through (X), other than
13 subclause (II), together with all sup-
14 plements to any such master agree-
15 ment, without regard to whether the
16 master agreement provides for an
17 agreement or transaction that is not a
18 securities contract under this clause,
19 except that the master agreement
20 shall be considered to be a securities
21 contract under this clause only with
22 respect to each agreement or trans-
23 action under the master agreement
24 that is referred to in any of sub-

1 clauses (I) through (X), other than
2 subclause (II); and

3 (XII) means any security agree-
4 ment or arrangement or other credit
5 enhancement related to any agree-
6 ment or transaction referred to in this
7 clause, including any guarantee or re-
8 imbursement obligation in connection
9 with any agreement or transaction re-
10 ferred to in this clause.

11 (iii) COMMODITY CONTRACT.—The
12 term “commodity contract” means—

13 (I) with respect to a futures com-
14 mission merchant, a contract for the
15 purchase or sale of a commodity for
16 future delivery on, or subject to the
17 rules of, a contract market or board
18 of trade;

19 (II) with respect to a foreign fu-
20 tures commission merchant, a foreign
21 future;

22 (III) with respect to a leverage
23 transaction merchant, a leverage
24 transaction;

1 (IV) with respect to a clearing
2 organization, a contract for the pur-
3 chase or sale of a commodity for fu-
4 ture delivery on, or subject to the
5 rules of, a contract market or board
6 of trade that is cleared by such clear-
7 ing organization, or commodity option
8 traded on, or subject to the rules of,
9 a contract market or board of trade
10 that is cleared by such clearing orga-
11 nization;

12 (V) with respect to a commodity
13 options dealer, a commodity option;

14 (VI) any other agreement or
15 transaction that is similar to any
16 agreement or transaction referred to
17 in this clause;

18 (VII) any combination of the
19 agreements or transactions referred to
20 in this clause;

21 (VIII) any option to enter into
22 any agreement or transaction referred
23 to in this clause;

24 (IX) a master agreement that
25 provides for an agreement or trans-

1 action referred to in any of subclauses
2 (I) through (VIII), together with all
3 supplements to any such master
4 agreement, without regard to whether
5 the master agreement provides for an
6 agreement or transaction that is not a
7 commodity contract under this clause,
8 except that the master agreement
9 shall be considered to be a commodity
10 contract under this clause only with
11 respect to each agreement or trans-
12 action under the master agreement
13 that is referred to in any of sub-
14 clauses (I) through (VIII); or

15 (X) any security agreement or
16 arrangement or other credit enhance-
17 ment related to any agreement or
18 transaction referred to in this clause,
19 including any guarantee or reimburse-
20 ment obligation in connection with
21 any agreement or transaction referred
22 to in this clause.

23 (iv) FORWARD CONTRACT.—The term
24 “forward contract” means—

- 1 (I) a contract (other than a com-
2 modity contract) for the purchase,
3 sale, or transfer of a commodity or
4 any similar good, article, service,
5 right, or interest which is presently or
6 in the future becomes the subject of
7 dealing in the forward contract trade,
8 or product or byproduct thereof, with
9 a maturity date that is more than 10
10 days after the date on which the con-
11 tract is entered into, including a re-
12 purchase or reverse repurchase trans-
13 action (whether or not such repur-
14 chase or reverse repurchase trans-
15 action is a “repurchase agreement”,
16 as defined in clause (v)), consignment,
17 lease, swap, hedge transaction, de-
18 posit, loan, option, allocated trans-
19 action, unallocated transaction, or any
20 other similar agreement;
- 21 (II) any combination of agree-
22 ments or transactions referred to in
23 subclauses (I) and (III);

1 (III) any option to enter into any
2 agreement or transaction referred to
3 in subclause (I) or (II);

4 (IV) a master agreement that
5 provides for an agreement or trans-
6 action referred to in subclause (I),
7 (II), or (III), together with all supple-
8 ments to any such master agreement,
9 without regard to whether the master
10 agreement provides for an agreement
11 or transaction that is not a forward
12 contract under this clause, except that
13 the master agreement shall be consid-
14 ered to be a forward contract under
15 this clause only with respect to each
16 agreement or transaction under the
17 master agreement that is referred to
18 in subclause (I), (II), or (III); or

19 (V) any security agreement or ar-
20 rangement or other credit enhance-
21 ment related to any agreement or
22 transaction referred to in subclause
23 (I), (II), (III), or (IV), including any
24 guarantee or reimbursement obliga-
25 tion in connection with any agreement

1 or transaction referred to in any such
2 subclause.

3 (v) REPURCHASE AGREEMENT.—The
4 term “repurchase agreement” (which defi-
5 nition also applies to a reverse repurchase
6 agreement)—

7 (I) means an agreement, includ-
8 ing related terms, which provides for
9 the transfer of one or more certifi-
10 cates of deposit, mortgage related se-
11 curities (as such term is defined in
12 section 3 of the Securities Exchange
13 Act of 1934), mortgage loans, inter-
14 ests in mortgage-related securities or
15 mortgage loans, eligible bankers’ ac-
16 ceptances, qualified foreign govern-
17 ment securities (which, for purposes
18 of this clause, means a security that is
19 a direct obligation of, or that is fully
20 guaranteed by, the central government
21 of a member of the Organization for
22 Economic Cooperation and Develop-
23 ment, as determined by regulation or
24 order adopted by the Board of Gov-
25 ernors), or securities that are direct

1 obligations of, or that are fully guar-
2 anteed by, the United States or any
3 agency of the United States against
4 the transfer of funds by the transferee
5 of such certificates of deposit, eligible
6 bankers' acceptances, securities, mort-
7 gage loans, or interests with a simul-
8 taneous agreement by such transferee
9 to transfer to the transferor thereof
10 certificates of deposit, eligible bank-
11 ers' acceptances, securities, mortgage
12 loans, or interests as described above,
13 at a date certain not later than 1 year
14 after such transfers or on demand,
15 against the transfer of funds, or any
16 other similar agreement;

17 (II) does not include any repur-
18 chase obligation under a participation
19 in a commercial mortgage loan, unless
20 the Corporation determines, by regu-
21 lation, resolution, or order to include
22 any such participation within the
23 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
10 (I), (III), or (IV), together with all
11 supplements to any such master
12 agreement, without regard to whether
13 the master agreement provides for an
14 agreement or transaction that is not a
15 repurchase agreement under this
16 clause, except that the master agree-
17 ment shall be considered to be a re-
18 purchase agreement under this sub-
19 clause only with respect to each agree-
20 ment or transaction under the master
21 agreement that is referred to in sub-
22 clause (I), (III), or (IV); and

23 (VI) means any security agree-
24 ment or arrangement or other credit
25 enhancement related to any agree-

1 ment or transaction referred to in
2 subclause (I), (III), (IV), or (V), in-
3 cluding any guarantee or reimburse-
4 ment obligation in connection with
5 any agreement or transaction referred
6 to in any such subclause.

7 (vi) SWAP AGREEMENT.—The term
8 “swap agreement” means—

9 (I) any agreement, including the
10 terms and conditions incorporated by
11 reference in any such agreement,
12 which is an interest rate swap, option,
13 future, or forward agreement, includ-
14 ing a rate floor, rate cap, rate collar,
15 cross-currency rate swap, and basis
16 swap; a spot, same day-tomorrow, to-
17 morrow-next, forward, or other for-
18 eign exchange, precious metals, or
19 other commodity agreement; a cur-
20 rency swap, option, future, or forward
21 agreement; an equity index or equity
22 swap, option, future, or forward
23 agreement; a debt index or debt swap,
24 option, future, or forward agreement;
25 a total return, credit spread or credit

1 swap, option, future, or forward
2 agreement; a commodity index or
3 commodity swap, option, future, or
4 forward agreement; weather swap, op-
5 tion, future, or forward agreement; an
6 emissions swap, option, future, or for-
7 ward agreement; or an inflation swap,
8 option, future, or forward agreement;
9 (II) any agreement or transaction
10 that is similar to any other agreement
11 or transaction referred to in this
12 clause and that is of a type that has
13 been, is presently, or in the future be-
14 comes, the subject of recurrent deal-
15 ings in the swap or other derivatives
16 markets (including terms and condi-
17 tions incorporated by reference in
18 such agreement) and that is a for-
19 ward, swap, future, option, or spot
20 transaction on one or more rates, cur-
21 rencies, commodities, equity securities
22 or other equity instruments, debt se-
23 curities or other debt instruments,
24 quantitative measures associated with
25 an occurrence, extent of an occur-

1 rence, or contingency associated with
2 a financial, commercial, or economic
3 consequence, or economic or financial
4 indices or measures of economic or fi-
5 nancial risk or value;

6 (III) any combination of agree-
7 ments or transactions referred to in
8 this clause;

9 (IV) any option to enter into any
10 agreement or transaction referred to
11 in this clause;

12 (V) a master agreement that pro-
13 vides for an agreement or transaction
14 referred to in subclause (I), (II), (III),
15 or (IV), together with all supplements
16 to any such master agreement, with-
17 out regard to whether the master
18 agreement contains an agreement or
19 transaction that is not a swap agree-
20 ment under this clause, except that
21 the master agreement shall be consid-
22 ered to be a swap agreement under
23 this clause only with respect to each
24 agreement or transaction under the
25 master agreement that is referred to

1 in subclause (I), (II), (III), or (IV);
2 and

3 (VI) any security agreement or
4 arrangement or other credit enhance-
5 ment related to any agreement or
6 transaction referred to in any of
7 clauses (I) through (V), including any
8 guarantee or reimbursement obliga-
9 tion in connection with any agreement
10 or transaction referred to in any such
11 clause.

12 (vii) DEFINITIONS RELATING TO DE-
13 FAULT.—When used in this paragraph and
14 paragraph (10)—

15 (I) the term “default” means,
16 with respect to a covered financial
17 company, any adjudication or other
18 official decision by any court of com-
19 petent jurisdiction, or other public au-
20 thority pursuant to which the Cor-
21 poration has been appointed receiver;
22 and

23 (II) the term “in danger of de-
24 fault” means a covered financial com-
25 pany with respect to which the Cor-

1 poration or appropriate State author-
2 ity has determined that—

3 (aa) in the opinion of the
4 Corporation or such authority—

5 (AA) the covered finan-
6 cial company is not likely to
7 be able to pay its obligations
8 in the normal course of busi-
9 ness; and

10 (BB) there is no rea-
11 sonable prospect that the
12 covered financial company
13 will be able to pay such obli-
14 gations without Federal as-
15 sistance; or

16 (bb) in the opinion of the
17 Corporation or such authority—

18 (AA) the covered finan-
19 cial company has incurred or
20 is likely to incur losses that
21 will deplete all or substan-
22 tially all of its capital; and

23 (BB) there is no rea-
24 sonable prospect that the

1 capital will be replenished
2 without Federal assistance.

3 (viii) TREATMENT OF MASTER AGREE-
4 MENT AS ONE AGREEMENT.—Any master
5 agreement for any contract or agreement
6 described in any of clauses (i) through (vi)
7 (or any master agreement for such master
8 agreement or agreements), together with
9 all supplements to such master agreement,
10 shall be treated as a single agreement and
11 a single qualified financial contract. If a
12 master agreement contains provisions re-
13 lating to agreements or transactions that
14 are not themselves qualified financial con-
15 tracts, the master agreement shall be
16 deemed to be a qualified financial contract
17 only with respect to those transactions that
18 are themselves qualified financial con-
19 tracts.

20 (ix) TRANSFER.—The term “transfer”
21 means every mode, direct or indirect, abso-
22 lute or conditional, voluntary or involun-
23 tary, of disposing of or parting with prop-
24 erty or with an interest in property, includ-
25 ing retention of title as a security interest

1 and foreclosure of the equity of redemption
2 of the covered financial company.

3 (x) PERSON.—The term “person” in-
4 cludes any governmental entity in addition
5 to any entity included in the definition of
6 such term in section 1, title 1, United
7 States Code.

8 (E) CLARIFICATION.—No provision of law
9 shall be construed as limiting the right or
10 power of the Corporation, or authorizing any
11 court or agency to limit or delay, in any man-
12 ner, the right or power of the Corporation to
13 transfer any qualified financial contract in ac-
14 cordance with paragraphs (9) and (10) of this
15 subsection or to disaffirm or repudiate any such
16 contract in accordance with subsection (c)(1).

17 (F) WALKAWAY CLAUSES NOT EFFEC-
18 TIVE.—

19 (i) IN GENERAL.—Notwithstanding
20 the provisions of subparagraph (A) of this
21 paragraph and sections 403 and 404 of the
22 Federal Deposit Insurance Corporation
23 Improvement Act of 1991, no walkaway
24 clause shall be enforceable in a qualified fi-

1 nancial contract of a covered financial
2 company in default.

3 (ii) LIMITED SUSPENSION OF CERTAIN
4 OBLIGATIONS.—In the case of a qualified
5 financial contract referred to in clause (i),
6 any payment or delivery obligations other-
7 wise due from a party pursuant to the
8 qualified financial contract shall be sus-
9 pended from the time at which the Cor-
10 poration is appointed as receiver until the
11 earlier of—

12 (I) the time at which such party
13 receives notice that such contract has
14 been transferred pursuant to para-
15 graph (10)(A); or

16 (II) 5:00 p.m. (eastern time) on
17 the 5th business day following the
18 date of the appointment of the Cor-
19 poration as receiver.

20 (iii) WALKAWAY CLAUSE DEFINED.—
21 For purposes of this subparagraph, the
22 term “walkaway clause” means any provi-
23 sion in a qualified financial contract that
24 suspends, conditions, or extinguishes a
25 payment obligation of a party, in whole or

1 in part, or does not create a payment obli-
2 gation of a party that would otherwise
3 exist, solely because of the status of such
4 party as a nondefaulting party in connec-
5 tion with the insolvency of a covered finan-
6 cial company that is a party to the con-
7 tract or the appointment of or the exercise
8 of rights or powers by the Corporation as
9 receiver for such covered financial com-
10 pany, and not as a result of the exercise by
11 a party of any right to offset, setoff, or net
12 obligations that exist under the contract,
13 any other contract between those parties,
14 or applicable law.

15 (iv) CERTAIN OBLIGATIONS TO CLEAR-
16 ING ORGANIZATIONS.—In the event that
17 the Corporation has been appointed as re-
18 ceiver for a covered financial company
19 which is a party to any qualified financial
20 contract cleared by or subject to the rules
21 of a clearing organization (as defined in
22 subsection (c)(9)(D)), the receiver shall use
23 its best efforts to meet all margin, collat-
24 eral, and settlement obligations of the cov-
25 ered financial company that arise under

1 qualified financial contracts (other than
2 any margin, collateral, or settlement obli-
3 gation that is not enforceable against the
4 receiver under paragraph (8)(F)(i) or
5 paragraph (10)(B)), as required by the
6 rules of the clearing organization when
7 due, and such obligations shall not be sus-
8 pended pursuant to paragraph (8)(F)(ii).
9 Notwithstanding paragraph (8)(F)(ii) or
10 (10)(B), if the receiver fails to satisfy any
11 such margin, collateral, or settlement obli-
12 gations under the rules of the clearing or-
13 ganization, the clearing organization shall
14 have the immediate right to exercise, and
15 shall not be stayed from exercising, all of
16 its rights and remedies under its rules and
17 applicable law with respect to any qualified
18 financial contract of the covered financial
19 company, including, without limitation, the
20 right to liquidate all positions and collat-
21 eral of such covered financial company
22 under the company's qualified financial
23 contracts, and suspend or cease to act for
24 such covered financial company, all in ac-

1 cordance with the rules of the clearing or-
2 ganization.

3 (G) RECORDKEEPING.—

4 (i) JOINT RULEMAKING.—The Federal
5 primary financial regulatory agencies shall
6 jointly prescribe regulations requiring that
7 financial companies maintain such records
8 with respect to qualified financial contracts
9 (including market valuations) that the
10 Federal primary financial regulatory agen-
11 cies determine to be necessary or appro-
12 priate in order to assist the Corporation as
13 receiver for a covered financial company in
14 being able to exercise its rights and fulfill
15 its obligations under this paragraph or
16 paragraph (9) or (10).

17 (ii) TIMEFRAME.—The Federal pri-
18 mary financial regulatory agencies shall
19 prescribe joint final or interim final regula-
20 tions not later than 24 months after the
21 date of enactment of this Act.

22 (iii) BACK-UP RULEMAKING AUTHOR-
23 ITY.—If the Federal primary financial reg-
24 ulatory agencies do not prescribe joint final
25 or interim final regulations within the time

1 frame in clause (ii), the Chairperson of the
2 Council shall prescribe, in consultation
3 with the Corporation, the regulations re-
4 quired by clause (i).

5 (iv) CATEGORIZATION AND
6 TIERING.—The joint regulations prescribed
7 under clause (i) shall, as appropriate, dif-
8 ferentiate among financial companies by
9 taking into consideration their size, risk,
10 complexity, leverage, frequency and dollar
11 amount of qualified financial contracts,
12 interconnectedness to the financial system,
13 and any other factors deemed appropriate.

14 (9) TRANSFER OF QUALIFIED FINANCIAL CON-
15 TRACTS.—

16 (A) IN GENERAL.—In making any transfer
17 of assets or liabilities of a covered financial
18 company in default, which includes any quali-
19 fied financial contract, the Corporation as re-
20 ceiver for such covered financial company shall
21 either—

22 (i) transfer to one financial institu-
23 tion, other than a financial institution for
24 which a conservator, receiver, trustee in
25 bankruptcy, or other legal custodian has

1 been appointed or which is otherwise the
2 subject of a bankruptcy or insolvency pro-
3 ceeding—

4 (I) all qualified financial con-
5 tracts between any person or any af-
6 filiate of such person and the covered
7 financial company in default;

8 (II) all claims of such person or
9 any affiliate of such person against
10 such covered financial company under
11 any such contract (other than any
12 claim which, under the terms of any
13 such contract, is subordinated to the
14 claims of general unsecured creditors
15 of such company);

16 (III) all claims of such covered fi-
17 nancial company against such person
18 or any affiliate of such person under
19 any such contract; and

20 (IV) all property securing or any
21 other credit enhancement for any con-
22 tract described in subclause (I) or any
23 claim described in subclause (II) or
24 (III) under any such contract; or

1 (ii) transfer none of the qualified fi-
2 nancial contracts, claims, property or other
3 credit enhancement referred to in clause (i)
4 (with respect to such person and any affil-
5 iate of such person).

6 (B) TRANSFER TO FOREIGN BANK, FINAN-
7 CIAL INSTITUTION, OR BRANCH OR AGENCY
8 THEREOF.—In transferring any qualified finan-
9 cial contracts and related claims and property
10 under subparagraph (A)(i), the Corporation as
11 receiver for the covered financial company shall
12 not make such transfer to a foreign bank, fi-
13 nancial institution organized under the laws of
14 a foreign country, or a branch or agency of a
15 foreign bank or financial institution unless,
16 under the law applicable to such bank, financial
17 institution, branch or agency, to the qualified
18 financial contracts, and to any netting contract,
19 any security agreement or arrangement or other
20 credit enhancement related to one or more
21 qualified financial contracts, the contractual
22 rights of the parties to such qualified financial
23 contracts, netting contracts, security agree-
24 ments or arrangements, or other credit en-

1 hancements are enforceable substantially to the
2 same extent as permitted under this section.

3 (C) TRANSFER OF CONTRACTS SUBJECT
4 TO THE RULES OF A CLEARING ORGANIZA-
5 TION.—In the event that the Corporation as re-
6 ceiver for a financial institution transfers any
7 qualified financial contract and related claims,
8 property, or credit enhancement pursuant to
9 subparagraph (A)(i) and such contract is
10 cleared by or subject to the rules of a clearing
11 organization, the clearing organization shall not
12 be required to accept the transferee as a mem-
13 ber by virtue of the transfer.

14 (D) DEFINITIONS.—For purposes of this
15 paragraph—

16 (i) the term “financial institution”
17 means a broker or dealer, a depository in-
18 stitution, a futures commission merchant,
19 a bridge financial company, or any other
20 institution determined by the Corporation,
21 by regulation, to be a financial institution;
22 and

23 (ii) the term “clearing organization”
24 has the same meaning as in section 402 of

1 the Federal Deposit Insurance Corporation
2 Improvement Act of 1991.

3 (10) NOTIFICATION OF TRANSFER.—

4 (A) IN GENERAL.—

5 (i) NOTICE.—The Corporation shall
6 provide notice in accordance with clause

7 (ii), if—

8 (I) the Corporation as receiver
9 for a covered financial company in de-
10 fault or in danger of default transfers
11 any assets or liabilities of the covered
12 financial company; and

13 (II) the transfer includes any
14 qualified financial contract.

15 (ii) TIMING.—The Corporation as re-
16 ceiver for a covered financial company
17 shall notify any person who is a party to
18 any contract described in clause (i) of such
19 transfer not later than 5:00 p.m. (eastern
20 time) on the 5th business day following the
21 date of the appointment of the Corporation
22 as receiver.

23 (B) CERTAIN RIGHTS NOT ENFORCE-
24 ABLE.—

1 (i) RECEIVERSHIP.—A person who is
2 a party to a qualified financial contract
3 with a covered financial company may not
4 exercise any right that such person has to
5 terminate, liquidate, or net such contract
6 under paragraph (8)(A) solely by reason of
7 or incidental to the appointment under this
8 section of the Corporation as receiver for
9 the covered financial company (or the in-
10 solvency or financial condition of the cov-
11 ered financial company for which the Cor-
12 poration has been appointed as receiver)—

13 (I) until 5:00 p.m. (eastern time)
14 on the 5th business day following the
15 date of the appointment; or

16 (II) after the person has received
17 notice that the contract has been
18 transferred pursuant to paragraph
19 (9)(A).

20 (ii) NOTICE.—For purposes of this
21 paragraph, the Corporation as receiver for
22 a covered financial company shall be
23 deemed to have notified a person who is a
24 party to a qualified financial contract with
25 such covered financial company, if the Cor-

1 poration has taken steps reasonably cal-
2 culated to provide notice to such person by
3 the time specified in subparagraph (A).

4 (C) TREATMENT OF BRIDGE FINANCIAL
5 COMPANY.—For purposes of paragraph (9), a
6 bridge financial company shall not be consid-
7 ered to be a covered financial company for
8 which a conservator, receiver, trustee in bank-
9 ruptcy, or other legal custodian has been ap-
10 pointed, or which is otherwise the subject of a
11 bankruptcy or insolvency proceeding.

12 (D) BUSINESS DAY DEFINED.—For pur-
13 poses of this paragraph, the term “business
14 day” means any day other than any Saturday,
15 Sunday, or any day on which either the New
16 York Stock Exchange or the Federal Reserve
17 Bank of New York is closed.

18 (11) DISAFFIRMANCE OR REPUDIATION OF
19 QUALIFIED FINANCIAL CONTRACTS.—In exercising
20 the rights of disaffirmance or repudiation of the
21 Corporation as receiver with respect to any qualified
22 financial contract to which a covered financial com-
23 pany is a party, the Corporation shall either—

24 (A) disaffirm or repudiate all qualified fi-
25 nancial contracts between—

1 (i) any person or any affiliate of such
2 person; and

3 (ii) the covered financial company in
4 default; or

5 (B) disaffirm or repudiate none of the
6 qualified financial contracts referred to in sub-
7 paragraph (A) (with respect to such person or
8 any affiliate of such person).

9 (12) CERTAIN SECURITY AND CUSTOMER IN-
10 TERESTS NOT AVOIDABLE.—No provision of this
11 subsection shall be construed as permitting the
12 avoidance of any—

13 (A) legally enforceable or perfected secu-
14 rity interest in any of the assets of any covered
15 financial company, except in accordance with
16 subsection (a)(11); or

17 (B) legally enforceable interest in customer
18 property, security entitlements in respect of as-
19 sets or property held by the covered financial
20 company for any security entitlement holder.

21 (13) AUTHORITY TO ENFORCE CONTRACTS.—

22 (A) IN GENERAL.—The Corporation, as re-
23 ceiver for a covered financial company, may en-
24 force any contract, other than a liability insur-
25 ance contract of a director or officer, a financial

1 institution bond entered into by the covered fi-
2 nancial company, notwithstanding any provision
3 of the contract providing for termination, de-
4 fault, acceleration, or exercise of rights upon, or
5 solely by reason of, insolvency, the appointment
6 of or the exercise of rights or powers by the
7 Corporation as receiver, the filing of the peti-
8 tion pursuant to section 202(c)(1), or the
9 issuance of the recommendations or determina-
10 tion, or any actions or events occurring in con-
11 nection therewith or as a result thereof, pursu-
12 ant to section 203.

13 (B) CERTAIN RIGHTS NOT AFFECTED.—

14 No provision of this paragraph may be con-
15 strued as impairing or affecting any right of the
16 Corporation as receiver to enforce or recover
17 under a liability insurance contract of a director
18 or officer or financial institution bond under
19 other applicable law.

20 (C) CONSENT REQUIREMENT AND IPSO

21 FACTO CLAUSES.—

22 (i) IN GENERAL.—Except as otherwise

23 provided by this section, no person may ex-
24 ercise any right or power to terminate, ac-
25 celerate, or declare a default under any

1 contract to which the covered financial
2 company is a party (and no provision in
3 any such contract providing for such de-
4 fault, termination, or acceleration shall be
5 enforceable), or to obtain possession of or
6 exercise control over any property of the
7 covered financial company or affect any
8 contractual rights of the covered financial
9 company, without the consent of the Cor-
10 poration as receiver for the covered finan-
11 cial company during the 90 day period be-
12 ginning from the appointment of the Cor-
13 poration as receiver.

14 (ii) EXCEPTIONS.—No provision of
15 this subparagraph shall apply to a director
16 or officer liability insurance contract or a
17 financial institution bond, to the rights of
18 parties to certain qualified financial con-
19 tracts pursuant to paragraph (8), or to the
20 rights of parties to netting contracts pur-
21 suant to subtitle A of title IV of the Fed-
22 eral Deposit Insurance Corporation Im-
23 provement Act of 1991 (12 U.S.C. 4401 et
24 seq.), or shall be construed as permitting
25 the Corporation as receiver to fail to com-

1 ply with otherwise enforceable provisions of
2 such contract.

3 (D) CONTRACTS TO EXTEND CREDIT.—

4 Notwithstanding any other provision in this
5 title, if the Corporation as receiver enforces any
6 contract to extend credit to the covered finan-
7 cial company or bridge financial company, any
8 valid and enforceable obligation to repay such
9 debt shall be paid by the Corporation as re-
10 ceiver, as an administrative expense of the re-
11 ceivership.

12 (14) EXCEPTION FOR FEDERAL RESERVE

13 BANKS AND CORPORATION SECURITY INTEREST.—

14 No provision of this subsection shall apply with re-
15 spect to—

16 (A) any extension of credit from any Fed-
17 eral reserve bank or the Corporation to any cov-
18 ered financial company; or

19 (B) any security interest in the assets of
20 the covered financial company securing any
21 such extension of credit.

22 (15) SAVINGS CLAUSE.—The meanings of terms
23 used in this subsection are applicable for purposes of
24 this subsection only, and shall not be construed or
25 applied so as to challenge or affect the characteriza-

tion, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(16) ENFORCEMENT OF CONTRACTS GUARANTEED BY THE COVERED FINANCIAL COMPANY.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution) shall have the power to enforce contracts of subsidiaries or affiliates of the covered financial company, the obligations under which are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of the covered financial company, if—

(i) such guaranty or other support and all related assets and liabilities are

1 transferred to and assumed by a bridge fi-
2 nancial company or a third party (other
3 than a third party for which a conservator,
4 receiver, trustee in bankruptcy, or other
5 legal custodian has been appointed, or
6 which is otherwise the subject of a bank-
7 ruptcy or insolvency proceeding) within the
8 same period of time as the Corporation is
9 entitled to transfer the qualified financial
10 contracts of such covered financial com-
11 pany; or

12 (ii) the Corporation, as receiver, oth-
13 erwise provides adequate protection with
14 respect to such obligations.

15 (B) RULE OF CONSTRUCTION.—For pur-
16 poses of this paragraph, a bridge financial com-
17 pany shall not be considered to be a third party
18 for which a conservator, receiver, trustee in
19 bankruptcy, or other legal custodian has been
20 appointed, or which is otherwise the subject of
21 a bankruptcy or insolvency proceeding.

22 (d) VALUATION OF CLAIMS IN DEFAULT.—

23 (1) IN GENERAL.—Notwithstanding any other
24 provision of Federal law or the law of any State, and
25 regardless of the method utilized by the Corporation

1 for a covered financial company, including trans-
2 actions authorized under subsection (h), this sub-
3 section shall govern the rights of the creditors of any
4 such covered financial company.

5 (2) MAXIMUM LIABILITY.—The maximum li-
6 ability of the Corporation, acting as receiver for a
7 covered financial company or in any other capacity,
8 to any person having a claim against the Corpora-
9 tion as receiver or the covered financial company for
10 which the Corporation is appointed shall equal the
11 amount that such claimant would have received if—

12 (A) the Corporation had not been ap-
13 pointed receiver with respect to the covered fi-
14 nancial company; and

15 (B) the covered financial company had
16 been liquidated under chapter 7 of the Bank-
17 ruptcy Code, or any similar provision of State
18 insolvency law applicable to the covered finan-
19 cial company.

20 (3) SPECIAL PROVISION FOR ORDERLY LIQ-
21 UIDATION BY SIPC.—The maximum liability of the
22 Corporation, acting as receiver or in its corporate
23 capacity for any covered broker or dealer to any cus-
24 tomer of such covered broker or dealer, with respect
25 to customer property of such customer, shall be—

1 (A) equal to the amount that such cus-
2 tomer would have received with respect to such
3 customer property in a case initiated by SIPC
4 under the Securities Investor Protection Act of
5 1970 (15 U.S.C. 78aaa et seq.); and

6 (B) determined as of the close of business
7 on the date on which the Corporation is ap-
8 pointed as receiver.

9 (4) ADDITIONAL PAYMENTS AUTHORIZED.—

10 (A) IN GENERAL.—Subject to subsection
11 (o)(1)(E)(ii), the Corporation, with the approval
12 of the Secretary, may make additional pay-
13 ments or credit additional amounts to or with
14 respect to or for the account of any claimant or
15 category of claimants of the covered financial
16 company, if the Corporation determines that
17 such payments or credits are necessary or ap-
18 propriate to minimize losses to the Corporation
19 as receiver from the orderly liquidation of the
20 covered financial company under this section.

21 (B) LIMITATION.—Notwithstanding any
22 other provision of Federal or State law, or the
23 constitution of any State, the Corporation shall
24 not be obligated, as a result of having made any
25 payment under subparagraph (A) or credited

1 any amount described in subparagraph (A) to
2 or with respect to or for the account of any
3 claimant or category of claimants, to make pay-
4 ments to any other claimant or category of
5 claimants.

6 (C) MANNER OF PAYMENT.—The Corpora-
7 tion may make payments or credit amounts
8 under subparagraph (A) directly to the claim-
9 ants or may make such payments or credit such
10 amounts to a company other than a covered fi-
11 nancial company or a bridge financial company
12 established with respect thereto in order to in-
13 duce such other company to accept liability for
14 such claims.

15 (e) LIMITATION ON COURT ACTION.—Except as pro-
16 vided in this title, no court may take any action to restrain
17 or affect the exercise of powers or functions of the receiver
18 hereunder, and any remedy against the Corporation or re-
19 ceiver shall be limited to money damages determined in
20 accordance with this title.

21 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

22 (1) IN GENERAL.—A director or officer of a
23 covered financial company may be held personally
24 liable for monetary damages in any civil action de-
25 scribed in paragraph (2) by, on behalf of, or at the

1 request or direction of the Corporation, which action
2 is prosecuted wholly or partially for the benefit of
3 the Corporation—

4 (A) acting as receiver for such covered fi-
5 nancial company;

6 (B) acting based upon a suit, claim, or
7 cause of action purchased from, assigned by, or
8 otherwise conveyed by the Corporation as re-
9 ceiver; or

10 (C) acting based upon a suit, claim, or
11 cause of action purchased from, assigned by, or
12 otherwise conveyed in whole or in part by a cov-
13 ered financial company or its affiliate in con-
14 nection with assistance provided under this
15 title.

16 (2) ACTIONS COVERED.—Paragraph (1) shall
17 apply with respect to actions for gross negligence,
18 including any similar conduct or conduct that dem-
19 onstrates a greater disregard of a duty of care (than
20 gross negligence) including intentional tortious con-
21 duct, as such terms are defined and determined
22 under applicable State law.

23 (3) SAVINGS CLAUSE.—Nothing in this sub-
24 section shall impair or affect any right of the Cor-
25 poration under other applicable law.

1 (g) DAMAGES.—In any proceeding related to any
 2 claim against a director, officer, employee, agent, attorney,
 3 accountant, or appraiser of a covered financial company,
 4 or any other party employed by or providing services to
 5 a covered financial company, recoverable damages deter-
 6 mined to result from the improvident or otherwise im-
 7 proper use or investment of any assets of the covered fi-
 8 nancial company shall include principal losses and appro-
 9 priate interest.

10 (h) BRIDGE FINANCIAL COMPANIES.—

11 (1) ORGANIZATION.—

12 (A) PURPOSE.—The Corporation, as re-
 13 ceiver for one or more covered financial compa-
 14 nies or in anticipation of being appointed re-
 15 ceiver for one or more covered financial compa-
 16 nies, may organize one or more bridge financial
 17 companies in accordance with this subsection.

18 (B) AUTHORITIES.—Upon the creation of
 19 a bridge financial company under subparagraph
 20 (A) with respect to a covered financial com-
 21 pany, such bridge financial company may—

22 (i) assume such liabilities (including
 23 liabilities associated with any trust or cus-
 24 tody business, but excluding any liabilities
 25 that count as regulatory capital) of such

covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—Except as provided in subparagraph (H), where the covered financial company is a covered broker or dealer, the Corporation, as receiver for a covered financial company, may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies, with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate

1 in accordance with, and subject to, such char-
2 ter, articles, and this section.

3 (B) MANAGEMENT.—Upon its establish-
4 ment, a bridge financial company shall be under
5 the management of a board of directors ap-
6 pointed by the Corporation.

7 (C) ARTICLES OF ASSOCIATION.—The arti-
8 cles of association and organization certificate
9 of a bridge financial company shall have such
10 terms as the Corporation may provide, and
11 shall be executed by such representatives as the
12 Corporation may designate.

13 (D) TERMS OF CHARTER; RIGHTS AND
14 PRIVILEGES.—Subject to and in accordance
15 with the provisions of this subsection, the Cor-
16 poration shall—

17 (i) establish the terms of the charter
18 of a bridge financial company and the
19 rights, powers, authorities, and privileges
20 of a bridge financial company granted by
21 the charter or as an incident thereto; and

22 (ii) provide for, and establish the
23 terms and conditions governing, the man-
24 agement (including the bylaws and the
25 number of directors of the board of direc-

tors) and operations of the bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities, or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities, and privileges.

(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities, or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State

1 law, assignment, or consent with respect
2 thereto.

3 (F) CORPORATE GOVERNANCE AND ELEC-
4 TION AND DESIGNATION OF BODY OF LAW.—To
5 the extent permitted by the Corporation and
6 consistent with this section and any rules, regu-
7 lations, or directives issued by the Corporation
8 under this section, a bridge financial company
9 may elect to follow the corporate governance
10 practices and procedures that are applicable to
11 a corporation incorporated under the general
12 corporation law of the State of Delaware, or the
13 State of incorporation or organization of the
14 covered financial company with respect to which
15 the bridge financial company was established,
16 as such law may be amended from time to time.

17 (G) CAPITAL.—

18 (i) CAPITAL NOT REQUIRED.—Not-
19 withstanding any other provision of Fed-
20 eral or State law, a bridge financial com-
21 pany may, if permitted by the Corporation,
22 operate without any capital or surplus, or
23 with such capital or surplus as the Cor-
24 poration may in its discretion determine to
25 be appropriate.

1 (ii) NO CONTRIBUTION BY THE COR-
2 PORATION REQUIRED.—The Corporation is
3 not required to pay capital into a bridge fi-
4 nancial company or to issue any capital
5 stock on behalf of a bridge financial com-
6 pany established under this subsection.

7 (iii) AUTHORITY.—If the Corporation
8 determines that such action is advisable,
9 the Corporation may cause capital stock or
10 other securities of a bridge financial com-
11 pany established with respect to a covered
12 financial company to be issued and offered
13 for sale in such amounts and on such
14 terms and conditions as the Corporation
15 may, in its discretion, determine.

16 (iv) OPERATING FUNDS IN LIEU OF
17 CAPITAL AND IMPLEMENTATION PLAN.—
18 Upon the organization of a bridge financial
19 company, and thereafter as the Corpora-
20 tion may, in its discretion, determine to be
21 necessary or advisable, the Corporation
22 may make available to the bridge financial
23 company, subject to the plan described in
24 subsection (n)(13), funds for the operation

1 of the bridge financial company in lieu of
2 capital.

3 (H) BRIDGE BROKERS OR DEALERS.—

4 (i) IN GENERAL.—The Corporation,
5 as receiver for a covered broker or dealer,
6 may approve articles of association for one
7 or more bridge financial companies with
8 respect to such covered broker or dealer,
9 which bridge financial company or compa-
10 nies shall, by operation of law and imme-
11 diately upon approval of its articles of as-
12 sociation—

13 (I) be established and deemed
14 registered with the Commission under
15 the Securities Exchange Act of 1934
16 and a member of SIPC;

17 (II) operate in accordance with
18 such articles and this section; and

19 (III) succeed to any and all reg-
20 istrations and memberships of the
21 covered financial company with or in
22 any self-regulatory organizations.

23 (ii) OTHER REQUIREMENTS.—Except
24 as provided in clause (i), and notwith-
25 standing any other provision of this sec-

1 tion, the bridge financial company shall be
2 subject to the Federal securities laws and
3 all requirements with respect to being a
4 member of a self-regulatory organization,
5 unless exempted from any such require-
6 ments by the Commission, as is necessary
7 or appropriate in the public interest or for
8 the protection of investors.

9 (iii) TREATMENT OF CUSTOMERS.—
10 Except as otherwise provided by this title,
11 any customer of the covered broker or
12 dealer whose account is transferred to a
13 bridge financial company shall have all the
14 rights, privileges, and protections under
15 section 205(f) and under the Securities In-
16 vestor Protection Act of 1970 (15 U.S.C.
17 78aaa et seq.), that such customer would
18 have had if the account were not trans-
19 ferred from the covered financial company
20 under this subparagraph.

21 (iv) OPERATION OF BRIDGE BROKERS
22 OR DEALERS.—Notwithstanding any other
23 provision of this title, the Corporation shall
24 not operate any bridge financial company
25 created by the Corporation under this title

1 with respect to a covered broker or dealer
2 in such a manner as to adversely affect the
3 ability of customers to promptly access
4 their customer property in accordance with
5 applicable law.

6 (3) INTERESTS IN AND ASSETS AND OBLIGA-
7 TIONS OF COVERED FINANCIAL COMPANY.—Notwith-
8 standing paragraph (1) or (2) or any other provision
9 of law—

10 (A) a bridge financial company shall as-
11 sume, acquire, or succeed to the assets or liabil-
12 ities of a covered financial company (including
13 the assets or liabilities associated with any trust
14 or custody business) only to the extent that
15 such assets or liabilities are transferred by the
16 Corporation to the bridge financial company in
17 accordance with, and subject to the restrictions
18 set forth in, paragraph (1)(B); and

19 (B) a bridge financial company shall not
20 assume, acquire, or succeed to any obligation
21 that a covered financial company for which the
22 Corporation has been appointed receiver may
23 have to any shareholder, member, general part-
24 ner, limited partner, or other person with an in-
25 terest in the equity of the covered financial

1 company that arises as a result of the status of
2 that person having an equity claim in the cov-
3 ered financial company.

4 (4) BRIDGE FINANCIAL COMPANY TREATED AS
5 BEING IN DEFAULT FOR CERTAIN PURPOSES.—A
6 bridge financial company shall be treated as a cov-
7 ered financial company in default at such times and
8 for such purposes as the Corporation may, in its dis-
9 cretion, determine.

10 (5) TRANSFER OF ASSETS AND LIABILITIES.—

11 (A) AUTHORITY OF CORPORATION.—The
12 Corporation, as receiver for a covered financial
13 company, may transfer any assets and liabilities
14 of a covered financial company (including any
15 assets or liabilities associated with any trust or
16 custody business) to one or more bridge finan-
17 cial companies, in accordance with and subject
18 to the restrictions of paragraph (1).

19 (B) SUBSEQUENT TRANSFERS.—At any
20 time after the establishment of a bridge finan-
21 cial company with respect to a covered financial
22 company, the Corporation, as receiver, may
23 transfer any assets and liabilities of such cov-
24 ered financial company as the Corporation may,
25 in its discretion, determine to be appropriate in

1 accordance with and subject to the restrictions
2 of paragraph (1).

3 (C) TREATMENT OF TRUST OR CUSTODY
4 BUSINESS.—For purposes of this paragraph,
5 the trust or custody business, including fidu-
6 ciary appointments, held by any covered finan-
7 cial company is included among its assets and
8 liabilities.

9 (D) EFFECTIVE WITHOUT APPROVAL.—
10 The transfer of any assets or liabilities, includ-
11 ing those associated with any trust or custody
12 business of a covered financial company, to a
13 bridge financial company shall be effective with-
14 out any further approval under Federal or
15 State law, assignment, or consent with respect
16 thereto.

17 (E) EQUITABLE TREATMENT OF SIMI-
18 LARLY SITUATED CREDITORS.—The Corpora-
19 tion shall treat all creditors of a covered finan-
20 cial company that are similarly situated under
21 subsection (b)(1), in a similar manner in exer-
22 cising the authority of the Corporation under
23 this subsection to transfer any assets or liabil-
24 ities of the covered financial company to one or
25 more bridge financial companies established

1 with respect to such covered financial company,
2 except that the Corporation may take any ac-
3 tion (including making payments, subject to
4 subsection (o)(1)(E)(ii)) that does not comply
5 with this subparagraph, if—

6 (i) the Corporation determines that
7 such action is necessary—

8 (I) to maximize the value of the
9 assets of the covered financial com-
10 pany;

11 (II) to maximize the present
12 value return from the sale or other
13 disposition of the assets of the covered
14 financial company; or

15 (III) to minimize the amount of
16 any loss realized upon the sale or
17 other disposition of the assets of the
18 covered financial company; and

19 (ii) all creditors that are similarly sit-
20 uated under subsection (b)(1) receive not
21 less than the amount provided under para-
22 graphs (2) and (3) of subsection (d).

23 (F) LIMITATION ON TRANSFER OF LIABIL-
24 ITIES.—Notwithstanding any other provision of
25 law, the aggregate amount of liabilities of a cov-

1 ered financial company that are transferred to,
2 or assumed by, a bridge financial company from
3 a covered financial company may not exceed the
4 aggregate amount of the assets of the covered
5 financial company that are transferred to, or
6 purchased by, the bridge financial company
7 from the covered financial company.

8 (6) STAY OF JUDICIAL ACTION.—Any judicial
9 action to which a bridge financial company becomes
10 a party by virtue of its acquisition of any assets or
11 assumption of any liabilities of a covered financial
12 company shall be stayed from further proceedings
13 for a period of not longer than 45 days (or such
14 longer period as may be agreed to upon the consent
15 of all parties) at the request of the bridge financial
16 company.

17 (7) AGREEMENTS AGAINST INTEREST OF THE
18 BRIDGE FINANCIAL COMPANY.—No agreement that
19 tends to diminish or defeat the interest of the bridge
20 financial company in any asset of a covered financial
21 company acquired by the bridge financial company
22 shall be valid against the bridge financial company,
23 unless such agreement—

24 (A) is in writing;

1 (B) was executed by an authorized officer
2 or representative of the covered financial com-
3 pany or confirmed in the ordinary course of
4 business by the covered financial company; and

5 (C) has been on the official record of the
6 company, since the time of its execution, or
7 with which, the party claiming under the agree-
8 ment provides documentation of such agreement
9 and its authorized execution or confirmation by
10 the covered financial company that is acceptable
11 to the receiver.

12 (8) NO FEDERAL STATUS.—

13 (A) AGENCY STATUS.—A bridge financial
14 company is not an agency, establishment, or in-
15 strumentality of the United States.

16 (B) EMPLOYEE STATUS.—Representatives
17 for purposes of paragraph (1)(B), directors, of-
18 ficers, employees, or agents of a bridge financial
19 company are not, solely by virtue of service in
20 any such capacity, officers or employees of the
21 United States. Any employee of the Corporation
22 or of any Federal instrumentality who serves at
23 the request of the Corporation as a representa-
24 tive for purposes of paragraph (1)(B), director,

1 officer, employee, or agent of a bridge financial
2 company shall not—

3 (i) solely by virtue of service in any
4 such capacity lose any existing status as
5 an officer or employee of the United States
6 for purposes of title 5, United States Code,
7 or any other provision of law; or

8 (ii) receive any salary or benefits for
9 service in any such capacity with respect to
10 a bridge financial company in addition to
11 such salary or benefits as are obtained
12 through employment with the Corporation
13 or such Federal instrumentality.

14 (9) FUNDING AUTHORIZED.—The Corporation
15 may, subject to the plan described in subsection
16 (n)(13), provide funding to facilitate any transaction
17 described in subparagraph (A), (B), (C), or (D) of
18 paragraph (13) with respect to any bridge financial
19 company, or facilitate the acquisition by a bridge fi-
20 nancial company of any assets, or the assumption of
21 any liabilities, of a covered financial company for
22 which the Corporation has been appointed receiver.

23 (10) EXEMPT TAX STATUS.—Notwithstanding
24 any other provision of Federal or State law, a bridge
25 financial company, its franchise, property, and in-

1 come shall be exempt from all taxation now or here-
2 after imposed by the United States, by any territory,
3 dependency, or possession thereof, or by any State,
4 county, municipality, or local taxing authority.

5 (11) FEDERAL AGENCY APPROVAL; ANTITRUST
6 REVIEW.—If a transaction involving the merger or
7 sale of a bridge financial company requires approval
8 by a Federal agency, the transaction may not be
9 consummated before the 5th calendar day after the
10 date of approval by the Federal agency responsible
11 for such approval with respect thereto. If, in connec-
12 tion with any such approval a report on competitive
13 factors from the Attorney General is required, the
14 Federal agency responsible for such approval shall
15 promptly notify the Attorney General of the pro-
16 posed transaction and the Attorney General shall
17 provide the required report within 10 days of the re-
18 quest. If a notification is required under section 7A
19 of the Clayton Act with respect to such transaction,
20 the required waiting period shall end on the 15th
21 day after the date on which the Attorney General
22 and the Federal Trade Commission receive such no-
23 tification, unless the waiting period is terminated
24 earlier under section 7A(b)(2) of the Clayton Act, or
25 extended under section 7A(e)(2) of that Act.

1 (12) DURATION OF BRIDGE FINANCIAL COM-
2 PANY.—Subject to paragraphs (13) and (14), the
3 status of a bridge financial company as such shall
4 terminate at the end of the 2-year period following
5 the date on which it was granted a charter. The
6 Corporation may, in its discretion, extend the status
7 of the bridge financial company as such for no more
8 than 3 additional 1-year periods.

9 (13) TERMINATION OF BRIDGE FINANCIAL COM-
10 PANY STATUS.—The status of any bridge financial
11 company as such shall terminate upon the earliest
12 of—

13 (A) the date of the merger or consolidation
14 of the bridge financial company with a company
15 that is not a bridge financial company;

16 (B) at the election of the Corporation, the
17 sale of a majority of the capital stock of the
18 bridge financial company to a company other
19 than the Corporation and other than another
20 bridge financial company;

21 (C) the sale of 80 percent, or more, of the
22 capital stock of the bridge financial company to
23 a person other than the Corporation and other
24 than another bridge financial company;

1 (D) at the election of the Corporation, ei-
2 ther the assumption of all or substantially all of
3 the liabilities of the bridge financial company by
4 a company that is not a bridge financial com-
5 pany, or the acquisition of all or substantially
6 all of the assets of the bridge financial company
7 by a company that is not a bridge financial
8 company, or other entity as permitted under
9 applicable law; and

10 (E) the expiration of the period provided in
11 paragraph (12), or the earlier dissolution of the
12 bridge financial company, as provided in para-
13 graph (15).

14 (14) EFFECT OF TERMINATION EVENTS.—

15 (A) MERGER OR CONSOLIDATION.—A
16 merger or consolidation, described in paragraph
17 (12)(A) shall be conducted in accordance with,
18 and shall have the effect provided in, the provi-
19 sions of applicable law. For the purpose of ef-
20 fecting such a merger or consolidation, the
21 bridge financial company shall be treated as a
22 corporation organized under the laws of the
23 State of Delaware (unless the law of another
24 State has been selected by the bridge financial
25 company in accordance with paragraph (2)(F)),

1 and the Corporation shall be treated as the sole
2 shareholder thereof, notwithstanding any other
3 provision of State or Federal law.

4 (B) CHARTER CONVERSION.—Following
5 the sale of a majority of the capital stock of the
6 bridge financial company, as provided in para-
7 graph (13)(B), the Corporation may amend the
8 charter of the bridge financial company to re-
9 flect the termination of the status of the bridge
10 financial company as such, whereupon the com-
11 pany shall have all of the rights, powers, and
12 privileges under its constituent documents and
13 applicable Federal or State law. In connection
14 therewith, the Corporation may take such steps
15 as may be necessary or convenient to reincor-
16 porate the bridge financial company under the
17 laws of a State and, notwithstanding any provi-
18 sions of Federal or State law, such State-char-
19 tered corporation shall be deemed to succeed by
20 operation of law to such rights, titles, powers,
21 and interests of the bridge financial company as
22 the Corporation may provide, with the same ef-
23 fect as if the bridge financial company had
24 merged with the State-chartered corporation

1 under provisions of the corporate laws of such
2 State.

3 (C) SALE OF STOCK.—Following the sale
4 of 80 percent or more of the capital stock of a
5 bridge financial company, as provided in para-
6 graph (13)(C), the company shall have all of
7 the rights, powers, and privileges under its con-
8 stituent documents and applicable Federal or
9 State law. In connection therewith, the Cor-
10 poration may take such steps as may be nec-
11 essary or convenient to reincorporate the bridge
12 financial company under the laws of a State
13 and, notwithstanding any provisions of Federal
14 or State law, the State-chartered corporation
15 shall be deemed to succeed by operation of law
16 to such rights, titles, powers and interests of
17 the bridge financial company as the Corpora-
18 tion may provide, with the same effect as if the
19 bridge financial company had merged with the
20 State-chartered corporation under provisions of
21 the corporate laws of such State.

22 (D) ASSUMPTION OF LIABILITIES AND
23 SALE OF ASSETS.—Following the assumption of
24 all or substantially all of the liabilities of the
25 bridge financial company, or the sale of all or

1 substantially all of the assets of the bridge fi-
2 nancial company, as provided in paragraph
3 (13)(D), at the election of the Corporation, the
4 bridge financial company may retain its status
5 as such for the period provided in paragraph
6 (12) or may be dissolved at the election of the
7 Corporation.

8 (E) AMENDMENTS TO CHARTER.—Fol-
9 lowing the consummation of a transaction de-
10 scribed in subparagraph (A), (B), (C), or (D)
11 of paragraph (13), the charter of the resulting
12 company shall be amended to reflect the termi-
13 nation of bridge financial company status, if ap-
14 propriate.

15 (15) DISSOLUTION OF BRIDGE FINANCIAL COM-
16 PANY.—

17 (A) IN GENERAL.—Notwithstanding any
18 other provision of Federal or State law, if the
19 status of a bridge financial company as such
20 has not previously been terminated by the oc-
21 currence of an event specified in subparagraph
22 (A), (B), (C), or (D) of paragraph (13)—

23 (i) the Corporation may, in its discre-
24 tion, dissolve the bridge financial company

1 in accordance with this paragraph at any
2 time; and

3 (ii) the Corporation shall promptly
4 commence dissolution proceedings in ac-
5 cordance with this paragraph upon the ex-
6 piration of the 2-year period following the
7 date on which the bridge financial com-
8 pany was chartered, or any extension
9 thereof, as provided in paragraph (12).

10 (B) PROCEDURES.—The Corporation shall
11 remain the receiver for a bridge financial com-
12 pany for the purpose of dissolving the bridge fi-
13 nancial company. The Corporation as receiver
14 for a bridge financial company shall wind up
15 the affairs of the bridge financial company in
16 conformity with the provisions of law relating to
17 the liquidation of covered financial companies
18 under this title. With respect to any such bridge
19 financial company, the Corporation as receiver
20 shall have all the rights, powers, and privileges
21 and shall perform the duties related to the exer-
22 cise of such rights, powers, or privileges granted
23 by law to the Corporation as receiver for a cov-
24 ered financial company under this title and,
25 notwithstanding any other provision of law, in

1 the exercise of such rights, powers, and privi-
2 leges, the Corporation shall not be subject to
3 the direction or supervision of any State agency
4 or other Federal agency.

5 (16) AUTHORITY TO OBTAIN CREDIT.—

6 (A) IN GENERAL.—A bridge financial com-
7 pany may obtain unsecured credit and issue un-
8 secured debt.

9 (B) INABILITY TO OBTAIN CREDIT.—If a
10 bridge financial company is unable to obtain
11 unsecured credit or issue unsecured debt, the
12 Corporation may authorize the obtaining of
13 credit or the issuance of debt by the bridge fi-
14 nancial company—

15 (i) with priority over any or all of the
16 obligations of the bridge financial com-
17 pany;

18 (ii) secured by a lien on property of
19 the bridge financial company that is not
20 otherwise subject to a lien; or

21 (iii) secured by a junior lien on prop-
22 erty of the bridge financial company that
23 is subject to a lien.

24 (C) LIMITATIONS.—

1 (i) IN GENERAL.—The Corporation,
2 after notice and a hearing, may authorize
3 the obtaining of credit or the issuance of
4 debt by a bridge financial company that is
5 secured by a senior or equal lien on prop-
6 erty of the bridge financial company that
7 is subject to a lien, only if—

8 (I) the bridge financial company
9 is unable to otherwise obtain such
10 credit or issue such debt; and

11 (II) there is adequate protection
12 of the interest of the holder of the lien
13 on the property with respect to which
14 such senior or equal lien is proposed
15 to be granted.

16 (ii) HEARING.—The hearing required
17 pursuant to this subparagraph shall be be-
18 fore a court of the United States, which
19 shall have jurisdiction to conduct such
20 hearing.

21 (D) BURDEN OF PROOF.—In any hearing
22 under this paragraph, the Corporation has the
23 burden of proof on the issue of adequate protec-
24 tion.

1 (E) QUALIFIED FINANCIAL CONTRACTS.—

2 No credit or debt obtained or issued by a bridge
3 financial company may contain terms that im-
4 pair the rights of a counterparty to a qualified
5 financial contract upon a default by the bridge
6 financial company, other than the priority of
7 such counterparty's unsecured claim (after the
8 exercise of rights) relative to the priority of the
9 bridge financial company's obligations in re-
10 spect of such credit or debt, unless such
11 counterparty consents in writing to any such
12 impairment.

13 (17) EFFECT ON DEBTS AND LIENS.—The re-
14 versal or modification on appeal of an authorization
15 under this subsection to obtain credit or issue debt,
16 or of a grant under this section of a priority or a
17 lien, does not affect the validity of any debt so
18 issued, or any priority or lien so granted, to an enti-
19 ty that extended such credit in good faith, whether
20 or not such entity knew of the pendency of the ap-
21 peal, unless such authorization and the issuance of
22 such debt, or the granting of such priority or lien,
23 were stayed pending appeal.

24 (i) SHARING RECORDS.—If the Corporation has been
25 appointed as receiver for a covered financial company,

1 other Federal regulators shall make all records relating
2 to the covered financial company available to the Corpora-
3 tion, which may be used by the Corporation in any manner
4 that the Corporation determines to be appropriate.

5 (j) EXPEDITED PROCEDURES FOR CERTAIN
6 CLAIMS.—

7 (1) TIME FOR FILING NOTICE OF APPEAL.—

8 The notice of appeal of any order, whether interlocu-
9 tory or final, entered in any case brought by the
10 Corporation against a director, officer, employee,
11 agent, attorney, accountant, or appraiser of the cov-
12 ered financial company, or any other person em-
13 ployed by or providing services to a covered financial
14 company, shall be filed not later than 30 days after
15 the date of entry of the order. The hearing of the
16 appeal shall be held not later than 120 days after
17 the date of the notice of appeal. The appeal shall be
18 decided not later than 180 days after the date of the
19 notice of appeal.

20 (2) SCHEDULING.—The court shall expedite the
21 consideration of any case brought by the Corpora-
22 tion against a director, officer, employee, agent, at-
23 torney, accountant, or appraiser of a covered finan-
24 cial company or any other person employed by or
25 providing services to a covered financial company.

1 As far as practicable, the court shall give such case
2 priority on its docket.

3 (3) JUDICIAL DISCRETION.—The court may
4 modify the schedule and limitations stated in para-
5 graphs (1) and (2) in a particular case, based on a
6 specific finding that the ends of justice that would
7 be served by making such a modification would out-
8 weigh the best interest of the public in having the
9 case resolved expeditiously.

10 (k) FOREIGN INVESTIGATIONS.—The Corporation, as
11 receiver for any covered financial company, and for pur-
12 poses of carrying out any power, authority, or duty with
13 respect to a covered financial company—

14 (1) may request the assistance of any foreign fi-
15 nancial authority and provide assistance to any for-
16 eign financial authority in accordance with section
17 8(v) of the Federal Deposit Insurance Act, as if the
18 covered financial company were an insured deposi-
19 tory institution, the Corporation were the appro-
20 priate Federal banking agency for the company, and
21 any foreign financial authority were the foreign
22 banking authority; and

23 (2) may maintain an office to coordinate for-
24 eign investigations or investigations on behalf of for-
25 eign financial authorities.

1 (l) PROHIBITION ON ENTERING SECRECY AGREE-
2 MENTS AND PROTECTIVE ORDERS.—The Corporation
3 may not enter into any agreement or approve any protec-
4 tive order which prohibits the Corporation from disclosing
5 the terms of any settlement of an administrative or other
6 action for damages or restitution brought by the Corpora-
7 tion in its capacity as receiver for a covered financial com-
8 pany.

9 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL
10 COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

11 (1) IN GENERAL.—Except as specifically pro-
12 vided in this section, and notwithstanding any other
13 provision of law, the Corporation, in connection with
14 the liquidation of any covered financial company or
15 bridge financial company with respect to which the
16 Corporation has been appointed as receiver, shall—

17 (A) in the case of any covered financial
18 company or bridge financial company that is or
19 has a subsidiary that is a stockbroker, but is
20 not a member of the Securities Investor Protec-
21 tion Corporation, apply the provisions of sub-
22 chapter III of chapter 7 of the Bankruptcy
23 Code, in respect of the distribution to any cus-
24 tomer of all customer name securities and cus-
25 tomer property, as if such covered financial

1 company or bridge financial company were a
 2 debtor for purposes of such subchapter; or

3 (B) in the case of any covered financial
 4 company or bridge financial company that is a
 5 commodity broker, apply the provisions of sub-
 6 chapter IV of chapter 7 the Bankruptcy Code,
 7 in respect of the distribution to any customer of
 8 all customer property, as if such covered finan-
 9 cial company or bridge financial company were
 10 a debtor for purposes of such subchapter.

11 (2) DEFINITIONS.—For purposes of this sub-
 12 section—

13 (A) the terms “customer”, “customer
 14 name securities”, and “customer property”
 15 have the same meanings as in section 741 of
 16 title 11, United States Code; and

17 (B) the terms “commodity broker” and
 18 “stockbroker” have the same meanings as in
 19 section 101 of the Bankruptcy Code.

20 (n) ORDERLY LIQUIDATION FUND.—

21 (1) ESTABLISHMENT.—There is established in
 22 the Treasury of the United States a separate fund
 23 to be known as the “Orderly Liquidation Fund”,
 24 which shall be available to the Corporation to carry
 25 out the authorities contained in this title, for the

1 cost of actions authorized by this title, including the
2 orderly liquidation of covered financial companies,
3 payment of administrative expenses, the payment of
4 principal and interest by the Corporation on obliga-
5 tions issued under paragraph (9), and the exercise
6 of the authorities of the Corporation under this title.

7 (2) PROCEEDS.—Amounts received by the Cor-
8 poration, including assessments received under sub-
9 section (o), proceeds of obligations issued under
10 paragraph (9), interest and other earnings from in-
11 vestments, and repayments to the Corporation by
12 covered financial companies, shall be deposited into
13 the Fund.

14 (3) MANAGEMENT.—The Corporation shall
15 manage the Fund in accordance with this subsection
16 and the policies and procedures established under
17 section 203(d).

18 (4) INVESTMENTS.—The Corporation shall in-
19 vest amounts in the Fund in accordance with para-
20 graph (8).

21 (5) TARGET SIZE OF THE FUND.—The target
22 size of the Fund (in this section referred to as “tar-
23 get size”) shall be \$50,000,000,000, adjusted for in-
24 flation on a periodic basis by the Corporation.

1 (6) INITIAL CAPITALIZATION PERIOD.—The
2 Corporation shall impose risk-based assessments as
3 provided under subsection (o), during the period be-
4 ginning one year after the date of enactment of this
5 Act and ending on the date on which the Fund
6 reaches the target size (in this section referred to as
7 the “initial capitalization period”), provided that the
8 initial capitalization period shall be not shorter than
9 5 years, and not longer than 10 years, after the date
10 of enactment of this Act. The Corporation, with the
11 approval of the Secretary, may extend the initial
12 capitalization period for a longer period, as deter-
13 mined necessary by the Corporation, if the Corpora-
14 tion is appointed receiver for a covered financial
15 company under this title and the Fund incurs a loss
16 before the expiration of such period.

17 (7) MAINTAINING THE FUND.—Upon the expi-
18 ration of the initial capitalization period, the Cor-
19 poration shall suspend assessments, except as set
20 forth in subsection (o)(1).

21 (8) INVESTMENTS.—At the request of the Cor-
22 poration, the Secretary may invest such portion of
23 amounts held in the Fund that are not, in the judg-
24 ment of the Corporation, required to meet the cur-
25 rent needs of the Corporation, in obligations of the

1 United States having suitable maturities, as deter-
2 mined by the Corporation. The interest on and the
3 proceeds from the sale or redemption of such obliga-
4 tions shall be credited to the Fund.

5 (9) AUTHORITY TO ISSUE OBLIGATIONS.—

6 (A) CORPORATION AUTHORIZED TO ISSUE
7 OBLIGATIONS.—Upon appointment by the Sec-
8 retary of the Corporation as receiver for a cov-
9 ered financial company, the Corporation is au-
10 thorized to issue obligations to the Secretary.

11 (B) SECRETARY AUTHORIZED TO PUR-
12 CHASE OBLIGATIONS.—The Secretary may,
13 under such terms and conditions as the Sec-
14 retary may require, purchase or agree to pur-
15 chase any obligations issued under subpara-
16 graph (A), and for such purpose, the Secretary
17 is authorized to use as a public debt transaction
18 the proceeds of the sale of any securities issued
19 under chapter 31 of title 31, United States
20 Code, and the purposes for which securities
21 may be issued under chapter 31 of title 31,
22 United States Code, are extended to include
23 such purchases.

24 (C) INTEREST RATE.—Each purchase of
25 obligations by the Secretary under this para-

graph shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity.

(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may sell, upon such terms and conditions as the Secretary shall determine, any of the obligations acquired under this paragraph.

(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

(10) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obliga-

1 tions outstanding under this subsection would exceed
2 the sum of—

3 (A) the amount of cash or the cash equiva-
4 lents held by the Fund; and

5 (B) the amount that is equal to 90 percent
6 of the fair value of assets from each covered fi-
7 nancial company that are available to repay the
8 Corporation.

9 (11) RULEMAKING.—The Corporation and the
10 Secretary shall jointly, in consultation with the
11 Council, prescribe regulations governing the calcula-
12 tion of the maximum obligation limitation defined in
13 this paragraph.

14 (12) RELIANCE ON PRIVATE SECTOR FUND-
15 ING.—The Corporation may exercise its authority
16 under paragraph (9) only after the cash and cash
17 equivalents held by the Fund have been drawn down
18 to facilitate the orderly liquidation of a covered fi-
19 nancial company.

20 (13) RULE OF CONSTRUCTION.—

21 (A) IN GENERAL.—Nothing in this section
22 shall be construed to affect the authority of the
23 Corporation under subsection (a) or (b) of sec-
24 tion 14 or section 15(c)(5) of the Federal De-
25 posit Insurance Act (12 U.S.C. 1824,

1 1825(c)(5)), the management of the Deposit In-
2 surance Fund by the Corporation, or the resolu-
3 tion of insured depository institutions, provided
4 that—

5 (i) none of the authorities contained
6 in this title shall be used to assist the De-
7 posit Insurance Fund with any of the other
8 responsibilities of the Corporation under
9 applicable law other than this title; and

10 (ii) the authorities of the Corporation
11 relating to the Deposit Insurance Fund, or
12 any other responsibilities of the Corpora-
13 tion, shall not be used to assist a covered
14 financial company pursuant to this title.

15 (B) VALUATION.—For purposes of deter-
16 mining the amount of obligations under this
17 subsection—

18 (i) the Corporation shall include as an
19 obligation any contingent liability of the
20 Corporation pursuant to this title; and

21 (ii) the Corporation shall value any
22 contingent liability at its expected cost to
23 the Corporation.

24 (14) ORDERLY LIQUIDATION PLAN.—Amounts
25 in the Fund shall be available to the Corporation

1 with regard to a covered financial company for
2 which the Corporation is appointed receiver after the
3 Corporation has developed an orderly liquidation
4 plan that is acceptable to the Secretary with regard
5 to such covered financial company, including the
6 provision and use of funds under section 204(d) and
7 subsection (h)(2)(G)(iv) and (h)(9) of this section.
8 The Corporation may, at any time, amend any or-
9 derly liquidation plan approved by the Secretary
10 with the concurrence of the Secretary.

11 (o) ASSESSMENTS.—

12 (1) RISK-BASED ASSESSMENTS.—

13 (A) ASSESSMENTS TO CAPITALIZE THE
14 FUND.—

15 (i) IN GENERAL.—Except as provided
16 under subparagraph (C)(ii), the Corpora-
17 tion shall impose risk-based assessments
18 on eligible financial companies to capitalize
19 the Fund during the initial capitalization
20 period, taking into account the consider-
21 ations set forth in paragraph (4).

22 (ii) SUSPENSION OF ASSESSMENTS.—

23 The Corporation shall suspend the imposi-
24 tion of assessments under clause (i) fol-
25 lowing a determination by the Corporation

1 that the Fund has reached the target size
2 described in subsection (n).

3 (B) 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
8 \$50,000,000,000 and any nonbank financial
9 company supervised by the Board of Governors.

10 (C) ADDITIONAL ASSESSMENTS.—The Cor-
11 poration shall charge one or more risk-based as-
12 sessments in accordance with the provisions of
13 subparagraph (E), if—

14 (i) the Fund falls below the target
15 size after the initial capitalization period,
16 in order to restore the Fund to the target
17 size over a period of time determined by
18 the Corporation;

19 (ii) the Corporation is appointed re-
20 ceiver for a covered financial company and
21 the Fund incurs a loss during the initial
22 capitalization period with respect to that
23 covered financial company; or

24 (iii) such assessments are necessary to
25 pay in full the obligations issued by the

1 Corporation to the Secretary within 60
2 months of the date of issuance of such ob-
3 ligations.

4 (D) EXTENSIONS AUTHORIZED.—The Cor-
5 poration may, with the approval of the Sec-
6 retary, extend the time period under subpara-
7 graph (C)(iii), if the Corporation determines
8 that an extension is necessary to avoid a serious
9 adverse effect on the financial system of the
10 United States.

11 (E) APPLICATION OF ADDITIONAL ASSESS-
12 MENTS.—To meet the requirements of subpara-
13 graph (C), the Corporation shall, taking into
14 account the considerations set forth in para-
15 graph (4), impose assessments—

16 (i) on—

17 (I) eligible financial companies;

18 and

19 (II) financial companies with

20 total consolidated assets over

21 \$50,000,000,000 that are not eligible

22 financial companies; and

23 (ii) at a substantially higher rate than

24 otherwise would be assessed on any finan-

25 cial company that received payments or

1 credit pursuant to subsection (b)(4),
2 (d)(4), or (h)(5)(E).

3 (F) NEW ELIGIBLE FINANCIAL COMPA-
4 NIES.—The Corporation shall impose an assess-
5 ment, in an amount determined by the Corpora-
6 tion in consultation with the Secretary and tak-
7 ing into account the considerations set forth in
8 paragraph (4), on any company that becomes
9 an eligible financial company after the initial
10 capitalization period.

11 (2) GRADUATED ASSESSMENT RATE.—The Cor-
12 poration shall impose assessments on a graduated
13 basis, with financial companies having greater assets
14 being assessed at a higher rate.

15 (3) NOTIFICATION AND PAYMENT.—The Cor-
16 poration shall notify each financial company of that
17 company's assessment under this subsection. Any fi-
18 nancial company subject to assessment under this
19 subsection shall pay such assessment in accordance
20 with the regulations prescribed pursuant to para-
21 graph (6).

22 (4) RISK-BASED ASSESSMENT CONSIDER-
23 ATIONS.—In imposing assessments under this sub-
24 section, the Corporation shall—

1 (A) take into account economic conditions
2 generally affecting financial companies, so as to
3 allow assessments to be lower during less favor-
4 able economic conditions;

5 (B) take into account any assessments im-
6 posed on—

7 (i) an insured depository institution
8 subsidiary of a financial company pursuant
9 to section 7 or section 13(c)(4)(G) of the
10 Federal Deposit Insurance Act (12 U.S.C.
11 1817, 1823(c)(4)(G));

12 (ii) a financial company or subsidiary
13 of such company that is a member of SIPC
14 pursuant to section 4 of the Securities In-
15 vestor Protection Act of 1970 (15 U.S.C.
16 78ddd); and

17 (iii) a financial company or subsidiary
18 of such company that is an insurance com-
19 pany pursuant to applicable State law to
20 cover (or reimburse payments made to
21 cover) the costs of rehabilitation, liquida-
22 tion, or other State insolvency proceeding
23 with respect to one or more insurance com-
24 panies;

1 (C) take into account the financial condi-
2 tion of the financial company, including the ex-
3 tent and type of off-balance-sheet exposures of
4 the financial company;

5 (D) take into account the risks presented
6 by the financial company to the financial sta-
7 bility of the United States economy;

8 (E) take into account the extent to which
9 the financial company or group of financial
10 companies has benefitted, or likely would ben-
11 efit, from the orderly liquidation of a covered fi-
12 nancial company and the use of the Fund under
13 this title;

14 (F) distinguish among different classes of
15 assets or different types of financial companies
16 (including distinguishing among different types
17 of financial companies, based on their levels of
18 capital and leverage) in order to establish com-
19 parable assessment bases among financial com-
20 panies subject to this subsection;

21 (G) establish the parameters for the grad-
22 uated assessment requirement in paragraph (2);
23 and

24 (H) take into account such other factors as
25 the Corporation deems appropriate.

1 (5) COLLECTION OF INFORMATION.—The Cor-
2 poration may impose on covered financial companies
3 such collection of information requirements as the
4 Corporation deems necessary to carry out this sub-
5 section after the appointment of the Corporation as
6 receiver under this title.

7 (6) RULEMAKING.—

8 (A) IN GENERAL.—The Corporation shall,
9 in consultation with the Secretary and the
10 Council, prescribe regulations to carry out this
11 subsection.

12 (B) EQUITABLE TREATMENT.—The regu-
13 lations prescribed under subparagraph (A) shall
14 take into account the differences in risks posed
15 to the financial stability of the United States by
16 financial companies, the differences in the li-
17 ability structures of financial companies, and
18 the different bases for other assessments that
19 such financial companies may be required to
20 pay, to ensure that assessed financial compa-
21 nies are treated equitably and that assessments
22 under this subsection reflect such differences.

23 (p) UNENFORCEABILITY OF CERTAIN AGREE-
24 MENTS.—

1 (1) IN GENERAL.—No provision described in
2 paragraph (2) shall be enforceable against or impose
3 any liability on any person, as such enforcement or
4 liability shall be contrary to public policy.

5 (2) PROHIBITED PROVISIONS.—A provision de-
6 scribed in this paragraph is any term contained in
7 any existing or future standstill, confidentiality, or
8 other agreement that, directly or indirectly—

9 (A) affects, restricts, or limits the ability
10 of any person to offer to acquire or acquire;

11 (B) prohibits any person from offering to
12 acquire or acquiring; or

13 (C) prohibits any person from using any
14 previously disclosed information in connection
15 with any such offer to acquire or acquisition of,
16 all or part of any covered financial company, includ-
17 ing any liabilities, assets, or interest therein, in con-
18 nection with any transaction in which the Corpora-
19 tion exercises its authority under this title.

20 (q) OTHER EXEMPTIONS.—

21 (1) IN GENERAL.—When acting as a receiver
22 under this title—

23 (A) the Corporation, including its fran-
24 chise, its capital, reserves and surplus, and its
25 income, shall be exempt from all taxation im-

1 posed by any State, county, municipality, or
2 local taxing authority, except that any real
3 property of the Corporation shall be subject to
4 State, territorial, county, municipal, or local
5 taxation to the same extent according to its
6 value as other real property is taxed, except
7 that, notwithstanding the failure of any person
8 to challenge an assessment under State law of
9 the value of such property, such value, and the
10 tax thereon, shall be determined as of the pe-
11 riod for which such tax is imposed;

12 (B) no property of the Corporation shall be
13 subject to levy, attachment, garnishment, fore-
14 closure, or sale without the consent of the Cor-
15 poration, nor shall any involuntary lien attach
16 to the property of the Corporation; and

17 (C) the Corporation shall not be liable for
18 any amounts in the nature of penalties or fines,
19 including those arising from the failure of any
20 person to pay any real property, personal prop-
21 erty, probate, or recording tax or any recording
22 or filing fees when due; and

23 (D) the Corporation shall be exempt from
24 all prosecution by the United States or any
25 State, county, municipality, or local authority

1 for any criminal offense arising under Federal,
2 State, county, municipal, or local law, which
3 was allegedly committed by the covered finan-
4 cial company, or persons acting on behalf of the
5 covered financial company, prior to the appoint-
6 ment of the Corporation as receiver.

7 (2) LIMITATION.—Paragraph (1) shall not
8 apply with respect to any tax imposed (or other
9 amount arising) under the Internal Revenue Code of
10 1986.

11 (r) CERTAIN SALES OF ASSETS PROHIBITED.—

12 (1) PERSONS WHO ENGAGED IN IMPROPER CON-
13 DUCT WITH, OR CAUSED LOSSES TO, COVERED FI-
14 NANCIAL COMPANIES.—The Corporation shall pre-
15 scribe regulations which, at a minimum, shall pro-
16 hibit the sale of assets of a covered financial com-
17 pany by the Corporation to—

18 (A) any person who—

19 (i) has defaulted, or was a member of
20 a partnership or an officer or director of a
21 corporation that has defaulted, on 1 or
22 more obligations, the aggregate amount of
23 which exceeds \$1,000,000, to such covered
24 financial company;

1 (ii) has been found to have engaged in
2 fraudulent activity in connection with any
3 obligation referred to in clause (i); and

4 (iii) proposes to purchase any such
5 asset in whole or in part through the use
6 of the proceeds of a loan or advance of
7 credit from the Corporation or from any
8 covered financial company;

9 (B) any person who participated, as an of-
10 ficer or director of such covered financial com-
11 pany or of any affiliate of such company, in a
12 material way in any transaction that resulted in
13 a substantial loss to such covered financial com-
14 pany; or

15 (C) any person who has demonstrated a
16 pattern or practice of defalcation regarding ob-
17 ligations to such covered financial company.

18 (2) CONVICTED DEBTORS.—Except as provided
19 in paragraph (3), a person may not purchase any
20 asset of such institution from the receiver, if that
21 person—

22 (A) has been convicted of an offense under
23 section 215, 656, 657, 1005, 1006, 1007, 1008,
24 1014, 1032, 1341, 1343, or 1344 of title 18,
25 United States Code, or of conspiring to commit

1 such an offense, affecting any covered financial
2 company; and

3 (B) is in default on any loan or other ex-
4 tension of credit from such covered financial
5 company which, if not paid, will cause substan-
6 tial loss to the Fund or the Corporation.

7 (3) SETTLEMENT OF CLAIMS.—Paragraphs (1)
8 and (2) shall not apply to the sale or transfer by the
9 Corporation of any asset of any covered financial
10 company to any person, if the sale or transfer of the
11 asset resolves or settles, or is part of the resolution
12 or settlement, of 1 or more claims that have been,
13 or could have been, asserted by the Corporation
14 against the person.

15 (4) DEFINITION OF DEFAULT.—For purposes
16 of this subsection, the term “default” means a fail-
17 ure to comply with the terms of a loan or other obli-
18 gation to such an extent that the property securing
19 the obligation is foreclosed upon.

20 **SEC. 211. MISCELLANEOUS PROVISIONS.**

21 (a) CLARIFICATION OF PROHIBITION REGARDING
22 CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUI-
23 DATING AGENT.—Section 1032(1) of title 18, United
24 States Code, is amended by inserting “the Federal Deposit
25 Insurance Corporation acting as receiver for a covered fi-

1 nancial company, in accordance with title II of the Restor-
 2 ing American Financial Stability Act of 2010,” before “or
 3 the National Credit”.

4 (b) CONFORMING AMENDMENT.—Section 1032 of
 5 title 18, United States Code, is amended in the section
 6 heading, by striking “**of financial institution**”.

7 (c) FEDERAL DEPOSIT INSURANCE CORPORATION
 8 IMPROVEMENT ACT OF 1991.—Section 403(a) of the Fed-
 9 eral Deposit Insurance Corporation Improvement Act of
 10 1991 (12 U.S.C. 4403(a)) is amended by inserting “sec-
 11 tion 210(c) of the Restoring American Financial Stability
 12 Act of 2010, section 1367 of the Federal Housing Enter-
 13 prises Financial Safety and Soundness Act of 1992 (12
 14 U.S.C. 4617(d)),” after “section 11(e) of the Federal De-
 15 posit Insurance Act,”.

16 **TITLE III—TRANSFER OF POW-**
 17 **ERS TO THE COMPTROLLER**
 18 **OF THE CURRENCY, THE COR-**
 19 **PORATION, AND THE BOARD**
 20 **OF GOVERNORS**

21 **SEC. 300. SHORT TITLE.**

22 This title may be cited as the “Enhancing Financial
 23 Institution Safety and Soundness Act of 2010”.

24 **SEC. 301. PURPOSES.**

25 The purposes of this title are—

1 (1) to provide for the safe and sound operation
2 of the banking system of the United States;

3 (2) to preserve and protect the dual system of
4 Federal and State-chartered depository institutions;

5 (3) to ensure the fair and appropriate super-
6 vision of each depository institution, regardless of
7 the size or type of charter of the depository institu-
8 tion; and

9 (4) to streamline and rationalize the supervision
10 of depository institutions and the holding companies
11 of depository institutions.

12 **SEC. 302. DEFINITION.**

13 In this title, the term “transferred employee” means,
14 as the context requires, an employee transferred to the
15 Office of the Comptroller of the Currency or the Corpora-
16 tion under section 322.

17 **Subtitle A—Transfer of Powers and**
18 **Duties**

19 **SEC. 311. TRANSFER DATE.**

20 (a) TRANSFER DATE.—Except as provided in sub-
21 section (b), the term “transfer date” means the date that
22 is 1 year after the date of enactment of this Act.

23 (b) EXTENSION PERMITTED.—

24 (1) NOTICE REQUIRED.—The Secretary, in con-
25 sultation with the Comptroller of the Currency, the

1 Director of the Office of Thrift Supervision, the
2 Chairman of the Board of Governors, and the Chair-
3 person of the Corporation, may extend the period
4 under subsection (a) and designate a transfer date
5 that is not later than 18 months after the date of
6 enactment of this Act, if the Secretary transmits to
7 the Committee on Banking, Housing, and Urban Af-
8 fairs of the Senate and the Committee on Financial
9 Services of the House of Representatives—

10 (A) a written determination that com-
11 mencement of the orderly process to implement
12 this title is not feasible by the date that is 1
13 year after the date of enactment of this Act;

14 (B) an explanation of why an extension is
15 necessary to commence the process of orderly
16 implementation of this title;

17 (C) the transfer date designated under this
18 subsection; and

19 (D) a description of the steps that will be
20 taken to initiate the process of an orderly and
21 timely implementation of this title within the
22 extended time period.

23 (2) PUBLICATION OF NOTICE.—Not later than
24 270 days after the date of enactment of this Act, the
25 Secretary shall publish in the Federal Register no-

1 tice of any transfer date designated under paragraph
 2 (1).

3 **SEC. 312. POWERS AND DUTIES TRANSFERRED.**

4 (a) EFFECTIVE DATE.—This section, and the amend-
 5 ments made by this section, shall take effect on the trans-
 6 fer date.

7 (b) FUNCTIONS OF THE OFFICE OF THRIFT SUPER-
 8 VISION.—

9 (1) SAVINGS AND LOAN HOLDING COMPANY
 10 FUNCTIONS TRANSFERRED.—

11 (A) BOARD OF GOVERNORS.—There are
 12 transferred to the Board of Governors all func-
 13 tions of the Office of Thrift Supervision and the
 14 Director of the Office of Thrift Supervision (in-
 15 cluding the authority to issue orders) relating
 16 to—

17 (i) the supervision of—

18 (I) any savings and loan holding
 19 company—

20 (aa) having
 21 \$50,000,000,000 or more in total
 22 consolidated assets; or

23 (bb) that is a foreign bank;
 24 and

1 (II) any subsidiary (other than a
2 depository institution) of a savings
3 and loan holding company described
4 in subclause (I); and

5 (ii) all rulemaking authority of the Of-
6 fice of Thrift Supervision and the Director
7 of the Office of Thrift Supervision relating
8 to savings and loan holding companies.

9 (B) COMPTROLLER OF THE CURRENCY.—
10 Except as provided in subparagraph (A), there
11 are transferred to the Office of the Comptroller
12 of the Currency all functions of the Office of
13 Thrift Supervision and the Director of the Of-
14 fice of Thrift Supervision (including the author-
15 ity to issue orders) relating to the supervision
16 of—

17 (i) any savings and loan holding com-
18 pany (other than a foreign bank)—

19 (I) having less than
20 \$50,000,000,000 in total consolidated
21 assets; and

22 (II) having—

23 (aa) a subsidiary that is an
24 insured depository institution, if
25 all such insured depository insti-

1 tutions are Federal depository in-
2 stitutions; or

3 (bb) a subsidiary that is a
4 Federal depository institution
5 and a subsidiary that is a State
6 depository institution, if the total
7 consolidated assets of all subsidi-
8 aries that are Federal depository
9 institutions exceed the total con-
10 solidated assets of all subsidiaries
11 that are State depository institu-
12 tions; and

13 (ii) any subsidiary (other than a de-
14 pository institution) of a savings and loan
15 holding company described in clause (i).

16 (C) CORPORATION.—Except as provided in
17 subparagraph (A), there are transferred to the
18 Corporation all functions of the Office of Thrift
19 Supervision and the Director of the Office of
20 Thrift Supervision (including the authority to
21 issue orders) relating to the supervision of—

22 (i) any savings and loan holding com-
23 pany (other than a foreign bank)—

1 (I) having less than
 2 \$50,000,000,000 in total consolidated
 3 assets; and

4 (II) having—

5 (aa) a subsidiary that is an
 6 insured depository institution, if
 7 all such insured depository insti-
 8 tutions are State depository insti-
 9 tutions; or

10 (bb) a subsidiary that is a
 11 Federal depository institution
 12 and a subsidiary that is a State
 13 depository institution, if the total
 14 consolidated assets of all subsidi-
 15 aries that are State depository
 16 institutions exceed the total con-
 17 solidated assets of all subsidiaries
 18 that are Federal depository insti-
 19 tutions; and

20 (ii) any subsidiary (other than a de-
 21 pository institution) of a savings and loan
 22 holding company described in clause (i).

23 (2) ALL OTHER FUNCTIONS TRANSFERRED.—

24 (A) BOARD OF GOVERNORS.—All rule-
 25 making authority of the Office of Thrift Super-

1 vision and the Director of the Office of Thrift
2 Supervision under section 11 of the Home Own-
3 ers' Loan Act (12 U.S.C. 1468) relating to
4 transactions with affiliates and extensions of
5 credit to executive officers, directors, and prin-
6 cipal shareholders is transferred to the Board
7 of Governors.

8 (B) COMPTROLLER OF THE CURRENCY.—
9 Except as provided in subparagraph (A), there
10 are transferred to the Comptroller of the Cur-
11 rency all functions of the Office of Thrift Su-
12 pervision and the Director of the Office of
13 Thrift Supervision relating to Federal savings
14 associations.

15 (C) CORPORATION.—Except as provided in
16 paragraph (1), all functions of the Office of
17 Thrift Supervision and the Director of the Of-
18 fice of Thrift Supervision relating to State sav-
19 ings associations are transferred to the Cor-
20 poration.

21 (D) COMPTROLLER OF THE CURRENCY
22 AND THE CORPORATION.—All rulemaking au-
23 thority of the Office of Thrift Supervision and
24 the Director of the Office of Thrift Supervision
25 relating to savings associations is transferred

1 to, and shall be exercised jointly by, the Comp-
 2 troller of the Currency and the Corporation.

3 (c) CERTAIN FUNCTIONS OF THE BOARD OF GOV-
 4 ERNORS.—

5 (1) BANK HOLDING COMPANY FUNCTIONS
 6 TRANSFERRED.—

7 (A) COMPTROLLER OF THE CURRENCY.—

8 Except as provided in subparagraph (C), there
 9 are transferred to the Office of the Comptroller
 10 of the Currency all functions of the Board of
 11 Governors (including any Federal reserve bank)
 12 relating to the supervision of—

13 (i) any bank holding company (other
 14 than a foreign bank)—

15 (I) having less than
 16 \$50,000,000,000 in total consolidated
 17 assets; and

18 (II) having—

19 (aa) a subsidiary that is an
 20 insured depository institution, if
 21 all such insured depository insti-
 22 tutions are Federal depository in-
 23 stitutions; or

24 (bb) a subsidiary that is a
 25 Federal depository institution

1 and a subsidiary that is a State
2 depository institution, if the total
3 consolidated assets of all subsidi-
4 aries that are Federal depository
5 institutions exceed the total con-
6 solidated assets of all subsidiaries
7 that are State depository institu-
8 tions; and

9 (ii) any subsidiary (other than a de-
10 pository institution) of a bank holding
11 company that is described in clause (i).

12 (B) CORPORATION.—Except as provided in
13 subparagraph (C), there are transferred to the
14 Corporation all functions of the Board of Gov-
15 ernors (including any Federal reserve bank) re-
16 lating to the supervision of—

17 (i) any bank holding company (other
18 than a foreign bank)—

19 (I) having less than
20 \$50,000,000,000 in total consolidated
21 assets; and

22 (II) having—

23 (aa) a subsidiary that is an
24 insured depository institution, if
25 all such insured depository insti-

tutions are State depository institutions; or

(bb) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are State depository institutions exceed the total consolidated assets of all subsidiaries that are Federal depository institutions; and

(ii) any subsidiary (other than a depository institution) of a bank holding company that is described in clause (i).

(C) RULEMAKING AUTHORITY.—No rulemaking authority of the Board of Governors is transferred to the Office of the Comptroller of the Currency or the Corporation under this paragraph.

(2) OTHER FUNCTIONS TRANSFERRED.—There are transferred to the Corporation all functions (other than rulemaking authority under the Federal Reserve Act) of the Board of Governors (and any

1 Federal reserve bank) relating to the supervision of
2 insured State member banks.

3 (d) CONFORMING AMENDMENTS.—

4 (1) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
5 tion 3(q) of the Federal Deposit Insurance Act (12
6 U.S.C. 1813(q)) is amended by striking paragraphs
7 (1) through (4) and inserting the following:

8 “(1) the Office of the Comptroller of the Cur-
9 rency, in the case of—

10 “(A) any national banking association;

11 “(B) any Federal branch or agency of a
12 foreign bank;

13 “(C) any bank holding company (other
14 than a foreign bank)—

15 “(i) having less than \$50,000,000,000
16 in total consolidated assets; and

17 “(ii) having—

18 “(I) a subsidiary that is an in-
19 sured depository institution, if all
20 such insured depository institutions
21 are Federal depository institutions; or

22 “(II) a subsidiary that is a Fed-
23 eral depository institution and a sub-
24 sidiary that is a State depository in-
25 stitution, if the total consolidated as-

1 sets of all subsidiaries that are Fed-
2 eral depository institutions exceed the
3 total consolidated assets of all subsidi-
4 aries that are State depository institu-
5 tions;

6 “(D) any subsidiary (other than a deposi-
7 tory institution) of a bank holding company
8 that is described in subparagraph (C);

9 “(E) any Federal savings association;

10 “(F) any savings and loan holding com-
11 pany (other than a foreign bank)—

12 “(i) having less than \$50,000,000,000
13 in total consolidated assets; and

14 “(ii) having—

15 “(I) a subsidiary that is an in-
16 sured depository institution, if all
17 such insured depository institutions
18 are Federal depository institutions; or

19 “(II) a subsidiary that is a Fed-
20 eral depository institution and a sub-
21 sidiary that is a State depository in-
22 stitution, if the total consolidated as-
23 sets of all subsidiaries that are Fed-
24 eral depository institutions exceed the
25 total consolidated assets of all subsidi-

1 aries that are State depository institu-
2 tions; and

3 “(G) any subsidiary (other than a deposi-
4 tory institution) of a savings and loan holding
5 company that is described in subparagraph (F’);

6 “(2) the Federal Deposit Insurance Corpora-
7 tion, in the case of—

8 “(A) any insured State bank;

9 “(B) any foreign bank having an insured
10 branch;

11 “(C) any State savings association;

12 “(D) any bank holding company (other
13 than a foreign bank)—

14 “(i) having less than \$50,000,000,000
15 in total consolidated assets; and

16 “(ii) having—

17 “(I) a subsidiary that is an in-
18 sured depository institution, if all
19 such insured depository institutions
20 are State depository institutions; or

21 “(II) a subsidiary that is a Fed-
22 eral depository institution and a sub-
23 sidiary that is a State depository in-
24 stitution, if the total consolidated as-
25 sets of all subsidiaries that are State

1 depository institutions exceed the total
2 consolidated assets of all subsidiaries
3 that are Federal depository institu-
4 tions;

5 “(E) any subsidiary (other than a depository
6 institution) of a bank holding company
7 that is described in subparagraph (D);

8 “(F) any savings and loan holding com-
9 pany (other than a foreign bank)—

10 “(i) having less than \$50,000,000,000
11 in total consolidated assets; and

12 “(ii) having—

13 “(I) a subsidiary that is an in-
14 sured depository institution, if all
15 such insured depository institutions
16 are State depository institutions; or

17 “(II) a subsidiary that is a Fed-
18 eral depository institution and a sub-
19 sidiary that is a State depository in-
20 stitution, if the total consolidated as-
21 sets of all subsidiaries that are State
22 depository institutions exceed the total
23 consolidated assets of all subsidiaries
24 that are Federal depository institu-
25 tions; and

1 “(G) any subsidiary (other than a deposi-
2 tory institution) of a savings and loan holding
3 company that is described in subparagraph (F);

4 “(3) the Board of Governors of the Federal Re-
5 serve System, in the case of—

6 “(A) any noninsured State member bank;

7 “(B) any branch or agency of a foreign
8 bank with respect to any provision of the Fed-
9 eral Reserve Act which is made applicable
10 under the International Banking Act of 1978;

11 “(C) any foreign bank which does not op-
12 erate an insured branch;

13 “(D) any agency or commercial lending
14 company other than a Federal agency;

15 “(E) supervisory or regulatory proceedings
16 arising from the authority given to the Board
17 of Governors under section 7(c)(1) of the Inter-
18 national Banking Act of 1978, including such
19 proceedings under the Financial Institutions
20 Supervisory Act of 1966;

21 “(F) any bank holding company having
22 total consolidated assets of \$50,000,000,000 or
23 more, any bank holding company that is a for-
24 eign bank, and any subsidiary (other than a de-

pository institution) of such a bank holding company; and

“(G) any savings and loan holding company having total consolidated assets of \$50,000,000,000 or more, any savings and loan holding company that is a foreign bank, and any subsidiary (other than a depository institution) of such a savings and loan holding company.”.

(2) CERTAIN REFERENCES IN THE BANK HOLDING COMPANY ACT OF 1956.—

(A) COMPTROLLER OF THE CURRENCY.—

On or after the transfer date, in the case of a bank holding company described in section 3(q)(1)(C) of the Federal Deposit Insurance Act, as amended by this Act, any reference in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) to the Board of Governors shall be deemed to be a reference to the Office of the Comptroller of the Currency.

(B) CORPORATION.—On or after the transfer date, in the case of a bank holding company described in section 3(q)(2)(D) of the Federal Deposit Insurance Act, as amended by this Act, any reference in the Bank Holding Company

1 Act of 1956 (12 U.S.C. 1841 et seq.) to the
2 Board of Governors shall be deemed to be a ref-
3 erence to the Corporation.

4 (C) RULE OF CONSTRUCTION.—Notwith-
5 standing subparagraph (A) or (B), the Board of
6 Governors shall retain all rulemaking authority
7 under the Bank Holding Company Act of 1956
8 (12 U.S.C. 1841 et seq.).

9 (3) CONSULTATION IN HOLDING COMPANY
10 RULEMAKING.—

11 (A) BANK HOLDING COMPANIES.—Section
12 5 of the Bank Holding Company Act of 1956
13 (12 U.S.C. 1844) is amended by adding at the
14 end the following:

15 “(h) CONSULTATION IN RULEMAKING.—Before pro-
16 posing or adopting regulations under this Act that apply
17 to bank holding companies having less than
18 \$50,000,000,000 in total consolidated assets, the Board
19 of Governors shall consult with the Comptroller of the
20 Currency and the Federal Deposit Insurance Corporation
21 as to the terms of such regulations.”.

22 (B) SAVINGS AND LOAN HOLDING COMPA-
23 NIES.—

24 (i) HOME OWNERS’ LOAN ACT.—Sec-
25 tion 10 of the Home Owners’ Loan Act

1 (12 U.S.C. 1467a) is amended by adding
 2 at the end the following:

3 “(u) CONSULTATION IN RULEMAKING.—Before pro-
 4 posing or adopting regulations under this section that
 5 apply to savings and loan holding companies having less
 6 than \$50,000,000,000 in total consolidated assets, the
 7 Board of Governors shall consult with the Comptroller of
 8 the Currency and the Federal Deposit Insurance Corpora-
 9 tion as to the terms of such regulations.”.

10 (ii) FEDERAL DEPOSIT INSURANCE
 11 ACT.—Section 19 of the Federal Deposit
 12 Insurance Act (12 U.S.C. 1829) is amend-
 13 ed—

14 (I) in subsection (d)(2), by in-
 15 serting “, in consultation with the
 16 Corporation and the Comptroller of
 17 the Currency,” after “System”; and

18 (II) in subsection (e)(2), by strik-
 19 ing “Director of the Office of Thrift
 20 Supervision” and inserting “Board of
 21 Governors of the Federal Reserve Sys-
 22 tem, in consultation with the Corpora-
 23 tion and the Comptroller of the Cur-
 24 rency,”.

25 (4) FEDERAL DEPOSIT INSURANCE ACT.—

1 (A) APPLICATION.—Section 8(b)(3) of the
2 Federal Deposit Insurance Act (12 U.S.C.
3 1818(b)(3)) is amended to read as follows:

4 “(3) APPLICATION TO BANK HOLDING COMPANIES,
5 SAVINGS AND LOAN HOLDING COMPANIES, AND EDGE
6 AND AGREEMENT CORPORATIONS.—

7 “(A) APPLICATION.—This subsection, sub-
8 sections (c) through (s) and subsection (u) of this
9 section, and section 50 shall apply to—

10 “(i) any bank holding company, and any
11 subsidiary (other than a bank) of a bank hold-
12 ing company, as those terms are defined in sec-
13 tion 2 of the Bank Holding Company Act of
14 1956 (12 U.S.C. 1841), as if such company or
15 subsidiary was an insured depository institution
16 for which the appropriate Federal banking
17 agency for the bank holding company was the
18 appropriate Federal banking agency;

19 “(ii) any savings and loan holding com-
20 pany, and any subsidiary (other than a deposi-
21 tory institution) of a savings and loan holding
22 company, as those terms are defined in section
23 10 of the Home Owners’ Loan Act (12 U.S.C.
24 1467a), as if such company or subsidiary was
25 an insured depository institution for which the

1 appropriate Federal banking agency for the sav-
2 ings and loan holding company was the appro-
3 priate Federal banking agency; and

4 “(iii) any organization organized and oper-
5 ated under section 25A of the Federal Reserve
6 Act (12 U.S.C. 611 et seq.) or operating under
7 section 25 of the Federal Reserve Act (12
8 U.S.C. 601 et seq.) and any noninsured State
9 member bank, as if such organization was a
10 bank holding company for which the Board of
11 Governors of the Federal Reserve System was
12 the appropriate Federal banking agency.

13 “(B) RULE OF CONSTRUCTION.—Nothing in
14 this paragraph may be construed to alter or affect
15 the authority of an appropriate Federal banking
16 agency to initiate enforcement proceedings, issue di-
17 rectives, or take other remedial action under any
18 other provision of law.”.

19 (B) CONFORMING AMENDMENT.—Section
20 8(b)(9) of the Federal Deposit Insurance Act
21 (12 U.S.C. 1818(b)(9)) is amended to read as
22 follows:

23 “(9) [Reserved].”.

24 (e) DETERMINATION OF TOTAL CONSOLIDATED AS-
25 SETS.—

1 (1) REGULATIONS.—

2 (A) IN GENERAL.—Not later than 180
3 days after the date of enactment of this Act,
4 the Office of the Comptroller of the Currency,
5 the Corporation, and the Board of Governors,
6 in order to avoid disruptive transfers of regu-
7 latory responsibility, shall issue joint regula-
8 tions that specify—

9 (i) the source of data for determining
10 the total consolidated assets of a deposi-
11 tory institution, bank holding company, or
12 savings and loan holding company for pur-
13 poses of this Act, and the amendments
14 made by this Act, including the amend-
15 ments to section 3(q) of the Federal De-
16 posit Insurance Act (12 U.S.C. 1813(q));
17 and

18 (ii) the interval and frequency at
19 which the total consolidated assets of a de-
20 pository institution, bank holding company,
21 or savings and loan holding company will
22 be determined.

23 (B) CONTENT.—The regulations issued
24 under subparagraph (A)—

1 (i) shall use information contained in
2 the reports described in paragraph (2),
3 other regulatory reports, audited financial
4 statements, or other comparable sources;

5 (ii) shall establish the frequency with
6 which the total consolidated assets of de-
7 pository institutions, bank holding compa-
8 nies, and savings and loan companies are
9 determined, at an interval that—

10 (I) avoids undue disruption in
11 regulatory oversight;

12 (II) facilitates nondisruptive
13 transfers of regulatory responsibility;
14 and

15 (III) is not shorter than 2 years;
16 and

17 (iii) may provide for more frequent
18 determinations of the total consolidated as-
19 sets of a depository institution, bank hold-
20 ing company, or savings and loan holding
21 company, to take into account a trans-
22 action outside the ordinary course of busi-
23 ness, including a merger, acquisition, or
24 other circumstance, as determined jointly
25 by the Office of the Comptroller of the

1 Currency, the Corporation, and the Board
2 of Governors, by rule.

3 (2) INTERIM PROVISIONS.—Until the date on
4 which final regulations issued under paragraph (1)
5 are effective, for purposes this Act, and the amend-
6 ments made by this Act, including the amendments
7 to section 3(q) of the Federal Deposit Insurance Act
8 (12 U.S.C. 1813(q)), the total consolidated assets
9 of—

10 (A) a depository institution shall be deter-
11 mined by reference to the total consolidated as-
12 sets reported in the most recent Consolidated
13 Report of Income and Condition or Thrift Fi-
14 nancial Report (or any successor thereto) filed
15 by the depository institution with the Corpora-
16 tion or the Office of Thrift Supervision before
17 the transfer date;

18 (B) a bank holding company shall be de-
19 termined by reference to the total consolidated
20 assets reported in the most recent Consolidated
21 Financial Statements for Bank Holding Compa-
22 nies (commonly referred to as the “FR Y–9C”,
23 or any successor thereto) filed by the bank
24 holding company with the Board of Governors
25 before the transfer date; and

1 (C) a savings and loan holding company
2 shall be determined by reference to the total
3 consolidated assets reported in the applicable
4 schedule of the most recent Thrift Financial
5 Report (or any successor thereto) filed by the
6 savings and loan holding company with the Of-
7 fice of Thrift Supervision before the transfer
8 date.

9 (f) CONSUMER PROTECTION.—Nothing in this sec-
10 tion may be construed to limit or otherwise affect the
11 transfer of powers under title X.

12 **SEC. 313. ABOLISHMENT.**

13 Effective 90 days after the transfer date, the Office
14 of Thrift Supervision and the position of Director of the
15 Office of Thrift Supervision are abolished.

16 **SEC. 314. AMENDMENTS TO THE REVISED STATUTES.**

17 (a) AMENDMENT TO SECTION 324.—Section 324 of
18 the Revised Statutes of the United States (12 U.S.C. 1)
19 is amended to read as follows:

20 **“SEC. 324. COMPTROLLER OF THE CURRENCY.**

21 **“(a) OFFICE OF THE COMPTROLLER OF THE CUR-**
22 **RENCY ESTABLISHED.**—There is established in the De-
23 partment of the Treasury a bureau to be known as the
24 ‘Office of the Comptroller of the Currency’ which is
25 charged with assuring the safety and soundness of, and

1 compliance with laws and regulations, fair access to finan-
2 cial services, and fair treatment of customers by, the insti-
3 tutions and other persons subject to its jurisdiction.

4 “(b) COMPTROLLER OF THE CURRENCY.—

5 “(1) IN GENERAL.—The chief officer of the Of-
6 fice of the Comptroller of the Currency shall be
7 known as the Comptroller of the Currency. The
8 Comptroller of the Currency shall perform the duties
9 of the Comptroller of the Currency under the gen-
10 eral direction of the Secretary of the Treasury. The
11 Secretary of the Treasury may not delay or prevent
12 the issuance of any rule or the promulgation of any
13 regulation by the Comptroller of the Currency, and
14 may not intervene in any matter or proceeding be-
15 fore the Comptroller of the Currency (including
16 agency enforcement actions), unless otherwise spe-
17 cifically provided by law.

18 “(2) ADDITIONAL AUTHORITY.—The Comp-
19 troller of the Currency shall have the same authority
20 with respect to functions transferred to the Comp-
21 troller of the Currency under the Enhancing Finan-
22 cial Institution Safety and Soundness Act of 2010
23 (including matters that were within the jurisdiction
24 of the Director of the Office of Thrift Supervision or
25 the Office of Thrift Supervision on the day before

1 the transfer date under that Act) as was vested in
2 the Director of the Office of Thrift Supervision on
3 the transfer date under that Act.”.

4 (b) AMENDMENT TO SECTION 329.—Section 329 of
5 the Revised Statutes of the United States (12 U.S.C. 11)
6 is amended by inserting before the period at the end the
7 following: “or any Federal savings association”.

8 (c) EFFECTIVE DATE.—This section, and the amend-
9 ments made by this section, shall take effect on the trans-
10 fer date.

11 **SEC. 315. FEDERAL INFORMATION POLICY.**

12 Section 3502(5) of title 44, United States Code, is
13 amended by inserting “Office of the Comptroller of the
14 Currency,” after “the Securities and Exchange Commis-
15 sion,”.

16 **SEC. 316. SAVINGS PROVISIONS.**

17 (a) OFFICE OF THRIFT SUPERVISION.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Sections 312(b) and 313
20 shall not affect the validity of any right, duty, or ob-
21 ligation of the United States, the Director of the Of-
22 fice of Thrift Supervision, the Office of Thrift Su-
23 pervision, or any other person, that existed on the
24 day before the transfer date.

1 (2) CONTINUATION OF SUITS.—This title shall
 2 not abate any action or proceeding commenced by or
 3 against the Director of the Office of Thrift Super-
 4 vision or the Office of Thrift Supervision before the
 5 transfer date, except that, for any action or pro-
 6 ceeding arising out of a function of the Director of
 7 the Office of Thrift Supervision or the Office of
 8 Thrift Supervision that is transferred to the Comp-
 9 troller of the Currency, the Office of the Comptroller
 10 of the Currency, the Chairperson of the Corporation,
 11 the Corporation, the Chairman of the Board of Gov-
 12 ernors, or the Board of Governors by this subtitle,
 13 the Comptroller of the Currency, the Office of the
 14 Comptroller of the Currency, the Chairperson of the
 15 Corporation, the Corporation, the Chairman of the
 16 Board of Governors, or the Board of Governors shall
 17 be substituted for the Director of the Office of
 18 Thrift Supervision or the Office of Thrift Super-
 19 vision, as appropriate, as a party to the action or
 20 proceeding as of the transfer date.

21 (b) BOARD OF GOVERNORS.—

22 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
 23 TIONS NOT AFFECTED.—Section 312(c) shall not af-
 24 fect the validity of any right, duty, or obligation of
 25 the United States, the Board of Governors, any Fed-

1 eral reserve bank, or any other person, that existed
2 on the day before the transfer date.

3 (2) CONTINUATION OF SUITS.—This title shall
4 not abate any action or proceeding commenced by or
5 against the Board of Governors or a Federal reserve
6 bank before the transfer date, except that, for any
7 action or proceeding arising out of a function of the
8 Board of Governors or a Federal reserve bank trans-
9 ferred to the Comptroller of the Currency, the Office
10 of the Comptroller of the Currency, the Chairperson
11 of the Corporation, or the Corporation by this sub-
12 title, the Comptroller of the Currency, the Office of
13 the Comptroller of the Currency, the Chairperson of
14 the Corporation, or the Corporation shall be sub-
15 stituted for the Board of Governors or the Federal
16 reserve bank, as appropriate, as a party to the ac-
17 tion or proceeding, as of the transfer date.

18 (c) CONTINUATION OF EXISTING ORDERS, RESOLU-
19 TIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS,
20 AND OTHER MATERIALS.—

21 (1) OFFICE OF THRIFT SUPERVISION.—All or-
22 ders, resolutions, determinations, agreements, regu-
23 lations, interpretative rules, other interpretations,
24 guidelines, procedures, and other advisory materials
25 that have been issued, made, prescribed, or allowed

1 to become effective by the Office of Thrift Super-
2 vision, or by a court of competent jurisdiction, in the
3 performance of functions of the Office of Thrift Su-
4 pervision that are transferred by this subtitle and
5 that are in effect on the day before the transfer
6 date, shall continue in effect according to the terms
7 of those materials, and shall be enforceable by or
8 against the Office of the Comptroller of the Cur-
9 rency, the Corporation, or the Board of Governors,
10 as appropriate, until modified, terminated, set aside,
11 or superseded in accordance with applicable law by
12 the Office of the Comptroller of the Currency, the
13 Corporation, or the Board of Governors, as appro-
14 priate, by any court of competent jurisdiction, or by
15 operation of law.

16 (2) BOARD OF GOVERNORS.—All orders, resolu-
17 tions, determinations, agreements, regulations, inter-
18 pretative rules, other interpretations, guidelines, pro-
19 cedures, and other advisory materials, that have
20 been issued, made, prescribed, or allowed to become
21 effective by the Board of Governors, or by a court
22 of competent jurisdiction, in the performance of
23 functions of the Board of Governors that are trans-
24 ferred by this subtitle and that are in effect on the
25 day before the transfer date, shall continue in effect

1 according to the terms of those materials, and shall
2 be enforceable by or against the Office of the Comp-
3 troller of the Currency or the Corporation, as appro-
4 priate, until modified, terminated, set aside, or su-
5 perseded in accordance with applicable law by the
6 Office of the Comptroller of the Currency or the
7 Corporation, as appropriate, by any court of com-
8 petent jurisdiction, or by operation of law.

9 (d) IDENTIFICATION OF REGULATIONS CONTIN-
10 UED.—

11 (1) BY THE OFFICE OF THE COMPTROLLER OF
12 THE CURRENCY.—Not later than the transfer date,
13 the Office of the Comptroller of the Currency
14 shall—

15 (A) in consultation with the Corporation,
16 identify the regulations continued under sub-
17 section (c) that will be enforced by the Office
18 of the Comptroller of the Currency; and

19 (B) publish a list of such regulations in the
20 Federal Register.

21 (2) BY THE CORPORATION.—Not later than the
22 transfer date, the Corporation shall—

23 (A) in consultation with the Office of the
24 Comptroller of the Currency, identify the regu-

1 lations continued under subsection (c) that will
2 be enforced by the Corporation; and

3 (B) publish a list of such regulations in the
4 Federal Register.

5 (3) BY THE BOARD OF GOVERNORS.—Not later
6 than the transfer date, the Board of Governors
7 shall—

8 (A) in consultation with the Office of the
9 Comptroller of the Currency and the Corpora-
10 tion, identify the regulations continued under
11 subsection (c) that will be enforced by the
12 Board of Governors; and

13 (B) publish a list of such regulations in the
14 Federal Register.

15 (e) STATUS OF REGULATIONS PROPOSED OR NOT
16 YET EFFECTIVE.—

17 (1) PROPOSED REGULATIONS.—Any proposed
18 regulation of the Office of Thrift Supervision or the
19 Board of Governors, which that agency, in per-
20 forming functions transferred by this subtitle, has
21 proposed before the transfer date, but has not pub-
22 lished as a final regulation before that date, shall be
23 deemed to be a proposed regulation of the Office of
24 the Comptroller of the Currency, the Corporation, or

1 the Board of Governors, as appropriate, according to
 2 its terms.

3 (2) REGULATIONS NOT YET EFFECTIVE.—Any
 4 interim or final regulation of the Office of Thrift Su-
 5 pervision or the Board of Governors, which that
 6 agency, in performing functions transferred by this
 7 subtitle, has published before the transfer date, but
 8 which has not become effective before that date,
 9 shall become effective as a regulation of the Office
 10 of the Comptroller of the Currency, the Corporation,
 11 or the Board of Governors, as appropriate, according
 12 to its terms.

13 **SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL**
 14 **BANKING AGENCIES.**

15 (a) DIRECTOR OF THE OFFICE OF THRIFT SUPER-
 16 VISION AND THE OFFICE OF THRIFT SUPERVISION.—Ex-
 17 cept as provided in section 312(d)(2), on and after the
 18 transfer date, any reference in Federal law to the Director
 19 of the Office of Thrift Supervision or the Office of Thrift
 20 Supervision, in connection with any function of the Direc-
 21 tor of the Office of Thrift Supervision or the Office of
 22 Thrift Supervision transferred under section 312(b) or
 23 any other provision of this subtitle, shall be deemed to be
 24 a reference to the Comptroller of the Currency, the Office
 25 of the Comptroller of the Currency, the Chairperson of

1 the Corporation, the Corporation, the Chairman of the
2 Board of Governors, or the Board of Governors, as appropriate.
3

4 (b) BOARD OF GOVERNORS.—Except as provided in
5 section 312(d)(2), on and after the transfer date, any reference
6 in Federal law to the Board of Governors or any
7 Federal reserve bank, in connection with any function of
8 the Board of Governors or any Federal reserve bank
9 transferred under section 312(c) or any other provision
10 of this subtitle, shall be deemed to be a reference to the
11 Comptroller of the Currency, the Office of the Comptroller
12 of the Currency, the Chairperson of the Corporation, or
13 the Corporation, as appropriate.

14 **SEC. 318. FUNDING.**

15 (a) FUNDING OF OFFICE OF THE COMPTROLLER OF
16 THE CURRENCY.—

17 (1) AUTHORITY TO COLLECT ASSESSMENTS,
18 FEES, AND OTHER CHARGES, AND TO RECEIVE
19 TRANSFERRED FUNDS.—Chapter 4 of title LXII of
20 the Revised Statutes is amended by inserting after
21 section 5240 (12 U.S.C. 481, 482) the following:

22 “SEC. 5240A. The Comptroller of the Currency may
23 collect an assessment, fee, or other charge from any entity
24 described in section 3(q)(1) of the Federal Deposit Insurance
25 Act (12 U.S.C. 1813(q)(1)), as the Comptroller de-

1 termines is necessary or appropriate to carry out the re-
2 sponsibilities of the Office of the Comptroller of the Cur-
3 rency. The Comptroller of the Currency also may collect
4 an assessment, fee, or other charge from any entity, the
5 activities of which are supervised by the Comptroller of
6 the Currency under section 6 of the Bank Holding Com-
7 pany Act of 1956, as the Comptroller determines is nec-
8 essary or appropriate to carry out the responsibilities of
9 the Office of the Comptroller of the Currency in connec-
10 tion with such activities. In establishing the amount of an
11 assessment, fee, or charge collected from an entity under
12 this section, the Comptroller of the Currency may take
13 into account the funds transferred to the Office of the
14 Comptroller of the Currency under this section, the nature
15 and scope of the activities of the entity, the amount and
16 type of assets that the entity holds, the financial and man-
17 agerial condition of the entity, and any other factor, as
18 the Comptroller of the Currency determines is appro-
19 priate. Funds derived from any assessment, fee, or charge
20 collected or payment made pursuant to this section may
21 be deposited by the Comptroller of the Currency in accord-
22 ance with the provisions of section 5234. Such funds shall
23 not be construed to be Government funds or appropriated
24 monies, and shall not be subject to apportionment for pur-
25 poses of chapter 15 of title 31, United States Code, or

1 any other provision of law. The authority of the Comp-
 2 troller of the Currency under this section shall be in addi-
 3 tion to the authority under section 5240.

4 “The Comptroller of the Currency shall have sole au-
 5 thority to determine the manner in which the obligations
 6 of the Office of the Comptroller of the Currency shall be
 7 incurred and its disbursements and expenses allowed and
 8 paid, in accordance with this section.”.

9 (2) PROMOTING PARITY IN SUPERVISION
 10 FEES.—

11 (A) PROPOSAL REQUIRED.—

12 (i) IN GENERAL.—The Comptroller of
 13 the Currency shall submit to the Board of
 14 Directors of the Corporation a proposal to
 15 promote parity in the examination fees
 16 paid by State and Federal depository insti-
 17 tutions having total consolidated assets of
 18 less than \$50,000,000,000.

19 (ii) CONTENTS.—The proposal sub-
 20 mitted under clause (i) shall recommend a
 21 transfer from the Corporation to the Office
 22 of the Comptroller of the Currency of a
 23 percentage of the amount that the Office
 24 of the Comptroller of the Currency esti-
 25 mates is necessary or appropriate to carry

1 out the responsibilities of the Office of the
2 Comptroller of the Currency associated
3 with the supervision of Federal depository
4 institutions having total consolidated assets
5 of less than \$50,000,000,000.

6 (iii) DATA COLLECTION.—The Cor-
7 poration shall assist the Office of the
8 Comptroller of the Currency in collecting
9 data relative to the supervision of State de-
10 pository institutions to develop the pro-
11 posal submitted under clause (i).

12 (B) VOTE.—Not later than 60 days after
13 the date of receipt of the proposal under sub-
14 paragraph (A), the Board of Directors of the
15 Corporation shall—

16 (i) vote on the proposal; and

17 (ii) promptly implement a plan to pe-
18 riodically transfer to the Office of the
19 Comptroller of the Currency a percentage
20 of the amount that the Office of the Comp-
21 troller of the Currency estimates is nec-
22 essary or appropriate to carry out the re-
23 sponsibilities of the Office of the Comp-
24 troller of the Currency associated with the
25 supervision of Federal depository institu-

1 tions having total consolidated assets of
2 less than \$50,000,000,000, as approved by
3 the Board of Directors of the Corporation.

4 (C) REPORT TO CONGRESS.—Not later
5 than 30 days after date of the vote of the
6 Board of Directors of the Corporation under
7 subparagraph (B), the Corporation shall submit
8 to the Committee on Banking, Housing, and
9 Urban Affairs of the Senate and the Committee
10 on Financial Services of the House of Rep-
11 resentatives a report describing—

12 (i) the proposal made to the Board of
13 Directors of the Corporation by the Comp-
14 troller of the Currency; and

15 (ii) the decision resulting from the
16 vote of the Board of Directors of the Cor-
17 poration.

18 (D) FAILURE TO APPROVE PLAN.—If, on
19 the date that is 2 years after the date of enact-
20 ment of this Act, the Board of Directors of the
21 Corporation has failed to approve a plan under
22 subparagraph (B), the Council shall approve a
23 plan using the dispute resolution procedures
24 under section 119.

1 (b) FUNDING OF BOARD OF GOVERNORS.—Section
2 11 of the Federal Reserve Act (12 U.S.C. 248) is amended
3 by adding at the end the following:

4 “(s) ASSESSMENTS, FEES, AND OTHER CHARGES
5 FOR CERTAIN COMPANIES.—

6 “(1) IN GENERAL.—The Board shall collect a
7 total amount of assessments, fees, or other charges
8 from the companies described in paragraph (2) that
9 is equal to the total expenses the Board estimates
10 are necessary or appropriate to carry out the respon-
11 sibilities of the Board with respect to such compa-
12 nies.

13 “(2) COMPANIES.—The companies described in
14 this paragraph are—

15 “(A) all bank holding companies having
16 total consolidated assets of \$50,000,000,000 or
17 more;

18 “(B) all savings and loan holding compa-
19 nies having total consolidated assets of
20 \$50,000,000,000 or more; and

21 “(C) all nonbank financial companies su-
22 pervised by the Board under section 113 of the
23 Restoring American Financial Stability Act of
24 2010.”.

1 (c) CORPORATION EXAMINATION FEES.—Section
2 10(e) of the Federal Deposit Insurance Act (12 U.S.C.
3 1820(e)) is amended by striking paragraph (1) and insert-
4 ing the following:

5 “(1) REGULAR AND SPECIAL EXAMINATIONS OF
6 DEPOSITORY INSTITUTIONS.—The cost of conducting
7 any regular examination or special examination of
8 any depository institution under subsection (b)(2),
9 (b)(3), or (d) or of any entity described in section
10 3(q)(2) may be assessed by the Corporation against
11 the institution or entity to meet the expenses of the
12 Corporation in carrying out such examinations, or as
13 the Corporation determines is necessary or appro-
14 priate to carry out the responsibilities of the Cor-
15 poration. The Corporation may also collect an as-
16 sessment, fee, or other charge from any entity, the
17 activities of which are supervised by the Corporation
18 under section 6 of the Bank Holding Company Act
19 of 1956, as the Corporation determines is necessary
20 or appropriate to carry out the responsibilities of the
21 Corporation in connection with such activities.”.

22 (d) EFFECTIVE DATE.—This section, and the amend-
23 ments made by this section, shall take effect on the trans-
24 fer date.

1 **SEC. 319. CONTRACTING AND LEASING AUTHORITY.**

2 Notwithstanding the Federal Property and Adminis-
 3 trative Services Act of 1949 (41 U.S.C. 251 et seq.) or
 4 any other provision of law, the Office of the Comptroller
 5 of the Currency may—

6 (1) enter into and perform contracts, execute
 7 instruments, and acquire, in any lawful manner,
 8 such goods and services, or personal or real property
 9 (or property interest) as the Comptroller deems nec-
 10 essary to carry out the duties and responsibilities of
 11 the Office of the Comptroller of the Currency; and

12 (2) hold, maintain, sell, lease, or otherwise dis-
 13 pose of the property (or property interest) acquired
 14 under paragraph (1).

15 **Subtitle B—Transitional Provisions**

16 **SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROP-**
 17 **ERTY.**

18 (a) OFFICE OF THRIFT SUPERVISION.—

19 (1) IN GENERAL.—Before the transfer date, the
 20 Office of the Comptroller of the Currency, the Cor-
 21 poration, and the Board of Governors shall—

22 (A) consult and cooperate with the Office
 23 of Thrift Supervision to facilitate the orderly
 24 transfer of functions to the Office of the Comp-
 25 troller of the Currency, the Corporation, and

1 the Board of Governors in accordance with this
2 title;

3 (B) determine jointly, from time to time—

4 (i) the amount of funds necessary to
5 pay any expenses associated with the
6 transfer of functions (including expenses
7 for personnel, property, and administrative
8 services) during the period beginning on
9 the date of enactment of this Act and end-
10 ing on the transfer date;

11 (ii) which personnel are appropriate to
12 facilitate the orderly transfer of functions
13 by this title; and

14 (iii) what property and administrative
15 services are necessary to support the Office
16 of the Comptroller of the Currency, the
17 Corporation, and the Board of Governors
18 during the period beginning on the date of
19 enactment of this Act and ending on the
20 transfer date; and

21 (C) take such actions as may be necessary
22 to provide for the orderly implementation of
23 this title.

24 (2) AGENCY CONSULTATION.—When requested
25 jointly by the Office of the Comptroller of the Cur-

1 rency, the Corporation, and the Board of Governors
2 to do so before the transfer date, the Office of Thrift
3 Supervision shall—

4 (A) pay to the Office of the Comptroller of
5 the Currency, the Corporation, or the Board of
6 Governors, as applicable, from funds obtained
7 by the Office of Thrift Supervision through as-
8 sessments, fees, or other charges that the Office
9 of Thrift Supervision is authorized by law to
10 impose, such amounts as the Office of the
11 Comptroller of the Currency, the Corporation,
12 and the Board of Governors jointly determine
13 to be necessary under paragraph (1);

14 (B) detail to the Office of the Comptroller
15 of the Currency, the Corporation, or the Board
16 of Governors, as applicable, such personnel as
17 the Office of the Comptroller of the Currency,
18 the Corporation, and the Board of Governors
19 jointly determine to be appropriate under para-
20 graph (1); and

21 (C) make available to the Office of the
22 Comptroller of the Currency, the Corporation,
23 or the Board of Governors, as applicable, such
24 property and provide to the Office of the Comp-
25 troller of the Currency, the Corporation, or the

1 Board of Governors, as applicable, such admin-
2 istrative services as the Office of the Comp-
3 troller of the Currency, the Corporation, and
4 the Board of Governors jointly determine to be
5 necessary under paragraph (1).

6 (3) NOTICE REQUIRED.—The Office of the
7 Comptroller of the Currency, the Corporation, and
8 the Board of Governors shall jointly give the Office
9 of Thrift Supervision reasonable prior notice of any
10 request that the Office of the Comptroller of the
11 Currency, the Corporation, and the Board of Gov-
12 ernors jointly intend to make under paragraph (2).

13 (b) BOARD OF GOVERNORS.—

14 (1) IN GENERAL.—Before the transfer date, the
15 Office of the Comptroller of the Currency and the
16 Corporation shall—

17 (A) consult and cooperate with the Board
18 of Governors to facilitate the orderly transfer of
19 functions to the Office of the Comptroller of the
20 Currency and the Corporation in accordance
21 with this title;

22 (B) determine jointly, from time to time—

23 (i) the amount of funds necessary to
24 pay any expenses associated with the
25 transfer of functions (including expenses

1 for personnel, property, and administrative
2 services) during the period beginning on
3 the date of enactment of this Act and end-
4 ing on the transfer date;

5 (ii) which personnel are appropriate to
6 facilitate the orderly transfer of functions
7 by this title; and

8 (iii) what property and administrative
9 services are necessary to support the Office
10 of the Comptroller of the Currency and the
11 Corporation during the period beginning
12 on the date of enactment of this Act and
13 ending on the transfer date; and

14 (C) take such actions as may be necessary
15 to provide for the orderly implementation of
16 this title.

17 (2) AGENCY CONSULTATION.—When requested
18 jointly by the Office of the Comptroller of the Cur-
19 rency and the Corporation to do so before the trans-
20 fer date, the Board of Governors shall—

21 (A) pay to the Office of the Comptroller of
22 the Currency or the Corporation, as applicable,
23 from funds obtained by the Board of Governors
24 through assessments, fees, or other charges
25 that the Board of Governors is authorized by

1 law to impose, such amounts as the Office of
2 the Comptroller of the Currency and the Cor-
3 poration jointly determine to be necessary
4 under paragraph (1);

5 (B) detail to the Office of the Comptroller
6 of the Currency or the Corporation, as applica-
7 ble, such personnel as the Office of the Comp-
8 troller of the Currency and the Corporation
9 jointly determine to be appropriate under para-
10 graph (1); and

11 (C) make available to the Office of the
12 Comptroller of the Currency or the Corporation,
13 as applicable, such property and provide to the
14 Office of the Comptroller of the Currency or the
15 Corporation, as applicable, such administrative
16 services as the Office of the Comptroller of the
17 Currency and the Corporation jointly determine
18 to be necessary under paragraph (1).

19 (3) NOTICE REQUIRED.—The Office of the
20 Comptroller of the Currency and the Corporation
21 shall jointly give the Board of Governors reasonable
22 prior notice of any request that the Office of the
23 Comptroller of the Currency and the Corporation
24 jointly intend to make under paragraph (2).

1 **SEC. 322. TRANSFER OF EMPLOYEES.**

2 (a) IN GENERAL.—

3 (1) OFFICE OF THRIFT SUPERVISION EMPLOY-
4 EES.—

5 (A) IN GENERAL.—All employees of the
6 Office of Thrift Supervision shall be transferred
7 to the Office of the Comptroller of the Currency
8 or the Corporation for employment in accord-
9 ance with this section.

10 (B) ALLOCATING EMPLOYEES FOR TRANS-
11 FER TO RECEIVING AGENCIES.—The Director of
12 the Office of Thrift Supervision, the Comp-
13 troller of the Currency, and the Chairperson of
14 the Corporation shall—

15 (i) jointly determine the number of
16 employees of the Office of Thrift Super-
17 vision necessary to perform or support the
18 functions that are transferred to the Office
19 of the Comptroller of the Currency or the
20 Corporation by this title; and

21 (ii) consistent with the determination
22 under clause (i), jointly identify employees
23 of the Office of Thrift Supervision for
24 transfer to the Office of the Comptroller of
25 the Currency or the Corporation.

1 (2) BOARD OF GOVERNORS.—The Comptroller
2 of the Currency, the Chairperson of the Corporation,
3 and the Chairman of the Board of Governors shall—

4 (A) jointly determine the number of em-
5 ployees of the Board of Governors (including
6 employees of the Federal reserve banks who, on
7 the day before the transfer date, are performing
8 functions on behalf of the Board of Governors)
9 necessary to perform or support the functions
10 that are transferred to the Office of the Comp-
11 troller of the Currency or the Corporation
12 under this title; and

13 (B) consistent with the determination
14 under subparagraph (A), jointly identify em-
15 ployees of the Board of Governors (including
16 employees of the Federal reserve banks who, on
17 the day before the transfer date, are performing
18 functions on behalf of the Board of Governors)
19 for transfer to the Office of the Comptroller of
20 the Currency or the Corporation.

21 (3) EMPLOYEES TRANSFERRED; SERVICE PERI-
22 ODS CREDITED.—For purposes of this section, peri-
23 ods of service with a Federal home loan bank, a
24 joint office of Federal home loan banks, or a Federal

1 reserve bank shall be credited as periods of service
2 with a Federal agency.

3 (4) APPOINTMENT AUTHORITY FOR EXCEPTED
4 SERVICE TRANSFERRED.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), any appointment authority
7 of the Office of Thrift Supervision or the Board
8 of Governors under Federal law that relates to
9 the functions transferred under section 312, in-
10 cluding the regulations of the Office of Per-
11 sonnel Management, for filling the positions of
12 employees in the excepted service shall be trans-
13 ferred to the Comptroller of the Currency or
14 the Chairperson of the Corporation, as appro-
15 priate.

16 (B) DECLINING TRANSFERS ALLOWED.—
17 The Office of the Comptroller of the Currency
18 or the Chairperson of the Corporation may de-
19 cline to accept a transfer of authority under
20 subparagraph (A) (and the employees appointed
21 under that authority) to the extent that such
22 authority relates to positions excepted from the
23 competitive service because of their confidential,
24 policy-making, policy-determining, or policy-ad-
25 vocating character.

1 (5) ADDITIONAL APPOINTMENT AUTHORITY.—

2 Notwithstanding any other provision of law, the Of-
3 fice of the Comptroller of the Currency and the Cor-
4 poration may appoint transferred employees to posi-
5 tions in the Office of the Comptroller of the Cur-
6 rency or the Corporation, respectively. For purposes
7 of this paragraph, an employee transferred from any
8 Federal reserve bank shall be treated as an employee
9 of the Board of Governors.

10 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
11 MENTS.—Each employee to be transferred under sub-
12 section (a)(1) shall—

13 (1) be transferred not later than 90 days after
14 the transfer date; and

15 (2) receive notice of the position assignment of
16 the employee not later than 120 days after the effec-
17 tive date of the transfer of the employee.

18 (c) TRANSFER OF FUNCTIONS.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, the transfer of employees under
21 this subtitle shall be deemed a transfer of functions
22 for the purpose of section 3503 of title 5, United
23 States Code.

24 (2) PRIORITY.—If any provision of this subtitle
25 conflicts with any protection provided to a trans-

1 ferred employee under section 3503 of title 5,
2 United States Code, the provisions of this subtitle
3 shall control.

4 (d) EMPLOYEE STATUS AND ELIGIBILITY.—The
5 transfer of functions and employees under this subtitle,
6 and the abolishment of the Office of Thrift Supervision
7 under section 313, shall not affect the status of the trans-
8 ferred employees as employees of an agency of the United
9 States under any provision of law.

10 (e) EQUAL STATUS AND TENURE POSITIONS.—

11 (1) STATUS AND TENURE.—

12 (A) OFFICE OF THRIFT SUPERVISION.—

13 Each transferred employee from the Office of
14 Thrift Supervision shall be placed in a position
15 at the Office of the Comptroller of the Currency
16 or the Corporation with the same status and
17 tenure as the transferred employee held on the
18 day before the date on which the employee was
19 transferred.

20 (B) BOARD OF GOVERNORS.—Each trans-
21 ferred employee from the Board of Governors
22 or from a Federal reserve bank shall be placed
23 in a position with the same status and tenure
24 as employees of the Office of the Comptroller of
25 the Currency or the Corporation who perform

1 similar functions and have similar periods of
2 service.

3 (2) FUNCTIONS.—To the extent practicable,
4 each transferred employee shall be placed in a posi-
5 tion at the Office of the Comptroller of the Currency
6 or the Corporation, as applicable, responsible for the
7 same functions and duties as the transferred em-
8 ployee had on the day before the date on which the
9 employee was transferred, in accordance with the ex-
10 pertise and preferences of the transferred employee.

11 (f) NO ADDITIONAL CERTIFICATION REQUIRE-
12 MENTS.—An examiner who is a transferred employee shall
13 not be subject to any additional certification requirements
14 before being placed in a comparable position at the Office
15 of the Comptroller of the Currency or the Corporation,
16 if the examiner carries out examinations of the same type
17 of institutions as an employee of the Office of the Comp-
18 troller of the Currency or the Corporation as the employee
19 was responsible for carrying out before the date on which
20 the employee was transferred.

21 (g) PERSONNEL ACTIONS LIMITED.—

22 (1) 2-YEAR PROTECTION.—Except as provided
23 in paragraph (2), during the 2-year period beginning
24 on the transfer date, an employee holding a perma-
25 nent position on the day before the date on which

1 the employee was transferred shall not be involun-
2 tarily separated or involuntarily reassigned outside
3 the locality pay area (as defined by the Office of
4 Personnel Management) of the employee.

5 (2) EXCEPTIONS.—The Comptroller of the Cur-
6 rency and the Chairperson of the Corporation, as
7 applicable, may—

8 (A) separate a transferred employee for
9 cause, including for unacceptable performance;

10 or

11 (B) terminate an appointment to a position
12 excepted from the competitive service because of
13 its confidential policy-making, policy-deter-
14 mining, or policy-advocating character.

15 (h) PAY.—

16 (1) 2-YEAR PROTECTION.—Except as provided
17 in paragraph (2), during the 2-year period beginning
18 on the date on which the employee was transferred
19 under this subtitle, a transferred employee shall be
20 paid at a rate that is not less than the basic rate
21 of pay, including any geographic differential, that
22 the transferred employee received during the pay pe-
23 riod immediately preceding the date on which the
24 employee was transferred.

1 (2) EXCEPTIONS.—The Comptroller of the Cur-
2 rency, the Chairperson of the Corporation, or the
3 Chairman of the Board of Governors may reduce the
4 rate of basic pay of a transferred employee—

5 (A) for cause, including for unacceptable
6 performance; or

7 (B) with the consent of the transferred
8 employee.

9 (3) PROTECTION ONLY WHILE EMPLOYED.—
10 This subsection shall apply to a transferred em-
11 ployee only during the period that the transferred
12 employee remains employed by Office of the Comp-
13 troller of the Currency or the Corporation.

14 (4) PAY INCREASES PERMITTED.—Nothing in
15 this subsection shall limit the authority of the Comp-
16 troller of the Currency or the Chairperson of the
17 Corporation to increase the pay of a transferred em-
18 ployee.

19 (i) BENEFITS.—

20 (1) RETIREMENT BENEFITS FOR TRANSFERRED
21 EMPLOYEES.—

22 (A) IN GENERAL.—

23 (i) CONTINUATION OF EXISTING RE-
24 TIREMENT PLAN.—Each transferred em-
25 ployee shall remain enrolled in the retire-

1 ment plan of the transferred employee, for
2 as long as the transferred employee is em-
3 ployed by the Office of the Comptroller of
4 the Currency or the Corporation.

5 (ii) EMPLOYER'S CONTRIBUTION.—

6 The Comptroller of the Currency or the
7 Chairperson of the Corporation, as appro-
8 priate, shall pay any employer contribu-
9 tions to the existing retirement plan of
10 each transferred employee, as required
11 under each such existing retirement plan.

12 (B) OPTION FOR EMPLOYEES TRANS-
13 FERRED FROM FEDERAL RESERVE SYSTEM TO
14 BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-
15 MENT PROGRAM.—

16 (i) ELECTION.—Any transferred em-
17 ployee who was enrolled in a Federal Re-
18 serve System retirement plan on the day
19 before the date of the transfer of the em-
20 ployee to the Office of the Comptroller of
21 the Currency or the Corporation may, dur-
22 ing the period beginning 6 months after
23 the transfer date and ending 1 year after
24 the transfer date, elect to be subject to the
25 Federal employee retirement program.

1 (ii) EFFECTIVE DATE OF COV-
 2 ERAGE.—For any employee making an
 3 election under clause (i), coverage by the
 4 Federal employee retirement program shall
 5 begin 1 year after the transfer date.

6 (C) AGENCY PARTICIPATION IN FEDERAL
 7 RESERVE SYSTEM RETIREMENT PLAN.—

8 (i) SEPARATE ACCOUNT IN FEDERAL
 9 RESERVE SYSTEM RETIREMENT PLAN ES-
 10 TABLISHED.—A separate account in the
 11 Federal Reserve System retirement plan
 12 shall be established for employees trans-
 13 ferred to the Office of the Comptroller of
 14 the Currency or the Corporation under this
 15 title who do not make the election under
 16 subparagraph (B).

17 (ii) FUNDS ATTRIBUTABLE TO TRANS-
 18 FERRED EMPLOYEES REMAINING IN FED-
 19 ERAL RESERVE SYSTEM RETIREMENT
 20 PLAN TRANSFERRED.—The proportionate
 21 share of funds in the Federal Reserve Sys-
 22 tem retirement plan, including the propor-
 23 tionate share of any funding surplus in
 24 that plan, attributable to a transferred em-
 25 ployee who does not make the election

1 under subparagraph (B), shall be trans-
2 ferred to the account established under
3 clause (i).

4 (iii) EMPLOYER CONTRIBUTIONS DE-
5 POSITED.—The Office of the Comptroller
6 of the Currency or the Corporation, as ap-
7 propriate, shall deposit into the account es-
8 tablished under clause (i) the employer
9 contributions that the Office of the Comp-
10 troller of the Currency or the Corporation,
11 respectively, makes on behalf of trans-
12 ferred employees who do not make an elec-
13 tion under subparagraph (B).

14 (iv) ACCOUNT ADMINISTRATION.—The
15 Office of the Comptroller of the Currency
16 or the Corporation, as appropriate, shall
17 administer the account established under
18 clause (i) as a participation employer in
19 the Federal Reserve System retirement
20 plan.

21 (D) DEFINITION.—In this paragraph, the
22 term “existing retirement plan” means, with re-
23 spect to a transferred employee, the retirement
24 plan (including the Financial Institutions Re-
25 tirement Fund), and any associated thrift sav-

1 ings plan, of the agency from which the em-
2 ployee was transferred in which the employee
3 was enrolled on the day before the date on
4 which the employee was transferred.

5 (2) BENEFITS OTHER THAN RETIREMENT BEN-
6 EFITS.—

7 (A) DURING FIRST YEAR.—

8 (i) EXISTING PLANS CONTINUE.—

9 During the 1-year period following the
10 transfer date, each transferred employee
11 may retain membership in any employee
12 benefit program (other than a retirement
13 benefit program) of the agency from which
14 the employee was transferred under this
15 title, including any dental, vision, long
16 term care, or life insurance program to
17 which the employee belonged on the day
18 before the transfer date.

19 (ii) EMPLOYER'S CONTRIBUTION.—

20 The Office of the Comptroller of the Cur-
21 rency or the Corporation, as appropriate,
22 shall pay any employer cost required to ex-
23 tend coverage in the benefit program to
24 the transferred employee as required under
25 that program or negotiated agreements.

1 (B) DENTAL, VISION, OR LIFE INSURANCE
2 AFTER FIRST YEAR.—If, after the 1-year period
3 beginning on the transfer date, the Office of the
4 Comptroller of the Currency or the Corporation
5 determines that the Office of the Comptroller of
6 the Currency or the Corporation, as the case
7 may be, will not continue to participate in any
8 dental, vision, or life insurance program of an
9 agency from which an employee was trans-
10 ferred, a transferred employee who is a member
11 of the program may, before the decision takes
12 effect and without regard to any regularly
13 scheduled open season, elect to enroll in—

14 (i) the enhanced dental benefits pro-
15 gram established under chapter 89A of
16 title 5, United States Code;

17 (ii) the enhanced vision benefits estab-
18 lished under chapter 89B of title 5, United
19 States Code; and

20 (iii) the Federal Employees' Group
21 Life Insurance Program established under
22 chapter 87 of title 5, United States Code,
23 without regard to any requirement of in-
24 surability.

1 (C) LONG TERM CARE INSURANCE AFTER
2 1ST YEAR.—If, after the 1-year period begin-
3 ning on the transfer date, the Office of the
4 Comptroller of the Currency or the Corporation
5 determines that the Office of the Comptroller of
6 the Currency or the Corporation, as appro-
7 priate, will not continue to participate in any
8 long term care insurance program of an agency
9 from which an employee transferred, a trans-
10 ferred employee who is a member of such a pro-
11 gram may, before the decision takes effect, elect
12 to apply for coverage under the Federal Long
13 Term Care Insurance Program established
14 under chapter 90 of title 5, United States Code,
15 under the underwriting requirements applicable
16 to a new active workforce member, as described
17 in part 875 of title 5, Code of Federal Regula-
18 tions (or any successor thereto).

19 (D) CONTRIBUTION OF TRANSFERRED EM-
20 PLOYEE.—

21 (i) IN GENERAL.—Subject to clause
22 (ii), a transferred employee who is enrolled
23 in a plan under the Federal Employees
24 Health Benefits Program shall pay any

1 employee contribution required under the
2 plan.

3 (ii) COST DIFFERENTIAL.—The Office
4 of the Comptroller of the Currency or the
5 Corporation, as applicable, shall pay any
6 difference in cost between the employee
7 contribution required under the plan pro-
8 vided to transferred employees by the
9 agency from which the employee trans-
10 ferred on the date of enactment of this Act
11 and the plan provided by the Office of the
12 Comptroller of the Currency or the Cor-
13 poration, as the case may be, under this
14 section.

15 (iii) FUNDS TRANSFER.—The Office
16 of the Comptroller of the Currency or the
17 Corporation, as the case may be, shall
18 transfer to the Employees Health Benefits
19 Fund established under section 8909 of
20 title 5, United States Code, an amount de-
21 termined by the Director of the Office of
22 Personnel Management, after consultation
23 with the Comptroller of the Currency or
24 the Chairperson of the Corporation, as the
25 case may be, and the Office of Manage-

1 ment and Budget, to be necessary to reim-
2 burse the Fund for the cost to the Fund
3 of providing any benefits under this sub-
4 paragraph that are not otherwise paid for
5 by a transferred employee under clause (i).

6 (E) SPECIAL PROVISIONS TO ENSURE CON-
7 TINUATION OF LIFE INSURANCE BENEFITS.—

8 (i) IN GENERAL.—An annuitant, as
9 defined in section 8901 of title 5, United
10 States Code, who is enrolled in a life insur-
11 ance plan administered by an agency from
12 which employees are transferred under this
13 title on the day before the transfer date
14 shall be eligible for coverage by a life in-
15 surance plan under sections 8706(b),
16 8714a, 8714b, or 8714c of title 5, United
17 States Code, or by a life insurance plan es-
18 tablished by the Office of the Comptroller
19 of the Currency or the Corporation, as ap-
20 plicable, without regard to any regularly
21 scheduled open season or any requirement
22 of insurability.

23 (ii) CONTRIBUTION OF TRANSFERRED
24 EMPLOYEE.—

1 (I) IN GENERAL.—Subject to
2 subclause (II), a transferred employee
3 enrolled in a life insurance plan under
4 this subparagraph shall pay any em-
5 ployee contribution required by the
6 plan.

7 (II) COST DIFFERENTIAL.—The
8 Office of the Comptroller of the Cur-
9 rency or the Corporation, as the case
10 may be, shall pay any difference in
11 cost between the benefits provided by
12 the agency from which the employee
13 transferred on the date of enactment
14 of this Act and the benefits provided
15 under this section.

16 (III) FUNDS TRANSFER.—The
17 Office of the Comptroller of the Cur-
18 rency or the Corporation, as the case
19 may be, shall transfer to the Federal
20 Employees' Group Life Insurance
21 Fund established under section 8714
22 of title 5, United States Code, an
23 amount determined by the Director of
24 the Office of Personnel Management,
25 after consultation with the Comp-

1 troller of the Currency or the Chair-
2 person of the Corporation, as the case
3 may be, and the Office of Manage-
4 ment and Budget, to be necessary to
5 reimburse the Federal Employees'
6 Group Life Insurance Fund for the
7 cost to the Federal Employees' Group
8 Life Insurance Fund of providing ben-
9 efits under this subparagraph not oth-
10 erwise paid for by a transferred em-
11 ployee under subclause (I).

12 (IV) CREDIT FOR TIME EN-
13 ROLLED IN OTHER PLANS.—For any
14 transferred employee, enrollment in a
15 life insurance plan administered by
16 the agency from which the employee
17 transferred, immediately before enroll-
18 ment in a life insurance plan under
19 chapter 87 of title 5, United States
20 Code, shall be considered as enroll-
21 ment in a life insurance plan under
22 that chapter for purposes of section
23 8706(b)(1)(A) of title 5, United
24 States Code.

1 (j) INCORPORATION INTO AGENCY PAY SYSTEM.—

2 Not later than 2 years after the transfer date, the Comp-
3 troller of the Currency and the Chairperson of the Cor-
4 poration shall place each transferred employee into the es-
5 tablished pay system and structure of the appropriate em-
6 ploying agency.

7 (k) EQUITABLE TREATMENT.—In administering the
8 provisions of this section, the Comptroller of the Currency
9 and the Chairperson of the Corporation—

10 (1) may not take any action that would unfairly
11 disadvantage a transferred employee relative to any
12 other employee of the Office of the Comptroller of
13 the Currency or the Corporation on the basis of
14 prior employment by the Office of Thrift Super-
15 vision, the Board of Governors, or a Federal reserve
16 bank; and

17 (2) may take such action as is appropriate in
18 an individual case to ensure that a transferred em-
19 ployee receives equitable treatment, with respect to
20 the status, tenure, pay, benefits (other than benefits
21 under programs administered by the Office of Per-
22 sonnel Management), and accrued leave or vacation
23 time for prior periods of service with any Federal
24 agency of the transferred employee.

25 (l) REORGANIZATION.—

1 (1) IN GENERAL.—If the Comptroller of the
2 Currency or the Chairperson of the Corporation de-
3 termines, during the 2-year period beginning 1 year
4 after the transfer date, that a reorganization of the
5 staff of the Office of the Comptroller of the Cur-
6 rency or the Corporation, respectively, is required,
7 the reorganization shall be deemed a “major reorga-
8 nization” for purposes of affording affected employ-
9 ees retirement under section 8336(d)(2) or
10 8414(b)(1)(B) of title 5, United States Code.

11 (2) SERVICE CREDIT.—For purposes of this
12 subsection, periods of service with a Federal home
13 loan bank, a joint office of Federal home loan banks
14 or a Federal reserve bank shall be credited as peri-
15 ods of service with a Federal agency.

16 **SEC. 323. PROPERTY TRANSFERRED.**

17 (a) PROPERTY DEFINED.—For purposes of this sec-
18 tion, the term “property” includes all real property (in-
19 cluding leaseholds) and all personal property, including
20 computers, furniture, fixtures, equipment, books, ac-
21 counts, records, reports, files, memoranda, paper, reports
22 of examination, work papers, and correspondence related
23 to such reports, and any other information or materials.

24 (b) PROPERTY OF THE OFFICE OF THRIFT SUPER-
25 VISION.—Not later than 90 days after the transfer date,

1 all property of the Office of Thrift Supervision that the
2 Comptroller of the Currency and the Chairperson of the
3 Corporation jointly determine is used, on the day before
4 the transfer date, to perform or support the functions of
5 the Office of Thrift Supervision transferred to the Office
6 of the Comptroller of the Currency or the Corporation
7 under this title, shall be transferred to the Office of the
8 Comptroller of the Currency or the Corporation in a man-
9 ner consistent with the transfer of employees under this
10 subtitle.

11 (c) PROPERTY OF THE BOARD OF GOVERNORS.—

12 (1) IN GENERAL.—Not later than 90 days after
13 the transfer date, all property of the Board of Gov-
14 ernors that the Office of the Comptroller of the Cur-
15 rency, the Corporation, and the Board of Governors
16 jointly determine is used, on the day before the
17 transfer date, to perform or support the functions of
18 the Board of Governor transferred to the Office of
19 the Comptroller of the Currency or the Corporation
20 under this title, shall be transferred to the Office of
21 the Comptroller of the Currency or the Corporation
22 in a manner consistent with the transfer of employ-
23 ees under this subtitle.

24 (2) PROPERTY OF FEDERAL RESERVE
25 BANKS.—Any property of any Federal reserve bank

1 that, on the day before the transfer date, is used to
 2 perform or support the functions of the Board of
 3 Governors transferred to the Office of the Comp-
 4 troller of the Currency or the Corporation by this
 5 title shall be treated as property of the Board of
 6 Governors for purposes of paragraph (1).

7 (d) **CONTRACTS RELATED TO PROPERTY TRANS-**
 8 **FERRED.**—Each contract, agreement, lease, license, per-
 9 mit, and similar arrangement relating to property trans-
 10 ferred to the Office of the Comptroller of the Currency
 11 or the Corporation by this section shall be transferred to
 12 the Office of the Comptroller of the Currency or the Cor-
 13 poration, as appropriate, together with the property to
 14 which it relates.

15 (e) **PRESERVATION OF PROPERTY.**—Property identi-
 16 fied for transfer under this section shall not be altered,
 17 destroyed, or deleted before transfer under this section.

18 **SEC. 324. FUNDS TRANSFERRED.**

19 The funds that, on the day before the transfer date,
 20 the Director of the Office of Thrift Supervision (in con-
 21 sultation with the Comptroller of the Currency, the Chair-
 22 person of the Corporation, and the Chairman of the Board
 23 of Governors) determines are not necessary to dispose of
 24 the affairs of the Office of Thrift Supervision under sec-
 25 tion 325 and are available to the Office of Thrift Super-

1 vision to pay the expenses of the Office of Thrift Super-
2 vision—

3 (1) relating to the functions of the Office of
4 Thrift Supervision transferred under section
5 312(b)(1)(B), shall be transferred to the Office of
6 the Comptroller of the Currency on the transfer
7 date;

8 (2) relating to the functions of the Office of
9 Thrift Supervision transferred under section
10 312(b)(1)(C), shall be transferred to the Corporation
11 on the transfer date; and

12 (3) relating to the functions of the Office of
13 Thrift Supervision transferred under section
14 312(b)(1)(A), shall be transferred to the Board of
15 Governors on the transfer date.

16 **SEC. 325. DISPOSITION OF AFFAIRS.**

17 (a) **AUTHORITY OF DIRECTOR.**—During the 90-day
18 period beginning on the transfer date, the Director of the
19 Office of Thrift Supervision—

20 (1) shall, solely for the purpose of winding up
21 the affairs of the Office of Thrift Supervision relat-
22 ing to any function transferred to the Office of the
23 Comptroller of the Currency, the Corporation, or the
24 Board of Governors under this title—

1 (A) manage the employees of the Office of
2 Thrift Supervision who have not yet been trans-
3 ferred and provide for the payment of the com-
4 pensation and benefits of the employees that ac-
5 crue before the date on which the employees are
6 transferred under this title; and

7 (B) manage any property of the Office of
8 Thrift Supervision, until the date on which the
9 property is transferred under section 323; and

10 (2) may take any other action necessary to
11 wind up the affairs of the Office of Thrift Super-
12 vision.

13 (b) STATUS OF DIRECTOR.—

14 (1) IN GENERAL.—Notwithstanding the trans-
15 fer of functions under this subtitle, during the 90-
16 day period beginning on the transfer date, the Direc-
17 tor of the Office of Thrift Supervision shall retain
18 and may exercise any authority vested in the Direc-
19 tor of the Office of Thrift Supervision on the day be-
20 fore the transfer date, only to the extent necessary—

21 (A) to wind up the Office of Thrift Super-
22 vision; and

23 (B) to carry out the transfer under this
24 subtitle during such 90-day period.

1 (2) OTHER PROVISIONS.—For purposes of
2 paragraph (1), the Director of the Office of Thrift
3 Supervision shall, during the 90-day period begin-
4 ning on the transfer date, continue to be—

5 (A) treated as an officer of the United
6 States; and

7 (B) entitled to receive compensation at the
8 same annual rate of basic pay that the Director
9 of the Office of Thrift Supervision received on
10 the day before the transfer date.

11 (c) AUTHORITY OF CHAIRMAN OF THE BOARD OF
12 GOVERNORS.—During the 90-day period beginning on the
13 transfer date, the Chairman of the Board of Governors
14 shall—

15 (1) manage the employees of the Board of Gov-
16 ernors who have not yet been transferred under this
17 title and provide for the payment of the compensa-
18 tion and benefits of the employees that accrue before
19 the date on which the employees are transferred
20 under this title; and

21 (2) manage any property of the Board of Gov-
22 ernors that is transferred under this title, until the
23 date on which the property is transferred under sec-
24 tion 323.

1 **SEC. 326. CONTINUATION OF SERVICES.**

2 Any agency, department, or other instrumentality of
 3 the United States, and any successor to any such agency,
 4 department, or instrumentality, that was, before the trans-
 5 fer date, providing support services to the Office of Thrift
 6 Supervision or the Board of Governors in connection with
 7 functions transferred to the Office of the Comptroller of
 8 the Currency, the Corporation or the Board of Governors
 9 under this title, shall—

10 (1) continue to provide such services, subject to
 11 reimbursement by the Office of the Comptroller of
 12 the Currency, the Corporation, or the Board of Gov-
 13 ernors, until the transfer of functions under this
 14 title is complete; and

15 (2) consult with the Comptroller of the Cur-
 16 rency, the Chairperson of the Corporation, or the
 17 Chairman of the Board of Governors, as appro-
 18 priate, to coordinate and facilitate a prompt and or-
 19 derly transition.

20 **Subtitle C—Federal Deposit**
 21 **Insurance Corporation**

22 **SEC. 331. DEPOSIT INSURANCE REFORMS.**

23 (a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Fed-
 24 eral Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is
 25 amended—

26 (1) by striking subparagraph (D); and

1 (2) by redesignating subparagraph (C) as sub-
2 paragraph (D).

3 (b) ASSESSMENT BASE.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the Corporation shall amend the regula-
6 tions issued by the Corporation under section
7 7(b)(2) of the Federal Deposit Insurance Act (12
8 U.S.C. 1817(b)(2)) to define the term “assessment
9 base” with respect to an insured depository institu-
10 tion for purposes of that section 7(b)(2), as an
11 amount equal to—

12 (A) the average total consolidated assets of
13 the insured depository institution during the as-
14 sessment period; minus

15 (B) the sum of—

16 (i) the average tangible equity of the
17 insured depository institution during the
18 assessment period; and

19 (ii) the average long-term unsecured
20 debt of the insured depository institution
21 during the assessment period.

22 (2) DETERMINATION.—If, not later than 1 year
23 after the date of enactment of this Act, the Corpora-
24 tion submits to the Committee on Banking, Hous-
25 ing, and Urban Affairs of the Senate and the Com-

1 mittee on Financial Services of the House of Rep-
 2 resentatives, in writing, a finding that an amend-
 3 ment to the rules of the Corporation regarding the
 4 definition of the term “assessment base”, as pro-
 5 vided in paragraph (1), would reduce the effective-
 6 ness of the risk-based assessment system of the Cor-
 7 poration or increase the risk of loss to the Deposit
 8 Insurance Fund, the Corporation may—

9 (A) continue in effect the definition of the
 10 term “assessment base”, as in effect on the day
 11 before the date of enactment of this Act; or

12 (B) establish, by rule, a definition of the
 13 term “assessment base” that the Corporation
 14 deems appropriate.

15 **SEC. 332. MANAGEMENT OF THE FEDERAL DEPOSIT INSUR-**
 16 **ANCE CORPORATION.**

17 (a) IN GENERAL.—Section 2 of the Federal Deposit
 18 Insurance Act (12 U.S.C. 1812) is amended—

19 (1) in subsection (a)(1)(B), by striking “Direc-
 20 tor of the Office of Thrift Supervision” and insert-
 21 ing “Director of the Consumer Financial Protection
 22 Bureau”;

23 (2) by amending subsection (d)(2) to read as
 24 follows:

1 “(2) ACTING OFFICIALS MAY SERVE.—In the
 2 event of a vacancy in the Office of the Comptroller
 3 of the Currency and pending the appointment of a
 4 successor, or during the absence or disability of the
 5 Comptroller of the Currency, the acting Comptroller
 6 of the Currency shall be a member of the Board of
 7 Directors in the place of the Comptroller of the Cur-
 8 rency.”; and

9 (3) in subsection (f)(2), by striking “or of the
 10 Office of Thrift Supervision”.

11 (b) EFFECTIVE DATE.—This section, and the amend-
 12 ments made by this section, shall take effect on the trans-
 13 fer date.

14 **Subtitle D—Termination of Federal** 15 **Thrift Charter**

16 **SEC. 341. TERMINATION OF FEDERAL SAVINGS ASSOCIA-** 17 **TIONS.**

18 (a) IN GENERAL.—Beginning on the date of enact-
 19 ment of this Act, the Director of the Office of Thrift Su-
 20 pervision, or the Comptroller of the Currency, may not
 21 issue a charter for a Federal savings association under
 22 section 5 of the Home Owners’ Loan Act (12 U.S.C.
 23 1464).

1 (b) CONFORMING AMENDMENT.—Section 5(a) of the
2 Home Owner’s Loan Act (12 U.S.C. 1464(a)) is amended
3 to read as follows:

4 “(a) IN GENERAL.—In order to provide thrift institu-
5 tions for the deposit of funds and for the extension of cred-
6 it for homes and other goods and services, the Comptroller
7 of the Currency is authorized, under such regulations as
8 the Comptroller of the Currency may prescribe, to provide
9 for the examination, operation, and regulation of associa-
10 tions to be known as ‘Federal savings associations’ (in-
11 cluding Federal savings banks), giving primary consider-
12 ation to the best practices of thrift institutions in the
13 United States. The lending and investment powers con-
14 ferred by this section are intended to encourage such insti-
15 tutions to provide credit for housing safely and soundly.”.

16 (c) PROSPECTIVE REPEAL.—Effective on the date on
17 which the Comptroller of the Currency determines that no
18 Federal savings associations exist, section 5 of the Home
19 Owner’s Loan Act (12 U.S.C. 1464) is repealed.

20 **SEC. 342. BRANCHING.**

21 Notwithstanding the Federal Deposit Insurance Act
22 (12 U.S.C. 1811 et seq.), the Bank Holding Company Act
23 of 1956 (12 U.S.C. 1841 et seq.), or any other provision
24 of Federal or State law, a savings association that be-
25 comes a bank may continue to operate any branch or

1 agency that the savings association operated immediately
 2 before the savings association became a bank.

3 **TITLE IV—REGULATION OF AD-**
 4 **VISERS TO HEDGE FUNDS**
 5 **AND OTHERS**

6 **SEC. 401. SHORT TITLE.**

7 This title may be cited as the “Private Fund Invest-
 8 ment Advisers Registration Act of 2010”.

9 **SEC. 402. DEFINITIONS.**

10 (a) INVESTMENT ADVISERS ACT OF 1940 DEFINI-
 11 TIONS.—Section 202(a) of the Investment Advisers Act of
 12 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the
 13 end the following:

14 “(29) The term ‘private fund’ means an issuer
 15 that would be an investment company, as defined in
 16 section 3 of the Investment Company Act of 1940
 17 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7)
 18 of that Act.

19 “(30) The term ‘foreign private adviser’ means
 20 any investment adviser who—

21 “(A) has no place of business in the
 22 United States;

23 “(B) has, in total, fewer than 15 clients
 24 who are domiciled in or residents of the United
 25 States;

1 “(C) has aggregate assets under manage-
2 ment attributable to clients in the United
3 States and investors in the United States in
4 private funds advised by the investment adviser
5 of less than \$25,000,000, or such higher
6 amount as the Commission may, by rule, deem
7 appropriate in accordance with the purposes of
8 this title; and

9 “(D) neither—

10 “(i) holds itself out generally to the
11 public in the United States as an invest-
12 ment adviser; nor

13 “(ii) acts as—

14 “(I) an investment adviser to any
15 investment company registered under
16 the Investment Company Act of 1940;
17 or

18 “(II) a company that has elected
19 to be a business development company
20 pursuant to section 54 of the Invest-
21 ment Company Act of 1940 (15
22 U.S.C. 80a-53), and has not with-
23 drawn its election.”.

24 (b) OTHER DEFINITIONS.—As used in this title, the
25 terms “investment adviser” and “private fund” have the

1 same meanings as in section 202 of the Investment Advis-
 2 ers Act of 1940, as amended by this title.

3 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION;**
 4 **LIMITED EXEMPTION FOR FOREIGN PRIVATE**
 5 **ADVISERS; LIMITED INTRASTATE EXEMP-**
 6 **TION.**

7 Section 203(b) of the Investment Advisers Act of
 8 1940 (15 U.S.C. 80b–3(b)) is amended—

9 (1) in paragraph (1), by inserting “, other than
 10 an investment adviser who acts as an investment ad-
 11 viser to any private fund,” before “all of whose”;

12 (2) by striking paragraph (3) and inserting the
 13 following:

14 “(3) any investment adviser that is a foreign
 15 private adviser;” and

16 (3) in paragraph (5), by striking “or” at the
 17 end;

18 (4) in paragraph (6), by striking the period at
 19 the end and inserting “; or”; and

20 (5) by adding at the end the following:

21 “(7) any investment adviser, other than any en-
 22 tity that has elected to be regulated or is regulated
 23 as a business development company pursuant to sec-
 24 tion 54 of the Investment Company Act of 1940 (15
 25 U.S.C. 80a–54), who solely advises—

1 “(A) small business investment companies
2 that are licensees under the Small Business In-
3 vestment Act of 1958;

4 “(B) entities that have received from the
5 Small Business Administration notice to pro-
6 ceed to qualify for a license as a small business
7 investment company under the Small Business
8 Investment Act of 1958, which notice or license
9 has not been revoked; or

10 “(C) applicants that are affiliated with 1
11 or more licensed small business investment
12 companies described in subparagraph (A) and
13 that have applied for another license under the
14 Small Business Investment Act of 1958, which
15 application remains pending.”.

16 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS;**
17 **EXAMINATIONS; DISCLOSURES.**

18 Section 204 of the Investment Advisers Act of 1940
19 (15 U.S.C. 80b–4) is amended—

20 (1) by redesignating subsections (b) and (c) as
21 subsections (c) and (d), respectively; and

22 (2) by inserting after subsection (a) the fol-
23 lowing:

24 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

1 “(1) IN GENERAL.—The Commission may re-
2 quire any investment adviser registered under this
3 title—

4 “(A) to maintain such records of, and file
5 with the Commission such reports regarding,
6 private funds advised by the investment adviser,
7 as necessary and appropriate in the public in-
8 terest and for the protection of investors, or for
9 the assessment of systemic risk by the Finan-
10 cial Stability Oversight Council (in this sub-
11 section referred to as the ‘Council’); and

12 “(B) to provide or make available to the
13 Council those reports or records or the informa-
14 tion contained therein.

15 “(2) TREATMENT OF RECORDS.—The records
16 and reports of any private fund to which an invest-
17 ment adviser registered under this title provides in-
18 vestment advice shall be deemed to be the records
19 and reports of the investment adviser.

20 “(3) REQUIRED INFORMATION.—The records
21 and reports required to be maintained by a private
22 fund and subject to inspection by the Commission
23 under this subsection shall include, for each private
24 fund advised by the investment adviser, a description
25 of—

1 “(A) the amount of assets under manage-
2 ment and use of leverage;

3 “(B) counterparty credit risk exposure;

4 “(C) trading and investment positions;

5 “(D) valuation policies and practices of the
6 fund;

7 “(E) types of assets held;

8 “(F) side arrangements or side letters,
9 whereby certain investors in a fund obtain more
10 favorable rights or entitlements than other in-
11 vestors;

12 “(G) trading practices; and

13 “(H) such other information as the Com-
14 mission, in consultation with the Council, deter-
15 mines is necessary and appropriate in the pub-
16 lic interest and for the protection of investors
17 or for the assessment of systemic risk, which
18 may include the establishment of different re-
19 porting requirements for different classes of
20 fund advisers, based on the type or size of pri-
21 vate fund being advised.

22 “(4) MAINTENANCE OF RECORDS.—An invest-
23 ment adviser registered under this title shall main-
24 tain such records of private funds advised by the in-
25 vestment adviser for such period or periods as the

1 Commission, by rule, may prescribe as necessary and
2 appropriate in the public interest and for the protec-
3 tion of investors, or for the assessment of systemic
4 risk.

5 “(5) FILING OF RECORDS.—The Commission
6 shall issue rules requiring each investment adviser to
7 a private fund to file reports containing such infor-
8 mation as the Commission deems necessary and ap-
9 propriate in the public interest and for the protec-
10 tion of investors or for the assessment of systemic
11 risk.

12 “(6) EXAMINATION OF RECORDS.—

13 “(A) PERIODIC AND SPECIAL EXAMINA-
14 TIONS.—The Commission—

15 “(i) shall conduct periodic inspections
16 of all records of private funds maintained
17 by an investment adviser registered under
18 this title in accordance with a schedule es-
19 tablished by the Commission; and

20 “(ii) may conduct at any time and
21 from time to time such additional, special,
22 and other examinations as the Commission
23 may prescribe as necessary and appro-
24 priate in the public interest and for the

1 protection of investors, or for the assess-
2 ment of systemic risk.

3 “(B) AVAILABILITY OF RECORDS.—An in-
4 vestment adviser registered under this title shall
5 make available to the Commission any copies or
6 extracts from such records as may be prepared
7 without undue effort, expense, or delay, as the
8 Commission or its representatives may reason-
9 ably request.

10 “(7) INFORMATION SHARING.—

11 “(A) IN GENERAL.—The Commission shall
12 make available to the Council copies of all re-
13 ports, documents, records, and information filed
14 with or provided to the Commission by an in-
15 vestment adviser under this subsection as the
16 Council may consider necessary for the purpose
17 of assessing the systemic risk posed by a pri-
18 vate fund.

19 “(B) CONFIDENTIALITY.—The Council
20 shall maintain the confidentiality of information
21 received under this paragraph in all such re-
22 ports, documents, records, and information, in
23 a manner consistent with the level of confiden-
24 tiality established by the Commission pursuant
25 to paragraph (8). The Council shall be exempt

1 from section 552 of title 5, United States Code,
2 with respect to any information in any report,
3 document, record, or information made avail-
4 able, to the Council under this subsection.”.

5 “(8) COMMISSION CONFIDENTIALITY OF RE-
6 PORTS.—Notwithstanding any other provision of
7 law, the Commission may not be compelled to dis-
8 close any report or information contained therein re-
9 quired to be filed with the Commission under this
10 subsection, except that nothing in this subsection
11 authorizes the Commission—

12 “(A) to withhold information from Con-
13 gress, upon an agreement of confidentiality; or

14 “(B) prevent the Commission from com-
15 plying with—

16 “(i) a request for information from
17 any other Federal department or agency or
18 any self-regulatory organization requesting
19 the report or information for purposes
20 within the scope of its jurisdiction; or

21 “(ii) an order of a court of the United
22 States in an action brought by the United
23 States or the Commission.

24 “(9) OTHER RECIPIENTS CONFIDENTIALITY.—
25 Any department, agency, or self-regulatory organiza-

1 tion that receives reports or information from the
2 Commission under this subsection shall maintain the
3 confidentiality of such reports, documents, records,
4 and information in a manner consistent with the
5 level of confidentiality established for the Commis-
6 sion under paragraph (8).

7 “(10) PUBLIC INFORMATION EXCEPTION.—

8 “(A) IN GENERAL.—The Commission, the
9 Council, and any other department, agency, or
10 self-regulatory organization that receives infor-
11 mation, reports, documents, records, or infor-
12 mation from the Commission under this sub-
13 section, shall be exempt from the provisions of
14 section 552 of title 5, United States Code, with
15 respect to any such report, document, record, or
16 information. Any proprietary information of an
17 investment adviser ascertained by the Commis-
18 sion from any report required to be filed with
19 the Commission pursuant to this subsection
20 shall be subject to the same limitations on pub-
21 lic disclosure as any facts ascertained during an
22 examination, as provided by section 210(b) of
23 this title.

1 “(B) PROPRIETARY INFORMATION.—For
2 purposes of this paragraph, proprietary infor-
3 mation includes—

4 “(i) sensitive, non-public information
5 regarding the investment or trading strate-
6 gies of the investment adviser;

7 “(ii) analytical or research methodolo-
8 gies;

9 “(iii) trading data;

10 “(iv) computer hardware or software
11 containing intellectual property; and

12 “(v) any additional information that
13 the Commission determines to be propri-
14 etary.

15 “(11) ANNUAL REPORT TO CONGRESS.—The
16 Commission shall report annually to Congress on
17 how the Commission has used the data collected
18 pursuant to this subsection to monitor the markets
19 for the protection of investors and the integrity of
20 the markets.”.

21 **SEC. 405. DISCLOSURE PROVISION ELIMINATED.**

22 Section 210(c) of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b–10(c)) is amended by inserting be-
24 fore the period at the end the following: “or for purposes
25 of assessment of potential systemic risk”.

1 **SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.**

2 Section 211 of the Investment Advisers Act of 1940
3 (15 U.S.C. 80b–11) is amended—

4 (1) in subsection (a), by inserting before the pe-
5 riod at the end of the first sentence the following:
6 “, including rules and regulations defining technical,
7 trade, and other terms used in this title, except that
8 the Commission may not define the term ‘client’ for
9 purposes of paragraphs (1) and (2) of section 206
10 to include an investor in a private fund managed by
11 an investment adviser, if such private fund has en-
12 tered into an advisory contract with such adviser”;
13 and

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

15 “(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The
16 Commission and the Commodity Futures Trading Com-
17 mission shall, after consultation with the Council but not
18 later than 12 months after the date of enactment of the
19 Private Fund Investment Advisers Registration Act of
20 2010, jointly promulgate rules to establish the form and
21 content of the reports required to be filed with the Com-
22 mission under subsection 204(b) and with the Commodity
23 Futures Trading Commission by investment advisers that
24 are registered both under this title and the Commodity
25 Exchange Act (7 U.S.C. 1a et seq.).”.

1 **SEC. 407. EXEMPTION OF VENTURE CAPITAL FUND ADVIS-**
 2 **ERS.**

3 Section 203 of the Investment Advisers Act of 1940
 4 (15 U.S.C. 80b-3) is amended by adding at the end the
 5 following:

6 “(l) EXEMPTION OF VENTURE CAPITAL FUND AD-
 7 VISERS.—No investment adviser shall be subject to the
 8 registration requirements of this title with respect to the
 9 provision of investment advice relating to a venture capital
 10 fund. Not later than 6 months after the date of enactment
 11 of this subsection, the Commission shall issue final rules
 12 to define the term ‘venture capital fund’ for purposes of
 13 this subsection.”.

14 **SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRI-**
 15 **VATE EQUITY FUND ADVISERS.**

16 Section 203 of the Investment Advisers Act of 1940
 17 (15 U.S.C. 80b-3) is amended by adding at the end the
 18 following:

19 “(m) EXEMPTION OF AND REPORTING BY PRIVATE
 20 EQUITY FUND ADVISERS.—

21 “(1) IN GENERAL.—Except as provided in this
 22 subsection, no investment adviser shall be subject to
 23 the registration or reporting requirements of this
 24 title with respect to the provision of investment ad-
 25 vice relating to a private equity fund or funds.

1 “(2) MAINTENANCE OF RECORDS AND ACCESS
2 BY COMMISSION.—Not later than 6 months after the
3 date of enactment of this subsection, the Commis-
4 sion shall issue final rules—

5 “(A) to require investment advisers de-
6 scribed in paragraph (1) to maintain such
7 records and provide to the Commission such an-
8 nual or other reports as the Commission taking
9 into account fund size, governance, investment
10 strategy, risk, and other factors, as the Com-
11 mission determines necessary and appropriate
12 in the public interest and for the protection of
13 investors; and

14 “(B) to define the term ‘private equity
15 fund’ for purposes of this subsection.”.

16 **SEC. 409. FAMILY OFFICES.**

17 (a) IN GENERAL.—Section 202(a)(11) of the Invest-
18 ment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is
19 amended by striking “or (G)” and inserting the following:
20 “; (G) any family office, as defined by rule, regulation,
21 or order of the Commission, in accordance with the pur-
22 poses of this title; or (H)”.

23 (b) RULEMAKING.—The rules, regulations, or orders
24 issued by the Commission pursuant to section
25 202(a)(11)(G) of the Investment Advisers Act of 1940, as

1 added by this section, regarding the definition of the term
 2 “family office” shall provide for an exemption that—

3 (1) is consistent with the previous exemptive
 4 policy of the Commission, as reflected in exemptive
 5 orders for family offices in effect on the date of en-
 6 actment of this Act; and

7 (2) recognizes the range of organizational, man-
 8 agement, and employment structures and arrange-
 9 ments employed by family offices.

10 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**
 11 **THRESHOLD FOR FEDERAL REGISTRATION**
 12 **OF INVESTMENT ADVISERS.**

13 Section 203A(a)(1) of the Investment Advisers Act
 14 of 1940 (15 U.S.C. 80b–3a(a)(1)) is amended —

15 (1) in subparagraph (A)—

16 (A) by striking “\$25,000,000” and insert-
 17 ing “\$100,000,000”; and

18 (B) by striking “or” at the end;

19 (2) in subparagraph (B), by striking the period
 20 at the end and inserting “; or”; and

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

22 “(C) is an adviser to a company that has
 23 elected to be a business development company
 24 pursuant to section 54 of the Investment Com-

1 pany Act of 1940, and has not withdrawn its
2 election.”.

3 **SEC. 411. CUSTODY OF CLIENT ASSETS.**

4 The Investment Advisers Act of 1940 (15 U.S.C.
5 80b–1 et seq.) is amended by adding at the end the fol-
6 lowing new section:

7 **“SEC. 223. CUSTODY OF CLIENT ACCOUNTS.**

8 “An investment adviser registered under this title
9 shall take such steps to safeguard client assets over which
10 such adviser has custody, including, without limitation,
11 verification of such assets by an independent public ac-
12 countant, as the Commission may, by rule, prescribe.”.

13 **SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STAND-**
14 **ARD FOR INFLATION.**

15 The Commission shall, by rule—

16 (1) increase the financial threshold for an ac-
17 credited investor, as set forth in the rules of the
18 Commission under the Securities Act of 1933, by
19 calculating an amount that is greater than the
20 amount in effect on the date of enactment of this
21 Act of \$200,000 income for a natural person (or
22 \$300,000 for a couple) and \$1,000,000 in assets, as
23 the Commission determines is appropriate and in the
24 public interest, in light of price inflation since those
25 figures were determined; and

1 (2) adjust that threshold not less frequently
2 than once every 5 years, to reflect the percentage in-
3 crease in the cost of living.

4 **SEC. 413. GAO STUDY AND REPORT ON ACCREDITED INVES-**
5 **TORS.**

6 The Comptroller General of the United States shall
7 conduct a study on the appropriate criteria for deter-
8 mining the financial thresholds or other criteria needed
9 to qualify for accredited investor status and eligibility to
10 invest in private funds, and shall submit a report to the
11 Committee on Banking, Housing, and Urban Affairs of
12 the Senate and the Committee on Financial Services of
13 the House of Representatives on the results of such study
14 not later than 1 year after the date of enactment of this
15 Act.

16 **SEC. 414. GAO STUDY ON SELF-REGULATORY ORGANIZA-**
17 **TION FOR PRIVATE FUNDS.**

18 The Comptroller General of the United States shall—

19 (1) conduct a study of the feasibility of forming
20 a self-regulatory organization to oversee private
21 funds; and

22 (2) submit a report to the Committee on Bank-
23 ing, Housing, and Urban Affairs of the Senate and
24 the Committee on Financial Services of the House of
25 Representatives on the results of such study, not

1 later than 1 year after the date of enactment of this
2 Act.

3 **SEC. 415. COMMISSION STUDY AND REPORT ON SHORT**
4 **SELLING.**

5 (a) STUDY.—The Division of Risk, Strategy, and Fi-
6 nancial Innovation of the Commission shall conduct a
7 study, taking into account current scholarship, on the
8 state of short selling on national securities exchanges and
9 in the over-the-counter markets, with particular attention
10 to the impact of recent rule changes and the incidence
11 of—

12 (1) the failure to deliver shares sold short; or
13 (2) delivery of shares on the fourth day fol-
14 lowing the short sale transaction.

15 (b) REPORT.—The Division of Risk, Strategy, and
16 Financial Innovation shall submit a report, together with
17 any recommendations for market improvements, including
18 consideration of real time reporting of short sale positions,
19 to the Committee on Banking, Housing, and Urban Af-
20 fairs of the Senate and the Committee on Financial Serv-
21 ices of the House of Representatives on the results of the
22 study conducted under subsection (a), not later than 2
23 years after the date of enactment of this Act.

1 **SEC. 416. TRANSITION PERIOD.**

2 Except as otherwise provided in this title, this title
 3 and the amendments made by this title shall become effective 1 year after the date of enactment of this Act, except
 4 that any investment adviser may, at the discretion of the
 5 investment adviser, register with the Commission under
 6 the Investment Advisers Act of 1940 during that 1-year
 7 period, subject to the rules of the Commission.

9 **TITLE V—INSURANCE**
 10 **Subtitle A—Office of National**
 11 **Insurance**

12 **SEC. 501. SHORT TITLE.**

13 This subtitle may be cited as the “Office of National
 14 Insurance Act of 2010”.

15 **SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL IN-**
 16 **SURANCE.**

17 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
 18 chapter 3 of subtitle I of title 31, United States Code,
 19 is amended—

20 (1) by redesignating section 312 as section 315;

21 (2) by redesignating section 313 as section 312;

22 and

23 (3) by inserting after section 312 (as so rededesignated) the following new sections:

1 **“SEC. 313. OFFICE OF NATIONAL INSURANCE.**

2 “(a) ESTABLISHMENT.—There is established within
3 the Department of the Treasury the Office of National
4 Insurance.

5 “(b) LEADERSHIP.—The Office shall be headed by a
6 Director, who shall be appointed by the Secretary of the
7 Treasury. The position of Director shall be a career re-
8 served position in the Senior Executive Service, as that
9 position is defined under section 3132 of title 5, United
10 States Code.

11 “(c) FUNCTIONS.—

12 “(1) AUTHORITY PURSUANT TO DIRECTION OF
13 SECRETARY.—The Office, pursuant to the direction
14 of the Secretary, shall have the authority—

15 “(A) to monitor all aspects of the insur-
16 ance industry, including identifying issues or
17 gaps in the regulation of insurers that could
18 contribute to a systemic crisis in the insurance
19 industry or the United States financial system;

20 “(B) to recommend to the Financial Sta-
21 bility Oversight Council that it designate an in-
22 surer, including the affiliates of such insurer, as
23 an entity subject to regulation as a nonbank fi-
24 nancial company supervised by the Board of
25 Governors pursuant to title I of the Restoring
26 American Financial Stability Act of 2010;

1 “(C) to assist the Secretary in admin-
2 istering the Terrorism Insurance Program es-
3 tablished in the Department of the Treasury
4 under the Terrorism Risk Insurance Act of
5 2002 (15 U.S.C. 6701 note);

6 “(D) to coordinate Federal efforts and de-
7 velop Federal policy on prudential aspects of
8 international insurance matters, including rep-
9 resenting the United States, as appropriate, in
10 the International Association of Insurance Su-
11 pervisors (or a successor entity) and assisting
12 the Secretary in negotiating International In-
13 surance Agreements on Prudential Measures;

14 “(E) to determine, in accordance with sub-
15 section (f), whether State insurance measures
16 are preempted by International Insurance
17 Agreements on Prudential Measures;

18 “(F) to consult with the States (including
19 State insurance regulators) regarding insurance
20 matters of national importance and prudential
21 insurance matters of international importance;
22 and

23 “(G) to perform such other related duties
24 and authorities as may be assigned to the Of-
25 fice by the Secretary.

1 “(2) ADVISORY FUNCTIONS.—The Office shall
2 advise the Secretary on major domestic and pruden-
3 tial international insurance policy issues.

4 “(d) SCOPE.—The authority of the Office shall ex-
5 tend to all lines of insurance except health insurance, as
6 such insurance is determined by the Secretary based on
7 section 2791 of the Public Health Service Act (42 U.S.C.
8 300gg–91), and crop insurance, as established by the Fed-
9 eral Crop Insurance Act (7 U.S.C. 1501 et seq.).

10 “(e) GATHERING OF INFORMATION.—

11 “(1) IN GENERAL.—In carrying out the func-
12 tions required under subsection (c), the Office
13 may—

14 “(A) receive and collect data and informa-
15 tion on and from the insurance industry and in-
16 surers;

17 “(B) enter into information-sharing agree-
18 ments;

19 “(C) analyze and disseminate data and in-
20 formation; and

21 “(D) issue reports regarding all lines of in-
22 surance except health insurance.

23 “(2) COLLECTION OF INFORMATION FROM IN-
24 SURERS AND AFFILIATES.—

1 “(A) IN GENERAL.—Except as provided in
2 paragraph (3), the Office may require an in-
3 surer, or any affiliate of an insurer, to submit
4 such data or information as the Office may rea-
5 sonably require in carrying out the functions
6 described under subsection (c).

7 “(B) RULE OF CONSTRUCTION.—Notwith-
8 standing any other provision of this section, for
9 purposes of subparagraph (A), the term ‘in-
10 surer’ means any person that is authorized to
11 write insurance or reinsure risks and issue con-
12 tracts or policies in 1 or more States.

13 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
14 graph (2) shall not apply with respect to any insurer
15 or affiliate thereof that meets a minimum size
16 threshold that the Office may establish, whether by
17 order or rule.

18 “(4) ADVANCE COORDINATION.—Before col-
19 lecting any data or information under paragraph (2)
20 from an insurer, or any affiliate of an insurer, the
21 Office shall coordinate with each relevant State in-
22 surance regulator (or other relevant Federal or State
23 regulatory agency, if any, in the case of an affiliate
24 of an insurer) to determine if the information to be
25 collected is available from, or may be obtained in a

1 timely manner by, such State insurance regulator,
2 individually or collectively, another regulatory agen-
3 cy, or publicly available sources. Notwithstanding
4 any other provision of law, each such relevant State
5 insurance regulator or other Federal or State regu-
6 latory agency is authorized to provide to the Office
7 such data or information.

8 “(5) CONFIDENTIALITY.—

9 “(A) RETENTION OF PRIVILEGE.—The
10 submission of any nonpublicly available data
11 and information to the Office under this sub-
12 section shall not constitute a waiver of, or oth-
13 erwise affect, any privilege arising under Fed-
14 eral or State law (including the rules of any
15 Federal or State court) to which the data or in-
16 formation is otherwise subject.

17 “(B) CONTINUED APPLICATION OF PRIOR
18 CONFIDENTIALITY AGREEMENTS.—Any require-
19 ment under Federal or State law to the extent
20 otherwise applicable, or any requirement pursu-
21 ant to a written agreement in effect between
22 the original source of any nonpublicly available
23 data or information and the source of such data
24 or information to the Office, regarding the pri-
25 vacy or confidentiality of any data or informa-

tion in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

“(C) INFORMATION SHARING AGREEMENT.—Any data or information obtained by the Office may be made available to State insurance regulators, individually or collectively, through an information sharing agreement that—

“(i) shall comply with applicable Federal law; and

“(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

“(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

1 “(6) SUBPOENAS AND ENFORCEMENT.—The
2 Director shall have the power to require by subpoena
3 the production of the data or information requested
4 under paragraph (2), but only upon a written find-
5 ing by the Director that such data or information is
6 required to carry out the functions described under
7 subsection (c) and that the Office has coordinated
8 with such regulator or agency as required under
9 paragraph (4). Subpoenas shall bear the signature of
10 the Director and shall be served by any person or
11 class of persons designated by the Director for that
12 purpose. In the case of contumacy or failure to obey
13 a subpoena, the subpoena shall be enforceable by
14 order of any appropriate district court of the United
15 States. Any failure to obey the order of the court
16 may be punished by the court as a contempt of
17 court.

18 “(f) PREEMPTION OF STATE INSURANCE MEAS-
19 URES.—

20 “(1) STANDARD.—A State insurance measure
21 shall be preempted if, and only to the extent that the
22 Director determines, in accordance with this sub-
23 section, that the measure—

24 “(A) results in less favorable treatment of
25 a non-United States insurer domiciled in a for-

1 eign jurisdiction that is subject to an inter-
2 national insurance agreement on prudential
3 measures than a United States insurer domi-
4 ciled, licensed, or otherwise admitted in that
5 State; and

6 “(B) is inconsistent with an International
7 Insurance Agreement on Prudential Measures.

8 “(2) DETERMINATION.—

9 “(A) NOTICE OF POTENTIAL INCONSIST-
10 ENCY.—Before making any determination
11 under paragraph (1), the Director shall—

12 “(i) notify and consult with the appro-
13 priate State regarding any potential incon-
14 sistency or preemption;

15 “(ii) cause to be published in the Fed-
16 eral Register notice of the issue regarding
17 the potential inconsistency or preemption,
18 including a description of each State insur-
19 ance measure at issue and any applicable
20 International Insurance Agreement on
21 Prudential Measures;

22 “(iii) provide interested parties a rea-
23 sonable opportunity to submit written com-
24 ments to the Office; and

25 “(iv) consider any comments received.

1 “(B) SCOPE OF REVIEW.—For purposes of
2 this subsection, the determination of the Direc-
3 tor regarding State insurance measures shall be
4 limited to the subject matter contained within
5 the international insurance agreement on pru-
6 dential measure involved.

7 “(C) NOTICE OF DETERMINATION OF IN-
8 CONSISTENCY.—Upon making any determina-
9 tion under paragraph (1), the Director shall—

10 “(i) notify the appropriate State of
11 the determination and the extent of the in-
12 consistency;

13 “(ii) establish a reasonable period of
14 time, which shall not be less than 30 days,
15 before the determination shall become ef-
16 fective; and

17 “(iii) notify the Committee on Bank-
18 ing, Housing, and Urban Affairs of the
19 Senate and the Committee on Financial
20 Services of the House of Representatives of
21 the inconsistency.

22 “(3) NOTICE OF EFFECTIVENESS.—Upon the
23 conclusion of the period referred to in paragraph
24 (2)(C)(ii), if the basis for such determination still

1 exists, the determination shall become effective and
2 the Director shall—

3 “(A) cause to be published a notice in the
4 Federal Register that the preemption has be-
5 come effective, as well as the effective date; and

6 “(B) notify the appropriate State.

7 “(4) LIMITATION.—No State may enforce a
8 State insurance measure to the extent that such
9 measure has been preempted under this subsection.

10 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
11 DURES ACT.—Determinations of inconsistency made pur-
12 suant to subsection (f)(2) shall be subject to the applicable
13 provisions of subchapter II of chapter 5 of title 5, United
14 States Code (relating to administrative procedure), and
15 chapter 7 of such title (relating to judicial review).

16 “(h) REGULATIONS, POLICIES, AND PROCEDURES.—
17 The Secretary may issue orders, regulations, policies, and
18 procedures to implement this section.

19 “(i) CONSULTATION.—The Director shall consult
20 with State insurance regulators, individually or collec-
21 tively, to the extent the Director determines appropriate,
22 in carrying out the functions of the Office.

23 “(j) SAVINGS PROVISIONS.—Nothing in this section
24 shall—

25 “(1) preempt—

1 “(A) any State insurance measure that
2 governs any insurer’s rates, premiums, under-
3 writing, or sales practices;

4 “(B) any State coverage requirements for
5 insurance;

6 “(C) the application of the antitrust laws
7 of any State to the business of insurance; or

8 “(D) any State insurance measure gov-
9 erning the capital or solvency of an insurer, ex-
10 cept to the extent that such State insurance
11 measure results in less favorable treatment of a
12 non-United State insurer than a United States
13 insurer;

14 “(2) be construed to alter, amend, or limit any
15 provision of the Consumer Financial Protection
16 Agency Act of 2010; or

17 “(3) affect the preemption of any State insur-
18 ance measure otherwise inconsistent with and pre-
19 empted by Federal law.

20 “(k) RETENTION OF EXISTING STATE REGULATORY
21 AUTHORITY.—Nothing in this section or section 314 shall
22 be construed to establish or provide the Office or the De-
23 partment of the Treasury with general supervisory or reg-
24 ulatory authority over the business of insurance.

1 “(l) ANNUAL REPORT TO CONGRESS.—Beginning
2 September 30, 2011, the Director shall submit a report
3 on or before September 30 of each calendar year to the
4 President and to the Committee on Banking, Housing,
5 and Urban Affairs of the Senate and the Committee on
6 Financial Services of the House of Representatives on the
7 insurance industry, any actions taken by the Office pursu-
8 ant to subsection (f) (regarding preemption of inconsistent
9 State insurance measures), and any other information as
10 deemed relevant by the Director or as requested by such
11 Committees.

12 “(m) STUDY AND REPORT ON REGULATION OF IN-
13 SURANCE.—

14 “(1) IN GENERAL.—Not later than 18 months
15 after the date of enactment of this section, the Di-
16 rector shall conduct a study and submit a report to
17 Congress on how to modernize and improve the sys-
18 tem of insurance regulation in the United States.

19 “(2) CONSIDERATIONS.—The study and report
20 required under paragraph (1) shall be based on and
21 guided by the following considerations:

22 “(A) Systemic risk regulation with respect
23 to insurance.

24 “(B) Capital standards and the relation-
25 ship between capital allocation and liabilities,

1 including standards relating to liquidity and du-
2 ration risk.

3 “(C) Consumer protection for insurance
4 products and practices, including gaps in state
5 regulation.

6 “(D) The degree of national uniformity of
7 state insurance regulation.

8 “(E) The regulation of insurance compa-
9 nies and affiliates on a consolidated basis.

10 “(F) International coordination of insur-
11 ance regulation.

12 “(3) ADDITIONAL FACTORS.—The study and
13 report required under paragraph (1) shall also exam-
14 ine the following factors:

15 “(A) The costs and benefits of potential
16 Federal regulation of insurance across various
17 lines of insurance (except health insurance).

18 “(B) The feasibility of regulating only cer-
19 tain lines of insurance at the Federal level,
20 while leaving other lines of insurance to be reg-
21 ulated at the State level.

22 “(C) The ability of any potential Federal
23 regulation or Federal regulators to eliminate or
24 minimize regulatory arbitrage.

1 “(D) The impact that developments in the
2 regulation of insurance in foreign jurisdictions
3 might have on the potential Federal regulation
4 of insurance.

5 “(E) The ability of any potential Federal
6 regulation or Federal regulator to provide ro-
7 bust consumer protection for policyholders.

8 “(F) The potential consequences of sub-
9 jecting insurance companies to a Federal reso-
10 lution authority, including the effects of any
11 Federal resolution authority—

12 “(i) on the operation of State insur-
13 ance guaranty fund systems, including the
14 loss of guaranty fund coverage if an insur-
15 ance company is subject to a Federal reso-
16 lution authority;

17 “(ii) on policyholder protection, in-
18 cluding the loss of the priority status of
19 policyholder claims over other unsecured
20 general creditor claims;

21 “(iii) in the case of life insurance
22 companies, the loss of the special status of
23 separate account assets and separate ac-
24 count liabilities; and

1 “(iv) on the international competitive-
2 ness of insurance companies.

3 “(G) Such other factors as the Director
4 determines necessary or appropriate, consistent
5 with the principles set forth in paragraph (2).

6 “(4) REQUIRED RECOMMENDATIONS.—The
7 study and report required under paragraph (1) shall
8 also contain any legislative, administrative, or regu-
9 latory recommendations, as the Director determines
10 appropriate, to carry out or effectuate the findings
11 set forth in such report.

12 “(5) CONSULTATION.—With respect to the
13 study and report required under paragraph (1), the
14 Director shall consult with the National Association
15 of Insurance Commissioners, consumer organiza-
16 tions, representatives of the insurance industry and
17 policyholders, and other organizations and experts,
18 as appropriate.

19 “(n) USE OF EXISTING RESOURCES.—To carry out
20 this section, the Office may employ personnel, facilities,
21 and any other resource of the Department of the Treasury
22 available to the Secretary.

23 “(o) DEFINITIONS.—In this section and section 314,
24 the following definitions shall apply:

1 “(1) AFFILIATE.—The term ‘affiliate’ means,
2 with respect to an insurer, any person who controls,
3 is controlled by, or is under common control with the
4 insurer.

5 “(2) INSURER.—The term ‘insurer’ means any
6 person engaged in the business of insurance, includ-
7 ing reinsurance.

8 “(3) INTERNATIONAL INSURANCE AGREEMENT
9 ON PRUDENTIAL MEASURES.—The term ‘Inter-
10 national Insurance Agreement on Prudential Meas-
11 ures’ means a written bilateral or multilateral agree-
12 ment entered into between the United States and a
13 foreign government, authority, or regulatory entity
14 regarding prudential measures applicable to the
15 business of insurance or reinsurance.

16 “(4) NON-UNITED STATES INSURER.—The term
17 ‘non-United States insurer’ means an insurer that is
18 organized under the laws of a jurisdiction other than
19 a State, but does not include any United States
20 branch of such an insurer.

21 “(5) OFFICE.—The term ‘Office’ means the Of-
22 fice of National Insurance established by this sec-
23 tion.

24 “(6) STATE INSURANCE MEASURE.—The term
25 ‘State insurance measure’ means any State law, reg-

1 ulation, administrative ruling, bulletin, guideline, or
 2 practice relating to or affecting prudential measures
 3 applicable to insurance or reinsurance.

4 “(7) STATE INSURANCE REGULATOR.—The
 5 term ‘State insurance regulator’ means any State
 6 regulatory authority responsible for the supervision
 7 of insurers.

8 “(8) UNITED STATES INSURER.—The term
 9 ‘United States insurer’ means—

10 “(A) an insurer that is organized under
 11 the laws of a State; or

12 “(B) a United States branch of a non-
 13 United States insurer.

14 “(p) AUTHORIZATION OF APPROPRIATIONS.—There
 15 are authorized to be appropriated for the Office for each
 16 fiscal year such sums as may be necessary.

17 **“SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON**
 18 **PRUDENTIAL MEASURES.**

19 “(a) IN GENERAL.—The Secretary of the Treasury
 20 is authorized to negotiate and enter into International In-
 21 surance Agreements on Prudential Measures on behalf of
 22 the United States.

23 “(b) SAVINGS PROVISION.—Nothing in this section or
 24 section 313 shall be construed to affect the development
 25 and coordination of United States international trade pol-

1 icy or the administration of the United States trade agree-
2 ments program. It is to be understood that the negotiation
3 of International Insurance Agreements on Prudential
4 Measures under such sections is consistent with the re-
5 quirement of this subsection.

6 “(c) CONSULTATION.—The Secretary shall consult
7 with the United States Trade Representative on the nego-
8 tiation of International Insurance Agreements on Pruden-
9 tial Measures, including prior to initiating and concluding
10 any such agreements.”.

11 (b) DUTIES OF SECRETARY.—Section 321(a) of title
12 31, United States Code, is amended—

13 (1) in paragraph (7), by striking “; and” and
14 inserting a semicolon;

15 (2) in paragraph (8)(C), by striking the period
16 at the end and inserting “; and”; and

17 (3) by adding at the end the following new
18 paragraph:

19 “(9) advise the President on major domestic
20 and international prudential policy issues in connec-
21 tion with all lines of insurance except health insur-
22 ance.”.

23 (c) CLERICAL AMENDMENT.—The table of sections
24 for subchapter I of chapter 3 of title 31, United States

1 Code, is amended by striking the item relating to section
 2 312 and 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.”.

3 **Subtitle B—State-based Insurance** 4 **Reform**

5 **SEC. 511. SHORT TITLE.**

6 This subtitle may be cited as the “Nonadmitted and
 7 Reinsurance Reform Act of 2010”.

8 **SEC. 512. EFFECTIVE DATE.**

9 Except as otherwise specifically provided in this sub-
 10 title, this subtitle shall take effect upon the expiration of
 11 the 12-month period beginning on the date of the enact-
 12 ment of this subtitle.

13 **PART I—NONADMITTED INSURANCE**

14 **SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF** 15 **PREMIUM TAXES.**

16 (a) HOME STATE’S EXCLUSIVE AUTHORITY.—No
 17 State other than the home State of an insured may require
 18 any premium tax payment for nonadmitted insurance.

19 (b) ALLOCATION OF NONADMITTED PREMIUM
 20 TAXES.—

21 (1) IN GENERAL.—The States may enter into a
 22 compact or otherwise establish procedures to allocate

1 among the States the premium taxes paid to an in-
2 sured's home State described in subsection (a).

3 (2) EFFECTIVE DATE.—Except as expressly
4 otherwise provided in such compact or other proce-
5 dures, any such compact or other procedures—

6 (A) if adopted on or before the expiration
7 of the 330-day period that begins on the date
8 of the enactment of this subtitle, shall apply to
9 any premium taxes that, on or after such date
10 of enactment, are required to be paid to any
11 State that is subject to such compact or proce-
12 dures; and

13 (B) if adopted after the expiration of such
14 330-day period, shall apply to any premium
15 taxes that, on or after January 1 of the first
16 calendar year that begins after the expiration of
17 such 330-day period, are required to be paid to
18 any State that is subject to such compact or
19 procedures.

20 (3) REPORT.—Upon the expiration of the 330-
21 day period referred to in paragraph (2), the NAIC
22 may submit a report to the Committee on Financial
23 Services and Committee on the Judiciary of the
24 House of Representatives and the Committee on
25 Banking, Housing, and Urban Affairs of the Senate

1 identifying and describing any compact or other pro-
2 cedures for allocation among the States of premium
3 taxes that have been adopted during such period by
4 any States.

5 (4) NATIONWIDE SYSTEM.—The Congress in-
6 tends that each State adopt nationwide uniform re-
7 quirements, forms, and procedures, such as an inter-
8 state compact, that provides for the reporting, pay-
9 ment, collection, and allocation of premium taxes for
10 nonadmitted insurance consistent with this section.

11 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
12 PORT.—To facilitate the payment of premium taxes
13 among the States, an insured’s home State may require
14 surplus lines brokers and insureds who have independently
15 procured insurance to annually file tax allocation reports
16 with the insured’s home State detailing the portion of the
17 nonadmitted insurance policy premium or premiums at-
18 tributable to properties, risks, or exposures located in each
19 State. The filing of a nonadmitted insurance tax allocation
20 report and the payment of tax may be made by a person
21 authorized by the insured to act as its agent.

22 **SEC. 522. REGULATION OF NONADMITTED INSURANCE BY**
23 **INSURED’S HOME STATE.**

24 (a) HOME STATE AUTHORITY.—Except as otherwise
25 provided in this section, the placement of nonadmitted in-

1 surance shall be subject to the statutory and regulatory
2 requirements solely of the insured's home State.

3 (b) **BROKER LICENSING.**—No State other than an in-
4 sured's home State may require a surplus lines broker to
5 be licensed in order to sell, solicit, or negotiate non-
6 admitted insurance with respect to such insured.

7 (c) **ENFORCEMENT PROVISION.**—With respect to sec-
8 tion 521 and subsections (a) and (b) of this section, any
9 law, regulation, provision, or action of any State that ap-
10 plies or purports to apply to nonadmitted insurance sold
11 to, solicited by, or negotiated with an insured whose home
12 State is another State shall be preempted with respect to
13 such application.

14 (d) **WORKERS' COMPENSATION EXCEPTION.**—This
15 section may not be construed to preempt any State law,
16 rule, or regulation that restricts the placement of workers'
17 compensation insurance or excess insurance for self-fund-
18 ed workers' compensation plans with a nonadmitted in-
19 surer.

20 **SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-**
21 **BASE.**

22 After the expiration of the 2-year period beginning
23 on the date of the enactment of this subtitle, a State may
24 not collect any fees relating to licensing of an individual
25 or entity as a surplus lines broker in the State unless the

1 State has in effect at such time laws or regulations that
2 provide for participation by the State in the national in-
3 surance producer database of the NAIC, or any other
4 equivalent uniform national database, for the licensure of
5 surplus lines brokers and the renewal of such licenses.

6 **SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
7 **GIBILITY.**

8 A State may not—

9 (1) impose eligibility requirements on, or other-
10 wise establish eligibility criteria for, nonadmitted in-
11 surers domiciled in a United States jurisdiction, ex-
12 cept in conformance with such requirements and cri-
13 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
14 mitted Insurance Model Act, unless the State has
15 adopted nationwide uniform requirements, forms,
16 and procedures developed in accordance with section
17 521(b) of this subtitle that include alternative na-
18 tionwide uniform eligibility requirements; or

19 (2) prohibit a surplus lines broker from placing
20 nonadmitted insurance with, or procuring non-
21 admitted insurance from, a nonadmitted insurer
22 domiciled outside the United States that is listed on
23 the Quarterly Listing of Alien Insurers maintained
24 by the International Insurers Department of the
25 NAIC.

1 **SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL**
2 **PURCHASERS.**

3 A surplus lines broker seeking to procure or place
4 nonadmitted insurance in a State for an exempt commer-
5 cial purchaser shall not be required to satisfy any State
6 requirement to make a due diligence search to determine
7 whether the full amount or type of insurance sought by
8 such exempt commercial purchaser can be obtained from
9 admitted insurers if—

10 (1) the broker procuring or placing the surplus
11 lines insurance has disclosed to the exempt commer-
12 cial purchaser that such insurance may or may not
13 be available from the admitted market that may pro-
14 vide greater protection with more regulatory over-
15 sight; and

16 (2) the exempt commercial purchaser has sub-
17 sequently requested in writing the broker to procure
18 or place such insurance from a nonadmitted insurer.

19 **SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MAR-**
20 **KET.**

21 (a) IN GENERAL.—The Comptroller General of the
22 United States shall conduct a study of the nonadmitted
23 insurance market to determine the effect of the enactment
24 of this part on the size and market share of the non-
25 admitted insurance market for providing coverage typi-
26 cally provided by the admitted insurance market.

1 (b) CONTENTS.—The study shall determine and ana-
2 lyze—

3 (1) the change in the size and market share of
4 the nonadmitted insurance market and in the num-
5 ber of insurance companies and insurance holding
6 companies providing such business in the 18-month
7 period that begins upon the effective date of this
8 subtitle;

9 (2) the extent to which insurance coverage typi-
10 cally provided by the admitted insurance market has
11 shifted to the nonadmitted insurance market;

12 (3) the consequences of any change in the size
13 and market share of the nonadmitted insurance
14 market, including differences in the price and avail-
15 ability of coverage available in both the admitted
16 and nonadmitted insurance markets;

17 (4) the extent to which insurance companies
18 and insurance holding companies that provide both
19 admitted and nonadmitted insurance have experi-
20 enced shifts in the volume of business between ad-
21 mitted and nonadmitted insurance; and

22 (5) the extent to which there has been a change
23 in the number of individuals who have nonadmitted
24 insurance policies, the type of coverage provided

1 under such policies, and whether such coverage is
2 available in the admitted insurance market.

3 (c) CONSULTATION WITH NAIC.—In conducting the
4 study under this section, the Comptroller General shall
5 consult with the NAIC.

6 (d) REPORT.—The Comptroller General shall com-
7 plete the study under this section and submit a report to
8 the Committee on Banking, Housing, and Urban Affairs
9 of the Senate and the Committee on Financial Services
10 of the House of Representatives regarding the findings of
11 the study not later than 30 months after the effective date
12 of this subtitle.

13 **SEC. 527. DEFINITIONS.**

14 For purposes of this part, the following definitions
15 shall apply:

16 (1) ADMITTED INSURER.—The term “admitted
17 insurer” means, with respect to a State, an insurer
18 licensed to engage in the business of insurance in
19 such State.

20 (2) AFFILIATE.—The term “affiliate” means,
21 with respect to an insured, any entity that controls,
22 is controlled by, or is under common control with the
23 insured.

1 (3) AFFILIATED GROUP.—The term “affiliated
2 group” means any group of entities that are all af-
3 filiated.

4 (4) CONTROL.—An entity has “control” over
5 another entity if—

6 (A) the entity directly or indirectly or act-
7 ing through 1 or more other persons owns, con-
8 trols, or has the power to vote 25 percent or
9 more of any class of voting securities of the
10 other entity; or

11 (B) the entity controls in any manner the
12 election of a majority of the directors or trust-
13 ees of the other entity.

14 (5) EXEMPT COMMERCIAL PURCHASER.—The
15 term “exempt commercial purchaser” means any
16 person purchasing commercial insurance that, at the
17 time of placement, meets the following requirements:

18 (A) The person employs or retains a quali-
19 fied risk manager to negotiate insurance cov-
20 erage.

21 (B) The person has paid aggregate nation-
22 wide commercial property and casualty insur-
23 ance premiums in excess of \$100,000 in the im-
24 mediately preceding 12 months.

1 (C)(i) The person meets at least 1 of the
2 following criteria:

3 (I) The person possesses a net worth
4 in excess of \$20,000,000, as such amount
5 is adjusted pursuant to clause (ii).

6 (II) The person generates annual rev-
7 enues in excess of \$50,000,000, as such
8 amount is adjusted pursuant to clause (ii).

9 (III) The person employs more than
10 500 full-time or full-time equivalent em-
11 ployees per individual insured or is a mem-
12 ber of an affiliated group employing more
13 than 1,000 employees in the aggregate.

14 (IV) The person is a not-for-profit or-
15 ganization or public entity generating an-
16 nual budgeted expenditures of at least
17 \$30,000,000, as such amount is adjusted
18 pursuant to clause (ii).

19 (V) The person is a municipality with
20 a population in excess of 50,000 persons.

21 (ii) Effective on the fifth January 1 occur-
22 ring after the date of the enactment of this sub-
23 title and each fifth January 1 occurring there-
24 after, the amounts in subclauses (I), (II), and
25 (IV) of clause (i) shall be adjusted to reflect the

1 percentage change for such 5-year period in the
2 Consumer Price Index for All Urban Con-
3 sumers published by the Bureau of Labor Sta-
4 tistics of the Department of Labor.

5 (6) HOME STATE.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), the term “home State”
8 means, with respect to an insured—

9 (i) the State in which an insured
10 maintains its principal place of business or,
11 in the case of an individual, the individ-
12 ual’s principal residence; or

13 (ii) if 100 percent of the insured risk
14 is located out of the State referred to in
15 subparagraph (A), the State to which the
16 greatest percentage of the insured’s tax-
17 able premium for that insurance contract
18 is allocated.

19 (B) AFFILIATED GROUPS.—If more than 1
20 insured from an affiliated group are named in-
21 sureds on a single nonadmitted insurance con-
22 tract, the term “home State” means the home
23 State, as determined pursuant to subparagraph
24 (A), of the member of the affiliated group that

1 has the largest percentage of premium attrib-
2 uted to it under such insurance contract.

3 (7) INDEPENDENTLY PROCURED INSURANCE.—

4 The term “independently procured insurance”
5 means insurance procured directly by an insured
6 from a nonadmitted insurer.

7 (8) NAIC.—The term “NAIC” means the Na-
8 tional Association of Insurance Commissioners or
9 any successor entity.

10 (9) NONADMITTED INSURANCE.—The term
11 “nonadmitted insurance” means any property and
12 casualty insurance permitted to be placed directly or
13 through a surplus lines broker with a nonadmitted
14 insurer eligible to accept such insurance.

15 (10) NON-ADMITTED INSURANCE MODEL
16 ACT.—The term “Non-Admitted Insurance Model
17 Act” means the provisions of the Non-Admitted In-
18 surance Model Act, as adopted by the NAIC on Au-
19 gust 3, 1994, and amended on September 30, 1996,
20 December 6, 1997, October 2, 1999, and June 8,
21 2002.

22 (11) NONADMITTED INSURER.—The term
23 “nonadmitted insurer”—

1 (A) means, with respect to a State, an in-
2 surer not licensed to engage in the business of
3 insurance in such State; but

4 (B) does not include a risk retention
5 group, as that term is defined in section 2(a)(4)
6 of the Liability Risk Retention Act of 1986 (15
7 U.S.C. 3901(a)(4)).

8 (12) QUALIFIED RISK MANAGER.—The term
9 “qualified risk manager” means, with respect to a
10 policyholder of commercial insurance, a person who
11 meets all of the following requirements:

12 (A) The person is an employee of, or third
13 party consultant retained by, the commercial
14 policyholder.

15 (B) The person provides skilled services in
16 loss prevention, loss reduction, or risk and in-
17 surance coverage analysis, and purchase of in-
18 surance.

19 (C) The person—

20 (i)(I) has a bachelor’s degree or high-
21 er from an accredited college or university
22 in risk management, business administra-
23 tion, finance, economics, or any other field
24 determined by a State insurance commis-
25 sioner or other State regulatory official or

1 entity to demonstrate minimum com-
2 petence in risk management; and

3 (II)(aa) has 3 years of experience in
4 risk financing, claims administration, loss
5 prevention, risk and insurance analysis, or
6 purchasing commercial lines of insurance;
7 or

8 (bb) has 1 of the following designa-
9 tions:

10 (AA) a designation as a Char-
11 tered Property and Casualty Under-
12 writer (in this subparagraph referred
13 to as “CPCU”) issued by the Amer-
14 ican Institute for CPCU/Insurance In-
15 stitute of America;

16 (BB) a designation as an Asso-
17 ciate in Risk Management (ARM)
18 issued by the American Institute for
19 CPCU/Insurance Institute of America;

20 (CC) a designation as Certified
21 Risk Manager (CRM) issued by the
22 National Alliance for Insurance Edu-
23 cation & Research;

1 (DD) a designation as a RIMS
2 Fellow (RF) issued by the Global Risk
3 Management Institute; or

4 (EE) any other designation, cer-
5 tification, or license determined by a
6 State insurance commissioner or other
7 State insurance regulatory official or
8 entity to demonstrate minimum com-
9 petency in risk management;

10 (ii)(I) has at least 7 years of experi-
11 ence in risk financing, claims administra-
12 tion, loss prevention, risk and insurance
13 coverage analysis, or purchasing commer-
14 cial lines of insurance; and

15 (II) has any 1 of the designations
16 specified in subitems (AA) through (EE)
17 of clause (i)(II)(bb);

18 (iii) has at least 10 years of experi-
19 ence in risk financing, claims administra-
20 tion, loss prevention, risk and insurance
21 coverage analysis, or purchasing commer-
22 cial lines of insurance; or

23 (iv) has a graduate degree from an
24 accredited college or university in risk
25 management, business administration, fi-

1 nance, economics, or any other field deter-
2 mined by a State insurance commissioner
3 or other State regulatory official or entity
4 to demonstrate minimum competence in
5 risk management.

6 (13) PREMIUM TAX.—The term “premium tax”
7 means, with respect to surplus lines or independently
8 procured insurance coverage, any tax, fee, assess-
9 ment, or other charge imposed by a government en-
10 tity directly or indirectly based on any payment
11 made as consideration for an insurance contract for
12 such insurance, including premium deposits, assess-
13 ments, registration fees, and any other compensation
14 given in consideration for a contract of insurance.

15 (14) SURPLUS LINES BROKER.—The term “sur-
16 plus lines broker” means an individual, firm, or cor-
17 poration which is licensed in a State to sell, solicit,
18 or negotiate insurance on properties, risks, or expo-
19 sures located or to be performed in a State with
20 nonadmitted insurers.

21 **PART II—REINSURANCE**

22 **SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND** 23 **REINSURANCE AGREEMENTS.**

24 (a) CREDIT FOR REINSURANCE.—If the State of
25 domicile of a ceding insurer is an NAIC-accredited State,

1 or has financial solvency requirements substantially simi-
2 lar to the requirements necessary for NAIC accreditation,
3 and recognizes credit for reinsurance for the insurer's
4 ceded risk, then no other State may deny such credit for
5 reinsurance.

6 (b) ADDITIONAL PREEMPTION OF
7 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
8 addition to the application of subsection (a), all laws, regu-
9 lations, provisions, or other actions of a State that is not
10 the domiciliary State of the ceding insurer, except those
11 with respect to taxes and assessments on insurance com-
12 panies or insurance income, are preempted to the extent
13 that they—

14 (1) restrict or eliminate the rights of the ceding
15 insurer or the assuming insurer to resolve disputes
16 pursuant to contractual arbitration to the extent
17 such contractual provision is not inconsistent with
18 the provisions of title 9, United States Code;

19 (2) require that a certain State's law shall gov-
20 ern the reinsurance contract, disputes arising from
21 the reinsurance contract, or requirements of the re-
22 insurance contract;

23 (3) attempt to enforce a reinsurance contract
24 on terms different than those set forth in the rein-

1 surance contract, to the extent that the terms are
2 not inconsistent with this part; or

3 (4) otherwise apply the laws of the State to re-
4 insurance agreements of ceding insurers not domi-
5 ciled in that State.

6 **SEC. 532. REGULATION OF REINSURER SOLVENCY.**

7 (a) DOMICILIARY STATE REGULATION.—If the State
8 of domicile of a reinsurer is an NAIC-accredited State or
9 has financial solvency requirements substantially similar
10 to the requirements necessary for NAIC accreditation,
11 such State shall be solely responsible for regulating the
12 financial solvency of the reinsurer.

13 (b) NONDOMICILIARY STATES.—

14 (1) LIMITATION ON FINANCIAL INFORMATION
15 REQUIREMENTS.—If the State of domicile of a rein-
16 surer is an NAIC-accredited State or has financial
17 solvency requirements substantially similar to the re-
18 quirements necessary for NAIC accreditation, no
19 other State may require the reinsurer to provide any
20 additional financial information other than the infor-
21 mation the reinsurer is required to file with its
22 domiciliary State.

23 (2) RECEIPT OF INFORMATION.—No provision
24 of this section shall be construed as preventing or
25 prohibiting a State that is not the State of domicile

1 of a reinsurer from receiving a copy of any financial
2 statement filed with its domiciliary State.

3 **SEC. 533. DEFINITIONS.**

4 For purposes of this part, the following definitions
5 shall apply:

6 (1) CEDING INSURER.—The term “ceding in-
7 surer” means an insurer that purchases reinsurance.

8 (2) DOMICILIARY STATE.—The terms “State of
9 domicile” and “domiciliary State” mean, with re-
10 spect to an insurer or reinsurer, the State in which
11 the insurer or reinsurer is incorporated or entered
12 through, and licensed.

13 (3) REINSURANCE.—The term “reinsurance”
14 means the assumption by an insurer of all or part
15 of a risk undertaken originally by another insurer.

16 (4) REINSURER.—

17 (A) IN GENERAL.—The term “reinsurer”
18 means an insurer to the extent that the in-
19 surer—

20 (i) is principally engaged in the busi-
21 ness of reinsurance;

22 (ii) does not conduct significant
23 amounts of direct insurance as a percent-
24 age of its net premiums; and

1 (iii) is not engaged in an ongoing
2 basis in the business of soliciting direct in-
3 surance.

4 (B) DETERMINATION.—A determination of
5 whether an insurer is a reinsurer shall be made
6 under the laws of the State of domicile in ac-
7 cordance with this paragraph.

8 **PART III—RULE OF CONSTRUCTION**

9 **SEC. 541. RULE OF CONSTRUCTION.**

10 Nothing in this subtitle or the amendments made by
11 this subtitle shall be construed to modify, impair, or super-
12 sede the application of the antitrust laws. Any implied or
13 actual conflict between this subtitle and any amendments
14 to this subtitle and the antitrust laws shall be resolved
15 in favor of the operation of the antitrust laws.

16 **SEC. 542. SEVERABILITY.**

17 If any section or subsection of this subtitle, or any
18 application of such provision to any person or cir-
19 cumstance, is held to be unconstitutional, the remainder
20 of this subtitle, and the application of the provision to any
21 other person 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
 8 Association Holding Company and Depository Institution
 9 Regulatory 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
 14 affiliates 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
 4 U.S.C. 1841(c)(2)(F));

5 (B) the term “industrial bank” means an
 6 institution described in section 2(c)(2)(H) of
 7 the Bank Holding Company Act of 1956 (12
 8 U.S.C. 1841(c)(2)(H)); and

9 (C) the term “trust bank” means an insti-
 10 tution described in section 2(c)(2)(D) of the
 11 Bank Holding Company Act of 1956 (12
 12 U.S.C. 1841(c)(2)(D)).

13 (2) MORATORIUM ON PROVISION OF DEPOSIT
 14 INSURANCE.—The Corporation may not approve an
 15 application for deposit insurance under section 5 of
 16 the Federal Deposit Insurance Act (12 U.S.C. 1815)
 17 that is received after November 10, 2009, for an in-
 18 dustrial bank, a credit card bank, or a trust bank
 19 that is directly or indirectly owned or controlled by
 20 a commercial 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 Fed-

1 eral Deposit Insurance Act (12 U.S.C. 1817(j)),
2 of an industrial bank, a credit card bank, or a
3 trust bank if the change in control would result
4 in direct or indirect control of the industrial
5 bank, credit card bank, or trust bank by a com-
6 mercial firm.

7 (B) EXCEPTIONS.—Subparagraph (A)
8 shall not apply to a change in control of an in-
9 dustrial bank, credit card bank, or trust bank
10 that—

11 (i) is in danger of default, as deter-
12 mined by the appropriate Federal banking
13 agency; or

14 (ii) results from the merger or whole
15 acquisition of a commercial firm that di-
16 rectly or indirectly controls the industrial
17 bank, credit card bank, or trust bank in a
18 bona fide merger with or acquisition by an-
19 other commercial firm, as determined by
20 the appropriate Federal banking agency.

21 (4) SUNSET.—This subsection shall cease to
22 have effect 3 years after the date of enactment of
23 this Act.

1 (b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
2 OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY
3 ACT OF 1956.—

4 (1) STUDY REQUIRED.—The Comptroller Gen-
5 eral of the United States shall carry out a study to
6 determine whether it is necessary, in order to
7 strengthen the safety and soundness of institutions
8 or the stability of the financial system, to eliminate
9 the exceptions under section 2 of the Bank Holding
10 Company Act of 1956 (12 U.S.C. 1841) for institu-
11 tions described in—

12 (A) section 2(a)(5)(E) of the Bank Hold-
13 ing Company Act of 1956 (12 U.S.C.
14 1841(a)(5)(E));

15 (B) section 2(a)(5)(F) of the Bank Hold-
16 ing Company Act of 1956 (12 U.S.C.
17 1841(a)(5)(F));

18 (C) section 2(c)(2)(D) of the Bank Hold-
19 ing Company Act of 1956 (12 U.S.C.
20 1841(c)(2)(D));

21 (D) section 2(c)(2)(F) of the Bank Hold-
22 ing Company Act of 1956 (12 U.S.C.
23 1841(c)(2)(F));

1 (E) section 2(c)(2)(H) of the Bank Hold-
2 ing Company Act of 1956 (12 U.S.C.
3 1841(c)(2)(H)); and

4 (F) section 2(c)(2)(B) of the Bank Hold-
5 ing Company Act of 1956 (12 U.S.C.
6 1841(c)(2)(B)).

7 (2) CONTENT OF STUDY.—

8 (A) IN GENERAL.—The study required
9 under paragraph (1), with respect to the insti-
10 tutions referenced in each of subparagraphs (A)
11 through (E) of paragraph (1), shall, to the ex-
12 tent feasible be based on information provided
13 to the Comptroller General by the appropriate
14 Federal or State regulator, and shall—

15 (i) identify the types and number of
16 institutions excepted from section 2 of the
17 Bank Holding Company Act of 1956 (12
18 U.S.C. 1841) under each of the subpara-
19 graphs described in subparagraphs (A)
20 through (E) of paragraph (1);

21 (ii) generally describe the size and ge-
22 ographic locations of the institutions de-
23 scribed in clause (i);

24 (iii) determine the extent to which the
25 institutions described in clause (i) are held

1 by holding companies that are commercial
2 firms;

3 (iv) determine whether the institutions
4 described in clause (i) have any affiliates
5 that are commercial firms;

6 (v) identify the Federal banking agen-
7 cy responsible for the supervision of the in-
8 stitutions described in clause (i) on and
9 after the transfer date;

10 (vi) determine the adequacy of the
11 Federal bank regulatory framework appli-
12 cable to each category of institution de-
13 scribed in clause (i), including any restric-
14 tions (including limitations on affiliate
15 transactions or cross-marketing) that apply
16 to transactions between an institution, the
17 holding company of the institution, and
18 any other affiliate of the institution; and

19 (vii) evaluate the potential con-
20 sequences of subjecting the institutions de-
21 scribed in clause (i) to the requirements of
22 the Bank Holding Company Act of 1956,
23 including with respect to the availability
24 and allocation of credit, the stability of the
25 financial system and the economy, the safe

1 and sound operation of each category of
2 institution, and the impact on the types of
3 activities in which such institutions, and
4 the holding companies of such institutions,
5 may engage.

6 (B) SAVINGS ASSOCIATIONS.—With respect
7 to institutions described in paragraph (1)(F),
8 the study required under paragraph (1) shall—

9 (i) determine the adequacy of the
10 Federal bank regulatory framework appli-
11 cable to such institutions, including any re-
12 strictions (including limitations on affiliate
13 transactions or cross-marketing) that apply
14 to transactions between an institution, the
15 holding company of the institution, and
16 any other affiliate of the institution; and

17 (ii) evaluate the potential con-
18 sequences of subjecting the institutions de-
19 scribed in paragraph (1)(F) to the require-
20 ments of the Bank Holding Company Act
21 of 1956, including with respect to the
22 availability and allocation of credit, the
23 stability of the financial system and the
24 economy, the safe and sound operation of
25 such institutions, and the impact on the

1 types of activities in which such institu-
 2 tions, and the holding companies of such
 3 institutions, may engage.

4 (3) REPORT.—Not later than 18 months after
 5 the date of enactment of this Act, the Comptroller
 6 General shall submit to the Committee on Banking,
 7 Housing, and Urban Affairs of the Senate and the
 8 Committee on Financial Services of the House of
 9 Representatives a report on the study required
 10 under paragraph (1).

11 **SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COM-**
 12 **PANIES; REGULATION OF FUNCTIONALLY**
 13 **REGULATED SUBSIDIARIES.**

14 (a) REPORTS BY BANK HOLDING COMPANIES.—Sec-
 15 tions 5(c)(1) of the Bank Holding Company Act of 1956
 16 (12 U.S.C. 1844(c)(1)) is amended—

17 (1) by striking subparagraph (B) and inserting
 18 the following:

19 “(B) USE OF EXISTING REPORTS AND
 20 OTHER SUPERVISORY INFORMATION.—The ap-
 21 propriate Federal banking agency for a bank
 22 holding company shall, to the fullest extent pos-
 23 sible, use—

24 “(i) reports and other supervisory in-
 25 formation that the bank holding company

1 or any subsidiary thereof has been required
2 to provide to other Federal or State regu-
3 latory agencies;

4 “(ii) externally audited financial state-
5 ments of the bank holding company or
6 subsidiary;

7 “(iii) information otherwise available
8 from Federal or State regulatory agencies;
9 and

10 “(iv) information that is otherwise re-
11 quired to be reported publicly.”; and

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

13 “(C) AVAILABILITY.—Upon the request of
14 the appropriate Federal banking agency for a
15 bank holding company, the bank holding com-
16 pany or a subsidiary of the bank holding com-
17 pany shall promptly provide to the appropriate
18 Federal banking agency any information de-
19 scribed in clauses (i) through (iii) of subpara-
20 graph (B).”.

21 (b) EXAMINATIONS OF BANK HOLDING COMPA-
22 NIES.—Section 5(c)(2) of the Bank Holding Company Act
23 of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as
24 follows:

25 “(2) EXAMINATIONS.—

1 “(A) IN GENERAL.—The appropriate Fed-
2 eral banking agency for a bank holding com-
3 pany may make examinations of the bank hold-
4 ing company and each subsidiary of the bank
5 holding company in order to—

6 “(i) inform such appropriate Federal
7 banking agency of—

8 “(I) the nature of the operations
9 and financial condition of the bank
10 holding company and the subsidiary;

11 “(II) the financial, operational,
12 and other risks within the bank hold-
13 ing company system that may pose a
14 threat to—

15 “(aa) the safety and sound-
16 ness of the bank holding com-
17 pany or of any depository institu-
18 tion subsidiary of the bank hold-
19 ing company; or

20 “(bb) the stability of the fi-
21 nancial system of the United
22 States; and

23 “(III) the systems of the bank
24 holding company for monitoring and

1 controlling the risks described in sub-
2 clause (II); and

3 “(ii) enforce the compliance of the
4 bank holding company and the subsidiary
5 with this Act and any other Federal law
6 that such appropriate Federal banking
7 agency has specific jurisdiction to enforce
8 against the bank holding company or sub-
9 sidiary.

10 “(B) USE OF REPORTS TO REDUCE EXAMI-
11 NATIONS.—For purposes of this paragraph, the
12 appropriate Federal banking agency for a bank
13 holding company shall, to the fullest extent pos-
14 sible, rely on—

15 “(i) examination reports made by
16 other Federal or State regulatory agencies
17 relating to the bank holding company and
18 any subsidiary of the bank holding com-
19 pany; and

20 “(ii) the reports and other informa-
21 tion required under paragraph (1).

22 “(C) COORDINATION WITH OTHER REGU-
23 LATORS.—The appropriate Federal banking
24 agency for a bank holding company shall—

1 “(i) provide reasonable notice to, and
 2 consult with, the appropriate Federal
 3 banking agency or State regulatory agency
 4 of a subsidiary that is a depository institu-
 5 tion or a functionally regulated subsidiary
 6 before commencing an examination of the
 7 subsidiary under this section; and

8 “(ii) to the fullest extent possible,
 9 avoid duplication of examination activities,
 10 reporting requirements, and requests for
 11 information.”.

12 (c) AUTHORITY TO REGULATE FUNCTIONALLY REG-
 13 ULATED SUBSIDIARIES OF BANK HOLDING COMPA-
 14 NIES.—The Bank Holding Company Act of 1956 (12
 15 U.S.C. 1841 et seq.) is amended—

16 (1) in section 5(c) (12 U.S.C. 1844(c)), by
 17 striking paragraphs (3) and (4) and inserting the
 18 following:

19 “(3) [Reserved]

20 “(4) [Reserved]”; and

21 (2) by striking section 10A (12 U.S.C. 1848a).

22 (d) ACQUISITIONS OF BANKS.—Section 3(c) of the
 23 Bank Holding Company Act of 1956 (12 U.S.C. 1842(c))
 24 is amended by adding at the end the following:

1 “(7) FINANCIAL STABILITY.—In every case, the
2 appropriate Federal banking agency of a bank hold-
3 ing company shall take into consideration the extent
4 to which a proposed acquisition, merger, or consoli-
5 dation would result in greater or more concentrated
6 risks to the stability of the United States banking or
7 financial system.”.

8 (e) ACQUISITIONS OF NONBANKS.—

9 (1) NOTICE PROCEDURES.—Section 4(j)(2)(A)
10 of the Bank Holding Company Act of 1956 (12
11 U.S.C. 1843(j)(2)(A)) is amended by striking “or
12 unsound banking practices” and inserting “unsound
13 banking practices, or risk to the stability of the
14 United States banking or financial system”.

15 (2) ACTIVITIES THAT ARE FINANCIAL IN NA-
16 TURE.—Section 4(k)(6)(B) of the Bank Holding
17 Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)) is
18 amended to read as follows:

19 “(B) APPROVAL NOT REQUIRED FOR CER-
20 TAIN FINANCIAL ACTIVITIES.—

21 “(i) IN GENERAL.—Except as pro-
22 vided in clause (ii), a financial holding
23 company may commence any activity or ac-
24 quire any company, pursuant to paragraph
25 (4) or any regulation prescribed or order

1 issued under paragraph (5), without prior
2 approval of the appropriate Federal bank-
3 ing agency for the financial holding com-
4 pany.

5 “(ii) EXCEPTION.—A financial hold-
6 ing company may not acquire a company,
7 without the prior approval of the appro-
8 priate Federal banking agency for the fi-
9 nancial holding company, in a transaction
10 in which the total consolidated assets to be
11 acquired by the financial holding company
12 exceed \$25,000,000,000.”.

13 (f) BANK MERGER ACT TRANSACTIONS.—Section
14 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.
15 1828(c)(5)) is amended, in the matter immediately fol-
16 lowing subparagraph (B), by striking “and the conven-
17 ience and needs of the community to be served” and in-
18 serting “the convenience and needs of the community to
19 be served, and the risk to the stability of the United States
20 banking or financial system”.

21 (g) REPORTS BY SAVINGS AND LOAN HOLDING COM-
22 PANIES.—Section 10(b)(2) of the Home Owners’ Loan Act
23 (12 U.S.C. 1467a(b)(2) is amended—

24 (1) by striking “Each savings” and inserting
25 the following:

1 “(A) IN GENERAL.—Each savings”; and
2 (2) by adding at the end the following:

3 “(B) USE OF EXISTING REPORTS AND
4 OTHER SUPERVISORY INFORMATION.—The ap-
5 propriate Federal banking agency for a savings
6 and loan holding company shall, to the fullest
7 extent possible, use—

8 “(i) reports and other supervisory in-
9 formation that the savings and loan hold-
10 ing company or any subsidiary thereof has
11 been required to provide to other Federal
12 or State regulatory agencies;

13 “(ii) externally audited financial state-
14 ments of the savings and loan holding com-
15 pany or subsidiary;

16 “(iii) information that is otherwise
17 available from Federal or State regulatory
18 agencies; and

19 “(iv) information that is otherwise re-
20 quired to be reported publicly.

21 “(C) AVAILABILITY.—Upon the request of
22 the appropriate Federal banking agency for a
23 savings and loan holding company, the savings
24 and loan holding company or a subsidiary of
25 the savings and loan holding company shall

1 promptly provide to the appropriate Federal
 2 banking agency any information described in
 3 clauses (i) through (iii) of subparagraph (B).”.

4 (h) EXAMINATION OF SAVINGS AND LOAN HOLDING
 5 COMPANIES.—

6 (1) DEFINITIONS.—Section 2 of the Home
 7 Owners’ Loan Act (12 U.S.C. 1462) is amended by
 8 adding at the end the following:

9 “(10) APPROPRIATE FEDERAL BANKING AGEN-
 10 CY.—The term ‘appropriate Federal banking agency’
 11 has the same meaning as in section 3(q) of the Fed-
 12 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

13 “(11) FUNCTIONALLY REGULATED SUB-
 14 SIDIARY.—The term ‘functionally regulated sub-
 15 sidiary’ has the same meaning as in section 5(c)(5)
 16 of the Bank Holding Company Act of 1956 (12
 17 U.S.C. 1844(c)(5)).”.

18 (2) EXAMINATION.—Section 10(b) of the Home
 19 Owners’ Loan Act (12 U.S.C. 1467a(b)) is amended
 20 by striking paragraph (4) and inserting the fol-
 21 lowing:

22 “(4) EXAMINATIONS.—

23 “(A) IN GENERAL.—The appropriate Fed-
 24 eral banking agency for a savings and loan
 25 holding company may make examinations of the

1 savings and loan holding company and each
2 subsidiary of the savings and loan holding com-
3 pany system, in order to—

4 “(i) inform such appropriate Federal
5 banking agency of—

6 “(I) the nature of the operations
7 and financial condition of the savings
8 and loan holding company and the
9 subsidiary;

10 “(II) the financial, operational,
11 and other risks within the savings and
12 loan holding company that may pose a
13 threat to—

14 “(aa) the safety and sound-
15 ness of the savings and loan
16 holding company or of any depos-
17 itory institution subsidiary of the
18 savings and loan holding com-
19 pany; or

20 “(bb) the stability of the fi-
21 nancial system of the United
22 States; and

23 “(III) the systems of the savings
24 and loan holding company for moni-

1 toring and controlling the risks de-
2 scribed in subclause (II); and

3 “(ii) enforce the compliance of the
4 savings and loan holding company and the
5 subsidiary with this Act and any other
6 Federal law that such appropriate Federal
7 banking agency has specific jurisdiction to
8 enforce against the savings and loan hold-
9 ing company or subsidiary.

10 “(B) USE OF REPORTS TO REDUCE EXAMI-
11 NATIONS.—For purposes of this subsection, the
12 appropriate Federal banking agency for a sav-
13 ings and loan holding company shall, to the
14 fullest extent possible, rely on—

15 “(i) the examination reports made by
16 other Federal or State regulatory agencies
17 relating to the savings and loan holding
18 company and any subsidiary; and

19 “(ii) the reports and other informa-
20 tion required under paragraph (2).

21 “(C) COORDINATION WITH OTHER REGU-
22 LATORS.—The appropriate Federal banking
23 agency for a savings and loan holding company
24 shall—

1 “(i) provide reasonable notice to, and
 2 consult with, the appropriate Federal
 3 banking agency or State regulatory agency
 4 of a subsidiary that is a depository institu-
 5 tion or a functionally regulated subsidiary
 6 before commencing an examination of the
 7 subsidiary under this section; and

8 “(ii) to the fullest extent possible,
 9 avoid duplication of examination activities,
 10 reporting requirements, and requests for
 11 information.”.

12 (i) EFFECTIVE DATE.—The amendments made by
 13 this section shall take effect on the transfer date.

14 **SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMIS-**
 15 **SIBLE ACTIVITIES OF DEPOSITORY INSTITU-**
 16 **TION SUBSIDIARIES OF HOLDING COMPA-**
 17 **NIES.**

18 Section 6 of the Bank Holding Company Act of 1956
 19 (12 U.S.C. 1845) is amended to read as follows:

20 **“SEC. 6. ASSURING CONSISTENT OVERSIGHT OF PERMIS-**
 21 **SIBLE ACTIVITIES OF DEPOSITORY INSTITU-**
 22 **TION SUBSIDIARIES OF HOLDING COMPA-**
 23 **NIES.**

24 “(a) DEFINITIONS.—

25 “(1) DEFINITIONS.—In this section—

1 “(A) the term ‘depository institution hold-
2 ing company’ has the same meaning as in sec-
3 tion 3(w) of the Federal Deposit Insurance Act
4 (12 U.S.C. 1813(w));

5 “(B) the term ‘functionally regulated sub-
6 sidiary’ has the same meaning as in section
7 5(c)(5); and

8 “(C) the term ‘lead Federal banking agen-
9 cy’ means—

10 “(i) the Office of the Comptroller of
11 the Currency, in the case of any depository
12 institution holding company having—

13 “(I) a subsidiary that is an in-
14 sured depository institution, if all
15 such insured depository institutions
16 are Federal depository institutions; or

17 “(II) a subsidiary that is a Fed-
18 eral depository institution and a sub-
19 sidiary that is a State depository in-
20 stitution, if the total consolidated as-
21 sets of all subsidiaries that are Fed-
22 eral depository institutions exceed the
23 total consolidated assets of all subsidi-
24 aries that are State depository institu-
25 tions; and

1 “(ii) the Federal Deposit Insurance
2 Corporation, in the case of any depository
3 institution holding company having—

4 “(I) a subsidiary that is an in-
5 sured depository institution, if all
6 such insured depository institutions
7 are State depository institutions; or

8 “(II) a subsidiary that is a Fed-
9 eral depository institution and a sub-
10 sidiary that is a State depository in-
11 stitution, if the total consolidated as-
12 sets of all subsidiaries that are State
13 depository institutions exceed the total
14 consolidated assets of all subsidiaries
15 that are Federal depository institu-
16 tions.

17 “(2) DETERMINATION OF TOTAL CONSOLI-
18 DATED ASSETS.—For purposes of paragraph (1)(A),
19 the total consolidated assets of a depository institu-
20 tion shall be determined in the same manner that
21 total consolidated assets of depository institutions
22 are determined for purposes of section 3(q) of the
23 Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

24 “(b) LEAD AGENCY SUPERVISION.—

1 “(1) IN GENERAL.—The lead Federal banking
2 agency for each depository institution holding com-
3 pany shall make examinations of the activities of
4 each nondepository institution subsidiary (other than
5 a functionally regulated subsidiary) of the depository
6 institution holding company that are permissible for
7 depository institution subsidiaries of the depository
8 institution holding company, to determine whether
9 the activities—

10 “(A) present safety and soundness risks to
11 any depository institution subsidiary of the de-
12 pository institution holding company;

13 “(B) are conducted in accordance with ap-
14 plicable law; and

15 “(C) are subject to appropriate systems for
16 monitoring and controlling the financial, oper-
17 ating, and other risks of the activity and pro-
18 tecting the depository institution subsidiaries of
19 the holding company.

20 “(2) PROCESS FOR EXAMINATION.—An exam-
21 ination under paragraph (1) shall be carried out
22 under the authority of the lead Federal banking
23 agency, as if the nondepository institution subsidiary
24 were an insured depository institution for which the

1 lead Federal banking agency is the appropriate Fed-
2 eral banking agency.

3 “(c) COORDINATION.—For each depository institu-
4 tion holding company for which the Board of Governors
5 is the appropriate Federal banking agency, the lead Fed-
6 eral banking agency of the depository institution holding
7 company shall coordinate the supervision of the activities
8 of subsidiaries described in subsection (b) with the Board
9 of Governors, in a manner that—

10 “(1) avoids duplication;

11 “(2) shares information relevant to the super-
12 vision of the depository institution holding company
13 by each agency;

14 “(3) achieves the objectives of subsection (b);
15 and

16 “(4) ensures that the depository institution
17 holding company and the subsidiaries of the depository
18 institution holding company are not subject to
19 conflicting supervisory demands by the 2 agencies.

20 “(d) REFERRALS FOR ENFORCEMENT.—

21 “(1) RECOMMENDATION OF ACTION BY BOARD
22 OF GOVERNORS.—The lead Federal banking agency
23 for a depository institution holding company, based
24 on information obtained pursuant to the responsibil-
25 ities of the agency under subsection (b), may submit

1 to the Board of Governors, in writing, a rec-
2 ommendation that the Board of Governors take en-
3 forcement action against a nondepository institution
4 subsidiary (other than a functionally regulated sub-
5 sidiary) of the depository institution holding com-
6 pany, together with an explanation of the concerns
7 giving rise to the recommendation.

8 “(2) BACK-UP AUTHORITY OF THE LEAD FED-
9 ERAL BANKING AGENCY.—If, within the 60-day pe-
10 riod beginning on the date on which the Board of
11 Governors receives a recommendation under para-
12 graph (1), the Board of Governors does not take en-
13 forcement action against a nondepository institution
14 subsidiary or provide a plan for enforcement action
15 that is acceptable to the lead Federal banking agen-
16 cy, the lead Federal banking agency (upon the au-
17 thorization of the Comptroller, or the Federal De-
18 posit Insurance Corporation, upon a vote of its
19 members, as applicable) may take the recommended
20 enforcement action, in the same manner as if the
21 subsidiary were an insured depository institution for
22 which the lead Federal banking agency is the appro-
23 priate Federal banking agency.”.

1 **SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
 2 **PANIES TO REMAIN WELL CAPITALIZED AND**
 3 **WELL MANAGED.**

4 (a) AMENDMENT.—Section 4(l)(1) of the Bank Hold-
 5 ing Company Act of 1956 (12 U.S.C. 1843(l)(1)) is
 6 amended—

7 (1) in subparagraph (B), by striking “and” at
 8 the end;

9 (2) by redesignating subparagraph (C) as sub-
 10 paragraph (D);

11 (3) by inserting after subparagraph (B) the fol-
 12 lowing:

13 “(C) the bank holding company is well
 14 capitalized and well managed; and”; and

15 (4) in subparagraph (D)(ii), as so redesignated,
 16 by striking “subparagraphs (A) and (B)” and insert-
 17 ing “subparagraphs (A), (B), and (C)”.

18 (b) EFFECTIVE DATE.—The amendments made by
 19 this section shall take effect on the transfer date.

20 **SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.**

21 (a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of
 22 the Bank Holding Company Act of 1956 (12 U.S.C.
 23 1842(d)(1)(A)) is amended by striking “adequately cap-
 24 italized and adequately managed” and inserting “well cap-
 25 italized and well managed”.

1 (b) INTERSTATE BANK MERGERS.—Section
 2 44(b)(4)(B) of the Federal Deposit Insurance Act (12
 3 U.S.C. 1831u(b)(4)(B)) is amended by striking “will con-
 4 tinue to be adequately capitalized and adequately man-
 5 aged” and inserting “will be well capitalized and well man-
 6 aged”.

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall take effect on the transfer date.

9 **SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK**
 10 **TRANSACTIONS WITH AFFILIATES.**

11 (a) AFFILIATE TRANSACTIONS.—Section 23A of the
 12 Federal Reserve Act (12 U.S.C. 371c) is amended—

13 (1) in subsection (b)—

14 (A) in paragraph (1), by striking subpara-
 15 graph (D) and inserting the following:

16 “(D) any investment fund with respect to
 17 which a member bank or affiliate thereof is an
 18 investment adviser; and”; and

19 (B) in paragraph (7)—

20 (i) in subparagraph (A), by inserting
 21 before the semicolon at the end the fol-
 22 lowing: “, including a purchase of assets
 23 subject to an agreement to repurchase”;

1 (ii) in subparagraph (C), by striking
2 “, including assets subject to an agreement
3 to repurchase,”;

4 (iii) in subparagraph (D)—

5 (I) by inserting “or other debt
6 obligations” after “acceptance of secu-
7 rities”; and

8 (II) by striking “or” at the end;
9 and

10 (iv) by adding at the end the fol-
11 lowing:

12 “(F) a transaction with an affiliate that
13 involves the borrowing or lending of securities,
14 to the extent that the transaction causes a
15 member bank or a subsidiary to have credit ex-
16 posure to the affiliate; or

17 “(G) a derivative transaction, as defined in
18 paragraph (3) of section 5200(b) of the Revised
19 Statutes of the United States (12 U.S.C.
20 84(b)), with an affiliate, to the extent that the
21 transaction causes a member bank or a sub-
22 sidiary to have credit exposure to the affiliate;”;

23 (2) in subsection (c)—

24 (A) in paragraph (1)—

1 (i) in the matter preceding subpara-
2 graph (A), by striking “subsidiary” and all
3 that follows through “time of the trans-
4 action” and inserting “subsidiary, and any
5 credit exposure of a member bank or a
6 subsidiary to an affiliate resulting from a
7 securities borrowing or lending transaction,
8 or a derivative transaction, shall be se-
9 cured at all times”; and

10 (ii) in each of subparagraphs (A)
11 through (D), by striking “or letter of cred-
12 it” and inserting “letter of credit, or credit
13 exposure”;

14 (B) by striking paragraph (2);

15 (C) by redesignating paragraphs (3)
16 through (5) as paragraphs (2) through (4), re-
17 spectively;

18 (D) in paragraph (2), as so redesignated,
19 by inserting before the period at the end “, or
20 credit exposure to an affiliate resulting from a
21 securities borrowing or lending transaction, or
22 derivative transaction”; and

23 (E) in paragraph (3), as so redesignated—

24 (i) by inserting “or other debt obliga-
25 tions” after “securities”; and

1 (ii) by striking “or guarantee” and all
2 that follows through “behalf of,” and in-
3 serting “guarantee, acceptance, or letter of
4 credit issued on behalf of, or credit expo-
5 sure from a securities borrowing or lending
6 transaction, or derivative transaction to,”;

7 (3) in subsection (d)(4), in the matter pre-
8 ceding subparagraph (A), by striking “or issuing”
9 and all that follows through “behalf of,” and insert-
10 ing “issuing a guarantee, acceptance, or letter of
11 credit on behalf of, or having credit exposure result-
12 ing from a securities borrowing or lending trans-
13 action, or derivative transaction to,”; and

14 (4) in subsection (f)—

15 (A) in paragraph (2)—

16 (i) by striking “or order”;

17 (ii) by striking “if it finds” and all
18 that follows through the end of the para-
19 graph and inserting the following: “if—

20 “(i) the Board finds the exemption to
21 be in the public interest and consistent
22 with the purposes of this section, and noti-
23 fies the Federal Deposit Insurance Cor-
24 poration of such finding; and

1 “(ii) before the end of the 60-day pe-
2 riod beginning on the date on which the
3 Federal Deposit Insurance Corporation re-
4 ceives notice of the finding under clause
5 (i), the Federal Deposit Insurance Cor-
6 poration does not object, in writing, to the
7 finding, based on a determination that the
8 exemption presents an unacceptable risk to
9 the Deposit Insurance Fund.”;

10 (iii) by striking the Board and insert-
11 ing the following:

12 “(A) IN GENERAL.—The Board”; and

13 (iv) by adding at the end the fol-
14 lowing:

15 “(B) ADDITIONAL EXEMPTIONS.—

16 “(i) NATIONAL BANKS.—The Comp-
17 troller of the Currency may, by order, ex-
18 empt a transaction of a national bank from
19 the requirements of this section if—

20 “(I) the Board and the Office of
21 the Comptroller of the Currency joint-
22 ly find the exemption to be in the
23 public interest and consistent with the
24 purposes of this section and notify the

1 Federal Deposit Insurance Corpora-
2 tion of such finding; and

3 “(II) before the end of the 60-
4 day period beginning on the date on
5 which the Federal Deposit Insurance
6 Corporation receives notice of the
7 finding under subclause (I), the Fed-
8 eral Deposit Insurance Corporation
9 does not object, in writing, to the
10 finding, based on a determination that
11 the exemption presents an unaccept-
12 able risk to the Deposit Insurance
13 Fund.

14 “(ii) STATE BANKS.—The Federal
15 Deposit Insurance Corporation may, by
16 order, exempt a transaction of a State
17 bank from the requirements of this section
18 if—

19 “(I) the Board and the Federal
20 Deposit Insurance Corporation jointly
21 find that the exemption is in the pub-
22 lic interest and consistent with the
23 purposes of this section; and

24 “(II) the Federal Deposit Insur-
25 ance Corporation finds that the ex-

1 emption does not present an unaccept-
2 able risk to the Deposit Insurance
3 Fund.”; and

4 (B) by adding at the end the following:

5 “(4) AMOUNTS OF COVERED TRANSACTIONS.—

6 The Board may issue such regulations or interpreta-
7 tions as the Board determines are necessary or ap-
8 propriate with respect to the manner in which a net-
9 ting agreement may be taken into account in deter-
10 mining the amount of a covered transaction between
11 a member bank or a subsidiary and an affiliate, in-
12 cluding the extent to which netting agreements be-
13 tween a member bank or a subsidiary and an affil-
14 iate may be taken into account in determining
15 whether a covered transaction is fully secured for
16 purposes of subsection (d)(4). An interpretation
17 under this paragraph with respect to a specific mem-
18 ber bank, subsidiary, or affiliate shall be issued
19 jointly with the appropriate Federal banking agency
20 for such member bank, subsidiary, or affiliate.”.

21 (b) TRANSACTIONS WITH AFFILIATES.—Section
22 23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e))
23 is amended—

24 (1) by striking the undesignated matter fol-
25 lowing subparagraph (B);

1 (2) by redesignating subparagraphs (A) and
2 (B) as clauses (i) and (ii), respectively, and adjust-
3 ing the clause margins accordingly;

4 (3) by redesignating paragraphs (1) and (2) as
5 subparagraphs (A) and (B), respectively, and adjust-
6 ing the subparagraph margins accordingly;

7 (4) by striking “The Board” and inserting the
8 following:

9 “(1) IN GENERAL.—The Board”;

10 (5) in paragraph (1)(B), as so redesignated—

11 (A) in the matter preceding clause (i), by
12 inserting before “regulations” the following:
13 “subject to paragraph (2), if the Board finds
14 that an exemption or exclusion is in the public
15 interest and is consistent with the purposes of
16 this section, and notifies the Federal Deposit
17 Insurance Corporation of such finding,”; and

18 (B) in clause (ii), by striking the comma at
19 the end and inserting a period; and

20 (6) by adding at the end the following:

21 “(2) EXCEPTION.—The Board may grant an
22 exemption or exclusion under this subsection only if,
23 during the 60-day period beginning on the date of
24 receipt of notice of the finding from the Board
25 under paragraph (1)(B), the Federal Deposit Insur-

1 ance Corporation does not object, in writing, to such
2 exemption or exclusion, based on a determination
3 that the exemption presents an unacceptable risk to
4 the Deposit Insurance Fund.”.

5 (c) HOME OWNERS’ LOAN ACT.—Section 11 of the
6 Home Owners’ Loan Act (12 U.S.C. 1468) is amended
7 by adding at the end the following:

8 “(d) EXEMPTIONS.—

9 “(1) FEDERAL SAVINGS ASSOCIATIONS.—The
10 Comptroller of the Currency may, by order, exempt
11 a transaction of a Federal savings association from
12 the requirements of this section if—

13 “(A) the Board and the Office of the
14 Comptroller of the Currency jointly find the ex-
15 emption to be in the public interest and con-
16 sistent with the purposes of this section and no-
17 tify the Federal Deposit Insurance Corporation
18 of such finding; and

19 “(B) before the end of the 60-day period
20 beginning on the date on which the Federal De-
21 posit Insurance Corporation receives notice of
22 the finding under subparagraph (A), the Fed-
23 eral Deposit Insurance Corporation does not ob-
24 ject, in writing, to the finding, based on a de-

1 termination that the exemption presents an un-
 2 acceptable risk to the Deposit Insurance Fund.

3 “(2) STATE SAVINGS ASSOCIATION.—The Fed-
 4 eral Deposit Insurance Corporation may, by order,
 5 exempt a transaction of a State savings association
 6 from the requirements of this section if the Board
 7 and the Federal Deposit Insurance Corporation
 8 jointly find that—

9 “(A) the exemption is in the public interest
 10 and consistent with the purposes of this section;
 11 and

12 “(B) the exemption does not present an
 13 unacceptable risk to the Deposit Insurance
 14 Fund.”.

15 (d) EFFECTIVE DATE.—The amendments made by
 16 this section shall take effect 1 year after the transfer date.

17 **SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**
 18 **WITH FINANCIAL SUBSIDIARIES.**

19 (a) AMENDMENT.—Section 23A(e) of the Federal Re-
 20 serve Act (12 U.S.C. 371c(e)) is amended—

21 (1) by striking paragraph (3); and

22 (2) by redesignating paragraph (4) as para-
 23 graph (3).

24 (b) PROSPECTIVE APPLICATION OF AMENDMENT.—
 25 The amendments made by this section shall apply with

1 respect to any covered transaction between a bank and
 2 a subsidiary of the bank, as those terms are defined in
 3 section 23A of the Federal Reserve Act (12 U.S.C. 371e),
 4 that is entered into on or after the date of enactment of
 5 this Act.

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall take effect 1 year after the transfer date.

8 **SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
 9 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
 10 **PURCHASE AGREEMENTS, REVERSE REPUR-**
 11 **CHASE AGREEMENTS, AND SECURITIES**
 12 **LENDING AND BORROWING TRANSACTIONS.**

13 (a) NATIONAL BANKS.—Section 5200(b) of the Re-
 14 vised Statutes of the United States (12 U.S.C. 84(b)) is
 15 amended—

16 (1) in paragraph (1), by striking “shall in-
 17 clude” and all that follows through the end of the
 18 paragraph and inserting the following: “shall in-
 19 clude—

20 “(A) all direct or indirect advances of
 21 funds to a person made on the basis of any ob-
 22 ligation of that person to repay the funds or re-
 23 payable from specific property pledged by or on
 24 behalf of the person;

1 “(B) to the extent specified by the Comp-
2 troller of the Currency, any liability of a na-
3 tional banking association to advance funds to
4 or on behalf of a person pursuant to a contrac-
5 tual commitment; and

6 “(C) any credit exposure to a person aris-
7 ing from a derivative transaction, repurchase
8 agreement, reverse repurchase agreement, secu-
9 rities lending transaction, or securities bor-
10 rowing transaction between the national bank-
11 ing association and the person;”;

12 (2) in paragraph (2), by striking the period at
13 the end and inserting “; and”; and

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

15 “(3) the term ‘derivative transaction’ includes
16 any transaction that is a contract, agreement, swap,
17 warrant, note, or option that is based, in whole or
18 in part, on the value of, any interest in, or any
19 quantitative measure or the occurrence of any event
20 relating to, one or more commodities, securities, cur-
21 rencies, interest or other rates, indices, or other as-
22 sets.”.

23 (b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the
24 Home Owners’ Loan Act (12 U.S.C. 1464(u)(3)) is

1 amended by striking “Director” each place that term ap-
 2 pears and inserting “Comptroller of the Currency”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall take effect 1 year after the transfer date.

5 **SEC. 611. APPLICATION OF NATIONAL BANK LENDING LIM-**
 6 **ITS TO INSURED STATE BANKS.**

7 (a) AMENDMENT.—Section 18 of the Federal Deposit
 8 Insurance Act (12 U.S.C. 1828) is amended by adding at
 9 the end the following:

10 “(y) APPLICATION OF LENDING LIMITS TO INSURED
 11 STATE BANKS.—Section 5200 of the Revised Statutes of
 12 the United States (12 U.S.C. 84) shall apply to each in-
 13 sured State bank, in the same manner and to the same
 14 extent as if the insured State bank were a national bank-
 15 ing association.”.

16 (b) EFFECTIVE DATE.—The amendment made by
 17 this section shall take effect 1 year after the transfer date.

18 **SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED**
 19 **BANKS.**

20 (a) CONVERSION OF A NATIONAL BANKING ASSOCIA-
 21 TION TO A STATE BANK.—The Act entitled “An Act to
 22 provide for the conversion of national banking associations
 23 into and their merger or consolidation with State banks,
 24 and for other purposes.” (12 U.S.C. 214 et seq.) is amend-
 25 ed by adding at the end the following:

1 **“SEC. 10. PROHIBITION ON CONVERSION.**

2 “A national banking association may not convert to
3 a State bank or State savings association during any pe-
4 riod in which the national banking association is subject
5 to a cease and desist order (or other formal enforcement
6 order) issued by, or a memorandum of understanding en-
7 tered into with, the Comptroller of the Currency with re-
8 spect to a significant supervisory matter.”.

9 (b) CONVERSION OF A STATE BANK TO A NATIONAL
10 BANK.—Section 5154 of the Revised Statutes of the
11 United States (12 U.S.C. 35) is amended by adding at
12 the end the following: “The Comptroller of the Currency
13 may not approve the conversion of a State bank or State
14 savings association to a national banking association dur-
15 ing any period in which the State bank or State savings
16 association is subject to a cease and desist order (or other
17 formal enforcement order) issued by, or a memorandum
18 of understanding entered into with, a State bank super-
19 visor or the appropriate Federal banking agency with re-
20 spect to a significant supervisory matter.”.

21 (c) CONVERSION OF A FEDERAL SAVINGS ASSOCIA-
22 TION TO A NATIONAL OR STATE BANK OR STATE SAVINGS
23 ASSOCIATION.—Section 5(i) of the Home Owners’ Loan
24 Act (12 U.S.C. 1464(i)) is amended by adding at the end
25 the following:

1 “(6) LIMITATION ON CERTAIN CONVERSIONS BY
 2 FEDERAL SAVINGS ASSOCIATIONS.—A Federal sav-
 3 ings association may not convert to a national bank
 4 or State bank or State savings association during
 5 any period in which the Federal savings association
 6 is subject to a cease and desist order (or other for-
 7 mal enforcement order) issued by, or a memorandum
 8 of understanding entered into with, the Office of
 9 Thrift Supervision or the Comptroller of the Cur-
 10 rency with respect to a significant supervisory mat-
 11 ter.”.

12 **SEC. 613. DE NOVO BRANCHING INTO STATES.**

13 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the
 14 Revised Statutes of the United States (12 U.S.C.
 15 36(g)(1)(A)) is amended to read as follows:

16 “(A) the law of the State in which the
 17 branch is located, or is to be located, would per-
 18 mit establishment of the branch, if the national
 19 bank were a State bank chartered by such
 20 State; and”.

21 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i)
 22 of the Federal Deposit Insurance Act (12 U.S.C.
 23 1828(d)(4)(A)(i)) is amended to read as follows:

24 “(i) the law of the State in which the
 25 branch is located, or is to be located, would

1 permit establishment of the branch, if the
2 bank were a State bank chartered by such
3 State; and”.

4 **SEC. 614. LENDING LIMITS TO INSIDERS.**

5 (a) EXTENSIONS OF CREDIT.—Section
6 22(h)(9)(D)(i) of the Federal Reserve Act (12 U.S.C.
7 375b(9)(D)(i)) is amended—

8 (1) by striking the period at the end and insert-
9 ing “; or”;

10 (2) by striking “a person” and inserting “the
11 person”;

12 (3) by striking “extends credit by making” and
13 inserting the following: “extends credit to a person
14 by—

15 “(I) making”; and

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

17 “(II) having credit exposure to
18 the person arising from a derivative
19 transaction (as defined in section
20 5200(b) of the Revised Statutes of the
21 United States (12 U.S.C. 84(b))), re-
22 purchase agreement, reverse repur-
23 chase agreement, securities lending
24 transaction, or securities borrowing

1 transaction between the member bank
 2 and the person.”.

3 (b) EFFECTIVE DATE.—The amendments made by
 4 this section shall take effect 1 year after the transfer date.

5 **SEC. 615. LIMITATIONS ON PURCHASES OF ASSETS FROM**
 6 **INSIDERS.**

7 (a) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-
 8 ANCE ACT.—Section 18 of the Federal Deposit Insurance
 9 Act (12 U.S.C. 1828) is amended by adding at the end
 10 the following:

11 “(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

12 “(1) IN GENERAL.—An insured depository in-
 13 stitution may not purchase an asset from, or sell an
 14 asset to, an executive officer, director, or principal
 15 shareholder of the insured depository institution, or
 16 any related interest of such person (as such terms
 17 are defined in section 22(h) of Federal Reserve Act),
 18 unless—

19 “(A) the transaction is on market terms;
 20 and

21 “(B) if the transaction represents more
 22 than 10 percent of the capital stock and surplus
 23 of the insured depository institution, the trans-
 24 action has been approved in advance by a ma-
 25 jority of the members of the board of directors

1 of the insured depository institution who do not
2 have an interest in the transaction.

3 “(2) RULEMAKING.—The Board of Governors
4 of the Federal Reserve System may issue such rules
5 as may be necessary to define terms and to carry
6 out the purposes this subsection. Before proposing
7 or adopting a rule under this paragraph, the Board
8 of Governors of the Federal Reserve System shall
9 consult with the Comptroller of the Currency and
10 the Corporation as to the terms of the rule.”.

11 (b) AMENDMENTS TO THE FEDERAL RESERVE
12 ACT.—Section 22(d) of the Federal Reserve Act (12
13 U.S.C. 375) is amended to read as follows:

14 “(d) [Reserved]”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the transfer date.

17 **SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS OF**
18 **HOLDING COMPANIES.**

19 (a) CAPITAL LEVELS OF BANK HOLDING COMPA-
20 NIES.—Section 5(b) of the Bank Holding Company Act
21 of 1956 (12 U.S.C. 1844(b)) is amended by inserting after
22 “regulations” the following: “(including regulations relat-
23 ing to the capital requirements of bank holding compa-
24 nies)”.

1 (b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLD-
 2 ING COMPANIES.—Section 10(g)(1) of the Home Owners’
 3 Loan Act (12 U.S.C. 1467a(g)(1)) is amended by insert-
 4 ing after “orders” the following: “(including regulations
 5 relating to capital requirements for savings and loan hold-
 6 ing companies)”.

7 (c) SOURCE OF STRENGTH.—The Federal Deposit
 8 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
 9 inserting after section 38 (12 U.S.C. 1831o) the following:
 10 **“SEC. 38A. SOURCE OF STRENGTH.**

11 “(a) HOLDING COMPANIES.—The appropriate Fed-
 12 eral banking agency for a bank holding company or sav-
 13 ings and loan holding company shall require the bank
 14 holding company or savings and loan holding company to
 15 serve as a source of financial strength for any subsidiary
 16 of the bank holding company or savings and loan holding
 17 company that is a depository institution.

18 “(b) OTHER COMPANIES.—If an insured depository
 19 institution is not the subsidiary of a bank holding com-
 20 pany or savings and loan holding company, the appro-
 21 priate Federal banking agency for the insured depository
 22 institution shall require any company that directly or indi-
 23 rectly controls the insured depository institution to serve
 24 as a source 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 com-
4 pany, or a company that directly or indirectly controls the
5 insured depository institution to submit a report, under
6 oath, 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 trans-
13 fer date, as defined in section 311 of the Enhancing Fi-
14 nancial Institution Safety and Soundness Act of 2010, the
15 appropriate Federal banking agencies shall jointly issue
16 final rules to carry out this section.

17 “(e) DEFINITION.—In this section, the term ‘source
18 of financial strength’ means the ability of a company that
19 directly or indirectly owns or controls an insured deposi-
20 tory institution to provide financial assistance to such in-
21 sured depository institution in the event of the financial
22 distress of the insured depository institution.”.

23 “(d) EFFECTIVE DATE.—The amendments made by
24 this 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. 78q) 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
9 this 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
17 meaning as in section 1(b)(7) of the International
18 Banking Act of 1978 (12 U.S.C. 3101(b)(7));

19 (3) the term “insured bank” has the same
20 meaning as in section 3 of the Federal Deposit In-
21 surance 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 bro-

1 kers or dealers registered with the Com-
2 mission; 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
16 8(a) of the International Banking Act of
17 1978 (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

1 supervised by the Board of Governors under this
2 section; and

3 (6) the terms “affiliate”, “bank”, “bank hold-
4 ing company”, “company”, “control”, “savings asso-
5 ciation”, and “subsidiary” have the same meanings
6 as in section 2 of the Bank Holding Company Act
7 of 1956.

8 (b) SUPERVISION OF A SECURITIES HOLDING COM-
9 PANY NOT HAVING A BANK OR SAVINGS ASSOCIATION
10 AFFILIATE.—

11 (1) IN GENERAL.—A securities holding com-
12 pany that is required by a foreign regulator or provi-
13 sion of foreign law to be subject to comprehensive
14 consolidated supervision may register with the Board
15 of Governors under paragraph (2) to become a su-
16 pervised securities holding company. Any securities
17 holding company filing such a registration shall be
18 supervised in accordance with this section, and shall
19 comply with the rules and orders prescribed by the
20 Board of Governors applicable to supervised securi-
21 ties holding 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
2 filing with the Board of Governors such infor-
3 mation and documents as the Board of Gov-
4 ernors, by regulation, may prescribe as nec-
5 essary or appropriate in furtherance of the pur-
6 poses of this section.

7 (B) EFFECTIVE DATE.—A securities hold-
8 ing company that registers under subparagraph
9 (A) shall be deemed to be a supervised securi-
10 ties holding company, effective on the date that
11 is 45 days after the date of receipt of the reg-
12 istration information and documents under sub-
13 paragraph (A) by the Board of Governors, or
14 within such shorter period as the Board of Gov-
15 ernors, by rule 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,
25 and make such reports, as the Board of Gov-

ernors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) FORM AND CONTENTS.—

(i) IN GENERAL.—Any record or report required to be made, furnished, or kept under this paragraph shall—

(I) be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board of Governors may require; and

(II) be provided promptly to the Board of Governors at any time, upon request by the Board of Governors.

(ii) CONTENTS.—Records and reports required to be made, furnished, or kept under this paragraph may include—

(I) a balance sheet or income statement of the supervised securities holding company or an affiliate of a 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 sec-
15 tion and any regulations prescribed
16 and orders issued under this section.

17 (2) USE OF EXISTING REPORTS.—

18 (A) IN GENERAL.—The Board of Gov-
19 ernors shall, to the fullest extent possible, ac-
20 cept reports in fulfillment of the requirements
21 of this paragraph that a supervised securities
22 holding company or an affiliate of a supervised
23 securities holding company has been required to
24 provide to another regulatory agency or a self-
25 regulatory organization.

1 (B) AVAILABILITY.—A supervised securi-
2 ties holding company or an affiliate of a super-
3 vised securities holding company shall promptly
4 provide to the Board of Governors, at the re-
5 quest of the Board of Governors, any report de-
6 scribed in subparagraph (A), as permitted by
7 law.

8 (3) EXAMINATION AUTHORITY.—

9 (A) FOCUS OF EXAMINATION AUTHOR-
10 ITY.—The Board of Governors may make ex-
11 aminations of any supervised securities holding
12 company and any affiliate of a supervised secu-
13 rities holding company to carry out this sub-
14 section, to prevent evasions thereof, and to
15 monitor compliance by the supervised securities
16 holding company or affiliate with applicable
17 provisions of law.

18 (B) DEFERENCE TO OTHER EXAMINA-
19 TIONS.—For purposes of this subparagraph, the
20 Board of Governors shall, to the fullest extent
21 possible, use the reports of examination made
22 by other appropriate Federal or State regu-
23 latory authorities with respect to any function-
24 ally regulated subsidiary or any institution de-
25 scribed in subparagraph (D), (F), or (H) of

1 section 2(c)(2) of the Bank Holding Company
2 Act of 1956 (12 U.S.C. 1841(c)(2)).

3 (d) CAPITAL AND RISK MANAGEMENT.—

4 (1) IN GENERAL.—The Board of Governors
5 shall, by regulation or order, prescribe capital ade-
6 quacy and other risk management standards for su-
7 pervised securities holding companies that are ap-
8 propriate to protect the safety and soundness of the
9 supervised securities holding companies and address
10 the risks posed to financial stability by supervised
11 securities holding companies.

12 (2) DIFFERENTIATION.—In imposing standards
13 under this subsection, the Board of Governors may
14 differentiate among supervised securities holding
15 companies on an individual basis, or by category,
16 taking into consideration the requirements under
17 paragraph (3).

18 (3) CONTENT.—Any standards imposed on a
19 supervised securities holding company under this
20 subsection shall take into account—

21 (A) the differences among types of busi-
22 ness activities carried out by the supervised se-
23 curities holding company;

1 (B) the amount and nature of the financial
2 assets of the supervised securities holding com-
3 pany;

4 (C) the amount and nature of the liabilities
5 of the supervised securities holding company,
6 including the degree of reliance on short-term
7 funding;

8 (D) the extent and nature of the off-bal-
9 ance sheet exposures of the supervised securi-
10 ties holding company;

11 (E) the extent and nature of the trans-
12 actions and relationships of the supervised secu-
13 rities holding company with other financial
14 companies;

15 (F) the importance of the supervised secu-
16 rities holding company as a source of credit for
17 households, businesses, and State and local gov-
18 ernments, and as a source of liquidity for the
19 financial system; and

20 (G) the nature, scope, and mix of the ac-
21 tivities of the supervised securities holding com-
22 pany.

23 (4) NOTICE.—A capital requirement imposed
24 under this subsection may not take effect earlier
25 than 180 days after the date on which a supervised

1 securities holding company is provided notice of the
2 capital requirement.

3 (e) EXCEPTION FOR BANKS.—No bank shall be sub-
4 ject to any of the requirements set forth in subsections
5 (c) and (d).

6 (f) OTHER PROVISIONS OF LAW APPLICABLE TO SU-
7 PERVISED SECURITIES HOLDING COMPANIES.—

8 (1) FEDERAL DEPOSIT INSURANCE ACT.—Sub-
9 sections (b), (c) through (s), and (u) of section 8 of
10 the Federal Deposit Insurance Act (12 U.S.C. 1818)
11 shall apply to any supervised securities holding com-
12 pany, and to any subsidiary (other than a bank or
13 an institution described in subparagraph (D), (F),
14 or (H) of section 2(c)(2) of the Bank Holding Com-
15 pany Act of 1956 (12 U.S.C. 1841(c)(2))) of a su-
16 pervised securities holding company, in the same
17 manner as such subsections apply to a bank holding
18 company for which the Board of Governors is the
19 appropriate Federal banking agency. For purposes
20 of applying such subsections to a supervised securi-
21 ties holding company or a subsidiary (other than a
22 bank or an institution described in subparagraph
23 (D), (F), or (H) of section 2(c)(2) of the Bank
24 Holding Company Act of 1956 (12 U.S.C.
25 1841(c)(2))) of a supervised securities holding com-

pany, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) BANK HOLDING COMPANY ACT OF 1956.— Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

**SEC. 619. RESTRICTIONS ON CAPITAL MARKET ACTIVITY BY
BANKS AND BANK HOLDING COMPANIES.**

(a) DEFINITIONS.—In this section—

(1) the terms “hedge fund” and “private equity fund” mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) or 80a-3(c)(7)), or a similar fund, as jointly determined by the appropriate Federal banking agencies;

1 (2) the term “proprietary trading”—

2 (A) means purchasing or selling, or other-
3 wise acquiring or disposing of, stocks, bonds,
4 options, commodities, derivatives, or other fi-
5 nancial instruments by an insured depository
6 institution, a company that controls, directly or
7 indirectly, an insured depository institution or
8 is treated as a bank holding company for pur-
9 poses of the Bank Holding Company Act of
10 1956 (12 U.S.C. 1841 et seq.), and any sub-
11 sidiary of such institution or company, for the
12 trading book (or such other portfolio as the
13 Federal banking agencies may determine) of
14 such institution, company, or subsidiary; and

15 (B) subject to such restrictions as the Fed-
16 eral banking agencies may determine, does not
17 include purchasing or selling, or otherwise ac-
18 quiring or disposing of, stocks, bonds, options,
19 commodities, derivatives, or other financial in-
20 struments on behalf of a customer, as part of
21 market making activities, or otherwise in con-
22 nection with or in facilitation of customer rela-
23 tionships, including risk-mitigating hedging ac-
24 tivities related to such a purchase, sale, acquisi-
25 tion, or disposal; and

1 (3) the term “sponsoring”, when used with re-
2 spect to a hedge fund or private equity fund,
3 means—

4 (A) serving as a general partner, managing
5 member, or trustee of the fund;

6 (B) in any manner selecting or controlling
7 (or having employees, officers, directors, or
8 agents who constitute) a majority of the direc-
9 tors, trustees, or management of the fund; or

10 (C) sharing with the fund, for corporate,
11 marketing, promotional, or other purposes, the
12 same name or a variation of the same name.

13 (b) PROHIBITION ON PROPRIETARY TRADING.—

14 (1) IN GENERAL.—Subject to the recommenda-
15 tions and modifications of the Council under sub-
16 section (g), and except as provided in paragraph (2)
17 or (3), the appropriate Federal banking agencies
18 shall, through a rulemaking under subsection (g),
19 jointly prohibit proprietary trading by an insured de-
20 pository institution, a company that controls, di-
21 rectly or indirectly, an insured depository institution
22 or is treated as a bank holding company for pur-
23 poses of the Bank Holding Company Act of 1956
24 (12 U.S.C. 1841 et seq.), and any subsidiary of such
25 institution or company.

1 (2) EXCEPTED OBLIGATIONS.—

2 (A) IN GENERAL.—The prohibition under
3 this subsection shall not apply with respect to
4 an investment that is otherwise authorized by
5 Federal law in—

6 (i) obligations of the United States or
7 any agency of the United States, including
8 obligations fully guaranteed as to principal
9 and interest by the United States or an
10 agency of the United States;

11 (ii) obligations, participations, or
12 other instruments of, or issued by, the
13 Government National Mortgage Associa-
14 tion, the Federal National Mortgage Asso-
15 ciation, or the Federal Home Loan Mort-
16 gage Corporation, including obligations
17 fully guaranteed as to principal and inter-
18 est by such entities; and

19 (iii) obligations of any State or any
20 political subdivision of a State.

21 (B) CONDITIONS.—The appropriate Fed-
22 eral banking agencies may impose conditions on
23 the conduct of investments described in sub-
24 paragraph (A).

1 (C) RULE OF CONSTRUCTION.—Nothing in
2 subparagraph (A) may be construed to grant
3 any authority to any person that is not other-
4 wise provided in Federal law.

5 (3) FOREIGN ACTIVITIES.—An investment or
6 activity conducted by a company pursuant to para-
7 graph (9) or (13) of section 4(c) of the Bank Hold-
8 ing Company Act of 1956 (12 U.S.C. 1843(c)) solely
9 outside of the United States shall not be subject to
10 the prohibition under paragraph (1), provided that
11 the company is not directly or indirectly controlled
12 by a company that is organized under the laws of
13 the United States or of a State.

14 (c) PROHIBITION ON SPONSORING AND INVESTING IN
15 HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), and subject to the recommendations and
18 modifications of the Council under subsection (g),
19 the appropriate Federal banking agencies shall,
20 through a rulemaking under subsection (g), jointly
21 prohibit an insured depository institution, a com-
22 pany that controls, directly or indirectly, an insured
23 depository institution or is treated as a bank holding
24 company for purposes of the Bank Holding Com-
25 pany Act of 1956 (12 U.S.C. 1841 et seq.), or any

1 subsidiary of such institution or company, from
2 sponsoring or investing in a hedge fund or a private
3 equity fund.

4 (2) APPLICATION TO FOREIGN ACTIVITIES OF
5 FOREIGN FIRMS.—An investment or activity con-
6 ducted by a company pursuant to paragraph (9) or
7 (13) of section 4(c) of the Bank Holding Company
8 Act of 1956 (12 U.S.C. 1843(c)) solely outside of
9 the United States shall not be subject to the prohibi-
10 tions and restrictions under paragraph (1), provided
11 that the company is not directly or indirectly con-
12 trolled by a company that is organized under the
13 laws of the United States or of a State.

14 (d) INVESTMENTS IN SMALL BUSINESS INVESTMENT
15 COMPANIES AND INVESTMENTS DESIGNED TO PROMOTE
16 THE PUBLIC WELFARE.—

17 (1) IN GENERAL.—A prohibition imposed by
18 the appropriate Federal banking agencies under sub-
19 section (c) shall not apply with respect an invest-
20 ment otherwise authorized under Federal law that
21 is—

22 (A) an investment in a small business in-
23 vestment company, as that term is defined in
24 section 103 of the Small Business Investment
25 Act of 1958 (15 U.S.C. 662); or

1 (B) designed primarily to promote the pub-
2 lic welfare, as provided in the 11th paragraph
3 of section 5136 of the Revised Statutes (12
4 U.S.C. 24).

5 (2) RULE OF CONSTRUCTION.—Nothing in
6 paragraph (1) may be construed to grant any au-
7 thority to any person that is not otherwise provided
8 in Federal law.

9 (e) LIMITATIONS ON RELATIONSHIPS WITH HEDGE
10 FUNDS AND PRIVATE EQUITY FUNDS.—

11 (1) COVERED TRANSACTIONS.—An insured de-
12 pository institution, a company that controls, di-
13 rectly or indirectly, an insured depository institution
14 or is treated as a bank holding company for pur-
15 poses of the Bank Holding Company Act of 1956
16 (12 U.S.C. 1841 et seq.), and any subsidiary of such
17 institution or company that serves, directly or indi-
18 rectly, as the investment manager or investment ad-
19 viser to a hedge fund or private equity fund may not
20 enter into a covered transaction, as defined in sec-
21 tion 23A of the Federal Reserve Act (12 U.S.C.
22 371e) with such hedge fund or private equity fund.

23 (2) AFFILIATION.—An insured depository insti-
24 tution, a company that controls, directly or indi-
25 rectly, an insured depository institution or is treated

1 as a bank holding company for purposes of the Bank
2 Holding Company Act of 1956 (12 U.S.C. 1841 et
3 seq.), and any subsidiary of such institution or com-
4 pany that serves, directly or indirectly, as the invest-
5 ment manager or investment adviser to a hedge fund
6 or private equity fund shall be subject to section
7 23B of the Federal Reserve Act (12 U.S.C. 371c-1)
8 as if such institution, company, or subsidiary were
9 a member bank and such hedge fund or private eq-
10 uity fund were an affiliate.

11 (f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR
12 CERTAIN NONBANK FINANCIAL COMPANIES.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), and subject to the recommendations and
15 modifications of the Council under subsection (g),
16 the Board of Governors shall adopt rules imposing
17 additional capital requirements and specifying addi-
18 tional quantitative limits for nonbank financial com-
19 panies supervised by the Board of Governors under
20 section 113 that engage in proprietary trading or
21 sponsoring and investing in hedge funds and private
22 equity funds.

23 (2) EXCEPTIONS.—The rules under this sub-
24 section shall not apply with respect to the trading of

1 an investment that is otherwise authorized by Fed-
2 eral law—

3 (A) in obligations of the United States or
4 any agency of the United States, including obli-
5 gations fully guaranteed as to principal and in-
6 terest by the United States or an agency of the
7 United States;

8 (B) in obligations, participations, or other
9 instruments of, or issued by, the Government
10 National Mortgage Association, the Federal Na-
11 tional Mortgage Association, or the Federal
12 Home Loan Mortgage Corporation, including
13 obligations fully guaranteed as to principal and
14 interest by such entities;

15 (C) in obligations of any State or any po-
16 litical subdivision of a State;

17 (D) in a small business investment com-
18 pany, as that term is defined in section 103 of
19 the Small Business Investment Act of 1958 (15
20 U.S.C. 662); or

21 (E) that is designed primarily to promote
22 the public welfare, as provided in the 11th
23 paragraph of section 5136 of the Revised Stat-
24 utes (12 U.S.C. 24).

25 (g) COUNCIL STUDY AND RULEMAKING.—

1 (1) STUDY AND RECOMMENDATIONS.—Not
2 later than 6 months after the date of enactment of
3 this Act, the Council—

4 (A) shall complete a study of the defini-
5 tions under subsection (a) and the other provi-
6 sions under subsections (b) through (f), to as-
7 sess the extent to which the definitions under
8 subsection (a) and the implementation of sub-
9 sections (a) through (f) would—

10 (i) promote and enhance the safety
11 and soundness of depository institutions
12 and the affiliates of depository institutions;

13 (ii) protect taxpayers and enhance fi-
14 nancial stability by minimizing the risk
15 that depository institutions and the affili-
16 ates of depository institutions will engage
17 in unsafe and unsound activities;

18 (iii) limit the inappropriate transfer of
19 Federal subsidies from institutions that
20 benefit from deposit insurance and liquid-
21 ity facilities of the Federal Government to
22 unregulated entities;

23 (iv) reduce inappropriate conflicts of
24 interest between the self-interest of deposi-
25 tory institutions, affiliates of depository in-

stitutions, and financial companies supervised by the Board, and the interests of the customers of such institutions and companies;

(v) raise the cost of credit or other financial services, reduce the availability of credit or other financial services, or impose other costs on households and businesses in the United States;

(vi) limit activities that have caused undue risk or loss in depository institutions, affiliates of depository institutions, and financial companies supervised by the Board of Governors, or that might reasonably be expected to create undue risk or loss in such institutions, affiliates, and companies; and

(vii) appropriately accommodates the business of insurance within an insurance company subject to regulation in accordance with State insurance company investment laws;

(B) shall make recommendations regarding the definitions under subsection (a) and the implementation of other provisions under sub-

1 sections (b) through (f), including any modifica-
2 tions to the definitions, prohibitions, require-
3 ments, and limitations contained therein that
4 the Council determines would more effectively
5 implement the purposes of this section; and

6 (C) may make recommendations for pro-
7 hibiting the conduct of the activities described
8 in subsections (b) and (c) above a specific
9 threshold amount and imposing additional cap-
10 ital requirements on activities conducted below
11 such threshold amount.

12 (2) RULEMAKING.—Not earlier than the date of
13 completion of the study required under paragraph
14 (1), and not later than 9 months after the date of
15 completion of such study—

16 (A) the appropriate Federal banking agen-
17 cies shall jointly issue final regulations imple-
18 menting subsections (b) through (e), which
19 shall reflect any recommendations or modifica-
20 tions made by the Council pursuant to para-
21 graph (1)(B); and

22 (B) the Board of Governors shall issue
23 final regulations implementing subsection (f),
24 which shall reflect any recommendations or

1 modifications made by the Council pursuant to
2 paragraph (1)(B).

3 (h) TRANSITION.—

4 (1) IN GENERAL.—The final regulations issued
5 by the appropriate Federal banking agencies and the
6 Board of Governors under subsection (g)(2) shall
7 provide that, effective 2 years after the date on
8 which such final regulations are issued, no insured
9 depository institution, company that controls, di-
10 rectly or indirectly, an insured depository institution,
11 company that is treated as a bank holding company
12 for purposes of the Bank Holding Company Act of
13 1956 (12 U.S.C. 1841 et seq.), or subsidiary of such
14 institution or company, may retain any investment
15 or relationship prohibited under such regulations.

16 (2) EXTENSION.—

17 (A) IN GENERAL.—The appropriate Fed-
18 eral banking agency for an insured depository
19 institution or a company described in paragraph
20 (1) may, upon the application of any such com-
21 pany, extend the 2-year period under paragraph
22 (1) with respect to such company, if the appro-
23 priate Federal banking agency determines that
24 an extension would not be detrimental to the
25 public interest.

1 (B) TIME PERIOD FOR EXTENSION.—An
 2 extension granted under subparagraph (A) may
 3 not exceed—

4 (i) 1 year for each determination
 5 made by the appropriate Federal banking
 6 agency under subparagraph (A); and

7 (ii) a total of 3 years with respect to
 8 any 1 company.

9 **SEC. 620. CONCENTRATION LIMITS ON LARGE FINANCIAL**
 10 **FIRMS.**

11 The Bank Holding Company Act of 1956 (12 U.S.C.
 12 1841 et seq.) is amended by adding at the end the fol-
 13 lowing:

14 **“SEC. 13. CONCENTRATION LIMITS ON LARGE FINANCIAL**
 15 **FIRMS.**

16 “(a) DEFINITIONS.—In this section—

17 “(1) the term ‘Council’ means the Financial
 18 Stability Oversight Council;

19 “(2) the term ‘financial company’ means—

20 “(A) an insured depository institution;

21 “(B) a bank holding company;

22 “(C) a savings and loan holding company;

23 “(D) a company that controls an insured
 24 depository institution;

1 “(E) a nonbank financial company super-
2 vised by the Board under title I of the Restor-
3 ing American Financial Stability Act of 2010;
4 and

5 “(F) a foreign bank or company that is
6 treated as a bank holding company for purposes
7 of this Act; and

8 “(3) the term ‘liabilities’ means—

9 “(A) with respect to a United States finan-
10 cial company—

11 “(i) the total risk-weighted assets of
12 the financial company, as determined
13 under the risk-based capital rules applica-
14 ble to bank holding companies, as adjusted
15 to reflect exposures that are deducted from
16 regulatory capital; less

17 “(ii) the total regulatory capital of the
18 financial company under the risk-based
19 capital rules applicable to bank holding
20 companies;

21 “(B) with respect to a foreign-based finan-
22 cial company—

23 “(i) the total risk-weighted assets of
24 the United States operations of the finan-
25 cial company, as determined under the ap-

1 plicable risk-based capital rules, as ad-
2 justed to reflect exposures that are de-
3 ducted from regulatory capital; less

4 “(ii) the total regulatory capital of the
5 United States operations of the financial
6 company, as determined under the applica-
7 ble risk-based capital rules; and

8 “(C) with respect to an insurance company
9 or other nonbank financial company supervised
10 by the Board, such assets of the company as
11 the Board shall specify by rule, in order to pro-
12 vide for consistent and equitable treatment of
13 such companies.

14 “(b) CONCENTRATION LIMIT.—Subject to the rec-
15 ommendations by the Council under subsection (e), a fi-
16 nancial company may not merge or consolidate with, ac-
17 quire all or substantially all of the assets of, or otherwise
18 acquire control of, another company, if the total consoli-
19 dated liabilities of the acquiring financial company upon
20 consummation of the transaction would exceed 10 percent
21 of the aggregate consolidated liabilities of all financial
22 companies at the end of the calendar year preceding the
23 transaction.

24 “(c) EXCEPTION TO CONCENTRATION LIMIT.—With
25 the prior written consent of the Board, the concentration

1 limit under subsection (b) shall not apply to an acquisi-
 2 tion—

3 “(1) of a bank in default or in danger of de-
 4 fault;

5 “(2) with respect to which assistance is pro-
 6 vided by the Federal Deposit Insurance Corporation
 7 under section 13(c) of the Federal Deposit Insur-
 8 ance Act (12 U.S.C. 1823(c)); or

9 “(3) that would result only in a de minimis in-
 10 crease in the liabilities of the financial company.

11 “(d) RULEMAKING AND GUIDANCE.—The Board
 12 shall issue regulations implementing this section in accord-
 13 ance with the recommendations of the Council under sub-
 14 section (e), including the definition of terms, as necessary.
 15 The Board may issue interpretations or guidance regard-
 16 ing the application of this section to an individual financial
 17 company or to financial companies in general.

18 “(e) COUNCIL STUDY AND RULEMAKING.—

19 “(1) STUDY AND RECOMMENDATIONS.—Not
 20 later than 6 months after the date of enactment of
 21 this section, the Council shall—

22 “(A) complete a study of the extent to
 23 which the concentration limit under this section
 24 would affect financial stability, moral hazard in
 25 the financial system, the efficiency and competi-

1 tiveness of United States financial firms and fi-
 2 nancial markets, and the cost and availability of
 3 credit and other financial services to households
 4 and businesses in the United States; and

5 “(B) make recommendations regarding any
 6 modifications to the concentration limit that the
 7 Council determines would more effectively im-
 8 plement this section.

9 “(2) RULEMAKING.—Not later than 9 months
 10 after the date of completion of the study under para-
 11 graph (1), and notwithstanding subsections (b) and
 12 (d), the Board shall issue final regulations imple-
 13 menting this section, which shall reflect any rec-
 14 ommendations by the Council under paragraph
 15 (1)(B).”.

16 **TITLE VII—WALL STREET** 17 **TRANSPARENCY AND AC-** 18 **COUNTABILITY**

19 **SEC. 701. SHORT TITLE.**

20 This title may be cited as the “Wall Street Trans-
 21 parency and Accountability Act of 2010”.

1 **Subtitle A—Regulation of Over-the-**
2 **Counter Swaps Markets**

3 **PART I—REGULATORY AUTHORITY**

4 **SEC. 711. DEFINITIONS.**

5 In this subtitle, the terms “prudential regulator”,
6 “swap”, “swap dealer”, “major swap participant”, “swap
7 data repository”, “associated person of a swap dealer or
8 major swap participant”, “eligible contract participant”,
9 “swap execution facility”, “security-based swap”, “secu-
10 rity-based swap dealer”, “major security-based swap par-
11 ticipant”, “swap data repository”, and “associated person
12 of a security-based swap dealer or major security-based
13 swap participant” have the meanings given the terms in
14 section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

15 **SEC. 712. REVIEW OF REGULATORY AUTHORITY.**

16 (a) REGULATORY AUTHORITY.—

17 (1) IN GENERAL.—Except as provided in para-
18 graphs (4) and (8), the Commodity Futures Trading
19 Commission and the Securities and Exchange Com-
20 mission shall each prescribe such regulations as may
21 be necessary to carry out the purposes of this title.

22 (2) COORDINATION, CONSISTENCY, AND COM-
23 PARABILITY.—Both Commissions required under
24 paragraph (1) to prescribe regulations shall consult
25 and coordinate with each other for the purposes of

1 assuring, to the extent possible, that the regulations
2 prescribed by each such Commission are consistent
3 and comparable with the regulations prescribed by
4 the other.

5 (3) PROCEDURES AND DEADLINE.—Such regu-
6 lations shall be prescribed in accordance with appli-
7 cable requirements of title 5, United States Code,
8 and, shall be issued in final form not later than 180
9 days after the date of enactment of this Act.

10 (4) APPLICABILITY.—The requirements of
11 paragraph (1) shall not apply to an order issued—

12 (A) in connection with or arising from a
13 violation or potential violation of any provision
14 of the Commodity Exchange Act (7 U.S.C. 1 et
15 seq.);

16 (B) in connection with or arising from a
17 violation or potential violation of any provision
18 of the securities laws; or

19 (C) in any proceeding that is conducted on
20 the record in accordance with sections 556 and
21 557 of title 5, United States Code.

22 (5) EFFECT.—Nothing in this subsection au-
23 thorizes any consultation or procedure for consulta-
24 tion that is not consistent with the requirements of
25 subchapter II of chapter 5, and chapter 7, of title

1 5, United States Code (commonly known as the
2 “Administrative Procedure Act”).

3 (6) RULES; ORDERS.—In developing and pro-
4 mulgating rules or orders pursuant to this sub-
5 section, each Commission shall consider the views of
6 the prudential regulators.

7 (7) TREATMENT OF SIMILAR PRODUCTS AND
8 ENTITIES.—

9 (A) IN GENERAL.—In adopting rules and
10 orders under this subsection, the Commodity
11 Futures Trading Commission and the Securities
12 and Exchange Commission shall treat function-
13 ally or economically similar products or entities
14 described in paragraphs (1) and (2) in a similar
15 manner.

16 (B) EFFECT.—Nothing in this subtitle re-
17 quires the Commodity Futures Trading Com-
18 mission or the Securities and Exchange Com-
19 mission to adopt joint rules or orders that treat
20 functionally or economically similar products or
21 entities described in paragraphs (1) and (2) in
22 an identical manner.

23 (8) MIXED SWAPS.—The Commodity Futures
24 Trading Commission and the Securities and Ex-
25 change Commission shall jointly prescribe such regu-

lations regarding mixed swaps, as described in section 1a(47)(D) of the Commodity Exchange Act (7 U.S.C. 1a(47)(D)) and in section (68)(D) of the Securities Exchange Act of 1934 (15 U.S.C. (68)(D)), as may be necessary to carry out the purposes of this title.

(b) LIMITATION.—

(1) COMMODITY FUTURES TRADING COMMISSION.—Nothing in this title, unless specifically provided, confers jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to its activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap data repositories;

(iv) persons associated with a security-based swap dealer or major security-based swap participant;

1 (v) eligible contract participants with
2 respect to security-based swaps; or

3 (vi) swap execution facilities with re-
4 spect to security-based swaps.

5 (2) SECURITIES AND EXCHANGE COMMIS-
6 SION.—Nothing in this title, unless specifically pro-
7 vided, confers jurisdiction on the Securities and Ex-
8 change Commission or State securities regulators to
9 issue a rule, regulation, or order providing for over-
10 sight or regulation of—

11 (A) swaps; or

12 (B) with regard to its activities or func-
13 tions concerning swaps—

14 (i) swap dealers;

15 (ii) major swap participants;

16 (iii) swap data repositories;

17 (iv) persons associated with a swap
18 dealer or major swap participant;

19 (v) eligible contract participants with
20 respect to swaps; or

21 (vi) swap execution facilities with re-
22 spect to swaps.

23 (3) PROHIBITION ON CERTAIN FUTURES ASSO-
24 CIATIONS AND NATIONAL SECURITIES ASSOCIA-
25 TIONS.—

1 (A) FUTURES ASSOCIATIONS.—Notwith-
2 standing any other provision of law (including
3 regulations), unless otherwise authorized by this
4 title, no futures association registered under
5 section 17 of the Commodity Exchange Act (7
6 U.S.C. 21) may issue a rule, regulation, or
7 order for the oversight or regulation of, or oth-
8 erwise assert jurisdiction over, for any purpose,
9 any security-based swap, except that this shall
10 not limit the authority of a national futures as-
11 sociation to examine for compliance with and
12 enforce its rules on advertising and capital ade-
13 quacy.

14 (B) NATIONAL SECURITIES ASSOCIA-
15 TIONS.—Notwithstanding any other provision of
16 law (including regulations), unless otherwise au-
17 thorized by this title, no national securities as-
18 sociation registered under section 15A of the
19 Securities Exchange Act of 1934 (15 U.S.C.
20 78o–3) may issue a rule, regulation, or order
21 for the oversight or regulation of, or otherwise
22 assert jurisdiction over, for any purpose, any
23 swap, except that this shall not limit the au-
24 thority of a national securities association to ex-

1 amine for compliance with and enforce its rules
2 on advertising and capital adequacy.

3 (c) OBJECTION TO COMMISSION REGULATION.—

4 (1) FILING OF PETITION FOR REVIEW.—

5 (A) IN GENERAL.—If either Commission
6 referred to in this section determines that a
7 final rule, regulation, or order of the other
8 Commission conflicts with subsection (a)(4) or
9 (b), then the complaining Commission may ob-
10 tain review of the final rule, regulation, or order
11 in the United States Court of Appeals for the
12 District of Columbia Circuit by filing in the
13 court, not later than 60 days after the date of
14 publication of the final rule, regulation, or
15 order, a written petition requesting that the
16 rule, regulation, or order be set aside.

17 (B) EXPEDITED PROCEEDING.—A pro-
18 ceeding described in subparagraph (A) shall be
19 expedited by the United States Court of Ap-
20 peals for the District of Columbia Circuit.

21 (2) TRANSMITTAL OF PETITION AND
22 RECORD.—

23 (A) IN GENERAL.—A copy of a petition de-
24 scribed in paragraph (1) shall be transmitted
25 not later than 1 business day after the date of

1 filing by the complaining Commission to the
2 Secretary of the responding Commission.

3 (B) DUTY OF RESPONDING COMMISSION.—

4 On receipt of the copy of a petition described
5 in paragraph (1), the responding Commission
6 shall file with the United States Court of Ap-
7 peals for the District of Columbia Circuit—

8 (i) a copy of the rule, regulation, or
9 order under review (including any docu-
10 ments referred to therein); and

11 (ii) any other materials prescribed by
12 the United States Court of Appeals for the
13 District of Columbia Circuit.

14 (3) STANDARD OF REVIEW.—The United States
15 Court of Appeals for the District of Columbia Cir-
16 cuit shall—

17 (A) give deference to the views of neither
18 Commission; and

19 (B) determine to affirm or set aside a rule,
20 regulation, or order of the responding Commis-
21 sion under this subsection, based on the deter-
22 mination of the court as to whether the rule,
23 regulation, or order is in conflict with sub-
24 section (a)(4) or (b), as applicable.

1 (4) JUDICIAL STAY.—The filing of a petition by
2 the complaining Commission pursuant to paragraph
3 (1) shall operate as a stay of the rule, regulation, or
4 order until the date on which the determination of
5 the United States Court of Appeals for the District
6 of Columbia Circuit is final (including any appeal of
7 the determination).

8 (d) ADOPTION OF RULES ON UNCLEARED SWAPS.—
9 Notwithstanding subsections (b) and (c), the Commodity
10 Futures Trading Commission and the Securities and Ex-
11 change Commission shall, after consulting with each other
12 Commission, adopt rules—

13 (1) to require the maintenance of records of all
14 activities relating to transactions in swaps and secu-
15 rity-based swaps under the respective jurisdictions of
16 the Commodity Futures Trading Commission and
17 the Securities and Exchange Commission that are
18 uncleared;

19 (2) to make available, consistent with section 8
20 of the Commodity Exchange Act (7 U.S.C. 12), to
21 the Securities and Exchange Commission informa-
22 tion relating to swaps transactions that are
23 uncleared; and

24 (3) to make available to the Commodity Fu-
25 tures Trading Commission information relating to

1 security-based swaps transactions that are
2 uncleared.

3 (e) DEFINITIONS.—Notwithstanding subsections (b)
4 and (c), the Commodity Futures Trading Commission and
5 the Securities and Exchange Commission shall jointly
6 adopt rules to define the term “security-based swap agree-
7 ment” in section 1a(47)(A)(v) of the Commodity Ex-
8 change Act (7 U.S.C. 1a(47)(A)(v)) and in section
9 3(a)(78) of the Securities Exchange Act of 1934 (15
10 U.S.C. 78c(a)(78)).

11 (f) GLOBAL RULEMAKING TIMEFRAME.—Unless oth-
12 erwise provided in a particular provision of this title, or
13 an amendment made by this title, the Commodity Futures
14 Trading Commission or the Securities and Exchange Com-
15 mission, or both, shall individually, and not jointly, pro-
16 mulgate rules and regulations required of each Commis-
17 sion under this title or an amendment made by this title
18 not later than 180 days after the date of enactment of
19 this Act.

20 (g) EXPEDITED RULEMAKING PROCESS.—The Com-
21 modity Futures Trading Commission or the Securities and
22 Exchange Commission, or both, may use emergency and
23 expedited procedures (including any administrative or
24 other procedure as appropriate) to carry out this title and

1 the amendments made by this title if, in either of the Com-
2 missions' discretion, it considers it necessary to do so.

3 **SEC. 713. RECOMMENDATIONS FOR CHANGES TO PORT-**
4 **FOLIO MARGINING LAWS.**

5 Not later than 180 days after the date of enactment
6 of this Act, the Securities and Exchange Commission, the
7 Commodity Futures Trading Commission, and the pru-
8 dential regulators shall submit to the appropriate commit-
9 tees of Congress recommendations for legislative changes
10 to the Federal laws to facilitate the portfolio margining
11 of securities and commodity futures and options, com-
12 modity options, swaps, and other financial instrument po-
13 sitions.

14 **SEC. 714. ABUSIVE SWAPS.**

15 The Commodity Futures Trading Commission or the
16 Securities and Exchange Commission, or both, individually
17 may, by rule or order—

18 (1) collect information as may be necessary con-
19 cerning the markets for any types of—

20 (A) swap (as defined in section 1a of the
21 Commodity Exchange Act (7 U.S.C. 1a)); or

22 (B) security-based swap (as defined in sec-
23 tion 1a of the Commodity Exchange Act (7
24 U.S.C. 1a)); and

1 (2) issue a report with respect to any types of
2 swaps or security-based swaps that the Commodity
3 Futures Trading Commission or the Securities and
4 Exchange Commission determines to be detrimental
5 to—

6 (A) the stability of a financial market; or

7 (B) participants in a financial market.

8 **SEC. 715. AUTHORITY TO PROHIBIT PARTICIPATION IN**
9 **SWAP ACTIVITIES.**

10 Except as provided in section 4 of the Commodity Ex-
11 change Act (7 U.S.C. 6) (as amended by section 738), if
12 the Commodity Futures Trading Commission or the Secu-
13 rities and Exchange Commission determines that the regu-
14 lation of swaps or security-based swaps markets in a for-
15 eign country undermines the stability of the United States
16 financial system, either Commission, in consultation with
17 the Secretary of the Treasury, may prohibit an entity
18 domiciled in the foreign country from participating in the
19 United States in any swap or security-based swap activi-
20 ties.

21 **SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT**
22 **BAILOUTS OF SWAPS ENTITIES.**

23 (a) PROHIBITION ON FEDERAL ASSISTANCE.—Not-
24 withstanding any other provision of law (including regula-
25 tions), no Federal assistance may be provided to any

1 swaps entity with respect to any swap, security-based
2 swap, or other activity of the swaps entity.

3 (b) DEFINITIONS.—In this section:

4 (1) FEDERAL ASSISTANCE.—The term “Federal
5 assistance” means the use of any funds, including
6 advances from any Federal Reserve credit facility,
7 discount window, or pursuant to the third undesig-
8 nated paragraph of section 13 of the Federal Re-
9 serve Act (12 U.S.C. 343) (relating to emergency
10 lending authority), Federal Deposit Insurance Cor-
11 poration insurance, or guarantees for the purpose
12 of—

13 (A) making any loan to, or purchasing any
14 stock, equity interest, or debt obligation of, any
15 swaps entity;

16 (B) purchasing the assets of any swaps en-
17 tity;

18 (C) guaranteeing any loan or debt issuance
19 of any swaps entity; or

20 (D) entering into any assistance arrange-
21 ment (including tax breaks), loss sharing, or
22 profit sharing with any swaps entity.

23 (2) SWAPS ENTITY.—The term “swaps entity”
24 means any swap dealer, security-based swap dealer,
25 major swap participant, major security-based swap

1 participant, swap execution facility, designated con-
 2 tract market, national securities exchange, central
 3 counterparty, clearing house, clearing agency, or de-
 4 rivatives clearing organization that is registered
 5 under—

6 (A) the Commodity Exchange Act (7
 7 U.S.C. 1 et seq.);

8 (B) the Securities Exchange Act of 1934
 9 (15 U.S.C. 78a et seq.); or

10 (C) any other Federal or State law (includ-
 11 ing regulations).

12 **SEC. 717. NEW PRODUCT APPROVAL – CFTC-SEC PROCESS.**

13 (a) AMENDMENTS TO THE COMMODITY EXCHANGE
 14 ACT.—Section 2(a)(1)(C) of the Commodity Exchange
 15 Act (7 U.S.C. 2(a)(1)(C)) is amended—

16 (1) in clause (i) by striking “This” and insert-
 17 ing “(I) Except as provided in subclause (II), this”;
 18 and

19 (2) by adding at the end of clause (i) the fol-
 20 lowing:

21 “(II) This Act shall apply to and
 22 the Commission shall have jurisdiction
 23 with respect to accounts, agreements,
 24 and transactions involving, and may
 25 permit the listing for trading pursu-

1 ant to section 5c(c) of, a put, call, or
2 other option on 1 or more securities
3 (as defined in section 2(a)(1) of the
4 Securities Act of 1933 or section
5 3(a)(10) of the Securities Exchange
6 Act of 1934 on the date of enactment
7 of the Futures Trading Act of 1982),
8 including any group or index of such
9 securities, or any interest therein or
10 based on the value thereof, that is ex-
11 empted by the Securities and Ex-
12 change Commission pursuant to sec-
13 tion 36(a)(1) of the Securities Ex-
14 change Act of 1934 with the condition
15 that the Commission exercise concur-
16 rent jurisdiction over such put, call, or
17 other option; *provided*, however, that
18 nothing in this paragraph shall be
19 construed to affect the jurisdiction
20 and authority of the Securities and
21 Exchange Commission over such put,
22 call, or other option.”.

23 (b) AMENDMENT TO THE SECURITIES EXCHANGE
24 ACT OF 1934.—The Securities Exchange Act of 1934 is

1 amended by adding the following section after section 3A
2 (15 U.S.C. 78c-1):

3 **“SEC. 3B. SECURITIES-RELATED DERIVATIVES.**

4 “(a) Any agreement, contract, or transaction (or
5 class thereof) that is exempted by the Commodity Futures
6 Trading Commission pursuant to section 4(c)(1) of the
7 Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the con-
8 dition that the Commission exercise concurrent jurisdic-
9 tion over such agreement, contract, or transaction (or
10 class thereof) shall be deemed a security for purposes of
11 the securities laws.

12 “(b) With respect to any agreement, contract, or
13 transaction (or class thereof) that is exempted by the
14 Commodity Futures Trading Commission pursuant to sec-
15 tion 4(c)(1) of the Commodity Exchange Act (7 U.S.C.
16 6(c)(1)) with the condition that the Commission exercise
17 concurrent jurisdiction over such agreement, contract, or
18 transaction (or class thereof), references in the securities
19 laws to the ‘purchase’ or ‘sale’ of a security shall be
20 deemed to include the execution, termination (prior to its
21 scheduled maturity date), assignment, exchange, or simi-
22 lar transfer or conveyance of, or extinguishing of rights
23 or obligations under such agreement, contract, or trans-
24 action, as the context may require.”.

1 (c) AMENDMENT TO SECURITIES EXCHANGE ACT OF
2 1934.—Section 19(b) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78s(b)) is amended by adding at the end
4 the 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
14 is the subject of such proposed rule change is a se-
15 curity pursuant to section 718 of the Wall Street
16 Transparency and Accountability Act of 2010.”.

17 (d) AMENDMENT TO COMMODITY EXCHANGE ACT.—
18 Section 5c(c)(1) of the Commodity Exchange Act (7
19 U.S.C. 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)”;

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 wheth-
 7 er the product that is the subject of such cer-
 8 tification is a contract of sale of a commodity
 9 for future delivery, an option on such a con-
 10 tract, or an option on a commodity pursuant to
 11 section 718 of the Wall Street Transparency
 12 and Accountability 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
 19 proposal to list or trade a novel derivative prod-
 20 uct that may have elements of both securities
 21 and contracts of sale of a commodity for future
 22 delivery (or options on such contracts or options
 23 on commodities) may concurrently provide no-
 24 tice and furnish a copy of such filing with both
 25 the Securities and Exchange Commission and

1 the Commodity Futures Trading Commission.
2 Any such notice shall state that notice has been
3 made with both Commissions.

4 (B) NOTIFICATION.—If no concurrent no-
5 tice is made pursuant to subparagraph (A),
6 within 5 business days after determining that a
7 proposal that seeks to list or trade a novel de-
8 rivative product may have elements of both se-
9 curities and contracts of sale of a commodity
10 for future delivery (or options on such contracts
11 or options on commodities), the Securities and
12 Exchange Commission or the Commodity Fu-
13 tures Trading Commission, as applicable, shall
14 notify the other Commission and provide a copy
15 of such filing to 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
22 Exchange Commission issue a determination as
23 to whether a product is a security, as defined
24 in section 3(a)(10) of the Securities Exchange
25 Act of 1934 (15 U.S.C. 78c(a)(10)).

1 (B) REQUEST.—No later than 21 days
2 after receipt of a notice under paragraph (1), or
3 upon its own initiative if no such notice is re-
4 ceived, the Securities and Exchange Commis-
5 sion may request that the Commodity Futures
6 Trading Commission issue a determination as
7 to whether a product is a contract of sale of a
8 commodity for future delivery, an option on
9 such a contract, or an option on a commodity
10 subject to the Commodity Futures Trading
11 Commission’s exclusive jurisdiction under sec-
12 tion 2(a)(1)(A) of the Commodity Exchange
13 Act (7 U.S.C. 2(a)(1)(A)).

14 (C) REQUIREMENT RELATING TO RE-
15 QUEST.—A request under subparagraph (A) or
16 (B) shall be made by submitting such request,
17 in writing, to the Securities and Exchange
18 Commission or the Commodity Futures Trading
19 Commission, as applicable.

20 (D) EFFECT.—Nothing in this paragraph
21 shall be construed to prevent—

22 (i) the Commodity Futures Trading
23 Commission from requesting that the Se-
24 curities and Exchange Commission grant
25 an exemption pursuant to section 36(a)(1)

1 of the Securities Exchange Act of 1934
2 (15 U.S.C. 78mm(a)(1)) with respect to a
3 product that is the subject of a filing
4 under paragraph (1); or

5 (ii) the Securities and Exchange Com-
6 mission from requesting that the Com-
7 modity Futures Trading Commission grant
8 an exemption pursuant to section 4(c)(1)
9 of the Commodity Exchange Act (7 U.S.C.
10 6(c)(1)) with respect to a product that is
11 the subject of a filing under paragraph (1).

12 *Provided*, however, that nothing in this sub-
13 paragraph shall be construed to require the
14 Commodity Futures Trading Commission or the
15 Securities and Exchange Commission to issue
16 an exemption requested pursuant to this sub-
17 paragraph; *provided further*, That an order
18 granting or denying an exemption described in
19 this subparagraph and issued under paragraph
20 (3)(B) shall not be subject to judicial review
21 pursuant to subsection (b).

22 (E) WITHDRAWAL OF REQUEST.—A re-
23 quest under subparagraph (A) or (B) may be
24 withdrawn by the Commission making the re-
25 quest at any time prior to a determination

1 being made pursuant to paragraph (3) for any
2 reason by providing written notice to the head
3 of the other Commission.

4 (3) DETERMINATION.—Notwithstanding any
5 other provision of law, no later than 120 days after
6 the date of receipt of a request—

7 (A) under subparagraph (A) or (B) of
8 paragraph (2), unless such request has been
9 withdrawn pursuant to paragraph (2)(E), the
10 Securities and Exchange Commission or the
11 Commodity Futures Trading Commission, as
12 applicable, shall, by order, issue the determina-
13 tion requested in subparagraph (A) or (B) of
14 paragraph (2), as applicable, and the reasons
15 therefore; or

16 (B) under paragraph (2)(D), unless such
17 request has been withdrawn, the Securities and
18 Exchange Commission or the Commodity Fu-
19 tures Trading Commission, as applicable, shall
20 grant an exemption or provide reasons for not
21 granting such exemption, provided that any de-
22 cision by the Securities and Exchange Commis-
23 sion not to grant such exemption shall not be
24 reviewable under section 25 of the Securities
25 Exchange Act of 1934 (15 U.S.C. 78y).

1 (b) JUDICIAL RESOLUTION.—

2 (1) IN GENERAL.—The Commodity Futures
3 Trading Commission or the Securities and Exchange
4 Commission may petition the United States Court of
5 Appeals for the District of Columbia Circuit for re-
6 view of a final order of the other Commission, with
7 respect to a novel derivative product that may have
8 elements of both securities and contracts of sale of
9 a commodity for future delivery (or options on such
10 contracts or options on commodities) that it believes
11 affects its statutory jurisdiction, including an order
12 or orders issued under subsection (a)(3)(A), by filing
13 in such court, within 60 days after the date of entry
14 of such order, a written petition requesting a review
15 of the order. Any such proceeding shall be expedited
16 by the Court of Appeals.

17 (2) TRANSMITTAL OF PETITION AND
18 RECORD.—A copy of a petition described in para-
19 graph (1) shall be transmitted not later than 1 busi-
20 ness day after filing by the complaining Commission
21 to the responding Commission. On receipt of the pe-
22 tition, the responding Commission shall file with the
23 court a copy of the order under review and any doc-
24 uments referred to therein, and any other materials
25 prescribed by the 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
 4 of, 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
 8 date on which the determination of the court is final
 9 (including 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
 15 (4), (5) through (17), (18) through (23), (24)
 16 through (28), (29), (30), (31) through (33), and
 17 (34) as paragraphs (6), (8) and (9), (11) through
 18 (23), (26) through (31), (34) through (38), (40),
 19 (41), (44) 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-
2 BASED SWAP DEALER OR MAJOR SECURITY-BASED
3 SWAP PARTICIPANT.—The term ‘associated person of
4 a security-based swap dealer or major security-based
5 swap participant’ has the meaning given the term in
6 section 3(a) of the Securities Exchange Act of 1934
7 (15 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 pur-
 2 poses of section 4s(b)(6), the term ‘associated
 3 person of a swap dealer or major swap partici-
 4 pant’ does not include any person associated
 5 with a swap dealer or major swap participant
 6 the functions of which are solely clerical or min-
 7 isterial.

8 “(5) BOARD.—The term ‘Board’ means the
 9 Board of Governors of the Federal Reserve Sys-
 10 tem.”;

11 (3) by inserting after paragraph (6) (as redesign-
 12 ated by paragraph (1)) the following:

13 “(7) CLEARED SWAP.—The term ‘cleared swap’
 14 means any swap that is, directly or indirectly, sub-
 15 mitted to and cleared by a derivatives clearing orga-
 16 nization registered with the Commission.”;

17 (4) in paragraph (9) (as redesignated by para-
 18 graph (1)), by striking “except onions” and all that
 19 follows through the period at the end and inserting
 20 the following: “except onions (as provided in section
 21 13-1) and motion picture box office receipts (or any
 22 index, measure, value, or data related to such re-
 23 ceipts), and all services, rights, and interests (except
 24 motion picture box office receipts, or any index,
 25 measure, value or data related to such receipts) in

1 which contracts for future delivery are presently or
2 in the future dealt in.”;

3 (5) by inserting after paragraph (9) (as redesign-
4 nated by paragraph (1)) the following:

5 “(10) COMMODITY POOL.—

6 “(A) IN GENERAL.—The term ‘commodity
7 pool’ means any investment trust, syndicate, or
8 similar form of enterprise operated for the pur-
9 pose of trading in commodity interests, includ-
10 ing any—

11 “(i) commodity for future delivery, se-
12 curity futures product, or swap;

13 “(ii) agreement, contract, or trans-
14 action described in section 2(c)(2)(C)(i) or
15 section 2(c)(2)(D)(i);

16 “(iii) commodity option authorized
17 under section 4c; or

18 “(iv) leverage transaction authorized
19 under section 19.

20 “(B) FURTHER DEFINITION.—The Com-
21 mission, by rule or regulation, may include
22 within, or exclude from, the term ‘commodity
23 pool’ any investment trust, syndicate, or similar
24 form of enterprise if the Commission deter-

1 mines that the rule or regulation will effectuate
2 the purposes of this Act.”;

3 (6) by striking paragraph (11) (as redesignated
4 by paragraph (1)) and inserting the following:

5 “(11) COMMODITY POOL OPERATOR.—

6 “(A) IN GENERAL.—The term ‘commodity
7 pool operator’ means any person—

8 “(i) engaged in a business that is of
9 the nature of a commodity pool, invest-
10 ment trust, syndicate, or similar form of
11 enterprise, and who, in connection there-
12 with, solicits, accepts, or receives from oth-
13 ers, funds, securities, or property, either
14 directly or through capital contributions,
15 the sale of stock or other forms of securi-
16 ties, or otherwise, for the purpose of trad-
17 ing in commodity interest, including any—

18 “(I) commodity for future deliv-
19 ery, security futures product, or swap;

20 “(II) agreement, contract, or
21 transaction described in section
22 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

23 “(III) commodity option author-
24 ized under section 4c; or

1 “(IV) leverage transaction au-
2 thorized under section 19; or

3 “(ii) who is registered with the Com-
4 mission as a commodity pool operator.

5 “(B) FURTHER DEFINITION.—The Com-
6 mission, by rule or regulation, may include
7 within, or exclude from, the term ‘commodity
8 pool operator’ any person engaged in a business
9 that is of the nature of a commodity pool, in-
10 vestment trust, syndicate, or similar form of en-
11 terprise if the Commission determines that the
12 rule or regulation will effectuate the purposes of
13 this Act.”;

14 (7) in paragraph (12) (as redesignated by para-
15 graph (1)), in subparagraph (A)—

16 (A) in clause (i)—

17 (i) in subclause (I), by striking “made
18 or to be made on or subject to the rules of
19 a contract market or derivatives trans-
20 action execution facility” and inserting “,
21 security futures product, or swap”;

22 (ii) by redesignating subclauses (II)
23 and (III) as subclauses (III) and (IV);

24 (iii) by inserting after subclause (I)
25 the following:

1 “(II) any agreement, contract, or
2 transaction described in section
3 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)”;
4 and
5 (iv) in subclause (IV) (as so redesign-
6 ated), by striking “or” ;
7 (B) in clause (ii), by striking the period at
8 the end and inserting a semicolon; and
9 (C) by adding at the end the following:
10 “(iii) is registered with the Commis-
11 sion as a commodity trading advisor; or
12 “(iv) the Commission, by rule or regu-
13 lation, may include if the Commission de-
14 termines that the rule or regulation will ef-
15 fectuate the purposes of this Act.”;
16 (8) in paragraph (17) (as redesignated by para-
17 graph (1)), in subparagraph (A), in the matter pre-
18 ceding clause (i), by striking “paragraph (12)(A)”
19 and inserting “paragraph (18)(A)”;
20 (9) in paragraph (18) (as redesignated by para-
21 graph (1))—
22 (A) in subparagraph (A)—
23 (i) in the matter following clause
24 (vii)(III)—

1 (I) by striking “section 1a
2 (11)(A)” and inserting “paragraph
3 (17)(A)”; and

4 (II) by striking “\$25,000,000”
5 and inserting “\$50,000,000”; and

6 (ii) in clause (xi), in the matter pre-
7 ceding subclause (I), by striking “total as-
8 sets in an amount” and inserting
9 “amounts invested on a discretionary
10 basis, the aggregate of which is”;

11 (10) by striking paragraph (22) (as redesign-
12 nated by paragraph (1)) and inserting the following:

13 “(22) FLOOR BROKER.—

14 “(A) IN GENERAL.—The term ‘floor
15 broker’ means any person—

16 “(i) who, in or surrounding any pit,
17 ring, post, or other place provided by a
18 contract market for the meeting of persons
19 similarly engaged, shall purchase or sell for
20 any other person—

21 “(I) any commodity for future
22 delivery, security futures product, or
23 swap; or

24 “(II) any commodity option au-
25 thorized under section 4c; or

1 “(ii) who is registered with the Com-
2 mission as a floor broker.

3 “(B) FURTHER DEFINITION.—The Com-
4 mission, by rule or regulation, may include
5 within, or exclude from, the term ‘floor broker’
6 any person in or surrounding any pit, ring,
7 post, or other place provided by a contract mar-
8 ket for the meeting of persons similarly engaged
9 who trades for any other person if the Commis-
10 sion determines that the rule or regulation will
11 effectuate the purposes of this Act.”;

12 (11) by striking paragraph (23) (as redesign-
13 nated by paragraph (1)) and inserting the following:

14 “(23) FLOOR TRADER.—

15 “(A) IN GENERAL.—The term ‘floor trad-
16 er’ means any person—

17 “(i) who, in or surrounding any pit,
18 ring, post, or other place provided by a
19 contract market for the meeting of persons
20 similarly engaged, purchases, or sells solely
21 for such person’s own account—

22 “(I) any commodity for future
23 delivery, security futures product, or
24 swap; or

1 “(II) any commodity option au-
2 thorized under section 4c; or

3 “(ii) who is registered with the Com-
4 mission as a floor trader.

5 “(B) FURTHER DEFINITION.—The Com-
6 mission, by rule or regulation, may include
7 within, or exclude from, the term ‘floor trader’
8 any person in or surrounding any pit, ring,
9 post, or other place provided by a contract mar-
10 ket for the meeting of persons similarly engaged
11 who trades solely for such person’s own account
12 if the Commission determines that the rule or
13 regulation will effectuate the purposes of this
14 Act.”;

15 (12) by inserting after paragraph (23) (as re-
16 designated by paragraph (1)) the following:

17 “(24) FOREIGN EXCHANGE FORWARD.—The
18 term ‘foreign exchange forward’ means a transaction
19 that solely involves the exchange of 2 different cur-
20 rencies on a specific future date at a fixed rate
21 agreed upon on the inception of the contract cov-
22 ering the exchange.

23 “(25) FOREIGN EXCHANGE SWAP.—The term
24 ‘foreign exchange swap’ means a transaction that
25 solely involves—

1 “(A) an exchange of 2 different currencies
 2 on a specific date at a fixed rate that is agreed
 3 upon on the inception of the contract covering
 4 the exchange; and

5 “(B) a reverse exchange of the 2 cur-
 6 rencies described in subparagraph (A) at a later
 7 date and at a fixed rate that is agreed upon on
 8 the inception of the contract covering the ex-
 9 change.”;

10 (13) by striking paragraph (28) (as redesign-
 11 nated by paragraph (1)) and inserting the following:

12 “(28) FUTURES COMMISSION MERCHANT.—

13 “(A) IN GENERAL.—The term ‘futures
 14 commission merchant’ means an individual, as-
 15 sociation, partnership, corporation, or trust—

16 “(i) that—

17 “(I) is engaged in soliciting or in
 18 accepting orders for—

19 “(aa) the purchase or sale of
 20 a commodity for future delivery;

21 “(bb) a security futures
 22 product;

23 “(cc) a swap;

24 “(dd) any agreement, con-
 25 tract, or transaction described in

1 section 2(c)(2)(C)(i) or section
2 2(c)(2)(D)(i);

3 “(ee) any commodity option
4 authorized under section 4c; or

5 “(ff) any leverage trans-
6 action authorized under section
7 19; or

8 “(II) is acting as a counterparty
9 in any agreement, contract, or trans-
10 action described in section
11 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
12 and

13 “(III) in or in connection with
14 the activities described in subclause
15 (I) or (II), accepts any money, securi-
16 ties, or property (or extends credit in
17 lieu thereof) to margin, guarantee, or
18 secure any trades or contracts that re-
19 sult or may result therefrom; or

20 “(ii) that is registered with the Com-
21 mission as a futures commission merchant.

22 “(B) FURTHER DEFINITION.—The Com-
23 mission, by rule or regulation, may include
24 within, or exclude from, the term ‘futures com-
25 mission merchant’ any person who engages in

1 soliciting or accepting orders for, or acting as
2 a counterparty in, any agreement, contract, or
3 transaction subject to this Act, and who accepts
4 any money, securities, or property (or extends
5 credit in lieu thereof) to margin, guarantee, or
6 secure any trades or contracts that result or
7 may result therefrom, if the Commission deter-
8 mines that the rule or regulation will effectuate
9 the purposes of this Act.”;

10 (14) in paragraph (30) (as redesignated by
11 paragraph (1)), in subparagraph (B), by striking
12 “state” and inserting “State”;

13 (15) by striking paragraph (31) (as redesign-
14 ated by paragraph (1)) and inserting the following:

15 “(31) INTRODUCING BROKER.—

16 “(A) IN GENERAL.—The term ‘introducing
17 broker’ means any person (except an individual
18 who elects to be and is registered as an associ-
19 ated person of a futures commission mer-
20 chant)—

21 “(i) who—

22 “(I) is engaged in soliciting or in
23 accepting orders for—

24 “(aa) the purchase or sale of
25 any commodity for future deliv-

1 ery, security futures product, or
2 swap;

3 “(bb) any agreement, con-
4 tract, or transaction described in
5 section 2(c)(2)(C)(i) or section
6 2(c)(2)(D)(i);

7 “(cc) any commodity option
8 authorized under section 4c; or

9 “(dd) any leverage trans-
10 action authorized under section
11 19; and

12 “(II) does not accept any money,
13 securities, or property (or extend cred-
14 it in lieu thereof) to margin, guar-
15 antee, or secure any trades or con-
16 tracts that result or may result there-
17 from; or

18 “(ii) who is registered with the Com-
19 mission as an introducing broker.

20 “(B) FURTHER DEFINITION.—The Com-
21 mission, by rule or regulation, may include
22 within, or exclude from, the term ‘introducing
23 broker’ any person who engages in soliciting or
24 accepting orders for any agreement, contract,
25 or transaction subject to this Act, and who does

1 not accept any money, securities, or property
 2 (or extend credit in lieu thereof) to margin,
 3 guarantee, or secure any trades or contracts
 4 that result or may result therefrom, if the Com-
 5 mission determines that the rule or regulation
 6 will effectuate the purposes of this Act.”;

7 (16) by inserting after paragraph (31) (as re-
 8 designated by paragraph (1)) the following:

9 “(32) MAJOR SECURITY-BASED SWAP PARTICI-
 10 PANT.—The term ‘major security-based swap partic-
 11 ipant’ has the meaning given the term in section
 12 3(a) of the Securities Exchange Act of 1934 (15
 13 U.S.C. 78c(a)).

14 “(33) MAJOR SWAP PARTICIPANT.—

15 “(A) IN GENERAL.—The term ‘major swap
 16 participant’ means any person who is not a
 17 swap dealer, and—

18 “(i) maintains a substantial position
 19 in swaps for any of the major swap cat-
 20 egories as determined by the Commission,
 21 excluding—

22 “(I) positions held for hedging or
 23 mitigating commercial risk; and

24 “(II) positions maintained by any
 25 employee benefit plan (or any contract

1 held by such a plan) as defined in
2 paragraphs (3) and (32) of section 3
3 of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C.
5 1002) for the primary purpose of
6 hedging or mitigating any risk directly
7 associated with the operation of the
8 plan; or

9 “(ii) whose outstanding swaps create
10 substantial counterparty exposure that
11 could have serious adverse effects on the
12 financial stability of the United States
13 banking system or financial markets; or

14 “(iii)(I) is a financial entity, other
15 than an entity predominantly engaged in
16 providing financing for the purchase of an
17 affiliate’s merchandise or manufactured
18 goods, that is highly leveraged relative to
19 the amount of capital it holds; and

20 “(II) maintains a substantial position
21 in outstanding swaps in any major swap
22 category as determined by the Commission.

23 “(B) DEFINITION OF SUBSTANTIAL POSI-
24 TION.—For purposes of subparagraph (A), the
25 Commission shall define by rule or regulation

1 the term ‘substantial position’ at the threshold
2 that the Commission determines to be prudent
3 for the effective monitoring, management, and
4 oversight of entities that are systemically im-
5 portant or can significantly impact the financial
6 system of the United States.

7 “(C) SCOPE OF DESIGNATION.—For pur-
8 poses of subparagraph (A), a person may be
9 designated as a major swap participant for 1 or
10 more categories of swaps without being classi-
11 fied as a major swap participant for all classes
12 of swaps.

13 “(D) CAPITAL.—In setting capital require-
14 ments for a person that is designated as a
15 major swap participant for a single type or sin-
16 gle class or category of swaps or activities, the
17 prudential regulator and the Commission shall
18 take into account the risks associated with
19 other types of swaps or classes of swaps or cat-
20 egories of swaps engaged in and the other ac-
21 tivities conducted by that person that are not
22 otherwise subject to regulation applicable to
23 that person by virtue of the status of the person
24 as a major swap participant.”;

1 (17) by inserting after paragraph (38) (as re-
2 designated by paragraph (1)) the following:

3 “(39) PRUDENTIAL REGULATOR.—The term
4 ‘prudential regulator’ means—

5 “(A) the Office of the Comptroller of the
6 Currency, in the case of—

7 “(i) any national banking association;

8 “(ii) any Federal branch or agency of
9 a foreign bank; or

10 “(iii) any Federal savings association;

11 “(B) the Federal Deposit Insurance Cor-
12 poration, in the case of—

13 “(i) any insured State bank;

14 “(ii) any foreign bank having an in-
15 sured branch; or

16 “(iii) any State savings association;

17 “(C) the Board of Governors of the Fed-
18 eral Reserve System, in the case of—

19 “(i) any noninsured State member
20 bank;

21 “(ii) any branch or agency of a for-
22 eign bank with respect to any provision of
23 the Federal Reserve Act (12 U.S.C. 221 et
24 seq.) which is made applicable under the

1 International Banking Act of 1978 (12
2 U.S.C. 3101 et seq.);

3 “(iii) any foreign bank which does not
4 operate an insured branch;

5 “(iv) any agency or commercial lend-
6 ing company other than a Federal agency;
7 or

8 “(v) supervisory or regulatory pro-
9 ceedings arising from the authority given
10 to the Board of Governors under section
11 7(c)(1) of the International Banking Act of
12 1978 (12 U.S.C. 3105(c)(1)), including
13 such proceedings under the Financial In-
14 stitutions Supervisory Act of 1966 (12
15 U.S.C. 1464 et seq.); and

16 “(D) the Farm Credit Administration, in
17 the case of a swap dealer, major swap partici-
18 pant, security-based swap dealer, or major secu-
19 rity-based swap participant that is an institu-
20 tion chartered under the Farm Credit Act of
21 1971 (12 U.S.C. 2001 et seq.).”;

22 (18) in paragraph (40) (as redesignated by
23 paragraph (1))—

24 (A) by striking subparagraph (B);

1 (B) by redesignating subparagraphs (C),
2 (D), and (E) as subparagraphs (B), (C), and
3 (F), respectively;

4 (C) in subparagraph (C) (as so redesign-
5 nated), by striking “and”;

6 (D) by inserting after subparagraph (C)
7 (as so redesignated) the following:

8 “(D) a swap execution facility registered
9 under section 5h;

10 “(E) a swap data repository; and”;

11 (19) by inserting after paragraph (41) (as re-
12 designated by paragraph (1)) the following:

13 “(42) SECURITY-BASED SWAP.—The term ‘se-
14 curity-based swap’ has the meaning given the term
15 in section 3(a) of the Securities Exchange Act of
16 1934 (15 U.S.C. 78c(a)).

17 “(43) SECURITY-BASED SWAP DEALER.—The
18 term ‘security-based swap dealer’ has the meaning
19 given the term in section 3(a) of the Securities Ex-
20 change Act of 1934 (15 U.S.C. 78c(a)).”;

21 (20) in paragraph (46) (as redesignated by
22 paragraph (1)), by striking “subject to section
23 2(h)(7)” and inserting “subject to section 2(h)(5)”;

24 (21) by inserting after paragraph (46) (as re-
25 designated by paragraph (1)) the following:

1 “(47) SWAP.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), the term ‘swap’ means any
4 agreement, contract, or transaction—

5 “(i) that is a put, call, cap, floor, col-
6 lar, or similar option of any kind that is
7 for the purchase or sale, or based on the
8 value, of 1 or more interest or other rates,
9 currencies, commodities, securities, instru-
10 ments of indebtedness, indices, quantitative
11 measures, or other financial or economic
12 interests or property of any kind;

13 “(ii) that provides for any purchase,
14 sale, payment, or delivery (other than a
15 dividend on an equity security) that is de-
16 pendent on the occurrence, nonoccurrence,
17 or the extent of the occurrence of an event
18 or contingency associated with a potential
19 financial, economic, or commercial con-
20 sequence;

21 “(iii) that provides on an executory
22 basis for the exchange, on a fixed or con-
23 tingent basis, of 1 or more payments based
24 on the value or level of 1 or more interest
25 or other rates, currencies, commodities, se-

1 curities, instruments of indebtedness, indi-
2 ces, quantitative measures, or other finan-
3 cial or economic interests or property of
4 any kind, or any interest therein or based
5 on the value thereof, and that transfers, as
6 between the parties to the transaction, in
7 whole or in part, the financial risk associ-
8 ated with a future change in any such
9 value or level without also conveying a cur-
10 rent or future direct or indirect ownership
11 interest in an asset (including any enter-
12 prise or investment pool) or liability that
13 incorporates the financial risk so trans-
14 ferred, including any agreement, contract,
15 or transaction commonly known as—

16 “(I) an interest rate swap;

17 “(II) a rate floor;

18 “(III) a rate cap;

19 “(IV) a rate collar;

20 “(V) a cross-currency rate swap;

21 “(VI) a basis swap;

22 “(VII) a currency swap;

23 “(VIII) a foreign exchange swap;

24 “(IX) a total return swap;

25 “(X) an equity index swap;

- 1 “(XI) an equity swap;
- 2 “(XII) a debt index swap;
- 3 “(XIII) a debt swap;
- 4 “(XIV) a credit spread;
- 5 “(XV) a credit default swap;
- 6 “(XVI) a credit swap;
- 7 “(XVII) a weather swap;
- 8 “(XVIII) an energy swap;
- 9 “(XIX) a metal swap;
- 10 “(XX) an agricultural swap;
- 11 “(XXI) an emissions swap; and
- 12 “(XXII) a commodity swap;
- 13 “(iv) that is an agreement, contract,
- 14 or transaction that is, or in the future be-
- 15 comes commonly known to the trade as a
- 16 swap;
- 17 “(v) including any security-based
- 18 swap agreement which meets the definition
- 19 of ‘swap agreement’ as defined in section
- 20 206A of the Gramm-Leach-Bliley Act (15
- 21 U.S.C. 78c note) of which a material term
- 22 is based on the price, yield, value, or vola-
- 23 tility of any security or any group or index
- 24 of securities, or any interest therein; or

1 “(vi) that is any combination or per-
2 mutation of, or option on, any agreement,
3 contract, or transaction described in any of
4 clauses (i) through (v).

5 “(B) EXCLUSIONS.—The term ‘swap’ does
6 not include—

7 “(i) any contract of sale of a com-
8 modity for future delivery (or option on
9 such a contract), leverage contract author-
10 ized under section 19, security futures
11 product, or agreement, contract, or trans-
12 action described in section 2(c)(2)(C)(i) or
13 section 2(c)(2)(D)(i);

14 “(ii) any sale of a nonfinancial com-
15 modity or security for deferred shipment or
16 delivery, so long as the transaction is in-
17 tended to be physically settled;

18 “(iii) any put, call, straddle, option, or
19 privilege on any security, certificate of de-
20 posit, or group or index of securities, in-
21 cluding any interest therein or based on
22 the value thereof, that is subject to—

23 “(I) the Securities Act of 1933
24 (15 U.S.C. 77a et seq.); and

1 “(II) the Securities Exchange
2 Act of 1934 (15 U.S.C. 78a et seq.);

3 “(iv) any put, call, straddle, option, or
4 privilege relating to a foreign currency en-
5 tered into on a national securities exchange
6 registered pursuant to section 6(a) of the
7 Securities Exchange Act of 1934 (15
8 U.S.C. 78f(a));

9 “(v) any agreement, contract, or
10 transaction providing for the purchase or
11 sale of 1 or more securities on a fixed basis
12 that is subject to—

13 “(I) the Securities Act of 1933
14 (15 U.S.C. 77a et seq.); and

15 “(II) the Securities Exchange
16 Act of 1934 (15 U.S.C. 78a et seq.);

17 “(vi) any agreement, contract, or
18 transaction providing for the purchase or
19 sale of 1 or more securities on a contingent
20 basis that is subject to the Securities Act
21 of 1933 (15 U.S.C. 77a et seq.) and the
22 Securities Exchange Act of 1934 (15
23 U.S.C. 78a et seq.), unless the agreement,
24 contract, or transaction predicates the pur-
25 chase or sale on the occurrence of a bona

1 fide contingency that might reasonably be
2 expected to affect or be affected by the
3 creditworthiness of a party other than a
4 party to the agreement, contract, or trans-
5 action;

6 “(vii) any note, bond, or evidence of
7 indebtedness that is a security, as defined
8 in section 2(a) of the Securities Act of
9 1933 (15 U.S.C. 77b(a));

10 “(viii) any agreement, contract, or
11 transaction that is—

12 “(I) based on a security; and

13 “(II) entered into directly or
14 through an underwriter (as defined in
15 section 2(a) of the Securities Act of
16 1933 (15 U.S.C. 77b(a))) by the
17 issuer of such security for the pur-
18 poses of raising capital, unless the
19 agreement, contract, or transaction is
20 entered into to manage a risk associ-
21 ated with capital raising;

22 “(ix) any agreement, contract, or
23 transaction a counterparty of which is a
24 Federal Reserve bank, the Federal Govern-
25 ment, or a Federal agency that is expressly

1 backed by the full faith and credit of the
2 United States; and

3 “(x) any security-based swap, other
4 than a security-based swap as described in
5 subparagraph (D).

6 “(C) RULE OF CONSTRUCTION REGARDING
7 MASTER AGREEMENTS.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in clause (ii), the term ‘swap’ in-
10 cludes a master agreement that provides
11 for an agreement, contract, or transaction
12 that is a swap under subparagraph (A), to-
13 gether with each supplement to any master
14 agreement, without regard to whether the
15 master agreement contains an agreement,
16 contract, or transaction that is not a swap
17 pursuant to subparagraph (A).

18 “(ii) EXCEPTION.—For purposes of
19 clause (i), the master agreement shall be
20 considered to be a swap only with respect
21 to each agreement, contract, or transaction
22 covered by the master agreement that is a
23 swap pursuant to subparagraph (A).

24 “(D) MIXED SWAP.—The term ‘security-
25 based swap’ includes any agreement, contract,

1 or transaction that is as described in section
2 3(a)(68)(A) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78c(a)(68)(A)) and also is
4 based on the value of 1 or more interest or
5 other rates, currencies, commodities, instru-
6 ments of indebtedness, indices, quantitative
7 measures, other financial or economic interest
8 or property of any kind (other than a single se-
9 curity or a narrow-based security index), or the
10 occurrence, non-occurrence, or the extent of the
11 occurrence of an event or contingency associ-
12 ated with a potential financial, economic, or
13 commercial consequence (other than an event
14 described in subparagraph (A)(iii)).

15 “(E) TREATMENT OF FOREIGN EXCHANGE
16 SWAPS AND FORWARDS.—

17 “(i) IN GENERAL.—Foreign exchange
18 swaps and foreign exchange forwards shall
19 be considered swaps under this paragraph
20 unless the Secretary makes a written de-
21 termination that either foreign exchange
22 swaps or foreign exchange forwards or
23 both—

24 “(I) should be not be regulated
25 as swaps under this Act; and

1 “(II) are not structured to evade
2 the Wall Street Transparency and Ac-
3 countability Act of 2010 in violation
4 of any rule promulgated by the Com-
5 mission pursuant to section 111(c) of
6 that Act.

7 “(ii) CONGRESSIONAL NOTICE; EFPEC-
8 TIVENESS.—The Secretary shall submit
9 any written determination under clause (i)
10 to the appropriate committees of Congress,
11 including the Committee on Agriculture,
12 Nutrition, and Forestry of the Senate and
13 the Committee on Agriculture of the House
14 of Representatives. Any such written deter-
15 mination by the Secretary shall not be ef-
16 fective until it is submitted to the appro-
17 priate committees of Congress.

18 “(iii) REPORTING.—Notwithstanding
19 a written determination by the Secretary
20 under clause (i), all foreign exchange
21 swaps and foreign exchange forwards shall
22 be reported to either a swap data reposi-
23 tory, or, if there is no swap data repository
24 that would accept such swaps or forwards,
25 to the Commission pursuant to section 4r

1 within such time period as the Commission
2 may by rule or regulation prescribe.

3 “(iv) BUSINESS STANDARDS.—Not-
4 withstanding clauses (ix) and (x) of sub-
5 paragraph (B) and clause (ii), any party to
6 a foreign exchange swap or forward that is
7 a swap dealer or major swap participant
8 shall conform to the business conduct
9 standards contained in section 4s(h).

10 “(v) SECRETARY.—For purposes of
11 this subparagraph only, the term ‘Sec-
12 retary’ means the Secretary of the Treas-
13 ury.

14 “(F) EXCEPTION FOR CERTAIN FOREIGN
15 EXCHANGE SWAPS AND FORWARDS.—

16 “(i) REGISTERED ENTITIES.—Any
17 foreign exchange swap and any foreign ex-
18 change forward that is listed and traded on
19 or subject to the rules of a designated con-
20 tract market or a swap execution facility,
21 or that is cleared by a derivatives clearing
22 organization shall not be exempt from any
23 provision of this Act or amendments made
24 by the Wall Street Transparency and Ac-

1 countability Act of 2010 prohibiting fraud
2 or manipulation.

3 “(ii) RETAIL TRANSACTIONS.—Noth-
4 ing in subparagraph (E) shall affect, or be
5 construed to affect, the applicability of this
6 Act or the jurisdiction of the Commission
7 with respect to agreements, contracts, or
8 transactions in foreign currency pursuant
9 to section 2(c)(2).

10 “(48) SWAP DATA REPOSITORY.—The term
11 ‘swap data repository’ means any person that col-
12 lects, calculates, prepares, or maintains information
13 or records with respect to transactions or positions
14 in, or the terms and conditions of, swaps entered
15 into by third parties.

16 “(49) SWAP DEALER.—

17 “(A) IN GENERAL.—The term ‘swap deal-
18 er’ means any person who—

19 “(i) holds itself out as a dealer in
20 swaps;

21 “(ii) makes a market in swaps;

22 “(iii) regularly engages in the pur-
23 chase and sale of swaps in the ordinary
24 course of business; or

1 “(iv) engages in any activity causing
2 the person to be commonly known in the
3 trade as a dealer or market maker in
4 swaps.

5 “(B) INCLUSION.—A person may be des-
6 ignated as a swap dealer for a single type or
7 single class or category of swap or activities and
8 considered not to be a swap dealer for other
9 types, classes, or categories of swaps or activi-
10 ties.

11 “(C) CAPITAL.—In setting capital require-
12 ments for a person that is designated as a swap
13 dealer for a single type or single class or cat-
14 egory of swap or activities, the prudential regu-
15 lator and the Commission shall take into ac-
16 count the risks associated with other types of
17 swaps or classes of swaps or categories of swaps
18 engaged in and the other activities conducted
19 by that person that are not otherwise subject to
20 regulation applicable to that person by virtue of
21 the status of the person as a swap dealer.

22 “(D) EXCEPTION.—The term ‘swap dealer’
23 does not include a person that buys or sells
24 swaps for such person’s own account, either in-

1 dividually or in a fiduciary capacity, but not as
2 a part of a regular business.

3 “(50) SWAP EXECUTION FACILITY.—The term
4 ‘swap execution facility’ means a facility in which
5 multiple participants have the ability to execute or
6 trade swaps by accepting bids and offers made by
7 other participants that are open to multiple partici-
8 pants in the facility or system, through any means
9 of interstate commerce, including any trading facil-
10 ity, that—

11 “(A) facilitates the execution of swaps be-
12 tween persons; and

13 “(B) is not a designated contract mar-
14 ket.”; and

15 (22) in paragraph (51) (as redesignated by
16 paragraph (1)), in subparagraph (A)(i), by striking
17 “partipants” and inserting “participants”.

18 (b) AUTHORITY TO DEFINE TERMS.—The Com-
19 modity Futures Trading Commission may adopt a rule to
20 define—

21 (1) the term “commercial risk”; and

22 (2) any other term included in an amendment
23 to the Commodity Exchange Act (7 U.S.C. 1 et seq.)
24 made by this subtitle.

1 (c) MODIFICATION OF DEFINITIONS.—To include
 2 transactions and entities that have been structured to
 3 evade this subtitle (or an amendment made by this sub-
 4 title), the Commodity Futures Trading Commission shall
 5 adopt a rule to further define the terms “swap”, “swap
 6 dealer”, “major swap participant”, and “eligible contract
 7 participant”.

8 (d) EXEMPTIONS.—Section 4(c)(1) of the Commodity
 9 Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking
 10 “except that” and all that follows through the period at
 11 the end and inserting the following: “except that—

12 “(A) unless the Commission is expressly
 13 authorized by any provision described in this
 14 subparagraph to grant exemptions, with respect
 15 to amendments made by subtitle A of the Wall
 16 Street Transparency and Accountability Act of
 17 2010—

18 “(i) with respect to—

19 “(I) paragraphs (2), (3), (4), (5),
 20 and (7), clause (vii)(III) of paragraph
 21 (17), paragraphs (23), (24), (31),
 22 (32), (38), (39), (41), (42), (46),
 23 (47), (48), and (49) of section 1a, and
 24 sections 2(a)(13), 2(c)(D), 4a(a),
 25 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a),

1 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i),
 2 8e, and 21; and

3 “(II) section 206(e) of the
 4 Gramm-Leach-Bliley Act (Public Law
 5 106–102; 15 U.S.C. 78e note); and

6 “(ii) in subsection (c) of section 111
 7 and section 132; and

8 “(B) the Commission and the Securities
 9 and Exchange Commission may by rule, regula-
 10 tion, or order jointly exclude any agreement,
 11 contract, or transaction from section
 12 2(a)(1)(D)) if the Commission determines that
 13 the exemption would be consistent with the
 14 public interest.”.

15 (e) CONFORMING AMENDMENTS.—

16 (1) Section 2(c)(2)(B)(i)(II) of the Commodity
 17 Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-
 18 ed—

19 (A) in item (cc)—

20 (i) in subitem (AA), by striking “sec-
 21 tion 1a(20)” and inserting “section 1a”;
 22 and

23 (ii) in subitem (BB), by striking “sec-
 24 tion 1a(20)” and inserting “section 1a”;
 25 and

1 (B) in item (dd), by striking “section
2 1a(12)(A)(ii)” and inserting “section
3 1a(18)(A)(ii)”.

4 (2) Section 4m(3) of the Commodity Exchange
5 Act (7 U.S.C. 6m(3)) is amended by striking “sec-
6 tion 1a(6)” and inserting “section 1a”.

7 (3) Section 4q(a)(1) of the Commodity Ex-
8 change Act (7 U.S.C. 6o–1(a)(1)) is amended by
9 striking “section 1a(4)” and inserting “section
10 1a(9)”.

11 (4) Section 5(e)(1) of the Commodity Exchange
12 Act (7 U.S.C. 7(e)(1)) is amended by striking “sec-
13 tion 1a(4)” and inserting “section 1a(9)”.

14 (5) Section 5a(b)(2)(F) of the Commodity Ex-
15 change Act (7 U.S.C. 7a(b)(2)(F)) is amended by
16 striking “section 1a(4)” and inserting “section
17 1a(9)”.

18 (6) Section 5b(a) of the Commodity Exchange
19 Act (7 U.S.C. 7a–1(a)) is amended, in the matter
20 preceding paragraph (1), by striking “section 1a(9)”
21 and inserting “section 1a”.

22 (7) Section 5c(c)(2)(B) of the Commodity Ex-
23 change Act (7 U.S.C. 7a–2(c)(2)(B)) is amended by
24 striking “section 1a(4)” and inserting “section
25 1a(9)”.

1 (8) Section 6(g)(5)(B)(i) of the Securities Ex-
2 change Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is
3 amended—

4 (A) in subclause (I), by striking “section
5 1a(12)(B)(ii)” and inserting “section
6 1a(18)(B)(ii)”; and

7 (B) in subclause (II), by striking “section
8 1a(12)” and inserting “section 1a(18)”.

9 (9) The Legal Certainty for Bank Products Act
10 of 2000 (7 U.S.C. 27 et seq.) is amended—

11 (A) in section 402—

12 (i) in subsection (a)(7), by striking
13 “section 1a(20)” and inserting “section
14 1a”;

15 (ii) in subsection (b)(2), by striking
16 “section 1a(12)” and inserting “section
17 1a”;

18 (iii) in subsection (c), by striking
19 “section 1a(4)” and inserting “section 1a”;
20 and

21 (iv) in subsection (d)—

22 (I) in the matter preceding para-
23 graph (1), by striking “section 1a(4)”
24 and inserting “section 1a(9)”;

25 (II) in paragraph (1)—

1 (aa) in subparagraph (A),
2 by striking “section 1a(12)” and
3 inserting “section 1a”; and

4 (bb) in subparagraph (B),
5 by striking “section 1a(33)” and
6 inserting “section 1a”;

7 (III) in paragraph (2)—

8 (aa) in subparagraph (A),
9 by striking “section 1a(10)” and
10 inserting “section 1a”;

11 (bb) in subparagraph (B),
12 by striking “section
13 1a(12)(B)(ii)” and inserting
14 “section 1a(18)(B)(ii)”;

15 (cc) in subparagraph (C), by
16 striking “section 1a(12)” and in-
17 serting “section 1a(18)”;

18 (dd) in subparagraph (D),
19 by striking “section 1a(13)” and
20 inserting “section 1a”; and

21 (B) in section 404(1), by striking “section
22 1a(4)” and inserting “section 1a”.

1 **SEC. 722. JURISDICTION.**

2 (a) **EXCLUSIVE JURISDICTION.**—Section 2(a)(1)(A)
3 of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is
4 amended in the first sentence—

5 (1) by inserting “the Wall Street Transparency
6 and Accountability Act of 2010 (including an
7 amendment made by that Act) and” after “other-
8 wise provided in”;

9 (2) by striking “(c) through (i) of this section”
10 and inserting “(c) and (f)”;

11 (3) by striking “contracts of sale” and inserting
12 “swaps or contracts of sale”; and

13 (4) by striking “or derivatives transaction exe-
14 cution facility registered pursuant to section 5 or
15 5a” and inserting “pursuant to section 5”.

16 (b) **REGULATION OF SWAPS UNDER FEDERAL AND**
17 **STATE LAW.**—Section 12 of the Commodity Exchange Act
18 (7 U.S.C. 16) is amended by adding at the end the fol-
19 lowing:

20 “(h) **REGULATION OF SWAPS AS INSURANCE UNDER**
21 **STATE LAW.**—A swap—

22 “(1) shall not be considered to be insurance;
23 and

24 “(2) may not be regulated as an insurance con-
25 tract under the law of any State.”.

1 (c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS
2 TRADED ON AN ORGANIZED EXCHANGE.—Section
3 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C.
4 2(c)(2)(A)) is amended—

5 (1) in clause (i), by striking “or” at the end;

6 (2) by redesignating clause (ii) as clause (iii);

7 and

8 (3) by inserting after clause (i) the following:

9 “(ii) a swap; or”.

10 (d) APPLICABILITY.—Section 2 of the Commodity
11 Exchange Act (7 U.S.C. 2) (as amended by section
12 723(a)(3)) is amended by adding at the end the following:

13 “(i) APPLICABILITY.—The provisions of this Act re-
14 lating to swaps that were enacted by the Wall Street
15 Transparency and Accountability Act of 2010 (including
16 any rule prescribed or regulation promulgated under that
17 Act), shall not apply to activities outside the United States
18 unless those activities—

19 “(1) have a direct and significant connection
20 with activities in, or effect on, commerce of the
21 United States; or

22 “(2) contravene such rules or regulations as the
23 Commission may prescribe or promulgate as are nec-
24 essary or appropriate to prevent the evasion of any
25 provision of this Act that was enacted by the Wall

1 Street Transparency and Accountability Act of
2 2010.”.

3 **SEC. 723. CLEARING.**

4 (a) CLEARING REQUIREMENT.—

5 (1) IN GENERAL.—Section 2 of the Commodity
6 Exchange Act (7 U.S.C. 2) is amended—

7 (A) by striking subsections (d), (e), (g),
8 and (h); and

9 (B) by redesignating subsection (i) as sub-
10 section (g).

11 (2) SWAPS; LIMITATION ON PARTICIPATION.—

12 Section 2 of the Commodity Exchange Act (7 U.S.C.
13 2) (as amended by paragraph (1)) is amended by in-
14 serting after subsection (c) the following:

15 “(d) SWAPS.—Nothing in this Act (other than sub-
16 paragraphs (A), (B), (C), and (D) of subsection (a)(1),
17 subsections (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e),
18 2(h), 4(c), 4a, 4b, and 4b-1, subsections (a), (b), and (g)
19 of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l,
20 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, sub-
21 sections (c) and (d) of section 6, sections 6c, 6d, 8, 8a,
22 and 9, subsections (e)(2) and (f) of section 12, subsections
23 (a) and (b) of section 13, sections 17, 20, 21, and
24 22(a)(4), and any other provision of this Act that is appli-

1 cable to registered entities and Commission registrants)
 2 governs or applies to a swap.

3 “(e) LIMITATION ON PARTICIPATION.—It shall be
 4 unlawful for any person, other than an eligible contract
 5 participant, to enter into a swap unless the swap is en-
 6 tered into on, or subject to the rules of, a board of trade
 7 designated as a contract market under section 5.”.

8 (3) MANDATORY CLEARING OF SWAPS.—Section
 9 2 of the Commodity Exchange Act (7 U.S.C. 2) is
 10 amended by inserting after subsection (g) (as reded-
 11 icated by paragraph (1)(B)) the following:

12 “(h) CLEARING REQUIREMENT.—

13 “(1) SUBMISSION.—

14 “(A) IN GENERAL.—Except as provided in
 15 paragraphs (9) and (10), any person who is a
 16 party to a swap shall submit such swap for
 17 clearing to a derivatives clearing organization
 18 that is registered under this Act or a derivatives
 19 clearing organization that is exempt from reg-
 20 istration under section 5b(j) of this Act.

21 “(B) OPEN ACCESS.—The rules of a reg-
 22 istered derivatives clearing organization shall—

23 “(i) prescribe that all swaps with the
 24 same terms and conditions are economi-
 25 cally equivalent and may be offset with

1 each other within the derivatives clearing
2 organization; and

3 “(ii) provide for nondiscriminatory
4 clearing of a swap executed bilaterally or
5 on or through the rules of an unaffiliated
6 designated contract market or swap execu-
7 tion facility, subject to the requirements of
8 section 5(b).

9 “(2) COMMISSION APPROVAL.—

10 “(A) IN GENERAL.—A derivatives clearing
11 organization shall submit to the Commission for
12 prior approval any group, category, type, or
13 class of swaps that the derivatives clearing or-
14 ganization seeks to accept for clearing, which
15 submission the Commission shall make available
16 to the public.

17 “(B) DEADLINE.—The Commission shall
18 take final action on a request submitted pursu-
19 ant to subparagraph (A) not later than 90 days
20 after submission of the request, unless the de-
21 rivatives clearing organization submitting the
22 request agrees to an extension of the time limi-
23 tation established under this subparagraph.

24 “(C) APPROVAL.—The Commission shall
25 approve, unconditionally or subject to such

1 terms and conditions as the Commission deter-
2 mines to be appropriate, any request submitted
3 pursuant to subparagraph (A) if the Commis-
4 sion finds that the request is consistent with
5 section 5b(c)(2). The Commission shall not ap-
6 prove any such request if the Commission does
7 not make such finding.

8 “(D) RULES.—The Commission shall
9 adopt rules for a derivatives clearing organiza-
10 tion’s submission for approval, pursuant to this
11 paragraph, of any group, category, type, or
12 class of swaps that the derivative clearing orga-
13 nization seeks to accept for clearing.

14 “(3) STAY OF CLEARING REQUIREMENT.—At
15 any time after issuance of an approval pursuant to
16 paragraph (2):

17 “(A) REVIEW PROCESS.—The Commission,
18 on application of a counterparty to a swap or
19 on its own initiative, may stay the clearing re-
20 quirement of paragraph (1) until the Commis-
21 sion completes a review of the terms of the
22 swap, or the group, category, type, or class of
23 swaps, and the clearing arrangement.

24 “(B) DEADLINE.—The Commission shall
25 complete a review undertaken pursuant to sub-

1 paragraph (A) not later than 90 days after
2 issuance of the stay, unless the derivatives
3 clearing organization that clears the swap, or
4 the group, category, type, or class of swaps,
5 agrees to an extension of the time limitation es-
6 tablished under this subparagraph.

7 “(C) DETERMINATION.—Upon completion
8 of the review undertaken pursuant to subpara-
9 graph (A)—

10 “(i) the Commission may determine,
11 unconditionally or subject to such terms
12 and conditions as the Commission deter-
13 mines to be appropriate, that the swap, or
14 the group, category, type, or class of
15 swaps, must be cleared pursuant to this
16 subsection if the Commission finds that
17 such clearing—

18 “(I) is consistent with section
19 5b(c)(2); and

20 “(II) is otherwise in the public
21 interest, for the protection of inves-
22 tors, and consistent with the purposes
23 of this Act;

24 “(ii) the Commission may determine
25 that the clearing requirement of paragraph

1 (1) shall not apply to the swap, or the
2 group, category, type, or class of swaps; or
3 “(iii) if a determination is made that
4 the clearing requirement of paragraph (1)
5 shall no longer apply, then it shall still be
6 permissible to clear such swap, or the
7 group, category, type, or class of swaps.

8 “(D) RULES.—The Commission shall
9 adopt rules for reviewing, pursuant to this
10 paragraph, a derivatives clearing organization’s
11 clearing of a swap, or a group, category, type,
12 or class of swaps that the Commission has ac-
13 cepted for clearing.

14 “(4) SWAPS REQUIRED TO BE ACCEPTED FOR
15 CLEARING.—

16 “(A) RULEMAKING.—The Commission
17 shall adopt rules to further identify any group,
18 category, type, or class of swaps not submitted
19 for approval under paragraph (2) that the Com-
20 mission deems should be accepted for clearing.
21 In adopting such rules, the Commission shall
22 take into account the following factors:

23 “(i) The extent to which any of the
24 terms of the group, category, type, or class
25 of swaps, including price, are disseminated

1 to third parties or are referenced in other
2 agreements, contracts, or transactions.

3 “(ii) The volume of transactions in
4 the group, category, type, or class of
5 swaps.

6 “(iii) The extent to which the terms of
7 the group, category, type, or class of swaps
8 are similar to the terms of other agree-
9 ments, contracts, or transactions that are
10 cleared.

11 “(iv) Whether any differences in the
12 terms of the group, category, type, or class
13 of swaps, compared to other agreements,
14 contracts, or transactions that are cleared,
15 are of economic significance.

16 “(v) Whether a derivatives clearing
17 organization is prepared to clear the
18 group, category, type, or class of swaps
19 and such derivatives clearing organization
20 has in place effective risk management sys-
21 tems.

22 “(vi) Any other factors the Commis-
23 sion 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
7 subparagraph.

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 sub-
12 paragraph (D) to establish criteria for deter-
13 mining that a swap, or any group, category,
14 type, or 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)
19 may be made without regard to—

20 “(I) the notice and comment pro-
21 visions of section 553 of title 5,
22 United States Code; and

23 “(II) chapter 35 of title 44,
24 United States Code (commonly known
25 as the ‘Paperwork Reduction Act’).

1 “(ii) 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 INVES-
13 TIGATE AND TAKE CERTAIN ACTIONS.—To the
14 extent the Commission finds that a particular
15 swap, group, category, type, or class of swaps
16 would otherwise be subject to mandatory clear-
17 ing but no derivatives clearing organization has
18 listed the swap, group, category, type, or class
19 of swaps for clearing, 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 Com-
2 mission determines to be necessary and in
3 the public interest, which may include re-
4 quiring the retaining of adequate margin
5 or capital by parties to the swap, group,
6 category, 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
13 the 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
19 clearing organization; and

20 “(ii) affect the authority of the Com-
21 mission to enforce the open access provi-
22 sions of paragraph (1) with respect to a
23 swap, group, category, type, or class of
24 swaps that is listed for clearing by a de-
25 rivatives clearing 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
7 no 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 sub-
11 paragraph (A) not later than such time period
12 as the Commission may by rule or regulation
13 prescribe.

14 “(7) TRANSITION RULES.—

15 “(A) REPORTING TRANSITION RULES.—
16 Rules adopted by the Commission under this
17 section shall provide for the reporting of data,
18 as follows:

19 “(i) SWAPS ENTERED INTO BEFORE
20 DATE OF ENACTMENT OF THIS SUB-
21 SECTION.—Swaps entered into before the
22 date of the enactment of this subsection
23 shall be reported to a registered swap re-
24 pository or the Commission not later than

1 180 days after the effective date of this
2 subsection.

3 “(ii) SWAPS ENTERED INTO ON OR
4 AFTER DATE OF ENACTMENT OF THIS
5 SUBSECTION.—Swaps entered into on or
6 after such date of enactment shall be re-
7 ported to a registered swap repository or
8 the Commission not later than the later
9 of—

10 “(I) 90 days after such effective
11 date; or

12 “(II) such other time after enter-
13 ing into the swap as the Commission
14 may prescribe by rule or regulation.

15 “(B) CLEARING TRANSITION RULES.—

16 “(i) SWAPS ENTERED INTO BEFORE
17 THE DATE OF THE ENACTMENT OF THIS
18 SUBSECTION.—Swaps entered into before
19 the date of the enactment of this sub-
20 section are exempt from the clearing re-
21 quirements of this subsection if reported
22 pursuant to subparagraph (A)(i).

23 “(ii) SWAPS ENTERED INTO BEFORE
24 APPLICATION OF CLEARING REQUIRE-
25 MENT.—Swaps entered into before applica-

1 tion of the clearing requirement pursuant
2 to this subsection are exempt from the
3 clearing requirements of this subsection if
4 reported pursuant to subparagraph (A)(ii).

5 “(8) TRADE EXECUTION.—

6 “(A) IN GENERAL.—With respect to trans-
7 actions involving swaps subject to the clearing
8 requirement of paragraph (1), counterparties
9 shall—

10 “(i) execute the transaction on a
11 board of trade designated as a contract
12 market under section 5; or

13 “(ii) execute the transaction on a
14 swap execution facility registered under
15 section 5h or a swap execution facility that
16 is exempt from registration under section
17 5h(f) of this Act.

18 “(B) EXCEPTION.—The requirements of
19 clauses (i) and (ii) of subparagraph (A) shall
20 not apply if no board of trade or swap execution
21 facility makes the swap available to trade or a
22 swap transactions where a commercial end user
23 opts to use the clearing exemption under para-
24 graph (9).

1 “(9) REQUIRED EXEMPTION.—Subject to para-
2 graph (4), the Commission shall exempt a swap from
3 the requirements of paragraphs (1) and (8) and any
4 rules issued under this subsection, if no derivatives
5 clearing organization registered under this Act or no
6 derivatives clearing organization that is exempt from
7 registration under section 5b(j) of this Act will ac-
8 cept the swap from clearing.

9 “(10) END USER CLEARING EXEMPTION.—

10 “(A) DEFINITION OF COMMERCIAL END
11 USER.—

12 “(i) IN GENERAL.—In this paragraph,
13 the term ‘commercial end user’ means any
14 person other than a financial entity de-
15 scribed in clause (ii) who, as its primary
16 business activity, owns, uses, produces,
17 processes, manufactures, distributes, mer-
18 chandises, or markets goods, services, or
19 commodities (which shall include but not
20 be limited to coal, natural gas, electricity,
21 ethanol, crude oil, gasoline, propane, dis-
22 tillates, and other hydrocarbons) either in-
23 dividually 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
7 business of banking or financial in na-
8 ture, as defined in Section 4(k) of the
9 Bank Holding Company Act of 1956;

10 “(III) a person predominantly
11 engaged in activities that are financial
12 in nature;

13 “(IV) a commodity pool or a pri-
14 vate fund as defined in section 202(a)
15 of the Investment Advisers Act of
16 1940 (15 U.S.C. 80b–2(a)); or

17 “(V) a person that is registered
18 or required to be registered with the
19 Commission.

20 “(B) END USER CLEARING EXEMPTION.—

21 “(i) IN GENERAL.—Subject to clause
22 (ii), in the event that a swap is subject to
23 the mandatory clearing requirement under
24 paragraph (1), and 1 of the counterparties

1 to the swap is a commercial end user, that
2 counterparty—

3 “(I)(aa) may elect not to clear
4 the swap, as required under para-
5 graph (1); or

6 “(bb) may elect to require clear-
7 ing of the swap; and

8 “(II) if the end user makes an
9 election under subclause (I)(bb), shall
10 have the sole right to select the de-
11 rivatives clearing organization at
12 which the swap will be cleared.

13 “(ii) LIMITATION.—A commercial end
14 user may only make an election under
15 clause (i) if the end user is using the swap
16 to hedge its own commercial risk.

17 “(C) TREATMENT OF AFFILIATES.—

18 “(i) IN GENERAL.—An affiliate of a
19 commercial end user (including affiliate en-
20 tities predominantly engaged in providing
21 financing for the purchase of the merchan-
22 dise or manufactured goods of the com-
23 mercial end user) may make an election
24 under subparagraph (B)(i) only if the affil-
25 iate, acting on behalf of the commercial

1 end user and as an agent, uses the swap
2 to hedge or mitigate the commercial risk of
3 the commercial end user parent or other
4 affiliate of the commercial end user that is
5 not a financial entity.

6 “(ii) PROHIBITION RELATING TO CER-
7 TAIN AFFILIATES.—An affiliate of a com-
8 mercial end user shall not use the exemp-
9 tion under subparagraph (B) if the affil-
10 iate is—

11 “(I) a swap dealer;

12 “(II) a security-based swap deal-
13 er;

14 “(III) a major swap participant;

15 “(IV) a major security-based
16 swap participant;

17 “(V) an issuer that would be an
18 investment company, as defined in
19 section 3 of the Investment Company
20 Act of 1940 (15 U.S.C. 80a–3), but
21 for paragraph (1) or (7) of subsection
22 (c) of that Act (15 U.S.C. 80a–3(c));

23 “(VI) a commodity pool;

1 “(VII) a bank holding company
2 with over \$50,000,000,000 in consoli-
3 dated assets; or

4 “(VIII) an affiliate of any entity
5 described in subclauses (I) through
6 (VII).

7 “(D) ABUSE OF EXEMPTION.—The Com-
8 mission may prescribe such rules or issue inter-
9 pretations of the rules as the Commission deter-
10 mines to be necessary to prevent abuse of the
11 exemption described in subparagraph (B). The
12 Commission may also request information from
13 those entities claiming the clearing exemption
14 as necessary to prevent abuse of the exemption
15 described in subparagraph (B).

16 “(E) OPTION TO CLEAR.—

17 “(i) SWAPS REQUIRED TO BE
18 CLEARED ENTERED INTO WITH A FINAN-
19 CIAL ENTITY.—With respect to any swap
20 that is required to be cleared by a deriva-
21 tives clearing organization and entered into
22 by a swap dealer or a major swap partici-
23 pant with a financial entity, the financial
24 entity shall have the sole right to select the

1 derivatives clearing organization at which
2 the swap will be cleared.

3 “(ii) SWAPS NOT REQUIRED TO BE
4 CLEARED ENTERED INTO WITH A FINAN-
5 CIAL ENTITY OR COMMERCIAL END
6 USER.—With respect to any swap that is
7 not required to be cleared by a derivatives
8 clearing organization and entered into by a
9 swap dealer or a major swap participant
10 with a financial entity or commercial end
11 user, the financial entity or commercial
12 end user—

13 “(I) may elect to require clearing
14 of the swap; and

15 “(II) shall have the sole right to
16 select the derivatives clearing organi-
17 zation at which the swap will be
18 cleared.”.

19 (b) COMMODITY EXCHANGE ACT.—Section 2 of the
20 Commodity Exchange Act (7 U.S.C. 2) is amended by
21 adding at the end the following:

22 “(j) AUDIT COMMITTEE APPROVAL.—Exemptions
23 from the requirements of subsection (h)(2)(F) to clear a
24 swap and subsection (b) to trade a swap through a board
25 of trade or swap execution facility shall be available to

1 a counterparty that is an issuer of securities that are reg-
2 istered under section 12 of the Securities Exchange Act
3 of 1934 (15 U.S.C. 78l) or that is required to file reports
4 pursuant to section 15(d) of the Securities Exchange Act
5 of 1934 (15 U.S.C. 78o) only if the issuer's audit com-
6 mittee has reviewed and approved its decision to enter into
7 swaps that are subject to such exemptions.”.

8 (c) GRANDFATHER PROVISIONS.—

9 (1) LEGAL CERTAINTY FOR CERTAIN TRANS-
10 ACTIONS IN EXEMPT COMMODITIES.—Not later than
11 60 days after the date of enactment of this Act, a
12 person may submit to the Commodity Futures Trad-
13 ing Commission a petition to remain subject to sec-
14 tion 2(h) of the Commodity Exchange Act (7 U.S.C.
15 2(h)) (as in effect on the day before the date of en-
16 actment of this Act).

17 (2) CONSIDERATION; AUTHORITY OF COM-
18 MODITY FUTURES TRADING COMMISSION.—The
19 Commodity Futures Trading Commission—

20 (A) shall consider any petition submitted
21 under subparagraph (A) in a prompt manner;
22 and

23 (B) may allow a person to continue oper-
24 ating subject to section 2(h) of the Commodity
25 Exchange Act (7 U.S.C. 2(h)) (as in effect on

1 the day before the date of enactment of this
2 Act) for not longer than a 1-year period.

3 (3) AGRICULTURAL SWAPS.—

4 (A) IN GENERAL.—Except as provided in
5 paragraph (2), no person shall offer to enter
6 into, enter into, or confirm the execution of,
7 any swap in an agricultural commodity (as de-
8 fined by the Commodity Futures Trading Com-
9 mission).

10 (B) EXCEPTION.—Notwithstanding para-
11 graph (1), a person may offer to enter into,
12 enter into, or confirm the execution of, any
13 swap in an agricultural commodity pursuant to
14 section 4(c) of the Commodity Exchange Act (7
15 U.S.C. 6(c)) or any rule, regulation, or order
16 issued thereunder (including any rule, regula-
17 tion, or order in effect as of the date of enact-
18 ment of this Act) by the Commodity Futures
19 Trading Commission to allow swaps under such
20 terms and conditions as the Commission shall
21 prescribe.

22 (4) REQUIRED REPORTING.—If the exception
23 described in paragraph (2) applies, and there is no
24 facility that makes the swap available to trade, the
25 counterparties shall comply with any recordkeeping

1 and transaction reporting requirements that may be
2 prescribed by the Commission with respect to swaps
3 subject to the requirements of paragraph (1).

4 **SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREAT-**
5 **MENT.**

6 (a) SEGREGATION REQUIREMENTS FOR CLEARED
7 SWAPS.—Section 4d of the Commodity Exchange Act (7
8 U.S.C. 6d) (as amended by section 732) is amended by
9 adding at the end the following:

10 “(f) SWAPS.—

11 “(1) REGISTRATION REQUIREMENT.—It shall
12 be unlawful for any person to accept any money, se-
13 curities, or property (or to extend any credit in lieu
14 of money, securities, or property) from, for, or on
15 behalf of a swaps customer to margin, guarantee, or
16 secure a swap cleared by or through a derivatives
17 clearing organization (including money, securities, or
18 property accruing to the customer as the result of
19 such a swap), unless the person shall have registered
20 under this Act with the Commission as a futures
21 commission merchant, and the registration shall not
22 have expired nor been suspended nor revoked.

23 “(2) CLEARED SWAPS.—

24 “(A) SEGREGATION REQUIRED.—A futures
25 commission merchant shall treat and deal with

1 all money, securities, and property of any swaps
2 customer received to margin, guarantee, or se-
3 cure a swap cleared by or through a derivatives
4 clearing organization (including money, securi-
5 ties, or property accruing to the swaps cus-
6 tomer as the result of such a swap) as belong-
7 ing to the swaps customer.

8 “(B) COMMINGLING PROHIBITED.—Money,
9 securities, and property of a swaps customer
10 described in subparagraph (A) shall be sepa-
11 rately accounted for and shall not be commin-
12 gled with the funds of the futures commission
13 merchant or be used to margin, secure, or guar-
14 antee any trades or contracts of any swaps cus-
15 tomer or person other than the person for
16 whom the same are held.

17 “(3) EXCEPTIONS.—

18 “(A) USE OF FUNDS.—

19 “(i) IN GENERAL.—Notwithstanding
20 paragraph (2), money, securities, and
21 property of a swaps customer of a futures
22 commission merchant described in para-
23 graph (2) may, for convenience, be com-
24 mingled and deposited in the same 1 or
25 more accounts with any bank or trust com-

pany or with a derivatives clearing organization.

“(ii) WITHDRAWAL.—Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

“(B) COMMISSION ACTION.—Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customer of a futures commission merchant described in paragraph (2) may be commingled and deposited as provided in this section with any other money, securities, or property re-

1 ceived by the futures commission merchant and
2 required by the Commission to be separately ac-
3 counted for and treated and dealt with as be-
4 longing to the swaps customer of the futures
5 commission merchant.

6 “(4) PERMITTED INVESTMENTS.—Money de-
7 scribed in paragraph (2) may be invested in obliga-
8 tions of the United States, in general obligations of
9 any State or of any political subdivision of a State,
10 and in obligations fully guaranteed as to principal
11 and interest by the United States, or in any other
12 investment that the Commission may by rule or reg-
13 ulation prescribe, and such investments shall be
14 made in accordance with such rules and regulations
15 and subject to such conditions as the Commission
16 may prescribe.

17 “(5) COMMODITY CONTRACT.—A swap cleared
18 by or through a derivatives clearing organization
19 shall be considered to be a commodity contract as
20 such term is defined in section 761 of title 11,
21 United States Code, with regard to all money, secu-
22 rities, and property of any swaps customer received
23 by a futures commission merchant or a derivatives
24 clearing organization to margin, guarantee, or se-
25 cure the swap (including money, securities, or prop-

1 erty accruing to the customer as the result of the
2 swap).

3 “(6) PROHIBITION.—It shall be unlawful for
4 any person, including any derivatives clearing orga-
5 nization and any depository institution, that has re-
6 ceived any money, securities, or property for deposit
7 in a separate account or accounts as provided in
8 paragraph (2) to hold, dispose of, or use any such
9 money, securities, or property as belonging to the
10 depositing futures commission merchant or any per-
11 son other than the swaps customer of the futures
12 commission merchant.”.

13 (b) BANKRUPTCY TREATMENT OF CLEARED
14 SWAPS.—Section 761 of title 11, United States Code, is
15 amended—

16 (1) in paragraph (4), by striking subparagraph
17 (F) and inserting the following:

18 “(F)(i) any other contract, option, agree-
19 ment, or transaction that is similar to a con-
20 tract, option, agreement, or transaction referred
21 to in this paragraph; and

22 “(ii) with respect to a futures commission
23 merchant or a clearing organization, any other
24 contract, option, agreement, or transaction, in

1 each case, that is cleared by a clearing organi-
2 zation;” and

3 (2) in paragraph (9)(A)(i), by striking “the
4 commodity futures account” and inserting “a com-
5 modity contract account”.

6 (c) SEGREGATION REQUIREMENTS FOR UNCLEARED
7 SWAPS.—Section 4s of the Commodity Exchange Act (as
8 added by section 731) is amended by adding at the end
9 the following:

10 “(l) SEGREGATION REQUIREMENTS.—

11 “(1) SEGREGATION OF ASSETS HELD AS COL-
12 LATERAL IN UNCLEARED SWAP TRANSACTIONS.—

13 “(A) NOTIFICATION.—A swap dealer or
14 major swap participant shall be required to no-
15 tify the counterparty of the swap dealer or
16 major swap participant at the beginning of a
17 swap transaction that the counterparty has the
18 right to require segregation of the funds or
19 other property supplied to margin, guarantee,
20 or secure the obligations of the counterparty.

21 “(B) SEGREGATION AND MAINTENANCE OF
22 FUNDS.—At the request of a counterparty to a
23 swap that provides funds or other property to
24 a swap dealer or major swap participant to
25 margin, guarantee, or secure the obligations of

1 the counterparty, the swap dealer or major
2 swap participant shall—

3 “(i) segregate the funds or other
4 property for the benefit of the
5 counterparty; and

6 “(ii) in accordance with such rules
7 and regulations as the Commission may
8 promulgate, maintain the funds or other
9 property in a segregated account separate
10 from the assets and other interests of the
11 swap dealer or major swap participant.

12 “(2) APPLICABILITY.—The requirements de-
13 scribed in paragraph (1) shall—

14 “(A) apply only to a swap between a
15 counterparty and a swap dealer or major swap
16 participant that is not submitted for clearing to
17 a derivatives clearing organization; and

18 “(B)(i) not apply to variation margin pay-
19 ments; or

20 “(ii) not preclude any commercial arrange-
21 ment regarding—

22 “(I) the investment of segregated
23 funds or other property that may only be
24 invested in such investments as the Com-

1 mission may permit by rule or regulation;
2 and

3 “(II) the related allocation of gains
4 and losses resulting from any investment
5 of the segregated funds or other property.

6 “(3) USE OF INDEPENDENT THIRD-PARTY
7 CUSTODIANS.—The segregated account described in
8 paragraph (1) shall be—

9 “(A) carried by an independent third-party
10 custodian; and

11 “(B) designated as a segregated account
12 for and on behalf of the counterparty.

13 “(4) REPORTING REQUIREMENT.—If the
14 counterparty does not choose to require segregation
15 of the funds or other property supplied to margin,
16 guarantee, or secure the obligations of the
17 counterparty, the swap dealer or major swap partici-
18 pant shall report to the counterparty of the swap
19 dealer or major swap participant on a quarterly
20 basis that the back office procedures of the swap
21 dealer or major swap participant relating to margin
22 and collateral requirements are in compliance with
23 the agreement of the counterparties.”.

1 **SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.**

2 (a) REGISTRATION REQUIREMENT.—Section 5b of
3 the Commodity Exchange Act (7 U.S.C. 7a–1) is amended
4 by striking subsections (a) and (b) and inserting the fol-
5 lowing:

6 “(a) REGISTRATION REQUIREMENT.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), it shall be unlawful for a derivatives
9 clearing organization, directly or indirectly, to make
10 use of the mails or any means or instrumentality of
11 interstate commerce to perform the functions of a
12 derivatives clearing organization with respect to—

13 “(A) a contract of sale of a commodity for
14 future delivery (or an option on the contract of
15 sale) or option on a commodity, in each case,
16 unless the contract or option is—

17 “(i) excluded from this Act by sub-
18 section (a)(1)(C)(i), (c), or (f) of section 2;
19 or

20 “(ii) a security futures product
21 cleared by a clearing agency registered
22 with the Securities and Exchange Commis-
23 sion under the Securities Exchange Act of
24 1934 (15 U.S.C. 78a et seq.); or

25 “(B) a swap.

1 “(2) EXCEPTION.—Paragraph (1) shall not
2 apply to a derivatives clearing organization that is
3 registered with the Commission.

4 “(b) VOLUNTARY REGISTRATION.—A person that
5 clears 1 or more agreements, contracts, or transactions
6 that are not required to be cleared under this Act may
7 register with the Commission as a derivatives clearing or-
8 ganization.”.

9 (b) REGISTRATION FOR DEPOSITORY INSTITUTIONS
10 AND CLEARING AGENCIES; EXEMPTIONS; COMPLIANCE
11 OFFICER; ANNUAL REPORTS.—Section 5b of the Com-
12 modity Exchange Act (7 U.S.C. 7a–1) is amended by add-
13 ing at the end the following:

14 “(g) REQUIRED REGISTRATION FOR DEPOSITORY IN-
15 STITUTIONS AND CLEARING AGENCIES.—A person that is
16 required to be registered as a derivatives clearing organi-
17 zation under this section shall register with the Commis-
18 sion regardless of whether the person is also licensed as
19 a depository institution (as that term is defined in section
20 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)
21 or a clearing agency registered with the Securities and Ex-
22 change Commission under the Securities Exchange Act of
23 1934 (15 U.S.C. 78a et seq.).

24 “(h) EXISTING DEPOSITORY INSTITUTIONS AND
25 CLEARING AGENCIES.—

1 “(1) IN GENERAL.—A depository institution or
2 clearing agency registered with the Securities and
3 Exchange Commission under the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78a et seq.) that is
5 required to be registered as a derivatives clearing or-
6 ganization under this section is deemed to be reg-
7 istered under this section to the extent that, before
8 the date of enactment of this subsection—

9 “(A) the depository institution cleared
10 swaps as a multilateral clearing organization; or

11 “(B) the clearing agency cleared swaps.

12 “(2) CONVERSION OF DEPOSITORY INSTITU-
13 TIONS.—A depository institution to which this para-
14 graph applies may, by the vote of the shareholders
15 owning not less than 51 percent of the voting inter-
16 ests of the depository institution, be converted into
17 a State corporation, partnership, limited liability
18 company, or similar legal form pursuant to a plan
19 of conversion, if the conversion is not in contraven-
20 tion of applicable State law.

21 “(i) EXEMPTIONS.—The Commission may exempt,
22 conditionally or unconditionally, a derivatives clearing or-
23 ganization from registration under this section for the
24 clearing of swaps if the Commission determines that the
25 derivatives clearing organization is subject to comparable,

1 comprehensive supervision and regulation by the Securi-
2 ties and Exchange Commission or the appropriate govern-
3 ment authorities in the home country of the organization.
4 Such conditions may include, but are not limited to, re-
5 quiring that the derivatives clearing organization be avail-
6 able for inspection by the Commission and make available
7 all information requested by the Commission.

8 “(j) DESIGNATION OF CHIEF COMPLIANCE OFFI-
9 CER.—

10 “(1) IN GENERAL.—Each derivatives clearing
11 organization shall designate an individual to serve as
12 a chief compliance officer.

13 “(2) DUTIES.—The chief compliance officer
14 shall—

15 “(A) report directly to the board or to the
16 senior officer of the derivatives clearing organi-
17 zation;

18 “(B) review the compliance of the deriva-
19 tives clearing organization with respect to the
20 core principles described in subsection (c)(2);

21 “(C) in consultation with the board of the
22 derivatives clearing organization, a body per-
23 forming a function similar to the board of the
24 derivatives clearing organization, or the senior

1 officer of the derivatives clearing organization,
2 resolve any conflicts of interest that may arise;

3 “(D) be responsible for administering each
4 policy and procedure that is required to be es-
5 tablished pursuant to this section;

6 “(E) ensure compliance with this Act (in-
7 cluding regulations) relating to agreements,
8 contracts, or transactions, including each rule
9 prescribed by the Commission under this sec-
10 tion;

11 “(F) establish procedures for the remedi-
12 ation of noncompliance issues identified by the
13 compliance officer through any—

14 “(i) compliance office review;

15 “(ii) look-back;

16 “(iii) internal or external audit find-
17 ing;

18 “(iv) self-reported error; or

19 “(v) validated complaint; and

20 “(G) establish and follow appropriate pro-
21 cedures for the handling, management response,
22 remediation, retesting, and closing of non-
23 compliance issues.

24 “(3) ANNUAL REPORTS.—

1 “(A) IN GENERAL.—In accordance with
2 rules prescribed by the Commission, the chief
3 compliance officer shall annually prepare and
4 sign a report that contains a description of—

5 “(i) the compliance of the derivatives
6 clearing organization of the compliance of-
7 ficer with respect to this Act (including
8 regulations); and

9 “(ii) each policy and procedure of the
10 derivatives clearing organization of the
11 compliance officer (including the code of
12 ethics and conflict of interest policies of
13 the derivatives clearing organization).

14 “(B) REQUIREMENTS.—A compliance re-
15 port under subparagraph (A) shall—

16 “(i) accompany each appropriate fi-
17 nancial report of the derivatives clearing
18 organization that is required to be fur-
19 nished to the Commission pursuant to this
20 section; and

21 “(ii) include a certification that, under
22 penalty of law, the compliance report is ac-
23 curate and complete.”.

24 (c) CORE PRINCIPLES FOR DERIVATIVES CLEARING
25 ORGANIZATIONS.—Section 5b(c) of the Commodity Ex-

1 change Act (7 U.S.C. 7a-1(c)) is amended by striking
2 paragraph (2) and inserting the following:

3 “(2) CORE PRINCIPLES FOR DERIVATIVES
4 CLEARING ORGANIZATIONS.—

5 “(A) COMPLIANCE.—

6 “(i) IN GENERAL.—To be registered
7 and to maintain registration as a deriva-
8 tives clearing organization, a derivatives
9 clearing organization shall comply with
10 each core principle described in this para-
11 graph and any requirement that the Com-
12 mission may impose by rule or regulation
13 pursuant to section 8a(5).

14 “(ii) DISCRETION OF DERIVATIVES
15 CLEARING ORGANIZATION.—Subject to any
16 rule or regulation prescribed by the Com-
17 mission, a derivatives clearing organization
18 shall have reasonable discretion in estab-
19 lishing the manner by which the derivatives
20 clearing organization complies with each
21 core principle described in this paragraph.

22 “(B) FINANCIAL RESOURCES.—

23 “(i) IN GENERAL.—Each derivatives
24 clearing organization shall have adequate
25 financial, operational, and managerial re-

1 sources, as determined by the Commission,
2 to discharge each responsibility of the de-
3 rivatives clearing organization.

4 “(ii) MINIMUM AMOUNT OF FINAN-
5 CIAL RESOURCES.—Each derivatives clear-
6 ing organization shall possess financial re-
7 sources that, at a minimum, exceed the
8 total amount that would—

9 “(I) enable the organization to
10 meet its financial obligations to its
11 members and participants notwith-
12 standing a default by the member or
13 participant creating the largest finan-
14 cial exposure for that organization in
15 extreme but plausible market condi-
16 tions; and

17 “(II) enable the derivatives clear-
18 ing organization to cover the oper-
19 ating costs of the derivatives clearing
20 organization for a period of 1 year (as
21 calculated on a rolling basis).

22 “(C) PARTICIPANT AND PRODUCT ELIGI-
23 BILITY.—

24 “(i) IN GENERAL.—Each derivatives
25 clearing organization shall establish—

1 “(I) appropriate admission and
2 continuing eligibility standards (in-
3 cluding sufficient financial resources
4 and operational capacity to meet obli-
5 gations arising from participation in
6 the derivatives clearing organization)
7 for members of, and participants in,
8 the derivatives clearing organization;
9 and

10 “(II) appropriate standards for
11 determining the eligibility of agree-
12 ments, contracts, and transactions
13 submitted to the derivatives clearing
14 organization for clearing.

15 “(ii) REQUIRED PROCEDURES.—Each
16 derivatives clearing organization shall es-
17 tablish and implement procedures to verify,
18 on an ongoing basis, the compliance of
19 each participation and membership re-
20 quirement of the derivatives clearing orga-
21 nization.

22 “(iii) REQUIREMENTS.—The partici-
23 pation and membership requirements of
24 each derivatives clearing organization
25 shall—

1 “(I) be objective;

2 “(II) be publicly disclosed; and

3 “(III) permit fair and open ac-
4 cess.

5 “(D) RISK MANAGEMENT.—

6 “(i) IN GENERAL.—Each derivatives
7 clearing organization shall ensure that the
8 derivatives clearing organization possesses
9 the ability to manage the risks associated
10 with discharging the responsibilities of the
11 derivatives clearing organization through
12 the use of appropriate tools and proce-
13 dures.

14 “(ii) MEASUREMENT OF CREDIT EX-
15 POSURE.—Each derivatives clearing orga-
16 nization shall—

17 “(I) not less than once during
18 each business day of the derivatives
19 clearing organization, measure the
20 credit exposures of the derivatives
21 clearing organization to each member
22 and participant of the derivatives
23 clearing organization; and

24 “(II) monitor each exposure de-
25 scribed in subclause (I) periodically

1 during the business day of the deriva-
2 tives clearing organization.

3 “(iii) LIMITATION OF EXPOSURE TO
4 POTENTIAL LOSSES FROM DEFAULTS.—
5 Each derivatives clearing organization,
6 through margin requirements and other
7 risk control mechanisms, shall limit the ex-
8 posure of the derivatives clearing organiza-
9 tion to potential losses from defaults by
10 members and participants of the deriva-
11 tives clearing organization to ensure that—

12 “(I) the operations of the deriva-
13 tives clearing organization would not
14 be disrupted; and

15 “(II) nondefaulting members or
16 participants would not be exposed to
17 losses that nondefaulting members or
18 participants cannot anticipate or con-
19 trol.

20 “(iv) MARGIN REQUIREMENTS.—The
21 margin required from each member and
22 participant of a derivatives clearing organi-
23 zation shall be sufficient to cover potential
24 exposures in normal market conditions.

1 “(v) REQUIREMENTS REGARDING
2 MODELS AND PARAMETERS.—Each model
3 and parameter used in setting margin re-
4 quirements under clause (iv) shall be—

5 “(I) risk-based; and

6 “(II) reviewed on a regular basis.

7 “(E) SETTLEMENT PROCEDURES.—Each
8 derivatives clearing organization shall—

9 “(i) complete money settlements on a
10 timely basis (but not less frequently than
11 once each business day);

12 “(ii) employ money settlement ar-
13 rangements to eliminate or strictly limit
14 the exposure of the derivatives clearing or-
15 ganization to settlement bank risks (in-
16 cluding credit and liquidity risks from the
17 use of banks to effect money settlements);

18 “(iii) ensure that money settlements
19 are final when effected;

20 “(iv) maintain an accurate record of
21 the flow of funds associated with each
22 money settlement;

23 “(v) possess the ability to comply with
24 each term and condition of any permitted

1 netting or offset arrangement with any
2 other clearing organization;

3 “(vi) regarding physical settlements,
4 establish rules that clearly state each obli-
5 gation of the derivatives clearing organiza-
6 tion with respect to physical deliveries; and

7 “(vii) ensure that each risk arising
8 from an obligation described in clause (vi)
9 is identified and managed.

10 “(F) TREATMENT OF FUNDS.—

11 “(i) REQUIRED STANDARDS AND PRO-
12 CEDURES.—Each derivatives clearing orga-
13 nization shall establish standards and pro-
14 cedures that are designed to protect and
15 ensure the safety of member and partici-
16 pant funds and assets.

17 “(ii) HOLDING OF FUNDS AND AS-
18 SETS.—Each derivatives clearing organiza-
19 tion shall hold member and participant
20 funds and assets in a manner by which to
21 minimize the risk of loss or of delay in the
22 access by the derivatives clearing organiza-
23 tion to the assets and funds.

24 “(iii) PERMISSIBLE INVESTMENTS.—
25 Funds and assets invested by a derivatives

1 clearing organization shall be held in in-
2 struments with minimal credit, market,
3 and liquidity risks.

4 “(G) DEFAULT RULES AND PROCE-
5 DURES.—

6 “(i) IN GENERAL.—Each derivatives
7 clearing organization shall have rules and
8 procedures designed to allow for the effi-
9 cient, fair, and safe management of events
10 during which members or participants—

11 “(I) become insolvent; or

12 “(II) otherwise default on the ob-
13 ligations of the members or partici-
14 pants to the derivatives clearing orga-
15 nization.

16 “(ii) DEFAULT PROCEDURES.—Each
17 derivatives clearing organization shall—

18 “(I) clearly state the default pro-
19 cedures of the derivatives clearing or-
20 ganization;

21 “(II) make publicly available the
22 default rules of the derivatives clear-
23 ing organization; and

1 “(III) ensure that the derivatives
2 clearing organization may take timely
3 action—

4 “(aa) to contain losses and
5 liquidity pressures; and

6 “(bb) to continue meeting
7 each obligation of the derivatives
8 clearing organization.

9 “(H) RULE ENFORCEMENT.—Each deriva-
10 tives clearing organization shall—

11 “(i) maintain adequate arrangements
12 and resources for—

13 “(I) the effective monitoring and
14 enforcement of compliance with the
15 rules of the derivatives clearing orga-
16 nization; and

17 “(II) the resolution of disputes;

18 “(ii) have the authority and ability to
19 discipline, limit, suspend, or terminate the
20 activities of a member or participant due
21 to a violation by the member or participant
22 of any rule of the derivatives clearing orga-
23 nization; and

24 “(iii) report to the Commission re-
25 garding rule enforcement activities and

1 sanctions imposed against members and
2 participants as provided in clause (ii).

3 “(I) SYSTEM SAFEGUARDS.—Each deriva-
4 tives clearing organization shall—

5 “(i) establish and maintain a program
6 of risk analysis and oversight to identify
7 and minimize sources of operational risk
8 through the development of appropriate
9 controls and procedures, and automated
10 systems, that are reliable, secure, and have
11 adequate scalable capacity;

12 “(ii) establish and maintain emer-
13 gency procedures, backup facilities, and a
14 plan for disaster recovery that allows for—

15 “(I) the timely recovery and re-
16 sumption of operations of the deriva-
17 tives clearing organization; and

18 “(II) the fulfillment of each obli-
19 gation and responsibility of the de-
20 rivatives clearing organization; and

21 “(iii) periodically conduct tests to
22 verify that the backup resources of the de-
23 rivatives clearing organization are suffi-
24 cient to ensure daily processing, clearing,
25 and settlement.

1 “(J) REPORTING.—Each derivatives clear-
2 ing organization shall provide to the Commis-
3 sion all information that the Commission deter-
4 mines to be necessary to conduct oversight of
5 the derivatives clearing organization.

6 “(K) RECORDKEEPING.—Each derivatives
7 clearing organization shall maintain records of
8 all activities related to the business of the de-
9 rivatives clearing organization as a derivatives
10 clearing organization—

11 “(i) in a form and manner that is ac-
12 ceptable to the Commission; and

13 “(ii) for a period of not less than 5
14 years.

15 “(L) PUBLIC INFORMATION.—

16 “(i) IN GENERAL.—Each derivatives
17 clearing organization shall provide to mar-
18 ket participants sufficient information to
19 enable the market participants to identify
20 and evaluate accurately the risks and costs
21 associated with using the services of the
22 derivatives clearing organization.

23 “(ii) AVAILABILITY OF INFORMA-
24 TION.—Each derivatives clearing organiza-
25 tion shall make information concerning the

1 rules and operating procedures governing
2 the clearing and settlement systems of the
3 derivatives clearing organization available
4 to market participants.

5 “(iii) PUBLIC DISCLOSURE.—Each de-
6 rivatives clearing organization shall dis-
7 close publicly and to the Commission infor-
8 mation concerning—

9 “(I) the terms and conditions of
10 each contract, agreement, and other
11 transaction cleared and settled by the
12 derivatives clearing organization;

13 “(II) each clearing and other fee
14 that the derivatives clearing organiza-
15 tion charges the members and partici-
16 pants of the derivatives clearing orga-
17 nization;

18 “(III) the margin-setting method-
19 ology, and the size and composition,
20 of the financial resource package of
21 the derivatives clearing organization;

22 “(IV) daily settlement prices, vol-
23 ume, and open interest for each con-
24 tract settled or cleared by the deriva-
25 tives clearing organization; and

1 “(V) any other matter relevant to
2 participation in the settlement and
3 clearing activities of the derivatives
4 clearing organization.

5 “(M) INFORMATION-SHARING.—Each de-
6 rivatives clearing organization shall—

7 “(i) enter into, and abide by the terms
8 of, each appropriate and applicable domes-
9 tic and international information-sharing
10 agreement; and

11 “(ii) use relevant information obtained
12 from each agreement described in clause
13 (i) in carrying out the risk management
14 program of the derivatives clearing organi-
15 zation.

16 “(N) ANTITRUST CONSIDERATIONS.—Un-
17 less necessary or appropriate to achieve the
18 purposes of this Act, a derivatives clearing or-
19 ganization shall not—

20 “(i) adopt any rule or take any action
21 that results in any unreasonable restraint
22 of trade; or

23 “(ii) impose any material anticompeti-
24 tive burden.

1 “(O) GOVERNANCE FITNESS STAND-
2 ARDS.—

3 “(i) GOVERNANCE ARRANGEMENTS.—
4 Each derivatives clearing organization shall
5 establish governance arrangements that
6 are transparent—

7 “(I) to fulfill public interest re-
8 quirements; and

9 “(II) to support the objectives of
10 owners and participants.

11 “(ii) FITNESS STANDARDS.—Each de-
12 rivatives clearing organization shall estab-
13 lish and enforce appropriate fitness stand-
14 ards for—

15 “(I) directors;

16 “(II) members of any disciplinary
17 committee;

18 “(III) members of the derivatives
19 clearing organization;

20 “(IV) any other individual or en-
21 tity with direct access to the settle-
22 ment or clearing activities of the de-
23 rivatives clearing organization; and

1 “(V) any party affiliated with
2 any individual or entity described in
3 this clause.

4 “(P) CONFLICTS OF INTEREST.—Each de-
5 rivatives clearing organization shall—

6 “(i) establish and enforce rules to
7 minimize conflicts of interest in the deci-
8 sion-making process of the derivatives
9 clearing organization; and

10 “(ii) establish a process for resolving
11 conflicts of interest described in clause (i).

12 “(Q) COMPOSITION OF GOVERNING
13 BOARDS.—Each derivatives clearing organiza-
14 tion shall ensure that the composition of the
15 governing board or committee of the derivatives
16 clearing organization includes market partici-
17 pants.

18 “(R) LEGAL RISK.—Each derivatives clear-
19 ing organization shall have a well-founded,
20 transparent, and enforceable legal framework
21 for each aspect of the activities of the deriva-
22 tives clearing organization.

23 “(S) MODIFICATION OF CORE PRIN-
24 CIPLES.—The Commission may conform the
25 core principles established in this paragraph to

1 reflect evolving United States and international
2 standards.”.

3 (d) CONFLICTS OF INTEREST.—The Commodity Fu-
4 tures Trading Commission shall adopt rules mitigating
5 conflicts of interest in connection with the conduct of busi-
6 ness by a swap dealer or a major swap participant with
7 a derivatives clearing organization, board of trade, or a
8 swap execution facility that clears or trades swaps in
9 which the swap dealer or major swap participant has a
10 material debt or material equity investment.

11 (e) REPORTING REQUIREMENTS.—Section 5b of the
12 Commodity Exchange Act (7 U.S.C. 7a–1) (as amended
13 by subsection (b)) is amended by adding at the end the
14 following:

15 “(k) REPORTING REQUIREMENTS.—

16 “(1) DUTY OF DERIVATIVES CLEARING ORGANI-
17 ZATIONS.—Each derivatives clearing organization
18 that clears swaps shall provide to the Commission all
19 information that is determined by the Commission to
20 be necessary to perform each responsibility of the
21 Commission under this Act.

22 “(2) DATA COLLECTION AND MAINTENANCE
23 REQUIREMENTS.—The Commission shall adopt data
24 collection and maintenance requirements for swaps

1 cleared by derivatives clearing organizations that are
2 comparable to the corresponding requirements for—

3 “(A) swaps data reported to swap data re-
4 positories; and

5 “(B) swaps traded on swap execution fa-
6 cilities.

7 “(3) REPORTS ON SECURITY-BASED SWAP
8 AGREEMENTS TO BE SHARED WITH THE SECURITIES
9 AND EXCHANGE COMMISSION.—

10 “(A) IN GENERAL.—A derivatives clearing
11 organization that clears security-based swap
12 agreements (as defined in section 3(a)(79) of
13 the Securities Exchange Act) shall, upon re-
14 quest, make available to the Securities and Ex-
15 change Commission all books and records relat-
16 ing to such security-based swap agreements,
17 consistent with the confidentiality and disclo-
18 sure requirements of section 8.

19 “(B) JURISDICTION.—Nothing in this
20 paragraph shall affect the exclusive jurisdiction
21 of the Commission to prescribe recordkeeping
22 and reporting requirements for a derivatives
23 clearing organization that is registered with the
24 Commission.”

1 “(4) INFORMATION SHARING.—Subject to sec-
2 tion 8, and upon request, the Commission shall
3 share information collected under paragraph (2)
4 with—

5 “(A) the Board;

6 “(B) the Securities and Exchange Commis-
7 sion;

8 “(C) each appropriate prudential regulator;

9 “(D) the Financial Stability Oversight
10 Council;

11 “(E) the Department of Justice; and

12 “(F) any other person that the Commis-
13 sion determines to be appropriate, including—

14 “(i) foreign financial supervisors (in-
15 cluding foreign futures authorities);

16 “(ii) foreign central banks; and

17 “(iii) foreign ministries.

18 “(5) CONFIDENTIALITY AND INDEMNIFICATION
19 AGREEMENT.—Before the Commission may share in-
20 formation with any entity described in paragraph
21 (4)—

22 “(A) the Commission shall receive a writ-
23 ten agreement from each entity stating that the
24 entity shall abide by the confidentiality require-
25 ments described in section 8 relating to the in-

1 formation on swap transactions that is pro-
2 vided; and

3 “(B) each entity shall agree to indemnify
4 the Commission for any expenses arising from
5 litigation relating to the information provided
6 under section 8.

7 “(6) PUBLIC INFORMATION.—Each derivatives
8 clearing organization that clears swaps shall provide
9 to the Commission (including any designee of the
10 Commission) information under paragraph (2) in
11 such form and at such frequency as is required by
12 the Commission to comply with the public reporting
13 requirements contained in section 2(a)(13).”.

14 (f) PUBLIC DISCLOSURE.—Section 8(e) of the Com-
15 modity Exchange Act (7 U.S.C. 12(e)) is amended in the
16 last sentence—

17 (1) by inserting “, central bank and min-
18 istries,” after “department” each place it appears;
19 and

20 (2) by striking “. is a party.” and inserting “,
21 is a party.”.

22 (g) LEGAL CERTAINTY FOR IDENTIFIED BANKING
23 PRODUCTS.—

1 (1) REPEALS.—The Legal Certainty for Bank
2 Products Act of 2000 (7 U.S.C. 27 et seq.) is
3 amended—

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”
12 and inserting “in the case of a hy-
13 brid”;

14 (II) by striking “; or” and insert-
15 ing a period; and

16 (III) by striking paragraph (2);

17 (ii) by striking subsection (b); and

18 (iii) by redesignating subsection (c) as
19 subsection (b).

20 (2) LEGAL CERTAINTY FOR BANK PRODUCTS
21 ACT OF 2000.—Section 403 of the Legal Certainty
22 for Bank Products Act of 2000 (7 U.S.C. 27a) is
23 amended to read as follows:

1 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

2 “(a) EXCLUSION.—Except as provided in subsection
3 (b) or (c)—

4 “(1) the Commodity Exchange Act (7 U.S.C. 1
5 et seq.) shall not apply to, and the Commodity Fu-
6 tures Trading Commission shall not exercise regu-
7 latory authority under the Commodity Exchange Act
8 (7 U.S.C. 1 et seq.) with respect to, an identified
9 banking product; and

10 “(2) the definitions of ‘security-based swap’ in
11 section 3(a)(68) of the Securities Exchange Act of
12 1934 and ‘security-based swap agreement’ in section
13 3(a)(79) of the Securities Exchange Act of 1934 do
14 not include any identified bank product.

15 “(b) EXCEPTION.—An appropriate Federal banking
16 agency may except an identified banking product of a
17 bank under its regulatory jurisdiction from the exclusion
18 in subsection (a) if the agency determines, in consultation
19 with the Commodity Futures Trading Commission and the
20 Securities and Exchange Commission, that the product—

21 “(1) would meet the definition of a ‘swap’
22 under section 1a(46) of the Commodity Exchange
23 Act (7 U.S.C. 1a) or a ‘security-based swap’ under
24 that section 3(a)(68) of the Securities Exchange Act
25 of 1934; and

1 “(2) has become known to the trade as a swap
2 or security-based swap, or otherwise has been struc-
3 tured as an identified banking product for the pur-
4 pose of evading the provisions of the Commodity Ex-
5 change Act (7 U.S.C. 1 et seq.), the Securities Act
6 of 1933 (15 U.S.C. 77a et seq.), or the Securities
7 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

8 “(c) EXCEPTION.—The exclusions in subsection (a)
9 shall not apply to an identified bank product that—

10 “(1) is a product of a bank that is not under
11 the regulatory jurisdiction of an appropriate Federal
12 banking agency;

13 “(2) meets the definition of swap in section
14 1a(46) of the Commodity Exchange Act or security-
15 based swap in section 3(a)(68) of the Securities Ex-
16 change Act of 1934; and

17 “(3) has become known to the trade as a swap
18 or security-based swap, or otherwise has been struc-
19 tured as an identified banking product for the pur-
20 pose of evading the provisions of the Commodity Ex-
21 change Act (7 U.S.C. 1 et seq.), the Securities Act
22 of 1933 (15 U.S.C. 77a et seq.), or the Securities
23 Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

1 **SEC. 726. RULEMAKING ON CONFLICT OF INTEREST.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 date of enactment of the Wall Street Transparency and
4 Accountability Act of 2010, the Commodity Futures Trad-
5 ing Commission shall determine whether to adopt rules to
6 establish limits on the control of any derivatives clearing
7 organization that clears swaps, or swap execution facility
8 or board of trade designated as a contract market that
9 posts swaps or makes swaps available for trading, by a
10 bank holding company (as defined in section 2 of the Bank
11 Holding Company Act of 1956 (12 U.S.C. 1841)) with
12 total consolidated assets of \$50,000,000,000 or more, a
13 nonbank financial company (as defined in section 102) su-
14 pervised by the Board of Governors of the Federal Reserve
15 System, an affiliate of such a bank holding company or
16 nonbank financial company, a swap dealer, major swap
17 participant, or associated person of a swap dealer or major
18 swap participant.

19 (b) PURPOSES.—The Commission shall adopt rules if
20 it determines, after the review described in subsection (a),
21 that such rules are necessary or appropriate to improve
22 the governance of, or to mitigate systemic risk, promote
23 competition, or mitigate conflicts of interest in connection
24 with a swap dealer or major swap participant's conduct
25 of business with, a derivatives clearing organization, con-
26 tract market, or swap execution facility that clears or

1 posts swaps or makes swaps available for trading and in
2 which such swap dealer or major swap participant has a
3 material debt or equity investment.

4 **SEC. 727. PUBLIC REPORTING OF SWAP TRANSACTION**
5 **DATA.**

6 Section 2(a) of the Commodity Exchange Act (7
7 U.S.C. 2(a)) is amended by adding at the end the fol-
8 lowing:

9 “(13) PUBLIC AVAILABILITY OF SWAP TRANS-
10 ACTION DATA.—

11 “(A) DEFINITION OF REAL-TIME PUBLIC
12 REPORTING.—In this paragraph, the term ‘real-
13 time public reporting’ means to report data re-
14 lating to a swap transaction as soon as techno-
15 logically practicable after the time at which the
16 swap transaction has been executed.

17 “(B) PURPOSE.—The purpose of this sec-
18 tion is to authorize the Commission to make
19 swap transaction and pricing data available to
20 the public in such form and at such times as
21 the Commission determines appropriate to en-
22 hance price discovery.

23 “(C) GENERAL RULE.—The Commission is
24 authorized and required to provide by rule for

1 the public availability of swap transaction and
2 pricing data as follows:

3 “(i) With respect to those swaps that
4 are subject to the mandatory clearing re-
5 quirement described in subsection (h)(2)
6 (including those swaps that are exempted
7 from the requirement pursuant to sub-
8 section (h)(10)), the Commission shall re-
9 quire real-time public reporting for such
10 transactions.

11 “(ii) With respect to those swaps that
12 are not subject to the mandatory clearing
13 requirement described in subsection (h)(2),
14 but are cleared at a registered derivatives
15 clearing organization, the Commission
16 shall require real-time public reporting for
17 such transactions.

18 “(iii) With respect to swaps that are
19 not cleared at a registered derivatives
20 clearing organization and which are re-
21 ported to a swap data repository or the
22 Commission under subsection (h), the
23 Commission shall make available to the
24 public, in a manner that does not disclose
25 the business transactions and market posi-

1 tions of any person, aggregate data on
2 such swap trading volumes and positions.

3 “(iv) With respect to swaps that are
4 exempt from the requirements of sub-
5 section (h)(1), pursuant to subsection
6 (h)(10), the Commission shall require real-
7 time public reporting for such transactions.

8 “(D) REGISTERED ENTITIES AND PUBLIC
9 REPORTING.—The Commission may require
10 registered entities to publicly disseminate the
11 swap transaction and pricing data required to
12 be reported under this paragraph.

13 “(E) RULEMAKING REQUIRED.—With re-
14 spect to the rule providing for the public avail-
15 ability of transaction and pricing data for
16 swaps described in clauses (i) and (ii) of sub-
17 paragraph (C), the rule promulgated by the
18 Commission shall contain provisions—

19 “(i) to ensure such information does
20 not identify the participants;

21 “(ii) to specify the criteria for deter-
22 mining what constitutes a large notional
23 swap transaction (block trade) for par-
24 ticular markets and contracts;

1 “(iii) to specify the appropriate time
2 delay for reporting large notional swap
3 transactions (block trades) to the public;
4 and

5 “(iv) that take into account whether
6 the public disclosure will materially reduce
7 market liquidity.

8 “(F) TIMELINESS OF REPORTING.—Par-
9 ties to a swap (including agents of the parties
10 to a swap) shall be responsible for reporting
11 swap transaction information to the appropriate
12 registered entity in a timely manner as may be
13 prescribed by the Commission.

14 “(14) SEMIANNUAL AND ANNUAL PUBLIC RE-
15 PORTING OF AGGREGATE SWAP DATA.—

16 “(A) IN GENERAL.—In accordance with
17 subparagraph (B), the Commission shall issue a
18 written report on a semiannual and annual
19 basis to make available to the public informa-
20 tion relating to—

21 “(i) the trading and clearing in the
22 major swap categories; and

23 “(ii) the market participants and de-
24 velopments in new products.

1 “(B) USE; CONSULTATION.—In preparing
2 a report under subparagraph (A), the Commis-
3 sion shall—

4 “(i) use information from swap data
5 repositories and derivatives clearing orga-
6 nizations; 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 **SEC. 728. SWAP DATA REPOSITORIES.**

12 The Commodity Exchange Act is amended by insert-
13 ing after section 20 (7 U.S.C. 24) the following:

14 **“SEC. 21. SWAP DATA REPOSITORIES.**

15 “(a) REGISTRATION REQUIREMENT.—

16 “(1) IN GENERAL.—It shall be unlawful for any
17 person, unless registered with the Commission, di-
18 rectly or indirectly to make use of the mails or any
19 means or instrumentality of interstate commerce to
20 perform the functions of a swap data repository.

21 “(2) INSPECTION AND EXAMINATION.—Each
22 registered swap data repository shall be subject to
23 inspection and examination by any representative of
24 the Commission.

25 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

1 “(A) IN GENERAL.—To be registered, and
 2 maintain registration, as a swap data reposi-
 3 tory, the swap data repository shall comply
 4 with—

5 “(i) the core principles described in
 6 this subsection; and

7 “(ii) any requirement that the Com-
 8 mission may impose by rule or regulation
 9 pursuant to section 8a(5).

10 “(B) REASONABLE DISCRETION OF SWAP
 11 DATA REPOSITORY.—Unless otherwise deter-
 12 mined by the Commission by rule or regulation,
 13 a swap data repository described in subpara-
 14 graph (A) shall have reasonable discretion in
 15 establishing the manner in which the swap data
 16 repository complies with the core principles de-
 17 scribed in this subsection.

18 “(b) STANDARD SETTING.—

19 “(1) DATA IDENTIFICATION.—The Commission
 20 shall prescribe standards that specify the data ele-
 21 ments for each swap that shall be collected and
 22 maintained by each registered swap data repository.

23 “(2) DATA COLLECTION AND MAINTENANCE.—
 24 The Commission shall prescribe data collection and

1 data maintenance standards for swap data reposi-
2 tories.

3 “(3) COMPARABILITY.—The standards pre-
4 scribed by the Commission under this subsection
5 shall be comparable to the data standards imposed
6 by the Commission on derivatives clearing organiza-
7 tions in connection with their clearing of swaps.

8 “(4) SHARING OF INFORMATION WITH SECURI-
9 TIES AND EXCHANGE COMMISSION.—Registered
10 swap data repositories shall make available to the
11 Securities and Exchange Commission, upon request,
12 all books and records relating to security-based swap
13 agreements that are maintained by such swap data
14 repository, consistent with the confidentiality and
15 disclosure requirements of section 8. Nothing in this
16 paragraph shall affect the exclusive jurisdiction of
17 the Commission to prescribe recordkeeping and re-
18 porting requirements for a swap data repository that
19 is registered with the Commission.

20 “(c) DUTIES.—A swap data repository shall—

21 “(1) accept data prescribed by the Commission
22 for each swap under subsection (b);

23 “(2) confirm with both counterparties to the
24 swap the accuracy of the data that was submitted;

1 “(3) maintain the data described in paragraph
2 (1) in such form, in such manner, and for such pe-
3 riod as may be required by the Commission;

4 “(4)(A) provide direct electronic access to the
5 Commission (or any designee of the Commission, in-
6 cluding another registered entity); and

7 “(B) provide the information described in para-
8 graph (1) in such form and at such frequency as the
9 Commission may require to comply with the public
10 reporting requirements contained in section
11 2(a)(13);

12 “(5) at the direction of the Commission, estab-
13 lish automated systems for monitoring, screening,
14 and analyzing swap data, including compliance and
15 frequency of end user clearing exemption claims by
16 individual and affiliated entities;

17 “(6) maintain the privacy of any and all swap
18 transaction information that the swap data reposi-
19 tory receives from a swap dealer, counterparty, or
20 any other registered entity; and

21 “(7) on a confidential basis pursuant to section
22 8, upon request, and after notifying the Commission
23 of the request, make available all data obtained by
24 the swap data repository, including individual
25 counterparty trade and position data, to—

1 “(A) each appropriate prudential regulator;

2 “(B) the Financial Stability Oversight
3 Council;

4 “(C) the Securities and Exchange Commis-
5 sion;

6 “(D) the Department of Justice; and

7 “(E) any other person that the Commis-
8 sion determines to be appropriate, including—

9 “(i) foreign financial supervisors (in-
10 cluding foreign futures authorities);

11 “(ii) foreign central banks;

12 “(iii) foreign ministries; and

13 “(8) establish and maintain emergency proce-
14 dures, backup facilities, and a plan for disaster re-
15 covery that allows for the timely recovery and re-
16 sumption of operations and the fulfillment of the re-
17 sponsibilities and obligations of the organization.

18 “(d) CONFIDENTIALITY AND INDEMNIFICATION
19 AGREEMENT.—Before the swap data repository may share
20 information with any entity described above—

21 “(1) the swap data repository shall receive a
22 written agreement from each entity stating that the
23 entity shall abide by the confidentiality requirements
24 described in section 8 relating to the information on
25 swap transactions that is provided; and

1 “(2) each entity shall agree to indemnify the
2 swap data repository and the Commission for any
3 expenses arising from litigation relating to the infor-
4 mation provided under section 8.

5 “(e) DESIGNATION OF CHIEF COMPLIANCE OFFI-
6 CER.—

7 “(1) IN GENERAL.—Each swap data repository
8 shall designate an individual to serve as a chief com-
9 pliance 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 swap data repository;

14 “(B) review the compliance of the swap
15 data repository with respect to the core prin-
16 ciples described in subsection (f);

17 “(C) in consultation with the board of the
18 swap data repository, a body performing a func-
19 tion similar to the board of the swap data re-
20 pository, or the senior officer of the swap data
21 repository, resolve any conflicts of interest that
22 may arise;

23 “(D) be responsible for administering each
24 policy and procedure that is required to be es-
25 tablished pursuant to this section;

1 “(E) ensure compliance with this Act (in-
 2 cluding regulations) relating to agreements,
 3 contracts, or transactions, including each rule
 4 prescribed by the Commission under this sec-
 5 tion;

6 “(F) establish procedures for the remedi-
 7 ation of noncompliance issues identified by the
 8 chief compliance officer through any—

9 “(i) compliance office review;

10 “(ii) look-back;

11 “(iii) internal or external audit find-
 12 ing;

13 “(iv) self-reported error; or

14 “(v) validated complaint; and

15 “(G) establish and follow appropriate pro-
 16 cedures for the handling, management response,
 17 remediation, retesting, and closing of non-
 18 compliance issues.

19 “(3) ANNUAL REPORTS.—

20 “(A) IN GENERAL.—In accordance with
 21 rules prescribed by the Commission, the chief
 22 compliance officer shall annually prepare and
 23 sign a report that contains a description of—

24 “(i) the compliance of the swap data
 25 repository of the chief compliance officer

1 with respect to this Act (including regula-
2 tions); and

3 “(ii) each policy and procedure of the
4 swap data repository of the chief compli-
5 ance officer (including the code of ethics
6 and conflict of interest policies of the swap
7 data repository).

8 “(B) REQUIREMENTS.—A compliance re-
9 port under subparagraph (A) shall—

10 “(i) accompany each appropriate fi-
11 nancial report of the swap data repository
12 that is required to be furnished to the
13 Commission pursuant to this section; and

14 “(ii) include a certification that, under
15 penalty of law, the compliance report is ac-
16 curate and complete.

17 “(f) CORE PRINCIPLES APPLICABLE TO SWAP DATA
18 REPOSITORIES.—

19 “(1) ANTITRUST CONSIDERATIONS.—Unless
20 necessary or appropriate to achieve the purposes of
21 this Act, a swap data repository shall not

22 “(A) adopt any rule or take any action
23 that results in any unreasonable restraint of
24 trade; or

1 “(B) impose any material anticompetitive
2 burden on the trading, clearing, or reporting of
3 transactions.

4 “(2) GOVERNANCE ARRANGEMENTS.—Each
5 swap data repository shall establish governance ar-
6 rangements that are transparent—

7 “(A) to fulfill public interest requirements;
8 and

9 “(B) to support the objectives of the Fed-
10 eral Government, owners, and participants.

11 “(3) CONFLICTS OF INTEREST.—Each swap
12 data repository shall—

13 “(A) establish and enforce rules to mini-
14 mize conflicts of interest in the decision-making
15 process of the swap data repository; and

16 “(B) establish a process for resolving con-
17 flicts of interest described in subparagraph (A).

18 “(g) REQUIRED REGISTRATION FOR SWAP DATA RE-
19 POSITORIES.—Any person that is required to be registered
20 as a swap data repository under this section shall register
21 with the Commission regardless of whether that person is
22 also licensed as a bank or registered with the Securities
23 and Exchange Commission as a swap data repository.

24 “(h) RULES.—The Commission shall adopt rules gov-
25 erning persons that are registered under this section.”.

1 **SEC. 729. REPORTING AND RECORDKEEPING.**

2 The Commodity Exchange Act is amended by insert-
3 ing after section 4q (7 U.S.C. 6o-1) the following:

4 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR**
5 **UNCLEARED SWAPS.**

6 **“(a) REQUIRED REPORTING OF SWAPS NOT ACCEPT-**
7 **ED BY ANY DERIVATIVES CLEARING ORGANIZATION.—**

8 **“(1) IN GENERAL.—**Each swap that is not ac-
9 cepted for clearing by any derivatives clearing orga-
10 nization shall be reported to—

11 **“(A)** a swap data repository described in
12 section 21; or

13 **“(B)** in the case in which there is no swap
14 data repository that would accept the swap, to
15 the Commission pursuant to this section within
16 such time period as the Commission may by
17 rule or regulation prescribe.

18 **“(2) TRANSITION RULE FOR PREENACTMENT**
19 **SWAPS.—**

20 **“(A) SWAPS ENTERED INTO BEFORE THE**
21 **DATE OF ENACTMENT OF THE WALL STREET**
22 **TRANSPARENCY AND ACCOUNTABILITY ACT OF**
23 **2010.—**Each swap entered into before the date
24 of enactment of the Wall Street Transparency
25 and Accountability Act of 2010, the terms of
26 which have not expired as of the date of enact-

1 ment of that Act, shall be reported to a reg-
2 istered swap data repository or the Commission
3 by a date that is not later than—

4 “(i) 30 days after issuance of the in-
5 terim final rule; or

6 “(ii) such other period as the Com-
7 mission determines to be appropriate.

8 “(B) COMMISSION RULEMAKING.—The
9 Commission shall promulgate an interim final
10 rule within 90 days of the date of enactment of
11 this section providing for the reporting of each
12 swap entered into before the date of enactment
13 as referenced in subparagraph (A).

14 “(C) EFFECTIVE DATE.—The reporting
15 provisions described in this section shall be ef-
16 fective upon the enactment of this section.

17 “(3) REPORTING OBLIGATIONS.—

18 “(A) SWAPS IN WHICH ONLY 1
19 COUNTERPARTY IS A SWAP DEALER OR MAJOR
20 SWAP PARTICIPANT.—With respect to a swap in
21 which only 1 counterparty is a swap dealer or
22 major swap participant, the swap dealer or
23 major swap participant shall report the swap as
24 required under paragraphs (1) and (2).

1 “(B) SWAPS IN WHICH 1 COUNTERPARTY
2 IS A SWAP DEALER AND THE OTHER A MAJOR
3 SWAP PARTICIPANT.—With respect to a swap in
4 which 1 counterparty is a swap dealer and the
5 other a major swap participant, the swap dealer
6 shall report the swap as required under para-
7 graphs (1) and (2).

8 “(C) OTHER SWAPS.—With respect to any
9 other swap not described in subparagraph (A)
10 or (B), the counterparties to the swap shall se-
11 lect a counterparty to report the swap as re-
12 quired under paragraphs (1) and (2).

13 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
14 vidual or entity that enters into a swap shall meet each
15 requirement described in subsection (c) if the individual
16 or entity did not—

17 “(1) clear the swap in accordance with section
18 2(h)(1); or

19 “(2) have the data regarding the swap accepted
20 by a swap data repository in accordance with rules
21 (including timeframes) adopted by the Commission
22 under section 21.

23 “(c) REQUIREMENTS.—An individual or entity de-
24 scribed in subsection (b) shall—

1 “(1) upon written request from the Commis-
2 sion, provide reports regarding the swaps held by the
3 individual or entity to the Commission in such form
4 and in such manner as the Commission may request;
5 and

6 “(2) maintain books and records pertaining to
7 the swaps held by the individual or entity in such
8 form, in such manner, and for such period as the
9 Commission may require, which shall be open to in-
10 spection by—

11 “(A) any representative of the Commis-
12 sion;

13 “(B) an appropriate prudential regulator;

14 “(C) the Securities and Exchange Commis-
15 sion;

16 “(D) the Financial Stability Oversight
17 Council; and

18 “(E) the Department of Justice.

19 “(d) IDENTICAL DATA.—In prescribing rules under
20 this section, the Commission shall require individuals and
21 entities described in subsection (b) to submit to the Com-
22 mission a report that contains data that is not less com-
23 prehensive than the data required to be collected by swap
24 data repositories under section 21.”.

1 **SEC. 730. LARGE SWAP TRADER REPORTING.**

2 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
3 is amended by adding after section 4s (as added by section
4 731) the following:

5 **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

6 **“(a) PROHIBITION.—**

7 **“(1) IN GENERAL.—**Except as provided in para-
8 graph (2), it shall be unlawful for any person to
9 enter into any swap that the Commission determines
10 to perform a significant price discovery function with
11 respect to registered entities if—

12 **“(A)** the person directly or indirectly en-
13 ters into the swap during any 1 day in an
14 amount equal to or in excess of such amount as
15 shall be established periodically by the Commis-
16 sion; and

17 **“(B)** the person directly or indirectly has
18 or obtains a position in the swap equal to or in
19 excess of such amount as shall be established
20 periodically by the Commission.

21 **“(2) EXCEPTION.—**Paragraph (1) shall not
22 apply if—

23 **“(A)** the person files or causes to be filed
24 with the properly designated officer of the Com-
25 mission such reports regarding any transactions
26 or positions described in subparagraphs (A) and

1 (B) of paragraph (1) as the Commission may
2 require by rule or regulation; and

3 “(B) in accordance with the rules and reg-
4 ulations of the Commission, the person keeps
5 books and records of all such swaps and any
6 transactions and positions in any related com-
7 modity traded on or subject to the rules of any
8 board of trade, and of cash or spot transactions
9 in, inventories of, and purchase and sale com-
10 mitments of, such a commodity.

11 “(b) REQUIREMENTS.—

12 “(1) IN GENERAL.—Books and records de-
13 scribed in subsection (a)(2)(B) shall—

14 “(A) show such complete details con-
15 cerning all transactions and positions as the
16 Commission may prescribe by rule or regula-
17 tion;

18 “(B) be open at all times to inspection and
19 examination by any representative of the Com-
20 mission; and

21 “(C) be open at all times to inspection and
22 examination by the Securities and Exchange
23 Commission, to the extent such books and
24 records relate to transactions in security-based
25 swap agreements (as that term is defined in

1 section 3(a)(79) of the Securities Exchange Act
 2 of 1934), and consistent with the confidentiality
 3 and disclosure requirements of section 8.

4 “(2) JURISDICTION.—Nothing in paragraph (1)
 5 shall affect the exclusive jurisdiction of the Commis-
 6 sion to prescribe recordkeeping and reporting re-
 7 quirements for large swap traders under this section.

8 “(c) APPLICABILITY.—For purposes of this section,
 9 the swaps, futures, and cash or spot transactions and posi-
 10 tions of any person shall include the swaps, futures, and
 11 cash or spot transactions and positions of any persons di-
 12 rectly or indirectly controlled by the person.

13 “(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—
 14 In making a determination as to whether a swap performs
 15 or affects a significant price discovery function with re-
 16 spect to registered entities, the Commission shall consider
 17 the factors described in section 4a(a)(3).”.

18 **SEC. 731. REGISTRATION AND REGULATION OF SWAP DEAL-**
 19 **ERS AND MAJOR SWAP PARTICIPANTS.**

20 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
 21 is amended by inserting after section 4r (as added by sec-
 22 tion 729) the following:

23 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
 24 **ERS AND MAJOR SWAP PARTICIPANTS.**

25 “(a) REGISTRATION.—

1 “(1) SWAP DEALERS.—It shall be unlawful for
2 any person to act as a swap dealer unless the person
3 is registered as a swap dealer with the Commission.

4 “(2) MAJOR SWAP PARTICIPANTS.—It shall be
5 unlawful for any person to act as a major swap par-
6 ticipant unless the person is registered as a major
7 swap participant with the Commission.

8 “(b) REQUIREMENTS.—

9 “(1) IN GENERAL.—A person shall register as
10 a swap dealer or major swap participant by filing a
11 registration application with the Commission.

12 “(2) CONTENTS.—

13 “(A) IN GENERAL.—The application shall
14 be made in such form and manner as prescribed
15 by the Commission, and shall contain such in-
16 formation, as the Commission considers nec-
17 essary concerning the business in which the ap-
18 plicant is or will be engaged.

19 “(B) CONTINUAL REPORTING.—A person
20 that is registered as a swap dealer or major
21 swap participant shall continue to submit to the
22 Commission reports that contain such informa-
23 tion pertaining to the business of the person as
24 the Commission may require.

1 “(3) EXPIRATION.—Each registration under
2 this section shall expire at such time as the Commis-
3 sion may prescribe by rule or regulation.

4 “(4) RULES.—Except as provided in sub-
5 sections (c), (e), and (f), the Commission may pre-
6 scribe rules applicable to non-bank swap dealers and
7 non-bank major swap participants, including rules
8 that limit the activities of swap dealers and major
9 swap participants.

10 “(5) TRANSITION.—Rules under this section
11 shall provide for the registration of swap dealers and
12 major swap participants not later than 1 year after
13 the date of enactment of the Wall Street Trans-
14 parency and Accountability Act of 2010.

15 “(6) STATUTORY DISQUALIFICATION.—Except
16 to the extent otherwise specifically provided by rule,
17 regulation, or order, it shall be unlawful for a swap
18 dealer or a major swap participant to permit any
19 person associated with a swap dealer or a major
20 swap participant who is subject to a statutory dis-
21 qualification to effect or be involved in effecting
22 swaps on behalf of the swap dealer or major swap
23 participant, if the swap dealer or major swap partici-
24 pant knew, or in the exercise of reasonable care
25 should have known, of the statutory disqualification.

1 “(c) DUAL REGISTRATION.—

2 “(1) SWAP DEALER.—Any person that is re-
3 quired to be registered as a swap dealer under this
4 section shall register with the Commission regardless
5 of whether the person also is a depository institution
6 or is registered with the Securities and Exchange
7 Commission as a security-based swap dealer.

8 “(2) MAJOR SWAP PARTICIPANT.—Any person
9 that is required to be registered as a major swap
10 participant under this section shall register with the
11 Commission regardless of whether the person also is
12 a depository institution or is registered with the Se-
13 curities and Exchange Commission as a major secu-
14 rity-based swap participant.

15 “(d) RULEMAKINGS.—

16 “(1) IN GENERAL.—The Commission shall
17 adopt rules for persons that are registered as swap
18 dealers or major swap participants under this sec-
19 tion.

20 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
21 MENTS.—

22 “(A) IN GENERAL.—The Commission may
23 not prescribe rules imposing prudential require-
24 ments on swap dealers or major swap partici-
25 pants for which there is a prudential regulator.

1 “(B) APPLICABILITY.—Subparagraph (A)
2 does not limit the authority of the Commission
3 to prescribe appropriate business conduct, re-
4 porting, and recordkeeping requirements to pro-
5 tect investors.

6 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

7 “(1) IN GENERAL.—

8 “(A) SWAP DEALERS AND MAJOR SWAP
9 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-
10 TIONS.—Each registered swap dealer and major
11 swap participant that is a depository institu-
12 tion, as that term is defined in section 3 of the
13 Federal Deposit Insurance Act (12 U.S.C.
14 1813), shall meet such minimum capital re-
15 quirements and minimum initial and variation
16 margin requirements as the appropriate Federal
17 banking agency shall by rule or regulation pre-
18 scribe under paragraph (2)(A) to help ensure
19 the safety and soundness of the swap dealer or
20 major swap participant.

21 “(B) SWAP DEALERS AND MAJOR SWAP
22 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-
23 STITUTIONS.—Each registered swap dealer and
24 major swap participant that is not a depository
25 institution, as that term is defined in section 3

1 of the Federal Deposit Insurance Act (12
2 U.S.C. 1813), shall meet such minimum capital
3 requirements and minimum initial and variation
4 margin requirements as the Commission and
5 the Securities and Exchange Commission shall
6 by rule or regulation prescribe under paragraph
7 (2)(B) to help ensure the safety and soundness
8 of the swap dealer or major swap participant.

9 “(2) RULES.—

10 “(A) SWAP DEALERS AND MAJOR SWAP
11 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-
12 TIONS.—The appropriate Federal banking
13 agencies, in consultation with the Commission
14 and the Securities and Exchange Commission,
15 shall adopt rules imposing capital and margin
16 requirements under this subsection for swap
17 dealers and major swap participants that are
18 depository institutions, as that term is defined
19 in section 3 of the Federal Deposit Insurance
20 Act (12 U.S.C. 1813).

21 “(B) SWAP DEALERS AND MAJOR SWAP
22 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-
23 STITUTIONS.—The Commission shall adopt
24 rules imposing capital and margin requirements
25 under this subsection for swap dealers and

1 major swap participants that are not depository
2 institutions, as that term is defined in section
3 of the Federal Deposit Insurance Act (12
4 U.S.C. 1813).

5 “(3) CAPITAL.—

6 “(A) SWAP DEALERS AND MAJOR SWAP
7 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-
8 TIONS.—The capital requirements prescribed
9 under paragraph (2)(A) for swap dealers and
10 major swap participants that are depository in-
11 stitutions shall contain—

12 “(i) a capital requirement that is
13 greater than zero for swaps that are
14 cleared by a registered derivatives clearing
15 organization or a derivatives clearing orga-
16 nization that is exempt from registration
17 under section 5b(j); and

18 “(ii) to offset the greater risk to the
19 swap dealer or major swap participant and
20 to the financial system arising from the
21 use of swaps that are not cleared, substan-
22 tially higher capital requirements for swaps
23 that are not cleared by a registered deriva-
24 tives clearing organization or a derivatives
25 clearing organization that is exempt from

1 registration under section 5b(j) than for
2 swaps that are cleared.

3 “(B) SWAP DEALERS AND MAJOR SWAP
4 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-
5 STITUTIONS.—The capital requirements pre-
6 scribed under paragraph (2)(B) for swap deal-
7 ers and major swap participants that are not
8 depository institutions shall be as strict as or
9 stricter than the capital requirements pre-
10 scribed for swap dealers and major swap par-
11 ticipants that are depository institutions under
12 paragraph (2)(A).

13 “(C) RULE OF CONSTRUCTION.—

14 “(i) IN GENERAL.—Nothing in this
15 section shall limit, or be construed to limit,
16 the authority—

17 “(I) of the Commission to set fi-
18 nancial responsibility rules for a fu-
19 tures commission merchant or intro-
20 ducing broker registered pursuant to
21 section 4f(a) (except for section
22 4f(a)(3)) in accordance with section
23 4f(b); or

24 “(II) of the Securities and Ex-
25 change Commission to set financial

1 responsibility rules for a broker or
2 dealer registered pursuant to section
3 15(b) of the Securities Exchange Act
4 of 1934 (15 U.S.C. 78o(b)) (except
5 for section 15(b)(11) of that Act (15
6 U.S.C. 78o(b)(11)) in accordance with
7 section 15(c)(3) of the Securities Ex-
8 change Act of 1934 (15 U.S.C.
9 78o(c)(3)).

10 “(ii) FUTURES COMMISSION MER-
11 CHANTS AND OTHER DEALERS.—A futures
12 commission merchant, introducing broker,
13 broker, or dealer shall maintain sufficient
14 capital to comply with the stricter of any
15 applicable capital requirements to which
16 such futures commission merchant, intro-
17 ducing broker, broker, or dealer is subject
18 to under this Act or the Securities Ex-
19 change Act of 1934 (15 U.S.C. 78a et
20 seq.).

21 “(4) MARGIN.—

22 “(A) SWAP DEALERS AND MAJOR SWAP
23 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-
24 TIONS.—The appropriate Federal banking
25 agency for swap dealers and major swap par-

1 participants that are depository institutions shall
2 impose both initial and variation margin re-
3 quirements in accordance with paragraph
4 (2)(A) on all swaps that are not cleared by a
5 registered derivatives clearing organization or a
6 derivatives clearing organization that is exempt
7 from registration under section 5b(j) .

8 “(B) SWAP DEALERS AND MAJOR SWAP
9 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-
10 STITUTIONS.—The Commission and the Securi-
11 ties and Exchange Commission shall impose
12 both initial and variation margin requirements
13 in accordance with paragraph (2)(B) for swap
14 dealers and major swap participants that are
15 not depository institutions on all swaps that are
16 not cleared by a registered derivatives clearing
17 organization or a derivatives clearing organiza-
18 tion that is exempt from registration under sec-
19 tion 5b(j). Any such initial and variation mar-
20 gin requirements shall be as strict as or stricter
21 than the margin requirements prescribed under
22 paragraph (4)(A).

23 “(5) MARGIN REQUIREMENTS.—In prescribing
24 margin requirements under this subsection, the ap-
25 propriate Federal banking agency with respect to

1 swap dealers and major swap participants that are
2 depository institutions and the Commission with re-
3 spect to swap dealers and major swap participants
4 that are not depository institutions may permit the
5 use of noncash collateral, as the agency or the Com-
6 mission determines to be consistent with—

7 “(A) preserving the financial integrity of
8 markets trading swaps; and

9 “(B) preserving the stability of the United
10 States financial system.

11 “(6) COMPARABILITY OF CAPITAL AND MARGIN
12 REQUIREMENTS.—

13 “(A) IN GENERAL.—The appropriate Fed-
14 eral banking agencies, the Commission, and the
15 Securities and Exchange Commission shall peri-
16 odically (but not less frequently than annually)
17 consult on minimum capital requirements and
18 minimum initial and variation margin require-
19 ments.

20 “(B) COMPARABILITY.—The entities de-
21 scribed in subparagraph (A) shall, to the max-
22 imum extent practicable, establish and maintain
23 comparable minimum capital requirements and
24 minimum initial and variation margin require-

1 ments, including the use of non cash collateral,
2 for—

3 “(i) swap dealers; and

4 “(ii) major swap participants.

5 “(7) REQUESTED MARGIN.—If any party to a
6 swap that is exempt from the margin requirements
7 of paragraph (4)(A)(i) pursuant to the provisions of
8 paragraph (4)(A)(ii), or from the margin require-
9 ments of paragraph (4)(B)(i) pursuant to the provi-
10 sions of paragraph (4)(B)(ii), requests that such
11 swap be margined, then—

12 “(A) the exemption shall not apply; and

13 “(B) the counterparty to such swap shall
14 provide the requested margin.

15 “(8) APPLICABILITY WITH RESPECT TO
16 COUNTERPARTIES.—Paragraph (4) shall not apply
17 to initial and variation margin for swaps in which 1
18 of the counterparties is not—

19 “(A) a swap dealer;

20 “(B) a major swap participant; or

21 “(C) a financial entity as described in sec-
22 tion 2(h)(9)(A)(ii), and such counterparty is eli-
23 gible for and utilizing the commercial end user
24 clearing exemption under section 2(h)(9).

25 “(f) REPORTING AND RECORDKEEPING.—

1 “(1) IN GENERAL.—Each registered swap deal-
2 er and major swap participant—

3 “(A) shall make such reports as are re-
4 quired by the Commission by rule or regulation
5 regarding the transactions and positions and fi-
6 nancial condition of the registered swap dealer
7 or major swap participant;

8 “(B)(i) for which there is a prudential reg-
9 ulator, shall keep books and records of all ac-
10 tivities related to the business as a swap dealer
11 or major swap participant in such form and
12 manner and for such period as may be pre-
13 scribed by the Commission by rule or regula-
14 tion; and

15 “(ii) for which there is no prudential regu-
16 lator, shall keep books and records in such form
17 and manner and for such period as may be pre-
18 scribed by the Commission by rule or regula-
19 tion; and

20 “(C) shall keep books and records de-
21 scribed in subparagraph (B) open to inspection
22 and examination by any representative of the
23 Commission.

1 “(2) RULES.—The Commission shall adopt
2 rules governing reporting and recordkeeping for
3 swap dealers and major swap participants.

4 “(g) DAILY TRADING RECORDS.—

5 “(1) IN GENERAL.—Each registered swap deal-
6 er and major swap participant shall maintain daily
7 trading records of the swaps of the registered swap
8 dealer and major swap participant and all related
9 records (including related cash or forward trans-
10 actions) and recorded communications, including
11 electronic mail, instant messages, and recordings of
12 telephone calls, for such period as may be required
13 by the Commission by rule or regulation.

14 “(2) INFORMATION REQUIREMENTS.—The daily
15 trading records shall include such information as the
16 Commission shall require by rule or regulation.

17 “(3) COUNTERPARTY RECORDS.—Each reg-
18 istered swap dealer and major swap participant shall
19 maintain daily trading records for each counterparty
20 in a manner and form that is identifiable with each
21 swap transaction.

22 “(4) AUDIT TRAIL.—Each registered swap deal-
23 er and major swap participant shall maintain a com-
24 plete audit trail for conducting comprehensive and
25 accurate trade reconstructions.

1 “(5) RULES.—The Commission shall adopt
2 rules governing daily trading records for swap deal-
3 ers and major swap participants.

4 “(h) BUSINESS CONDUCT STANDARDS.—

5 “(1) IN GENERAL.—Each registered swap deal-
6 er and major swap participant shall conform with
7 such business conduct standards as may be pre-
8 scribed by the Commission by rule or regulation that
9 relate to—

10 “(A) fraud, manipulation, and other abu-
11 sive practices involving swaps (including swaps
12 that are offered but not entered into);

13 “(B) diligent supervision of the business of
14 the registered swap dealer and major swap par-
15 ticipant;

16 “(C) adherence to all applicable position
17 limits; and

18 “(D) such other matters as the Commis-
19 sion determines to be appropriate.

20 “(2) SPECIAL RULE; FIDUCIARY DUTIES TO
21 CERTAIN ENTITIES.—

22 “(A) GOVERNMENTAL ENTITIES.—A swap
23 dealer that provides advice regarding, or offers
24 to enter into, or enters into a swap with a
25 State, State agency, city, county, municipality,

1 or other political subdivision of a State or a
2 Federal agency shall have a fiduciary duty to
3 the State, State agency, city, county, municipi-
4 pality, or other political subdivision of a State,
5 or the Federal agency, as appropriate.

6 “(B) PENSION PLANS; ENDOWMENTS; RE-
7 TIREMENT PLANS.—A swap dealer that pro-
8 vides advice regarding, or offers to enter into,
9 or enters into a swap with a pension plan, en-
10 dowment, or retirement plan shall have a fidu-
11 ciary duty to the pension plan, endowment, or
12 retirement plan, as appropriate.

13 “(3) BUSINESS CONDUCT REQUIREMENTS.—
14 Business conduct requirements adopted by the Com-
15 mission shall—

16 “(A) establish the standard of care for a
17 swap dealer or major swap participant to verify
18 that any counterparty meets the eligibility
19 standards for an eligible contract participant;

20 “(B) require disclosure by the swap dealer
21 or major swap participant to any counterparty
22 to the transaction (other than a swap dealer,
23 major swap participant, security-based swap
24 dealer, or major security-based swap partici-
25 pant) of—

1 “(i) information about the material
2 risks and characteristics of the swap;

3 “(ii) the source and amount of any
4 fees or other material remuneration that
5 the swap dealer or major swap participant
6 would directly or indirectly expect to re-
7 ceive in connection with the swap;

8 “(iii) any other material incentives or
9 conflicts of interest that the swap dealer or
10 major swap participant may have in con-
11 nection with the swap; and

12 “(iv)(I) for cleared swaps, upon the
13 request of the counterparty, the daily mark
14 from the appropriate derivatives clearing
15 organization; and

16 “(II) for uncleared swaps, the daily
17 mark of the swap dealer or the major swap
18 participant;

19 “(C) establish a standard of conduct for a
20 swap dealer or major swap participant to com-
21 municate in a fair and balanced manner based
22 on principles of fair dealing and good faith;

23 “(D) establish a standard of conduct for a
24 swap dealer or major swap participant, with re-
25 spect to a counterparty that is an eligible con-

1 tract participant within the meaning of sub-
2 clause (I) or (II) of clause (vii) of section
3 1a(18) of this Act, to have a reasonable basis
4 to believe that the counterparty has an inde-
5 pendent representative that—

6 “(i) has sufficient knowledge to evalu-
7 ate the transaction and risks;

8 “(ii) is not subject to a statutory dis-
9 qualification;

10 “(iii) is independent of the swap deal-
11 er or major swap participant;

12 “(iv) undertakes a duty to act in the
13 best interests of the counterparty it rep-
14 resents;

15 “(v) makes appropriate disclosures;
16 and

17 “(vi) will provide written representa-
18 tions to the eligible contract participant re-
19 garding fair pricing and the appropriate-
20 ness of the transaction; and

21 “(E) establish such other standards and
22 requirements as the Commission may determine
23 are appropriate in the public interest, for the
24 protection of investors, or otherwise in further-
25 ance of the purposes of this Act.

1 “(4) RULES.—The Commission shall prescribe
2 rules under this subsection governing business con-
3 duct standards for swap dealers and major swap
4 participants.

5 “(i) DOCUMENTATION AND BACK OFFICE STAND-
6 ARDS.—

7 “(1) IN GENERAL.—Each registered swap deal-
8 er and major swap participant shall conform with
9 such standards as may be prescribed by the Com-
10 mission by rule or regulation that relate to timely
11 and accurate confirmation, processing, netting, docu-
12 mentation, and valuation of all swaps.

13 “(2) RULES.—The Commission shall adopt
14 rules governing documentation and back office
15 standards for swap dealers and major swap partici-
16 pants.

17 “(j) DUTIES.—Each registered swap dealer and
18 major swap participant at all times shall comply with the
19 following requirements:

20 “(1) MONITORING OF TRADING.—The swap
21 dealer or major swap participant shall monitor its
22 trading in swaps to prevent violations of applicable
23 position limits.

24 “(2) RISK MANAGEMENT PROCEDURES.—The
25 swap dealer or major swap participant shall estab-

1 lish robust and professional risk management sys-
2 tems adequate for managing the day-to-day business
3 of the swap dealer or major swap participant.

4 “(3) DISCLOSURE OF GENERAL INFORMA-
5 TION.—The swap dealer or major swap participant
6 shall disclose to the Commission and to the pruden-
7 tial regulator for the swap dealer or major swap par-
8 ticipant, as applicable, information concerning—

9 “(A) terms and conditions of its swaps;

10 “(B) swap trading operations, mechanisms,
11 and practices;

12 “(C) financial integrity protections relating
13 to swaps; and

14 “(D) other information relevant to its trad-
15 ing in swaps.

16 “(4) ABILITY TO OBTAIN INFORMATION.—The
17 swap dealer or major swap participant shall—

18 “(A) establish and enforce internal systems
19 and procedures to obtain any necessary infor-
20 mation to perform any of the functions de-
21 scribed in this section; and

22 “(B) provide the information to the Com-
23 mission and to the prudential regulator for the
24 swap dealer or major swap participant, as ap-
25 plicable, on request.

1 “(5) CONFLICTS OF INTEREST.—The swap
2 dealer and major swap participant shall implement
3 conflict-of-interest systems and procedures that—

4 “(A) establish structural and institutional
5 safeguards to ensure that the activities of any
6 person within the firm relating to research or
7 analysis of the price or market for any com-
8 modity or swap or acting in a role of providing
9 clearing activities or making determinations as
10 to accepting clearing customers are separated
11 by appropriate informational partitions within
12 the firm from the review, pressure, or oversight
13 of persons whose involvement in pricing, trad-
14 ing, or clearing activities might potentially bias
15 their judgment or supervision and contravene
16 the core principles of open access and the busi-
17 ness conduct standards described in this Act;
18 and

19 “(B) address such other issues as the
20 Commission determines to be appropriate.

21 “(6) ANTITRUST CONSIDERATIONS.—Unless
22 necessary or appropriate to achieve the purposes of
23 this Act, a swap dealer or major swap participant
24 shall not—

1 “(A) adopt any process or take any action
2 that results in any unreasonable restraint of
3 trade; or

4 “(B) impose any material anticompetitive
5 burden on trading or clearing.

6 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
7 CER.—

8 “(1) IN GENERAL.—Each swap dealer and
9 major swap participant shall designate an individual
10 to serve as a chief compliance officer.

11 “(2) DUTIES.—The chief compliance officer
12 shall—

13 “(A) report directly to the board or to the
14 senior officer of the swap dealer or major swap
15 participant;

16 “(B) review the compliance of the swap
17 dealer or major swap participant with respect to
18 the swap dealer and major swap participant re-
19 quirements described in this section;

20 “(C) in consultation with the board of di-
21 rectors, a body performing a function similar to
22 the board, or the senior officer of the organiza-
23 tion, resolve any conflicts of interest that may
24 arise;

1 “(D) be responsible for administering each
2 policy and procedure that is required to be es-
3 tablished pursuant to this section;

4 “(E) ensure compliance with this Act (in-
5 cluding regulations) relating to swaps, including
6 each rule prescribed by the Commission under
7 this section;

8 “(F) establish procedures for the remedi-
9 ation of noncompliance issues identified by the
10 chief compliance officer through any—

11 “(i) compliance office review;

12 “(ii) look-back;

13 “(iii) internal or external audit find-
14 ing;

15 “(iv) self-reported error; or

16 “(v) validated complaint; and

17 “(G) establish and follow appropriate pro-
18 cedures for the handling, management response,
19 remediation, retesting, and closing of non-
20 compliance issues.

21 “(3) ANNUAL REPORTS.—

22 “(A) IN GENERAL.—In accordance with
23 rules prescribed by the Commission, the chief
24 compliance officer shall annually prepare and
25 sign a report that contains a description of—

1 “(i) the compliance of the swap dealer
2 or major swap participant with respect to
3 this Act (including regulations); and

4 “(ii) each policy and procedure of the
5 swap dealer or major swap participant of
6 the chief compliance officer (including the
7 code of ethics and conflict of interest poli-
8 cies).

9 “(B) REQUIREMENTS.—A compliance re-
10 port under subparagraph (A) shall—

11 “(i) accompany each appropriate fi-
12 nancial report of the swap dealer or major
13 swap participant that is required to be fur-
14 nished to the Commission pursuant to this
15 section; and

16 “(ii) include a certification that, under
17 penalty of law, the compliance report is ac-
18 curate and complete.”.

19 **SEC. 732. CONFLICTS OF INTEREST.**

20 Section 4d of the Commodity Exchange Act (7 U.S.C.
21 6d) is amended—

22 (1) by redesignating subsection (c) as sub-
23 section (e); and

24 (2) by inserting after subsection (b) the fol-
25 lowing:

1 “(c) CONFLICTS OF INTEREST.—The Commission
2 shall require that futures commission merchants and in-
3 troducing brokers implement conflict-of-interest systems
4 and procedures that—

5 “(1) establish structural and institutional safe-
6 guards to ensure that the activities of any person
7 within the firm relating to research or analysis of
8 the price or market for any commodity are separated
9 by appropriate informational partitions within the
10 firm from the review, pressure, or oversight of per-
11 sons whose involvement in trading or clearing activi-
12 ties might potentially bias the judgment or super-
13 vision of the persons; and

14 “(2) address such other issues as the Commis-
15 sion determines to be appropriate.

16 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-
17 CER.—

18 “(1) IN GENERAL.—Each futures commission
19 merchant 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 futures commission mer-
25 chant;

1 “(B) review the compliance of the futures
2 commission merchant with respect to require-
3 ments described in this section;

4 “(C) in consultation with the board of di-
5 rectors, a body performing a function similar to
6 the board, or the senior officer of the organiza-
7 tion, resolve any conflicts of interest that may
8 arise;

9 “(D) be responsible for administering each
10 policy and procedure that is required to be es-
11 tablished pursuant to this section;

12 “(E) ensure compliance with this Act (in-
13 cluding regulations and each rule prescribed by
14 the Commission under this section) relating,
15 but not limited, to—

16 “(i) contracts of sale of a commodity
17 for future delivery;

18 “(ii) options on the contracts de-
19 scribed in clause (i);

20 “(iii) commodity options;

21 “(iv) retail commodity transactions;

22 “(v) security futures products;

23 “(vi) leverage contracts; and

24 “(vii) swaps;

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 pro-
11 cedures for the handling, management response,
12 remediation, retesting, and closing of non-
13 compliance 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 futures
20 commission merchant with respect to this
21 Act (including regulations); and

22 “(ii) each policy and procedure of the
23 futures commission merchant of the chief
24 compliance officer (including the code of
25 ethics and conflict of interest policies).

1 “(B) REQUIREMENTS.—A compliance re-
2 port under subparagraph (A) shall—

3 “(i) accompany each appropriate fi-
4 nancial report of the futures commission
5 merchant that is required to be furnished
6 to the Commission pursuant to this sec-
7 tion; and

8 “(ii) include a certification that, under
9 penalty of law, the compliance report is ac-
10 curate and complete.”.

11 **SEC. 733. SWAP EXECUTION FACILITIES.**

12 The Commodity Exchange Act is amended by insert-
13 ing after section 5g (7 U.S.C. 7b-2) the following:

14 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

15 “(a) REGISTRATION.—

16 “(1) IN GENERAL.—No person may operate a
17 facility for the trading or processing of swaps unless
18 the facility is registered as a swap execution facility
19 or as a designated contract market under this sec-
20 tion.

21 “(2) DUAL REGISTRATION.—Any person that is
22 registered as a swap execution facility under this
23 section shall register with the Commission regardless
24 of whether the person also is registered with the Se-

1 securities and Exchange Commission as a swap execu-
2 tion facility.

3 “(b) TRADING AND TRADE PROCESSING.—A swap
4 execution facility that is registered under subsection (a)
5 may—

6 “(1) make available for trading any swap; and

7 “(2) facilitate trade processing of any swap.

8 “(c) IDENTIFICATION OF FACILITY USED TO TRADE
9 SWAPS BY CONTRACT MARKETS.—A board of trade that
10 operates a contract market shall, to the extent that the
11 board of trade also operates a swap execution facility and
12 uses the same electronic trade execution system for listing
13 and executing trades of swaps on or through the contract
14 market and the swap execution facility, identify whether
15 the electronic trading of such swaps is taking place on or
16 through the contract market or the swap execution facil-
17 ity.

18 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
19 CILITIES.—

20 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

21 “(A) IN GENERAL.—To be registered, and
22 maintain registration, as a swap execution facil-
23 ity, the swap execution facility shall comply
24 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) REASONABLE DISCRETION OF SWAP
7 EXECUTION FACILITY.—Unless otherwise deter-
8 mined by the Commission by rule or regulation,
9 a swap execution facility described in subpara-
10 graph (A) shall have reasonable discretion in
11 establishing the manner in which the swap exe-
12 cution facility complies with the core principles
13 described in this subsection.

14 “(2) COMPLIANCE WITH RULES.—A swap exe-
15 cution facility shall—

16 “(A) monitor and enforce compliance with
17 any rule of the swap execution facility, includ-
18 ing—

19 “(i) the terms and conditions of the
20 swaps traded or processed on or through
21 the swap execution facility; and

22 “(ii) any limitation on access to the
23 swap execution facility;

24 “(B) establish and enforce trading, trade
25 processing, and participation rules that will

1 deter abuses and have the capacity to detect,
2 investigate, and enforce those rules, including
3 means—

4 “(i) to provide market participants
5 with impartial access to the market; and

6 “(ii) to capture information that may
7 be used in establishing whether rule viola-
8 tions have occurred;

9 “(C) establish rules governing the oper-
10 ation of the facility, including rules specifying
11 trading procedures to be used in entering and
12 executing orders traded or posted on the facil-
13 ity, including block trades; and

14 “(D) provide by its rules that when a swap
15 dealer or major swap participant enters into or
16 facilitates a swap that is subject to the manda-
17 tory clearing requirement of section 2(h)(2)(F),
18 the swap dealer or major swap participant shall
19 be responsible for compliance with the manda-
20 tory trading requirement of section 113(d) of
21 the Wall Street Transparency and Account-
22 ability Act of 2010.

23 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
24 NIPULATION.—The swap execution facility shall per-

1 mit trading only in swaps that are not readily sus-
2 ceptible to manipulation.

3 “(4) MONITORING OF TRADING AND TRADE
4 PROCESSING.—The swap execution facility shall—

5 “(A) establish and enforce rules or terms
6 and conditions defining, or specifications detail-
7 ing—

8 “(i) trading procedures to be used in
9 entering and executing orders traded on or
10 through the facilities of the swap execution
11 facility; and

12 “(ii) procedures for trade processing
13 of swaps on or through the facilities of the
14 swap execution facility; and

15 “(B) monitor trading in swaps to prevent
16 manipulation, price distortion, and disruptions
17 of the delivery or cash settlement process
18 through surveillance, compliance, and discipli-
19 nary practices and procedures, including meth-
20 ods for conducting real-time monitoring of trad-
21 ing and comprehensive and accurate trade re-
22 constructions.

23 “(5) ABILITY TO OBTAIN INFORMATION.—The
24 swap execution facility shall—

1 “(A) establish and enforce rules that will
2 allow the facility to obtain any necessary infor-
3 mation to perform any of the functions de-
4 scribed in this section;

5 “(B) provide the information to the Com-
6 mission on request; and

7 “(C) have the capacity to carry out such
8 international information-sharing agreements as
9 the Commission may require.

10 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

11 “(A) IN GENERAL.—To reduce the poten-
12 tial threat of market manipulation or conges-
13 tion, especially during trading in the delivery
14 month, a swap execution facility that is a trad-
15 ing facility shall adopt for each of the contracts
16 of the facility, as is necessary and appropriate,
17 position limitations or position accountability
18 for speculators.

19 “(B) POSITION LIMITS.—For any contract
20 that is subject to a position limitation estab-
21 lished by the Commission pursuant to section
22 4a(a), the swap execution facility shall set its
23 position limitation at a level no higher than the
24 Commission limitation.

1 “(C) POSITION ENFORCEMENT.—For any
2 contract that is subject to a position limitation
3 established by the Commission pursuant to sec-
4 tion 4a(a), a swap execution facility shall reject
5 any proposed swap transaction if, based on in-
6 formation readily available to a swap execution
7 facility, any proposed swap transaction would
8 cause a swap execution facility customer that
9 would be a party to such swap transaction to
10 exceed such position limitation.

11 “(7) FINANCIAL INTEGRITY OF TRANS-
12 ACTIONS.—The swap execution facility shall estab-
13 lish and enforce rules and procedures for ensuring
14 the financial integrity of swaps entered on or
15 through the facilities of the swap execution facility,
16 including the clearance and settlement of the swaps
17 pursuant to section 2(h)(1).

18 “(8) EMERGENCY AUTHORITY.—The swap exe-
19 cution facility shall adopt rules to provide for the ex-
20 ercise of emergency authority, in consultation or co-
21 operation with the Commission, as is necessary and
22 appropriate, including the authority to liquidate or
23 transfer open positions in any swap or to suspend or
24 curtail trading in a swap.

1 “(9) TIMELY PUBLICATION OF TRADING INFOR-
2 MATION.—

3 “(A) IN GENERAL.—The swap execution
4 facility shall make public timely information on
5 price, trading volume, and other trading data
6 on swaps to the extent prescribed by the Com-
7 mission.

8 “(B) CAPACITY OF SWAP EXECUTION FA-
9 CILITY.—The swap execution facility shall be
10 required to have the capacity to electronically
11 capture trade information with respect to trans-
12 actions executed on the facility.

13 “(10) RECORDKEEPING AND REPORTING.—

14 “(A) IN GENERAL.—A swap execution fa-
15 cility shall—

16 “(i) maintain records of all activities
17 relating to the business of the facility, in-
18 cluding a complete audit trail, in a form
19 and manner acceptable to the Commission
20 for a period of 5 years; and

21 “(ii) report to the Commission, in a
22 form and manner acceptable to the Com-
23 mission, such information as the Commis-
24 sion determines to be necessary or appro-

1 prate for the Commission to perform the
2 duties of the Commission under this Act.

3 “(B) REQUIREMENTS.—The Commission
4 shall adopt data collection and reporting re-
5 quirements for swap execution facilities that are
6 comparable to corresponding requirements for
7 derivatives clearing organizations and swap
8 data repositories.

9 “(11) ANTITRUST CONSIDERATIONS.—Unless
10 necessary or appropriate to achieve the purposes of
11 this Act, the swap execution facility shall not—

12 “(A) adopt any rules or taking any actions
13 that result in any unreasonable restraint of
14 trade; or

15 “(B) impose any material anticompetitive
16 burden on trading or clearing.

17 “(12) CONFLICTS OF INTEREST.—The swap
18 execution facility shall—

19 “(A) establish and enforce rules to mini-
20 mize conflicts of interest in its decision-making
21 process; and

22 “(B) establish a process for resolving the
23 conflicts of interest.

24 “(13) FINANCIAL RESOURCES.—

1 “(A) IN GENERAL.—The swap execution
2 facility shall have adequate financial, oper-
3 ational, and managerial resources to discharge
4 each responsibility of the swap execution facil-
5 ity.

6 “(B) DETERMINATION OF RESOURCE ADE-
7 QUACY.—The financial resources of a swap exe-
8 cution facility shall be considered to be ade-
9 quate if the value of the financial resources ex-
10 ceeds the total amount that would enable the
11 swap execution facility to cover the operating
12 costs of the swap execution facility for a 1-year
13 period, as calculated on a rolling basis.

14 “(14) SYSTEM SAFEGUARDS.—The swap execu-
15 tion facility shall—

16 “(A) establish and maintain a program of
17 risk analysis and oversight to identify and mini-
18 mize sources of operational risk, through the
19 development of appropriate controls and proce-
20 dures, and automated systems, that—

21 “(i) are reliable and secure; and

22 “(ii) have adequate scalable capacity;

23 “(B) establish and maintain emergency
24 procedures, backup facilities, and a plan for dis-
25 aster recovery that are designed to allow for—

1 “(i) the timely recovery and resump-
2 tion of operations; and

3 “(ii) the fulfillment of the responsibil-
4 ities and obligation of the swap execution
5 facility; and

6 “(C) periodically conduct tests to verify
7 that the backup resources of the swap execution
8 facility are sufficient to ensure continued—

9 “(i) order processing and trade
10 matching;

11 “(ii) price reporting;

12 “(iii) market surveillance and

13 “(iv) maintenance of a comprehensive
14 and accurate audit trail.

15 “(15) DESIGNATION OF CHIEF COMPLIANCE
16 OFFICER.—

17 “(A) IN GENERAL.—Each swap execution
18 facility shall designate an individual to serve as
19 a chief compliance officer.

20 “(B) DUTIES.—The chief compliance offi-
21 cer shall—

22 “(i) report directly to the board or to
23 the senior officer of the facility;

24 “(ii) review compliance with the core
25 principles in this subsection;

1 “(iii) in consultation with the board of
2 the facility, a body performing a function
3 similar to that of a board, or the senior of-
4 ficer of the facility, resolve any conflicts of
5 interest that may arise;

6 “(iv) be responsible for establishing
7 and administering the policies and proce-
8 dures required to be established pursuant
9 to this section;

10 “(v) ensure compliance with this Act
11 and the rules and regulations issued under
12 this Act, including rules prescribed by the
13 Commission pursuant to this section; and

14 “(vi) establish procedures for the re-
15 mediation of noncompliance issues found
16 during compliance office reviews, look
17 backs, internal or external audit findings,
18 self-reported errors, or through validated
19 complaints.

20 “(C) REQUIREMENTS FOR PROCEDURES.—

21 In establishing procedures under subparagraph
22 (B)(vi), the chief compliance officer shall design
23 the procedures to establish the handling, man-
24 agement response, remediation, retesting, and
25 closing of noncompliance issues.

1 “(D) ANNUAL REPORTS.—

2 “(i) IN GENERAL.—In accordance
3 with rules prescribed by the Commission,
4 the chief compliance officer shall annually
5 prepare and sign a report that contains a
6 description of—

7 “(I) the compliance of the swap
8 execution facility with this Act; and

9 “(II) the policies and procedures,
10 including the code of ethics and con-
11 flict of interest policies, of the swap
12 execution facility.

13 “(ii) REQUIREMENTS.—The chief
14 compliance officer shall—

15 “(I) submit each report described
16 in clause (i) with the appropriate fi-
17 nancial report of the swap execution
18 facility that is required to be sub-
19 mitted to the Commission pursuant to
20 this section; and

21 “(II) include in the report a cer-
22 tification that, under penalty of law,
23 the report is accurate and complete.

24 “(e) EXEMPTIONS.—The Commission may exempt,
25 conditionally or unconditionally, a swap execution facility

1 from registration under this section if the Commission
 2 finds that the facility is subject to comparable, comprehen-
 3 sive supervision and regulation on a consolidated basis by
 4 the Securities and Exchange Commission, a prudential
 5 regulator, or the appropriate governmental authorities in
 6 the home country of the facility.

7 “(f) RULES.—The Commission shall prescribe rules
 8 governing the regulation of alternative swap execution fa-
 9 cilities under this section.”.

10 **SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILI-**
 11 **TIES AND EXEMPT BOARDS OF TRADE.**

12 (a) IN GENERAL.—Sections 5a and 5d of the Com-
 13 modity Exchange Act (7 U.S.C. 7a, 7a-3) are repealed.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 2 of the Commodity Exchange Act
 16 (7 U.S.C. 2) is amended—

17 (A) in subsection (a)(1)(A), in the first
 18 sentence, by striking “or 5a”; and

19 (B) in paragraph (2) of subsection (g) (as
 20 redesignated by section 723(a)(1)(B)), by strik-
 21 ing “section 5a of this Act” and all that follows
 22 through “5d of this Act” and inserting “section
 23 5b of this Act”.

1 (2) Section 6(g)(1)(A) of the Securities Ex-
 2 change Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is
 3 amended—

4 (A) by striking “that—” and all that fol-
 5 lows through “(i) has been designated” and in-
 6 serting “that has been designated”;

7 (B) by striking “; or” and inserting “;
 8 and” and

9 (C) by striking clause (ii).

10 **SEC. 735. DESIGNATED CONTRACT MARKETS.**

11 (a) CRITERIA FOR DESIGNATION.—Section 5 of the
 12 Commodity Exchange Act (7 U.S.C. 7) is amended by
 13 striking subsection (b).

14 (b) CORE PRINCIPLES FOR CONTRACT MARKETS.—
 15 Section 5 of the Commodity Exchange Act (7 U.S.C. 7)
 16 is amended by striking subsection (d) and inserting the
 17 following:

18 “(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

19 “(1) DESIGNATION AS CONTRACT MARKET.—

20 “(A) IN GENERAL.—To be designated, and
 21 maintain a designation, as a contract market, a
 22 board of trade shall comply with—

23 “(i) any core principle described in
 24 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 CON-
 5 TRACT MARKET.—Unless otherwise determined
 6 by the Commission by rule or regulation, a
 7 board of trade described in subparagraph (A)
 8 shall have reasonable discretion in establishing
 9 the manner in which the board of trade com-
 10 plies with the core principles described in this
 11 subsection.

12 “(2) COMPLIANCE WITH RULES.—

13 “(A) IN GENERAL.—The board of trade
 14 shall establish, monitor, and enforce compliance
 15 with the rules of the contract market, includ-
 16 ing—

17 “(i) access requirements;

18 “(ii) the terms and conditions of any
 19 contracts to be traded on the contract mar-
 20 ket; and

21 “(iii) rules prohibiting abusive trade
 22 practices on the contract market.

23 “(B) CAPACITY OF CONTRACT MARKET.—
 24 The board of trade shall have the capacity to
 25 detect, investigate, and apply appropriate sanc-

1 tions to any person that violates any rule of the
2 contract market.

3 “(C) REQUIREMENT OF RULES.—The rules
4 of the contract market shall provide the board
5 of trade with the ability and authority to obtain
6 any necessary information to perform any func-
7 tion described in this subsection, including the
8 capacity to carry out such international infor-
9 mation-sharing agreements as the Commission
10 may require.

11 “(3) CONTRACTS NOT READILY SUBJECT TO
12 MANIPULATION.—The board of trade shall list on
13 the contract market only contracts that are not
14 readily susceptible to manipulation.

15 “(4) PREVENTION OF MARKET DISRUPTION.—
16 The board of trade shall have the capacity and re-
17 sponsibility to prevent manipulation, price distortion,
18 and disruptions of the delivery or cash-settlement
19 process through market surveillance, compliance,
20 and enforcement practices and procedures, includ-
21 ing—

22 “(A) methods for conducting real-time
23 monitoring of trading; and

24 “(B) comprehensive and accurate trade re-
25 constructions.

1 “(5) POSITION LIMITATIONS OR ACCOUNT-
2 ABILITY.—

3 “(A) IN GENERAL.—To reduce the poten-
4 tial threat of market manipulation or conges-
5 tion (especially during trading in the delivery
6 month), the board of trade shall adopt for each
7 contract of the board of trade, as is necessary
8 and appropriate, position limitations or position
9 accountability for speculators.

10 “(B) MAXIMUM ALLOWABLE POSITION
11 LIMITATION.—For any contract that is subject
12 to a position limitation established by the Com-
13 mission pursuant to section 4a(a), the board of
14 trade shall set the position limitation of the
15 board of trade at a level not higher than the po-
16 sition limitation established by the Commission.

17 “(6) EMERGENCY AUTHORITY.—The board of
18 trade, in consultation or cooperation with the Com-
19 mission, shall adopt rules to provide for the exercise
20 of emergency authority, as is necessary and appro-
21 priate, including the authority—

22 “(A) to liquidate or transfer open positions
23 in any contract;

24 “(B) to suspend or curtail trading in any
25 contract; and

1 “(C) to require market participants in any
2 contract to meet special margin requirements.

3 “(7) AVAILABILITY OF GENERAL INFORMA-
4 TION.—The board of trade shall make available to
5 market authorities, market participants, and the
6 public accurate information concerning—

7 “(A) the terms and conditions of the con-
8 tracts of the contract market; and

9 “(B)(i) the rules, regulations, and mecha-
10 nisms for executing transactions on or through
11 the facilities of the contract market; and

12 “(ii) the rules and specifications describing
13 the operation of the contract market’s—

14 “(I) electronic matching platform; or

15 “(II) trade execution facility.

16 “(8) DAILY PUBLICATION OF TRADING INFOR-
17 MATION.—The board of trade shall make public
18 daily information on settlement prices, volume, open
19 interest, and opening and closing ranges for actively
20 traded contracts on the contract market.

21 “(9) EXECUTION OF TRANSACTIONS.—

22 “(A) IN GENERAL.—The board of trade
23 shall provide a competitive, open, and efficient
24 market and mechanism for executing trans-
25 actions that protects the price discovery process

1 of trading in the centralized market of the
2 board of trade.

3 “(B) RULES.—The rules of the board of
4 trade may authorize, for bona fide business
5 purposes—

6 “(i) transfer trades or office trades;

7 “(ii) an exchange of—

8 “(I) futures in connection with a
9 cash commodity transaction;

10 “(II) futures for cash commod-
11 ities; or

12 “(III) futures for swaps; or

13 “(iii) a futures commission merchant,
14 acting as principal or agent, to enter into
15 or confirm the execution of a contract for
16 the purchase or sale of a commodity for fu-
17 ture delivery if the contract is reported, re-
18 corded, or cleared in accordance with the
19 rules of the contract market or a deriva-
20 tives clearing organization.

21 “(10) TRADE INFORMATION.—The board of
22 trade shall maintain rules and procedures to provide
23 for the recording and safe storage of all identifying
24 trade information in a manner that enables the con-
25 tract market to use the information—

1 “(A) to assist in the prevention of cus-
2 tomer and market abuses; and

3 “(B) to provide evidence of any violations
4 of the rules of the contract market.

5 “(11) FINANCIAL INTEGRITY OF TRANS-
6 ACTIONS.—The board of trade shall establish and
7 enforce—

8 “(A) rules and procedures for ensuring the
9 financial integrity of transactions entered into
10 on or through the facilities of the contract mar-
11 ket (including the clearance and settlement of
12 the transactions with a derivatives clearing or-
13 ganization); and

14 “(B) rules to ensure—

15 “(i) the financial integrity of any—

16 “(I) futures commission mer-
17 chant; and

18 “(II) introducing broker; and

19 “(ii) the protection of customer funds.

20 “(12) PROTECTION OF MARKETS AND MARKET
21 PARTICIPANTS.—The board of trade shall establish
22 and enforce rules—

23 “(A) to protect markets and market par-
24 ticipants from abusive practices committed by
25 any party, including abusive practices com-

1 mitted by a party acting as an agent for a par-
2 ticipant; and

3 “(B) to promote fair and equitable trading
4 on the contract market.

5 “(13) DISCIPLINARY PROCEDURES.—The board
6 of trade shall establish and enforce disciplinary pro-
7 cedures that authorize the board of trade to dis-
8 cipline, suspend, or expel members or market par-
9 ticipants that violate the rules of the board of trade,
10 or similar methods for performing the same func-
11 tions, including delegation of the functions to third
12 parties.

13 “(14) DISPUTE RESOLUTION.—The board of
14 trade shall establish and enforce rules regarding,
15 and provide facilities for alternative dispute resolu-
16 tion as appropriate for, market participants and any
17 market intermediaries.

18 “(15) GOVERNANCE FITNESS STANDARDS.—
19 The board of trade shall establish and enforce ap-
20 propriate fitness standards for directors, members of
21 any disciplinary committee, members of the contract
22 market, and any other person with direct access to
23 the facility (including any party affiliated with any
24 person described in this paragraph).

1 “(16) CONFLICTS OF INTEREST.—The board of
2 trade shall establish and enforce rules—

3 “(A) to minimize conflicts of interest in
4 the decision-making process of the contract
5 market; and

6 “(B) to establish a process for resolving
7 conflicts of interest described in subparagraph
8 (A).

9 “(17) COMPOSITION OF GOVERNING BOARDS OF
10 CONTRACT MARKETS.—The governance arrange-
11 ments of the board of trade shall be designed to pro-
12 mote the objectives of market participants.

13 “(18) RECORDKEEPING.—The board of trade
14 shall maintain records of all activities relating to the
15 business of the contract market—

16 “(A) in a form and manner that is accept-
17 able to the Commission; and

18 “(B) for a period of at least 5 years.

19 “(19) ANTITRUST CONSIDERATIONS.—Unless
20 necessary or appropriate to achieve the purposes of
21 this Act, the board of trade shall not—

22 “(A) adopt any rule or taking any action
23 that results in any unreasonable restraint of
24 trade; or

1 “(B) impose any material anticompetitive
2 burden on trading on the contract market.

3 “(20) SYSTEM SAFEGUARDS.—The board of
4 trade shall—

5 “(A) establish and maintain a program of
6 risk analysis and oversight to identify and mini-
7 mize sources of operational risk, through the
8 development of appropriate controls and proce-
9 dures, and the development of automated sys-
10 tems, that are reliable, secure, and have ade-
11 quate scalable capacity;

12 “(B) establish and maintain emergency
13 procedures, backup facilities, and a plan for dis-
14 aster recovery that allow for the timely recovery
15 and resumption of operations and the fulfill-
16 ment of the responsibilities and obligations of
17 the board of trade; and

18 “(C) periodically conduct tests to verify
19 that backup resources are sufficient to ensure
20 continued order processing and trade matching,
21 price reporting, market surveillance, and main-
22 tenance of a comprehensive and accurate audit
23 trail.

24 “(21) FINANCIAL RESOURCES.—

1 “(A) IN GENERAL.—The board of trade
2 shall have adequate financial, operational, and
3 managerial resources to discharge each respon-
4 sibility of the board of trade.

5 “(B) DETERMINATION OF ADEQUACY.—
6 The financial resources of the board of trade
7 shall be considered to be adequate if the value
8 of the financial resources exceeds the total
9 amount that would enable the contract market
10 to cover the operating costs of the contract
11 market for a 1-year period, as calculated on a
12 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 “, except-
17 ing the setting of levels of margin”;

18 (2) by redesignating subparagraphs (D)
19 through (F) as subparagraphs (E) through (G), re-
20 spectively; 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
 6 of 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”;
 23 and

24 (B) by striking “on an electronic trading
 25 facility with respect to a significant price dis-

1 covery contract,” and inserting “swaps traded
2 on or subject to the rules of an swaps execution
3 facility, or swaps not traded on or subject to
4 the rules of an swaps execution facility that
5 perform a significant price discovery function
6 with respect to a registered entity,”; and

7 (4) by adding at the end the following:

8 “(2) AGGREGATE POSITION LIMITS.—The Com-
9 mission shall, by rule or regulation, establish limits
10 (including related hedge exemption provisions) on
11 the aggregate number or amount of positions in con-
12 tracts based on the same underlying commodity (as
13 defined by the Commission) that may be held by any
14 person, including any group or class of traders, for
15 each month across—

16 “(A) contracts listed by designated con-
17 tract markets;

18 “(B) with respect to an agreement, con-
19 tract, or transaction that settles against, or in
20 relation to, any price (including the daily or
21 final settlement price) of 1 or more contracts
22 listed for trading on a registered entity, con-
23 tracts traded on a foreign board of trade that
24 provides members or other participants located
25 in the United States with direct access to the

1 electronic trading and order matching system of
2 the foreign board of trade;

3 “(C) swaps traded on or subject to the
4 rules 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
7 or affect a significant price discovery function
8 with 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 dis-
12 covery function with respect to registered entities,
13 the Commission shall consider, as appropriate, the
14 following factors:

15 “(A) PRICE LINKAGE.—The extent to
16 which the swap uses or otherwise relies on a
17 daily or final settlement price, or other major
18 price parameter, of another contract traded on
19 a registered entity based on the same under-
20 lying commodity, to value a position, transfer or
21 convert a position, financially settle a position,
22 or close out a position.

23 “(B) ARBITRAGE.—The extent to which
24 the price for the swap is sufficiently related to
25 the price of another contract traded on a reg-

1 istered entity based on the same underlying
2 commodity so as to permit market participants
3 to effectively arbitrage between the markets by
4 simultaneously maintaining positions or exe-
5 cuting trades in the swaps on a frequent and
6 recurring basis.

7 “(C) MATERIAL PRICE REFERENCE.—The
8 extent to which, on a frequent and recurring
9 basis, bids, offers, or transactions in a contract
10 traded on a registered entity are directly based
11 on, or are determined by referencing, the price
12 generated by the swap.

13 “(D) MATERIAL LIQUIDITY.—The extent
14 to which the volume of swaps being traded in
15 the commodity is sufficient to have a material
16 effect on another contract traded on a reg-
17 istered entity.

18 “(E) OTHER MATERIAL FACTORS.—Such
19 other material factors as the Commission speci-
20 fies by rule or regulation as relevant to deter-
21 mine whether a swap serves a significant price
22 discovery function with respect to a regulated
23 market.

24 “(4) EXEMPTIONS.—The Commission, by rule,
25 regulation, or order, may exempt, conditionally or

1 unconditionally, any person or class of persons, any
2 swap or class of swaps, or any transaction or class
3 of transactions from any requirement that the Com-
4 mission establishes under this section with respect to
5 position limits.”.

6 (b) CONFORMING AMENDMENTS.—Section 4a(b) of
7 the Commodity Exchange Act (7 U.S.C. 6a(b)) is amend-
8 ed—

9 (1) in paragraph (1), by striking “or derivatives
10 transaction execution facility or facilities or elec-
11 tronic trading facility” and inserting “or swap exe-
12 cution facility or facilities”; and

13 (2) in paragraph (2), by striking “or derivatives
14 transaction execution facility or facilities or elec-
15 tronic trading facility” and inserting “or swap exe-
16 cution facility”.

17 **SEC. 738. FOREIGN BOARDS OF TRADE.**

18 (a) IN GENERAL.—Section 4(b) of the Commodity
19 Exchange Act (7 U.S.C. 6(b)) is amended—

20 (1) in the first sentence, by striking “The Com-
21 mission” and inserting the following:

22 “(2) PERSONS LOCATED IN THE UNITED
23 STATES.—

24 “(A) IN GENERAL.—The Commission”;

1 (2) in the second sentence, by striking “Such
2 rules and regulations” and inserting the following:

3 “(B) DIFFERENT REQUIREMENTS.—Rules
4 and regulations described in subparagraph
5 (A)”;

6 (3) in the third sentence—

7 (A) by striking “No rule or regulation”
8 and inserting the following:

9 “(C) PROHIBITION.—Except as provided in
10 paragraphs (1) and (2), no rule or regulation”;

11 (B) by striking “that (1) requires” and in-
12 serting the following: “that—

13 “(i) requires”; and

14 (C) by striking “market, or (2) governs”
15 and inserting the following: “market; or

16 “(ii) governs”; and

17 (4) by inserting before paragraph (2) (as des-
18 ignated by paragraph (1)) the following:

19 “(1) FOREIGN BOARDS OF TRADE.—

20 “(A) IN GENERAL.—It shall be unlawful
21 for a foreign board of trade to provide to the
22 members of the foreign board of trade or other
23 participants located in the United States direct
24 access to the electronic trading and order-
25 matching system of the foreign board of trade

1 with respect to an agreement, contract, or
2 transaction that settles against any price (in-
3 cluding the daily or final settlement price) of 1
4 or more contracts listed for trading on a reg-
5 istered entity, unless the Commission deter-
6 mines that—

7 “(i) the foreign board of trade makes
8 public daily trading information regarding
9 the agreement, contract, or transaction
10 that is comparable to the daily trading in-
11 formation published by the registered enti-
12 ty for the 1 or more contracts against
13 which the agreement, contract, or trans-
14 action traded on the foreign board of trade
15 settles; and

16 “(ii) the foreign board of trade (or the
17 foreign futures authority that oversees the
18 foreign board of trade)—

19 “(I) adopts position limits (in-
20 cluding related hedge exemption provi-
21 sions) for the agreement, contract, or
22 transaction that are comparable to the
23 position limits (including related
24 hedge exemption provisions) adopted
25 by the registered entity for the 1 or

1 more contracts against which the
2 agreement, contract, or transaction
3 traded on the foreign board of trade
4 settles;

5 “(II) has the authority to require
6 or direct market participants to limit,
7 reduce, or liquidate any position the
8 foreign board of trade (or the foreign
9 futures authority that oversees the
10 foreign board of trade) determines to
11 be necessary to prevent or reduce the
12 threat of price manipulation, excessive
13 speculation as described in section 4a,
14 price distortion, or disruption of deliv-
15 ery or the cash settlement process;

16 “(III) agrees to promptly notify
17 the Commission, with regard to the
18 agreement, contract, or transaction
19 that settles against any price (includ-
20 ing the daily or final settlement price)
21 of 1 or more contracts listed for trad-
22 ing on a registered entity, of any
23 change regarding—

1 “(aa) the information that
2 the foreign board of trade will
3 make publicly available;

4 “(bb) the position limits
5 that the foreign board of trade or
6 foreign futures authority will
7 adopt and enforce;

8 “(cc) the position reductions
9 required to prevent manipulation,
10 excessive speculation as described
11 in section 4a, price distortion, or
12 disruption of delivery or the cash
13 settlement process; and

14 “(dd) any other area of in-
15 terest expressed by the Commis-
16 sion to the foreign board of trade
17 or foreign futures authority;

18 “(IV) provides information to the
19 Commission regarding large trader
20 positions in the agreement, contract,
21 or transaction that is comparable to
22 the large trader position information
23 collected by the Commission for the 1
24 or more contracts against which the
25 agreement, contract, or transaction

1 traded on the foreign board of trade
2 settles; and

3 “(V) provides the Commission
4 such information as is necessary to
5 publish reports on aggregate trader
6 positions for the agreement, contract,
7 or transaction traded on the foreign
8 board of trade that are comparable to
9 such reports on aggregate trader posi-
10 tions for the 1 or more contracts
11 against which the agreement, con-
12 tract, or transaction traded on the
13 foreign board of trade settles.

14 “(B) EXISTING FOREIGN BOARDS OF
15 TRADE.—Subparagraph (A) shall not be effec-
16 tive with respect to any foreign board of trade
17 to which, prior to the date of enactment of this
18 paragraph, the Commission granted direct ac-
19 cess permission until the date that is 180 days
20 after that date of enactment.”.

21 (b) LIABILITY OF REGISTERED PERSONS TRADING
22 ON A FOREIGN BOARD OF TRADE.—Section 4 of the Com-
23modity Exchange Act (7 U.S.C. 6) is amended—

24 (1) in subsection (a), in the matter preceding
25 paragraph (1), by inserting “or by subsection (e)”

1 after “Unless exempted by the Commission pursuant
2 to subsection (c)”; and

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

4 “(e) LIABILITY OF REGISTERED PERSONS TRADING
5 ON A FOREIGN BOARD OF TRADE.—A person registered
6 with the Commission, or exempt from registration by the
7 Commission, under this Act may not be found to have vio-
8 lated subsection (a) with respect to a transaction in, or
9 in connection with, a contract of sale of a commodity for
10 future delivery if the person has reason to believe that the
11 transaction and the contract is made on or subject to the
12 rules of a foreign board of trade that has complied with
13 paragraphs (1) and (2) of subsection (b).”.

14 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
15 TURES CONTRACTS.—Section 22(a) of the Commodity Ex-
16 change Act (7 U.S.C. 25(a)) (as amended by section 739)
17 is amended by adding at the end the following:

18 “(6) CONTRACT ENFORCEMENT FOR FOREIGN
19 FUTURES CONTRACTS.—A contract of sale of a com-
20 modity for future delivery traded or executed on or
21 through the facilities of a board of trade, exchange,
22 or market located outside the United States for pur-
23 poses of section 4(a) shall not be void, voidable, or
24 unenforceable, and a party to such a contract shall
25 not be entitled to rescind or recover any payment

1 made with respect to the contract, based on the fail-
2 ure of the foreign board of trade to comply with any
3 provision of this Act.”.

4 **SEC. 739. LEGAL CERTAINTY FOR SWAPS.**

5 Section 22(a) of the Commodity Exchange Act (7
6 U.S.C. 25(a)) is amended by striking paragraph (4) and
7 inserting the following:

8 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
9 GIBLE COUNTERPARTIES.—

10 “(A) IN GENERAL.—No hybrid instrument
11 sold to any investor shall be void, voidable, or
12 unenforceable, and no party to a hybrid instru-
13 ment shall be entitled to rescind, or recover any
14 payment made with respect to, the hybrid in-
15 strument under this section or any other provi-
16 sion of Federal or State law, based solely on the
17 failure of the hybrid instrument to comply with
18 the terms or conditions of section 2(f) or regu-
19 lations of the Commission.

20 “(B) SWAPS.—No agreement, contract, or
21 transaction between eligible contract partici-
22 pants or persons reasonably believed to be eligi-
23 ble contract participants shall be void, voidable,
24 or unenforceable, and no party to an agree-
25 ment, contract, or transaction shall be entitled

1 to rescind, or recover any payment made with
 2 respect to, the agreement, contract, or trans-
 3 action under this section or any other provision
 4 of Federal or State law, based solely on the fail-
 5 ure of the agreement, contract, or transaction—

6 “(i) to meet the definition of a swap
 7 under section 1a; or

8 “(ii) to be cleared in accordance with
 9 section 2(h)(1).

10 “(5) LEGAL CERTAINTY FOR LONG-TERM
 11 SWAPS ENTERED INTO BEFORE THE DATE OF EN-
 12 ACTMENT OF THE WALL STREET TRANSPARENCY
 13 AND ACCOUNTABILITY ACT OF 2010.—

14 “(A) IN GENERAL.—Any swap entered into
 15 before the date of enactment of the Wall Street
 16 Transparency and Accountability Act of 2010,
 17 the terms of which have not expired as of the
 18 date of enactment, shall not be subject to the
 19 mandatory clearing requirements under this
 20 Act.

21 “(B) EFFECT ON SWAPS.—Unless specifi-
 22 cally reserved in the applicable bilateral trading
 23 agreement, neither the enactment of the Wall
 24 Street Transparency and Accountability Act of
 25 2010, nor any requirement under that Act or

1 an amendment made by that Act, shall con-
2 stitute a termination event, force majeure, ille-
3 gality, increased costs, regulatory change, or
4 similar event under a bilateral trading agree-
5 ment (including any related credit support ar-
6 rangement) that would permit a party to termi-
7 nate, renegotiate, modify, amend, or supple-
8 ment 1 or more transactions under the bilateral
9 trading agreement.

10 “(C) POSITION LIMITS.—Any position limit
11 established under the Wall Street Transparency
12 and Accountability Act of 2010 shall not apply
13 to a position acquired in good faith prior to the
14 effective date of any rule, regulation, or order
15 under the Act that establishes the position
16 limit; provided, however, that such positions
17 shall be attributed to the trader if the trader’s
18 position is increased after the effective date
19 such position limit rule, regulation, or order.”.

20 **SEC. 740. MULTILATERAL CLEARING ORGANIZATIONS.**

21 Sections 408 and 409 of the Federal Deposit Insur-
22 ance Corporation Improvement Act of 1991 (12 U.S.C.
23 4421, 4422) are repealed.

1 **SEC. 741. ENFORCEMENT.**

2 (a) ENFORCEMENT AUTHORITY.—The Commodity
3 Exchange Act is amended by inserting after section 4b (7
4 U.S.C. 6b) the following:

5 **“SEC. 4b–1. ENFORCEMENT AUTHORITY.**

6 “(a) COMMISSION.—Except as provided in sub-
7 sections (b), (c), and (d), the Commission shall have pri-
8 mary authority to enforce the amendments made by the
9 Wall Street Transparency and Accountability Act of 2010
10 with respect to any person.

11 “(b) APPROPRIATE FEDERAL BANKING AGENCIES.—
12 The appropriate Federal banking agency for swap dealers
13 or major swap participants that are depository institu-
14 tions, as that term is defined under section 3 of the Fed-
15 eral Deposit Insurance Act (12 U.S.C. 1813), shall have
16 exclusive authority to enforce the provisions of section
17 4s(e) and other prudential requirements of this Act, with
18 respect to depository institutions that are swap dealers or
19 major swap participants.

20 “(c) REFERRALS.—

21 “(1) PRUDENTIAL REGULATORS.—If the pru-
22 dential regulator for a swap dealer or major swap
23 participant has cause to believe that the swap dealer
24 or major swap participant, or any affiliate or divi-
25 sion of the swap dealer or major swap participant,
26 may have engaged in conduct that constitutes a vio-

1 lation of the nonprudential requirements of this Act
2 (including section 4s or rules adopted by the Com-
3 mission under that section), the prudential regulator
4 shall promptly notify the Commission in a written
5 report that includes—

6 “(A) a request that the Commission ini-
7 tiate an enforcement proceeding under this Act;
8 and

9 “(B) an explanation of the facts and cir-
10 cumstances that led to the preparation of the
11 written report.

12 “(2) COMMISSION.—If the Commission has
13 cause to believe that a swap dealer or major swap
14 participant that has a prudential regulator may have
15 engaged in conduct that constitutes a violation of
16 any prudential requirement of section 4s or rules
17 adopted by the Commission under that section, the
18 Commission may notify the prudential regulator of
19 the conduct in a written report that includes—

20 “(A) a request that the prudential regu-
21 lator initiate an enforcement proceeding under
22 this Act or any other Federal law (including
23 regulations); and

24 “(B) an explanation of the concerns of the
25 Commission, and a description of the facts and

1 circumstances, that led to the preparation of
2 the written report.

3 “(d) BACKSTOP ENFORCEMENT AUTHORITY.—

4 “ (1) INITIATION OF ENFORCEMENT PRO-
5 CEEDING BY PRUDENTIAL REGULATOR.—If the
6 Commission does not initiate an enforcement pro-
7 ceeding before the end of the 90-day period begin-
8 ning on the date on which the Commission receives
9 a written report under subsection (c)(1), the pruden-
10 tial regulator may initiate an enforcement pro-
11 ceeding.

12 “ (2) INITIATION OF ENFORCEMENT PRO-
13 CEEDING BY COMMISSION.—If the prudential regu-
14 lator does not initiate an enforcement proceeding be-
15 fore the end of the 90-day period beginning on the
16 date on which the prudential regulator receives a
17 written report under subsection (c)(2), the Commis-
18 sion may initiate an enforcement proceeding.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 4b of the Commodity Exchange Act
21 (7 U.S.C. 6b) is amended—

22 (A) in subsection (a)(2), by striking “or
23 other agreement, contract, or transaction sub-
24 ject to paragraphs (1) and (2) of section
25 5a(g),” and inserting “or swap,”;

1 (B) in subsection (b), by striking “or other
2 agreement, contract or transaction subject to
3 paragraphs (1) and (2) of section 5a(g),” and
4 inserting “or swap,”; and

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

6 “(e) It shall be unlawful for any person, directly or
7 indirectly, by the use of any means or instrumentality of
8 interstate commerce, or of the mails, or of any facility of
9 any registered entity, in or in connection with any order
10 to make, or the making of, any contract of sale of any
11 commodity for future delivery (or option on such a con-
12 tract), or any swap, on a group or index of securities (or
13 any interest therein or based on the value thereof)—

14 “(1) to employ any device, scheme, or artifice to
15 defraud;

16 “(2) to make any untrue statement of a mate-
17 rial fact or to omit to state a material fact necessary
18 in order to make the statements made, in the light
19 of the circumstances under which they were made,
20 not misleading; or

21 “(3) to engage in any act, practice, or course of
22 business which operates or would operate as a fraud
23 or deceit upon any person.”.

24 (2) Section 4c(a)(1) of the Commodity Ex-
25 change Act (7 U.S.C. 6c(a)(1)) is amended by in-

1 serting “or swap” before “if the transaction is used
2 or may be used”.

3 (3) Section 6(c) of the Commodity Exchange
4 Act (7 U.S.C. 9) is amended in the first sentence by
5 inserting “or of any swap,” before “or has willfully
6 made”.

7 (4) Section 6(d) of the Commodity Exchange
8 Act (7 U.S.C. 13b) is amended in the first sentence,
9 in the matter preceding the proviso, by inserting “or
10 of any swap,” before “or otherwise is violating”.

11 (5) Section 6c(a) of the Commodity Exchange
12 Act (7 U.S.C. 13a-1(a)) is amended in the matter
13 preceding the proviso by inserting “or any swap”
14 after “commodity for future delivery”.

15 (6) Section 9 of the Commodity Exchange Act
16 (7 U.S.C. 13) is amended—

17 (A) in subsection (a)—

18 (i) in paragraph (2), by inserting “or
19 of any swap,” before “or to corner”; and

20 (ii) in paragraph (4), by inserting
21 “swap data repository,” before “or futures
22 association” and

23 (B) in subsection (e)(1)—

1 (i) by inserting “swap data reposi-
2 tory,” before “or registered futures asso-
3 ciation”; and

4 (ii) by inserting “, or swaps,” before
5 “on the basis”.

6 (7) Section 9(a) of the Commodity Exchange
7 Act (7 U.S.C. 13(a)) is amended by adding at the
8 end the following:

9 “(6) Any person to abuse the end user clearing
10 exemption under section 2(h)(4), as determined by
11 the Commission.”.

12 (8) Section 8(b) of the Federal Deposit Insur-
13 ance Act (12 U.S.C. 1818(b)) is amended by adding
14 at the end the following:

15 “(11) SWAPS.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), this section shall apply to any swap
18 dealer, major swap participant, security-based
19 swap dealer, major security-based swap partici-
20 pant, derivatives clearing organization, swap
21 data repository, or swap execution facility, re-
22 gardless of whether the dealer, participant, or-
23 ganization, repository, or facility is an insured
24 depository institution, for which the Board, the
25 Corporation, or the Office of the Comptroller of

1 the Currency is the appropriate Federal bank-
2 ing agency or prudential regulator for purposes
3 of the amendments made by the Wall Street
4 Transparency and Accountability Act of 2010.

5 “(B) LIMITATION.—The authority de-
6 scribed in subparagraph (A) shall be limited by,
7 and exercised in accordance with, section 4b–1
8 of the Commodity Exchange Act.”.

9 (9) Section 2(c)(2)(B) of the Commodity Ex-
10 change Act (7 U.S.C. 2(c)(2)(B)) is amended—

11 (A) by striking “(dd),” each place it ap-
12 pears;

13 (B) in clause (iii), by inserting “, and ac-
14 counts or pooled investment vehicles described
15 in clause (vi),” before “shall be subject to”; and

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

17 “(vi) This Act applies to, and the
18 Commission shall have jurisdiction over, an
19 account or pooled investment vehicle that
20 is offered for the purpose of trading, or
21 that trades, any agreement, contract, or
22 transaction in foreign currency described
23 in clause (i).”.

24 (10) Section 2(c)(2)(C) of the Commodity Ex-
25 change Act (7 U.S.C. 2(c)(2)(C)) is amended—

1 (A) by striking “(dd),” each place it ap-
 2 pears;

3 (B) in clause (ii)(I), by inserting “, and ac-
 4 counts or pooled investment vehicles described
 5 in clause (vii),” before “shall be subject to”;
 6 and

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

8 “(vii) This Act applies to, and the
 9 Commission shall have jurisdiction over, an
 10 account or pooled investment vehicle that
 11 is offered for the purpose of trading, or
 12 that trades, any agreement, contract, or
 13 transaction in foreign currency described
 14 in clause (i).”.

15 (11) Section 1a(19)(A)(iv)(II) of the Com-
 16modity Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II))
 17 (as redesignated by section 721(a)(1)) is amended
 18 by inserting before the semicolon at the end the fol-
 19 lowing: “provided, however, that for purposes of sec-
 20 tion 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the
 21 term ‘eligible contract participant’ shall not include
 22 a commodity pool in which any participant is not
 23 otherwise an eligible contract participant”.

1 **SEC. 742. RETAIL COMMODITY TRANSACTIONS.**

2 (a) IN GENERAL.—Section 2(c) of the Commodity
3 Exchange Act (7 U.S.C. 2(c)) is amended—

4 (1) in paragraph (1), by striking “(to the extent
5 provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))”
6 and inserting “, 5b, or 12(e)(2)(B))”; and

7 (2) in paragraph (2), by adding at the end the
8 following:

9 “(D) RETAIL COMMODITY TRANS-
10 ACTIONS.—

11 “(i) APPLICABILITY.—Except as pro-
12 vided in clause (ii), this subparagraph shall
13 apply to any agreement, contract, or trans-
14 action in any commodity that is—

15 “(I) entered into with, or offered
16 to (even if not entered into with), a
17 person that is not an eligible contract
18 participant or eligible commercial en-
19 tity; and

20 “(II) entered into, or offered
21 (even if not entered into), on a lever-
22 aged or margined basis, or financed
23 by the offeror, the counterparty, or a
24 person acting in concert with the of-
25 feror or counterparty on a similar
26 basis.

1 “(ii) EXCEPTIONS.—This subpara-
2 graph shall not apply to—

3 “(I) an agreement, contract, or
4 transaction described in paragraph (1)
5 or subparagraphs (A), (B), or (C), in-
6 cluding any agreement, contract, or
7 transaction specifically excluded from
8 subparagraph (A), (B), or (C);

9 “(II) any security;

10 “(III) a contract of sale that—

11 “(aa) results in actual deliv-
12 ery within 28 days or such other
13 period as the Commission may
14 determine by rule or regulation
15 based upon the typical commer-
16 cial practice in cash or spot mar-
17 kets for the commodity involved;
18 or

19 “(bb) creates an enforceable
20 obligation to deliver between a
21 seller and a buyer that have the
22 ability to deliver and accept deliv-
23 ery, respectively, in connection
24 with the line of business of the
25 seller and buyer; or

1 “(IV) an agreement, contract, or
2 transaction that is listed on a national
3 securities exchange registered under
4 section 6(a) of the Securities Ex-
5 change Act of 1934 (15 U.S.C.
6 78f(a)); or

7 “(V) an identified banking prod-
8 uct, as defined in section 402(b) of
9 the Legal Certainty for Bank Prod-
10 ucts Act of 2000 (7 U.S.C.27(b)).

11 “(iii) ENFORCEMENT.—Sections 4(a),
12 4(b), and 4b apply to any agreement, con-
13 tract, or transaction described in clause (i),
14 as if the agreement, contract, or trans-
15 action was a contract of sale of a com-
16 modity for future delivery.

17 “(iv) ELIGIBLE COMMERCIAL ENTI-
18 TY.—For purposes of this subparagraph,
19 an agricultural producer, packer, or han-
20 dler shall be considered to be an eligible
21 commercial entity for any agreement, con-
22 tract, or transaction for a commodity in
23 connection with the line of business of the
24 agricultural producer, packer, or handler.

1 “(v) ACTUAL DELIVERY.—For pur-
 2 poses of clause (ii)(III), the term ‘actual
 3 delivery’ does not include delivery to a
 4 third party in a financed transaction in
 5 which the commodity is held as collat-
 6 eral.”.

7 (b) GRAMM-LEACH-BLILEY ACT.—Section 206(a) of
 8 the Gramm-Leach-Bliley Act (Public Law 106–102; 15
 9 U.S.C. 78c note) is amended, in the matter preceding
 10 paragraph (1), by striking “For purposes of” and insert-
 11 ing “Except as provided in subsection (e), for purposes
 12 of”.

13 (c) CONFORMING AMENDMENTS RELATING TO RE-
 14 TAIL FOREIGN EXCHANGE TRANSACTIONS.—

15 (1) Section 2(c)(2)(B)(i)(II) of the Commodity
 16 Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-
 17 ed—

18 (A) in item (aa), by inserting “United
 19 States” before “financial institution”;

20 (B) by striking items (dd) and (ff);

21 (C) by redesignating items (ee) and (gg) as
 22 items (dd) and (ff), respectively; and

23 (D) in item (dd) (as so redesignated), by
 24 striking the semicolon and inserting “; or”.

1 (2) Section 2(c)(2) of the Commodity Exchange
2 Act (7 U.S.C. 2(c)(2)) (as amended by subsection
3 (a)(2)) is amended by adding at the end the fol-
4 lowing:

5 “(E) PROHIBITION.—

6 “(i) DEFINITION OF FEDERAL REGU-
7 LATORY AGENCY.—In this subparagraph,
8 the term ‘Federal regulatory agency’
9 means—

10 “(I) the Commission;

11 “(II) the Securities and Ex-
12 change Commission;

13 “(III) an appropriate Federal
14 banking agency;

15 “(IV) the National Credit Union
16 Association; and

17 “(V) the Farm Credit Adminis-
18 tration.

19 “(ii) PROHIBITION.—A person de-
20 scribed in subparagraph (B)(i)(II) for
21 which there is a Federal regulatory agency
22 shall not offer to, or enter into with, a per-
23 son that is not an eligible contract partici-
24 pant, any agreement, contract, or trans-
25 action in foreign currency described in sub-

1 paragraph (B)(i)(I) except pursuant to a
 2 rule or regulation of a Federal regulatory
 3 agency allowing the agreement, contract,
 4 or transaction under such terms and condi-
 5 tions as the Federal regulatory agency
 6 shall prescribe.

7 “(iii) REQUIREMENTS OF RULES AND
 8 REGULATIONS.—

9 “(I) IN GENERAL.—The rules
 10 and regulations described in clause
 11 (ii) shall prescribe appropriate re-
 12 quirements with respect to—

13 “(aa) disclosure;

14 “(bb) recordkeeping;

15 “(cc) capital and margin;

16 “(dd) reporting;

17 “(ee) business conduct;

18 “(ff) documentation; and

19 “(gg) such other standards
 20 or requirements as the Federal
 21 regulatory agency shall determine
 22 to be necessary.

23 “(II) TREATMENT.—The rules or
 24 regulations described in clause (ii)
 25 shall treat all agreements, contracts,

1 and transactions in foreign currency
2 described in subparagraph (B)(i)(I),
3 and all agreements, contracts, and
4 transactions in foreign currency that
5 are functionally or economically simi-
6 lar to agreements, contracts, or trans-
7 actions described in subparagraph
8 (B)(i)(I), similarly.”.

9 **SEC. 743. OTHER AUTHORITY.**

10 Unless otherwise provided by the amendments made
11 by this subtitle, the amendments made by this subtitle do
12 not divest any appropriate Federal banking agency, the
13 Commodity Futures Trading Commission, the Securities
14 and Exchange Commission, or other Federal or State
15 agency of any authority derived from any other applicable
16 law.

17 **SEC. 744. RESTITUTION REMEDIES.**

18 Section 6c(d) of the Commodity Exchange Act (7
19 U.S.C. 13a–1(d)) is amended by adding at the end the
20 following:

21 “(3) **EQUITABLE REMEDIES.**—In any action
22 brought under this section, the Commission may
23 seek, and the court shall have jurisdiction to impose,
24 on a proper showing, on any person found in the ac-

1 tion to have committed any violation, equitable remedies including—

3 “(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and

6 “(B) disgorgement of gains received in connection with such violation.”.

8 **SEC. 745. ENHANCED COMPLIANCE BY REGISTERED ENTITIES.**

10 (a) CORE PRINCIPLES FOR CONTRACT MARKETS.—
11 Section 5(d) of the Commodity Exchange Act (7 U.S.C.
12 7(d)) (as amended by section 735(b)) is amended by striking paragraph (1) and inserting the following:

14 “(1) DESIGNATION.—

15 “(A) IN GENERAL.—To be designated as,
16 and to maintain the designation of, a board of
17 trade as a contract market, the board of trade
18 shall comply with—

19 “(i) the core principles described in
20 this subsection; and

21 “(ii) any requirement that the Commission may impose by rule or regulation
22 pursuant to section 8a(5).
23 pursuant to section 8a(5).

24 “(B) DISCRETION OF BOARD OF TRADE.—

25 Unless the Commission determines otherwise by

1 rule or regulation, the board of trade shall have
 2 reasonable discretion in establishing the manner
 3 by which the board of trade complies with each
 4 core principle.”.

5 (b) CORE PRINCIPLES.—Section 5b(c)(2) of the
 6 Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)) (as
 7 amended by section 725(c)) is amended by striking sub-
 8 paragraph (A) and inserting the following:

9 “(A) REGISTRATION.—

10 “(i) IN GENERAL.—To be registered
 11 and to maintain registration as a deriva-
 12 tives clearing organization, a derivatives
 13 clearing organization shall comply with—

14 “(I) the core principles described
 15 in this paragraph; and

16 “(II) any requirement that the
 17 Commission may impose by rule or
 18 regulation pursuant to section 8a(5).

19 “(ii) DISCRETION OF COMMISSION.—
 20 Unless the Commission determines other-
 21 wise by rule or regulation, a derivatives
 22 clearing organization shall have reasonable
 23 discretion in establishing the manner by
 24 which the derivatives clearing organization
 25 complies with each core principle.”.

1 (c) EFFECT OF INTERPRETATION.—Section 5c(a) of
2 the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is
3 amended by striking paragraph (2) and inserting the fol-
4 lowing:

5 “(2) EFFECT OF INTERPRETATION.—An inter-
6 pretation issued under paragraph (1) may provide
7 the exclusive means for complying with each section
8 described in paragraph (1).”.

9 (d) NEW CONTRACTS, NEW RULES, AND RULE
10 AMENDMENTS.—

11 (1) IN GENERAL.—A registered entity may elect
12 to list for trading or accept for clearing any new
13 contract, or other instrument, or may elect to ap-
14 prove and implement any new rule or rule amend-
15 ment, by providing to the Commission (and the Sec-
16 retary of the Treasury, in the case of a contract of
17 sale of a government security for future delivery (or
18 option on such a contract) or a rule or rule amend-
19 ment specifically related to such a contract) a writ-
20 ten certification that the new contract or instrument
21 or clearing of the new contract or instrument, new
22 rule, or rule amendment complies with this Act (in-
23 cluding regulations under this Act).

24 (2) RULE REVIEW.—The new rule or rule
25 amendment described in paragraph (1) shall become

1 effective, pursuant to the certification of the reg-
2 istered entity, on the date that is 10 business days
3 after the date on which the Commission receives the
4 certification (or such shorter period as determined
5 by the Commission by rule or regulation) unless the
6 Commission notifies the registered entity within such
7 time that it is staying the certification because there
8 exist novel or complex issues that require additional
9 time to analyze, an inadequate explanation by the
10 submitting registered entity, or a potential inconsis-
11 tency with this Act (including regulations under this
12 Act).

13 (3) STAY OF CERTIFICATION FOR RULES.—

14 (A) A notification by the Commission pur-
15 suant to paragraph (2) shall stay the certifi-
16 cation of the new rule or rule amendment for
17 up to an additional 90 days from the date of
18 the notification.

19 (B) A rule or rule amendment subject to
20 a stay pursuant to subparagraph (A) shall be-
21 come effective, pursuant to the certification of
22 the registered entity, at the expiration of the
23 period described in subparagraph (A) unless the
24 Commission—

1 (i) withdraws the stay prior to that
2 time; or

3 (ii) notifies the registered entity dur-
4 ing such period that it objects to the pro-
5 posed certification on the grounds that it is
6 inconsistent with this Act (including regu-
7 lations under this Act).

8 (4) PRIOR APPROVAL.—

9 (A) IN GENERAL.—A registered entity may
10 request that the Commission grant prior ap-
11 proval to any new contract or other instrument,
12 new rule, or rule amendment.

13 (B) PRIOR APPROVAL REQUIRED.—Not-
14 withstanding any other provision of this section,
15 a designated contract market shall submit to
16 the Commission for prior approval each rule
17 amendment that materially changes the terms
18 and conditions, as determined by the Commis-
19 sion, in any contract of sale for future delivery
20 of a commodity specifically enumerated in sec-
21 tion 1a(10) (or any option thereon) traded
22 through its facilities if the rule amendment ap-
23 plies to contracts and delivery months which
24 have already been listed for trading and have
25 open interest.

1 (C) DEADLINE.—If prior approval is re-
 2 quested under subparagraph (A), the Commis-
 3 sion shall take final action on the request not
 4 later than 90 days after submission of the re-
 5 quest, unless the person submitting the request
 6 agrees to an extension of the time limitation es-
 7 tablished under this subparagraph.

8 (5) APPROVAL.—

9 (A) RULES.—The Commission shall ap-
 10 prove a new rule, or rule amendment, of a reg-
 11 istered entity unless the Commission finds that
 12 the new rule, or rule amendment, is incon-
 13 sistent with this subtitle (including regulations).

14 (B) CONTRACTS AND INSTRUMENTS.—The
 15 Commission shall approve a new contract or
 16 other instrument unless the Commission finds
 17 that the new contract or other instrument
 18 would violate this subtitle (including regula-
 19 tions).

20 (C) SPECIAL RULE FOR REVIEW AND AP-
 21 PROVAL OF EVENT CONTRACTS AND SWAPS
 22 CONTRACTS.—

23 (i) EVENT CONTRACTS.—In connec-
 24 tion with the listing of agreements, con-
 25 tracts, transactions, or swaps in excluded

1 commodities that are based upon the oc-
2 currence, extent of an occurrence, or con-
3 tingency (other than a change in the price,
4 rate, value, or levels of a commodity de-
5 scribed in section 1a(2)(i)), by a des-
6 ignated contract market or swap execution
7 facility, the Commission may determine
8 that such agreements, contracts, or trans-
9 actions are contrary to the public interest
10 if the agreements, contracts, or trans-
11 actions involve—

12 (I) activity that is unlawful under
13 any Federal or State law;

14 (II) terrorism;

15 (III) assassination;

16 (IV) war;

17 (V) gaming; or

18 (VI) other similar activity deter-
19 mined by the Commission, by rule or
20 regulation, to be contrary to the pub-
21 lic interest.

22 (ii) PROHIBITION.—No agreement,
23 contract, or transaction determined by the
24 Commission to be contrary to the public
25 interest under clause (i) may be listed or

1 made available for clearing or trading on
2 or through a registered entity.

3 (iii) SWAPS CONTRACTS.—

4 (I) IN GENERAL.—In connection
5 with the listing of a swap for clearing
6 by a derivatives clearing organization,
7 the Commission shall determine, upon
8 request or on its own motion, the ini-
9 tial eligibility, or the continuing quali-
10 fication, of a derivatives clearing orga-
11 nization to clear such a swap under
12 those criteria, conditions, or rules that
13 the Commission, in its discretion, de-
14 termines.

15 (II) REQUIREMENTS.—Any such
16 criteria, conditions, or rules shall con-
17 sider—

18 (aa) the financial integrity
19 of the derivatives clearing organi-
20 zation; and

21 (bb) any other factors which
22 the Commission determines may
23 be appropriate.

24 (iv) DEADLINE.—The Commission
25 shall take final action under clauses (i)

1 and (ii) in not later than 90 days from the
2 commencement of its review unless the
3 party seeking to offer the contract or swap
4 agrees to an extension of this time limita-
5 tion.

6 (e) VIOLATION OF CORE PRINCIPLES.—Section 5c of
7 the Commodity Exchange Act (7 U.S.C. 7a–2) is amended
8 by striking subsection (d).

9 **SEC. 746. INSIDER TRADING.**

10 Section 4c(a) of the Commodity Exchange Act (7
11 U.S.C. 6c(a)) is amended by adding at the end the fol-
12 lowing:

13 “(3) CONTRACT OF SALE.—It shall be unlawful
14 for any employee or agent of any department or
15 agency of the Federal Government who, by virtue of
16 the employment or position of the employee or
17 agent, acquires information that may affect or tend
18 to affect the price of any commodity in interstate
19 commerce, or for future delivery, or any swap, and
20 which information has not been disseminated by the
21 department or agency of the Federal Government
22 holding or creating the information in a manner
23 which makes it generally available to the trading
24 public, or disclosed in a criminal, civil, or adminis-
25 trative hearing, or in a congressional, administrative,

1 or Government Accountability Office report, hearing,
2 audit, or investigation, to use the information in his
3 personal capacity and for personal gain to enter
4 into, or offer to enter into—

5 “(A) a contract of sale of a commodity for
6 future delivery (or option on such a contract);

7 “(B) an option (other than an option exe-
8 cuted or traded on a national securities ex-
9 change registered pursuant to section 6(a) of
10 the Securities Exchange Act of 1934 (15
11 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
20 affect 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 Fed-
24 eral Government holding or creating the infor-
25 mation in a manner which makes it generally

1 available to the trading public, or disclosed in
2 a criminal, civil, or administrative hearing, or in
3 a congressional, administrative, or Government
4 Accountability Office report, hearing, audit, or
5 investigation, to impart the information in his
6 personal capacity and for personal gain with in-
7 tent to assist another person, directly or indi-
8 rectly, to use the information to enter into, or
9 offer to enter into—

10 “(i) a contract of sale of a commodity
11 for future delivery (or option on such a
12 contract);

13 “(ii) an option (other than an option
14 executed or traded on a national securities
15 exchange registered pursuant to section
16 6(a) of the Securities Exchange Act of
17 1934 (15 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
23 described 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
3 contract);

4 “(ii) an option (other than an option
5 executed or traded on a national securities
6 exchange registered pursuant to section
7 6(a) of the Securities Exchange Act of
8 1934 (15 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 Govern-
15 ment that may affect or tend to affect the price
16 of any commodity in interstate commerce, or
17 for future delivery, or any swap, where such
18 person knows, or acts in reckless disregard of
19 the fact, that such information has not been
20 disseminated by the department or agency of
21 the Federal Government holding or creating the
22 information in a manner which makes it gen-
23 erally available to the trading public, or dis-
24 closed in a criminal, civil, or administrative
25 hearing, or in a congressional, administrative,

1 or Government Accountability Office report,
2 hearing, audit, or investigation, and to use such
3 information, or to impart such information with
4 the intent to assist another person, directly or
5 indirectly, to use such information to enter into,
6 or offer to enter into—

7 “(i) a contract of sale of a commodity
8 for future delivery (or option on such a
9 contract);

10 “(ii) an option (other than an option
11 executed or traded on a national securities
12 exchange registered pursuant to section
13 6(a) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78f(a)); or

15 “(iii) a swap.

16 *Provided*, however, that nothing in this
17 subparagraph shall preclude a person that
18 has provided information concerning, or
19 generated by, the person, its operations or
20 activities, to any employee or agent of any
21 department or agency of the Federal Gov-
22 ernment, voluntarily or as required by law,
23 from using such information to enter into,
24 or offer to enter into, a contract of sale,

1 option, or swap described in clauses (i),
2 (ii), or (iii).”.

3 **SEC. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY.**

4 Section 4c(a) of the Commodity Exchange Act (7
5 U.S.C. 6c(a)) (as amended by section 746) is amended
6 by adding at the end the following:

7 “(5) DISRUPTIVE PRACTICES.—It shall be un-
8 lawful for any person to engage in any trading, prac-
9 tice, or conduct on or subject to the rules of a reg-
10 istered entity that—

11 “(A) violates bids or offers;

12 “(B) demonstrates intentional or reckless
13 disregard for the orderly execution of trans-
14 actions during the closing period; or

15 “(C) is, is of the character of, or is com-
16 monly known to the trade as, ‘spoofing’ (bid-
17 ding or offering with the intent to cancel the
18 bid or offer before execution).

19 “(6) RULEMAKING AUTHORITY.—The Commis-
20 sion may make and promulgate such rules and regu-
21 lations as, in the judgment of the Commission, are
22 reasonably necessary to prohibit the trading prac-
23 tices described in paragraph (5) and any other trad-
24 ing practice that is disruptive of fair and equitable
25 trading.

1 “(7) USE OF SWAPS TO DEFRAUD.—It shall be
 2 unlawful for any person to enter into a swap know-
 3 ing, or acting in reckless disregard of the fact, that
 4 its counterparty will use the swap as part of a de-
 5 vice, scheme, or artifice to defraud any third
 6 party.”.

7 **SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND**
 8 **PROTECTION.**

9 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
 10 is amended by adding at the end the following:

11 **“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND**
 12 **PROTECTION.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
 15 ACTION.—The term ‘covered judicial or administra-
 16 tive action’ means any judicial or administrative ac-
 17 tion brought by the Commission under this Act that
 18 results in monetary sanctions exceeding \$1,000,000.

19 “(2) FUND.—The term ‘Fund’ means the Com-
 20 modity Futures Trading Commission Customer Pro-
 21 tection Fund established under subsection (g).

22 “(3) MONETARY SANCTIONS.—The term ‘mone-
 23 tary sanctions’, when used with respect to any judi-
 24 cial or administrative action means—

1 “(A) any monies, including penalties,
2 disgorgement, restitution, and interest ordered
3 to be paid; and

4 “(B) any monies deposited into a
5 disgorgement fund or other fund pursuant to
6 section 308(b) of the Sarbanes-Oxley Act of
7 2002 (15 U.S.C. 7246(b)), as a result of such
8 action or any settlement of such action.

9 “(4) ORIGINAL INFORMATION.—The term
10 ‘original information’ means information that—

11 “(A) is derived from the independent
12 knowledge or analysis of a whistleblower;

13 “(B) is not known to the Commission from
14 any other source, unless the whistleblower is the
15 original source of the information; and

16 “(C) is not exclusively derived from an al-
17 legation made in a judicial or administrative
18 hearing, in a governmental report, hearing,
19 audit, or investigation, or from the news media,
20 unless the whistleblower is a source of the infor-
21 mation.

22 “(5) RELATED ACTION.—The term ‘related ac-
23 tion’, when used with respect to any judicial or ad-
24 ministrative action brought by the Commission
25 under this Act, means any judicial or administrative

1 action brought by an entity described in subclauses
2 (i) through (vi) of subsection (g)(2)(B) that is based
3 upon the original information provided by a whistle-
4 blower pursuant to subsection (a) that led to the
5 successful enforcement of the Commission action.

6 “(6) SUCCESSFUL RESOLUTION.—The term
7 ‘successful resolution’, when used with respect to
8 any judicial or administrative action brought by the
9 Commission under this Act, includes any settlement
10 of such action.

11 “(7) WHISTLEBLOWER.—The term ‘whistle-
12 blower’ means any individual, or 2 or more individ-
13 uals acting jointly, who provides information relating
14 to a violation of this Act to the Commission, in a
15 manner established by rule or regulation, by the
16 Commission.

17 “(b) AWARDS.—

18 “(1) IN GENERAL.—In any covered judicial or
19 administrative action, or related action, the Commis-
20 sion, under regulations prescribed by the Commis-
21 sion and subject to subsection (c), shall pay an
22 award or awards to 1 or more whistleblowers who
23 voluntarily provided original information to the
24 Commission that led to the successful enforcement

1 of the covered judicial or administrative action, or
 2 related action, in an aggregate amount equal to—

3 “(A) not less than 10 percent, in total, of
 4 what has been collected of the monetary sanc-
 5 tions imposed in the action or related actions;
 6 and

7 “(B) not more than 30 percent, in total, of
 8 what has been collected of the monetary sanc-
 9 tions imposed in the action or related actions.

10 “(2) PAYMENT OF AWARDS.—Any amount paid
 11 under paragraph (1) shall be paid from the Fund.

12 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
 13 NIAL OF AWARD.—

14 “(1) DETERMINATION OF AMOUNT OF
 15 AWARD.—

16 “(A) DISCRETION.—The determination of
 17 the amount of an award made under subsection
 18 (b) shall be in the discretion of the Commission.

19 “(B) CRITERIA.—In determining the
 20 amount of an award made under subsection (b),
 21 the Commission shall take into account—

22 “(i) the significance of the informa-
 23 tion provided by the whistleblower to the
 24 success of the covered judicial or adminis-
 25 trative action;

1 “(ii) the degree of assistance provided
2 by the whistleblower and any legal rep-
3 resentative of the whistleblower in a cov-
4 ered judicial or administrative action;

5 “(iii) the programmatic interest of the
6 Commission in deterring violations of the
7 Act (including regulations under the Act)
8 by making awards to whistleblowers who
9 provide information that leads to the suc-
10 cessful enforcement of such laws; and

11 “(iv) such additional relevant factors
12 as the Commission may establish by rule
13 or regulation.

14 “(2) DENIAL OF AWARD.—No award under
15 subsection (b) shall be made—

16 “(A) to any whistleblower who is, or was at
17 the time the whistleblower acquired the original
18 information submitted to the Commission, a
19 member, officer, or employee of—

20 “(i) a appropriate regulatory agency;

21 “(ii) the Department of Justice;

22 “(iii) a registered entity;

23 “(iv) a registered futures association;

24 or

1 “(v) a self-regulatory organization as
2 defined in section 3(a) of the Securities
3 Exchange Act of 1934 (15 U.S.C. 78c(a));
4 or

5 “(vi) a law enforcement organization;

6 “(B) to any whistleblower who is convicted
7 of a criminal violation related to the judicial or
8 administrative action for which the whistle-
9 blower otherwise could receive an award under
10 this section;

11 “(C) to any whistleblower who submits in-
12 formation to the Commission that is based on
13 the facts underlying the covered action sub-
14 mitted previously by another whistleblower;

15 “(D) to any whistleblower who fails to sub-
16 mit information to the Commission in such
17 form as the Commission may, by rule or regula-
18 tion, require.

19 “(d) REPRESENTATION.—

20 “(1) PERMITTED REPRESENTATION.—Any
21 whistleblower who makes a claim for an award under
22 subsection (b) may be represented by counsel.

23 “(2) REQUIRED REPRESENTATION.—

24 “(A) IN GENERAL.—Any whistleblower
25 who anonymously makes a claim for an award

1 under subsection (b) shall be represented by
2 counsel if the whistleblower submits the infor-
3 mation upon which the claim is based.

4 “(B) DISCLOSURE OF IDENTITY.—Prior to
5 the payment of an award, a whistleblower shall
6 disclose the identity of the whistleblower and
7 provide such other information as the Commis-
8 sion may require, directly or through counsel
9 for the whistleblower.

10 “(e) NO CONTRACT NECESSARY.—No contract with
11 the Commission is necessary for any whistleblower to re-
12 ceive an award under subsection (b), unless otherwise re-
13 quired by the Commission, by rule or regulation.

14 “(f) APPEALS.—

15 “(1) IN GENERAL.—Any determination made
16 under this section, including whether, to whom, or in
17 what amount to make awards, shall be in the discre-
18 tion of the Commission.

19 “(2) APPEALS.—Any determination described
20 in paragraph (1) may be appealed to the appropriate
21 court of appeals of the United States not more than
22 30 days after the determination is issued by the
23 Commission.

1 “(3) REVIEW.—The court shall review the de-
2 termination made by the Commission in accordance
3 with section 7064 of title 5, United States Code.

4 “(g) COMMODITY FUTURES TRADING COMMISSION
5 CUSTOMER PROTECTION FUND.—

6 “(1) ESTABLISHMENT.—There is established in
7 the Treasury of the United States a revolving fund
8 to be known as the ‘Commodity Futures Trading
9 Commission Customer Protection Fund’.

10 “(2) USE OF FUND.—The Fund shall be avail-
11 able to the Commission, without further appropria-
12 tion or fiscal year limitation, for—

13 “(A) the payment of awards to whistle-
14 blowers as provided in subsection (a); and

15 “(B) the funding of customer education
16 initiatives designed to help customers protect
17 themselves against fraud or other violations of
18 this Act, or the rules and regulations there-
19 under.

20 “(3) DEPOSITS AND CREDITS.—There shall be
21 deposited into or credited to the Fund—

22 “(A) any monetary judgment collected by
23 the Commission in any judicial or administra-
24 tive action brought by the Commission under
25 this Act, that is not otherwise distributed to

1 victims of a violation of this Act or the rules
2 and regulations thereunder underlying such ac-
3 tion, unless the balance of the Fund at the time
4 the monetary judgment is collected exceeds
5 \$100,000,000; and

6 “(B) all income from investments made
7 under paragraph (4).

8 “(4) INVESTMENTS.—

9 “(A) AMOUNTS IN FUND MAY BE IN-
10 VESTED.—The Commission may request the
11 Secretary of the Treasury to invest the portion
12 of the Fund that is not, in the Commission’s
13 judgment, required to meet the current needs of
14 the Fund.

15 “(B) ELIGIBLE INVESTMENTS.—Invest-
16 ments shall be made by the Secretary of the
17 Treasury in obligations of the United States or
18 obligations that are guaranteed as to principal
19 and interest by the United States, with matu-
20 rities suitable to the needs of the Fund as de-
21 termined by the Commission.

22 “(C) INTEREST AND PROCEEDS CRED-
23 ITED.—The interest on, and the proceeds from
24 the sale or redemption of, any obligations held

1 in the Fund shall be credited to, and form a
2 part of, the Fund.

3 “(5) REPORTS TO CONGRESS.—Not later than
4 October 30 of each year, the Commission shall
5 transmit to the Committee on Agriculture, Nutri-
6 tion, and Forestry of the Senate, and the Committee
7 on Agriculture of the House of Representatives a re-
8 port on—

9 “(A) the Commission’s whistleblower
10 award program under this section, including a
11 description of the number of awards granted
12 and the types of cases in which awards were
13 granted during the preceding fiscal year;

14 “(B) customer education initiatives de-
15 scribed in paragraph (2)(B) that were funded
16 by the Fund during the preceding fiscal year;

17 “(C) the balance of the Fund at the begin-
18 ning of the preceding fiscal year;

19 “(D) the amounts deposited into or cred-
20 ited to the Fund during the preceding fiscal
21 year;

22 “(E) the amount of earnings on invest-
23 ments of amounts in the Fund during the pre-
24 ceding fiscal year;

1 “(F) the amount paid from the Fund dur-
2 ing the preceding fiscal year to whistleblowers
3 pursuant to subsection (b);

4 “(G) the amount paid from the Fund dur-
5 ing the preceding fiscal year for customer edu-
6 cation initiatives described in paragraph (2)(B);

7 “(H) the balance of the Fund at the end
8 of the preceding fiscal year; and

9 “(I) a complete set of audited financial
10 statements, including a balance sheet, income
11 statement, and cash flow analysis.

12 “(h) PROTECTION OF WHISTLEBLOWERS.—

13 “(1) PROHIBITION AGAINST RETALIATION.—

14 “(A) IN GENERAL.—No employer may dis-
15 charge, demote, suspend, threaten, harass, di-
16 rectly or indirectly, or in any other manner dis-
17 criminate against, a whistleblower in the terms
18 and conditions of employment because of any
19 lawful act done by the whistleblower—

20 “(i) in providing information to the
21 Commission in accordance with subsection
22 (b); or

23 “(ii) in assisting in any investigation
24 or judicial or administrative action of the

1 Commission based upon or related to such
2 information.

3 “(B) ENFORCEMENT.—

4 “(i) CAUSE OF ACTION.—An indi-
5 vidual who alleges discharge or other dis-
6 crimination in violation of subparagraph
7 (A) may bring an action under this sub-
8 section in the appropriate district court of
9 the United States for the relief provided in
10 subparagraph (C), unless the individual
11 who is alleging discharge or other discrimi-
12 nation in violation of subparagraph (A) is
13 an employee of the federal government, in
14 which case the individual shall only bring
15 an action under section 1221 of title 5
16 United States Code.

17 “(ii) SUBPOENAS.—A subpoena re-
18 quiring the attendance of a witness at a
19 trial or hearing conducted under this sub-
20 section may be served at any place in the
21 United States.

22 “(iii) STATUTE OF LIMITATIONS.—An
23 action under this subsection may not be
24 brought more than 2 years after the date

1 on which the violation reported in subpara-
2 graph (A) is committed.

3 “(C) RELIEF.—Relief for an individual
4 prevailing in an action brought under subpara-
5 graph (B) shall include—

6 “(i) reinstatement with the same se-
7 niority status that the individual would
8 have had, but for the discrimination;

9 “(ii) the amount of back pay other-
10 wise owed to the individual, with interest;
11 and

12 “(iii) compensation for any special
13 damages sustained as a result of the dis-
14 charge or discrimination, including litiga-
15 tion costs, expert witness fees, and reason-
16 able attorney’s fees.

17 “(2) CONFIDENTIALITY.—

18 “(A) INFORMATION PROVIDED.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in subparagraph (B), all information
21 provided to the Commission by a whistle-
22 blower shall be confidential and privileged
23 as an evidentiary matter (and shall not be
24 subject to civil discovery or other legal
25 process) in any proceeding in any Federal

1 or State court or administrative agency,
2 and shall be exempt from disclosure, in the
3 hands of a department or agency of the
4 Federal Government, under section 552 of
5 title 5, United States Code (commonly
6 known as the ‘Freedom of Information
7 Act’) or otherwise, unless and until re-
8 quired to be disclosed to a defendant or re-
9 spondent in connection with a public pro-
10 ceeding instituted by the Commission or
11 any entity described in subparagraph (B).

12 “(ii) CONSTRUCTION.—For purposes
13 of section 552 of title 5, United States
14 Code, this paragraph shall be considered to
15 be a statute described in subsection
16 (b)(3)(B) of that section.

17 “(iii) EFFECT.—Nothing in this para-
18 graph is intended to limit the ability of the
19 Attorney General to present such evidence
20 to a grand jury or to share such evidence
21 with potential witnesses or defendants in
22 the course of an ongoing criminal inves-
23 tigation.

24 “(B) AVAILABILITY TO GOVERNMENT
25 AGENCIES.—

1 “(i) IN GENERAL.—Without the loss
2 of its status as confidential and privileged
3 in the hands of the Commission, all infor-
4 mation referred to in subparagraph (A)
5 may, in the discretion of the Commission,
6 when determined by the Commission to be
7 necessary or appropriate to accomplish the
8 purposes of this Act and protect customers
9 and in accordance with clause (ii), be made
10 available to—

11 “(I) the Department of Justice;

12 “(II) an appropriate department
13 or agency of the Federal Government,
14 acting within the scope of its jurisdic-
15 tion;

16 “(III) a registered entity, reg-
17 istered futures association, or self-reg-
18 ulatory organization as defined in sec-
19 tion 3(a) of the Securities Exchange
20 Act of 1934 (15 U.S.C. 78c(a));

21 “(IV) a State attorney general in
22 connection with any criminal inves-
23 tigation;

1 “(V) an appropriate department
2 or agency of any State, acting within
3 the scope of its jurisdiction; and

4 “(VI) a foreign futures authority.

5 “(ii) MAINTENANCE OF INFORMA-
6 TION.—Each of the entities, agencies, or
7 persons described in clause (i) shall main-
8 tain information described in that clause
9 as confidential and privileged, in accord-
10 ance with the requirements in subpara-
11 graph (A).

12 “(3) RIGHTS RETAINED.—Nothing in this sec-
13 tion shall be deemed to diminish the rights, privi-
14 leges, or remedies of any whistleblower under any
15 Federal or State law, or under any collective bar-
16 gaining agreement.

17 “(i) RULEMAKING AUTHORITY.—The Commission
18 shall have the authority to issue such rules and regulations
19 as may be necessary or appropriate to implement the pro-
20 visions of this section consistent with the purposes of this
21 section.

22 “(j) IMPLEMENTING RULES.—The Commission shall
23 issue final rules or regulations implementing the provi-
24 sions of this section not later than 270 days after the date

1 of enactment of the Wall Street Transparency and Ac-
2 countability Act of 2010.

3 “(k) ORIGINAL INFORMATION.—Information sub-
4 mitted to the Commission by a whistleblower in accord-
5 ance with rules or regulations implementing this section
6 shall not lose its status as original information solely be-
7 cause the whistleblower submitted such information prior
8 to the effective date of such rules or regulations, provided
9 such information was submitted after the date of enact-
10 ment of the Wall Street Transparency and Accountability
11 Act of 2010.

12 “(l) AWARDS.—A whistleblower may receive an award
13 pursuant to this section regardless of whether any viola-
14 tion of a provision of this Act, or a rule or regulation
15 thereunder, underlying the judicial or administrative ac-
16 tion upon which the award is based occurred prior to the
17 date of enactment of the Wall Street Transparency and
18 Accountability Act of 2010.

19 “(m) PROVISION OF FALSE INFORMATION.—A whis-
20 tleblower who knowingly and willfully makes any false, fic-
21 titious, or fraudulent statement or representation, or who
22 makes or uses any false writing or document knowing the
23 same to contain any false, fictitious, or fraudulent state-
24 ment or entry, shall not be entitled to an award under

1 this section and shall be subject to prosecution under sec-
 2 tion 1001 of title 18, United States Code.”.

3 **SEC. 749. CONFORMING AMENDMENTS.**

4 (a) Section 2(c)(1) of the Commodity Exchange Act
 5 (7 U.S.C. 2(c)(1)) is amended, in the matter preceding
 6 subparagraph (A), by striking “5a (to the extent provided
 7 in section 5a(g)),”.

8 (b) Section 4d of the Commodity Exchange Act (7
 9 U.S.C. 6d) (as amended by section 724) is amended—

10 (1) in subsection (a)—

11 (A) in the matter preceding paragraph
 12 (1)—

13 (i) by striking “engage as” and insert-
 14 ing “be a”; and

15 (ii) by striking “or introducing
 16 broker” and all that follows through “or
 17 derivatives transaction execution facility”;

18 (B) in paragraph (1), by striking “or in-
 19 troducing broker”; and

20 (C) in paragraph (2), by striking “if a fu-
 21 tures commission merchant,”; and

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

23 “(g) It shall be unlawful for any person to be an in-
 24 troducing broker unless such person shall have registered
 25 under this Act with the Commission as an introducing

1 broker and such registration shall not have expired nor
2 been suspended nor revoked.”.

3 (c) Section 4m(3) of the Commodity Exchange Act
4 (7 U.S.C. 6m(3)) is amended—

5 (1) by striking “(3) Subsection (1) of this sec-
6 tion” and inserting the following:

7 “(3) EXCEPTION.—

8 “(A) IN GENERAL.—Paragraph (1)”; and

9 (2) by striking “to any investment trust” and
10 all that follows through the period at the end and
11 inserting the following: “to any commodity pool that
12 is engaged primarily in trading commodity interests.

13 “(B) ENGAGED PRIMARILY.—For purposes
14 of subparagraph (A), a commodity trading advi-
15 sor or a commodity pool shall be considered to
16 be ‘engaged primarily’ in the business of being
17 a commodity trading advisor or commodity pool
18 if it is or holds itself out to the public as being
19 engaged primarily, or proposes to engage pri-
20 marily, in the business of advising on com-
21 modity interests or investing, reinvesting, own-
22 ing, holding, or trading in commodity interests,
23 respectively.

24 “(C) COMMODITY INTERESTS.—For pur-
25 poses of this paragraph, commodity interests

1 shall include contracts of sale of a commodity
2 for future delivery, options on such contracts,
3 security futures, swaps, leverage contracts, for-
4 eign exchange, spot and forward contracts on
5 physical commodities, and any monies held in
6 an account used for trading commodity inter-
7 ests.”.

8 (d) Section 5c of the Commodity Exchange Act (7
9 U.S.C. 7a-2) is amended—

10 (1) in subsection (a)(1)—

11 (A) by striking “, 5a(d),”; and

12 (B) by striking “and section (2)(h)(7) with
13 respect to significant price discovery con-
14 tracts,”; and

15 (2) in subsection (f)(1), by striking “section
16 4d(c) of this Act” and inserting “section 4d(e)”.

17 (e) Section 5e of the Commodity Exchange Act (7
18 U.S.C. 7b) is amended by striking “or revocation of the
19 right of an electronic trading facility to rely on the exemp-
20 tion set forth in section 2(h)(3) with respect to a signifi-
21 cant price discovery contract,”.

22 (f) Section 6(b) of the Commodity Exchange Act (7
23 U.S.C. 8(b)) is amended in the first sentence by striking
24 “, or to revoke the right of an electronic trading facility

1 to rely on the exemption set forth in section 2(h)(3) with
 2 respect to a significant price discovery contract,”.

3 (g) Section 12(e)(2)(B) of the Commodity Exchange
 4 Act (7 U.S.C. 16(e)(2)(B)) is amended—

5 (1) by striking “section 2(c), 2(d), 2(f), or 2(g)
 6 of this Act” and inserting “section 2(c), 2(f), or 2(i)
 7 of this Act”; and

8 (2) by striking “2(h) or”.

9 (h) Section 17(r)(1) of the Commodity Exchange Act
 10 (7 U.S.C. 21(r)(1)) is amended by striking “section 4d(c)
 11 of this Act” and inserting “section 4d(e)”.

12 (i) Section 22(b)(1)(A) of the Commodity Exchange
 13 Act (7 U.S.C. 25(b)(1)(A)) is amended by striking “sec-
 14 tion 2(h)(7) or”.

15 (j) Section 408(2)(C) of the Federal Deposit Insur-
 16 ance Corporation Improvement Act of 1991 (12 U.S.C.
 17 4421(2)(C)) is amended—

18 (1) by striking “section 2(c), 2(d), 2(f), or
 19 (2)(g) of such Act” and inserting “section 2(c), 2(f),
 20 or 2(i) of that Act”; and

21 (2) by striking “2(h) or”.

22 **SEC. 750. STUDY ON OVERSIGHT OF CARBON MARKETS.**

23 (a) INTERAGENCY WORKING GROUP.—There is es-
 24 tablished to carry out this section an interagency working

1 group (referred to in this section as the “interagency
2 group”) composed of the following members or designees:

3 (1) The Chairman of the Commodity Futures
4 Trading Commission (referred to in this section as
5 the “Commission”), who shall serve as Chairman of
6 the interagency group.

7 (2) The Secretary of Agriculture.

8 (3) The Secretary of the Treasury.

9 (4) The Chairman of the Securities and Ex-
10 change Commission.

11 (5) The Administrator of the Environmental
12 Protection Agency.

13 (6) The Chairman of the Federal Energy Regu-
14 latory Commission.

15 (7) The Commissioner of the Federal Trade
16 Commission.

17 (8) The Administrator of the Energy Informa-
18 tion Administration.

19 (b) ADMINISTRATIVE SUPPORT.—The Commission
20 shall provide the interagency group such administrative
21 support services as are necessary to enable the interagency
22 group to carry out the functions of the interagency group
23 under this section.

24 (c) CONSULTATION.—In carrying out this section, the
25 interagency group shall consult with representatives of ex-

1 changes, clearinghouses, self-regulatory bodies, major car-
 2 bon market participants, consumers, and the general pub-
 3 lic, as the interagency group determines to be appropriate.

4 (d) STUDY.—The interagency group shall conduct a
 5 study on the oversight of existing and prospective carbon
 6 markets to ensure an efficient, secure, and transparent
 7 carbon market, including oversight of spot markets and
 8 derivative markets.

9 (e) REPORT.—Not later than 180 days after the date
 10 of enactment of this Act, the interagency group shall sub-
 11 mit to Congress a report on the results of the study con-
 12 ducted under subsection (b), including recommendations
 13 for the oversight of existing and prospective carbon mar-
 14 kets to ensure an efficient, secure, and transparent carbon
 15 market, including oversight of spot markets and derivative
 16 markets.

17 **SEC. 751. ENERGY AND ENVIRONMENTAL MARKETS ADVI-**
 18 **SORY COMMITTEE.**

19 Section 2(a) of the Commodity Exchange Act (7
 20 U.S.C. 2(a)) (as amended by section 727) is amended by
 21 adding at the end the following:

22 “(15) ENERGY AND ENVIRONMENTAL MARKETS
 23 ADVISORY COMMITTEE.—

24 “(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 ve-
14 hicle for discussion and communica-
15 tion on matters of concern to ex-
16 changes, firms, end users, and regu-
17 lators regarding energy and environ-
18 mental markets and their regulation
19 by the 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 “(ii) MEMBERS.—Members shall be
 2 appointed to 3-year terms, but may be re-
 3 moved for cause by vote of the Commis-
 4 sion.

5 “(C) APPOINTMENT.—The Commission
 6 shall appoint members with a wide diversity of
 7 opinion and who represent a broad spectrum of
 8 interests, including hedgers and consumers.

9 “(D) REIMBURSEMENT.—Members shall
 10 be entitled to per diem and travel expense reim-
 11 bursement by the Commission.

12 “(E) FACA.—The Committee shall not be
 13 subject to the Federal Advisory Committee Act
 14 (5 U.S.C. App.).”.

15 **SEC. 752. INTERNATIONAL HARMONIZATION.**

16 In order to promote effective and consistent global
 17 regulation of swaps and security-based swaps, the Securi-
 18 ties and Exchange Commission, the Commodity Futures
 19 Trading Commission, the Financial Stability Oversight
 20 Council, and the Treasury Department—

21 (1) shall, both individually and collectively, con-
 22 sult and coordinate with foreign regulatory authori-
 23 ties on the establishment of consistent international
 24 standards with respect to the regulation of such
 25 swaps; and

1 (2) may, both individually and collectively,
 2 agree to such information-sharing arrangements as
 3 may be deemed to be necessary or appropriate in the
 4 public interest or for the protection of investors and
 5 swap counterparties.

6 **SEC. 753. EFFECTIVE DATE.**

7 Unless otherwise provided in this title, this subtitle
 8 shall take effect on the date that is 180 days after the
 9 date of enactment of this Act.

10 **Subtitle B—Regulation of Security-**
 11 **Based Swap Markets**

12 **SEC. 761. DEFINITIONS UNDER THE SECURITIES EX-**
 13 **CHANGE ACT OF 1934.**

14 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-
 15 change Act of 1934 (15 U.S.C. 78c(a)) is amended—

16 (1) in subparagraphs (A) and (B) of paragraph
 17 (5), by inserting “(not including security-based
 18 swaps, other than security-based swaps with or for
 19 persons that are not eligible contract participants)”
 20 after “securities” each place that term appears;

21 (2) in paragraph (10), by inserting “security-
 22 based swap,” after “security future,”;

23 (3) in paragraph (13), by adding at the end the
 24 following: “For security-based swaps, such terms in-
 25 clude the execution, termination (prior to its sched-

1 uled maturity date), assignment, exchange, or simi-
 2 lar transfer or conveyance of, or extinguishing of
 3 rights or obligations under, a security-based swap,
 4 as the context may require.”;

5 (4) in paragraph (14), by adding at the end the
 6 following: “For security-based swaps, such terms in-
 7 clude the execution, termination (prior to its sched-
 8 uled maturity date), assignment, exchange, or simi-
 9 lar transfer or conveyance of, or extinguishing of
 10 rights or obligations under, a security-based swap,
 11 as the context may require.”;

12 (5) in paragraph (39)—

13 (A) in subparagraph (B)(i)—

14 (i) in subclause (I), by striking “or
 15 government securities dealer” and insert-
 16 ing “government securities dealer, security-
 17 based swap dealer, or major security-based
 18 swap participant”; and

19 (ii) in subclause (II), by inserting “se-
 20 curity-based swap dealer, major security-
 21 based swap participant,” after “govern-
 22 ment securities dealer,”;

23 (B) in subparagraph (C), by striking “or
 24 government securities dealer” and inserting
 25 “government securities dealer, security-based

1 swap dealer, or major security-based swap par-
 2 ticipant”; and

3 (C) in subparagraph (D), by inserting “se-
 4 curity-based swap dealer, major security-based
 5 swap participant,” after “government securities
 6 dealer,”; and

7 (6) by adding at the end the following:

8 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The
 9 term ‘eligible contract participant’ has the same
 10 meaning as in section 1a of the Commodity Ex-
 11 change Act (7 U.S.C. 1a).

12 “(66) MAJOR SWAP PARTICIPANT.—The term
 13 ‘major swap participant’ has the same meaning as in
 14 section 1a of the Commodity Exchange Act (7
 15 U.S.C. 1a).

16 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
 17 PANT.—

18 “(A) IN GENERAL.—The term ‘major secu-
 19 rity-based swap participant’ means any per-
 20 son—

21 “(i) who is not a security-based swap
 22 dealer; and

23 “(ii)(I) who maintains a substantial
 24 position in security-based swaps for any of
 25 the major security-based swap categories,

1 as such categories are determined by the
2 Commission, excluding—

3 “(aa) positions held for hedging
4 or mitigating commercial risk; and

5 “(bb) positions maintained by
6 any employee benefit plan (or any
7 contract held by such a plan), as that
8 term is defined in paragraphs (3) and
9 (32) of section 3 of the Employee Re-
10 tirement Income Security Act of 1974
11 (29 U.S.C. 1002), for the primary
12 purpose of hedging or mitigating any
13 risk directly associated with the oper-
14 ation of the plan;

15 “(II) whose outstanding security-
16 based swaps create substantial
17 counterparty exposure that could have seri-
18 ous adverse effects on the financial sta-
19 bility of the United States banking system
20 or financial markets; or

21 “(III) that is a financial entity that—

22 “(aa) is highly leveraged relative
23 to the amount of capital such entity
24 holds; and

1 “(bb) maintains a substantial po-
2 sition in outstanding security-based
3 swaps in any major security-based
4 swap category, as such categories are
5 determined by the Commission.

6 “(B) DEFINITION OF SUBSTANTIAL POSI-
7 TION.—For purposes of subparagraph (A), the
8 Commission shall define, by rule or regulation,
9 the term ‘substantial position’ at the threshold
10 that the Commission determines to be prudent
11 for the effective monitoring, management, and
12 oversight of entities that are systemically im-
13 portant or can significantly impact the financial
14 system of the United States.

15 “(C) SCOPE OF DESIGNATION.—For pur-
16 poses of subparagraph (A), a person may be
17 designated as a major security-based swap par-
18 ticipant for 1 or more categories of security-
19 based swaps without being classified as a major
20 security-based swap participant for all classes
21 of security-based swaps.

22 “(D) CAPITAL.—In setting capital require-
23 ments for a person that is designated as a
24 major security-based swap participant for a sin-
25 gle type or single class or category of security-

1 based swap or activities, the prudential regu-
2 lator and the Commission shall take into ac-
3 count the risks associated with other types of
4 security-based swaps or classes of security-
5 based swaps or categories of security-based
6 swaps engaged in and the other activities con-
7 ducted by that person that are not otherwise
8 subject to regulation applicable to that person
9 by virtue of the status of the person as a major
10 security-based swap participant.

11 “(68) SECURITY-BASED SWAP.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), the term ‘security-based
14 swap’ means any agreement, contract, or trans-
15 action that—

16 “(i) is a swap, as that term is defined
17 under section 1a of the Commodity Ex-
18 change Act; and

19 “(ii) is based on—

20 “(I) an index that is a narrow-
21 based security index, including any in-
22 terest therein or on the value thereof;

23 “(II) a single security or loan, in-
24 cluding any interest therein or on the
25 value thereof; or

1 “(III) the occurrence, nonoccur-
2 rence, or extent of the occurrence of
3 an event relating to a single issuer of
4 a security or the issuers of securities
5 in a narrow-based security index, pro-
6 vided that such event directly affects
7 the financial statements, financial
8 condition, or financial obligations of
9 the issuer.

10 “(B) RULE OF CONSTRUCTION REGARDING
11 MASTER AGREEMENTS.—The term ‘security-
12 based swap’ shall be construed to include a
13 master agreement that provides for an agree-
14 ment, contract, or transaction that is a secu-
15 rity-based swap pursuant to subparagraph (A),
16 together with all supplements to any such mas-
17 ter agreement, without regard to whether the
18 master agreement contains an agreement, con-
19 tract, or transaction that is not a security-based
20 swap pursuant to subparagraph (A), except
21 that the master agreement shall be considered
22 to be a security-based swap only with respect to
23 each agreement, contract, or transaction under
24 the master agreement that is a security-based
25 swap pursuant to subparagraph (A).

1 “(C) EXCLUSIONS.—The term ‘security-
2 based swap’ does not include any agreement,
3 contract, or transaction that meets the defini-
4 tion of a security-based swap only because such
5 agreement, contract, or transaction references,
6 is based upon, or settles through the transfer,
7 delivery, or receipt of an exempted security
8 under paragraph (12), as in effect on the date
9 of enactment of the Futures Trading Act of
10 1982 (other than any municipal security as de-
11 fined in paragraph (29) as in effect on the date
12 of enactment of the Futures Trading Act of
13 1982), unless such agreement, contract, or
14 transaction is of the character of, or is com-
15 monly known in the trade as, a put, call, or
16 other option.

17 “(D) MIXED SWAP.—The term ‘security-
18 based swap’ includes any agreement, contract,
19 or transaction that is as described in subpara-
20 graph (A) and also is based on the value of 1
21 or more interest or other rates, currencies, com-
22 modities, instruments of indebtedness, indices,
23 quantitative measures, other financial or eco-
24 nomic interest or property of any kind (other
25 than a single security or a narrow-based secu-

1 rity index), or the occurrence, non-occurrence,
 2 or the extent of the occurrence of an event or
 3 contingency associated with a potential finan-
 4 cial, economic, or commercial consequence
 5 (other than an event described in subparagraph
 6 (A)(ii)(III)).

7 “(69) SWAP.—The term ‘swap’ has the same
 8 meaning as in section 1a of the Commodity Ex-
 9 change Act (7 U.S.C. 1a).

10 “(70) PERSON ASSOCIATED WITH A SECURITY-
 11 BASED SWAP DEALER OR MAJOR SECURITY-BASED
 12 SWAP PARTICIPANT.—

13 “(A) IN GENERAL.—The term ‘person as-
 14 sociated with a security-based swap dealer or
 15 major security-based swap participant’ or ‘asso-
 16 ciated person of a security-based swap dealer or
 17 major security-based swap participant’ means—

18 “(i) any partner, officer, director, or
 19 branch manager of such security-based
 20 swap dealer or major security-based swap
 21 participant (or any person occupying a
 22 similar status or performing similar func-
 23 tions);

24 “(ii) any person directly or indirectly
 25 controlling, controlled by, or under com-

1 mon control with such security-based swap
2 dealer or major security-based swap partic-
3 ipant; or

4 “(iii) any employee of such security-
5 based swap dealer or major security-based
6 swap participant.

7 “(B) EXCLUSION.—Other than for pur-
8 poses of section 15F(l)(2), the term ‘person as-
9 sociated with a security-based swap dealer or
10 major security-based swap participant’ or ‘asso-
11 ciated person of a security-based swap dealer or
12 major security-based swap participant’ does not
13 include any person associated with a security-
14 based swap dealer or major security-based swap
15 participant whose functions are solely clerical or
16 ministerial.

17 “(71) SECURITY-BASED SWAP DEALER.—

18 “(A) IN GENERAL.—The term ‘security-
19 based swap dealer’ means any person who—

20 “(i) holds themselves out as a dealer in
21 security-based swaps;

22 “(ii) makes a market in security-based
23 swaps;

1 “(iii) regularly engages in the pur-
2 chase and sale of security-based swaps in
3 the ordinary course of a business; or

4 “(iv) engages in any activity causing
5 it to be commonly known in the trade as
6 a dealer or market maker in security-based
7 swaps.

8 “(B) DESIGNATION BY TYPE OR CLASS.—

9 A person may be designated as a security-based
10 swap dealer for a single type or single class or
11 category of security-based swap or activities
12 and considered not to be a security-based swap
13 dealer for other types, classes, or categories of
14 security-based swaps or activities.

15 “(C) CAPITAL.—In setting capital require-
16 ments for a person that is designated as a secu-
17 rity-based swap dealer for a single type or sin-
18 gle class or category of security-based swap or
19 activities, the prudential regulator and the
20 Commission shall take into account the risks
21 associated with other types of security-based
22 swaps or classes of security-based swaps or cat-
23 egories of security-based swaps engaged in and
24 the other activities conducted by that person
25 that are not otherwise subject to regulation ap-

1 plicable to that person by virtue of the status
2 of the person as a security-based swap dealer.

3 “(72) APPROPRIATE FEDERAL BANKING AGEN-
4 CY.—The term ‘appropriate Federal banking agency’
5 has the same meaning as in section 3(q) of the Fed-
6 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

7 “(73) BOARD.—The term ‘Board’ means the
8 Board of Governors of the Federal Reserve System.

9 “(74) PRUDENTIAL REGULATOR.—The term
10 ‘prudential regulator’ has the same meaning as in
11 section 1a of the Commodity Exchange Act (7
12 U.S.C. 1a).

13 “(75) SECURITY-BASED SWAP DATA REPOSI-
14 TORY.—The term ‘security-based swap data reposi-
15 tory’ means any person that collects, calculates, pre-
16 pares, or maintains information or records with re-
17 spect to transactions or positions in, or the terms
18 and conditions of, security-based swaps entered into
19 by third parties.

20 “(76) SWAP DEALER.—The term ‘swap dealer’
21 has the same meaning as in section 1a of the Com-
22 modity Exchange Act (7 U.S.C. 1a).

23 “(77) SWAP EXECUTION FACILITY.—The term
24 ‘swap execution facility’ means a facility in which
25 multiple participants have the ability to execute or

1 trade security-based swaps by accepting bids and of-
 2 fers made by other participants that are open to
 3 multiple participants in the facility or system, or
 4 confirmation facility, that—

5 “(A) facilitates the execution of security-
 6 based swaps between persons; and

7 “(B) is not a designated contract market.

8 “(78) SECURITY-BASED SWAP AGREEMENT.—

9 “(A) IN GENERAL.—For purposes of sec-
 10 tions 9, 10, 16, 20, and 21A of this Act, and
 11 section 17 of the Securities Act of 1933 (15
 12 U.S.C. 77q), the term ‘security-based swap
 13 agreement’ means a swap agreement as defined
 14 in section 206A of the Gramm-Leach-Bliley Act
 15 (15 U.S.C. 78c note) of which a material term
 16 is based on the price, yield, value, or volatility
 17 of any security or any group or index of securi-
 18 ties, or any interest therein.

19 “(B) EXCLUSIONS.—The term ‘security-
 20 based swap agreement’ does not include any se-
 21 curity-based swap.”.

22 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
 23 Securities and Exchange Commission may, by rule, fur-
 24 ther define the terms “security-based swap”, “security-
 25 based swap dealer”, “major security-based swap partici-

1 pant”, and “eligible contract participant” with regard to
 2 security-based swaps (as such terms are defined in the
 3 amendments made by subsection (a)) for the purpose of
 4 including transactions and entities that have been struc-
 5 tured to evade this subtitle or the amendments made by
 6 this subtitle.

7 (c) OTHER INCORPORATED DEFINITIONS.—Except
 8 as the context otherwise requires, in this subtitle, the
 9 terms “prudential regulator”, “swap”, “swap dealer”,
 10 “major swap participant”, “swap data repository”, “asso-
 11 ciated person of a swap dealer or major swap participant”,
 12 “eligible contract participant”, “swap execution facility”,
 13 “security-based swap”, “security-based swap dealer”,
 14 “major security-based swap participant”, “security-based
 15 swap data repository”, and “associated person of a secu-
 16 rity-based swap dealer or major security-based swap par-
 17 ticipant” have the same meanings as in section 1a of the
 18 Commodity Exchange Act (7 U.S.C. 1a), as amended by
 19 this Act.

20 **SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SE-**
 21 **CURITY-BASED SWAP AGREEMENTS.**

22 (a) REPEAL.—Sections 206B and 206C of the
 23 Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C.
 24 78c note) are repealed.

1 (b) CONFORMING AMENDMENTS TO THE SECURITIES
2 ACT OF 1933.—

3 (1) Section 2A of the Securities Act of 1933
4 (15 U.S.C. 77b-1) is amended—

5 (A) by striking subsection (a) and reserv-
6 ing that subsection; and

7 (B) by striking “(as defined in section
8 206B of the Gramm-Leach-Bliley Act)” each
9 place that such term appears and inserting “(as
10 defined in section 3(a)(78) of the Securities Ex-
11 change Act of 1934)”.

12 (2) Section 17 of the Securities Act of 1933 (15
13 U.S.C. 77q) is amended—

14 (A) in subsection (a)—

15 (i) by inserting “(including security-
16 based swaps)” after “securities”; and

17 (ii) by striking “(as defined in section
18 206B of the Gramm-Leach-Bliley Act)”
19 and inserting “(as defined in section
20 3(a)(78) of the Securities Exchange Act)”;
21 and

22 (B) in subsection (d), by striking “206B of
23 the Gramm-Leach-Bliley Act” and inserting
24 “3(a)(78) of the Securities Exchange Act of
25 1934”.

1 (c) CONFORMING AMENDMENTS TO THE SECURITIES
2 EXCHANGE ACT OF 1934.—The Securities Exchange Act
3 of 1934 (15 U.S.C. 78a et seq.) is amended—

4 (1) in section 3A (15 U.S.C. 78c–1)—

5 (A) by striking subsection (a) and reserv-
6 ing that subsection; and

7 (B) by striking “(as defined in section
8 206B of the Gramm-Leach-Bliley Act)” each
9 place that the term appears;

10 (2) in section 9 (15 U.S.C. 78i)—

11 (A) in subsection (a), by striking para-
12 graphs (2) through (5) and inserting the fol-
13 lowing:

14 “(2) To effect, alone or with 1 or more other persons,
15 a series of transactions in any security registered on a na-
16 tional securities exchange, any security not so registered,
17 or in connection with any security-based swap or security-
18 based swap agreement with respect to such security cre-
19 ating actual or apparent active trading in such security,
20 or raising or depressing the price of such security, for the
21 purpose of inducing the purchase or sale of such security
22 by others.

23 “(3) If a dealer, broker, security-based swap dealer,
24 major security-based swap participant, or other person
25 selling or offering for sale or purchasing or offering to

1 purchase the security, a security-based swap, or a secu-
2 rity-based swap agreement with respect to such security,
3 to induce the purchase or sale of any security registered
4 on a national securities exchange, any security not so reg-
5 istered, any security-based swap, or any security-based
6 swap agreement with respect to such security by the cir-
7 culation or dissemination in the ordinary course of busi-
8 ness of information to the effect that the price of any such
9 security will or is likely to rise or fall because of market
10 operations of any 1 or more persons conducted for the
11 purpose of raising or depressing the price of such security.

12 “(4) If a dealer, broker, security-based swap dealer,
13 major security-based swap participant, or other person
14 selling or offering for sale or purchasing or offering to
15 purchase the security, a security-based swap, or security-
16 based swap agreement with respect to such security, to
17 make, regarding any security registered on a national se-
18 curities exchange, any security not so registered, any secu-
19 rity-based swap, or any security-based swap agreement
20 with respect to such security, for the purpose of inducing
21 the purchase or sale of such security, such security-based
22 swap, or such security-based swap agreement any state-
23 ment which was at the time and in the light of the cir-
24 cumstances under which it was made, false or misleading
25 with respect to any material fact, and which that person

1 knew or had reasonable ground to believe was so false or
2 misleading.

3 “(5) For a consideration, received directly or indi-
4 rectly from a broker, dealer, security-based swap dealer,
5 major security-based swap participant, or other person
6 selling or offering for sale or purchasing or offering to
7 purchase the security, a security-based swap, or security-
8 based swap agreement with respect to such security, to
9 induce the purchase of any security registered on a na-
10 tional securities exchange, any security not so registered,
11 any security-based swap, or any security-based swap
12 agreement with respect to such security by the circulation
13 or dissemination of information to the effect that the price
14 of any such security will or is likely to rise or fall because
15 of the market operations of any 1 or more persons con-
16 ducted for the purpose of raising or depressing the price
17 of such security.”; and

18 (B) in subsection (i), by striking “(as de-
19 fined in section 206B of the Gramm-Leach-Bli-
20 ley Act)”;

21 (3) in section 10 (15 U.S.C. 78j)—

22 (A) in subsection (b), by striking “(as de-
23 fined in section 206B of the Gramm-Leach-Bli-
24 ley Act),” each place that term appears; and

1 (B) in the matter following subsection (b),
2 by striking “(as defined in section 206B of the
3 Gramm-Leach-Bliley Act)”;
4 (4) in section 15 (15 U.S.C. 78o)—

5 (A) in subsection (c)(1)(A), by striking
6 “(as defined in section 206B of the Gramm-
7 Leach-Bliley Act),”;

8 (B) in subparagraphs (B) and (C) of sub-
9 section (c)(1), by striking “(as defined in sec-
10 tion 206B of the Gramm-Leach-Bliley Act)”
11 each place that term appears;

12 (C) by redesignating subsection (i), as
13 added by section 303(f) of the Commodity Fu-
14 tures Modernization Act of 2000 (Public Law
15 106–554; 114 Stat. 2763A–455)), as subsection
16 (j); and

17 (D) in subsection (j), as redesignated by
18 subparagraph (C), by striking “(as defined in
19 section 206B of the Gramm-Leach-Bliley Act)”;
20 (5) in section 16 (15 U.S.C. 78p)—

21 (A) in subsection (a)(2)(C), by striking
22 “(as defined in section 206(b) of the Gramm-
23 Leach-Bliley Act (15 U.S.C. 78c note))”;

1 (B) in subsection (a)(3)(B), by inserting
2 “or security-based swaps” after “security-based
3 swap agreement”;

4 (C) in the first sentence of subsection (b),
5 by striking “(as defined in section 206B of the
6 Gramm-Leach-Bliley Act)”;

7 (D) in the third sentence of subsection (b),
8 by striking “(as defined in section 206B of the
9 Gramm-Leach Bliley Act)” and inserting “or a
10 security-based swap”; and

11 (E) in subsection (g), by striking “(as de-
12 fined in section 206B of the Gramm-Leach-Bli-
13 ley Act)”;

14 (6) in section 20 (15 U.S.C. 78t),

15 (A) in subsection (d), by striking “(as de-
16 fined in section 206B of the Gramm-Leach-Bli-
17 ley Act)”;

18 (B) in subsection (f), by striking “(as de-
19 fined in section 206B of the Gramm-Leach-Bli-
20 ley Act)”;

21 (7) in section 21A (15 U.S.C. 78u–1)—

22 (A) in subsection (a)(1), by striking “(as
23 defined in section 206B of the Gramm-Leach-
24 Bliley Act)”;

1 (B) in subsection (g), by striking “(as de-
 2 fined in section 206B of the Gramm-Leach-Bli-
 3 ley Act)”.

4 **SEC. 763. AMENDMENTS TO THE SECURITIES EXCHANGE**
 5 **ACT OF 1934.**

6 (a) CLEARING FOR SECURITY-BASED SWAPS.—The
 7 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
 8 is amended by inserting after section 3B (as added by sec-
 9 tion 717 of this Act):

10 **“SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.**

11 **“(a) CLEARING REQUIREMENT.—**

12 **“(1) SUBMISSION.—**

13 **“(A) IN GENERAL.—**Except as provided in
 14 paragraphs (9) and (10), any person who is a
 15 party to a security-based swap shall submit
 16 such security-based swap for clearing to a clear-
 17 ing agency registered under section 17A of this
 18 title.

19 **“(B) OPEN ACCESS.—**The rules of a reg-
 20 istered clearing agency shall—

21 **“(i) prescribe that all security-based**
 22 **swaps with the same terms and conditions**
 23 **are economically equivalent and may be**
 24 **offset with each other within the clearing**
 25 **agency; and**

1 “(ii) provide for nondiscriminatory
2 clearing of a security-based swap executed
3 bilaterally or on or through the rules of an
4 unaffiliated national securities exchange or
5 swap execution facility, subject to the re-
6 quirements of section 5(b).

7 “(2) COMMISSION APPROVAL.—

8 “(A) IN GENERAL.—A clearing agency
9 shall submit to the Commission for prior ap-
10 proval any group, category, type, or class of se-
11 curity-based swaps that the clearing agency
12 seeks to accept for clearing, which submission
13 the Commission shall make available to the
14 public.

15 “(B) DEADLINE.—The Commission shall
16 take final action on a request submitted pursu-
17 ant to subparagraph (A) not later than 90 days
18 after submission of the request, unless the
19 clearing agency submitting the request agrees
20 to an extension of the time limitation estab-
21 lished under this subparagraph.

22 “(C) APPROVAL.—The Commission shall
23 approve, unconditionally or subject to such
24 terms and conditions as the Commission deter-
25 mines to be appropriate, any request submitted

1 pursuant to subparagraph (A) if the Commis-
2 sion finds that the request is consistent with
3 the requirements of section 17A. The Commis-
4 sion shall not approve any such request if the
5 Commission does not make such finding.

6 “(D) RULES.—The Commission shall
7 adopt rules for a clearing agency’s submission
8 for approval, pursuant to this paragraph, of any
9 group, category, type, or class of security-based
10 swaps that the clearing agency seeks to accept
11 for clearing.

12 “(3) STAY OF CLEARING REQUIREMENT.—At
13 any time after issuance of an approval pursuant to
14 paragraph (2):

15 “(A) REVIEW PROCESS.—The Commission,
16 on application of a counterparty to a security-
17 based swap or on its own initiative, may stay
18 the clearing requirement of paragraph (1) until
19 the Commission completes a review of the terms
20 of the security-based swap, or the group, cat-
21 egory, type, or class of security-based swaps,
22 and the clearing arrangement.

23 “(B) DEADLINE.—The Commission shall
24 complete a review undertaken pursuant to sub-
25 paragraph (A) not later than 90 days after

1 issuance of the stay, unless the clearing agency
2 that clears the security-based swap, or the
3 group, category, type, or class of security-based
4 swaps, agrees to an extension of the time limi-
5 tation established under this subparagraph.

6 “(C) DETERMINATION.—Upon completion
7 of the review undertaken pursuant to subpara-
8 graph (A)—

9 “(i) the Commission may determine,
10 unconditionally or subject to such terms
11 and conditions as the Commission deter-
12 mines to be appropriate, that the security-
13 based swap, or the group, category, type,
14 or class of security-based swaps, must be
15 cleared pursuant to this subsection if the
16 Commission finds that such clearing—

17 “(I) is consistent with the re-
18 quirements of section 17A; and

19 “(II) is otherwise in the public
20 interest, for the protection of inves-
21 tors, and consistent with the purposes
22 of this title;

23 “(ii) the Commission may determine
24 that the clearing requirement of paragraph
25 (1) shall not apply to the security-based

1 swap, or the group, category, type, or class
2 of security-based swaps; or

3 “(iii) if a determination is made that
4 the clearing requirement of paragraph (1)
5 shall no longer apply, then the Commission
6 may still permit such security-based swap,
7 or the group, category, type, or class of se-
8 curity-based swaps to be cleared.

9 “(D) RULES.—The Commission shall
10 adopt rules for reviewing, pursuant to this
11 paragraph, a clearing agency’s clearing of a se-
12 curity-based swap, or a group, category, type,
13 or class of security-based swaps that the Com-
14 mission has accepted for clearing.

15 “(4) SECURITY-BASED SWAPS REQUIRED TO BE
16 ACCEPTED FOR CLEARING.—

17 “(A) RULEMAKING.—The Commission
18 shall adopt rules to further identify any group,
19 category, type, or class of security-based swaps
20 not submitted for approval under paragraph (2)
21 that the Commission deems should be accepted
22 for clearing. In adopting such rules, the Com-
23 mission shall take into account the following
24 factors:

1 “(i) The extent to which any of the
2 terms of the group, category, type, or class
3 of security-based swaps, including price,
4 are disseminated to third parties or are
5 referenced in other agreements, contracts,
6 or transactions.

7 “(ii) The volume of transactions in
8 the group, category, type, or class of secu-
9 rity-based swaps.

10 “(iii) The extent to which the terms of
11 the group, category, type, or class of secu-
12 rity-based swaps are similar to the terms
13 of other agreements, contracts, or trans-
14 actions that are cleared.

15 “(iv) Whether any differences in the
16 terms of the group, category, type, or class
17 of security-based swaps, compared to other
18 agreements, contracts, or transactions that
19 are cleared, are of economic significance.

20 “(v) Whether a clearing agency is pre-
21 pared to clear the group, category, type, or
22 class of security-based swaps and such
23 clearing agency has in place effective risk
24 management systems.

1 “(vi) Any other factor the Commission
2 determines to be appropriate.

3 “(B) OTHER DESIGNATIONS.—At any time
4 after the adoption of the rules required under
5 subparagraph (A), the Commission may sepa-
6 rately designate a particular security-based
7 swap or class of security-based swaps as subject
8 to the clearing requirement of paragraph (1),
9 taking into account the factors established in
10 clauses (i) through (vi) of subparagraph (A)
11 and the rules adopted in such subparagraph.

12 “(C) IN GENERAL.—In accordance with
13 subparagraph (A), the Commission shall, con-
14 sistent with the public interest, adopt rules
15 under the expedited process described in sub-
16 paragraph (D) to establish criteria for deter-
17 mining that a swap, or any group, category,
18 type, or class of swap is required to be cleared.

19 “(D) EXPEDITED RULEMAKING AUTHOR-
20 ITY.—

21 “(i) PROCEDURE.—The promulgation
22 of regulations under subparagraph (A)
23 may be made without regard to—

1 “(I) the notice and comment pro-
2 visions of section 553 of title 5,
3 United States Code; and

4 “(II) chapter 35 of title 44,
5 United States Code (commonly known
6 as the ‘Paperwork Reduction Act’).

7 “(ii) AGENCY RULEMAKING.—In car-
8 rying out subparagraph (A), the Commis-
9 sion shall use the authority provided under
10 section 808 of title 5, United States Code.

11 “(5) PREVENTION OF EVASION.—

12 “(A) IN GENERAL.—The Commission shall
13 have authority to prescribe rules under this sec-
14 tion, or issue interpretations of such rules, as
15 necessary to prevent evasions of this section.

16 “(B) DUTY OF COMMISSION TO INVES-
17 TIGATE AND TAKE CERTAIN ACTIONS.—To the
18 extent the Commission finds that a particular
19 security-based swap or any group, category,
20 type, or class of security-based swaps that
21 would otherwise be subject to mandatory clear-
22 ing but no clearing agency has listed the secu-
23 rity-based swap or the group, category, type, or
24 class of security-based swaps for clearing, the
25 Commission shall—

1 “(i) investigate the relevant facts and
2 circumstances;

3 “(ii) within 30 days issue a public re-
4 port containing the results of the investiga-
5 tion; and

6 “(iii) take such actions as the Com-
7 mission determines to be necessary and in
8 the public interest, which may include re-
9 quiring the retaining of adequate margin
10 or capital by parties to the security-based
11 swap or the group, category, type, or class
12 of security-based swaps.

13 “(C) EFFECT ON AUTHORITY.—Nothing in
14 this paragraph—

15 “(i) authorize the Commission to re-
16 quire a clearing agency to list for clearing
17 a security-based swap or any group, cat-
18 egory, type, or class of security-based
19 swaps if the clearing of the security-based
20 swap or the group, category, type, or class
21 of security-based swaps would adversely af-
22 fect the business operations of the clearing
23 agency, threaten the financial integrity of
24 the clearing agency, or pose a systemic risk
25 to the clearing agency; and

1 “(ii) affect the authority of the Com-
2 mission to enforce the open access provi-
3 sions of paragraph (1) with respect to a se-
4 curity-based swap or the group, category,
5 type, or class of security-based swaps that
6 is listed for clearing by a clearing agency.

7 “(6) REQUIRED REPORTING.—

8 “(A) BOTH COUNTERPARTIES.—Both
9 counterparties to a security-based swap that is
10 not cleared by any clearing agency shall report
11 such a security-based swap either to a reg-
12 istered security-based swap repository described
13 in section 13(n) or, if there is no repository
14 that would accept the security-based swap, to
15 the Commission pursuant to section 13A.

16 “(B) TIMING.—Counterparties to a secu-
17 rity-based swap shall submit the reports re-
18 quired under subparagraph (A) not later than
19 such time period as the Commission may by
20 rule or regulation prescribe.

21 “(7) TRANSITION RULES.—

22 “(A) REPORTING TRANSITION RULES.—
23 Rules adopted by the Commission under this
24 section shall provide for the reporting of data,
25 as follows:

1 “(i) Security-based swaps entered into
 2 before the date of the enactment of this
 3 section shall be reported to a registered se-
 4 curity-based swap repository or the Com-
 5 mission not later than 180 days after the
 6 effective date of this section.

7 “(ii) Security-based swaps entered
 8 into on or after such date of enactment
 9 shall be reported to a registered security-
 10 based swap repository or the Commission
 11 not later than the later of—

12 “(I) 90 days after such effective
 13 date; or

14 “(II) such other time after enter-
 15 ing into the security-based swap as
 16 the Commission may prescribe by rule
 17 or regulation.

18 “(B) CLEARING TRANSITION RULES.—

19 “(i) Security-based swaps entered into
 20 before the date of the enactment of this
 21 section are exempt from the clearing re-
 22 quirements of this subsection if reported
 23 pursuant to subparagraph (A)(i).

24 “(ii) Security-based swaps entered
 25 into before application of the clearing re-

1 quirement pursuant to this section are ex-
2 empt from the clearing requirements of
3 this section if reported pursuant to sub-
4 paragraph (A)(ii).

5 “(8) TRADE EXECUTION.—

6 “(A) IN GENERAL.—With respect to trans-
7 actions involving security-based swaps subject
8 to the clearing requirement of paragraph (1),
9 counterparties shall—

10 “(i) execute the transaction on an ex-
11 change; or

12 “(ii) execute the transaction on a
13 swap execution facility registered under
14 section 3D or a swap execution facility
15 that is exempt from registration under sec-
16 tion 3D(e).

17 “(B) EXCEPTION.—The requirements of
18 clauses (i) and (ii) of subparagraph (A) shall
19 not apply—

20 “(i) if no national securities exchange
21 or security-based swap execution facility
22 makes the security-based swap available to
23 trade; or

1 “(ii) to swap transactions where a
2 commercial end user opts to use the clear-
3 ing 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
7 business of banking or financial in na-
8 ture, as defined in Section 4(k) of the
9 Bank Holding Company Act of 1956;

10 “(III) a person predominantly
11 engaged in activities that are financial
12 in nature;

13 “(IV) a private fund as defined
14 in section 202(a) of the Investment
15 Advisers Act of 1940 (15 U.S.C. 80b-
16 2(a)) or a commodity pool as defined
17 in section 1a of the Commodity Ex-
18 change Act (7 U.S.C. 1a); or

19 “(V) a person that is registered
20 or required to be registered with the
21 Commission, but does not include a
22 public company which registers its se-
23 curities 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
 3 swap is subject to the mandatory clearing
 4 requirement under paragraph (1), and 1 of
 5 the counterparties to the security-based
 6 swap is a commercial end user that
 7 counterparty—

8 “(I)(aa) may elect not to clear
 9 the security-based swap, as required
 10 under paragraph (1); or

11 “(bb) may elect to require clear-
 12 ing of the security-based swap; and

13 “(II) if the end user makes an
 14 election under subclause (I)(bb), shall
 15 have the sole right to select the clear-
 16 ing agency at which the security-based
 17 swap will be cleared.

18 “(ii) LIMITATION.—A commercial end
 19 user may only make an election under
 20 clause (i) if the end user is using the secu-
 21 rity-based swap to hedge its own commer-
 22 cial risk.

23 “(C) TREATMENT OF AFFILIATES.—

24 “(i) IN GENERAL.—An affiliate of a
 25 commercial end user (including affiliate en-

1 tities predominantly engaged in providing
2 financing for the purchase of the merchan-
3 dise or manufactured goods of the com-
4 mercial end user) may make an election
5 under subparagraph (B)(i) only if the affil-
6 iate, acting on behalf of the commercial
7 end user and as an agent, uses the secu-
8 rity-based swap to hedge or mitigate the
9 commercial risk of the commercial end
10 user parent or other affiliates of the com-
11 mercial end user that is not a financial en-
12 tity..

13 “(ii) PROHIBITION RELATING TO CER-
14 TAIN AFFILIATES.—An affiliate of a com-
15 mercial end user shall not use the exemp-
16 tion under subparagraph (B) if the affil-
17 iate is—

18 “(I) a security-based swap dealer;

19 “(II) a security-based security-
20 based swap dealer;

21 “(III) a major security-based
22 swap participant;

23 “(IV) a major security-based se-
24 curity-based swap participant;

1 “(V) an issuer that would be an
2 investment company, as defined in
3 section 3 of the Investment Company
4 Act of 1940 (15 U.S.C. 80a–3), but
5 for paragraph (1) or (7) of subsection
6 (c) of that section 3 (15 U.S.C. 80a–
7 3(c));

8 “(VI) a commodity pool;

9 “(VII) a bank holding company
10 with over \$50,000,000,000 in consoli-
11 dated assets; or

12 “(VIII) an affiliate of any entity
13 described in subclauses (I) through
14 (VII).

15 “(iii) ABUSE OF EXEMPTION.—The
16 Commission may prescribe such rules, or
17 issue interpretations of the rules, as the
18 Commission determines to be necessary to
19 prevent abuse of the exemption described
20 in subparagraph (B).

21 “(D) OPTION TO CLEAR.—

22 “(i) SECURITY-BASED SWAPS RE-
23 QUIRED TO BE CLEARED ENTERED INTO
24 WITH A FINANCIAL ENTITY.—With respect
25 to any securities-based swap that is re-

1 quired to be cleared by a clearing agency
2 and entered into by a securities-based swap
3 dealer or a major securities-based swap
4 participant with a financial entity, the fi-
5 nancial entity shall have the sole right to
6 select the clearing agency at which the se-
7 curities-based swap will be cleared.

8 “(ii) SECURITY-BASED SWAPS NOT
9 REQUIRED TO BE CLEARED ENTERED INTO
10 WITH A FINANCIAL ENTITY OR COMMER-
11 CIAL END USER.—With respect to any se-
12 curities-based swap that is not required to
13 be cleared by a clearing agency and en-
14 tered into by a securities-based swap deal-
15 er or a major securities-based swap partici-
16 pant with a financial entity or commercial
17 end user, the financial entity or commer-
18 cial end user—

19 “(I) may elect to require clearing
20 of the securities-based swap; and

21 “(II) shall have the sole right to
22 select the clearing agency at which the
23 securities-based swap will be cleared.

24 “(b) AUDIT COMMITTEE APPROVAL.—Exemptions
25 from the requirements of this section to clear or trade a

1 security-based swap through a national securities ex-
2 change or security-based swap execution facility shall be
3 available to a counterparty that is an issuer of securities
4 that are registered under section 12 or that is required
5 to file reports pursuant to section 15(d), only if the
6 issuer's audit committee has reviewed and approved the
7 issuer's decision to enter into security-based swaps that
8 are subject to such exemptions.

9 “(c) PUBLIC AVAILABILITY OF SECURITY-BASED
10 SWAP TRANSACTION DATA.—

11 “(1) IN GENERAL.—

12 “(A) DEFINITION OF REAL-TIME PUBLIC
13 REPORTING.—In this paragraph, the term ‘real-
14 time public reporting’ means to report data re-
15 lating to a security-based swap transaction as
16 soon as technologically practicable after the
17 time at which the security-based swap trans-
18 action has been executed.

19 “(B) PURPOSE.—The purpose of this sec-
20 tion is to authorize the Commission to make se-
21 curity-based swap transaction and pricing data
22 available to the public in such form and at such
23 times as the Commission determines appro-
24 priate to enhance price discovery.

1 “(C) GENERAL RULE.—The Commission is
2 authorized to provide by rule for the public
3 availability of security-based swap transaction
4 and pricing data as follows:

5 “(i) With respect to those security-
6 based swaps that are subject to the man-
7 datory clearing requirement described in
8 subsection (a)(1) (including those security-
9 based swaps that are exempted from those
10 requirements), the Commission shall re-
11 quire real-time public reporting for such
12 transactions.

13 “(ii) With respect to those security-
14 based swaps that are not subject to the
15 mandatory clearing requirement described
16 in subsection (a)(1), but are cleared at a
17 registered clearing agency, the Commission
18 shall require real-time public reporting for
19 such transactions.

20 “(iii) With respect to security-based
21 swaps that are not cleared at a registered
22 clearing agency and which are reported to
23 a security-based swap data repository or
24 the Commission under subsection (a), the
25 Commission shall make available to the

1 public, in a manner that does not disclose
2 the business transactions and market posi-
3 tions of any person, aggregate data on
4 such security-based swap trading volumes
5 and positions.

6 “(iv) With respect to security-based
7 swaps that are exempt from the require-
8 ments of subsection (a)(1), but are subject
9 to the requirements of subsection (a)(8),
10 the Commission shall require real-time
11 public reporting for such transactions.

12 “(D) REGISTERED ENTITIES AND PUBLIC
13 REPORTING.—The Commission may require
14 registered entities to publicly disseminate the
15 security-based swap transaction and pricing
16 data required to be reported under this para-
17 graph.

18 “(E) RULEMAKING REQUIRED.—With re-
19 spect to the rule providing for the public avail-
20 ability of transaction and pricing data for secu-
21 rity-based swaps described in clauses (i) and (ii)
22 of subparagraph (C), the rule promulgated by
23 the Commission shall contain provisions—

24 “(i) to ensure such information does
25 not identify the participants;

1 “(ii) to specify the criteria for deter-
2 mining what constitutes a large notional
3 security-based swap transaction (block
4 trade) for particular markets and con-
5 tracts;

6 “(iii) to specify the appropriate time
7 delay for reporting large notional security-
8 based swap transactions (block trades) to
9 the public; and

10 “(iv) that take into account whether
11 the public disclosure will materially reduce
12 market liquidity.

13 “(F) TIMELINESS OF REPORTING.—Par-
14 ties to a security-based swap (including agents
15 of the parties to a security-based swap) shall be
16 responsible for reporting security-based swap
17 transaction information to the appropriate reg-
18 istered entity in a timely manner as may be
19 prescribed by the Commission.

20 “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-
21 PORTING OF AGGREGATE SECURITY-BASED SWAP
22 DATA.—

23 “(A) IN GENERAL.—In accordance with
24 subparagraph (B), the Commission shall issue a
25 written report on a semiannual and annual

1 basis to make available to the public informa-
2 tion relating to—

3 “(i) the trading and clearing in the
4 major security-based swap categories; and

5 “(ii) the market participants and de-
6 velopments in new products.

7 “(B) USE; CONSULTATION.—In preparing
8 a report under subparagraph (A), the Commis-
9 sion shall—

10 “(i) use information from security-
11 based swap data repositories and clearing
12 agencies; and

13 “(ii) consult with the Office of the
14 Comptroller of the Currency, the Bank for
15 International Settlements, and such other
16 regulatory bodies as may be necessary.

17 “(C) TRANSITION RULE FOR
18 PREENACTMENT SECURITY-BASED SWAPS.—

19 “(i) SECURITY-BASED SWAPS EN-
20 TERED INTO BEFORE THE DATE OF EN-
21 ACTMENT OF THE WALL STREET TRANS-
22 PARENCY AND ACCOUNTABILITY ACT OF
23 2010.—Each security-based swap entered
24 into before the date of enactment of the
25 Wall Street Transparency and Account-

1 ability Act of 2010, the terms of which
2 have not expired as of the date of enact-
3 ment of that Act, shall be reported to a
4 registered security-based swap data reposi-
5 tory or the Commission by a date that is
6 not later than—

7 “(I) 30 days after the date of
8 issuance of the interim final rule; or

9 “(II) such other period as the
10 Commission determines to be appro-
11 priate.

12 “(ii) COMMISSION RULEMAKING.—The
13 Commission shall promulgate an interim
14 final rule within 90 days of the date of en-
15 actment of this section providing for the
16 reporting of each security-based swap en-
17 tered into before the date of enactment as
18 referenced in clause (i).

19 “(D) EFFECTIVE DATE.—The reporting
20 provisions described in this paragraph shall be
21 effective upon the date of enactment of this sec-
22 tion.

23 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-
24 CER.—

1 “(1) IN GENERAL.—Each registered clearing
2 agency shall designate an individual to serve as a
3 chief compliance 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 clearing agency;

8 “(B) in consultation with its board, a body
9 performing a function similar thereto, or the
10 senior officer of the registered clearing agency,
11 resolve any conflicts of interest that may arise;

12 “(C) be responsible for administering each
13 policy and procedure that is required to be es-
14 tablished pursuant to this section;

15 “(D) ensure compliance with this title (in-
16 cluding regulations issued under this title) re-
17 lating to agreements, contracts, or transactions,
18 including each rule prescribed by the Commis-
19 sion under this section;

20 “(E) establish procedures for the remedi-
21 ation of noncompliance issues identified by the
22 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 “(F) establish and follow appropriate pro-
6 cedures for the handling, management response,
7 remediation, retesting, and closing of non-
8 compliance 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 registered
15 clearing agency or security-based swap exe-
16 cution facility of the compliance officer
17 with respect to this title (including regula-
18 tions under this title); and

19 “(ii) each policy and procedure of the
20 registered clearing agency of the compli-
21 ance officer (including the code of ethics
22 and conflict of interest policies of the reg-
23 istered clearing agency).

24 “(B) REQUIREMENTS.—A compliance re-
25 port under subparagraph (A) shall—

1 “(i) accompany each appropriate fi-
2 nancial report of the registered clearing
3 agency that is required to be furnished to
4 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 (b) CLEARING AGENCY REQUIREMENTS.—Section
10 17A of the Securities Exchange Act of 1934 (15 U.S.C.
11 78q-1) is amended by adding at the end the following:

12 “(g) REGISTRATION REQUIREMENT.—It shall be un-
13 lawful for a clearing agency, unless registered with the
14 Commission, directly or indirectly to make use of the mails
15 or any means or instrumentality of interstate commerce
16 to perform the functions of a clearing agency with respect
17 to a security-based swap.

18 “(h) VOLUNTARY REGISTRATION.—A person that
19 clears agreements, contracts, or transactions that are not
20 required to be cleared under this title may register with
21 the Commission as a clearing agency.

22 “(i) STANDARDS FOR CLEARING AGENCIES CLEAR-
23 ING SECURITY-BASED SWAP TRANSACTIONS.—To be reg-
24 istered and to maintain registration as a clearing agency
25 that clears security-based swap transactions, a clearing

1 agency shall comply with such standards as the Commis-
2 sion may establish by rule. In establishing any such stand-
3 ards, and in the exercise of its oversight of such a clearing
4 agency pursuant to this title, the Commission may con-
5 form such standards or oversight to reflect evolving
6 United States and international standards. Except where
7 the Commission determines otherwise by rule or regula-
8 tion, a clearing agency shall have reasonable discretion in
9 establishing the manner in which it complies with any such
10 standards.

11 “(j) RULES.—The Commission shall adopt rules gov-
12 erning persons that are registered as clearing agencies for
13 security-based swaps under this title.

14 “(k) EXEMPTIONS.—

15 “(1) IN GENERAL.—The Commission may ex-
16 empt, conditionally or unconditionally, a clearing
17 agency from registration under this section for the
18 clearing of security-based swaps if the Commission
19 determines that the clearing agency is subject to
20 comparable, comprehensive supervision and regula-
21 tion by the Commodity Futures Trading Commission
22 or the appropriate government authorities in the
23 home country of the agency. Such conditions may in-
24 clude, but are not limited to, requiring that the
25 clearing agency be available for inspection by the

1 Commission and make available all information re-
2 quested by the Commission.

3 “(2) DERIVATIVES CLEARING ORGANIZA-
4 TIONS.—A person that is required to be registered
5 as a derivatives clearing organization under the
6 Commodity Exchange Act, whose principal business
7 is clearing commodity futures and options on com-
8 modity futures transactions and swaps and which is
9 a derivatives clearing organization registered with
10 the Commodity Futures Trading Commission under
11 the Commodity Exchange Act (7 U.S.C. 1 et seq.),
12 shall be unconditionally exempt from registration
13 under this section solely for the purpose of clearing
14 security-based swaps, unless the Commission finds
15 that such derivatives clearing organization is not
16 subject to comparable, comprehensive supervision
17 and regulation by the Commodity Futures Trading
18 Commission.

19 “(1) MODIFICATION OF CORE PRINCIPLES.—The
20 Commission may conform the core principles established
21 in this section to reflect evolving United States and inter-
22 national standards.”.

23 (c) SECURITY-BASED SWAP EXECUTION FACILI-
24 TIES.—The Securities Exchange Act of 1934 (15 U.S.C.

1 78a et seq.) is amended by inserting after section 3C (as
 2 added by subsection (a) of this section) the following:

3 **“SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.**

4 “(a) REGISTRATION.—

5 “(1) IN GENERAL.—No person may operate a
 6 facility for the trading or processing of security-
 7 based swaps, unless the facility is registered as a se-
 8 curity-based swap execution facility or as a national
 9 securities exchange under this section.

10 “(2) DUAL REGISTRATION.—Any person that is
 11 registered as a security-based swap execution facility
 12 under this section shall register with the Commis-
 13 sion regardless of whether the person also is reg-
 14 istered with the Commodity Futures Trading Com-
 15 mission as a swap execution facility.

16 “(b) TRADING AND TRADE PROCESSING.—A secu-
 17 rity-based swap execution facility that is registered under
 18 subsection (a) may—

19 “(1) make available for trading any security-
 20 based swap; and

21 “(2) facilitate trade processing of any security-
 22 based swap.

23 “(c) IDENTIFICATION OF FACILITY USED TO TRADE
 24 SECURITY-BASED SWAPS BY NATIONAL SECURITIES EX-
 25 CHANGES.—A national securities exchange shall, to the ex-

1 tent that the exchange also operates a security-based swap
 2 execution facility and uses the same electronic trade execu-
 3 tion system for listing and executing trades of security-
 4 based swaps on or through the exchange and the facility,
 5 identify whether electronic trading of such security-based
 6 swaps is taking place on or through the national securities
 7 exchange or the security-based swap execution facility.

8 “(d) CORE PRINCIPLES FOR SECURITY-BASED SWAP
 9 EXECUTION FACILITIES.—

10 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

11 “(A) IN GENERAL.—To be registered, and
 12 maintain registration, as a security-based swap
 13 execution facility, the security-based swap exe-
 14 cution facility shall comply with—

15 “(i) the core principles described in
 16 this subsection; and

17 “(ii) any requirement that the Com-
 18 mission may impose by rule or regulation.

19 “(B) REASONABLE DISCRETION OF SECUR-
 20 ITY-BASED SWAP EXECUTION FACILITY.—Un-
 21 less otherwise determined by the Commission,
 22 by rule or regulation, a security-based swap
 23 execution facility described in subparagraph (A)
 24 shall have reasonable discretion in establishing

1 the manner in which it complies with the core
2 principles described in this subsection.

3 “(2) COMPLIANCE WITH RULES.—A security-
4 based swap execution facility shall—

5 “(A) monitor and enforce compliance with
6 any rule established by such security-based
7 swap execution facility, including—

8 “(i) the terms and conditions of the
9 security-based swaps traded or processed
10 on or through the facility; and

11 “(ii) any limitation on access to the
12 facility;

13 “(B) establish and enforce trading, trade
14 processing, and participation rules that will
15 deter abuses and have the capacity to detect,
16 investigate, and enforce those rules, including
17 means—

18 “(i) to provide market participants
19 with impartial access to the market; and

20 “(ii) to capture information that may
21 be used in establishing whether rule viola-
22 tions have occurred; and

23 “(C) establish rules governing the oper-
24 ation of the facility, including rules specifying
25 trading procedures to be used in entering and

1 executing orders traded or posted on the facil-
2 ity, including block trades.

3 “(3) SECURITY-BASED SWAPS NOT READILY
4 SUSCEPTIBLE TO MANIPULATION.—The security-
5 based swap execution facility shall permit trading
6 only in security-based swaps that are not readily
7 susceptible to manipulation.

8 “(4) MONITORING OF TRADING AND TRADE
9 PROCESSING.—The security-based swap execution
10 facility shall—

11 “(A) establish and enforce rules or terms
12 and conditions defining, or specifications detail-
13 ing—

14 “(i) trading procedures to be used in
15 entering and executing orders traded on or
16 through the facilities of the security-based
17 swap execution facility; and

18 “(ii) procedures for trade processing
19 of security-based swaps on or through the
20 facilities of the security-based swap execu-
21 tion facility; and

22 “(B) monitor trading in security-based
23 swaps to prevent manipulation, price distortion,
24 and disruptions of the delivery or cash settle-
25 ment process through surveillance, compliance,

1 and disciplinary practices and procedures, in-
2 cluding methods for conducting real-time moni-
3 toring of trading and comprehensive and accu-
4 rate trade reconstructions.

5 “(5) ABILITY TO OBTAIN INFORMATION.—The
6 security-based swap execution facility shall—

7 “(A) establish and enforce rules that will
8 allow the facility to obtain any necessary infor-
9 mation to perform any of the functions de-
10 scribed in this subsection;

11 “(B) provide the information to the Com-
12 mission on request; and

13 “(C) have the capacity to carry out such
14 international information-sharing agreements as
15 the Commission may require.

16 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

17 “(A) IN GENERAL.—To reduce the poten-
18 tial threat of market manipulation or conges-
19 tion, especially during trading in the delivery
20 month, a security-based swap execution facility
21 that is a trading facility shall adopt for each of
22 the contracts of the facility, as is necessary and
23 appropriate, position limitations or position ac-
24 countability for speculators.

1 “(B) POSITION LIMITS.—For any contract
2 or agreement that is subject to a position limi-
3 tation established by the Commission pursuant
4 to section 10B, the security-based swap execu-
5 tion facility shall set its position limitation at a
6 level no higher than the limitation established
7 by the Commission.

8 “(C) POSITION ENFORCEMENT.—For any
9 contract or agreement that is subject to a posi-
10 tion limitation established by the Commission
11 pursuant to section 10B, a security-based swap
12 execution facility shall reject any proposed secu-
13 rity-based swap transaction if, based on infor-
14 mation readily available to a security-based
15 swap execution facility, any proposed security-
16 based swap transaction would cause a security-
17 based swap execution facility customer that
18 would be a party to such swap transaction to
19 exceed such position limitation.

20 “(7) FINANCIAL INTEGRITY OF TRANS-
21 ACTIONS.—The security-based swap execution facil-
22 ity shall establish and enforce rules and procedures
23 for ensuring the financial integrity of security-based
24 swaps entered on or through the facilities of the se-
25 curity-based swap execution facility, including the

1 clearance and settlement of security-based swaps
2 pursuant to section 3C(a)(1).

3 “(8) EMERGENCY AUTHORITY.—The security-
4 based swap execution facility shall adopt rules to
5 provide for the exercise of emergency authority, in
6 consultation or cooperation with the Commission, as
7 is necessary and appropriate, including the authority
8 to liquidate or transfer open positions in any secu-
9 rity-based swap or to suspend or curtail trading in
10 a security-based swap.

11 “(9) TIMELY PUBLICATION OF TRADING INFOR-
12 MATION.—

13 “(A) IN GENERAL.—The security-based
14 swap execution facility shall make public timely
15 information on price, trading volume, and other
16 trading data on security-based swaps to the ex-
17 tent prescribed by the Commission.

18 “(B) CAPACITY OF SECURITY-BASED SWAP
19 EXECUTION FACILITY.—The security-based
20 swap execution facility shall be required to have
21 the capacity to electronically capture trade in-
22 formation with respect to transactions executed
23 on the facility.

24 “(10) RECORDKEEPING AND REPORTING.—

1 “(A) IN GENERAL.—A security-based swap
2 execution facility shall—

3 “(i) maintain records of all activities
4 relating to the business of the facility, in-
5 cluding a complete audit trail, in a form
6 and manner acceptable to the Commission
7 for a period of 5 years; and

8 “(ii) report to the Commission, in a
9 form and manner acceptable to the Com-
10 mission, such information as the Commis-
11 sion determines to be necessary or appro-
12 priate for the Commission to perform the
13 duties of the Commission under this title.

14 “(B) REQUIREMENTS.—The Commission
15 shall adopt data collection and reporting re-
16 quirements for security-based swap execution
17 facilities that are comparable to corresponding
18 requirements for clearing agencies and security-
19 based swap data repositories.

20 “(11) ANTITRUST CONSIDERATIONS.—Unless
21 necessary or appropriate to achieve the purposes of
22 this title, the security-based swap execution facility
23 shall not—

1 “(A) adopt any rules or taking any actions
2 that result in any unreasonable restraint of
3 trade; or

4 “(B) impose any material anticompetitive
5 burden on trading or clearing.

6 “(12) CONFLICTS OF INTEREST.—The security-
7 based swap execution facility shall—

8 “(A) establish and enforce rules to mini-
9 mize conflicts of interest in its decision-making
10 process; and

11 “(B) establish a process for resolving the
12 conflicts of interest.

13 “(13) FINANCIAL RESOURCES.—

14 “(A) IN GENERAL.—The security-based
15 swap execution facility shall have adequate fi-
16 nancial, operational, and managerial resources
17 to discharge each responsibility of the security-
18 based swap execution facility, as determined by
19 the Commission.

20 “(B) DETERMINATION OF RESOURCE ADE-
21 QUACY.—The financial resources of a security-
22 based swap execution facility shall be consid-
23 ered to be adequate if the value of the financial
24 resources—

1 “(i) enables the organization to meet
2 its financial obligations to its members and
3 participants notwithstanding a default by
4 the member or participant creating the
5 largest financial exposure for that organi-
6 zation in extreme but plausible market
7 conditions; and

8 “(ii) exceeds the total amount that
9 would enable the security-based swap exe-
10 cution facility to cover the operating costs
11 of the security-based swap execution facil-
12 ity for a 1-year period, as calculated on a
13 rolling basis.

14 “(14) SYSTEM SAFEGUARDS.—The security-
15 based swap execution facility shall—

16 “(A) establish and maintain a program of
17 risk analysis and oversight to identify and mini-
18 mize sources of operational risk, through the
19 development of appropriate controls and proce-
20 dures, and automated systems, that—

21 “(i) are reliable and secure; and

22 “(ii) have adequate scalable capacity;

23 “(B) establish and maintain emergency
24 procedures, backup facilities, and a plan for dis-
25 aster recovery that are designed to allow for—

1 “(i) the timely recovery and resump-
2 tion of operations; and

3 “(ii) the fulfillment of the responsibil-
4 ities and obligation of the security-based
5 swap execution facility; and

6 “(C) periodically conduct tests to verify
7 that the backup resources of the security-based
8 swap execution facility are sufficient to ensure
9 continued—

10 “(i) order processing and trade
11 matching;

12 “(ii) price reporting;

13 “(iii) market surveillance; and

14 “(iv) maintenance of a comprehensive
15 and accurate audit trail.

16 “(15) DESIGNATION OF CHIEF COMPLIANCE
17 OFFICER.—

18 “(A) IN GENERAL.—Each security-based
19 swap execution facility shall designate an indi-
20 vidual to serve as a chief compliance officer.

21 “(B) DUTIES.—The chief compliance offi-
22 cer shall—

23 “(i) report directly to the board or to
24 the senior officer of the facility;

1 “(ii) review compliance with the core
2 principles in this subsection;

3 “(iii) in consultation with the board of
4 the facility, a body performing a function
5 similar to that of a board, or the senior of-
6 ficer of the facility, resolve any conflicts of
7 interest that may arise;

8 “(iv) be responsible for establishing
9 and administering the policies and proce-
10 dures required to be established pursuant
11 to this section;

12 “(v) ensure compliance with this title
13 and the rules and regulations issued under
14 this title, including rules prescribed by the
15 Commission pursuant to this section;

16 “(vi) establish procedures for the re-
17 mediation of noncompliance issues found
18 during—

19 “(I) compliance office reviews;

20 “(II) look backs;

21 “(III) internal or external audit
22 findings;

23 “(IV) self-reported errors; or

24 “(V) through validated com-
25 plaints; and

1 “(vii) establish and follow appropriate
2 procedures for the handling, management
3 response, remediation, retesting, and clos-
4 ing of noncompliance issues.

5 “(C) ANNUAL REPORTS.—

6 “(i) IN GENERAL.—In accordance
7 with rules prescribed by the Commission,
8 the chief compliance officer shall annually
9 prepare and sign a report that contains a
10 description of—

11 “(I) the compliance of the secu-
12 rity-based swap execution facility with
13 this title; and

14 “(II) the policies and procedures,
15 including the code of ethics and con-
16 flict of interest policies, of the secu-
17 rity-based security-based swap execu-
18 tion facility.

19 “(ii) REQUIREMENTS.—The chief
20 compliance officer shall—

21 “(I) submit each report described
22 in clause (i) with the appropriate fi-
23 nancial report of the security-based
24 swap execution facility that is re-

1 quired to be submitted to the Com-
2 mission pursuant to this 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 security-based swap
8 execution facility from registration under this section if
9 the Commission finds that the facility is subject to com-
10 parable, comprehensive supervision and regulation on a
11 consolidated basis by the Commodity Futures Trading
12 Commission.

13 “(f) RULES.—The Commission shall prescribe rules
14 governing the regulation of security-based swap execution
15 facilities under this section.”.

16 (d) SEGREGATION OF ASSETS HELD AS COLLATERAL
17 IN SECURITY-BASED SWAP TRANSACTIONS.—The Securi-
18 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
19 amended by inserting after section 3D (as added by sub-
20 section (b)) the following:

21 **“SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL**
22 **IN SECURITY-BASED SWAP TRANSACTIONS.**

23 “(a) REGISTRATION REQUIREMENT.—It shall be un-
24 lawful for any person to accept any money, securities, or
25 property (or to extend any credit in lieu of money, securi-

1 ties, or property) from, for, or on behalf of a security-
2 based swaps customer or to margin, guarantee, or secure
3 a security-based swap cleared by or through a clearing
4 agency (including money, securities, or property accruing
5 to the customer as the result of such a security-based
6 swap), unless the person shall have registered under this
7 title with the Commission as a broker, dealer, or security-
8 based swap dealer, and the registration shall not have ex-
9 pired nor been suspended nor revoked.

10 “(b) CLEARED SECURITY-BASED SWAPS.—

11 “(1) SEGREGATION REQUIRED.—A broker,
12 dealer, or security-based swap dealer shall treat and
13 deal with all money, securities, and property of any
14 security-based swaps customer received to margin,
15 guarantee, or secure a security-based swap cleared
16 by or though a clearing agency (including money, se-
17 curities, or property accruing to the security-based
18 swaps customer as the result of such a security-
19 based swap) as belonging to the security-based
20 swaps customer.

21 “(2) COMMINGLING PROHIBITED.—Money, se-
22 curities, and property of a security-based swaps cus-
23 tomer described in paragraph (1) shall be separately
24 accounted for and shall not be commingled with the
25 funds of the broker, dealer, or security-based swap

1 dealer or be used to margin, secure, or guarantee
2 any trades or contracts of any security-based swaps
3 customer or person other than the person for whom
4 the same are held.

5 “(c) EXCEPTIONS.—

6 “(1) USE OF FUNDS.—

7 “(A) IN GENERAL.—Notwithstanding sub-
8 section (b), money, securities, and property of a
9 security-based swaps customer of a broker,
10 dealer, or security-based swap dealer described
11 in subsection (b) may, for convenience, be com-
12 mingled and deposited in the same 1 or more
13 accounts with any bank or trust company or
14 with a clearing agency.

15 “(B) WITHDRAWAL.—Notwithstanding
16 subsection (b), such share of the money, securi-
17 ties, and property described in subparagraph
18 (A) as in the normal course of business shall be
19 necessary to margin, guarantee, secure, trans-
20 fer, adjust, or settle a cleared security-based
21 swap with a clearing agency, or with any mem-
22 ber of the clearing agency, may be withdrawn
23 and applied to such purposes, including the
24 payment of commissions, brokerage, interest,
25 taxes, storage, and other charges, lawfully ac-

1 cruing in connection with the cleared security-
2 based swap.

3 “(2) COMMISSION ACTION.—Notwithstanding
4 subsection (b), in accordance with such terms and
5 conditions as the Commission may prescribe by rule,
6 regulation, or order, any money, securities, or prop-
7 erty of the security-based swaps customer of a
8 broker, dealer, or security-based swap dealer de-
9 scribed in subsection (b) may be commingled and de-
10 posited as provided in this section with any other
11 money, securities, or property received by the
12 broker, dealer, or security-based swap dealer and re-
13 quired by the Commission to be separately ac-
14 counted for and treated and dealt with as belonging
15 to the security-based swaps customer of the broker,
16 dealer, or security-based swap dealer.

17 “(d) PERMITTED INVESTMENTS.—Money described
18 in subsection (b) may be invested in obligations of the
19 United States, in general obligations of any State or of
20 any political subdivision of a State, and in obligations fully
21 guaranteed as to principal and interest by the United
22 States, or in any other investment that the Commission
23 may by rule or regulation prescribe, and such investments
24 shall be made in accordance with such rules and regula-

1 tions and subject to such conditions as the Commission
2 may prescribe.

3 “(e) PROHIBITION.—It shall be unlawful for any per-
4 son, including any clearing agency and any depository in-
5 stitution, that has received any money, securities, or prop-
6 erty for deposit in a separate account or accounts as pro-
7 vided in subsection (b) to hold, dispose of, or use any such
8 money, securities, or property as belonging to the depos-
9 iting broker, dealer, or security-based swap dealer or any
10 person other than the swaps customer of the broker, deal-
11 er, or security-based swap dealer.”.

12 (e) TRADING IN SECURITY-BASED SWAPS.—Section
13 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
14 is amended by adding at the end the following:

15 “(l) SECURITY-BASED SWAPS.—It shall be unlawful
16 for any person to effect a transaction in a security-based
17 swap with or for a person that is not an eligible contract
18 participant, unless such transaction is effected on a na-
19 tional securities exchange registered pursuant to sub-
20 section (b).”.

21 (f) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
22 TAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the
23 Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is
24 amended by striking paragraphs (1) through (3) and in-
25 serting the following:

1 “(1) any transaction in connection with any se-
2 curity whereby any party to such transaction ac-
3 quires—

4 “(A) any put, call, straddle, or other op-
5 tion or privilege of buying the security from or
6 selling the security to another without being
7 bound to do so;

8 “(B) any security futures product on the
9 security; or

10 “(C) any security-based swap involving the
11 security or the issuer of the security;

12 “(2) any transaction in connection with any se-
13 curity with relation to which such person has, di-
14 rectly or indirectly, any interest in any—

15 “(A) such put, call, straddle, option, or
16 privilege;

17 “(B) such security futures product; or

18 “(C) such security-based swap; or

19 “(3) any transaction in any security for the ac-
20 count of any person who such person has reason to
21 believe has, and who actually has, directly or indi-
22 rectly, any interest in any—

23 “(A) such put, call, straddle, option, or
24 privilege;

1 “(B) such security futures product with re-
2 lation to such security; or

3 “(C) any security-based swap involving
4 such security or the issuer of such security.”.

5 (g) RULEMAKING AUTHORITY TO PREVENT FRAUD,
6 MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-
7 BASED SWAPS.—Section 9 of the Securities Exchange Act
8 of 1934 (15 U.S.C. 78i) is amended by adding at the end
9 the following:

10 “(j) It shall be unlawful for any person, directly or
11 indirectly, by the use of any means or instrumentality of
12 interstate commerce or of the mails, or of any facility of
13 any national securities exchange, to effect any transaction
14 in, or to induce or attempt to induce the purchase or sale
15 of, any security-based swap, in connection with which such
16 person engages in any fraudulent, deceptive, or manipula-
17 tive act or practice, makes any fictitious quotation, or en-
18 gages in any transaction, practice, or course of business
19 which operates as a fraud or deceit upon any person. The
20 Commission shall, for the purposes of this subsection, by
21 rules and regulations define, and prescribe means reason-
22 ably designed to prevent, such transactions, acts, prac-
23 tices, and courses of business as are fraudulent, deceptive,
24 or manipulative, and such quotations as are fictitious.”.

1 (h) POSITION LIMITS AND POSITION ACCOUNT-
 2 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
 3 Exchange Act of 1934 is amended by inserting after sec-
 4 tion 10A (15 U.S.C. 78j–1) the following:

5 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
 6 **ABILITY FOR SECURITY-BASED SWAPS AND**
 7 **LARGE TRADER REPORTING.**

8 “(a) POSITION LIMITS.—As a means reasonably de-
 9 signed to prevent fraud and manipulation, the Commission
 10 shall, by rule or regulation, as necessary or appropriate
 11 in the public interest or for the protection of investors,
 12 establish limits (including related hedge exemption provi-
 13 sions) on the size of positions in any security-based swap
 14 that may be held by any person. In establishing such lim-
 15 its, the Commission may require any person to aggregate
 16 positions in—

17 “(1) any security-based swap and any security
 18 or loan or group of securities or loans on which such
 19 security-based swap is based, which such security-
 20 based swap references, or to which such security-
 21 based swap is related as described in paragraph (68)
 22 of section 3(a), and any other instrument relating to
 23 such security or loan or group or index of securities
 24 or loans; or

25 “(2) any security-based swap and—

1 “(A) any security or group or index of se-
2 curities, the price, yield, value, or volatility of
3 which, or of which any interest therein, is the
4 basis for a material term of such security-based
5 swap as described in paragraph (68) of section
6 3(a); and

7 “(B) any other instrument relating to the
8 same security or group or index of securities de-
9 scribed under subparagraph (A).

10 “(b) EXEMPTIONS.—The Commission, by rule, regu-
11 lation, or order, may conditionally or unconditionally ex-
12 empt any person or class of persons, any security-based
13 swap or class of security-based swaps, or any transaction
14 or class of transactions from any requirement the Com-
15 mission may establish under this section with respect to
16 position limits.

17 “(c) SRO RULES.—

18 “(1) IN GENERAL.—As a means reasonably de-
19 signed to prevent fraud or manipulation, the Com-
20 mission, by rule, regulation, or order, as necessary
21 or appropriate in the public interest, for the protec-
22 tion of investors, or otherwise in furtherance of the
23 purposes of this title, may direct a self-regulatory
24 organization—

1 “(A) to adopt rules regarding the size of
2 positions in any security-based swap that may
3 be held by—

4 “(i) any member of such self-regu-
5 latory organization; or

6 “(ii) any person for whom a member
7 of such self-regulatory organization effects
8 transactions in such security-based swap;
9 and

10 “(B) to adopt rules reasonably designed to
11 ensure compliance with requirements prescribed
12 by the Commission under this subsection.

13 “(2) REQUIREMENT TO AGGREGATE POSI-
14 TIONS.—In establishing the limits under paragraph
15 (1), the self-regulatory organization may require
16 such member or person to aggregate positions in—

17 “(A) any security-based swap and any se-
18 curity or loan or group or narrow-based secu-
19 rity narrow-based security index of securities or
20 loans on which such security-based swap is
21 based, which such security-based swap ref-
22 erences, or to which such security-based swap is
23 related as described in section 3(a)(68), and
24 any other instrument relating to such security

1 or loan or group or narrow-based security index
 2 of securities or loans; or

3 “(B)(i) any security-based swap; and

4 “(ii) any security-based swap and any
 5 other instrument relating to the same security
 6 or group or narrow-based security index of se-
 7 curities.

8 “(d) LARGE TRADER REPORTING.—The Commis-
 9 sion, by rule or regulation, may require any person that
 10 effects transactions for such person’s own account or the
 11 account of others in any securities-based swap or
 12 uncleared security-based swap and any security or loan or
 13 group or narrow-based security index of securities or loans
 14 as set forth in paragraphs (1) and (2) of subsection (a)
 15 under this section to report such information as the Com-
 16 mission may prescribe regarding any position or positions
 17 in any security-based swap or uncleared security-based
 18 swap and any security or loan or group or narrow-based
 19 security index of securities or loans and any other instru-
 20 ment relating to such security or loan or group or narrow-
 21 based security index of securities or loans as set forth in
 22 paragraphs (1) and (2) of subsection (a) under this sec-
 23 tion.”.

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 add-
2 ing 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
7 REPORTING.—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
11 time at which the security-based swap trans-
12 action has been executed.

13 “(B) PURPOSE.—The purpose of this sec-
14 tion is to authorize the Commission to make se-
15 curity-based swap transaction and pricing data
16 available to the public in such form and at such
17 times as the Commission determines appro-
18 priate to enhance 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 man-
25 datory clearing requirement described in

1 section 3C(a)(1) (including those security-
2 based swaps that are exempted from the
3 requirement pursuant to section
4 3C(a)(10)), 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
9 mandatory clearing requirement described
10 in subsection section 3C(a)(1), but are
11 cleared at a registered clearing agency, the
12 Commission shall require real-time public
13 reporting for 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
18 the Commission under section 3C(a), the
19 Commission shall make available to the
20 public, in a manner that does not disclose
21 the business transactions and market posi-
22 tions of any person, aggregate data on
23 such security-based swap trading volumes
24 and positions.

1 “(iv) With respect to security-based
2 swaps that are exempt from the require-
3 ments of section 3C(a)(1), but are subject
4 to the requirements of section 3C(a)(8),
5 the Commission shall require real-time
6 public reporting for such transactions.

7 “(D) REGISTERED ENTITIES AND PUBLIC
8 REPORTING.—The Commission may require
9 registered entities to publicly disseminate the
10 security-based swap transaction and pricing
11 data required to be reported under this para-
12 graph.

13 “(E) RULEMAKING REQUIRED.—With re-
14 spect to the rule providing for the public avail-
15 ability of transaction and pricing data for secu-
16 rity-based swaps described in clauses (i) and (ii)
17 of subparagraph (C), the rule promulgated by
18 the Commission shall contain provisions—

19 “(i) to ensure such information does
20 not identify the participants;

21 “(ii) to specify the criteria for deter-
22 mining what constitutes a large notional
23 security-based swap transaction (block
24 trade) for particular markets and con-
25 tracts;

1 “(iii) to specify the appropriate time
2 delay for reporting large notional security-
3 based swap transactions (block trades) to
4 the public; and

5 “(iv) that take into account whether
6 the public disclosure will materially reduce
7 market liquidity.

8 “(F) TIMELINESS OF REPORTING.—Par-
9 ties to a security-based swap (including agents
10 of the parties to a security-based swap) shall be
11 responsible for reporting security-based swap
12 transaction information to the appropriate reg-
13 istered entity in a timely manner as may be
14 prescribed by the Commission.

15 “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-
16 PORTING OF AGGREGATE SECURITY-BASED SWAP
17 DATA.—

18 “(A) IN GENERAL.—In accordance with
19 subparagraph (B), the Commission shall issue a
20 written report on a semiannual and annual
21 basis to make available to the public informa-
22 tion relating to—

23 “(i) the trading and clearing in the
24 major security-based swap categories; and

1 “(ii) the market participants and de-
2 velopments in new products.

3 “(B) USE; CONSULTATION.—In preparing
4 a report under subparagraph (A), the Commis-
5 sion shall—

6 “(i) use information from security-
7 based swap data repositories and deriva-
8 tives clearing organizations; and

9 “(ii) consult with the Office of the
10 Comptroller of the Currency, the Bank for
11 International Settlements, and such other
12 regulatory bodies as may be necessary.

13 “(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

14 “(1) REGISTRATION REQUIREMENT.—It shall
15 be unlawful for any person, unless registered with
16 the Commission, directly or indirectly, to make use
17 of the mails or any means or instrumentality of
18 interstate commerce to perform the functions of a
19 security-based swap data repository.

20 “(2) INSPECTION AND EXAMINATION.—Each
21 registered security-based swap data repository shall
22 be subject to inspection and examination by any rep-
23 resentative of the Commission.

24 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

1 “(A) IN GENERAL.—To be registered, and
2 maintain registration, as a security-based swap
3 data repository, the security-based swap data
4 repository shall comply with—

5 “(i) the core principles described in
6 this subsection; and

7 “(ii) any requirement that the Com-
8 mission may impose by rule or regulation.

9 “(B) REASONABLE DISCRETION OF SECU-
10 RITY-BASED SWAP DATA REPOSITORY.—Unless
11 otherwise determined by the Commission, by
12 rule or regulation, a security-based swap data
13 repository described in subparagraph (A) shall
14 have reasonable discretion in establishing the
15 manner in which the security-based swap data
16 repository complies with the core principles de-
17 scribed in this subsection.

18 “(4) STANDARD SETTING.—

19 “(A) DATA IDENTIFICATION.—The Com-
20 mission shall prescribe standards that specify
21 the data elements for each security-based swap
22 that shall be collected and maintained by each
23 registered security-based swap data repository.

24 “(B) DATA COLLECTION AND MAINTE-
25 NANCE.—The Commission shall prescribe data

1 collection and data maintenance standards for
2 security-based swap data repositories.

3 “(C) COMPARABILITY.—The standards
4 prescribed by the Commission under this sub-
5 section shall be comparable to the data stand-
6 ards imposed by the Commission on clearing
7 agencies in connection with their clearing of se-
8 curity-based swaps.

9 “(5) DUTIES.—A security-based swap data re-
10 pository shall—

11 “(A) accept data prescribed by the Com-
12 mission for each security-based swap under sub-
13 section (b);

14 “(B) confirm with both counterparties to
15 the security-based swap the accuracy of the
16 data that was submitted;

17 “(C) maintain the data described in sub-
18 paragraph (A) in such form, in such manner,
19 and for such period as may be required by the
20 Commission;

21 “(D)(i) provide direct electronic access to
22 the Commission (or any designee of the Com-
23 mission, including another registered entity);
24 and

1 “(ii) provide the information described in
2 subparagraph (A) in such form and at such fre-
3 quency as the Commission may require to com-
4 ply with the public reporting requirements set
5 forth in subsection (m);

6 “(E) at the direction of the Commission,
7 establish automated systems for monitoring,
8 screening, and analyzing security-based swap
9 data;

10 “(F) maintain the privacy of any and all
11 security-based swap transaction information
12 that the security-based swap data repository re-
13 ceives from a security-based swap dealer,
14 counterparty, or any other registered entity;
15 and

16 “(G) on a confidential basis pursuant to
17 section 24, upon request, and after notifying
18 the Commission of the request, make available
19 all data obtained by the security-based swap
20 data repository, including individual
21 counterparty trade and position data, to—

22 “(i) each appropriate prudential regu-
23 lator;

24 “(ii) the Financial Stability Oversight
25 Council;

1 “(iii) the Commodity Futures Trading
2 Commission;

3 “(iv) the Department of Justice; and

4 “(v) any other person that the Com-
5 mission determines to be appropriate, in-
6 cluding—

7 “(I) foreign financial supervisors
8 (including foreign futures authorities);

9 “(II) foreign central banks; and

10 “(III) foreign ministries.

11 “(H) CONFIDENTIALITY AND INDEM-
12 NIFICATION AGREEMENT.—Before the security-
13 based swap data repository may share informa-
14 tion with any entity described in subparagraph
15 (G)—

16 “(i) the security-based swap data re-
17 pository shall receive a written agreement
18 from each entity stating that the entity
19 shall abide by the confidentiality require-
20 ments described in section 24 relating to
21 the information on security-based swap
22 transactions that is provided; and

23 “(ii) each entity shall agree to indem-
24 nify the security-based swap data reposi-
25 tory and the Commission for any expenses

1 arising from litigation relating to the infor-
2 mation provided under section 24.

3 “(6) DESIGNATION OF CHIEF COMPLIANCE OF-
4 FICER.—

5 “(A) IN GENERAL.—Each security-based
6 swap data repository shall designate an indi-
7 vidual to serve as a chief compliance officer.

8 “(B) DUTIES.—The chief compliance offi-
9 cer shall—

10 “(i) report directly to the board or to
11 the senior officer of the security-based
12 swap data repository;

13 “(ii) review the compliance of the se-
14 curity-based swap data repository with re-
15 spect to the core principles described in
16 paragraph (7);

17 “(iii) in consultation with the board of
18 the security-based swap data repository, a
19 body performing a function similar to the
20 board of the security-based swap data re-
21 pository, or the senior officer of the secu-
22 rity-based swap data repository, resolve
23 any conflicts of interest that may arise;

1 “(iv) be responsible for administering
 2 each policy and procedure that is required
 3 to be established pursuant to this section;

4 “(v) ensure compliance with this title
 5 (including regulations) relating to agree-
 6 ments, contracts, or transactions, including
 7 each rule prescribed by the Commission
 8 under this section;

9 “(vi) establish procedures for the re-
 10 mediation of noncompliance issues identi-
 11 fied by the chief compliance officer through
 12 any—

13 “(I) compliance office review;

14 “(II) look-back;

15 “(III) internal or external audit
 16 finding;

17 “(IV) self-reported error; or

18 “(V) validated complaint; and

19 “(vii) establish and follow appropriate
 20 procedures for the handling, management
 21 response, remediation, retesting, and clos-
 22 ing of noncompliance issues.

23 “(C) ANNUAL REPORTS.—

24 “(i) IN GENERAL.—In accordance
 25 with rules prescribed by the Commission,

1 the chief compliance officer shall annually
2 prepare and sign a report that contains a
3 description of—

4 “(I) the compliance of the secu-
5 rity-based swap data repository of the
6 chief compliance officer with respect
7 to this title (including regulations);
8 and

9 “(II) each policy and procedure
10 of the security-based swap data repos-
11 itory of the chief compliance officer
12 (including the code of ethics and con-
13 flict of interest policies of the secu-
14 rity-based swap data repository).

15 “(ii) REQUIREMENTS.—A compliance
16 report under clause (i) shall—

17 “(I) accompany each appropriate
18 financial report of the security-based
19 swap data repository that is required
20 to be furnished to the Commission
21 pursuant to this section; and

22 “(II) include a certification that,
23 under penalty of law, the compliance
24 report is accurate and complete.

1 “(7) CORE PRINCIPLES APPLICABLE TO SECUR-
2 RITY-BASED SWAP DATA REPOSITORIES.—

3 “(A) ANTITRUST CONSIDERATIONS.—Un-
4 less necessary or appropriate to achieve the
5 purposes of this title, the swap data repository
6 shall not—

7 “(i) adopt any rule or take any action
8 that results in any unreasonable restraint
9 of trade; or

10 “(ii) impose any material anticompeti-
11 tive burden on the trading, clearing, or re-
12 porting of transactions.

13 “(B) GOVERNANCE ARRANGEMENTS.—
14 Each security-based swap data repository shall
15 establish governance arrangements that are
16 transparent—

17 “(i) to fulfill public interest require-
18 ments; and

19 “(ii) to support the objectives of the
20 Federal Government, owners, and partici-
21 pants.

22 “(C) CONFLICTS OF INTEREST.—Each se-
23 curity-based swap data repository shall—

24 “(i) establish and enforce rules to
25 minimize conflicts of interest in the deci-

1 sion-making process of the security-based
2 swap data repository; and

3 “(ii) establish a process for resolving
4 any conflicts of interest described in clause
5 (i).

6 “(8) REQUIRED REGISTRATION FOR SECURITY-
7 BASED SWAP DATA REPOSITORIES.—Any person that
8 is required to be registered as a security-based swap
9 data repository under this subsection shall register
10 with the Commission, regardless of whether that
11 person is also licensed under the Commodity Ex-
12 change Act as a swap data repository.

13 “(9) RULES.—The Commission shall adopt
14 rules governing persons that are registered under
15 this subsection.”.

16 **SEC. 764. REGISTRATION AND REGULATION OF SECURITY-**
17 **BASED SWAP DEALERS AND MAJOR SECU-**
18 **RITY-BASED SWAP PARTICIPANTS.**

19 The Securities Exchange Act of 1934 (15 U.S.C. 78a
20 et seq.) is amended by inserting after section 15E (15
21 U.S.C. 78o–7) the following:

22 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
23 **BASED SWAP DEALERS AND MAJOR SECU-**
24 **RITY-BASED SWAP PARTICIPANTS.**

25 “(a) REGISTRATION.—

1 “(1) SECURITY-BASED SWAP DEALERS.—It
2 shall be unlawful for any person to act as a security-
3 based swap dealer unless the person is registered as
4 a security-based swap dealer with the Commission.

5 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
6 PANTS.—It shall be unlawful for any person to act
7 as a major security-based swap participant unless
8 the person is registered as a major security-based
9 swap participant with the Commission.

10 “(b) REQUIREMENTS.—

11 “(1) IN GENERAL.—A person shall register as
12 a security-based swap dealer or major security-based
13 swap participant by filing a registration application
14 with the Commission.

15 “(2) CONTENTS.—

16 “(A) IN GENERAL.—The application shall
17 be made in such form and manner as prescribed
18 by the Commission, and shall contain such in-
19 formation, as the Commission considers nec-
20 essary concerning the business in which the ap-
21 plicant is or will be engaged.

22 “(B) CONTINUAL REPORTING.—A person
23 that is registered as a security-based swap deal-
24 er or major security-based swap participant
25 shall continue to submit to the Commission re-

1 ports that contain such information pertaining
2 to the business of the person as the Commission
3 may require.

4 “(3) EXPIRATION.—Each registration under
5 this section shall expire at such time as the Commis-
6 sion may prescribe by rule or regulation.

7 “(4) RULES.—Except as provided in sub-
8 sections (c), (e), and (f), the Commission may pre-
9 scribe rules applicable to security-based swap dealers
10 and major security-based swap participants, includ-
11 ing rules that limit the activities of non-bank secu-
12 rity-based swap dealers and non-bank major secu-
13 rity-based swap participants.

14 “(5) TRANSITION.—Not later than 1 year after
15 the date of enactment of the Wall Street Trans-
16 parency and Accountability Act of 2010, the Com-
17 mission shall issue rules under this section to pro-
18 vide for the registration of security-based swap deal-
19 ers and major security-based swap participants.

20 “(6) STATUTORY DISQUALIFICATION.—Except
21 to the extent otherwise specifically provided by rule,
22 regulation, or order of the Commission, it shall be
23 unlawful for a security-based swap dealer or a major
24 security-based swap participant to permit any person
25 associated with a security-based swap dealer or a

1 major security-based swap participant who is subject
2 to a statutory disqualification to effect or be involved
3 in effecting security-based swaps on behalf of the se-
4 curity-based swap dealer or major security-based
5 swap participant, if the security-based swap dealer
6 or major security-based swap participant knew, or in
7 the exercise of reasonable care should have known,
8 of the statutory disqualification.

9 “(c) DUAL REGISTRATION.—

10 “(1) SECURITY-BASED SWAP DEALER.—Any
11 person that is required to be registered as a secu-
12 rity-based swap dealer under this section shall reg-
13 ister with the Commission, regardless of whether the
14 person also is registered with the Commodity Fu-
15 tures Trading Commission as a swap dealer.

16 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
17 PANT.—Any person that is required to be registered
18 as a major security-based swap participant under
19 this section shall register with the Commission, re-
20 gardless of whether the person also is registered
21 with the Commodity Futures Trading Commission
22 as a major swap participant.

23 “(d) RULEMAKING.—

24 “(1) IN GENERAL.—The Commission shall
25 adopt rules for persons that are registered as secu-

1 rity-based swap dealers or major security-based swap
2 participants under this section.

3 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
4 MENTS.—

5 “(A) IN GENERAL.—The Commission may
6 not prescribe rules imposing prudential require-
7 ments on security-based swap dealers or major
8 security-based swap participants that are depos-
9 itory institutions, as that term is defined in sec-
10 tion 3 of the Federal Deposit Insurance Act (12
11 U.S.C. 1813).

12 “(B) APPLICABILITY.—Subparagraph (A)
13 does not limit the authority of the Commission
14 to prescribe appropriate business conduct, re-
15 porting, and recordkeeping requirements on se-
16 curity-based swap dealers or major security-
17 based swap participants that are depository in-
18 stitutions to protect investors.

19 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

20 “(1) IN GENERAL.—

21 “(A) SECURITY-BASED SWAP DEALERS
22 AND MAJOR SECURITY-BASED SWAP PARTICI-
23 PANTS THAT ARE DEPOSITORY INSTITU-
24 TIONS.—Each registered security-based swap
25 dealer and major security-based swap partici-

1 pant that is a depository institution, as that
2 term is defined in section 3 of the Federal De-
3 posit Insurance Act (12 U.S.C. 1813), shall
4 meet such minimum capital requirements and
5 minimum initial and variation margin require-
6 ments as the appropriate Federal banking agen-
7 cy shall by rule or regulation prescribe under
8 paragraph (2)(A) to help ensure the safety and
9 soundness of the security-based swap dealer or
10 major security-based swap participant.

11 “(B) SECURITY-BASED SWAP DEALERS
12 AND MAJOR SECURITY-BASED SWAP PARTICI-
13 PANTS THAT ARE NOT DEPOSITORY INSTITU-
14 TIONS.—Each registered security-based swap
15 dealer and major security-based swap partici-
16 pant that is not a depository institution, as that
17 term is defined in section 3 of the Federal De-
18 posit Insurance Act (12 U.S.C. 1813), shall
19 meet such minimum capital requirements and
20 minimum initial and variation margin require-
21 ments as the Commission shall by rule or regu-
22 lation prescribe under paragraph (2)(B) to help
23 ensure the safety and soundness of the security-
24 based swap dealer or major security-based swap
25 participant.

1 “(2) RULES.—

2 “(A) SECURITY-BASED SWAP DEALERS
3 AND MAJOR SECURITY-BASED SWAP PARTICI-
4 PANTS THAT ARE DEPOSITORY INSTITU-
5 TIONS.—The appropriate Federal banking
6 agencies, in consultation with the Commission
7 and the Commodity Futures Trading Commis-
8 sion, shall adopt rules imposing capital and
9 margin requirements under this subsection for
10 security-based swap dealers and major security-
11 based swap participants that are depository in-
12 stitutions, as that term is defined in section 3
13 of the Federal Deposit Insurance Act (12
14 U.S.C. 1813).

15 “(B) SECURITY-BASED SWAP DEALERS
16 AND MAJOR SECURITY-BASED SWAP PARTICI-
17 PANTS THAT ARE NOT DEPOSITORY INSTITU-
18 TIONS.—The Commission shall adopt rules im-
19 posing capital and margin requirements under
20 this subsection for security-based swap dealers
21 and major security-based swap participants that
22 are not depository institutions, as that term is
23 defined in section 3 of the Federal Deposit In-
24 surance Act (12 U.S.C. 1813).

25 “(3) CAPITAL.—

1 “(A) SECURITY-BASED SWAP DEALERS
2 AND MAJOR SECURITY-BASED SWAP PARTICI-
3 PANTS THAT ARE DEPOSITORY INSTITU-
4 TIONS.—The capital requirements prescribed
5 under paragraph (2)(A) for security-based swap
6 dealers and major security-based swap partici-
7 pants that are depository institutions shall con-
8 tain—

9 “(i) a capital requirement that is
10 greater than zero for security-based swaps
11 that are cleared by a clearing agency; and

12 “(ii) to offset the greater risk to the
13 security-based swap dealer or major secu-
14 rity-based swap participant and to the fi-
15 nancial system arising from the use of se-
16 curity-based swaps that are not cleared,
17 substantially higher capital requirements
18 for security-based swaps that are not
19 cleared by a clearing agency than for secu-
20 rity-based swaps that are cleared.

21 “(B) SECURITY-BASED SWAP DEALERS
22 AND MAJOR SECURITY-BASED SWAP PARTICI-
23 PANTS THAT ARE NOT DEPOSITORY INSTITU-
24 TIONS.—The capital requirements prescribed
25 under paragraph (2)(B) for security-based swap

1 dealers and major security-based swap partici-
 2 pants that are not depository institutions shall
 3 be as strict as or stricter than the capital re-
 4 quirements prescribed for security-based swap
 5 dealers and major security-based swap partici-
 6 pants that are depository institutions under
 7 paragraph (2)(A).

8 “(C) RULE OF CONSTRUCTION.—

9 “(i) IN GENERAL.—Nothing in this
 10 section shall limit, or be construed to limit,
 11 the authority—

12 “(I) of the Commission to set fi-
 13 nancial responsibility rules for a
 14 broker or dealer registered pursuant
 15 to section 15(b) (except for section
 16 15(b)(11) thereof) in accordance with
 17 section 15(c)(3); or

18 “(II) of the Commodity Futures
 19 Trading Commission to set financial
 20 responsibility rules for a futures com-
 21 mission merchant or introducing
 22 broker registered pursuant to section
 23 4f(a) of the Commodity Exchange Act
 24 (except for section 4f(a)(3) thereof) in

1 accordance with section 4f(b) of the
2 Commodity Exchange Act.

3 “(ii) FUTURES COMMISSION MER-
4 CHANTS AND OTHER DEALERS.—A futures
5 commission merchant, introducing broker,
6 broker, or dealer shall maintain sufficient
7 capital to comply with the stricter of any
8 applicable capital requirements to which
9 such futures commission merchant, intro-
10 ducing broker, broker, or dealer is subject
11 to under this title or the Commodity Ex-
12 change Act.

13 “(4) MARGIN.—

14 “(A) SECURITY-BASED SWAP DEALERS
15 AND MAJOR SECURITY-BASED SWAP PARTICI-
16 PANTS THAT ARE DEPOSITORY INSTITU-
17 TIONS.—The appropriate Federal banking
18 agency for security-based swap dealers and
19 major security-based swap participants that are
20 depository institutions shall impose both initial
21 and variation margin requirements in accord-
22 ance with paragraph (2)(A) on all security-
23 based swaps that are not cleared by a clearing
24 agency.

1 “(B) SECURITY-BASED SWAP DEALERS
2 AND MAJOR SECURITY-BASED SWAP PARTICI-
3 PANTS THAT ARE NOT DEPOSITORY INSTITU-
4 TIONS.—The Commission shall impose both ini-
5 tial and variation margin requirements in ac-
6 cordance with paragraph (2)(B) for security-
7 based swap dealers and major security-based
8 swap participants that are not depository insti-
9 tutions on all security-based swaps that are not
10 cleared by a clearing agency. Any such initial
11 and variation margin requirements shall be as
12 strict as or stricter than the margin require-
13 ments prescribed under paragraph (4)(A).

14 “(5) MARGIN REQUIREMENTS.—In prescribing
15 margin requirements under this subsection, the ap-
16 propriate Federal banking agency with respect to se-
17 curity-based swap dealers and major security-based
18 swap participants that are depository institutions,
19 and the Commission with respect to security-based
20 swap dealers and major security-based swap partici-
21 pants that are not depository institutions may per-
22 mit the use of noncash collateral, as the agency or
23 the Commission determines to be consistent with—

24 “(A) preserving the financial integrity of
25 markets trading security-based swaps; and

1 “(B) preserving the stability of the United
2 States financial system.

3 “(6) COMPARABILITY OF CAPITAL AND MARGIN
4 REQUIREMENTS.—

5 “(A) IN GENERAL.—The appropriate Fed-
6 eral banking agencies, the Commission, and the
7 Securities and Exchange Commission shall peri-
8 odically (but not less frequently than annually)
9 consult on minimum capital requirements and
10 minimum initial and variation margin require-
11 ments.

12 “(B) COMPARABILITY.—The entities de-
13 scribed in subparagraph (A) shall, to the max-
14 imum extent practicable, establish and maintain
15 comparable minimum capital requirements and
16 minimum initial and variation margin require-
17 ments, including the use of noncash collateral,
18 for—

19 “(i) security-based swap dealers; and

20 “(ii) major security-based swap par-
21 ticipants.

22 “(7) REQUESTED MARGIN.—If any party to a
23 security-based swap that is exempt from the margin
24 requirements of paragraph (4)(A) or paragraph

1 (4)(B) requests that such security-based swap be
2 margined, then—

3 “(A) the exemption shall not apply; and

4 “(B) the counterparty to such security-
5 based swap shall provide the requested margin.

6 “(8) APPLICABILITY WITH RESPECT TO
7 COUNTERPARTIES.—Paragraphs (4) and (5) shall
8 not apply to initial and variation margin for secu-
9 rity-based swaps in which 1 of the counterparties is
10 not—

11 “(A) a security-based swap dealer;

12 “(B) a major security-based swap partici-
13 pant; or

14 “(C) a financial entity as described in sec-
15 tion 3C(a)(10)(A)(ii), and such counterparty is
16 eligible for and utilizing the commercial end
17 user clearing exemption under section
18 3C(a)(10).

19 “(f) REPORTING AND RECORDKEEPING.—

20 “(1) IN GENERAL.—Each registered security-
21 based swap dealer and major security-based swap
22 participant—

23 “(A) shall make such reports as are re-
24 quired by the Commission, by rule or regula-
25 tion, regarding the transactions and positions

1 and financial condition of the registered secu-
2 rity-based swap dealer or major security-based
3 swap participant;

4 “(B)(i) for which there is a prudential reg-
5 ulator, shall keep books and records of all ac-
6 tivities related to the business as a security-
7 based swap dealer or major security-based swap
8 participant in such form and manner and for
9 such period as may be prescribed by the Com-
10 mission by rule or regulation; and

11 “(ii) for which there is no prudential regu-
12 lator, shall keep books and records in such form
13 and manner and for such period as may be pre-
14 scribed by the Commission by rule or regula-
15 tion; and

16 “(C) shall keep books and records de-
17 scribed in subparagraph (B) open to inspection
18 and examination by any representative of the
19 Commission.

20 “(2) RULES.—The Commission shall adopt
21 rules governing reporting and recordkeeping for se-
22 curity-based swap dealers and major security-based
23 swap participants.

24 “(g) DAILY TRADING RECORDS.—

1 “(1) IN GENERAL.—Each registered security-
2 based swap dealer and major security-based swap
3 participant shall maintain daily trading records of
4 the security-based swaps of the registered security-
5 based swap dealer and major security-based swap
6 participant and all related records (including related
7 cash or forward transactions) and recorded commu-
8 nications, including electronic mail, instant mes-
9 sages, and recordings of telephone calls, for such pe-
10 riod as may be required by the Commission by rule
11 or regulation.

12 “(2) INFORMATION REQUIREMENTS.—The daily
13 trading records shall include such information as the
14 Commission shall require by rule or regulation.

15 “(3) CUSTOMER RECORDS.—Each registered se-
16 curity-based swap dealer and major security-based
17 swap participant shall maintain daily trading records
18 for each customer or counterparty in a manner and
19 form that is identifiable with each security-based
20 swap transaction.

21 “(4) AUDIT TRAIL.—Each registered security-
22 based swap dealer and major security-based swap
23 participant shall maintain a complete audit trail for
24 conducting comprehensive and accurate trade recon-
25 structions.

1 “(5) RULES.—The Commission shall adopt
2 rules governing daily trading records for security-
3 based swap dealers and major security-based swap
4 participants.

5 “(h) BUSINESS CONDUCT STANDARDS.—

6 “(1) IN GENERAL.—Each registered security-
7 based swap dealer and major security-based swap
8 participant shall conform with such business conduct
9 standards as may be prescribed by the Commission,
10 by rule or regulation, that relate to—

11 “(A) fraud, manipulation, and other abu-
12 sive practices involving security-based swaps
13 (including security-based swaps that are offered
14 but not entered into);

15 “(B) diligent supervision of the business of
16 the registered security-based swap dealer and
17 major security-based swap participant;

18 “(C) adherence to all applicable position
19 limits; and

20 “(D) such other matters as the Commis-
21 sion determines to be appropriate.

22 “(2) SPECIAL RULE; FIDUCIARY DUTIES TO
23 CERTAIN ENTITIES.—

24 “(A) GOVERNMENTAL ENTITIES.—A secu-
25 rity-based swap dealer that provides advice re-

1 garding, or offers to enter into, or enters into
2 a security-based swap with a State, State agen-
3 cy, city, county, municipality, or other political
4 subdivision of a State, or a Federal agency shall
5 have a fiduciary duty to the State, State agen-
6 cy, city, county, municipality, or other political
7 subdivision of the State, or the Federal agency,
8 as appropriate.

9 “(B) PENSION PLANS; ENDOWMENTS; RE-
10 TIREMENT PLANS.—A security-based swap deal-
11 er that provides advice regarding, or offers to
12 enter into, or enters into a security-based swap
13 with a pension plan, endowment, or retirement
14 plan shall have a fiduciary duty to the pension
15 plan, endowment, or retirement plan, as appro-
16 priate.

17 “(3) BUSINESS CONDUCT REQUIREMENTS.—
18 Business conduct requirements adopted by the Com-
19 mission under this subsection shall—

20 “(A) establish the standard of care for a
21 security-based swap dealer or major security-
22 based swap participant to verify that any
23 counterparty meets the eligibility standards for
24 an eligible contract participant;

1 “(B) require disclosure by the security-
2 based swap dealer or major security-based swap
3 participant to any counterparty to the trans-
4 action (other than a security-based swap dealer
5 or a major security-based swap participant)
6 of—

7 “(i) information about the material
8 risks and characteristics of the security-
9 based swap;

10 “(ii) the source and amount of any
11 fees or other material remuneration that
12 the security-based swap dealer or major se-
13 curity-based swap participant would di-
14 rectly or indirectly expect to receive in con-
15 nection with the security-based swap;

16 “(iii) any other material incentives or
17 conflicts of interest that the security-based
18 swap dealer or major security-based swap
19 participant may have in connection with
20 the security-based swap; and

21 “(iv)(I) for cleared security-based
22 swaps, upon the request of the
23 counterparty, the daily mark from the ap-
24 propriate clearing agency; and

1 “(II) for uncleared security-based
2 swaps, the daily mark of the security-based
3 swap dealer or the major security-based
4 swap participant;

5 “(C) establish a standard of conduct for a
6 security-based swap dealer or major security-
7 based swap participant to communicate in a
8 fair and balanced manner based on principles of
9 fair dealing and good faith;

10 “(D) establish a standard of conduct for a
11 security-based swap dealer or major security-
12 based swap participant, with respect to a
13 counterparty that is an eligible contract partici-
14 pant within the meaning of subclause (I) or (II)
15 of clause (vii) of section 1a(18) of the Com-
16 modity Exchange Act, to have a reasonable
17 basis to believe that the counterparty has an
18 independent representative that—

19 “(i) has sufficient knowledge to evalu-
20 ate the transaction and risks;

21 “(ii) is not subject to a statutory dis-
22 qualification;

23 “(iii) is independent of the security-
24 based swap dealer or major security-based
25 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
11 requirements 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 title.

15 “(4) RULES.—The Commission shall prescribe
16 rules under this subsection governing business con-
17 duct standards for security-based swap dealers and
18 major security-based swap participants.

19 “(i) DOCUMENTATION AND BACK OFFICE STAND-
20 ARDS.—

21 “(1) IN GENERAL.—Each registered security-
22 based swap dealer and major security-based swap
23 participant shall conform with such standards as
24 may be prescribed by the Commission, by rule or
25 regulation, that relate to timely and accurate con-

1 firmation, processing, netting, documentation, and
2 valuation of all security-based swaps.

3 “(2) RULES.—The Commission shall adopt
4 rules governing documentation and back office
5 standards for security-based swap dealers and major
6 security-based swap participants.

7 “(j) DUTIES.—Each registered security-based swap
8 dealer and major security-based swap participant shall, at
9 all times, comply with the following requirements:

10 “(1) MONITORING OF TRADING.—The security-
11 based swap dealer or major security-based swap par-
12 ticipant shall monitor its trading in security-based
13 swaps to prevent violations of applicable position
14 limits.

15 “(2) RISK MANAGEMENT PROCEDURES.—The
16 security-based swap dealer or major security-based
17 swap participant shall establish robust and profes-
18 sional risk management systems adequate for man-
19 aging the day-to-day business of the security-based
20 swap dealer or major security-based swap partici-
21 pant.

22 “(3) DISCLOSURE OF GENERAL INFORMA-
23 TION.—The security-based swap dealer or major se-
24 curity-based swap participant shall disclose to the
25 Commission and to the prudential regulator for the

1 security-based swap dealer or major security-based
2 swap participant, as applicable, information con-
3 cerning—

4 “(A) terms and conditions of its security-
5 based swaps;

6 “(B) security-based swap trading oper-
7 ations, mechanisms, and practices;

8 “(C) financial integrity protections relating
9 to security-based swaps; and

10 “(D) other information relevant to its trad-
11 ing in security-based swaps.

12 “(4) ABILITY TO OBTAIN INFORMATION.—The
13 security-based swap dealer or major security-based
14 swap participant shall—

15 “(A) establish and enforce internal systems
16 and procedures to obtain any necessary infor-
17 mation to perform any of the functions de-
18 scribed in this section; and

19 “(B) provide the information to the Com-
20 mission and to the prudential regulator for the
21 security-based swap dealer or major security-
22 based swap participant, as applicable, on re-
23 quest.

24 “(5) CONFLICTS OF INTEREST.—The security-
25 based swap dealer and major security-based swap

1 participant shall implement conflict-of-interest sys-
2 tems and procedures that—

3 “(A) establish structural and institutional
4 safeguards to ensure that the activities of any
5 person within the firm relating to research or
6 analysis of the price or market for any security-
7 based swap or acting in a role of providing
8 clearing activities or making determinations as
9 to accepting clearing customers are separated
10 by appropriate informational partitions within
11 the firm from the review, pressure, or oversight
12 of persons whose involvement in pricing, trad-
13 ing, or clearing activities might potentially bias
14 their judgment or supervision and contravene
15 the core principles of open access and the busi-
16 ness conduct standards described in this title;
17 and

18 “(B) address such other issues as the
19 Commission determines to be appropriate.

20 “(6) ANTITRUST CONSIDERATIONS.—Unless
21 necessary or appropriate to achieve the purposes of
22 this title, the security-based swap dealer or major se-
23 curity-based swap participant shall not—

1 “(A) adopt any process or take any action
2 that results in any unreasonable restraint of
3 trade; or

4 “(B) impose any material anticompetitive
5 burden on trading or clearing.

6 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
7 CER.—

8 “(1) IN GENERAL.—Each security-based swap
9 dealer and major security-based swap participant
10 shall designate an individual to serve as a chief com-
11 pliance officer.

12 “(2) DUTIES.—The chief compliance officer
13 shall—

14 “(A) report directly to the board or to the
15 senior officer of the security-based swap dealer
16 or major security-based swap participant;

17 “(B) review the compliance of the security-
18 based swap dealer or major security-based swap
19 participant with respect to the security-based
20 swap dealer and major security-based swap par-
21 ticipant requirements described in this section;

22 “(C) in consultation with the board of di-
23 rectors, a body performing a function similar to
24 the board, or the senior officer of the organiza-

1 tion, resolve any conflicts of interest that may
2 arise;

3 “(D) be responsible for administering each
4 policy and procedure that is required to be es-
5 tablished pursuant to this section;

6 “(E) ensure compliance with this title (in-
7 cluding regulations) relating to security-based
8 swaps, including each rule prescribed by the
9 Commission under this section;

10 “(F) establish procedures for the remedi-
11 ation of noncompliance issues identified by the
12 chief compliance officer through any—

13 “(i) compliance office review;

14 “(ii) look-back;

15 “(iii) internal or external audit find-
16 ing;

17 “(iv) self-reported error; or

18 “(v) validated complaint; and

19 “(G) establish and follow appropriate pro-
20 cedures for the handling, management response,
21 remediation, retesting, and closing of non-
22 compliance issues.

23 “(3) ANNUAL REPORTS.—

24 “(A) IN GENERAL.—In accordance with
25 rules prescribed by the Commission, the chief

1 compliance officer shall annually prepare and
2 sign a report that contains a description of—

3 “(i) the compliance of the security-
4 based swap dealer or major swap partici-
5 pant with respect to this title (including
6 regulations); and

7 “(ii) each policy and procedure of the
8 security-based swap dealer or major secu-
9 rity-based swap participant of the chief
10 compliance officer (including the code of
11 ethics and conflict of interest policies).

12 “(B) REQUIREMENTS.—A compliance re-
13 port under subparagraph (A) shall—

14 “(i) accompany each appropriate fi-
15 nancial report of the security-based swap
16 dealer or major security-based swap partici-
17 pant that is required to be furnished to
18 the Commission pursuant to this section;
19 and

20 “(ii) include a certification that, under
21 penalty of law, the compliance report is ac-
22 curate and complete.

23 “(1) ENFORCEMENT AND ADMINISTRATIVE PRO-
24 CEEDING AUTHORITY.—

25 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

1 “(A) SECURITIES AND EXCHANGE COMMIS-
2 SION.—Except as provided in subparagraph
3 (B), the Commission shall have primary author-
4 ity to enforce subtitle B, and the amendments
5 made by subtitle B of the Wall Street Trans-
6 parency and Accountability Act of 2010, with
7 respect to any person.

8 “(B) APPROPRIATE FEDERAL BANKING
9 AGENCIES.—The appropriate Federal banking
10 agency for security-based swap dealers or major
11 security-based swap participants that are depos-
12 itory institutions, as that term is defined under
13 section 3 of the Federal Deposit Insurance Act
14 (12 U.S.C. 1813), shall have exclusive authority
15 to enforce the provisions of subsection (e) and
16 other prudential requirements of this title, with
17 respect to depository institutions that are secu-
18 rity-based swap dealers or major security-based
19 swap participants.

20 “(C) REFERRAL.—

21 “(i) VIOLATIONS OF NONPRUDENTIAL
22 REQUIREMENTS.—If the appropriate Fed-
23 eral banking agency for security-based
24 swap dealers or major security-based swap
25 participants that are depository institu-

1 tions has cause to believe that such secu-
2 rity-based swap dealer or major security-
3 based swap participant may have engaged
4 in conduct that constitutes a violation of
5 the nonprudential requirements of this sec-
6 tion or rules adopted by the Commission
7 thereunder, the agency may recommend in
8 writing to the Commission that the Com-
9 mission initiate an enforcement proceeding
10 as authorized under this title. The rec-
11 ommendation shall be accompanied by a
12 written explanation of the concerns giving
13 rise to the recommendation.

14 “(ii) VIOLATIONS OF PRUDENTIAL RE-
15 QUIREMENTS.—If the Commission has
16 cause to believe that a securities-based
17 swap dealer or major securities-based swap
18 participant that has a prudential regulator
19 may have engaged in conduct that con-
20 stitute a violation of the prudential re-
21 quirements of subsection (e) or rules
22 adopted thereunder, the Commission may
23 recommend in writing to the prudential
24 regulator that the prudential regulator ini-
25 tiate an enforcement proceeding as author-

1 ized under this title. The recommendation
2 shall be accompanied by a written expla-
3 nation of the concerns giving rise to the
4 recommendation.

5 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
6 AND HEARING.—The Commission, by order, shall
7 censure, place limitations on the activities, functions,
8 or operations of, or revoke the registration of any se-
9 curity-based swap dealer or major security-based
10 swap participant that has registered with the Com-
11 mission pursuant to subsection (b) if the Commis-
12 sion finds, on the record after notice and oppor-
13 tunity for hearing, that such censure, placing of lim-
14 itations, or revocation is in the public interest and
15 that such security-based swap dealer or major secu-
16 rity-based swap participant, or any person associated
17 with such security-based swap dealer or major secu-
18 rity-based swap participant effecting or involved in
19 effecting transactions in security-based swaps on be-
20 half of such security-based swap dealer or major se-
21 curity-based swap participant, whether prior or sub-
22 sequent to becoming so associated—

23 “(A) has committed or omitted any act, or
24 is subject to an order or finding, enumerated in

1 subparagraph (A), (D), or (E) of paragraph (4)
2 of section 15(b);

3 “(B) has been convicted of any offense
4 specified in subparagraph (B) of such para-
5 graph (4) within 10 years of the commencement
6 of the proceedings under this subsection;

7 “(C) is enjoined from any action, conduct,
8 or practice specified in subparagraph (C) of
9 such paragraph (4);

10 “(D) is subject to an order or a final order
11 specified in subparagraph (F) or (H), respec-
12 tively, of such paragraph (4); or

13 “(E) has been found by a foreign financial
14 regulatory authority to have committed or omit-
15 ted any act, or violated any foreign statute or
16 regulation, enumerated in subparagraph (G) of
17 such paragraph (4).

18 “(3) ASSOCIATED PERSONS.—With respect to
19 any person who is associated, who is seeking to be-
20 come associated, or, at the time of the alleged mis-
21 conduct, who was associated or was seeking to be-
22 come associated with a security-based swap dealer or
23 major security-based swap participant for the pur-
24 pose of effecting or being involved in effecting secu-
25 rity-based swaps on behalf of such security-based

1 swap dealer or major security-based swap partici-
2 pant, the Commission, by order, shall censure, place
3 limitations on the activities or functions of such per-
4 son, or suspend for a period not exceeding 12
5 months, or bar such person from being associated
6 with a security-based swap dealer or major security-
7 based swap participant, if the Commission finds, on
8 the record after notice and opportunity for a hear-
9 ing, that such censure, placing of limitations, sus-
10 pension, or bar is in the public interest and that
11 such person—

12 “(A) has committed or omitted any act, or
13 is subject to an order or finding, enumerated in
14 subparagraph (A), (D), or (E) of paragraph (4)
15 of section 15(b);

16 “(B) has been convicted of any offense
17 specified in subparagraph (B) of such para-
18 graph (4) within 10 years of the commencement
19 of the proceedings under this subsection;

20 “(C) is enjoined from any action, conduct,
21 or practice specified in subparagraph (C) of
22 such paragraph (4);

23 “(D) is subject to an order or a final order
24 specified in subparagraph (F) or (H), respec-
25 tively, of such paragraph (4); or

1 “(E) has been found by a foreign financial
2 regulatory authority to have committed or omit-
3 ted any act, or violated any foreign statute or
4 regulation, enumerated in subparagraph (G) of
5 such paragraph (4).

6 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
7 ful—

8 “(A) for any person as to whom an order
9 under paragraph (3) is in effect, without the
10 consent of the Commission, willfully to become,
11 or to be, associated with a security-based swap
12 dealer or major security-based swap participant
13 in contravention of such order; or

14 “(B) for any security-based swap dealer or
15 major security-based swap participant to permit
16 such a person, without the consent of the Com-
17 mission, to become or remain a person associ-
18 ated with the security-based swap dealer or
19 major security-based swap participant in con-
20 travention of such order, if such security-based
21 swap dealer or major security-based swap par-
22 ticipant knew, or in the exercise of reasonable
23 care should have known, of such order.”.

1 **SEC. 765. RULEMAKING ON CONFLICT OF INTEREST.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 date of enactment of the Wall Street Transparency and
4 Accountability Act of 2010, the Securities and Exchange
5 Commission shall determine whether to adopt rules to es-
6 tablish limits on the control of any clearing agency that
7 clears security-based swaps, or on the control of any secu-
8 rity-based swap execution facility or national securities ex-
9 change that posts or makes available for trading security-
10 based swaps, by a bank holding company (as defined in
11 section 2 of the Bank Holding Company Act of 1956 (12
12 U.S.C. 1841)) with total consolidated assets of
13 \$50,000,000,000 or more, a nonbank financial company
14 (as defined in section 102) supervised by the Board of
15 Governors of the Federal Reserve System, affiliate of such
16 a bank holding company or nonbank financial company,
17 a security-based swap dealer, major security-based swap
18 participant, or person associated with a security-based
19 swap dealer or major security-based swap participant.

20 (b) PURPOSES.—The Commission shall adopt rules if
21 the Commission determines, after the review described in
22 subsection (a), that such rules are necessary or appro-
23 priate to improve the governance of, or to mitigate sys-
24 temic risk, promote competition, or mitigate conflicts of
25 interest in connection with a security-based swap dealer
26 or major security-based swap participant's conduct of

1 business with, a clearing agency, national securities ex-
 2 change, or security-based swap execution facility that
 3 clears, posts, or makes available for trading security-based
 4 swaps and in which such security-based swap dealer or
 5 major security-based swap participant has a material debt
 6 or equity investment.

7 **SEC. 766. REPORTING AND RECORDKEEPING.**

8 (a) IN GENERAL.—The Securities Exchange Act of
 9 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
 10 section 13 the following:

11 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
 12 **TAIN SECURITY-BASED SWAPS.**

13 “(a) REQUIRED REPORTING OF SECURITY-BASED
 14 SWAPS NOT ACCEPTED BY ANY CLEARING AGENCY OR
 15 DERIVATIVES CLEARING ORGANIZATION.—

16 “(1) IN GENERAL.—Each security-based swap
 17 that is not accepted for clearing by any clearing
 18 agency or derivatives clearing organization shall be
 19 reported to—

20 “(A) a security-based swap data repository
 21 described in section 10B(n); or

22 “(B) in the case in which there is no secu-
 23 rity-based swap data repository that would ac-
 24 cept the security-based swap, to the Commis-
 25 sion pursuant to this section within such time

1 period as the Commission may by rule or regu-
2 lation prescribe.

3 “(2) TRANSITION RULE FOR PREENACTMENT
4 SECURITY-BASED SWAPS.—

5 “(A) SECURITY-BASED SWAPS ENTERED
6 INTO BEFORE THE DATE OF ENACTMENT OF
7 THE WALL STREET TRANSPARENCY AND AC-
8 COUNTABILITY ACT OF 2010.—Each security-
9 based swap entered into before the date of en-
10 actment of the Wall Street Transparency and
11 Accountability Act of 2010, the terms of which
12 have not expired as of the date of enactment of
13 that Act, shall be reported to a registered secu-
14 rity-based swap data repository or the Commis-
15 sion by a date that is not later than—

16 “(i) 30 days after issuance of the in-
17 terim final rule; or

18 “(ii) such other period as the Com-
19 mission determines to be appropriate.

20 “(B) COMMISSION RULEMAKING.—The
21 Commission shall promulgate an interim final
22 rule within 90 days of the date of enactment of
23 this section providing for the reporting of each
24 security-based swap entered into before the date

1 of enactment as referenced in subparagraph
2 (A).

3 “(C) EFFECTIVE DATE.—The reporting
4 provisions described in this section shall be ef-
5 fective upon the date of the enactment of this
6 section.

7 “(3) REPORTING OBLIGATIONS.—

8 “(A) SECURITY-BASED SWAPS IN WHICH
9 ONLY 1 COUNTERPARTY IS A SECURITY-BASED
10 SWAP DEALER OR MAJOR SECURITY-BASED
11 SWAP PARTICIPANT.—With respect to a secu-
12 rity-based swap in which only 1 counterparty is
13 a security-based swap dealer or major security-
14 based swap participant, the security-based swap
15 dealer or major security-based swap participant
16 shall report the security-based swap as required
17 under paragraphs (1) and (2).

18 “(B) SECURITY-BASED SWAPS IN WHICH 1
19 COUNTERPARTY IS A SECURITY-BASED SWAP
20 DEALER AND THE OTHER A MAJOR SECURITY-
21 BASED SWAP PARTICIPANT.—With respect to a
22 security-based swap in which 1 counterparty is
23 a security-based swap dealer and the other a
24 major security-based swap participant, the secu-
25 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-
8 based swap as required under paragraphs (1)
9 and (2).

10 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
11 vidual or entity that enters into a security-based swap
12 shall meet each requirement described in subsection (c)
13 if the individual or entity did not—

14 “(1) clear the security-based swap in accord-
15 ance with section 3C(a)(1); or

16 “(2) have the data regarding the security-based
17 swap accepted by a security-based swap data reposi-
18 tory in accordance with rules (including timeframes)
19 adopted by the Commission under this title.

20 “(c) REQUIREMENTS.—An individual or entity de-
21 scribed in subsection (b) shall—

22 “(1) upon written request from the Commis-
23 sion, provide reports regarding the security-based
24 swaps held by the individual or entity to the Com-

1 mission in such form and in such manner as the
2 Commission may request; and

3 “(2) maintain books and records pertaining to
4 the security-based swaps held by the individual or
5 entity in such form, in such manner, and for such
6 period as the Commission may require, which shall
7 be open to inspection by—

8 “(A) any representative of the Commis-
9 sion;

10 “(B) an appropriate prudential regulator;

11 “(C) the Commodity Futures Trading
12 Commission;

13 “(D) the Financial Stability Oversight
14 Council; and

15 “(E) the Department of Justice.

16 “(d) IDENTICAL DATA.—In prescribing rules under
17 this section, the Commission shall require individuals and
18 entities described in subsection (b) to submit to the Com-
19 mission a report that contains data that is not less com-
20 prehensive than the data required to be collected by secu-
21 rity-based swap data repositories under this title.”.

22 (b) BENEFICIAL OWNERSHIP REPORTING.—Section
23 13 of the Securities Exchange Act of 1934 (15 U.S.C.
24 78m) is amended—

1 (1) in subsection (d)(1), by inserting “or other-
2 wise becomes or is deemed to become a beneficial
3 owner of any of the foregoing upon the purchase or
4 sale of a security-based swap that the Commission
5 may define by rule, and” after “Alaska Native
6 Claims Settlement Act,”; and

7 (2) in subsection (g)(1), by inserting “or other-
8 wise becomes or is deemed to become a beneficial
9 owner of any security of a class described in sub-
10 section (d)(1) upon the purchase or sale of a secu-
11 rity-based swap that the Commission may define by
12 rule” after “subsection (d)(1) of this section”.

13 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
14 AGERS.—Section 13(f)(1) of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting
16 “or otherwise becomes or is deemed to become a beneficial
17 owner of any security of a class described in subsection
18 (d)(1) upon the purchase or sale of a security-based swap
19 that the Commission may define by rule,” after “sub-
20 section (d)(1) of this section”.

21 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
22 Section 15(b)(4) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78o(b)(4)) is amended—

1 (1) in subparagraph (C), by inserting “security-
2 based swap dealer, major security-based swap partici-
3 pant,” after “government securities dealer,”; and

4 (2) in subparagraph (F), by striking “broker or
5 dealer” and inserting “broker, dealer, security-based
6 swap dealer, or a major security-based swap partici-
7 pant”.

8 (e) SECURITY-BASED SWAP BENEFICIAL OWNER-
9 SHIP.—Section 13 of the Securities Exchange Act of 1934
10 (15 U.S.C. 78m) is amended by adding at the end the
11 following:

12 “(o) BENEFICIAL OWNERSHIP.—For purposes of this
13 section and section 16, a person shall be deemed to acquire
14 beneficial ownership of an equity security based on the
15 purchase or sale of a security-based swap, only to the ex-
16 tent that the Commission, by rule, determines after con-
17 sultation with the prudential regulators and the Secretary
18 of the Treasury, that the purchase or sale of the security-
19 based swap, or class of security-based swap, provides inci-
20 dents of ownership comparable to direct ownership of the
21 equity security, and that it is necessary to achieve the pur-
22 poses of this section that the purchase or sale of the secu-
23 rity-based swaps, or class of security-based swap, be
24 deemed the acquisition of beneficial ownership of the eq-
25 uity security.”.

1 **SEC. 767. STATE GAMING AND BUCKET SHOP LAWS.**

2 Section 28(a) of the Securities Exchange Act of 1934
3 (15 U.S.C. 78bb(a)) is amended to read as follows:

4 “(a) **LIMITATION ON JUDGMENTS.**—

5 “(1) **IN GENERAL.**—No person permitted to
6 maintain a suit for damages under the provisions of
7 this title shall recover, through satisfaction of judg-
8 ment in 1 or more actions, a total amount in excess
9 of the actual damages to that person on account of
10 the act complained of. Except as otherwise specifi-
11 cally provided in this title, nothing in this title shall
12 affect the jurisdiction of the securities commission
13 (or any agency or officer performing like functions)
14 of any State over any security or any person insofar
15 as it does not conflict with the provisions of this title
16 or the rules and regulations under this title.

17 “(2) **RULE OF CONSTRUCTION.**—Except as pro-
18 vided in subsection (f), the rights and remedies pro-
19 vided by this title shall be in addition to any and all
20 other rights and remedies that may exist at law or
21 in equity.

22 “(3) **STATE BUCKET SHOP LAWS.**—No State
23 law which prohibits or regulates the making or pro-
24 moting of wagering or gaming contracts, or the op-
25 eration of ‘bucket shops’ or other similar or related
26 activities, shall invalidate—

1 “(A) any put, call, straddle, option, privi-
2 lege, or other security subject to this title (ex-
3 cept any security that has a pari-mutuel payout
4 or otherwise is determined by the Commission,
5 acting by rule, regulation, or order, to be appro-
6 priately subject to such laws), or apply to any
7 activity which is incidental or related to the
8 offer, purchase, sale, exercise, settlement, or
9 closeout of any such security;

10 “(B) any security-based swap between eli-
11 gible contract participants; or

12 “(C) any security-based swap effected on a
13 national securities exchange registered pursuant
14 to section 6(b).

15 “(4) OTHER STATE PROVISIONS.—No provision
16 of State law regarding the offer, sale, or distribution
17 of securities shall apply to any transaction in a secu-
18 rity-based swap or a security futures product, except
19 that this paragraph may not be construed as lim-
20 iting any State antifraud law of general applica-
21 bility. A security-based swap may not be regulated
22 as an insurance contract under any provision of
23 State law.”.

1 **SEC. 768. AMENDMENTS TO THE SECURITIES ACT OF 1933;**
2 **TREATMENT OF SECURITY-BASED SWAPS.**

3 (a) DEFINITIONS.—Section 2(a) of the Securities Act
4 of 1933 (15 U.S.C. 77b(a)) is amended—

5 (1) in paragraph (1), by inserting “security-
6 based swap,” after “security future,”;

7 (2) in paragraph (3), by adding at the end the
8 following: “Any offer or sale of a security-based
9 swap by or on behalf of the issuer of the securities
10 upon which such security-based swap is based or is
11 referenced, an affiliate of the issuer, or an under-
12 writer, shall constitute a contract for sale of, sale of,
13 offer for sale, or offer to sell such securities.”; and

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

15 “(17) The terms ‘swap’ and ‘security-based
16 swap’ have the same meanings as in section 1a of
17 the Commodity Exchange Act (7 U.S.C. 1a).

18 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
19 rity-based swap shall be deemed to mean the execu-
20 tion, termination (prior to its scheduled maturity
21 date), assignment, exchange, or similar transfer or
22 conveyance of, or extinguishing of rights or obliga-
23 tions under, a security-based swap, as the context
24 may require.”.

1 (b) REGISTRATION OF SECURITY-BASED SWAPS.—

2 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)

3 is amended by adding at the end the following:

4 “(d) Notwithstanding the provisions of section 3 or
 5 4, unless a registration statement meeting the require-
 6 ments of section 10(a) is in effect as to a security-based
 7 swap, it shall be unlawful for any person, directly or indi-
 8 rectly, to make use of any means or instruments of trans-
 9 portation or communication in interstate commerce or of
 10 the mails to offer to sell, offer to buy or purchase or sell
 11 a security-based swap to any person who is not an eligible
 12 contract participant as defined in section 1a(18) of the
 13 Commodity Exchange Act (7 U.S.C. 1a(18)).”.

14 **SEC. 769. DEFINITIONS UNDER THE INVESTMENT COMPANY**

15 **ACT OF 1940.**

16 Section 2(a) of the Investment Company Act of 1940

17 (15 U.S.C. 80a–2) is amended by adding at the end the

18 following:

19 “(54) The terms ‘commodity pool’, ‘commodity
 20 pool operator’, ‘commodity trading advisor’, ‘major
 21 swap participant’, ‘swap’, ‘swap dealer’, and ‘swap
 22 execution facility’ have the same meanings as in sec-
 23 tion 1a of the Commodity Exchange Act (7 U.S.C.
 24 1a).”.

1 **SEC. 770. DEFINITIONS UNDER THE INVESTMENT ADVI-**
2 **SORS ACT OF 1940.**

3 Section 202(a) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b–2) is amended by adding at the end
5 the following:

6 “(29) The terms ‘commodity pool’, ‘commodity
7 pool operator’, ‘commodity trading advisor’, ‘major
8 swap participant’, ‘swap’, ‘swap dealer’, and ‘swap
9 execution facility’ have the same meanings as in sec-
10 tion 1a of the Commodity Exchange Act (7 U.S.C.
11 1a).”.

12 **SEC. 771. OTHER AUTHORITY.**

13 Unless otherwise provided by its terms, this subtitle
14 does not divest any appropriate Federal banking agency,
15 the Securities and Exchange Commission, the Commodity
16 Futures Trading Commission, or any other Federal or
17 State agency, of any authority derived from any other pro-
18 vision of applicable law.

19 **SEC. 772. JURISDICTION.**

20 (a) IN GENERAL.—Section 36 of the Securities Ex-
21 change Act of 1934 (15 U.S.C. 78mm) is amended by add-
22 ing at the end the following:

23 “(c) DERIVATIVES.—The Commission shall not grant
24 exemptions from the security-based swap provisions of the
25 Wall Street Transparency and Accountability Act of 2010

1 or the amendments made by that Act, except as expressly
2 authorized under the provisions of that Act.”.

3 (b) RULE OF CONSTRUCTION.—Section 30 of the Se-
4 curities Exchange Act of 1934 (15 U.S.C. 78dd) is amend-
5 ed by adding at the end the following:

6 “(c) RULE OF CONSTRUCTION.—No provision of this
7 title that was added by the Wall Street Transparency and
8 Accountability Act of 2010, or any rule or regulation
9 thereunder, shall apply to any person insofar as such per-
10 son transacts a business in security-based swaps without
11 the jurisdiction of the United States, unless such person
12 transacts such business in contravention of such rules and
13 regulations as the Commission may prescribe as necessary
14 or appropriate to prevent the evasion of any provision of
15 this title that was added by the Wall Street Transparency
16 and Accountability Act of 2010. This subsection shall not
17 be construed to limit the jurisdiction of the Commission
18 under any provision of this title, as in effect prior to the
19 date of enactment of the Wall Street Transparency and
20 Accountability Act of 2010.”.

21 **SEC. 773. EFFECTIVE DATE.**

22 Unless otherwise specifically provided in this subtitle,
23 this subtitle, the provisions of this subtitle, and the
24 amendments made by this subtitle shall become effective
25 180 days after the date of enactment of this Act.

1 **TITLE VIII—PAYMENT, CLEAR-**
2 **ING, AND SETTLEMENT SU-**
3 **PERVISION**

4 **SEC. 801. SHORT TITLE.**

5 This title may be cited as the “Payment, Clearing,
6 and Settlement Supervision Act of 2010”.

7 **SEC. 802. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) The proper functioning of the financial mar-
10 kets is dependent upon safe and efficient arrange-
11 ments for the clearing and settlement of payment,
12 securities, and other financial transactions.

13 (2) Financial market utilities that conduct or
14 support multilateral payment, clearing, or settlement
15 activities may reduce risks for their participants and
16 the broader financial system, but such utilities may
17 also concentrate and create new risks and thus must
18 be well designed and operated in a safe and sound
19 manner.

20 (3) Payment, clearing, and settlement activities
21 conducted by financial institutions also present im-
22 portant risks to the participating financial institu-
23 tions and to the financial system.

24 (4) Enhancements to the regulation and super-
25 vision of systemically important financial market

1 utilities and the conduct of systemically important
2 payment, clearing, and settlement activities by finan-
3 cial institutions are necessary—

4 (A) to provide consistency;

5 (B) to promote robust risk management
6 and safety and soundness;

7 (C) to reduce systemic risks; and

8 (D) to support the stability of the broader
9 financial system.

10 (b) PURPOSE.—The purpose of this title is to miti-
11 gate systemic risk in the financial system and promote fi-
12 nancial stability by—

13 (1) authorizing the Board of Governors to pre-
14 scribe uniform standards for the—

15 (A) management of risks by systemically
16 important financial market utilities; and

17 (B) conduct of systemically important pay-
18 ment, clearing, and settlement activities by fi-
19 nancial institutions;

20 (2) providing the Board of Governors an en-
21 hanced role in the supervision of risk management
22 standards for systemically important financial mar-
23 ket utilities;

24 (3) strengthening the liquidity of systemically
25 important financial market utilities; and

1 (4) providing the Board of Governors an en-
2 hanced role in the supervision of risk management
3 standards for systemically important payment, clear-
4 ing, and settlement activities by financial institu-
5 tions.

6 **SEC. 803. DEFINITIONS.**

7 In this title, the following definitions shall apply:

8 (1) APPROPRIATE FINANCIAL REGULATOR.—

9 The term “appropriate financial regulator” means—

10 (A) the primary financial regulatory agen-
11 cy, as defined in section 2 of this Act;

12 (B) the National Credit Union Administra-
13 tion, with respect to any insured credit union
14 under the Federal Credit Union Act (12 U.S.C.
15 1751 et seq.); and

16 (C) the Board of Governors, with respect
17 to organizations operating under section 25A of
18 the Federal Reserve Act (12 U.S.C. 611), and
19 any other financial institution engaged in a des-
20 ignated activity.

21 (2) DESIGNATED ACTIVITY.—The term “des-
22 ignated activity” means a payment, clearing, or set-
23 tlement activity that the Council has designated as
24 systemically important under section 804.

1 (3) DESIGNATED FINANCIAL MARKET UTIL-
2 ITY.—The term “designated financial market util-
3 ity” means a financial market utility that the Coun-
4 cil has designated as systemically important under
5 section 804.

6 (4) FINANCIAL INSTITUTION.—The term “fi-
7 nancial institution” means—

8 (A) a depository institution, as defined in
9 section 3 of the Federal Deposit Insurance Act
10 (12 U.S.C. 1813);

11 (B) a branch or agency of a foreign bank,
12 as defined in section 1(b) of the International
13 Banking Act of 1978 (12 U.S.C. 3101);

14 (C) an organization operating under sec-
15 tion 25 or 25A of the Federal Reserve Act (12
16 U.S.C. 601–604a and 611 through 631);

17 (D) a credit union, as defined in section
18 101 of the Federal Credit Union Act (12
19 U.S.C. 1752);

20 (E) a broker or dealer, as defined in sec-
21 tion 3 of the Securities Exchange Act of 1934
22 (15 U.S.C. 78c);

23 (F) an investment company, as defined in
24 section 3 of the Investment Company Act of
25 1940 (15 U.S.C. 80a–3);

1 (G) an insurance company, as defined in
2 section 2 of the Investment Company Act of
3 1940 (15 U.S.C. 80a-2);

4 (H) an investment adviser, as defined in
5 section 202 of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b-2);

7 (I) a futures commission merchant, com-
8 modity trading advisor, or commodity pool oper-
9 ator, as defined in section 1a of the Commodity
10 Exchange Act (7 U.S.C. 1a); and

11 (J) any company engaged in activities that
12 are financial in nature or incidental to a finan-
13 cial activity, as described in section 4 of the
14 Bank Holding Company Act of 1956 (12
15 U.S.C. 1843(k)).

16 (5) FINANCIAL MARKET UTILITY.—The term
17 “financial market utility” means any person that
18 manages or operates a multilateral system for the
19 purpose of transferring, clearing, or settling pay-
20 ments, securities, or other financial transactions
21 among financial institutions or between financial in-
22 stitutions and the person.

23 (6) PAYMENT, CLEARING, OR SETTLEMENT AC-
24 TIVITY.—

1 (A) IN GENERAL.—The term “payment,
2 clearing, or settlement activity” means an activ-
3 ity carried out by 1 or more financial institu-
4 tions to facilitate the completion of financial
5 transactions.

6 (B) FINANCIAL TRANSACTION.—For the
7 purposes of subparagraph (A), the term “finan-
8 cial transaction” includes—

- 9 (i) funds transfers;
- 10 (ii) securities contracts;
- 11 (iii) contracts of sale of a commodity
12 for future delivery;
- 13 (iv) forward contracts;
- 14 (v) repurchase agreements;
- 15 (vi) swaps;
- 16 (vii) security-based swaps;
- 17 (viii) swap agreements;
- 18 (ix) security-based swap agreements;
- 19 (x) foreign exchange contracts;
- 20 (xi) financial derivatives contracts;
- 21 and
- 22 (xii) any similar transaction that the
23 Council determines to be a financial trans-
24 action for purposes of this title.

1 (C) INCLUDED ACTIVITIES.—When con-
2 ducted with respect to a financial transaction,
3 payment, clearing, and settlement activities may
4 include—

5 (i) the calculation and communication
6 of unsettled financial transactions between
7 counterparties;

8 (ii) the netting of transactions;

9 (iii) provision and maintenance of
10 trade, contract, or instrument information;

11 (iv) the management of risks and ac-
12 tivities associated with continuing financial
13 transactions;

14 (v) transmittal and storage of pay-
15 ment instructions;

16 (vi) the movement of funds;

17 (vii) the final settlement of financial
18 transactions; and

19 (viii) other similar functions that the
20 Council may determine.

21 (7) SUPERVISORY AGENCY.—

22 (A) IN GENERAL.—The term “Supervisory
23 Agency” means the Federal agency that has
24 primary jurisdiction over a designated financial

1 market utility under Federal banking, securi-
2 ties, or commodity futures laws, as follows:

3 (i) The Securities and Exchange Com-
4 mission, with respect to a designated fi-
5 nancial market utility that is a clearing
6 agency registered with the Securities and
7 Exchange Commission.

8 (ii) The Commodity Futures Trading
9 Commission, with respect to a designated
10 financial market utility that is a deriva-
11 tives clearing organization registered with
12 the Commodity Futures Trading Commis-
13 sion.

14 (iii) The appropriate Federal banking
15 agency, with respect to a designated finan-
16 cial market utility that is an institution de-
17 scribed in section 3(q) of the Federal De-
18 posit Insurance Act.

19 (iv) The Board of Governors, with re-
20 spect to a designated financial market util-
21 ity that is otherwise not subject to the ju-
22 risdiction of any agency listed in clauses
23 (i), (ii), and (iii).

24 (B) MULTIPLE AGENCY JURISDICTION.—If
25 a designated financial market utility is subject

to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this title.

(8) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms “systemically important” and “systemic importance” mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market

1 utilities or payment, clearing, or settlement activities
2 that the Council determines are, or are likely to be-
3 come, systemically important.

4 (2) CONSIDERATIONS.—In determining whether
5 a financial market utility or payment, clearing, or
6 settlement activity is, or is likely to become, system-
7 ically important, the Council shall take into consid-
8 eration the following:

9 (A) The aggregate monetary value of
10 transactions processed by the financial market
11 utility or carried out through the payment,
12 clearing, or settlement activity.

13 (B) The aggregate exposure of the finan-
14 cial market utility or a financial institution en-
15 gaged in payment, clearing, or settlement activi-
16 ties to its counterparties.

17 (C) The relationship, interdependencies, or
18 other interactions of the financial market utility
19 or payment, clearing, or settlement activity with
20 other financial market utilities or payment,
21 clearing, or settlement activities.

22 (D) The effect that the failure of or a dis-
23 ruption to the financial market utility or pay-
24 ment, clearing, or settlement activity would

1 have on critical markets, financial institutions,
2 or the broader financial system.

3 (E) Any other factors that the Council
4 deems appropriate.

5 (b) RESCISSION OF DESIGNATION.—

6 (1) IN GENERAL.—The Council, on a nondele-
7 gable basis and by a vote of not fewer than $\frac{2}{3}$ of
8 members then serving, including an affirmative vote
9 by the Chairperson of the Council, shall rescind a
10 designation of systemic importance for a designated
11 financial market utility or designated activity if the
12 Council determines that the utility or activity no
13 longer meets the standards for systemic importance.

14 (2) EFFECT OF RESCISSION.—Upon rescission,
15 the financial market utility or financial institutions
16 conducting the activity will no longer be subject to
17 the provisions of this title or any rules or orders pre-
18 scribed by the Council under this title.

19 (c) CONSULTATION AND NOTICE AND OPPORTUNITY
20 FOR HEARING.—

21 (1) CONSULTATION.—Before making any deter-
22 mination under subsection (a) or (b), the Council
23 shall consult with the relevant Supervisory Agency
24 and the Board of Governors.

1 (2) ADVANCE NOTICE AND OPPORTUNITY FOR
2 HEARING.—

3 (A) IN GENERAL.—Before making any de-
4 termination under subsection (a) or (b), the
5 Council shall provide the financial market util-
6 ity or, in the case of a payment, clearing, or
7 settlement activity, financial institutions with
8 advance notice of the proposed determination of
9 the Council.

10 (B) NOTICE IN FEDERAL REGISTER.—The
11 Council shall provide such advance notice to fi-
12 nancial institutions by publishing a notice in
13 the Federal Register.

14 (C) REQUESTS FOR HEARING.—Within 30
15 days from the date of any notice of the pro-
16 posed determination of the Council, the finan-
17 cial market utility or, in the case of a payment,
18 clearing, or settlement activity, a financial insti-
19 tution engaged in the designated activity may
20 request, in writing, an opportunity for a written
21 or oral hearing before the Council to dem-
22 onstrate that the proposed designation or re-
23 scission of designation is not supported by sub-
24 stantial evidence.

1 (D) WRITTEN SUBMISSIONS.—Upon re-
2 ceipt of a timely request, the Council shall fix
3 a time, not more than 30 days after receipt of
4 the request, unless extended at the request of
5 the financial market utility or financial institu-
6 tion, and place at which the financial market
7 utility or financial institution may appear, per-
8 sonally or through counsel, to submit written
9 materials, or, at the sole discretion of the Coun-
10 cil, oral testimony or oral argument.

11 (3) EMERGENCY EXCEPTION.—

12 (A) WAIVER OR MODIFICATION BY VOTE
13 OF THE COUNCIL.—The Council may waive or
14 modify the requirements of paragraph (2) if the
15 Council determines, by an affirmative vote of
16 not less than $\frac{2}{3}$ of all members then serving,
17 including an affirmative vote by the Chair-
18 person of the Council, that the waiver or modi-
19 fication is necessary to prevent or mitigate an
20 immediate threat to the financial system posed
21 by the financial market utility or the payment,
22 clearing, or settlement activity.

23 (B) NOTICE OF WAIVER OR MODIFICA-
24 TION.—The Council shall provide notice of the
25 waiver or modification to the financial market

1 utility concerned or, in the case of a payment,
2 clearing, or settlement activity, to financial in-
3 stitutions, as soon as practicable, which shall be
4 no later than 24 hours after the waiver or
5 modification in the case of a financial market
6 utility and 3 business days in the case of finan-
7 cial institutions. The Council shall provide the
8 notice to financial institutions by posting a no-
9 tice on the website of the Council and by pub-
10 lishing a notice in the Federal Register.

11 (d) NOTIFICATION OF FINAL DETERMINATION.—

12 (1) AFTER HEARING.—Within 60 days of any
13 hearing under subsection (c)(3), the Council shall
14 notify the financial market utility or financial insti-
15 tutions of the final determination of the Council in
16 writing, which shall include findings of fact upon
17 which the determination of the Council is based.

18 (2) WHEN NO HEARING REQUESTED.—If the
19 Council does not receive a timely request for a hear-
20 ing under subsection (c)(3), the Council shall notify
21 the financial market utility or financial institutions
22 of the final determination of the Council in writing
23 not later than 30 days after the expiration of the
24 date by which a financial market utility or a finan-
25 cial institution could have requested a hearing. All

1 notices to financial institutions under this subsection
2 shall be published in the Federal Register.

3 (e) EXTENSION OF TIME PERIODS.—The Council
4 may extend the time periods established in subsections (c)
5 and (d) as the Council determines to be necessary or ap-
6 propriate.

7 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-**
8 **NANCIAL MARKET UTILITIES AND PAYMENT,**
9 **CLEARING, OR SETTLEMENT ACTIVITIES.**

10 (a) AUTHORITY TO PRESCRIBE STANDARDS.—The
11 Board, by rule or order, and in consultation with the
12 Council and the Supervisory Agencies, shall prescribe risk
13 management standards, taking into consideration relevant
14 international standards and existing prudential require-
15 ments, governing—

16 (1) the operations related to the payment, clear-
17 ing, and settlement activities of designated financial
18 market utilities; and

19 (2) the conduct of designated activities by fi-
20 nancial institutions.

21 (b) OBJECTIVES AND PRINCIPLES.—The objectives
22 and principles for the risk management standards pre-
23 scribed under subsection (a) shall be to—

24 (1) promote robust risk management;

25 (2) promote safety and soundness;

1 (3) reduce systemic risks; and

2 (4) support the stability of the broader financial
3 system.

4 (c) SCOPE.—The standards prescribed under sub-
5 section (a) may address areas such as—

6 (1) risk management policies and procedures;

7 (2) margin and collateral requirements;

8 (3) participant or counterparty default policies
9 and procedures;

10 (4) the ability to complete timely clearing and
11 settlement of financial transactions;

12 (5) capital and financial resource requirements
13 for designated financial market utilities; and

14 (6) other areas that the Board determines are
15 necessary to achieve the objectives and principles in
16 subsection (b).

17 (d) THRESHOLD LEVEL.—The standards prescribed
18 under subsection (a) governing the conduct of designated
19 activities by financial institutions shall, where appropriate,
20 establish a threshold as to the level or significance of en-
21 gagement in the activity at which a financial institution
22 will become subject to the standards with respect to that
23 activity.

24 (e) COMPLIANCE REQUIRED.—Designated financial
25 market utilities and financial institutions subject to the

1 standards prescribed by the Board of Governors for a des-
2 ignated activity shall conduct their operations in compli-
3 ance with the applicable risk management standards pre-
4 scribed by the Board of Governors.

5 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MAR-**
6 **KET UTILITIES.**

7 (a) **FEDERAL RESERVE ACCOUNT AND SERVICES.**—
8 The Board of Governors may authorize a Federal Reserve
9 Bank to establish and maintain an account for a des-
10 ignated financial market utility and provide services to the
11 designated financial market utility that the Federal Re-
12 serve Bank is authorized under the Federal Reserve Act
13 to provide to a depository institution, subject to any appli-
14 cable rules, orders, standards, or guidelines prescribed by
15 the Board of Governors.

16 (b) **ADVANCES.**—The Board of Governors may au-
17 thorize a Federal Reserve Bank to provide to a designated
18 financial market utility the same discount and borrowing
19 privileges as the Federal Reserve Bank may provide to a
20 depository institution under the Federal Reserve Act, sub-
21 ject to any applicable rules, orders, standards, or guide-
22 lines prescribed by the Board of Governors.

23 (c) **EARNINGS ON FEDERAL RESERVE BALANCES.**—
24 A Federal Reserve Bank may pay earnings on balances
25 maintained by or on behalf of a designated financial mar-

1 ket utility in the same manner and to the same extent
2 as the Federal Reserve Bank may pay earnings to a depos-
3 itory institution under the Federal Reserve Act, subject
4 to any applicable rules, orders, standards, or guidelines
5 prescribed by the Board of Governors.

6 (d) RESERVE REQUIREMENTS.—The Board of Gov-
7 ernors may exempt a designated financial market utility
8 from, or modify any, reserve requirements under section
9 19 of the Federal Reserve Act (12 U.S.C. 461) applicable
10 to a designated financial market utility.

11 (e) CHANGES TO RULES, PROCEDURES, OR OPER-
12 ATIONS.—

13 (1) ADVANCE NOTICE.—

14 (A) ADVANCE NOTICE OF PROPOSED
15 CHANGES REQUIRED.—A designated financial
16 market utility shall provide notice 60 days in
17 advance advance notice to its Supervisory Agen-
18 cy and the Board of Governors of any proposed
19 change to its rules, procedures, or operations
20 that could, as defined in rules of the Board of
21 Governors, materially affect, the nature or level
22 of risks presented by the designated financial
23 market utility.

24 (B) TERMS AND STANDARDS PRESCRIBED
25 BY THE BOARD OF GOVERNORS.—The Board of

1 Governors shall prescribe regulations that de-
2 fine and describe the standards for determining
3 when notice is required to be provided under
4 subparagraph (A).

5 (C) CONTENTS OF NOTICE.—The notice of
6 a proposed change shall describe—

7 (i) the nature of the change and ex-
8 pected effects on risks to the designated fi-
9 nancial market utility, its participants, or
10 the market; and

11 (ii) how the designated financial mar-
12 ket utility plans to manage any identified
13 risks.

14 (D) ADDITIONAL INFORMATION.—The Su-
15 pervisory Agency or the Board of Governors
16 may require a designated financial market util-
17 ity to provide any information necessary to as-
18 sess the effect the proposed change would have
19 on the nature or level of risks associated with
20 the designated financial market utility's pay-
21 ment, clearing, or settlement activities and the
22 sufficiency of any proposed risk management
23 techniques.

24 (E) NOTICE OF OBJECTION.—The Super-
25 visory Agency or the Board of Governors shall

1 notify the designated financial market utility of
2 any objection regarding the proposed change
3 within 60 days from the later of—

4 (i) the date that the notice of the pro-
5 posed change is received; or

6 (ii) the date any further information
7 requested for consideration of the notice is
8 received.

9 (F) CHANGE NOT ALLOWED IF OBJEC-
10 TION.—A designated financial market utility
11 shall not implement a change to which the
12 Board of Governors or the Supervisory Agency
13 has an objection.

14 (G) CHANGE ALLOWED IF NO OBJECTION
15 WITHIN 60 DAYS.—A designated financial mar-
16 ket utility may implement a change if it has not
17 received an objection to the proposed change
18 within 60 days of the later of—

19 (i) the date that the Supervisory
20 Agency or the Board of Governors receives
21 the notice of proposed change; or

22 (ii) the date the Supervisory Agency
23 or the Board of Governors receives any
24 further information it requests for consid-
25 eration of the notice.

1 (H) REVIEW EXTENSION FOR NOVEL OR
2 COMPLEX ISSUES.—The Supervisory Agency or
3 the Board of Governors may, during the 60-day
4 review period, extend the review period for an
5 additional 60 days for proposed changes that
6 raise novel or complex issues, subject to the Su-
7 pervisory Agency or the Board of Governors
8 providing the designated financial market utility
9 with prompt written notice of the extension.
10 Any extension under this subparagraph will ex-
11 tend the time periods under subparagraphs (D)
12 and (F).

13 (I) CHANGE ALLOWED EARLIER IF NOTI-
14 FIED OF NO OBJECTION.—A designated finan-
15 cial market utility may implement a change in
16 less than 60 days from the date of receipt of
17 the notice of proposed change by the Super-
18 visory Agency or the Board of Governors, or the
19 date the Supervisory Agency or the Board of
20 Governors receives any further information it
21 requested, if the Supervisory Agency or the
22 Board of Governors notifies the designated fi-
23 nancial market utility in writing that it does
24 not object to the proposed change and author-
25 izes the designated financial market utility to

1 implement the change on an earlier date, sub-
2 ject to any conditions imposed by the Super-
3 visory Agency or the Board of Governors.

4 (2) EMERGENCY CHANGES.—

5 (A) IN GENERAL.—A designated financial
6 market utility may implement a change that
7 would otherwise require advance notice under
8 this subsection if it determines that—

9 (i) an emergency exists; and

10 (ii) immediate implementation of the
11 change is necessary for the designated fi-
12 nancial market utility to continue to pro-
13 vide its services in a safe and sound man-
14 ner.

15 (B) NOTICE REQUIRED WITHIN 24
16 HOURS.—The designated financial market util-
17 ity shall provide notice of any such emergency
18 change to its Supervisory Agency and the
19 Board of Governors, as soon as practicable,
20 which shall be no later than 24 hours after im-
21 plementation of the change.

22 (C) CONTENTS OF EMERGENCY NOTICE.—

23 In addition to the information required for
24 changes requiring advance notice, the notice of
25 an emergency change shall describe—

- 1 (i) the nature of the emergency; and
2 (ii) the reason the change was nec-
3 essary for the designated financial market
4 utility to continue to provide its services in
5 a safe and sound manner.

6 (D) MODIFICATION OR RESCISSION OF
7 CHANGE MAY BE REQUIRED.—The Supervisory
8 Agency or the Board of Governors may require
9 modification or rescission of the change if it
10 finds that the change is not consistent with the
11 purposes of this Act or any rules, orders, or
12 standards prescribed by the Board of Governors
13 hereunder.

14 (3) COPYING THE BOARD OF GOVERNORS.—The
15 Supervisory Agency shall provide the Board of Gov-
16 ernors concurrently with a complete copy of any no-
17 tice, request, or other information it issues, submits,
18 or receives under this subsection.

19 (4) CONSULTATION WITH BOARD OF GOV-
20 ERNORS.—Before taking any action on, or com-
21 pleting its review of, a change proposed by a des-
22 ignated financial market utility, the Supervisory
23 Agency shall consult with the Board of Governors.

1 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS**
2 **AGAINST DESIGNATED FINANCIAL MARKET**
3 **UTILITIES.**

4 (a) EXAMINATION.—Notwithstanding any other pro-
5 vision of law and subject to subsection (d), the Supervisory
6 Agency shall conduct examinations of a designated finan-
7 cial market utility at least once annually in order to deter-
8 mine the following:

9 (1) The nature of the operations of, and the
10 risks borne by, the designated financial market util-
11 ity.

12 (2) The financial and operational risks pre-
13 sented by the designated financial market utility to
14 financial institutions, critical markets, or the broad-
15 er financial system.

16 (3) The resources and capabilities of the des-
17 ignated financial market utility to monitor and con-
18 trol such risks.

19 (4) The safety and soundness of the designated
20 financial market utility.

21 (5) The designated financial market utility's
22 compliance with—

23 (A) this title; and

24 (B) the rules and orders prescribed by the
25 Board of Governors under this title.

1 (b) SERVICE PROVIDERS.—Whenever a service inte-
2 gral to the operation of a designated financial market util-
3 ity is performed for the designated financial market utility
4 by another entity, whether an affiliate or non-affiliate and
5 whether on or off the premises of the designated financial
6 market utility, the Supervisory Agency may examine
7 whether the provision of that service is in compliance with
8 applicable law, rules, orders, and standards to the same
9 extent as if the designated financial market utility were
10 performing the service on its own premises.

11 (c) ENFORCEMENT.—For purposes of enforcing the
12 provisions of this section, a designated financial market
13 utility shall be subject to, and the appropriate Supervisory
14 Agency shall have authority under the provisions of sub-
15 sections (b) through (n) of section 8 of the Federal De-
16 posit Insurance Act (12 U.S.C. 1818) in the same manner
17 and to the same extent as if the designated financial mar-
18 ket utility was an insured depository institution and the
19 Supervisory Agency was the appropriate Federal banking
20 agency for such insured depository institution.

21 (d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMI-
22 NATIONS.—

23 (1) BOARD OF GOVERNORS CONSULTATION ON
24 EXAMINATION PLANNING.—The Supervisory Agency
25 shall consult with the Board of Governors regarding

1 the scope and methodology of any examination con-
2 ducted under subsections (a) and (b).

3 (2) BOARD OF GOVERNORS PARTICIPATION IN
4 EXAMINATION.—The Board of Governors may, in its
5 discretion, participate in any examination led by a
6 Supervisory Agency and conducted under sub-
7 sections (a) and (b).

8 (e) BOARD OF GOVERNORS ENFORCEMENT REC-
9 OMMENDATIONS.—

10 (1) RECOMMENDATION.—The Board of Gov-
11 ernors may at any time recommend to the Super-
12 visory Agency that such agency take enforcement ac-
13 tion against a designated financial market utility.
14 Any such recommendation for enforcement action
15 shall provide a detailed analysis supporting the rec-
16 ommendation of the Board of Governors.

17 (2) CONSIDERATION.—The Supervisory Agency
18 shall consider the recommendation of the Board of
19 Governors and submit a response to the Board of
20 Governors within 60 days.

21 (3) MEDIATION.—If the Supervisory Agency re-
22 jects, in whole or in part, the recommendation of the
23 Board of Governors, the Board of Governors may
24 dispute the matter by referring the recommendation

1 to the Council, which shall attempt to resolve the
2 dispute.

3 (4) ENFORCEMENT ACTION.—If the Council is
4 unable to resolve the dispute under paragraph (3)
5 within 30 days from the date of referral, the Board
6 of Governors may, upon a vote of its members—

7 (A) exercise the enforcement authority ref-
8 erenced in subsection (c) as if it were the Su-
9 pervisory Agency; and

10 (B) take enforcement action against the
11 designated financial market utility.

12 (f) EMERGENCY ENFORCEMENT ACTIONS BY THE
13 BOARD OF GOVERNORS.—

14 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—

15 The Board of Governors may, after consulting with
16 the Council and the Supervisory Agency, take en-
17 forcement action against a designated financial mar-
18 ket utility if the Board of Governors has reasonable
19 cause to believe that—

20 (A) either—

21 (i) an action engaged in, or con-
22 templated by, a designated financial mar-
23 ket utility (including any change proposed
24 by the designated financial market utility
25 to its rules, procedures, or operations that

1 would otherwise be subject to section
2 806(e)) poses an imminent risk of substan-
3 tial harm to financial institutions, critical
4 markets, or the broader financial system;
5 or

6 (ii) the condition of a designated fi-
7 nancial market utility poses an imminent
8 risk of substantial harm to financial insti-
9 tutions, critical markets, or the broader fi-
10 nancial system; and

11 (B) the imminent risk of substantial harm
12 precludes the Board of Governors' use of the
13 procedures in subsection (e).

14 (2) ENFORCEMENT AUTHORITY.—For purposes
15 of taking enforcement action under paragraph (1), a
16 designated financial market utility shall be subject
17 to, and the Board of Governors shall have authority
18 under the provisions of subsections (b) through (n)
19 of section 8 of the Federal Deposit Insurance Act
20 (12 U.S.C. 1818) in the same manner and to the
21 same extent as if the designated financial market
22 utility was an insured depository institution and the
23 Board of Governors was the appropriate Federal
24 banking agency for such insured depository institu-
25 tion.

1 (3) PROMPT NOTICE TO SUPERVISORY AGENCY
2 OF ENFORCEMENT ACTION.—Within 24 hours of
3 taking an enforcement action under this subsection,
4 the Board of Governors shall provide written notice
5 to the designated financial market utility’s Super-
6 visory Agency containing a detailed analysis of the
7 action of the Board of Governors, with supporting
8 documentation included.

9 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS**
10 **AGAINST FINANCIAL INSTITUTIONS SUBJECT**
11 **TO STANDARDS FOR DESIGNATED ACTIVI-**
12 **TIES.**

13 (a) EXAMINATION.—The appropriate financial regu-
14 lator is authorized to examine a financial institution sub-
15 ject to the standards prescribed by the Board of Governors
16 for a designated activity in order to determine the fol-
17 lowing:

18 (1) The nature and scope of the designated ac-
19 tivities engaged in by the financial institution.

20 (2) The financial and operational risks the des-
21 ignated activities engaged in by the financial institu-
22 tion may pose to the safety and soundness of the fi-
23 nancial institution.

24 (3) The financial and operational risks the des-
25 ignated activities engaged in by the financial institu-

1 tion may pose to other financial institutions, critical
2 markets, or the broader financial system.

3 (4) The resources available to and the capabili-
4 ties of the financial institution to monitor and con-
5 trol the risks described in paragraphs (2) and (3).

6 (5) The financial institution's compliance with
7 this title and the rules and orders prescribed by the
8 Board of Governors under this title.

9 (b) ENFORCEMENT.—For purposes of enforcing the
10 provisions of this section, and the rules and orders pre-
11 scribed by the Board of Governors under this section, a
12 financial institution subject to the standards prescribed by
13 the Board of Governors for a designated activity shall be
14 subject to, and the appropriate financial regulator shall
15 have authority under the provisions of subsections (b)
16 through (n) of section 8 of the Federal Deposit Insurance
17 Act (12 U.S.C. 1818) in the same manner and to the same
18 extent as if the financial institution was an insured deposi-
19 tory institution and the appropriate financial regulator
20 was the appropriate Federal banking agency for such in-
21 sured depository institution.

22 (c) TECHNICAL ASSISTANCE.—The Board of Gov-
23 ernors shall consult with and provide such technical assist-
24 ance as may be required by the appropriate financial regu-
25 lators to ensure that the rules and orders prescribed by

1 the Board of Governors under this title are interpreted
2 and applied in as consistent and uniform a manner as
3 practicable.

4 (d) DELEGATION.—

5 (1) EXAMINATION.—

6 (A) REQUEST TO BOARD OF GOV-
7 ERNORS.—The appropriate financial regulator
8 may request the Board of Governors to conduct
9 or participate in an examination of a financial
10 institution subject to the standards prescribed
11 by the Board of Governors for a designated ac-
12 tivity in order to assess the compliance of such
13 financial institution with—

14 (i) this title; or

15 (ii) the rules or orders prescribed by
16 the Board of Governors under this title.

17 (B) EXAMINATION BY BOARD OF GOV-
18 ERNORS.—Upon receipt of an appropriate writ-
19 ten request, the Board of Governors will con-
20 duct the examination under such terms and
21 conditions to which the Board of Governors and
22 the appropriate financial regulator mutually
23 agree.

24 (2) ENFORCEMENT.—

1 (A) REQUEST TO BOARD OF GOV-
2 ERNORS.—The appropriate financial regulator
3 may request the Board of Governors to enforce
4 this title or the rules or orders prescribed by
5 the Board of Governors under this title against
6 a financial institution that is subject to the
7 standards prescribed by the Board of Governors
8 for a designated activity.

9 (B) ENFORCEMENT BY BOARD OF GOV-
10 ERNORS.—Upon receipt of an appropriate writ-
11 ten request, the Board of Governors shall deter-
12 mine whether an enforcement action is war-
13 ranted, and, if so, it shall enforce compliance
14 with this title or the rules or orders prescribed
15 by the Board of Governors under this title and,
16 if so, the financial institution shall be subject
17 to, and the Board of Governors shall have au-
18 thority under the provisions of subsections (b)
19 through (n) of section 8 of the Federal Deposit
20 Insurance Act (12 U.S.C. 1818) in the same
21 manner and to the same extent as if the finan-
22 cial institution was an insured depository insti-
23 tution and the Board of Governors was the ap-
24 propriate Federal banking agency for such in-
25 sured depository institution

1 (e) BACK-UP AUTHORITY OF THE BOARD OF GOV-
2 ERNORS.—

3 (1) EXAMINATION AND ENFORCEMENT.—Not-
4 withstanding any other provision of law, the Board
5 of Governors may—

6 (A) conduct an examination of the type de-
7 scribed in subsection (a) of any financial insti-
8 tution that is subject to the standards pre-
9 scribed by the Board of Governors for a des-
10 ignated activity; and

11 (B) enforce the provisions of this title or
12 any rules or orders prescribed by the Board of
13 Governors under this title against any financial
14 institution that is subject to the standards pre-
15 scribed by the Board of Governors for a des-
16 ignated activity.

17 (2) LIMITATIONS.—

18 (A) EXAMINATION.—The Board of Gov-
19 ernors may exercise the authority described in
20 paragraph (1)(A) only if the Board of Gov-
21 ernors has—

22 (i) reasonable cause to believe that a
23 financial institution is not in compliance
24 with this title or the rules or orders pre-
25 scribed by the Board of Governors under

1 this title with respect to a designated activ-
2 ity;

3 (ii) notified, in writing, the appro-
4 priate financial regulator and the Council
5 of its belief under clause (i) with sup-
6 porting documentation included;

7 (iii) requested the appropriate finan-
8 cial regulator to conduct a prompt exam-
9 ination of the financial institution; and

10 (iv) either—

11 (I) not been afforded a reason-
12 able opportunity to participate in an
13 examination of the financial institu-
14 tion by the appropriate financial regu-
15 lator within 30 days after the date of
16 the Board's notification under clause
17 (ii); or

18 (II) reasonable cause to believe
19 that the financial institution's non-
20 compliance with this title or the rules
21 or orders prescribed by the Board of
22 Governors under this title poses a
23 substantial risk to other financial in-
24 stitutions, critical markets, or the
25 broader financial system, subject to

1 the Board of Governors affording the
2 appropriate financial regulator a rea-
3 sonable opportunity to participate in
4 the examination.

5 (B) ENFORCEMENT.—The Board of Gov-
6 ernors may exercise the authority described in
7 paragraph (1)(B) only if the Board of Gov-
8 ernors has—

9 (i) reasonable cause to believe that a
10 financial institution is not in compliance
11 with this title or the rules or orders pre-
12 scribed by the Board of Governors under
13 this title with respect to a designated activ-
14 ity;

15 (ii) notified, in writing, the appro-
16 priate financial regulator and the Council
17 of its belief under clause (i) with sup-
18 porting documentation included and with a
19 recommendation that the appropriate fi-
20 nancial regulator take 1 or more specific
21 enforcement actions against the financial
22 institution; and

23 (iii) either—

24 (I) not been notified, in writing,
25 by the appropriate financial regulator

1 of the commencement of an enforce-
2 ment action recommended by the
3 Board of Governors against the finan-
4 cial institution within 60 days from
5 the date of the notification under
6 clause (ii); or

7 (II) reasonable cause to believe
8 that the financial institution's non-
9 compliance with this title or the rules
10 or orders prescribed by the Board of
11 Governors under this title poses a
12 substantial risk to other financial in-
13 stitutions, critical markets, or the
14 broader financial system, subject to
15 the Board of Governors notifying the
16 appropriate financial regulator of the
17 Board's enforcement action.

18 (3) ENFORCEMENT PROVISIONS.—For purposes
19 of taking enforcement action under paragraph (1),
20 the financial institution shall be subject to, and the
21 Board of Governors shall have authority under the
22 provisions of subsections (b) through (n) of section
23 8 of the Federal Deposit Insurance Act (12 U.S.C.
24 1818) in the same manner and to the same extent
25 as if the financial institution was an insured deposi-

1 tory institution and the Board of Governors was the
2 appropriate Federal banking agency for such insured
3 depository institution.

4 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR**
5 **RECORDS.**

6 (a) INFORMATION TO ASSESS SYSTEMIC IMPOR-
7 TANCE.—

8 (1) FINANCIAL MARKET UTILITIES.—The Coun-
9 cil is authorized to require any financial market util-
10 ity to submit such information as the Council may
11 require for the sole purpose of assessing whether
12 that financial market utility is systemically impor-
13 tant, but only if the Council has reasonable cause to
14 believe that the financial market utility meets the
15 standards for systemic importance set forth in sec-
16 tion 804.

17 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAY-
18 MENT, CLEARING, OR SETTLEMENT ACTIVITIES.—
19 The Council is authorized to require any financial
20 institution to submit such information as the Coun-
21 cil may require for the sole purpose of assessing
22 whether any payment, clearing, or settlement activ-
23 ity engaged in or supported by a financial institution
24 is systemically important, but only if the Council has
25 reasonable cause to believe that the activity meets

1 the standards for systemic importance set forth in
2 section 804.

3 (b) REPORTING AFTER DESIGNATION.—

4 (1) DESIGNATED FINANCIAL MARKET UTILI-
5 TIES.—The Board of Governors and the Council
6 may require a designated financial market utility to
7 submit reports or data to the Board of Governors
8 and the Council in such frequency and form as
9 deemed necessary by the Board of Governors and
10 the Council in order to assess the safety and sound-
11 ness of the utility and the systemic risk that the
12 utility's operations pose to the financial system.

13 (2) FINANCIAL INSTITUTIONS SUBJECT TO
14 STANDARDS FOR DESIGNATED ACTIVITIES.—The
15 Board of Governors and the Council may require 1
16 or more financial institutions subject to the stand-
17 ards prescribed by the Board of Governors for a des-
18 ignated activity to submit, in such frequency and
19 form as deemed necessary by the Board of Gov-
20 ernors and the Council, reports and data to the
21 Board of Governors and the Council solely with re-
22 spect to the conduct of the designated activity and
23 solely to assess whether—

24 (A) the rules, orders, or standards pre-
25 scribed by the Board of Governors with respect

1 to the designated activity appropriately address
2 the risks to the financial system presented by
3 such activity; and

4 (B) the financial institutions are in compli-
5 ance with this title and the rules and orders
6 prescribed by the Board of Governors under
7 this title with respect to the designated activity.

8 (c) COORDINATION WITH APPROPRIATE FEDERAL
9 SUPERVISORY AGENCY.—

10 (1) ADVANCE COORDINATION.—Before directly
11 requesting any material information from, or impos-
12 ing reporting or recordkeeping requirements on, any
13 financial market utility or any financial institution
14 engaged in a payment, clearing, or settlement activ-
15 ity, the Board of Governors and the Council shall co-
16 ordinate with the Supervisory Agency for a financial
17 market utility or the appropriate financial regulator
18 for a financial institution to determine if the infor-
19 mation is available from or may be obtained by the
20 agency in the form, format, or detail required by the
21 Board of Governors and the Council.

22 (2) SUPERVISORY REPORTS.—Notwithstanding
23 any other provision of law, the Supervisory Agency,
24 the appropriate financial regulator, and the Board of
25 Governors are authorized to disclose to each other

1 and the Council copies of its examination reports or
2 similar reports regarding any financial market utility
3 or any financial institution engaged in payment,
4 clearing, or settlement activities.

5 (d) TIMING OF RESPONSE FROM APPROPRIATE FED-
6 ERAL SUPERVISORY AGENCY.—If the information, report,
7 records, or data requested by the Board of Governors or
8 the Council under subsection (c)(1) are not provided in
9 full by the Supervisory Agency or the appropriate financial
10 regulator in less than 15 days after the date on which
11 the material is requested, the Board of Governors or the
12 Council may request the information or impose record-
13 keeping or reporting requirements directly on such per-
14 sons as provided in subsections (a) and (b) with notice
15 to the agency.

16 (e) SHARING OF INFORMATION.—

17 (1) MATERIAL CONCERNS.—Notwithstanding
18 any other provision of law, the Board of Governors,
19 the Council, the appropriate financial regulator, and
20 any Supervisory Agency are authorized to—

21 (A) promptly notify each other of material
22 concerns about a designated financial market
23 utility or any financial institution engaged in
24 designated activities; and

1 (B) share appropriate reports, information,
2 or data relating to such concerns.

3 (2) OTHER INFORMATION.—Notwithstanding
4 any other provision of law, the Board of Governors,
5 the Council, the appropriate financial regulator, or
6 any Supervisory Agency may, under such terms and
7 conditions as it deems appropriate, provide confiden-
8 tial supervisory information and other information
9 obtained under this title to other persons it deems
10 appropriate, including the Secretary, State financial
11 institution supervisory agencies, foreign financial su-
12 pervisors, foreign central banks, and foreign finance
13 ministries, subject to reasonable assurances of con-
14 fidentiality.

15 (f) PRIVILEGE MAINTAINED.—The Board of Gov-
16 ernors, the Council, the appropriate financial regulator,
17 and any Supervisory Agency providing reports or data
18 under this section shall not be deemed to have waived any
19 privilege applicable to those reports or data, or any portion
20 thereof, by providing the reports or data to the other party
21 or by permitting the reports or data, or any copies thereof,
22 to be used by the other party.

23 (g) DISCLOSURE EXEMPTION.—Information obtained
24 by the Board of Governors or the Council under this sec-
25 tion and any materials prepared by the Board of Gov-

1 errors or the Council regarding its assessment of the sys-
2 temic importance of financial market utilities or any pay-
3 ment, clearing, or settlement activities engaged in by fi-
4 nancial institutions, and in connection with its supervision
5 of designated financial market utilities and designated ac-
6 tivities, shall be confidential supervisory information ex-
7 empt from disclosure under section 552 of title 5, United
8 States Code. For purposes of such section 552, this sub-
9 section shall be considered a statute described in sub-
10 section (b)(3) of such section 552.

11 **SEC. 810. RULEMAKING.**

12 The Board of Governors and the Council are author-
13 ized to prescribe such rules and issue such orders as may
14 be necessary to administer and carry out the authorities
15 and duties granted to the Board of Governors or the
16 Council, respectively, and prevent evasions thereof.

17 **SEC. 811. OTHER AUTHORITY.**

18 Unless otherwise provided by its terms, this title does
19 not divest any appropriate financial regulator, any Super-
20 visory Agency, or any other Federal or State agency, of
21 any authority derived from any other applicable law, ex-
22 cept that any standards prescribed by the Board of Gov-
23 ernors under section 805 shall supersede any less strin-
24 gent requirements established under other authority to the
25 extent of any conflict.

1 **SEC. 812. EFFECTIVE DATE.**

2 This title is effective as of the date of enactment of
3 this Act.

4 **TITLE IX—INVESTOR PROTEC-**
5 **TIONS AND IMPROVEMENTS**
6 **TO THE REGULATION OF SE-**
7 **CURITIES**

8 **Subtitle A—Increasing Investor**
9 **Protection**

10 **SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

11 Title I of the Securities Exchange Act of 1934 (15
12 U.S.C. 78a et seq.) is amended by adding at the end the
13 following:

14 **“SEC. 39. INVESTOR ADVISORY COMMITTEE.**

15 **“(a) ESTABLISHMENT AND PURPOSE.—**

16 **“(1) ESTABLISHMENT.—**There is established
17 within the Commission the Investor Advisory Com-
18 mittee (referred to in this section as the ‘Com-
19 mittee’).

20 **“(2) PURPOSE.—**The Committee shall—

21 **“(A) advise and consult with the Commis-**
22 **sion on—**

23 **“(i) regulatory priorities of the Com-**
24 **mission;**

25 **“(ii) issues relating to the regulation**
26 **of securities products, trading strategies,**

1 and fee structures, and the effectiveness of
2 disclosure;

3 “(iii) initiatives to protect investor in-
4 terest; and

5 “(iv) initiatives to promote investor
6 confidence and the integrity of the securi-
7 ties marketplace; and

8 “(B) submit to the Commission such find-
9 ings and recommendations as the Committee
10 determines are appropriate, including rec-
11 ommendations for proposed legislative changes.

12 “(b) MEMBERSHIP.—

13 “(1) IN GENERAL.—The members of the Com-
14 mittee shall be—

15 “(A) the Investor Advocate;

16 “(B) a representative of State securities
17 commissions;

18 “(C) a representative of the interests of
19 senior citizens; and

20 “(D) not fewer than 10, and not more
21 than 20, members appointed by the Commis-
22 sion, from among individuals who—

23 “(i) represent the interests of indi-
24 vidual equity and debt investors, including
25 investors in mutual funds;

1 “(ii) represent the interests of institu-
2 tional investors, including the interests of
3 pension funds and registered investment
4 companies;

5 “(iii) are knowledgeable about invest-
6 ment issues and decisions; and

7 “(iv) have reputations of integrity.

8 “(2) TERM.—Each member of the Committee
9 appointed under paragraph (1)(B) shall serve for a
10 term of 4 years.

11 “(3) MEMBERS NOT COMMISSION EMPLOY-
12 EES.—Members appointed under paragraph (1)(B)
13 shall not be deemed to be employees or agents of the
14 Commission solely because of membership on the
15 Committee.

16 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
17 SISTANT SECRETARY.—

18 “(1) IN GENERAL.—The members of the Com-
19 mittee shall elect, from among the members of the
20 Committee—

21 “(A) a chairman, who may not be em-
22 ployed by an issuer;

23 “(B) a vice chairman, who may not be em-
24 ployed by an issuer;

25 “(C) a secretary; and

1 “(D) an assistant secretary.

2 “(2) TERM.—Each member elected under para-
3 graph (1) shall serve for a term of 3 years in the
4 capacity for which the member was elected under
5 paragraph (1).

6 “(d) MEETINGS.—

7 “(1) FREQUENCY OF MEETINGS.—The Com-
8 mittee shall meet—

9 “(A) not less frequently than twice annu-
10 ally, at the call of the chairman of the Com-
11 mittee; and

12 “(B) from time to time, at the call of the
13 Commission.

14 “(2) NOTICE.—The chairman of the Committee
15 shall give the members of the Committee written no-
16 tice of each meeting, not later than 2 weeks before
17 the date of the meeting.

18 “(e) COMPENSATION AND TRAVEL EXPENSES.—
19 Each member of the Committee who is not a full-time em-
20 ployee of the United States shall—

21 “(1) be compensated at a rate not to exceed the
22 daily equivalent of the annual rate of basic pay in
23 effect for a position at level V of the Executive
24 Schedule under section 5316 of title 5, United
25 States Code, for each day during which the member

1 is engaged in the actual performance of the duties
2 of the Committee; and

3 “(2) while away from the home or regular place
4 of business of the member in the performance of
5 services for the Committee, be allowed travel ex-
6 penses, including per diem in lieu of subsistence, in
7 the same manner as persons employed intermittently
8 in the Government service are allowed expenses
9 under section 5703(b) of title 5, United States Code.

10 “(f) STAFF.—The Commission shall make available
11 to the Committee such staff as the chairman of the Com-
12 mittee determines are necessary to carry out this section.

13 “(g) REVIEW BY COMMISSION.—The Commission
14 shall—

15 “(1) review the findings and recommendations
16 of the Committee; and

17 “(2) each time the Committee submits a finding
18 or recommendation to the Commission, issue a pub-
19 lic statement—

20 “(A) assessing the finding or recommenda-
21 tion of the Committee; and

22 “(B) disclosing the action, if any, the Com-
23 mission intends to take with respect to the find-
24 ing or recommendation.

1 “(h) COMMITTEE FINDINGS.—Nothing in this section
2 shall require the Commission to agree to or act upon any
3 finding or recommendation of the Committee.

4 “(i) FEDERAL ADVISORY COMMITTEE ACT.—The
5 Federal Advisory Committee Act (5 U.S.C. App.) shall not
6 apply with respect to the Committee and its activities.

7 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
8 is authorized to be appropriated to the Commission such
9 sums as are necessary to carry out this section.”.

10 **SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMIS-**
11 **SION TO ENGAGE IN INVESTOR TESTING.**

12 Section 19 of the Securities Act of 1933 (15 U.S.C.
13 77s) is amended by adding at the end the following:

14 “(e) EVALUATION OF RULES OR PROGRAMS.—For
15 the purpose of evaluating any rule or program of the Com-
16 mission issued or carried out under any provision of the
17 securities laws, as defined in section 3 of the Securities
18 Exchange Act of 1934 (15 U.S.C. 78c), and the purposes
19 of considering, proposing, adopting, or engaging in any
20 such rule or program or developing new rules or programs,
21 the Commission may—

22 “(1) gather information from and communicate
23 with investors or other members of the public;

1 “(2) engage in such temporary investor testing
2 programs as the Commission determines are in the
3 public interest or would protect investors; and

4 “(3) consult with academics and consultants, as
5 necessary to carry out this subsection.

6 “(f) RULE OF CONSTRUCTION.—For purposes of the
7 Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any
8 action taken under subsection (e) shall not be construed
9 to be a collection of information.”.

10 **SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGA-**
11 **TIONS OF BROKERS, DEALERS, AND INVEST-**
12 **MENT ADVISERS.**

13 (a) DEFINITIONS.—In this section—

14 (1) the term “FINRA” means the Financial In-
15 dustry Regulatory Authority; and

16 (2) the term “retail customer” means an indi-
17 vidual customer of a broker, dealer, investment ad-
18 viser, person associated with a broker or dealer, or
19 a person associated with an investment adviser.

20 (b) IN GENERAL.—The Commission shall conduct a
21 study to evaluate—

22 (1) the effectiveness of existing legal or regu-
23 latory standards of care for brokers, dealers, invest-
24 ment advisers, persons associated with brokers or
25 dealers, and persons associated with investment ad-

1 visers for providing personalized investment advice
2 and recommendations about securities to retail cus-
3 tomers imposed by the Commission and FINRA,
4 and other Federal and State legal or regulatory
5 standards; and

6 (2) whether there are legal or regulatory gaps
7 or overlap in legal or regulatory standards in the
8 protection of retail customers relating to the stand-
9 ards of care for brokers, dealers, investment advis-
10 ers, persons associated with brokers or dealers, and
11 persons associated with investment advisers for pro-
12 viding personalized investment advice about securi-
13 ties to retail customers that should be addressed by
14 rule or statute.

15 (c) CONSIDERATIONS.—In conducting the study re-
16 quired under subsection (b), the Commission shall con-
17 sider—

18 (1) the regulatory, examination, and enforce-
19 ment resources devoted to, and activities of, the
20 Commission and FINRA to enforce the standards of
21 care for brokers, dealers, investment advisers, per-
22 sons associated with brokers or dealers, and persons
23 associated with investment advisers when providing
24 personalized investment advice and recommendations
25 about securities to retail customers, including—

1 (A) the frequency of examinations of bro-
2 kers, dealers, and investment advisers; and

3 (B) the length of time of the examinations;

4 (2) the substantive differences, compared and
5 contrasted in detail, in the regulation of brokers,
6 dealers, and investment advisers, when providing
7 personalized investment advice and recommendations
8 about securities to retail customers, including the
9 differences in the amount of resources devoted to the
10 regulation and examination of brokers, dealers, and
11 investment advisers, by the Commission and
12 FINRA;

13 (3) the specific instances in which—

14 (A) the regulation and oversight of invest-
15 ment advisers provide greater protection to re-
16 tail customers than the regulation and oversight
17 of brokers and dealers; and

18 (B) the regulation and oversight of brokers
19 and dealers provide greater protection to retail
20 customers than the regulation and oversight of
21 investment advisers;

22 (4) the existing legal or regulatory standards of
23 State securities regulators and other regulators in-
24 tended to protect retail customers;

1 (5) the potential impact on retail customers, in-
2 cluding the potential impact on access of retail cus-
3 tomers to the range of products and services offered
4 by brokers and dealers, of imposing upon brokers,
5 dealers, and persons associated with brokers or deal-
6 ers—

7 (A) the standard of care applied under the
8 Investment Advisers Act of 1940 (15 U.S.C.
9 80b–1 et seq.) for providing personalized invest-
10 ment advice about securities to retail customers
11 of investment advisers; and

12 (B) other requirements of the Investment
13 Advisers Act of 1940 (15 U.S.C. 80b–1 et
14 seq.);

15 (6) the potential impact of—

16 (A) imposing on investment advisers the
17 standard of care applied by the Commission
18 and FINRA under the Securities Exchange Act
19 of 1934 (15 U.S.C. 78a et seq.) for providing
20 recommendations about securities to retail cus-
21 tomers of brokers and dealers and other Com-
22 mission and FINRA requirements applicable to
23 brokers and dealers; and

24 (B) authorizing the Commission to des-
25 ignate 1 or more self-regulatory organizations

1 to augment the efforts of the Commission to
2 oversee investment advisers;

3 (7) the potential impact of eliminating the
4 broker and dealer exclusion from the definition of
5 “investment adviser” under section 202(a)(11)(C) of
6 the Investment Advisers Act of 1940 (15 U.S.C.
7 80b–2(a)(11)(C)), in terms of—

8 (A) the potential benefits or harm to retail
9 customers that could result from such a change,
10 including any potential impact on access to per-
11 sonalized investment advice and recommenda-
12 tions about securities to retail customers or the
13 availability of such advice and recommenda-
14 tions;

15 (B) the number of additional entities and
16 individuals that would be required to register
17 under, or become subject to, the Investment
18 Advisers Act of 1940 (15 U.S.C. 80b–1 et
19 seq.), and the additional requirements to which
20 brokers, dealers, and persons associated with
21 brokers and dealers would become subject, in-
22 cluding—

23 (i) any potential additional associated
24 person licensing, registration, and exam-
25 ination requirements; and

1 (ii) the additional costs, if any, to the
2 additional entities and individuals; and

3 (C) the impact on Commission resources
4 to—

5 (i) conduct examinations of registered
6 investment advisers and the representatives
7 of registered investment advisers, including
8 the impact on the examination cycle; and

9 (ii) enforce the standard of care and
10 other applicable requirements imposed
11 under the Investment Advisers Act of 1940
12 (15 U.S.C. 80b–1 et seq.);

13 (8) the ability of investors to understand the
14 differences in terms of regulatory oversight and ex-
15 aminations between brokers, dealers, and investment
16 advisers;

17 (9) the varying level of services provided by bro-
18 kers, dealers, investment advisers, persons associated
19 with brokers or dealers, and persons associated with
20 investment advisers to retail customers and the vary-
21 ing scope and terms of retail customer relationships
22 of brokers, dealers, investment advisers, persons as-
23 sociated with brokers or dealers, and persons associ-
24 ated with investment advisers with such retail cus-
25 tomers;

1 (10) any potential benefits or harm to retail
2 customers that could result from any potential
3 changes in the regulatory requirements or legal
4 standards affecting brokers, dealers, investment ad-
5 visers, persons associated with brokers or dealers,
6 and persons associated with investment advisers re-
7 lating to their obligations to retail customers, includ-
8 ing any potential impact on—

9 (A) protection from fraud;

10 (B) access to personalized investment ad-
11 vice, and recommendations about securities to
12 retail customers; or

13 (C) the availability of such advice and rec-
14 ommendations;

15 (11) the additional costs and expenses to retail
16 customers and to brokers, dealers, and investment
17 advisers resulting from potential changes in the reg-
18 ulatory requirements or legal standards affecting
19 brokers, dealers, investment advisers, persons associ-
20 ated with brokers or dealers, and persons associated
21 with investment advisers relating to their obligations
22 to retail customers; and

23 (12) any other consideration that the Commis-
24 sion deems necessary and appropriate to effectively
25 execute the study required under subsection (b).

1 (d) REPORT.—

2 (1) IN GENERAL.—Not later than 1 year after
3 the date of enactment of this Act, the Commission
4 shall submit a report on the study required under
5 subsection (b) to—

6 (A) the Committee on Banking, Housing,
7 and Urban Affairs of the Senate; and

8 (B) the Committee on Financial Services
9 of the House of Representatives.

10 (2) CONTENT REQUIREMENTS.—The report re-
11 quired under paragraph (1) shall describe the find-
12 ings, conclusions, and recommendations of the Com-
13 mission from the study required under subsection
14 (b), including—

15 (A) a description of the considerations,
16 analysis, and public and industry input that the
17 Commission considered, as required under sub-
18 section (e), to make such findings, conclusions,
19 and policy recommendations; and

20 (B) an analysis of—

21 (i) whether any identified legal or reg-
22 ulatory gaps or overlap in legal or regu-
23 latory standards in the protection of retail
24 customers relating to the standards of care
25 for brokers, dealers, investment advisers,

1 persons associated with brokers or dealers,
2 and persons associated with investment ad-
3 visers for providing personalized invest-
4 ment advice about securities to retail cus-
5 tomers can be addressed by rule; and

6 (ii) whether, and the extent to which,
7 the Commission would require additional
8 statutory authority to address such gaps or
9 overlap.

10 (e) PUBLIC COMMENT.—The Commission shall seek
11 and consider public input, comments, and data in order
12 to prepare the report required under subsection (d).

13 (f) RULEMAKING.—

14 (1) IN GENERAL.—If the study required under
15 subsection (b) identifies any gaps or overlap in the
16 legal or regulatory standards in the protection of re-
17 tail customers relating to the standards of care for
18 brokers, dealers, investment advisers, persons associ-
19 ated with brokers or dealers, and persons associated
20 with investment advisers for providing personalized
21 investment advice about securities to such retail cus-
22 tomers, the Commission, not later than 2 years after
23 the date of enactment of this Act, shall—

24 (A) commence a rulemaking, as necessary
25 or appropriate in the public interest and for the

1 protection of retail customers, to address such
 2 regulatory gaps and overlap that can be ad-
 3 dressed by rule, using its authority under the
 4 Securities Exchange Act of 1934 (15 U.S.C.
 5 78a et seq.) and the Investment Advisers Act of
 6 1940 (15 U.S.C. 80b–1 et seq.); and

7 (B) consider and take into account the
 8 findings, conclusions, and recommendations of
 9 the study required under this section.

10 (2) RULE OF CONSTRUCTION.—Nothing in this
 11 section shall be construed to limit the rulemaking
 12 authority of the Commission under any other provi-
 13 sion of Federal law.

14 **SEC. 914. OFFICE OF THE INVESTOR ADVOCATE.**

15 Section 4 of the Securities Exchange Act of 1934 (15
 16 U.S.C. 78d) is amended by adding at the end the fol-
 17 lowing:

18 “(g) OFFICE OF THE INVESTOR ADVOCATE.—

19 “(1) OFFICE ESTABLISHED.—There is estab-
 20 lished within the Commission the Office of the In-
 21 vestor Advocate (in this subsection referred to as the
 22 ‘Office’).

23 “(2) INVESTOR ADVOCATE.—

24 “(A) IN GENERAL.—The head of the Of-
 25 fice shall be the Investor Advocate, who shall—

1 “(i) report directly to the Chairman;
2 and

3 “(ii) be appointed by the Chairman, in
4 consultation with the Commission, from
5 among individuals having experience in ad-
6 vocating for the interests of investors in se-
7 curities and investor protection issues,
8 from the perspective of investors.

9 “(B) COMPENSATION.—The annual rate of
10 pay for the Investor Advocate shall be equal to
11 the highest rate of annual pay for a Senior Ex-
12 ecutive Service position within the Commission.

13 “(C) LIMITATION ON SERVICE.—An indi-
14 vidual who serves as the Investor Advocate may
15 not be employed by the Commission—

16 “(i) during the 2-year period ending
17 on the date of appointment as Investor Ad-
18 vocate; or

19 “(ii) during the 5-year period begin-
20 ning on the date on which the person
21 ceases to serve as the Investor Advocate.

22 “(3) STAFF OF OFFICE.—The Investor Advo-
23 cate may retain or employ independent counsel, re-
24 search staff, and service staff, as the Investor Advo-

1 cate deems necessary to carry out the functions,
2 powers, and duties of the Office.

3 “(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

5 “(A) assist retail investors in resolving significant problems such investors may have with
6 the Commission or with self-regulatory organizations;
8

9 “(B) identify areas in which investors
10 would benefit from changes in the regulations
11 of the Commission or the rules of self-regulatory organizations;
12

13 “(C) identify problems that investors have
14 with financial service providers and investment
15 products;

16 “(D) analyze the potential impact on investors of—
17

18 “(i) proposed regulations of the Commission; and
19

20 “(ii) proposed rules of self-regulatory
21 organizations registered under this title;
22 and

23 “(E) to the extent practicable, propose to
24 the Commission changes in the regulations or
25 orders of the Commission and to Congress any

1 legislative, administrative, or personnel changes
2 that may be appropriate to mitigate problems
3 identified under this paragraph and to promote
4 the interests of investors.

5 “(5) ACCESS TO DOCUMENTS.—The Commis-
6 sion shall ensure that the Investor Advocate has full
7 access to the documents of the Commission and any
8 self-regulatory organization, as necessary to carry
9 out the functions of the Office.

10 “(6) ANNUAL REPORTS.—

11 “(A) REPORT ON OBJECTIVES.—

12 “(i) IN GENERAL.—Not later than
13 June 30 of each year after 2010, the In-
14 vestor Advocate shall submit to the Com-
15 mittee on Banking, Housing, and Urban
16 Affairs of the Senate and the Committee
17 on Financial Services of the House of Rep-
18 resentatives a report on the objectives of
19 the Investor Advocate for the following fis-
20 cal 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
2 December 31 of each year after 2010, the
3 Investor Advocate shall submit to the Com-
4 mittee on Banking, Housing, and Urban
5 Affairs of the Senate and the Committee
6 on Financial Services of the House of Rep-
7 resentatives a report on the activities of
8 the Investor Advocate during the imme-
9 diately 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 dur-
17 ing the reporting period to improve in-
18 vestor services and the responsiveness
19 of the Commission and self-regulatory
20 organizations 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 organiza-
7 tion and the result of such ac-
8 tion;

9 “(bb) the length of time that
10 each item has remained on such
11 inventory; and

12 “(cc) for items on which no
13 action has been taken, the rea-
14 sons for inaction, and an identi-
15 fication of any official who is re-
16 sponsible for such action;

17 “(V) recommendations for such
18 administrative and legislative actions
19 as may be appropriate to resolve prob-
20 lems encountered by investors; and

21 “(VI) any other information, as
22 determined appropriate by the Inves-
23 tor Advocate.

24 “(iii) INDEPENDENCE.—Each report
25 required under this paragraph shall be pro-

vided directly to the Committees listed in
 clause (i) without any prior review or com-
 ment from the Commission, any commis-
 sioner, any other officer or employee of the
 Commission, or the Office of Management
 and Budget.

“(iv) CONFIDENTIALITY.—No report
 required under clause (i) may contain con-
 fidential information.

“(7) REGULATIONS.—The Commission shall, by
 regulation, establish procedures requiring a formal
 response to all recommendations submitted to the
 Commission by the Investor Advocate, not later than
 3 months after the date of such submission.”.

**SEC. 915. STREAMLINING OF FILING PROCEDURES FOR
 SELF-REGULATORY ORGANIZATIONS.**

(a) FILING PROCEDURES.—Section 19(b) of the Se-
 curities Exchange Act of 1934 (15 U.S.C. 78s(b)) is
 amended by striking paragraph (2) (including the undesig-
 nated matter immediately following subparagraph (B))
 and inserting the following:

“(2) APPROVAL PROCESS.—

“(A) APPROVAL PROCESS ESTABLISHED.—

“(i) IN GENERAL.—Except as pro-
 vided in clause (ii), not later than 45 days

1 after the date of publication of a proposed
2 rule change under paragraph (1), the Com-
3 mission shall—

4 “(I) by order, approve the pro-
5 posed rule change; or

6 “(II) institute proceedings under
7 subparagraph (B) to determine wheth-
8 er the proposed rule change should be
9 disapproved.

10 “(ii) EXTENSION OF TIME PERIOD.—
11 The Commission may extend the period es-
12 tablished under clause (i) by not more than
13 an additional 45 days, if—

14 “(I) the Commission determines
15 that a longer period is appropriate
16 and publishes the reasons for such de-
17 termination; or

18 “(II) the self-regulatory organiza-
19 tion that filed the proposed rule
20 change consents to the longer period.

21 “(B) PROCEEDINGS.—

22 “(i) NOTICE AND HEARING.—If the
23 Commission does not approve a proposed
24 rule change under subparagraph (A), the
25 Commission shall provide to the self-regu-

latory organization that filed the proposed rule change—

“(I) notice of the grounds for disapproval under consideration; and

“(II) opportunity for hearing, to be concluded not later than 180 days after the date of publication of notice of the filing of the proposed rule change.

“(ii) ORDER OF APPROVAL OR DISAPPROVAL.—

“(I) IN GENERAL.—Except as provided in subclause (II), not later than 180 days after the date of publication under paragraph (1), the Commission shall issue an order approving or disapproving the proposed rule change.

“(II) EXTENSION OF TIME PERIOD.—The Commission may extend the period for issuance under clause (I) by not more than 60 days, if—

“(aa) the Commission determines that a longer period is ap-

1 appropriate and publishes the rea-
2 sons for such determination; or

3 “(bb) the self-regulatory or-
4 ganization that filed the proposed
5 rule change consents to the
6 longer period.

7 “(C) STANDARDS FOR APPROVAL AND DIS-
8 APPROVAL.—

9 “(i) APPROVAL.—The Commission
10 shall approve a proposed rule change of a
11 self-regulatory organization if it finds that
12 such proposed rule change is consistent
13 with the requirements of this title and the
14 rules and regulations issued under this
15 title that are applicable to such organiza-
16 tion.

17 “(ii) DISAPPROVAL.—The Commission
18 shall disapprove a proposed rule change of
19 a self-regulatory organization if it does not
20 make a finding described in clause (i).

21 “(iii) TIME FOR APPROVAL.—The
22 Commission may not approve a proposed
23 rule change earlier than 30 days after the
24 date of publication under paragraph (1),
25 unless the Commission finds good cause

1 for so doing and publishes the reason for
2 the finding.

3 “(D) RESULT OF FAILURE TO INSTITUTE
4 OR CONCLUDE PROCEEDINGS.—A proposed rule
5 change shall be deemed to have been approved
6 by the Commission, if—

7 “(i) the Commission does not approve
8 the proposed rule change or begin pro-
9 ceedings under subparagraph (B) within
10 the period described in subparagraph (A);
11 or

12 “(ii) the Commission does not issue
13 an order approving or disapproving the
14 proposed rule change under subparagraph
15 (B) within the period described in subpara-
16 graph (B)(ii).

17 “(E) PUBLICATION DATE BASED ON FED-
18 ERAL REGISTER PUBLISHING.—For purposes of
19 this paragraph, if, after filing a proposed rule
20 change with the Commission pursuant to para-
21 graph (1), a self-regulatory organization pub-
22 lishes a notice of the filing of such proposed
23 rule change, together with the substantive
24 terms of such proposed rule change, on a pub-
25 licly accessible website, the Commission shall

1 thereafter send the notice to the Federal Reg-
2 ister for publication thereof under paragraph
3 (1) within 15 days of the date on which such
4 website publication is made. If the Commission
5 fails to send the notice for publication thereof
6 within such 15 day period, then the date of
7 publication shall be deemed to be the date on
8 which such website publication was made.”.

9 (b) CLARIFICATION OF FILING DATE.—

10 (1) RULE OF CONSTRUCTION.—Section 19(b) of
11 the Securities Exchange Act of 1934 (15 U.S.C.
12 78s(b)) is amended by adding at the end the fol-
13 lowing:

14 “(10) RULE OF CONSTRUCTION RELATING TO
15 FILING DATE OF PROPOSED RULE CHANGES.—

16 “(A) IN GENERAL.—For purposes of this
17 subsection, the date of filing of a proposed rule
18 change shall be deemed to be the date on which
19 the Commission receives the proposed rule
20 change.

21 “(B) EXCEPTION.—A proposed rule
22 change has not been received by the Commis-
23 sion for purposes of subparagraph (A) if, not
24 later than 7 days after the date of receipt by
25 the Commission, the Commission notifies the

1 self-regulatory organization that such proposed
2 rule change does not comply with the rules of
3 the Commission relating to the required form of
4 a proposed rule change.”.

5 (2) PUBLICATION.—Section 19(b)(1) of the Se-
6 curities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))
7 is amended by striking “upon” and inserting “as
8 soon as practicable after the date of”.

9 (c) EFFECTIVE DATE OF PROPOSED RULES.—Sec-
10 tion 19(b)(3) of the Securities Exchange Act of 1934 (15
11 U.S.C. 78s(b)(3)) is amended—

12 (1) in subparagraph (A)—

13 (A) by striking “may take effect” and in-
14 serting “shall take effect”; and

15 (B) by inserting “on any person, whether
16 or not the person is a member of the self-regu-
17 latory organization” after “charge imposed by
18 the self-regulatory organization”; and

19 (2) in subparagraph (C)—

20 (A) by amending the second sentence to
21 read as follows: “At any time within the 60-day
22 period beginning on the date of filing of such
23 a proposed rule change in accordance with the
24 provisions of paragraph (1), the Commission
25 summarily may temporarily suspend the change

1 in the rules of the self-regulatory organization
2 made thereby, if it appears to the Commission
3 that such action is necessary or appropriate in
4 the public interest, for the protection of inves-
5 tors, or otherwise in furtherance of the pur-
6 poses of this title.”;

7 (B) by inserting after the second sentence
8 the following: “If the Commission takes such
9 action, the Commission shall institute pro-
10 ceedings under paragraph (2)(B) to determine
11 whether the proposed rule should be approved
12 or disapproved.”; and

13 (C) in the third sentence, by striking “the
14 preceding sentence” and inserting “this sub-
15 paragraph”.

16 (d) CONFORMING CHANGE.—Section 19(b)(4)(D) of
17 the Securities Exchange Act of 1934 (15 U.S.C.
18 78s(b)(4)(D)) is amended to read as follows:

19 “(D)(i) The Commission shall order the
20 temporary suspension of any change in the
21 rules of a clearing agency made by a proposed
22 rule change that has taken effect under para-
23 graph (3), if the appropriate regulatory agency
24 for the clearing agency notifies the Commission

1 not later than 30 days after the date on which
2 the proposed rule change was filed of—

3 “(I) the determination by the appro-
4 priate regulatory agency that the rules of
5 such clearing agency, as so changed, may
6 be inconsistent with the safeguarding of
7 securities or funds in the custody or con-
8 trol of such clearing agency or for which it
9 is responsible; and

10 “(II) the reasons for the determina-
11 tion described in subclause (I).

12 “(ii) If the Commission takes action under
13 clause (i), the Commission shall institute pro-
14 ceedings under paragraph (2)(B) to determine
15 if the proposed rule change should be approved
16 or disapproved.”.

17 **SEC. 916. STUDY REGARDING FINANCIAL LITERACY AMONG**
18 **INVESTORS.**

19 (a) IN GENERAL.—The Commission shall conduct a
20 study to identify—

21 (1) the existing level of financial literacy among
22 retail investors, including subgroups of investors
23 identified by the Commission;

24 (2) methods to improve the timing, content, and
25 format of disclosures to investors with respect to fi-

1 nancial intermediaries, investment products, and in-
2 vestment services;

3 (3) the most useful and understandable relevant
4 information that retail investors need to make in-
5 formed financial decisions before engaging a finan-
6 cial intermediary or purchasing an investment prod-
7 uct or service that is typically sold to retail inves-
8 tors, including shares of open-end companies, as
9 that term is defined in section 5 of the Investment
10 Company Act of 1940 (15 U.S.C. 80a–5) that are
11 registered under section 8 of that Act;

12 (4) methods to increase the transparency of ex-
13 penses and conflicts of interests in transactions in-
14 volving investment services and products, including
15 shares of open-end companies described in para-
16 graph (3);

17 (5) the most effective existing private and pub-
18 lic efforts to educate investors; and

19 (6) in consultation with the Financial Literacy
20 and Education Commission, a strategy (including, to
21 the extent practicable, measurable goals and objec-
22 tives) to increase the financial literacy of investors
23 in order to bring about a positive change in investor
24 behavior.

1 (b) REPORT.—Not later than 2 years after the date
2 of enactment of this Act, the Commission shall submit a
3 report on the study required under subsection (a) to—

4 (1) the Committee on Banking, Housing, and
5 Urban Affairs of the Senate; and

6 (2) the Committee on Financial Services of the
7 House of Representatives.

8 **SEC. 917. STUDY REGARDING MUTUAL FUND ADVERTISING.**

9 (a) IN GENERAL.—The Comptroller General of the
10 United States shall conduct a study on mutual fund adver-
11 tising to identify—

12 (1) existing and proposed regulatory require-
13 ments for open-end investment company advertise-
14 ments;

15 (2) current marketing practices for the sale of
16 open-end investment company shares, including the
17 use of past performance data, funds that have
18 merged, and incubator funds;

19 (3) the impact of such advertising on con-
20 sumers; and

21 (4) recommendations to improve investor pro-
22 tections in mutual fund advertising and additional
23 information necessary to ensure that investors can
24 make informed financial decisions when purchasing
25 shares.

1 (b) REPORT.—Not later than 1 year after the date
 2 of enactment of this Act, the Comptroller General of the
 3 United States shall submit a report on the results of the
 4 study conducted under subsection (a) to—

5 (1) the Committee on Banking, Housing, and
 6 Urban Affairs of the United States Senate; and

7 (2) the Committee on Financial Services of the
 8 House of Representatives.

9 **SEC. 918. CLARIFICATION OF COMMISSION AUTHORITY TO**
 10 **REQUIRE INVESTOR DISCLOSURES BEFORE**
 11 **PURCHASE OF INVESTMENT PRODUCTS AND**
 12 **SERVICES.**

13 Section 15 of the Securities Exchange Act of 1934
 14 (15 U.S.C. 78o) is amended by adding at the end the fol-
 15 lowing:

16 “(k) DISCLOSURES TO RETAIL INVESTORS.—

17 “(1) IN GENERAL.—Notwithstanding any other
 18 provision of the securities laws, the Commission may
 19 issue rules designating documents or information
 20 that shall be provided by a broker or dealer to a re-
 21 tail investor before the purchase of an investment
 22 product or service by the retail investor.

23 “(2) CONSIDERATIONS.—In developing any
 24 rules under paragraph (1), the Commission shall
 25 consider whether the rules will promote investor pro-

1 tection, efficiency, competition, and capital forma-
2 tion.

3 “(3) FORM AND CONTENTS OF DOCUMENTS
4 AND INFORMATION.—Any documents or information
5 designated under a rule promulgated under para-
6 graph (1) shall—

7 “(A) be in a summary format; and

8 “(B) contain clear and concise information
9 about—

10 “(i) investment objectives, strategies,
11 costs, and risks; and

12 “(ii) any compensation or other finan-
13 cial incentive received by a broker, dealer,
14 or other intermediary in connection with
15 the purchase of retail investment prod-
16 ucts.”.

17 **SEC. 919. STUDY ON CONFLICTS OF INTEREST.**

18 (a) IN GENERAL.—The Comptroller General of the
19 United States shall conduct a study—

20 (1) to identify and examine potential conflicts
21 of interest that exist between the staffs of the invest-
22 ment banking and equity and fixed income securities
23 analyst functions within the same firm; and

24 (2) to make recommendations to Congress de-
25 signed to protect investors in light of such conflicts.

1 (b) CONSIDERATIONS.—In conducting the study
2 under subsection (a), the Comptroller General shall—

3 (1) consider—

4 (A) the potential for investor harm result-
5 ing from conflicts, including consideration of
6 the forms of misconduct engaged in by the sev-
7 eral securities firms and individuals that en-
8 tered into the Global Analyst Research Settle-
9 ments in 2003 (also known as the “Global Set-
10 tlement”);

11 (B) the nature and benefits of the under-
12 takings to which those firms agreed in enforce-
13 ment proceedings, including firewalls between
14 research and investment banking, separate re-
15 porting lines, dedicated legal and compliance
16 staffs, allocation of budget, physical separation,
17 compensation, employee performance evalua-
18 tions, coverage decisions, limitations on solici-
19 ting investment banking business, disclosures,
20 transparency, and other measures;

21 (C) whether any such undertakings should
22 be codified and applied permanently to securi-
23 ties firms, or whether the Commission should
24 adopt rules applying any such undertakings to
25 securities firms; and

1 (D) whether to recommend regulatory or
2 legislative measures designed to mitigate pos-
3 sible adverse consequences to investors arising
4 from the conflicts of interest or to enhance in-
5 vestor protection or confidence in the integrity
6 of the securities markets; and

7 (2) consult with State attorneys general, State
8 securities officials, the Commission, the Financial
9 Industry Regulatory Authority (“FINRA”), NYSE
10 Regulation, investor advocates, brokers, dealers, re-
11 tail investors, institutional investors, and academics.

12 (c) REPORT.—The Comptroller General shall submit
13 a report on the results of the study required by this section
14 to the Committee on Banking, Housing, and Urban Af-
15 fairs of the Senate and the Committee on Financial Serv-
16 ices of the House of Representatives, not later than 18
17 months after the date of enactment of this Act.

18 **SEC. 919A. STUDY ON IMPROVED INVESTOR ACCESS TO IN-**
19 **FORMATION ON INVESTMENT ADVISERS AND**
20 **BROKER-DEALERS.**

21 (a) STUDY.—

22 (1) IN GENERAL.—Not later than 6 months
23 after the date of enactment of this Act, the Commis-
24 sion shall complete a study, including recommenda-
25 tions, of ways to improve the access of investors to

1 registration information (including disciplinary ac-
2 tions, regulatory, judicial, and arbitration pro-
3 ceedings, and other information) about registered
4 and previously registered investment advisers, asso-
5 ciated persons of investment advisers, brokers and
6 dealers and their associated persons on the existing
7 Central Registration Depository and Investment Ad-
8 viser Registration Depository systems, as well as
9 identify additional information that should be made
10 publicly available.

11 (2) CONTENTS.—The study required by sub-
12 section (a) shall include an analysis of the advan-
13 tages and disadvantages of further centralizing ac-
14 cess to the information contained in the 2 systems,
15 including—

16 (A) identification of those data pertinent
17 to investors; and

18 (B) the identification of the method and
19 format for displaying and publishing such data
20 to enhance accessibility by and utility to inves-
21 tors.

22 (b) IMPLEMENTATION.—Not later than 18 months
23 after the date of completion of the study required by sub-
24 section (a), the Commission shall implement any rec-
25 ommendations of the study.

1 **SEC. 919B. STUDY ON FINANCIAL PLANNERS AND THE USE**
2 **OF FINANCIAL DESIGNATIONS.**

3 (a) IN GENERAL.—The Comptroller General of the
4 United States shall conduct a study to evaluate—

5 (1) the effectiveness of State and Federal regu-
6 lations to protect consumers from individuals who
7 hold themselves out as financial planners through
8 the use of misleading designations;

9 (2) current State and Federal oversight struc-
10 ture and regulations for financial planners; and

11 (3) legal or regulatory gaps in the regulation of
12 financial planners and other individuals who provide
13 or offer to provide financial planning services to con-
14 sumers.

15 (b) CONSIDERATIONS.—In conducting the study re-
16 quired under subsection (a), the Comptroller General shall
17 consider—

18 (1) the role of financial planners in providing
19 advice regarding the management of financial re-
20 sources, including investment planning, income tax
21 planning, education planning, retirement planning,
22 estate planning, and risk management;

23 (2) whether current regulations at the State
24 and Federal level provide adequate ethical and pro-
25 fessional standards for financial planners;

1 (3) the use of the title “financial planner” and
2 misleading designations in connection with sale of fi-
3 nancial products, including insurance and securities;

4 (4) the possible risk posed to consumers by in-
5 dividuals who hold themselves out as financial plan-
6 ners through the use of misleading designations, in-
7 cluding “financial advisor” and “financial consult-
8 ant”;

9 (5) the ability of consumers to understand li-
10 censing requirements and standards of care that
11 apply to individuals who provide financial advice;

12 (6) the possible benefits to consumers of regula-
13 tion and professional oversight of financial planners;
14 and

15 (7) any other consideration that the Comp-
16 troller General deems necessary or appropriate to ef-
17 fectively execute the study required under subsection
18 (a).

19 (c) RECOMMENDATIONS.—In providing recommenda-
20 tions for the appropriate regulation of financial planners
21 and other individuals who provide or offer to provide fi-
22 nancial planning services, in order to protect consumers
23 of financial planning services, the Comptroller General
24 shall consider—

1 (1) the appropriate structure for regulation of
2 financial planners and individuals providing financial
3 planning services; and

4 (2) the appropriate scope of the regulations
5 needed to protect consumers, including but not lim-
6 ited to the need to establish competency standards,
7 practice standards, ethical guidelines, disciplinary
8 authority, and transparency to consumers.

9 (d) REPORT.—

10 (1) IN GENERAL.—Not later than 180 days
11 after the date of enactment of this Act, the Comp-
12 troller General shall submit a report on the study re-
13 quired under subsection (a) to—

14 (A) the Committee on Banking, Housing,
15 and Urban Affairs of the Senate;

16 (B) the Special Committee on Aging of the
17 Senate; and

18 (C) the Committee on Financial Services of
19 the House of Representatives.

20 (2) CONTENT REQUIREMENTS.—The report re-
21 quired under paragraph (1) shall describe the find-
22 ings and determinations made by the Comptroller
23 General in carrying out the study required under
24 subsection (a), including a description of the consid-
25 erations, analysis, and government, public, industry,

1 nonprofit and consumer input that the Comptroller
 2 General considered to make such findings, conclu-
 3 sions, and legislative, regulatory, or other rec-
 4 ommendations.

5 **Subtitle B—Increasing Regulatory** 6 **Enforcement and Remedies**

7 **SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MAN-** 8 **DATORY PREDISPUTE ARBITRATION.**

9 (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF
 10 1934.—Section 15 of the Securities Exchange Act of 1934
 11 (15 U.S.C. 78o), as amended by section 918, is amended
 12 by adding at the end the following:

13 “(l) AUTHORITY TO RESTRICT MANDATORY
 14 PREDISPUTE ARBITRATION.—The Commission may con-
 15 duct a rulemaking to reaffirm or prohibit, or impose or
 16 not impose conditions or limitations on the use of, agree-
 17 ments that require customers or clients of any broker,
 18 dealer, or municipal securities dealer to arbitrate any dis-
 19 pute between them and such broker, dealer, or municipal
 20 securities dealer that arises under the securities laws or
 21 the rules of a self-regulatory organization, if the Commis-
 22 sion finds that such reaffirmation, prohibition, imposition
 23 of conditions or limitations, or other action is in the public
 24 interest and for the protection of investors.”.

1 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF
2 1940.—Section 205 of the Investment Advisers Act of
3 1940 (15 U.S.C. 80b–5) is amended by adding at the end
4 the following:

5 “(f) AUTHORITY TO ISSUE RULES RELATED TO
6 MANDATORY PREDISPUTE ARBITRATION.—The Commis-
7 sion may conduct rulemaking to reaffirm or prohibit, or
8 impose or not impose conditions or limitations on the use
9 of, agreements that require customers or clients of any
10 investment adviser to arbitrate any dispute between them
11 and such investment adviser that arises under the securi-
12 ties laws, as defined in section 3 of the Securities Ex-
13 change Act of 1934 (15 U.S.C. 78c), or the rules of a
14 self-regulatory organization, if the Commission finds that
15 such reaffirmation, prohibition, imposition of conditions or
16 limitations, or other action is in the public interest and
17 for the protection of investors.”.

18 **SEC. 922. WHISTLEBLOWER PROTECTION.**

19 The Securities Exchange Act of 1934 (15 U.S.C. 78a
20 et seq.) is amended by inserting after section 21E the fol-
21 lowing:

22 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
23 **PROTECTION.**

24 “(a) DEFINITIONS.—In this section the following
25 definitions shall apply:

1 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
2 ACTION.—The term ‘covered judicial or administra-
3 tive action’ means any judicial or administrative ac-
4 tion brought by the Commission under the securities
5 laws that results in monetary sanctions exceeding
6 \$1,000,000.

7 “(2) FUND.—The term ‘Fund’ means the Secu-
8 rities and Exchange Commission Investor Protection
9 Fund.

10 “(3) ORIGINAL INFORMATION.—The term
11 ‘original information’ means information that—

12 “(A) is derived from the independent
13 knowledge or analysis of a whistleblower;

14 “(B) is not known to the Commission from
15 any other source, unless the whistleblower is the
16 original source of the information; and

17 “(C) is not exclusively derived from an al-
18 legation made in a judicial or administrative
19 hearing, in a governmental report, hearing,
20 audit, or investigation, or from the news media,
21 unless the whistleblower is a source of the infor-
22 mation.

23 “(4) MONETARY SANCTIONS.—The term ‘mone-
24 tary sanctions’, when used with respect to any judi-
25 cial or administrative action, means—

1 “(A) any monies, including penalties,
2 disgorgement, and interest, ordered to be paid;
3 and

4 “(B) any monies deposited into a
5 disgorgement fund or other fund pursuant to
6 section 308(b) of the Sarbanes-Oxley Act of
7 2002 (15 U.S.C. 7246(b)), as a result of such
8 action or any settlement of such action.

9 “(5) RELATED ACTION.—The term ‘related ac-
10 tion’, when used with respect to any judicial or ad-
11 ministrative action brought by the Commission
12 under the securities laws, means any judicial or ad-
13 ministrative action brought by an entity described in
14 subclauses (I) through (IV) of subsection
15 (h)(2)(D)(i) that is based upon the original informa-
16 tion provided by a whistleblower pursuant to sub-
17 section (a) that led to the successful enforcement of
18 the Commission action.

19 “(6) WHISTLEBLOWER.—The term ‘whistle-
20 blower’ means any individual, or 2 or more individ-
21 uals acting jointly, who provides information relating
22 to a violation of the securities laws to the Commis-
23 sion, in a manner established, by rule or regulation,
24 by the Commission.

25 “(b) AWARDS.—

1 “(1) IN GENERAL.—In any covered judicial or
 2 administrative action, or related action, the Commis-
 3 sion, under regulations prescribed by the Commis-
 4 sion and subject to subsection (c), shall pay an
 5 award or awards to 1 or more whistleblowers who
 6 voluntarily provided original information to the
 7 Commission that led to the successful enforcement
 8 of the covered judicial or administrative action, or
 9 related action, in an aggregate amount equal to—

10 “(A) not less than 10 percent, in total, of
 11 what has been collected of the monetary sanc-
 12 tions imposed in the action or related actions;
 13 and

14 “(B) not more than 30 percent, in total, of
 15 what has been collected of the monetary sanc-
 16 tions imposed in the action or related actions.

17 “(2) PAYMENT OF AWARDS.—Any amount paid
 18 under paragraph (1) shall be paid from the Fund.

19 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
 20 NIAL OF AWARD.—

21 “(1) DETERMINATION OF AMOUNT OF
 22 AWARD.—

23 “(A) DISCRETION.—The determination of
 24 the amount of an award made under subsection
 25 (b) shall be in the discretion of the Commission.

1 “(B) CRITERIA.—In determining the
2 amount of an award made under subsection (b),
3 the Commission shall take into account—

4 “(i) the significance of the informa-
5 tion provided by the whistleblower to the
6 success of the covered judicial or adminis-
7 trative action;

8 “(ii) the degree of assistance provided
9 by the whistleblower and any legal rep-
10 resentative of the whistleblower in a cov-
11 ered judicial or administrative action;

12 “(iii) the programmatic interest of the
13 Commission in deterring violations of the
14 securities laws by making awards to whis-
15 tlers who provide information that
16 lead to the successful enforcement of such
17 laws; and

18 “(iv) such additional relevant factors
19 as the Commission may establish by rule
20 or regulation.

21 “(2) DENIAL OF AWARD.—No award under
22 subsection (b) shall be made—

23 “(A) to any whistleblower who is, or was at
24 the time the whistleblower acquired the original

1 information submitted to the Commission, a
2 member, officer, or employee of—

3 “(i) an appropriate regulatory agency;

4 “(ii) the Department of Justice;

5 “(iii) a self-regulatory organization;

6 “(iv) the Public Company Accounting
7 Oversight Board; or

8 “(v) a law enforcement organization;

9 “(B) to any whistleblower who is convicted
10 of a criminal violation related to the judicial or
11 administrative action for which the whistle-
12 blower otherwise could receive an award under
13 this section;

14 “(C) to any whistleblower who gains the
15 information through the performance of an
16 audit of financial statements required under the
17 securities laws and for whom such submission
18 would be contrary to the requirements of sec-
19 tion 101A of the Securities Exchange Act of
20 1934 (15 U.S.C. 78j-1); or

21 “(D) to any whistleblower who fails to sub-
22 mit information to the Commission in such
23 form as the Commission may, by rule, require.

24 “(d) REPRESENTATION.—

1 “(1) PERMITTED REPRESENTATION.—Any
2 whistleblower who makes a claim for an award under
3 subsection (b) may be represented by counsel.

4 “(2) REQUIRED REPRESENTATION.—

5 “(A) IN GENERAL.—Any whistleblower
6 who anonymously makes a claim for an award
7 under subsection (b) shall be represented by
8 counsel if the whistleblower anonymously sub-
9 mits the information upon which the claim is
10 based.

11 “(B) DISCLOSURE OF IDENTITY.—Prior to
12 the payment of an award, a whistleblower shall
13 disclose the identity of the whistleblower and
14 provide such other information as the Commis-
15 sion may require, directly or through counsel
16 for the whistleblower.

17 “(e) NO CONTRACT NECESSARY.—No contract with
18 the Commission is necessary for any whistleblower to re-
19 ceive an award under subsection (b), unless otherwise re-
20 quired by the Commission by rule or regulation.

21 “(f) APPEALS.—Any determination made under this
22 section, including whether, to whom, or in what amount
23 to make awards, shall be in the discretion of the Commis-
24 sion. Any such determination may be appealed to the ap-
25 propriate court of appeals of the United States not more

1 than 30 days after the determination is issued by the
2 Commission. The court shall review the determination
3 made by the Commission in accordance with section 706
4 of title 5, United States Code.

5 “(g) INVESTOR PROTECTION FUND.—

6 “(1) FUND ESTABLISHED.—There is estab-
7 lished in the Treasury of the United States a fund
8 to be known as the ‘Securities and Exchange Com-
9 mission Investor Protection Fund’.

10 “(2) USE OF FUND.—The Fund shall be avail-
11 able to the Commission, without further appropria-
12 tion or fiscal year limitation, for—

13 “(A) paying awards to whistleblowers as
14 provided in subsection (b); and

15 “(B) funding the activities of the Inspector
16 General of the Commission under section 4(i).

17 “(3) DEPOSITS AND CREDITS.—There shall be
18 deposited into or credited to the Fund an amount
19 equal to—

20 “(A) the amount awarded under subsection
21 (b) from any monetary sanction collected by the
22 Commission in any judicial or administrative
23 action brought by the Commission that is based
24 on information provided by a whistleblower
25 under the securities laws, unless, the balance of

1 the Fund at the time the monetary sanction is
2 collected exceeds \$200,000,000;

3 “(B) any monetary sanction added to a
4 disgorgement fund or other fund pursuant to
5 section 308 of the Sarbanes-Oxley Act of 2002
6 (15 U.S.C. 7246) that is not distributed to the
7 victims for whom the disgorgement fund was
8 established, unless the balance of the
9 disgorgement fund at the time the determina-
10 tion is made not to distribute the monetary
11 sanction to such victims exceeds \$100,000,000;
12 and

13 “(C) all income from investments made
14 under paragraph (4).

15 “(4) INVESTMENTS.—

16 “(A) AMOUNTS IN FUND MAY BE IN-
17 VESTED.—The Commission may request the
18 Secretary of the Treasury to invest the portion
19 of the Fund that is not, in the discretion of the
20 Commission, required to meet the current needs
21 of the Fund.

22 “(B) ELIGIBLE INVESTMENTS.—Invest-
23 ments shall be made by the Secretary of the
24 Treasury in obligations of the United States or
25 obligations that are guaranteed as to principal

1 and interest by the United States, with matu-
2 rities suitable to the needs of the Fund as de-
3 termined by the Commission on the record.

4 “(C) INTEREST AND PROCEEDS CRED-
5 ITED.—The interest on, and the proceeds from
6 the sale or redemption of, any obligations held
7 in the Fund shall be credited to the Fund.

8 “(5) REPORTS TO CONGRESS.—Not later than
9 October 30 of each fiscal year beginning after the
10 date of enactment of this subsection, the Commis-
11 sion shall submit to the Committee on Banking,
12 Housing, and Urban Affairs of the Senate, and the
13 Committee on Financial Services of the House of
14 Representatives a report on—

15 “(A) the whistleblower award program, es-
16 tablished under this section, including—

17 “(i) a description of the number of
18 awards granted; and

19 “(ii) the types of cases in which
20 awards were granted during the preceding
21 fiscal year;

22 “(B) the balance of the Fund at the begin-
23 ning of the preceding fiscal year;

1 “(C) the amounts deposited into or cred-
2 ited to the Fund during the preceding fiscal
3 year;

4 “(D) the amount of earnings on invest-
5 ments made under paragraph (4) during the
6 preceding fiscal year;

7 “(E) the amount paid from the Fund dur-
8 ing the preceding fiscal year to whistleblowers
9 pursuant to subsection (b);

10 “(F) the balance of the Fund at the end
11 of the preceding fiscal year; and

12 “(G) a complete set of audited financial
13 statements, including—

14 “(i) a balance sheet;

15 “(ii) income statement; and

16 “(iii) cash flow analysis.

17 “(h) PROTECTION OF WHISTLEBLOWERS.—

18 “(1) PROHIBITION AGAINST RETALIATION.—

19 “(A) IN GENERAL.—No employer may dis-
20 charge, demote, suspend, threaten, harass, di-
21 rectly or indirectly, or in any other manner dis-
22 criminate against, a whistleblower in the terms
23 and conditions of employment because of any
24 lawful act done by the whistleblower—

1 “(i) in providing information to the
2 Commission in accordance with subsection
3 (a); or

4 “(ii) in assisting in any investigation
5 or judicial or administrative action of the
6 Commission based upon or related to such
7 information.

8 “(B) ENFORCEMENT.—

9 “(i) CAUSE OF ACTION.—An indi-
10 vidual who alleges discharge or other dis-
11 crimination in violation of subparagraph
12 (A) may bring an action under this sub-
13 section in the appropriate district court of
14 the United States for the relief provided in
15 subparagraph (C).

16 “(ii) SUBPOENAS.—A subpoena re-
17 quiring the attendance of a witness at a
18 trial or hearing conducted under this sec-
19 tion may be served at any place in the
20 United States.

21 “(iii) STATUTE OF LIMITATIONS.—

22 “(I) IN GENERAL.—An action
23 under this subsection may not be
24 brought—

1 “(aa) more than 6 years
2 after the date on which the viola-
3 tion of subparagraph (A) oc-
4 curred; or

5 “(bb) more than 3 years
6 after the date when facts mate-
7 rial to the right of action are
8 known or reasonably should have
9 been known by the employee al-
10 leging a violation of subpara-
11 graph (A).

12 “(II) REQUIRED ACTION WITHIN
13 10 YEARS.—Notwithstanding sub-
14 clause (I), an action under this sub-
15 section may not in any circumstance
16 be brought more than 10 years after
17 the date on which the violation occurs.

18 “(C) RELIEF.—Relief for an individual
19 prevailing in an action brought under subpara-
20 graph (B) shall include—

21 “(i) reinstatement with the same se-
22 niority status that the individual would
23 have had, but for the discrimination;

1 “(ii) 2 times the amount of back pay
2 otherwise owed to the individual, with in-
3 terest; and

4 “(iii) compensation for litigation
5 costs, expert witness fees, and reasonable
6 attorneys’ fees.

7 “(2) CONFIDENTIALITY.—

8 “(A) IN GENERAL.—Unless and until re-
9 quired to be disclosed to a defendant or re-
10 spondent in connection with a proceeding insti-
11 tuted by the Commission or any entity de-
12 scribed in subparagraph (D), all information
13 provided to the Commission by a whistle-
14 blower—

15 “(i) in any proceeding in any Federal
16 or State court or administrative agency—

17 “(I) shall be confidential and
18 privileged as an evidentiary matter;
19 and

20 “(II) shall not be subject to civil
21 discovery or other legal process; and

22 “(ii) shall not be subject to disclosure
23 under section 552 of title 5, United States
24 Code (commonly referred to as the Free-

1 dom of Information Act) or under any pro-
2 ceeding under that section.

3 “(B) EXEMPTED STATUTE.—For purposes
4 of section 552 of title 5, United States Code,
5 this paragraph shall be considered a statute de-
6 scribed in subsection (b)(3)(B) of such section
7 552.

8 “(C) RULE OF CONSTRUCTION.—Nothing
9 in this section is intended to limit, or shall be
10 construed to limit, the ability of the Attorney
11 General to present such evidence to a grand
12 jury or to share such evidence with potential
13 witnesses or defendants in the course of an on-
14 going criminal investigation.

15 “(D) AVAILABILITY TO GOVERNMENT
16 AGENCIES.—

17 “(i) IN GENERAL.—Without the loss
18 of its status as confidential and privileged
19 in the hands of the Commission, all infor-
20 mation referred to in subparagraph (A)
21 may, in the discretion of the Commission,
22 when determined by the Commission to be
23 necessary to accomplish the purposes of
24 this Act and to protect investors, be made
25 available 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 au-
15 thority; and

16 “(VIII) a foreign law enforce-
17 ment authority.

18 “(ii) 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 sec-
9 tion shall be deemed to diminish the rights, privi-
10 leges, or remedies of any whistleblower under any
11 Federal or State law, or under any collective bar-
12 gaining agreement.

13 “(i) PROVISION OF FALSE INFORMATION.—A whis-
14 tleblower shall not be entitled to an award under this sec-
15 tion 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 know-
20 ing the writing or document contains any false, ficti-
21 tious, 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 pro-

visions of this section consistent with the purposes of this section.”.

SEC. 923. CONFORMING AMENDMENTS FOR WHISTLE-BLOWER PROTECTION.

(a) IN GENERAL.—

(1) SECURITIES ACT OF 1933.—Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)) is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”.

(2) INVESTMENT COMPANY ACT OF 1940.—Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”.

(b) SECURITIES EXCHANGE ACT.—

(1) SECTION 21.—Section 21(d)(3)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C.

1 78u(d)(3)(C)(i)) is amended by inserting “and sec-
 2 tion 21F of this title” after “the Sarbanes-Oxley Act
 3 of 2002”.

4 (2) SECTION 21A.—Section 21A of the Securi-
 5 ties Exchange Act of 1934 (15 U.S.C. 78u–1) is
 6 amended—

7 (A) in subsection (d)(1) by—

8 (i) striking “(subject to subsection
 9 (e))”; and

10 (ii) inserting “and section 21F of this
 11 title” after “the Sarbanes-Oxley Act of
 12 2002”;

13 (B) by striking subsection (e); and

14 (C) by redesignating subsections (f) and
 15 (g) as subsections (e) and (f), respectively.

16 **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS**
 17 **FOR WHISTLEBLOWER PROTECTION.**

18 (a) IMPLEMENTING RULES.—The Commission shall
 19 issue final regulations implementing the provisions of sec-
 20 tion 21F of the Securities Exchange Act of 1934, as added
 21 by this subtitle, not later than 270 days after the date
 22 of enactment of this Act.

23 (b) ORIGINAL INFORMATION.—Information provided
 24 to the Commission by a whistleblower in accordance with
 25 the regulations referenced in subsection (a) shall not lose

1 the status of original information (as defined in section
2 21F(i)(1) of the Securities Exchange Act of 1934, as
3 added by this subtitle) solely because the whistleblower
4 provided the information prior to the effective date of the
5 regulations, provided that the information is—

6 (1) provided by the whistleblower after the date
7 of enactment of this subtitle, or monetary sanctions
8 are collected after the date of enactment of this sub-
9 title; or

10 (2) related to a violation for which an award
11 under section 21F of the Securities Exchange Act of
12 1934, as added by this subtitle, could have been paid
13 at the time the information was provided by the
14 whistleblower.

15 (c) AWARDS.—A whistleblower may receive an award
16 pursuant to section 21F of the Securities Exchange Act
17 of 1934, as added by this subtitle, regardless of whether
18 any violation of a provision of the securities laws, or a
19 rule or regulation thereunder, underlying the judicial or
20 administrative action upon which the award is based, oc-
21 curred prior to the date of enactment of this subtitle.

22 **SEC. 925. COLLATERAL BARS.**

23 (a) SECURITIES EXCHANGE ACT OF 1934.—

24 (1) SECTION 15.—Section 15(b)(6)(A) of the
25 Securities Exchange Act of 1934 (15 U.S.C.

1 78o(b)(6)(A)) is amended by striking “12 months,
2 or bar such person from being associated with a
3 broker or dealer,” and inserting “12 months, or bar
4 any such person from being associated with a
5 broker, dealer, investment adviser, municipal securi-
6 ties dealer, municipal advisor, transfer agent, or na-
7 tionally recognized statistical rating organization,”.

8 (2) SECTION 15B.—Section 15B(c)(4) of the Se-
9 curities Exchange Act of 1934 (15 U.S.C. 78o–
10 4(c)(4)) is amended by striking “twelve months or
11 bar any such person from being associated with a
12 municipal securities dealer,” and inserting “12
13 months or bar any such person from being associ-
14 ated with a broker, dealer, investment adviser, mu-
15 nicipal securities dealer, municipal advisor, transfer
16 agent, or nationally recognized statistical rating or-
17 ganization,”.

18 (3) SECTION 17A.—Section 17A(c)(4)(C) of the
19 Securities Exchange Act of 1934 (15 U.S.C. 78q–
20 1(c)(4)(C)) is amended by striking “twelve months
21 or bar any such person from being associated with
22 the transfer agent,” and inserting “12 months or
23 bar any such person from being associated with any
24 transfer agent, broker, dealer, investment adviser,

1 municipal securities dealer, municipal advisor, or na-
 2 tionally recognized statistical rating organization,”.

3 (b) INVESTMENT ADVISERS ACT OF 1940.—Section
 4 203(f) of the Investment Advisers Act of 1940 (15 U.S.C.
 5 80b–3(f)) is amended by striking “twelve months or bar
 6 any such person from being associated with an investment
 7 adviser,” and inserting “12 months or bar any such per-
 8 son from being associated with an investment adviser,
 9 broker, dealer, municipal securities dealer, municipal advi-
 10 sor, transfer agent, or nationally recognized statistical rat-
 11 ing organization,”.

12 **SEC. 926. AUTHORITY OF STATE REGULATORS OVER REGU-**
 13 **LATION D OFFERINGS.**

14 Section 18(b)(4) of the Securities Act of 1933 (15
 15 U.S.C. 77r(b)(4)) is amended—

16 (1) by striking “A security” and inserting “(A)
 17 IN GENERAL—A security”;

18 (2) by redesignating subparagraphs (A) through
 19 (D) as clauses (i) through (iv), respectively, and ad-
 20 justing the margins accordingly; and

21 (3) by striking clause (iv), as so redesignated,
 22 and inserting the following:

23 “(iv) Commission rules or regulations
 24 issued under section 4(2), except that the
 25 Commission may designate, by rule, a class

1 of securities that it deems not to be cov-
2 ered securities because the offering of such
3 securities is not of sufficient size or scope.

4 “(v) Not later than 360 days after the
5 date of enactment of the Restoring Amer-
6 ican Financial Stability Act of 2010, the
7 Commission shall conduct a rulemaking to
8 determine whether to designate a class of
9 securities because the offering of such se-
10 curities is not of sufficient size or scope.

11 “(B) DESIGNATION OF NON-COVERED SE-
12 CURITIES.—In making a designation under sub-
13 paragraph (A)(iv), the Commission shall con-
14 sider—

15 “(i) the size of the offering;

16 “(ii) the number of States in which
17 the security is being offered; and

18 “(iii) the nature of the persons to
19 whom the security is being offered.

20 “(C) REVIEW OF FILINGS.—

21 “(i) IN GENERAL.—The Commission
22 shall review any filings made relating to
23 any security issued under Commission
24 rules or regulations under section 4(2),
25 other than one designated as a non-covered

1 security under subparagraph (A)(iv), not
2 later than 120 days of the filing with the
3 Commission.

4 “(ii) FAILURE TO REVIEW WITHIN 120
5 DAYS.—If the Commission fails to review a
6 filing required under clause (i), the secu-
7 rity shall no longer be a covered security,
8 except that—

9 “(I) the failure of the Commis-
10 sion to review a filing shall not result
11 in the loss of status as a covered secu-
12 rity if the Commission, not later than
13 120 days of the filing with the Com-
14 mission, has determined that there
15 has been a good faith and reasonable
16 attempt by the issuer to comply with
17 all applicable terms, conditions, and
18 requirements of the filing; and

19 “(II) upon review of the filing, if
20 the Commission, not later than 120
21 days of the filing with the Commis-
22 sion, determines that any failure to
23 comply with the applicable filing
24 terms, conditions, and requirements is

1 insignificant to the offering as a
2 whole.

3 “(D) EFFECT ON STATE FILING REQUIRE-
4 MENTS.—

5 “(i) IN GENERAL.—Nothing in sub-
6 paragraph (A)(iv), (B), or (C) shall be con-
7 strued to prohibit a State from imposing
8 notice filing requirements that are substan-
9 tially similar to filing requirements re-
10 quired by rule or regulation under section
11 4(4) that were in effect on September 1,
12 1996.

13 “(ii) NOTIFICATION.—Not later than
14 180 days after the date of enactment of
15 the Restoring American Financial Stability
16 Act of 2010, the Commission shall imple-
17 ment procedures, after consultation with
18 the States, to promptly notify States upon
19 completion of review of securities offerings
20 described in subparagraph (A)(iv) by the
21 Commission.

22 “(E) OFFERINGS AFFECTED.—The re-
23 quirements of this section shall apply to offer-
24 ings filed on or after the date of enactment of
25 the Restoring Financial Stability Act of 2010.”.

1 **SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGA-**
2 **NIZATION RULES.**

3 Section 29(a) of the Securities Exchange Act of 1934
4 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
5 required thereby” and inserting “a self-regulatory organi-
6 zation,”.

7 **SEC. 928. CLARIFICATION THAT SECTION 205 OF THE IN-**
8 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**
9 **APPLY TO STATE-REGISTERED ADVISERS.**

10 Section 205(a) of the Investment Advisers Act of
11 1940 (15 U.S.C. 80b–5(a)) is amended, in the matter pre-
12 ceding paragraph (1)—

13 (1) by striking “, unless exempt from registra-
14 tion pursuant to section 203(b),” and inserting
15 “registered or required to be registered with the
16 Commission”;

17 (2) by striking “make use of the mails or any
18 means or instrumentality of interstate commerce, di-
19 rectly or indirectly, to”; and

20 (3) by striking “to” after “in any way”.

21 **SEC. 929. UNLAWFUL MARGIN LENDING.**

22 Section 7(c)(1)(A) of the Securities Exchange Act of
23 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;
24 and” and inserting “; or”.

1 **SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDI-**
 2 **ARIES AND AFFILIATES OF PUBLICLY TRAD-**
 3 **ED COMPANIES.**

4 Section 1514A of title 18, United States Code, is
 5 amended by inserting “including any subsidiary or affil-
 6 iate whose financial information is included in the consoli-
 7 dated financial statements of such company” after “the
 8 Securities Exchange Act of 1934 (15 U.S.C. 78o(d))”.

9 **SEC. 929B. FAIR FUND AMENDMENTS.**

10 Section 308 of the Sarbanes-Oxley Act of 2002 (15
 11 U.S.C. 7246(a)) is amended—

12 (1) by striking subsection (a) and inserting the
 13 following:

14 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-
 15 LIEF OF VICTIMS.—If, in any judicial or administrative
 16 action brought by the Commission under the securities
 17 laws, the Commission obtains a civil penalty against any
 18 person for a violation of such laws, or such person agrees,
 19 in settlement of any such action, to such civil penalty, the
 20 amount of such civil penalty shall, on the motion or at
 21 the direction of the Commission, be added to and become
 22 part of a disgorgement fund or other fund established for
 23 the benefit of the victims of such violation.”;

24 (2) in subsection (b)—

25 (A) by striking “for a disgorgement fund
 26 described in subsection (a)” and inserting “for

1 a disgorgement fund or other fund described in
2 subsection (a)”; and

3 (B) by striking “in the disgorgement fund”
4 and inserting “in such fund”; and
5 (3) by striking subsection (e).

6 **SEC. 929C. INCREASING THE BORROWING LIMIT ON TREAS-**
7 **URY LOANS.**

8 Section 4(h) of the Securities Investor Protection Act
9 of 1970 (15 U.S.C. 78ddd(h)) is amended in the first sen-
10 tence, by striking “\$1,000,000,000” and inserting
11 “\$2,500,000,000”.

12 **Subtitle C—Improvements to the**
13 **Regulation of Credit Rating**
14 **Agencies**

15 **SEC. 931. FINDINGS.**

16 Congress finds the following:

17 (1) Because of the systemic importance of cred-
18 it ratings and the reliance placed on credit ratings
19 by individual and institutional investors and finan-
20 cial regulators, the activities and performances of
21 credit rating agencies, including nationally recog-
22 nized statistical rating organizations, are matters of
23 national public interest, as credit rating agencies are
24 central to capital formation, investor confidence, and

1 the efficient performance of the United States econ-
2 omy.

3 (2) Credit rating agencies, including nationally
4 recognized statistical rating organizations, play a
5 critical “gatekeeper” role in the debt market that is
6 functionally similar to that of securities analysts,
7 who evaluate the quality of securities in the equity
8 market, and auditors, who review the financial state-
9 ments of firms. Such role justifies a similar level of
10 public oversight and accountability.

11 (3) Because credit rating agencies perform eval-
12 uative and analytical services on behalf of clients,
13 much as other financial “gatekeepers” do, the activi-
14 ties of credit rating agencies are fundamentally com-
15 mercial in character and should be subject to the
16 same standards of liability and oversight as apply to
17 auditors, securities analysts, and investment bank-
18 ers.

19 (4) In certain activities, particularly in advising
20 arrangers of structured financial products on poten-
21 tial ratings of such products, credit rating agencies
22 face conflicts of interest that need to be carefully
23 monitored and that therefore should be addressed
24 explicitly in legislation in order to give clearer au-
25 thority to the Securities and Exchange Commission.

1 (5) In the recent financial crisis, the ratings on
2 structured financial products have proven to be inac-
3 curate. This inaccuracy contributed significantly to
4 the mismanagement of risks by financial institutions
5 and investors, which in turn adversely impacted the
6 health of the economy in the United States and
7 around the world. Such inaccuracy necessitates in-
8 creased accountability on the part of credit rating
9 agencies.

10 **SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND**
11 **TRANSPARENCY OF NATIONALLY RECOG-**
12 **NIZED STATISTICAL RATING ORGANIZA-**
13 **TIONS.**

14 Section 15E of the Securities Exchange Act of 1934
15 (15 U.S.C. 78o–7) is amended—

16 (1) in subsection (c)—

17 (A) in paragraph (2)—

18 (i) in the second sentence, by insert-
19 ing “any other provision of this section,
20 or” after “Notwithstanding”; and

21 (ii) by inserting after the period at
22 the end the following: “Nothing in this
23 paragraph may be construed to afford a
24 defense against any action or proceeding
25 brought by the Commission to enforce the

1 antifraud provisions of the securities
2 laws.”; and

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

4 “(3) INTERNAL CONTROLS OVER PROCESSES
5 FOR DETERMINING CREDIT RATINGS.—

6 “(A) IN GENERAL.—Each nationally recog-
7 nized statistical rating organization shall estab-
8 lish, maintain, enforce, and document an effec-
9 tive internal control structure governing the im-
10 plementation of and adherence to policies, pro-
11 cedures, and methodologies for determining
12 credit ratings, taking into consideration such
13 factors as the Commission may prescribe, by
14 rule.

15 “(B) ATTESTATION REQUIREMENT.—The
16 Commission shall prescribe rules requiring each
17 nationally recognized statistical rating organiza-
18 tion to submit to the Commission an annual in-
19 ternal controls report, which shall contain—

20 “(i) a description of the responsibility
21 of the management of the nationally recog-
22 nized statistical rating organization in es-
23 tablishing and maintaining an effective in-
24 ternal control structure under subpara-
25 graph (A);

1 “(ii) an assessment of the effective-
2 ness of the internal control structure of the
3 nationally recognized statistical rating or-
4 ganization; and

5 “(iii) the attestation of the chief exec-
6 utive officer, or equivalent individual, of
7 the nationally recognized statistical rating
8 organization.”;

9 (2) in subsection (d)—

10 (A) in the subsection heading, by inserting
11 “FINE,” after “CENSURE,”;

12 (B) by inserting “fine,” after “censure,”
13 each place that term appears;

14 (C) in paragraph (2), by redesignating
15 subparagraphs (A) and (B) as clauses (i) and
16 (ii), respectively, and adjusting the clause mar-
17 gins accordingly;

18 (D) by redesignating paragraphs (1)
19 through (5) as subparagraphs (A) through (E),
20 respectively, and adjusting the subparagraph
21 margins accordingly;

22 (E) in the matter preceding subparagraph
23 (A), as so redesignated, by striking “The Com-
24 mission” and inserting the following:

25 “(1) IN GENERAL.—The Commission”;

1 (F) in subparagraph (D), as so redesign-
 2 nated, by striking “or” at the end;

3 (G) in subparagraph (E), as so redesign-
 4 nated, by striking the period at the end and in-
 5 serting a semicolon; and

6 (H) by adding at the end the following:

7 “(F) has failed reasonably to supervise,
 8 with a view to preventing a violation of the se-
 9 curities laws, an individual who commits such a
 10 violation, if the individual is subject to the su-
 11 pervision of that person.

12 “(2) SUSPENSION OR REVOCATION FOR PAR-
 13 TICULAR CLASS OF SECURITIES.—

14 “(A) IN GENERAL.—The Commission may
 15 temporarily suspend or permanently revoke the
 16 registration of a nationally recognized statistical
 17 rating organization with respect to a particular
 18 class or subclass of securities, if the Commis-
 19 sion finds, on the record after notice and oppor-
 20 tunity for hearing, that the nationally recog-
 21 nized statistical rating organization does not
 22 have adequate financial and managerial re-
 23 sources to consistently produce credit ratings
 24 with integrity.

1 “(B) CONSIDERATIONS.—In making any
2 determination under subparagraph (A), the
3 Commission shall consider—

4 “(i) whether the nationally recognized
5 statistical rating organization has failed
6 over a sustained period of time, as deter-
7 mined by the Commission, to produce rat-
8 ings that are accurate for that class or
9 subclass of securities; and

10 “(ii) such other factors as the Com-
11 mission may determine.”;

12 (3) in subsection (h), by adding at the end the
13 following:

14 “(3) SEPARATION OF RATINGS FROM SALES
15 AND MARKETING.—

16 “(A) RULES REQUIRED.—The Commission
17 shall issue rules to prevent the sales and mar-
18 keting considerations of a nationally recognized
19 statistical rating organization from influencing
20 the production of ratings by the nationally rec-
21 ognized statistical rating organization.

22 “(B) CONTENTS OF RULES.—The rules
23 issued under subparagraph (A) shall provide
24 for—

1 “(i) exceptions for small nationally
2 recognized statistical rating organizations
3 with respect to which the Commission de-
4 termines that the separation of the produc-
5 tion of ratings and sales and marketing ac-
6 tivities is not appropriate; and

7 “(ii) suspension or revocation of the
8 registration of a nationally recognized sta-
9 tistical rating organization, if the Commis-
10 sion finds, on the record, after notice and
11 opportunity for a hearing, that—

12 “(I) the nationally recognized
13 statistical rating organization has
14 committed a violation of a rule issued
15 under this subsection; and

16 “(II) the violation of a rule
17 issued under this subsection affected a
18 rating.”;

19 (4) in subsection (j)—

20 (A) by striking “Each” and inserting the
21 following:

22 “(1) IN GENERAL.—Each”; and

23 (B) by adding at the end the following:

24 “(2) LIMITATIONS.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), an individual designated
3 under paragraph (1) may not, while serving in
4 the designated capacity—

5 “(i) perform credit ratings;

6 “(ii) participate in the development of
7 ratings methodologies or models;

8 “(iii) perform marketing or sales
9 functions; or

10 “(iv) participate in establishing com-
11 pensation levels, other than for employees
12 working for that individual.

13 “(B) EXCEPTION.—The Commission may
14 exempt a small nationally recognized statistical
15 rating organization from the limitations under
16 this paragraph, if the Commission finds that
17 compliance with such limitations would impose
18 an unreasonable burden on the nationally recog-
19 nized statistical rating organization.

20 “(3) OTHER DUTIES.—Each individual des-
21 ignated under paragraph (1) shall establish proce-
22 dures for the receipt, retention, and treatment of—

23 “(A) complaints regarding credit ratings,
24 models, methodologies, and compliance with the

1 securities laws and the policies and procedures
2 developed under this section; and

3 “(B) confidential, anonymous complaints
4 by employees or users of credit ratings.

5 “(4) ANNUAL REPORTS REQUIRED.—

6 “(A) ANNUAL REPORTS REQUIRED.—Each
7 individual designated under paragraph (1) shall
8 submit to the nationally recognized statistical
9 rating organization an annual report on the
10 compliance of the nationally recognized statis-
11 tical rating organization with the securities laws
12 and the policies and procedures of the nation-
13 ally recognized statistical rating organization
14 that includes—

15 “(i) a description of any material
16 changes to the code of ethics and conflict
17 of interest policies of the nationally recog-
18 nized statistical rating organization; and

19 “(ii) a certification that the report is
20 accurate and complete.

21 “(B) SUBMISSION OF REPORTS TO THE
22 COMMISSION.—Each nationally recognized sta-
23 tistical rating organization shall file the reports
24 required under subparagraph (A) together with
25 the financial report that is required to be sub-

1 mitted to the Commission under this section.”;
2 and

3 (5) by striking subsection (p) and inserting the
4 following:

5 “(p) REGULATION OF NATIONALLY RECOGNIZED
6 STATISTICAL RATING ORGANIZATIONS.—

7 “(1) ESTABLISHMENT OF OFFICE OF CREDIT
8 RATINGS.—

9 “(A) OFFICE ESTABLISHED.—The Com-
10 mission shall establish within the Commission
11 an Office of Credit Ratings (referred to in this
12 subsection as the ‘Office’) to administer the
13 rules of the Commission—

14 “(i) with respect to the practices of
15 nationally recognized statistical rating or-
16 ganizations in determining ratings, for the
17 protection of users of credit ratings and in
18 the public interest;

19 “(ii) to promote accuracy in credit
20 ratings issued by nationally recognized sta-
21 tistical rating organizations; and

22 “(iii) to ensure that such ratings are
23 not unduly influenced by conflicts of inter-
24 est.

1 “(B) DIRECTOR OF THE OFFICE.—The
2 head of the Office shall be the Director, who
3 shall report 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 exper-
8 tise in corporate, municipal, and structured debt fi-
9 nance.

10 “(3) COMMISSION EXAMINATIONS.—

11 “(A) ANNUAL EXAMINATIONS RE-
12 QUIRED.—The Office shall conduct an examina-
13 tion of each nationally recognized statistical
14 rating organization at least annually.

15 “(B) CONDUCT OF EXAMINATIONS.—Each
16 examination under subparagraph (A) shall in-
17 clude a review of—

18 “(i) whether the nationally recognized
19 statistical rating organization conducts
20 business in accordance with the policies,
21 procedures, and rating methodologies of
22 the nationally recognized statistical rating
23 organization;

1 “(ii) the management of conflicts of
2 interest by the nationally recognized statis-
3 tical rating organization;

4 “(iii) implementation of ethics policies
5 by the nationally recognized statistical rat-
6 ing organization;

7 “(iv) the internal supervisory controls
8 of the nationally recognized statistical rat-
9 ing organization;

10 “(v) the governance of the nationally
11 recognized statistical rating organization;

12 “(vi) the activities of the individual
13 designated by the nationally recognized
14 statistical rating organization under sub-
15 section (j)(1);

16 “(vii) the processing of complaints by
17 the nationally recognized statistical rating
18 organization; and

19 “(viii) the policies of the nationally
20 recognized statistical rating organization
21 governing the post-employment activities of
22 former staff of the nationally recognized
23 statistical rating organization.

24 “(C) INSPECTION REPORTS.—The Com-
25 mission shall make available to the public, in an

1 easily understandable format, an annual report
2 summarizing—

3 “(i) the essential findings of all ex-
4 aminations conducted under subparagraph
5 (A), as deemed appropriate by the Com-
6 mission;

7 “(ii) the responses by the nationally
8 recognized statistical rating organizations
9 to any material regulatory deficiencies
10 identified by the Commission under clause
11 (i); and

12 “(iii) whether the nationally recog-
13 nized statistical rating organizations have
14 appropriately addressed the recommenda-
15 tions of the Commission contained in pre-
16 vious reports under this subparagraph.

17 “(4) RULEMAKING AUTHORITY.—The Commis-
18 sion shall—

19 “(A) establish, by rule, fines, and other
20 penalties applicable to any nationally recognized
21 statistical rating organization that violates the
22 requirements of this subsection and the rules
23 thereunder; and

24 “(B) issue such rules as may be necessary
25 to carry out this subsection.

1 “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

2 “(1) RULEMAKING REQUIRED.—The Commis-
3 sion shall, by rule, require that each nationally rec-
4 ognized statistical rating organization publicly dis-
5 close information on the initial credit ratings deter-
6 mined by the nationally recognized statistical rating
7 organization for each type of obligor, security, and
8 money market instrument, and any subsequent
9 changes to such credit ratings, for the purpose of al-
10 lowing users of credit ratings to evaluate the accu-
11 racy of ratings and compare the performance of rat-
12 ings by different nationally recognized statistical rat-
13 ing organizations.

14 “(2) CONTENT.—The rules of the Commission
15 under this subsection shall require, at a minimum,
16 disclosures that—

17 “(A) are comparable among nationally rec-
18 ognized statistical rating organizations, to allow
19 users of credit ratings to compare the perform-
20 ance of credit ratings across nationally recog-
21 nized statistical rating organizations;

22 “(B) are clear and informative for inves-
23 tors who use or might use credit ratings;

24 “(C) include performance information over
25 a range of years and for a variety of types of

1 credit ratings, including for credit ratings with-
2 drawn by the nationally recognized statistical
3 rating organization;

4 “(D) are published and made freely avail-
5 able by the nationally recognized statistical rat-
6 ing organization, on an easily accessible portion
7 of its website, and in writing, when requested;
8 and

9 “(E) are appropriate to the business model
10 of a nationally recognized statistical rating or-
11 ganization.

12 “(r) CREDIT RATINGS METHODOLOGIES.—The Com-
13 mission shall prescribe rules, for the protection of inves-
14 tors and in the public interest, with respect to the proce-
15 dures and methodologies, including qualitative and quan-
16 titative data and models, used by nationally recognized
17 statistical rating organizations that require each nation-
18 ally recognized statistical rating organization—

19 “(1) to ensure that credit ratings are deter-
20 mined using procedures and methodologies, includ-
21 ing qualitative and quantitative data and models,
22 that are—

23 “(A) approved by the board of the nation-
24 ally recognized statistical rating organization, a
25 body performing a function similar to that of a

1 board, or the senior credit officer of the nation-
2 ally recognized statistical rating organization;
3 and

4 “(B) in accordance with the policies and
5 procedures of the nationally recognized statis-
6 tical rating organization for the development
7 and modification of credit rating procedures
8 and methodologies;

9 “(2) to ensure that when material changes to
10 credit rating procedures and methodologies (includ-
11 ing changes to qualitative and quantitative data and
12 models) are made, that—

13 “(A) the changes are applied consistently
14 to all credit ratings to which the changed proce-
15 dures and methodologies apply;

16 “(B) to the extent that changes are made
17 to credit rating surveillance procedures and
18 methodologies, the changes are applied to then-
19 current credit ratings by the nationally recog-
20 nized statistical rating organization within a
21 reasonable time period determined by the Com-
22 mission, by rule; and

23 “(C) the nationally recognized statistical
24 rating organization publicly discloses the reason
25 for the change; and

1 “(3) to notify users of credit ratings—

2 “(A) of the version of a procedure or meth-
3 odology, including the qualitative methodology
4 or quantitative inputs, used with respect to a
5 particular credit rating;

6 “(B) when a material change is made to a
7 procedure or methodology, including to a quali-
8 tative model or quantitative inputs;

9 “(C) when a significant error is identified
10 in a procedure or methodology, including a
11 qualitative or quantitative model, that may re-
12 sult in credit rating actions; and

13 “(D) of the likelihood of a material change
14 described in subparagraph (B) resulting in a
15 change in current credit ratings.

16 “(s) TRANSPARENCY OF CREDIT RATING METH-
17 ODOLOGIES AND INFORMATION REVIEWED.—

18 “(1) FORM FOR DISCLOSURES.—The Commis-
19 sion shall require, by rule, each nationally recognized
20 statistical rating organization to prescribe a form to
21 accompany the publication of each credit rating that
22 discloses—

23 “(A) information relating to—

1 “(i) the assumptions underlying the
2 credit rating procedures and methodolo-
3 gies;

4 “(ii) the data that was relied on to de-
5 termine the credit rating; and

6 “(iii) if applicable, how the nationally
7 recognized statistical rating organization
8 used servicer or remittance reports, and
9 with what frequency, to conduct surveil-
10 lance of the credit rating; and

11 “(B) information that can be used by in-
12 vestors and other users of credit ratings to bet-
13 ter understand credit ratings in each class of
14 credit rating issued by the nationally recognized
15 statistical rating organization.

16 “(2) FORMAT.—The form developed under
17 paragraph (1) shall—

18 “(A) be easy to use and helpful for users
19 of credit ratings to understand the information
20 contained in the report;

21 “(B) require the nationally recognized sta-
22 tistical rating organization to provide the con-
23 tent described in paragraph (3)(B) in a manner
24 that is directly comparable across types of secu-
25 rities; and

1 “(C) be made readily available to users of
2 credit ratings, in electronic or paper form, as
3 the Commission may, by rule, determine.

4 “(3) CONTENT OF FORM.—

5 “(A) QUALITATIVE CONTENT.—Each na-
6 tionally recognized statistical rating organiza-
7 tion shall disclose on the form developed under
8 paragraph (1)—

9 “(i) the credit ratings produced by the
10 nationally recognized statistical rating or-
11 ganization;

12 “(ii) the main assumptions and prin-
13 ciples used in constructing procedures and
14 methodologies, including qualitative meth-
15 odologies and quantitative inputs and as-
16 sumptions about the correlation of defaults
17 across obligors used in rating structured
18 products;

19 “(iii) the potential limitations of the
20 credit ratings, and the types of risks ex-
21 cluded from the credit ratings that the na-
22 tionally recognized statistical rating orga-
23 nization does not comment on, including li-
24 quidity, market, and other risks;

1 “(iv) information on the uncertainty
2 of the credit rating, including—

3 “(I) information on the reli-
4 ability, accuracy, and quality of the
5 data relied on in determining the
6 credit rating; and

7 “(II) a statement relating to the
8 extent to which data essential to the
9 determination of the credit rating
10 were reliable or limited, including—

11 “(aa) any limits on the
12 scope of historical data; and

13 “(bb) any limits in accessi-
14 bility to certain documents or
15 other types of information that
16 would have better informed the
17 credit rating;

18 “(v) whether and to what extent third
19 party due diligence services have been used
20 by the nationally recognized statistical rat-
21 ing organization, a description of the infor-
22 mation that such third party reviewed in
23 conducting due diligence services, and a
24 description of the findings or conclusions
25 of such third party;

1 “(vi) a description of the data about
2 any obligor, issuer, security, or money
3 market instrument that were relied upon
4 for the purpose of determining the credit
5 rating;

6 “(vii) a statement containing an over-
7 all assessment of the quality of information
8 available and considered in producing a
9 rating for an obligor, security, or money
10 market instrument, in relation to the qual-
11 ity of information available to the nation-
12 ally recognized statistical rating organiza-
13 tion in rating similar issuances;

14 “(viii) information relating to conflicts
15 of interest of the nationally recognized sta-
16 tistical rating organization; and

17 “(ix) such additional information as
18 the Commission may require.

19 “(B) QUANTITATIVE CONTENT.—Each na-
20 tionally recognized statistical rating organiza-
21 tion shall disclose on the form developed under
22 this subsection—

23 “(i) an explanation or measure of the
24 potential volatility of the credit rating, in-
25 cluding—

1 “(I) any factors that might lead
2 to a change in the credit ratings; and

3 “(II) the magnitude of the
4 change that a user can expect under
5 different market conditions;

6 “(ii) information on the content of the
7 rating, including—

8 “(I) the historical performance of
9 the rating; and

10 “(II) the expected probability of
11 default and the expected loss in the
12 event of default;

13 “(iii) information on the sensitivity of
14 the rating to assumptions made by the na-
15 tionally recognized statistical rating orga-
16 nization; and

17 “(iv) such additional information as
18 may be required by the Commission.

19 “(4) DUE DILIGENCE SERVICES FOR ASSET-
20 BACKED SECURITIES.—

21 “(A) FINDINGS.—The issuer or under-
22 writer of any asset-backed security shall make
23 publicly available the findings and conclusions
24 of any third-party due diligence report obtained
25 by the issuer or underwriter.

1 “(B) CERTIFICATION REQUIRED.—In any
2 case in which third-party due diligence services
3 are employed by a nationally recognized statis-
4 tical rating organization, an issuer, or an un-
5 derwriter, the person providing the due dili-
6 gence services shall provide to any nationally
7 recognized statistical rating organization that
8 produces a rating to which such services relate,
9 written certification, as provided in subpara-
10 graph (C).

11 “(C) FORMAT AND CONTENT.—The Com-
12 mission shall establish the appropriate format
13 and content for the written certifications re-
14 quired under subparagraph (B), to ensure that
15 providers of due diligence services have con-
16 ducted a thorough review of data, documenta-
17 tion, and other relevant information necessary
18 for a nationally recognized statistical rating or-
19 ganization to provide an accurate rating.

20 “(D) DISCLOSURE OF CERTIFICATION.—
21 The Commission shall adopt rules requiring a
22 nationally recognized statistical rating organiza-
23 tion, at the time at which the nationally recog-
24 nized statistical rating organization produces a
25 rating, to disclose the certification described in

1 subparagraph (B) to the public in a manner
2 that allows the public to determine the ade-
3 quacy and level of due diligence services pro-
4 vided by a third party.

5 “(t) CORPORATE GOVERNANCE, ORGANIZATION, AND
6 MANAGEMENT OF CONFLICTS OF INTEREST.—

7 “(1) BOARD OF DIRECTORS.—Each nationally
8 recognized statistical rating organization shall have
9 a board of directors.

10 “(2) INDEPENDENT DIRECTORS.—

11 “(A) IN GENERAL.—At least $\frac{1}{2}$ of the
12 board of directors, but not fewer than 2 of the
13 members thereof, shall be independent of the
14 nationally recognized statistical rating agency.
15 A portion of the independent directors shall in-
16 clude users of ratings from a nationally recog-
17 nized statistical rating organization.

18 “(B) INDEPENDENCE DETERMINATION.—

19 In order to be considered independent for pur-
20 poses of this subsection, a member of the board
21 of directors of a nationally recognized statistical
22 rating organization—

23 “(i) may not, other than in his or her
24 capacity as a member of the board of di-
25 rectors or any committee thereof—

1 “(I) accept any consulting, advi-
2 sory, or other compensatory fee from
3 the nationally recognized statistical
4 rating organization; or

5 “(II) be a person associated with
6 the nationally recognized statistical
7 rating organization or with any affili-
8 ated company thereof; and

9 “(ii) shall be disqualified from any de-
10 liberation involving a specific rating in
11 which the independent board member has
12 a financial interest in the outcome of the
13 rating.

14 “(C) COMPENSATION AND TERM.—The
15 compensation of the independent members of
16 the board of directors of a nationally recognized
17 statistical rating organization shall not be
18 linked to the business performance of the na-
19 tionally recognized statistical rating organiza-
20 tion, and shall be arranged so as to ensure the
21 independence of their judgment. The term of
22 office of the independent directors shall be for
23 a pre-agreed fixed period, not to exceed 5 years,
24 and shall not be renewable.

1 “(3) DUTIES OF BOARD OF DIRECTORS.—In
2 addition to the overall responsibilities of the board of
3 directors, the board shall oversee—

4 “(A) the establishment, maintenance, and
5 enforcement of policies and procedures for de-
6 termining credit ratings;

7 “(B) the establishment, maintenance, and
8 enforcement of policies and procedures to ad-
9 dress, manage, and disclose any conflicts of in-
10 terest;

11 “(C) the effectiveness of the internal con-
12 trol system with respect to policies and proce-
13 dures for determining credit ratings; and

14 “(D) the compensation and promotion poli-
15 cies and practices of the nationally recognized
16 statistical rating organization.

17 “(4) TREATMENT OF NRSRO SUBSIDIARIES.—If
18 a nationally recognized statistical rating organiza-
19 tion is a subsidiary of a parent entity, the board of
20 the directors of the parent entity may satisfy the re-
21 quirements of this subsection by assigning to a com-
22 mittee of such board of directors the duties under
23 paragraph (3), if—

24 “(A) at least $\frac{1}{2}$ of the members of the
25 committee (including the chairperson of the

1 committee) are independent, as defined in this
2 section; and

3 “(B) at least 1 member of the committee
4 is a user of ratings from a nationally recognized
5 statistical rating organization.

6 “(5) EXCEPTION AUTHORITY.—If the Commis-
7 sion finds that compliance with the provisions of this
8 subsection present an unreasonable burden on a
9 small nationally recognized statistical rating organi-
10 zation, the Commission may permit the nationally
11 recognized statistical rating organization to delegate
12 such responsibilities to a committee that includes at
13 least one individual who is a user of ratings of a na-
14 tionally recognized statistical rating organization.”.

15 **SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.**

16 (a) ACCOUNTABILITY.—Section 15E(m) of the Secu-
17 rities Exchange Act of 1934 (15 U.S.C. 78o–7(m)) is
18 amended to read as follows:

19 “(m) ACCOUNTABILITY.—

20 “(1) IN GENERAL.—The enforcement and pen-
21 alty provisions of this title shall apply to statements
22 made by a credit rating agency in the same manner
23 and to the same extent as such provisions apply to
24 statements made by a registered public accounting
25 firm or a securities analyst under the securities laws,

1 and such statements shall not be deemed forward-
2 looking statements for the purposes of section 21E.

3 “(2) RULEMAKING.—The Commission shall
4 issue such rules as may be necessary to carry out
5 this subsection.”.

6 (b) STATE OF MIND.—Section 21D(b)(2) of the Se-
7 curities Exchange Act of 1934 (15 U.S.C. 78u–4(b)(2))
8 is amended—

9 (1) by striking “In any” and inserting the fol-
10 lowing:

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), in any”; and

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

14 “(B) EXCEPTION.—In the case of an ac-
15 tion for money damages brought against a cred-
16 it rating agency or a controlling person under
17 this title, it shall be sufficient, for purposes of
18 pleading any required state of mind in relation
19 to such action, that the complaint state with
20 particularity facts giving rise to a strong infer-
21 ence that the credit rating agency knowingly or
22 recklessly failed—

23 “(i) to conduct a reasonable investiga-
24 tion of the rated security with respect to

1 the factual elements relied upon by its own
 2 methodology for evaluating credit risk; or
 3 “(ii) to obtain reasonable verification
 4 of such factual elements (which verification
 5 may be based on a sampling technique that
 6 does not amount to an audit) from other
 7 sources that the credit rating agency con-
 8 sidered to be competent and that were
 9 independent of the issuer and under-
 10 writer.”.

11 **SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR**
 12 **REGULATORY AUTHORITIES.**

13 Section 15E of the Securities Exchange Act of 1934
 14 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-
 15 ed by adding at the end the following:

16 “(u) DUTY TO REPORT TIPS ALLEGING MATERIAL
 17 VIOLATIONS OF LAW.—

18 “(1) DUTY TO REPORT.—Each nationally rec-
 19 ognized statistical rating organization shall refer to
 20 the appropriate law enforcement or regulatory au-
 21 thorities any information that the nationally recog-
 22 nized statistical rating organization receives from a
 23 third party and finds credible that alleges that an
 24 issuer of securities rated by the nationally recog-
 25 nized statistical rating organization has committed

1 or is committing a material violation of law that has
2 not been adjudicated by a Federal or State court.

3 “(2) RULE OF CONSTRUCTION.—Nothing in
4 paragraph (1) may be construed to require a nation-
5 ally recognized statistical rating organization to
6 verify the accuracy of the information described in
7 paragraph (1).”.

8 **SEC. 935. CONSIDERATION OF INFORMATION FROM**
9 **SOURCES OTHER THAN THE ISSUER IN RAT-**
10 **ING DECISIONS.**

11 Section 15E of the Securities Exchange Act of 1934
12 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-
13 ed by adding at the end the following:

14 “(v) INFORMATION FROM SOURCES OTHER THAN
15 THE ISSUER.—In producing a credit rating, a nationally
16 recognized statistical rating organization shall consider in-
17 formation about an issuer that the nationally recognized
18 statistical rating organization has, or receives from a
19 source other than the issuer, that the nationally recog-
20 nized statistical rating organization finds credible and po-
21 tentially significant to a rating decision.”.

22 **SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RAT-**
23 **ING ANALYSTS.**

24 Not later than 1 year after the date of enactment
25 of this Act, the Commission shall issue rules that are rea-

1 sonably designed to ensure that any person employed by
2 a nationally recognized statistical rating organization to
3 perform credit ratings—

4 (1) meets standards of training, experience, and
5 competence necessary to produce accurate ratings
6 for the categories of issuers whose securities the per-
7 son rates; and

8 (2) is tested for knowledge of the credit rating
9 process.

10 **SEC. 937. TIMING OF REGULATIONS.**

11 Unless otherwise specifically provided in this subtitle,
12 the Commission shall issue final regulations, as required
13 by this subtitle and the amendments made by this subtitle,
14 not later than 1 year after the date of enactment of this
15 Act.

16 **SEC. 938. UNIVERSAL RATINGS SYMBOLS.**

17 (a) RULEMAKING.—The Commission shall require, by
18 rule, each nationally recognized statistical rating organiza-
19 tion to establish, maintain, and enforce written policies
20 and procedures that—

21 (1) assess the probability that an issuer of a se-
22 curity or money market instrument will default, fail
23 to make timely payments, or otherwise not make
24 payments to investors in accordance with the terms
25 of the 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
6 (2) in a manner that is consistent for all types of
7 securities and money market instruments for which
8 the symbol is used.

9 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
10 tion shall prohibit a nationally recognized statistical rating
11 organization from using distinct sets of symbols to denote
12 credit ratings for different types of securities or money
13 market instruments.

14 **SEC. 939. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
15 **AND FEDERAL AGENCY REVIEW OF RE-**
16 **QUIRED USES OF NATIONALLY RECOGNIZED**
17 **STATISTICAL RATING ORGANIZATION RAT-**
18 **INGS.**

19 (a) STUDY.—The Comptroller General of the United
20 States shall conduct a study of the scope of provisions of
21 Federal and State laws and regulations with respect to
22 the regulation of securities markets, banking, insurance,
23 and other areas that require the use of ratings issued by
24 nationally recognized statistical rating organizations (in
25 this section referred to as the “ratings requirements”).

1 (b) SUBJECTS FOR EVALUATION; PROCESS OF EVAL-
2 UATION.—

3 (1) SUBJECTS FOR EVALUATION.—In con-
4 ducting the study under subsection (a), the Comp-
5 troller General of the United States shall evaluate—

6 (A) the necessity for and purpose of rat-
7 ings requirements;

8 (B) which ratings requirements, if any,
9 could be removed with minimal disruption to
10 the financial markets;

11 (C) the potential impact on the financial
12 markets and on investors if the ratings require-
13 ments identified under subparagraph (B) were
14 rescinded; and

15 (D) whether the financial markets and in-
16 vestors would benefit from the rescission of
17 such ratings requirements.

18 (2) PROCESS OF EVALUATION.—In conducting
19 the study under subsection (a), the Comptroller Gen-
20 eral of the United States shall research and take
21 into consideration the views of—

22 (A) the Federal financial regulatory regulat-
23 ories;

24 (B) hedge funds;

25 (C) banks;

- 1 (D) brokerage firms;
- 2 (E) mutual funds;
- 3 (F) pension funds; and
- 4 (G) all other interested parties.

5 (c) REPORT AND RECOMMENDATIONS.—Not later
6 than 2 years after the date of enactment of this Act, the
7 Comptroller General of the United States shall submit to
8 the Committee on Banking, Housing, and Urban Affairs
9 of the Senate and the Committee on Financial Services
10 of the House of Representatives a report on the results
11 of the study conducted under subsection (a), including rec-
12 ommendations, if any, on—

13 (1) which ratings requirements, if any, could be
14 removed with minimal disruption to the markets;
15 and

16 (2) whether the financial markets and investors
17 would benefit from the rescission of the ratings re-
18 quirements identified under paragraph (1).

19 (d) FEDERAL AGENCY REVIEW OF RATINGS RE-
20 QUIREMENTS.—

21 (1) REVIEW.—Each covered Federal agency
22 shall review—

23 (A) any regulation of the covered Federal
24 agency that requires the use of an assessment

1 of the credit worthiness of a security or money
2 market instrument;

3 (B) any other reference to credit ratings or
4 requirement relating to credit ratings in a regu-
5 lation of the covered Federal agency; and

6 (C) alternative standards of creditworthi-
7 ness that are based on market-generated indica-
8 tors, including yield spreads, bond prices, and
9 credit default swap spreads.

10 (2) MODIFICATIONS REQUIRED.—Except as
11 provided in paragraph (3), each covered Federal
12 agency shall modify any regulation identified under
13 paragraph (1)—

14 (A) to remove any reference to credit rat-
15 ings or a credit ratings requirement in the reg-
16 ulation; and

17 (B) to amend the regulation to require the
18 use of a standard of credit worthiness that—

19 (i) is not related to credit ratings; and

20 (ii) the covered Federal agency deter-
21 mines appropriate.

22 (3) EXCEPTION.—A covered Federal agency
23 may elect not to amend a regulation identified under
24 paragraph (1), if the covered Federal agency deter-
25 mines that—

1 (A) there is no reasonable alternative
2 standard of credit worthiness that could replace
3 a credit rating for purposes of the regulation;
4 and

5 (B) an amendment to the regulation would
6 be inconsistent with the purposes of the statute
7 that authorized the regulation and not in the
8 public interest.

9 (4) REPORT.—Not later than 1 year after the
10 date on which the Comptroller General submits the
11 report required under subsection (c), each covered
12 Federal agency shall submit to Congress a report
13 that contains—

14 (A) a description of any amendment under
15 paragraph (2); and

16 (B) an explanation of any determination
17 under paragraph (3).

18 (5) DEFINITION.—In this subsection, the term
19 “covered Federal agency” means—

20 (A) the Commission;

21 (B) the Corporation;

22 (C) the Office of the Comptroller of the
23 Currency;

24 (D) the Board of Governors;

1 (E) the National Credit Union Administra-
2 tion; and

3 (F) the Federal Housing Finance Agency.

4 **SEC. 939A. SECURITIES AND EXCHANGE COMMISSION**
5 **STUDY ON STRENGTHENING CREDIT RATING**
6 **AGENCY INDEPENDENCE.**

7 (a) STUDY.—The Commission shall conduct a study
8 of—

9 (1) the independence of nationally recognized
10 statistical rating organizations; and

11 (2) how the independence of nationally recog-
12 nized statistical rating organizations affects the rat-
13 ings issued by the nationally recognized statistical
14 rating organizations.

15 (b) SUBJECTS FOR EVALUATION.—In conducting the
16 study under subsection (a), the Commission shall evalu-
17 ate—

18 (1) the management of conflicts of interest
19 raised by a nationally recognized statistical rating
20 organization providing other services, including risk
21 management advisory services, ancillary assistance,
22 or consulting services;

23 (2) the potential impact of rules prohibiting a
24 nationally recognized statistical rating organization

1 that provides a rating to an issuer from providing
2 other services to the issuer; and

3 (3) any other issue relating to nationally recog-
4 nized statistical rating organizations, as the Chair-
5 man of the Commission determines is appropriate.

6 (c) REPORT.—Not later than 3 years after the date
7 of enactment of this Act, the Chairman of the Commission
8 shall submit to the Committee on Banking, Housing, and
9 Urban Affairs of the Senate and the Committee on Finan-
10 cial Services of the House of Representatives a report on
11 the results of the study conducted under subsection (a),
12 including recommendations, if any, for improving the in-
13 tegrity of ratings issued by nationally recognized statis-
14 tical rating organizations.

15 **SEC. 939B. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
16 **ON ALTERNATIVE BUSINESS MODELS.**

17 (a) STUDY.—The Comptroller General of the United
18 States shall conduct a study on alternative means for com-
19 pensating nationally recognized statistical rating organiza-
20 tions in order to create incentives for nationally recognized
21 statistical rating organizations to provide more accurate
22 credit ratings, including any statutory changes that would
23 be required to facilitate the use of an alternative means
24 of compensation.

1 (b) REPORT.—Not later than 1 year after the date
 2 of enactment of this Act, the Comptroller General shall
 3 submit to the Committee on Banking, Housing, and
 4 Urban Affairs of the Senate and the Committee on Finan-
 5 cial Services of the House of Representatives a report on
 6 the results of the study conducted under subsection (a),
 7 including recommendations, if any, for providing incen-
 8 tives to credit rating agencies to improve the credit rating
 9 process.

10 **SEC. 939C. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
 11 **ON THE CREATION OF AN INDEPENDENT**
 12 **PROFESSIONAL ANALYST ORGANIZATION.**

13 (a) STUDY.—The Comptroller General of the United
 14 States shall conduct a study on the feasibility and merits
 15 of creating an independent professional organization for
 16 rating analysts employed by nationally recognized statis-
 17 tical rating organizations that would be responsible for—

- 18 (1) establishing independent standards for gov-
 19 erning the profession of rating analysts;
 20 (2) establishing a code of ethical conduct; and
 21 (3) overseeing the profession of rating analysts.

22 (b) REPORT.—Not later than 1 year after the date
 23 of enactment of this Act, the Comptroller General shall
 24 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).

3 **Subtitle D—Improvements to the**
 4 **Asset-Backed Securitization**
 5 **Process**

6 **SEC. 941. REGULATION OF CREDIT RISK RETENTION.**

7 (a) DEFINITION OF ASSET-BACKED SECURITY.—Sec-
 8 tion 3(a) of the Securities Exchange Act of 1934 (15
 9 U.S.C. 78c(a)) is amended by adding at the end the fol-
 10 lowing:

11 “(77) ASSET-BACKED SECURITY.—The term
 12 ‘asset-backed security’—

13 “(A) means a fixed-income or other secu-
 14 rity collateralized by any type of self-liquidating
 15 financial asset (including a loan, a lease, a
 16 mortgage, or a secured or unsecured receivable)
 17 that allows the holder of the security to receive
 18 payments that depend primarily on cash flow
 19 from the asset, including—

20 “(i) a collateralized mortgage obliga-
 21 tion;

22 “(ii) a collateralized debt obligation;

23 “(iii) a collateralized bond obligation;

24 “(iv) a collateralized debt obligation of
 25 asset-backed securities;

1 “(v) a collateralized debt obligation of
2 collateralized debt obligations; and

3 “(vi) a security that the Commission,
4 by rule, determines to be an asset-backed
5 security for purposes of this section; and

6 “(B) does not include a security issued by
7 a finance subsidiary held by the parent com-
8 pany or a company controlled by the parent
9 company, if none of the securities issued by the
10 finance subsidiary are held by an entity that is
11 not controlled by the parent company.”.

12 (b) CREDIT RISK RETENTION.—The Securities Ex-
13 change Act of 1934 (15 U.S.C. 78a et seq.) is amended
14 by inserting after section 15F, as added by this Act, the
15 following:

16 **“SEC. 15G. CREDIT RISK RETENTION.**

17 “(a) DEFINITIONS.—In this section—

18 “(1) the term ‘Federal banking agencies’ means
19 the Office of the Comptroller of the Currency and
20 the Federal Deposit Insurance Corporation;

21 “(2) the term ‘insured depository institution’
22 has the same meaning as in section 3(c) of the Fed-
23 eral Deposit Insurance Act (12 U.S.C. 1813(c));

24 “(3) the term ‘securitizer’ means—

1 “(A) an issuer of an asset-backed security;

2 or

3 “(B) a person who organizes and initiates
4 an asset-backed securities transaction by selling
5 or transferring assets, either directly or indi-
6 rectly, including through an affiliate, to the
7 issuer; and

8 “(4) the term ‘originator’ means a person
9 who—

10 “(A) through the extension of credit or
11 otherwise, creates a financial asset that
12 collateralizes an asset-backed security; and

13 “(B) sells an asset to a securitizer.

14 “(b) IN GENERAL.—Not later than 270 days after
15 the date of enactment of this section, the Federal banking
16 agencies and the Commission shall jointly prescribe regu-
17 lations to require any securitizer to retain an economic
18 interest in a portion of the credit risk for any asset that
19 the securitizer, through the issuance of an asset-backed
20 security, transfers, sells, or conveys to a third party.

21 “(c) STANDARDS FOR REGULATIONS.—

22 “(1) STANDARDS.—The regulations prescribed
23 under subsection (b) shall—

24 “(A) prohibit a securitizer from directly or
25 indirectly hedging or otherwise transferring the

1 credit risk that the securitizer is required to re-
2 tain with respect to an asset;

3 “(B) require a securitizer to retain—

4 “(i) not less than 5 percent of the
5 credit risk for any asset that is trans-
6 ferred, sold, or conveyed through the
7 issuance of an asset-backed security by the
8 securitizer; or

9 “(ii) less than 5 percent of the credit
10 risk for an asset that is transferred, sold,
11 or conveyed through the issuance of an
12 asset-backed security by the securitizer, if
13 the originator of the asset meets the un-
14 derwriting standards prescribed under
15 paragraph (2)(B);

16 “(C) specify—

17 “(i) the permissible forms of risk re-
18 tention for purposes of this section; and

19 “(ii) the minimum duration of the
20 risk retention required under this section;

21 “(D) apply, regardless of whether the
22 securitizer is an insured depository institution;
23 and

24 “(E) provide for—

1 “(i) a total or partial exemption of
2 any securitization, as may be appropriate
3 in the public interest and for the protec-
4 tion of investors; and

5 “(ii) the allocation of risk retention
6 obligations between a securitizer and an
7 originator in the case of a securitizer that
8 purchases assets from an originator, as the
9 Federal banking agencies and the Commis-
10 sion jointly determine appropriate.

11 “(2) ASSET CLASSES.—

12 “(A) ASSET CLASSES.—The regulations
13 prescribed under subsection (b) shall establish
14 asset classes with separate rules for securitizers
15 of different classes of assets, including residen-
16 tial mortgages, commercial mortgages, commer-
17 cial loans, auto loans, and any other class of as-
18 sets that the Federal banking agencies and the
19 Commission deem appropriate.

20 “(B) CONTENTS.—For each asset class es-
21 tablished under subparagraph (A), the regula-
22 tions prescribed under subsection (b) shall es-
23 tablish underwriting standards that specify the
24 terms, conditions, and characteristics of a loan

1 within the asset class that indicate a reduced
2 credit risk with respect to the loan.

3 “(d) ORIGINATORS.—In determining how to allocate
4 risk retention obligations between a securitizer and an
5 originator under subsection (c)(1)(E)(ii), the Federal
6 banking agencies and the Commission shall—

7 “(1) reduce the percentage of risk retention ob-
8 ligations required of the securitizer by the percent-
9 age of risk retention obligations required of the
10 originator; and

11 “(2) consider—

12 “(A) whether the assets sold to the
13 securitizer have terms, conditions, and charac-
14 teristics that reflect reduced credit risk;

15 “(B) whether the form or volume of trans-
16 actions in securitization markets creates incen-
17 tives for imprudent origination of the type of
18 loan or asset to be sold to the securitizer; and

19 “(C) the potential impact of the risk reten-
20 tion obligations on the access of consumers and
21 businesses to credit on reasonable terms, which
22 may not include the transfer of credit risk to a
23 third party.

24 “(e) EXEMPTIONS, EXCEPTIONS, AND ADJUST-
25 MENTS.—

1 “(1) IN GENERAL.—The Federal banking agen-
2 cies and the Commission may jointly adopt or issue
3 exemptions, exceptions, or adjustments to the rules
4 issued under this section, including exemptions, ex-
5 ceptions, or adjustments for classes of institutions or
6 assets relating to the risk retention requirement and
7 the prohibition on hedging under subsection (c)(1).

8 “(2) APPLICABLE STANDARDS.—Any exemp-
9 tion, exception, or adjustment adopted or issued by
10 the Federal banking agencies and the Commission
11 under this paragraph shall—

12 “(A) help ensure high quality underwriting
13 standards for the securitizers and originators of
14 assets that are securitized or available for
15 securitization; and

16 “(B) encourage appropriate risk manage-
17 ment practices by the securitizers and origina-
18 tors of assets, improve the access of consumers
19 and businesses to credit on reasonable terms, or
20 otherwise be in the public interest and for the
21 protection of investors.

22 “(3) FARM CREDIT SYSTEM INSTITUTIONS.—A
23 Farm Credit System institution, including the Fed-
24 eral Agricultural Mortgage Corporation, that is
25 chartered and subject to the provisions of the Farm

1 Credit Act of 1971, as amended (12 U.S.C. 2001 et
2 seq.), shall be exempt from the risk retention provi-
3 sions of this subsection.

4 “(f) ENFORCEMENT.—The regulations issued under
5 this section shall be enforced by—

6 “(1) the appropriate Federal banking agency,
7 with respect to any securitizer that is an insured de-
8 pository institution; and

9 “(2) the Commission, with respect to any
10 securitizer that is not an insured depository institu-
11 tion.

12 “(g) AUTHORITY OF COMMISSION.—The authority of
13 the Commission under this section shall be in addition to
14 the authority of the Commission to otherwise enforce the
15 securities laws.

16 “(h) EFFECTIVE DATE OF REGULATIONS.—The reg-
17 ulations issued under this section shall become effective—

18 “(1) with respect to securitizers and originators
19 of asset-backed securities backed by residential
20 mortgages, 1 year after the date on which final rules
21 under this section are published in the Federal Reg-
22 ister; and

23 “(2) with respect to securitizers and originators
24 of all other classes of asset-backed securities, 2 years

1 after the date on which final rules under this section
 2 are published in the Federal Register.”.

3 **SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-**
 4 **BACKED SECURITIES.**

5 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
 6 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.
 7 78o(d)) is amended—

8 (1) by striking “(d) Each” and inserting the
 9 following:

10 “(d) SUPPLEMENTARY AND PERIODIC INFORMA-
 11 TION.—

12 “(1) IN GENERAL.—Each”;

13 (2) in the third sentence, by inserting after “se-
 14 curities of each class” the following: “, other than
 15 any class of asset-backed securities,”; and

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

17 “(2) ASSET-BACKED SECURITIES.—

18 “(A) SUSPENSION OF DUTY TO FILE.—The
 19 Commission may, by rule or regulation, provide
 20 for the suspension or termination of the duty to
 21 file under this subsection for any class of asset-
 22 backed security, on such terms and conditions
 23 and for such period or periods as the Commis-
 24 sion deems necessary or appropriate in the pub-
 25 lic interest or for the protection of investors.

1 “(B) CLASSIFICATION OF ISSUERS.—The
 2 Commission may, for purposes of this sub-
 3 section, classify issuers and prescribe require-
 4 ments appropriate for each class of issuers of
 5 asset-backed securities.”.

6 (b) SECURITIES ACT OF 1933.—Section 7 of the Se-
 7 curities Act of 1933 (15 U.S.C. 77g) is amended by add-
 8 ing at the end the following:

9 “(c) DISCLOSURE REQUIREMENTS.—

10 “(1) IN GENERAL.—The Commission shall
 11 adopt regulations under this subsection requiring
 12 each issuer of an asset-backed security to disclose,
 13 for each tranche or class of security, information re-
 14 garding the assets backing that security.

15 “(2) CONTENT OF REGULATIONS.—In adopting
 16 regulations under this subsection, the Commission
 17 shall—

18 “(A) set standards for the format of the
 19 data provided by issuers of an asset-backed se-
 20 curity, which shall, to the extent feasible, facili-
 21 tate comparison of such data across securities
 22 in similar types of asset classes; and

23 “(B) require issuers of asset-backed securi-
 24 ties, at a minimum, to disclose asset-level or

1 loan-level data necessary for investors to inde-
2 pendently perform due diligence, including—

3 “(i) data having unique identifiers re-
4 lating to loan brokers or originators;

5 “(ii) the nature and extent of the
6 compensation of the broker or originator of
7 the assets backing the security; and

8 “(iii) the amount of risk retention by
9 the originator and the securitizer of such
10 assets.”.

11 **SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-**
12 **BACKED OFFERINGS.**

13 Not later than 180 days after the date of enactment
14 of this Act, the Securities and Exchange Commission shall
15 prescribe regulations on the use of representations and
16 warranties in the market for asset-backed securities (as
17 that term is defined in section 3(a)(77) of the Securities
18 Exchange Act of 1934, as added by this subtitle) that—

19 (1) require each national recognized statistical
20 rating organization to include in any report accom-
21 panying a credit rating a description of—

22 (A) the representations, warranties, and
23 enforcement mechanisms available to investors;
24 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
 7 fulfilled and unfulfilled repurchase requests across
 8 all trusts aggregated by the securitizer, so that in-
 9 vestors may identify asset originators with clear un-
 10 derwriting deficiencies.

11 **SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURI-**
 12 **TIES ACT OF 1933.**

13 (a) EXEMPTION ELIMINATED.—Section 4 of the Se-
 14 curities 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.
4 77g), as amended by this subtitle, is amended by adding
5 at the end the following:

6 “(d) REGISTRATION STATEMENT FOR ASSET-
7 BACKED SECURITIES.—Not later than 180 days after the
8 date of enactment of this subsection, the Commission shall
9 issue rules relating to the registration statement required
10 to be filed by any issuer of an asset-backed security (as
11 that term is defined in section 3(a)(77) of the Securities
12 Exchange Act of 1934) that require any issuer of an asset-
13 backed security—

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
24 U.S.C. 78n) the following:

1 **“SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECU-**
2 **TIVE COMPENSATION.**

3 “(a) SEPARATE RESOLUTION REQUIRED.—Any
4 proxy or consent or authorization for an annual or other
5 meeting of the shareholders occurring after the end of the
6 6-month period beginning on the date of enactment of this
7 section, for which the proxy solicitation rules of the Com-
8 mission require compensation disclosure, shall include a
9 separate resolution subject to shareholder vote to approve
10 the compensation of executives, as disclosed pursuant to
11 section 229.402 of title 17, Code of Federal Regulations,
12 or any successor thereto.

13 “(b) RULE OF CONSTRUCTION.—The shareholder
14 vote referred to in subsection (a) shall not be binding on
15 the issuer or the board of directors of an issuer, and may
16 not 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
4 added 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 ex-
10 changes and national securities associations to pro-
11 hibit the listing of any security of an issuer that
12 does not comply with the requirements of this sub-
13 section.

14 “(2) INDEPENDENCE OF COMPENSATION COM-
15 MITTEES.—The rules of the Commission under para-
16 graph (1) shall require that each member of the
17 compensation committee of the board of directors of
18 an issuer be—

19 “(A) a member of the board of directors of
20 the issuer; and

21 “(B) independent.

22 “(3) INDEPENDENCE.—The rules of the Com-
23 mission under paragraph (1) shall require that, in
24 determining the definition of the term ‘independ-
25 ence’ for purposes of paragraph (2), the national se-

1 securities exchanges and the national securities asso-
2 ciations shall consider relevant factors, including—

3 “(A) the source of compensation of a mem-
4 ber of the board of directors of an issuer, in-
5 cluding any consulting, advisory, or other com-
6 pensatory fee paid by the issuer to such mem-
7 ber of the board of directors; and

8 “(B) whether a member of the board of di-
9 rectors of an issuer is affiliated with the issuer,
10 a subsidiary of the issuer, or an affiliate of a
11 subsidiary of the issuer.

12 “(4) EXEMPTION AUTHORITY.—The rules of
13 the Commission under paragraph (1) shall permit a
14 national securities exchange or a national securities
15 association to exempt a particular relationship from
16 the requirements of paragraph (2), with respect to
17 the members of a compensation committee, as the
18 national securities exchange or national securities
19 association determines is appropriate, taking into
20 consideration the size of an issuer and any other rel-
21 evant factors.

22 “(b) INDEPENDENCE OF COMPENSATION CONSULT-
23 ANTS AND OTHER COMPENSATION COMMITTEE ADVIS-
24 ERS.—

1 “(1) IN GENERAL.—The compensation com-
2 mittee of an issuer may only select a compensation
3 consultant, legal counsel, or other adviser to the
4 compensation committee after taking into consider-
5 ation the factors identified by the Commission under
6 paragraph (2).

7 “(2) RULES.—The Commission shall identify
8 factors that affect the independence of a compensa-
9 tion consultant, legal counsel, or other adviser to a
10 compensation committee of an issuer, including—

11 “(A) the provision of other services to the
12 issuer by the person that employs the com-
13 pensation consultant, legal counsel, or other ad-
14 viser;

15 “(B) the amount of fees received from the
16 issuer by the person that employs the com-
17 pensation consultant, legal counsel, or other ad-
18 viser, as a percentage of the total revenue of
19 the person that employs the compensation con-
20 sultant, legal counsel, or other adviser;

21 “(C) the policies and procedures of the
22 person that employs the compensation consult-
23 ant, legal counsel, or other adviser that are de-
24 signed to prevent conflicts of interest;

1 “(D) any business or personal relationship
2 of the compensation consultant, legal counsel,
3 or other adviser with a member of the com-
4 pensation committee; and

5 “(E) any stock of the issuer owned by the
6 compensation consultant, legal counsel, or other
7 adviser.

8 “(c) COMPENSATION COMMITTEE AUTHORITY RE-
9 LATING TO COMPENSATION CONSULTANTS.—

10 “(1) AUTHORITY TO RETAIN COMPENSATION
11 CONSULTANT.—

12 “(A) IN GENERAL.—The compensation
13 committee of an issuer, in its capacity as a
14 committee of the board of directors, may, in its
15 sole discretion, retain or obtain the advice of a
16 compensation consultant.

17 “(B) DIRECT RESPONSIBILITY OF COM-
18 PENSATION COMMITTEE.—The compensation
19 committee of an issuer shall be directly respon-
20 sible for the appointment, compensation, and
21 oversight of the work of a compensation con-
22 sultant.

23 “(C) RULE OF CONSTRUCTION.—This
24 paragraph may not be construed—

1 “(i) to require the compensation com-
2 mittee to implement or act consistently
3 with the advice or recommendations of the
4 compensation consultant; or

5 “(ii) to affect the ability or obligation
6 of a compensation committee to exercise its
7 own judgment in fulfillment of the duties
8 of the compensation committee.

9 “(2) DISCLOSURE.—In any proxy or consent
10 solicitation material for an annual meeting of the
11 shareholders (or a special meeting in lieu of the an-
12 nual meeting) occurring on or after the date that is
13 1 year after the date of enactment of this section,
14 each issuer shall disclose in the proxy or consent
15 material, in accordance with regulations of the Com-
16 mission, whether—

17 “(A) the compensation committee of the
18 issuer retained or obtained the advice of a com-
19 pensation consultant; and

20 “(B) the work of the compensation con-
21 sultant has raised any conflict of interest and,
22 if so, the nature of the conflict and how the
23 conflict is being addressed.

24 “(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL
25 COUNSEL AND OTHER ADVISERS.—

1 “(1) IN GENERAL.—The compensation com-
2 mittee of an issuer, in its capacity as a committee
3 of the board of directors, may, in its sole discretion,
4 retain and obtain the advice of independent legal
5 counsel and other advisers.

6 “(2) DIRECT RESPONSIBILITY OF COMPENSA-
7 TION COMMITTEE.—The compensation committee of
8 an issuer shall be directly responsible for the ap-
9 pointment, compensation, and oversight of the work
10 of independent legal counsel and other advisers.

11 “(3) RULE OF CONSTRUCTION.—This sub-
12 section may not be construed—

13 “(A) to require a compensation committee
14 to implement or act consistently with the advice
15 or recommendations of independent legal coun-
16 sel or other advisers under this subsection; or

17 “(B) to affect the ability or obligation of a
18 compensation committee to exercise its own
19 judgment in fulfillment of the duties of the
20 compensation committee.

21 “(e) COMPENSATION OF COMPENSATION CONSULT-
22 ANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER AD-
23 VISERS.—Each issuer shall provide for appropriate fund-
24 ing, as determined by the compensation committee in its

1 capacity as a committee of the board of directors, for pay-
2 ment of reasonable compensation—

3 “(1) to a compensation consultant; and

4 “(2) to independent legal counsel or any other
5 adviser to the compensation committee.

6 “(f) COMMISSION RULES.—

7 “(1) IN GENERAL.—Not later than 360 days
8 after the date of enactment of this section, the Com-
9 mission shall, by rule, direct the national securities
10 exchanges and national securities associations to
11 prohibit the listing of any security of an issuer that
12 is not in compliance with the requirements of this
13 section.

14 “(2) OPPORTUNITY TO CURE DEFECTS.—The
15 rules of the Commission under paragraph (1) shall
16 provide for appropriate procedures for an issuer to
17 have a reasonable opportunity to cure any defects
18 that would be the basis for the prohibition under
19 paragraph (1), before the imposition of such prohibi-
20 tion.

21 “(3) EXEMPTION AUTHORITY.—

22 “(A) IN GENERAL.—The rules of the Com-
23 mission under paragraph (1) shall permit a na-
24 tional securities exchange or a national securi-
25 ties association to exempt a category of issuers

1 from the requirements under this section, as
2 the national securities exchange or the national
3 securities association determines is appropriate.

4 “(B) CONSIDERATIONS.—In determining
5 appropriate exemptions under subparagraph
6 (A), the national securities exchange or the na-
7 tional securities association shall take into ac-
8 count the potential impact of the requirements
9 of this section on smaller reporting issuers.”.

10 **SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.**

11 (a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—
12 Section 14 of the Securities Exchange Act of 1934 (15
13 U.S.C. 78n), as amended by this title, is amended by add-
14 ing at the end the following:

15 “(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—
16 The Commission shall, by rule, require each issuer to dis-
17 close in any proxy or consent solicitation material for an
18 annual meeting of the shareholders of the issuer a clear
19 description of any compensation required to be disclosed
20 by the issuer under section 229.402 of title 17, Code of
21 Federal Regulations (or any successor thereto), including
22 information that shows the relationship between executive
23 compensation actually paid and the financial performance
24 of the issuer, taking into account any change in the value
25 of the shares of stock and dividends of the issuer and any

1 distributions. The disclosure under this subsection may in-
2 clude a graphic representation of the information required
3 to be disclosed.”.

4 (b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

5 (1) IN GENERAL.—The Commission shall
6 amend section 229.402 of title 17, Code of Federal
7 Regulations, to require each issuer to disclose in any
8 filing of the issuer described in section 229.10(a) of
9 title 17, Code of Federal Regulations (or any suc-
10 cessor thereto)—

11 (A) the median of the annual total com-
12 pensation of all employees of the issuer, except
13 the chief executive officer (or any equivalent po-
14 sition) of the issuer;

15 (B) the annual total compensation of the
16 chief executive officer (or any equivalent posi-
17 tion) of the issuer; and

18 (C) the ratio of the amount described in
19 subparagraph (A) to the amount described in
20 subparagraph (B).

21 (2) TOTAL COMPENSATION.—For purposes of
22 this subsection, the total compensation of an em-
23 ployee of an issuer shall be determined in accordance
24 with section 229.402(c)(2)(x) of title 17, Code of

1 Federal Regulations, as in effect on the day before
2 the date of enactment of this Act.

3 **SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COM-**
4 **PENSATION.**

5 The Securities Exchange Act of 1934 is amended by
6 inserting after section 10C, as added by section 952, the
7 following:

8 **“SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COM-**
9 **PENSATION POLICY.**

10 “(a) LISTING STANDARDS.—The Commission shall,
11 by rule, direct the national securities exchanges and na-
12 tional securities associations to prohibit the listing of any
13 security of an issuer that does not comply with the re-
14 quirements of this section.

15 “(b) RECOVERY OF FUNDS.—The rules of the Com-
16 mission under subsection (a) shall require each issuer to
17 develop and implement a policy providing—

18 “(1) for disclosure of the policy of the issuer on
19 incentive-based compensation that is based on finan-
20 cial information required to be reported under the
21 securities laws; and

22 “(2) that, in the event that the issuer is re-
23 quired to prepare an accounting restatement due to
24 the material noncompliance of the issuer with any fi-
25 nancial reporting requirement under the securities

1 laws, the issuer will recover from any current or
2 former executive officer of the issuer who received
3 incentive-based compensation (including stock op-
4 tions awarded as compensation) during the 3-year
5 period preceding the date on which the issuer is re-
6 quired to prepare an accounting restatement, based
7 on the erroneous data, in excess of what would have
8 been paid to the executive officer under the account-
9 ing restatement.”.

10 **SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIREC-**
11 **TOR HEDGING.**

12 Section 14 of the Securities Exchange Act of 1934
13 (15 U.S.C. 78n), as amended by this title, is amended by
14 adding at the end the following:

15 “(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND
16 DIRECTORS.—The Commission shall, by rule, require each
17 issuer to disclose in any proxy or consent solicitation mate-
18 rial for an annual meeting of the shareholders of the issuer
19 whether any employee or member of the board of directors
20 of the issuer, or any designee of such employee or member,
21 is permitted to purchase financial instruments (including
22 prepaid variable forward contracts, equity swaps, collars,
23 and exchange funds) that are designed to hedge or offset
24 any decrease in the market value of equity securities—

1 “(1) granted to the employee or member of the
 2 board of directors by the issuer as part of the com-
 3 pensation of the employee or member of the board
 4 of directors; or

5 “(2) held, directly or indirectly, by the employee
 6 or member of the board of directors.”.

7 **SEC. 956. EXCESSIVE COMPENSATION BY HOLDING COMPA-**
 8 **NIES OF DEPOSITORY INSTITUTIONS.**

9 Section 5 of the Bank Holding Company Act of 1956
 10 (12 U.S.C. 1844) is amended by adding at the end the
 11 following:

12 “(i) EXCESSIVE COMPENSATION.—

13 “(1) IN GENERAL.—Not later than 180 days
 14 after the transfer date established under section 311
 15 of the Restoring American Financial Stability Act of
 16 2010, the Board of Governors, in consultation with
 17 the Comptroller of the Currency and the Federal
 18 Deposit Insurance Corporation, shall, by rule, estab-
 19 lish standards prohibiting as an unsafe and unsound
 20 practice any compensation plan of a bank holding
 21 company that—

22 “(A) provides an executive officer, em-
 23 ployee, director, or principal shareholder of the
 24 bank holding company with excessive compensa-
 25 tion, fees, or benefits; or

1 “(B) could lead to material financial loss
2 to the bank holding company.

3 “(2) CONSIDERATIONS.—In establishing the
4 standards under paragraph (1), the Board of Gov-
5 ernors shall take into consideration the compensa-
6 tion standards described in section 39(c) of the Fed-
7 eral Deposit Insurance Act (12 U.S.C. 1831p–1(c))
8 and the views and recommendations of the Comp-
9 troller of the Currency and the Federal Deposit In-
10 surance Corporation.”.

11 **SEC. 957. VOTING BY BROKERS.**

12 Section 6(b) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78f(b)) is amended—

14 (1) in paragraph (9)—

15 (A) in subparagraph (A), by redesignating
16 clauses (i) through (v) as subclauses (I)
17 through (V), respectively, and adjusting the
18 margins accordingly;

19 (B) by redesignating subparagraphs (A)
20 through (D) as clauses (i) through (iv), respec-
21 tively, and adjusting the margins accordingly;

22 (C) by inserting “(A)” after “(9)”; and

23 (D) in the matter immediately following
24 clause (iv), as so redesignated, by striking “As
25 used” and inserting the following:

1 “(B) As used”.

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

3 “(10)(A) The rules of the exchange prohibit
4 any member that is not the beneficial owner of a se-
5 curity registered under section 12 from granting a
6 proxy to vote the security in connection with a
7 shareholder vote described in subparagraph (B), un-
8 less the beneficial owner of the security has in-
9 structed the member to vote the proxy in accordance
10 with the voting instructions of the beneficial owner.

11 “(B) A shareholder vote described in this sub-
12 paragraph is a shareholder vote with respect to the
13 election of a member of the board of directors of an
14 issuer, executive compensation, or any other signifi-
15 cant matter, as determined by the Commission, by
16 rule.

17 “(C) Nothing in this paragraph shall be con-
18 strued to prohibit a national securities exchange
19 from prohibiting a member that is not the beneficial
20 owner of a security registered under section 12 from
21 granting a proxy to vote the security in connection
22 with a shareholder vote not described in subpara-
23 graph (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
7 later than 90 days after the end of each fiscal year, the
8 Commission shall submit a report to the Committee on
9 Banking, Housing, and Urban Affairs of the Senate and
10 the Committee on Financial Services of the House of Rep-
11 resentatives on the conduct by the Commission of exami-
12 nations of registered entities, enforcement investigations,
13 and review of corporate financial securities filings.

14 (b) CONTENTS OF REPORTS.—Each report under
15 subsection (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 ap-
21 plicable to the staff of the Commission who per-
22 form examinations of registered entities, en-
23 forcement investigations, and reviews of cor-
24 porate financial 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
6 the United States of the review carried out under
7 subsection (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 Divi-
12 sion of Corporation Finance, and the Director of the
13 Office of Compliance Inspections and Examinations
14 (or the 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
2 internal supervisory controls during the 90-day
3 period 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 oper-
7 ation of internal supervisory controls that could
8 adversely affect the ability of the Division or
9 Office to consistently conduct inspections, or in-
10 vestigations, or reviews of filings with profes-
11 sional competence 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
15 United States shall submit to the Committee on Banking,
16 Housing, and Urban Affairs of the Senate and the Com-
17 mittee on Financial Services of the House of Representa-
18 tives an initial report that contains a review of the ade-
19 quacy and effectiveness of the internal supervisory control
20 structure and procedures 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
2 Financial 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
8 using the skills, talents, and motivation of the
9 employees of the Commission to achieve the
10 goals of the 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
17 staff of the Commission;

18 (E) the efficiency of communication be-
19 tween the units of the Commission regarding
20 the work of the Commission (including commu-
21 nication between divisions and between subunits
22 of a division) and the efforts by the Commission
23 to promote such communication;

24 (F) the turnover within subunits of the
25 Commission, including the identification of su-

1 pervisors 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
7 Commission;

8 (I) the actions taken by the Commission
9 regarding employees of the Commission who
10 have 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
20 more effectively and efficiently to carry out the mis-
21 sion of 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
25 and other former employees of the Commission, the In-

1 spector General of the Commission, persons that have
2 business before the Commission, any union representing
3 the employees of the Commission, private management
4 consultants, academics, and any other source that the
5 Comptroller General deems appropriate.

6 (d) REPORT BY COMMISSION.—Not later than 90
7 days after the date on which the Comptroller General sub-
8 mits each report under subsection (a), the Commission
9 shall submit to the Committee on Banking, Housing, and
10 Urban Affairs of the Senate and the Committee on Finan-
11 cial Services of the House of Representatives a report de-
12 scribing the actions taken by the Commission in response
13 to the recommendations contained in the report under
14 subsection (a).

15 (e) REIMBURSEMENTS FOR COST OF REPORTS.—

16 (1) REIMBURSEMENTS REQUIRED.—The Com-
17 mission shall reimburse the Government Account-
18 ability Office for the full cost of making the reports
19 under this section, as billed therefor by the Comp-
20 troller General.

21 (2) CREDITING AND USE OF REIMBURSE-
22 MENTS.—Such reimbursements shall—

23 (A) be credited to the appropriation ac-
24 count “Salaries and Expenses, Government Ac-

1 countability Office” current when the payment
2 is received; and

3 (B) remain available until expended.

4 **SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.**

5 (a) REPORTS OF COMMISSION.—

6 (1) ANNUAL REPORTS REQUIRED.—Not later
7 than 6 months after the end of each fiscal year, the
8 Commission shall publish and submit to Congress a
9 report that—

10 (A) describes the responsibility of the man-
11 agement of the Commission for establishing and
12 maintaining an adequate internal control struc-
13 ture and procedures for financial reporting; and

14 (B) contains an assessment of the effec-
15 tiveness of the internal control structure and
16 procedures for financial reporting of the Com-
17 mission during that fiscal year.

18 (2) ATTESTATION.—The reports required under
19 paragraph (1) shall be attested to by the Chairman
20 and chief financial officer of the Commission.

21 (b) REPORT BY COMPTROLLER GENERAL.—

22 (1) REPORT REQUIRED.—Not later than 6
23 months after the end of the first fiscal year after the
24 date of enactment of this Act, the Comptroller Gen-

1 eral of the United States shall submit a report to
2 Congress that assesses—

3 (A) the effectiveness of the internal control
4 structure and procedures of the Commission for
5 financial reporting; and

6 (B) the assessment of the Commission
7 under subsection (a)(1)(B).

8 (2) ATTESTATION.—The Comptroller General
9 shall attest to, and report on, the assessment made
10 by the Commission under subsection (a).

11 (c) REIMBURSEMENTS FOR COST OF REPORTS.—

12 (1) REIMBURSEMENTS REQUIRED.—The Com-
13 mission shall reimburse the Government Account-
14 ability Office for the full cost of making the reports
15 under subsection (b), as billed therefor by the Comp-
16 troller General.

17 (2) CREDITING AND USE OF REIMBURSE-
18 MENTS.—Such reimbursements shall—

19 (A) be credited to the appropriation ac-
20 count “Salaries and Expenses, Government Ac-
21 countability Office” current when the payment
22 is received; and

23 (B) remain available until expended.

1 **SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURI-**
2 **TIES ASSOCIATIONS.**

3 (a) REPORT REQUIRED.—Not later than 2 years
4 after the date of enactment of this Act, and every 3 years
5 thereafter, the Comptroller General of the United States
6 shall submit 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 a report that
9 includes an evaluation of the oversight by the Commission
10 of national securities associations registered under section
11 15A of the Securities Exchange Act of 1934 (15 U.S.C.
12 78o–3) with respect to—

13 (1) the governance of such national securities
14 associations, including the identification and man-
15 agement of conflicts of interest by such national se-
16 curities associations, together with an analysis of the
17 impact of any conflicts of interest on the regulatory
18 enforcement or rulemaking by such national securi-
19 ties associations;

20 (2) the examinations carried out by the national
21 securities associations, including the expertise of the
22 examiners;

23 (3) the executive compensation practices of such
24 national securities associations;

25 (4) the arbitration services provided by the na-
26 tional securities associations;

1 (5) the review performed by national securities
2 associations of advertising by the members of the
3 national securities associations;

4 (6) the cooperation with and assistance to State
5 securities administrators by the national securities
6 associations to promote investor protection;

7 (7) how the funding of national securities asso-
8 ciations is used to support the mission of the na-
9 tional securities associations, including—

10 (A) the methods of funding;

11 (B) the sufficiency of funds;

12 (C) how funds are invested by the national
13 securities association pending use; and

14 (D) the impact of the methods, sufficiency,
15 and investment of funds on regulatory enforce-
16 ment by the national securities associations;

17 (8) the policies regarding the employment of
18 former employees of national securities associations
19 by regulated entities;

20 (9) the ongoing effectiveness of the rules of the
21 national securities associations in achieving the goals
22 of the rules;

23 (10) the transparency of governance and activi-
24 ties of the national securities associations; and

1 (11) any other issue that has an impact, as de-
 2 termined by the Comptroller General, on the effec-
 3 tiveness of such national securities associations in
 4 performing their mission and in dealing fairly with
 5 investors and members;

6 (b) REIMBURSEMENTS FOR COST OF REPORTS.—

7 (1) REIMBURSEMENTS REQUIRED.—The Com-
 8 mission shall reimburse the Government Account-
 9 ability Office for the full cost of making the reports
 10 under subsection (a), as billed therefor by the Comp-
 11 troller General.

12 (2) CREDITING AND USE OF REIMBURSE-
 13 MENTS.—Such reimbursements shall—

14 (A) be credited to the appropriation ac-
 15 count “Salaries and Expenses, Government Ac-
 16 countability Office” current when the payment
 17 is received; and

18 (B) remain available until expended.

19 **SEC. 965. COMPLIANCE EXAMINERS.**

20 Section 4 of the Securities Exchange Act of 1934 (15
 21 U.S.C. 78d) is amended by adding at the end the fol-
 22 lowing:

23 “(h) EXAMINERS.—

24 “(1) DIVISION OF TRADING AND MARKETS.—

25 The Division of Trading and Markets of the Com-

1 mission, or any successor organizational unit, shall
 2 have a staff of examiners who shall—

3 “(A) perform compliance inspections and
 4 examinations of entities under the jurisdiction
 5 of that Division; and

6 “(B) report to the Director of that Divi-
 7 sion.

8 “(2) DIVISION OF INVESTMENT MANAGE-
 9 MENT.—The Division of Investment Management of
 10 the Commission, or any successor organizational
 11 unit, shall have a staff of examiners who shall—

12 “(A) perform compliance inspections and
 13 examinations of entities under the jurisdiction
 14 of that Division; and

15 “(B) report to the Director of that Divi-
 16 sion.”.

17 **SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE**
 18 **COMMISSION.**

19 The Securities Exchange Act of 1934 (15 U.S.C. 78a
 20 et seq.) is amended by inserting after section 4C (15
 21 U.S.C. 78d–3) the following:

22 **“SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.**

23 “(a) SUGGESTION SUBMISSIONS BY COMMISSION EM-
 24 PLOYEES.—

1 “(1) HOTLINE ESTABLISHED.—The Inspector
2 General of the Commission shall establish and main-
3 tain a telephone hotline or other electronic means for
4 the receipt of—

5 “(A) suggestions by employees of the Com-
6 mission for improvements in the work effi-
7 ciency, effectiveness, and productivity, and the
8 use of the resources, of the Commission; and

9 “(B) allegations by employees of the Com-
10 mission of waste, abuse, misconduct, or mis-
11 management within the Commission.

12 “(2) CONFIDENTIALITY.—The Inspector Gen-
13 eral shall maintain as confidential—

14 “(A) the identity of any individual who
15 provides information by the means established
16 under paragraph (1), unless the individual re-
17 quests otherwise, in writing; and

18 “(B) at the request of any such individual,
19 any specific information provided by the indi-
20 vidual.

21 “(b) CONSIDERATION OF REPORTS.—The Inspector
22 General shall consider any suggestions or allegations re-
23 ceived by the means established under subsection (a)(1),
24 and shall recommend appropriate action in relation to
25 such suggestions or allegations.

1 “(c) RECOGNITION.—The Inspector General may rec-
2 ognize any employee who makes a suggestion under sub-
3 section (a)(1) (or by other means) that would or does—

4 “(1) increase the work efficiency, effectiveness,
5 or productivity of the Commission; or

6 “(2) reduce waste, abuse, misconduct, or mis-
7 management within the Commission.

8 “(d) REPORT.—The Inspector General of the Com-
9 mission shall submit to Congress an annual report con-
10 taining a description of—

11 “(1) the nature, number, and potential benefits
12 of any suggestions received under subsection (a);

13 “(2) the nature, number, and seriousness of
14 any allegations received under subsection (a);

15 “(3) any recommendations made or actions
16 taken by the Inspector General in response to sub-
17 stantiated allegations received under subsection (a);
18 and

19 “(4) any action the Commission has taken in
20 response to suggestions or allegations received under
21 subsection (a).

22 “(e) FUNDING.—The activities of the Inspector Gen-
23 eral under this subsection shall be funded by the Securities
24 and Exchange Commission Investor Protection Fund es-
25 tablished under section 21F.”.

Subtitle G—Strengthening Corporate Governance

SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN UNCONTESTED ELECTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14A, as added by this title, the following:

“SEC. 14B. CORPORATE GOVERNANCE.

“(a) CORPORATE GOVERNANCE STANDARDS.—

“(1) LISTING STANDARDS.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with any of the requirements of this subsection.

“(B) OPPORTUNITY TO COMPLY AND CURE.—The rules established under this paragraph shall allow an issuer to have an opportunity to come into compliance with the requirements of this subsection, and to cure any defect that would be the basis for a prohibition under subparagraph (A), before the imposition of such 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
6 market capitalization of the issuer, the number
7 of shareholders of record of the issuer, or any
8 other criteria, as the Commission deems nec-
9 essary and appropriate in the public interest or
10 for the protection of investors.

11 “(2) COMMISSION RULES ON ELECTIONS.—In
12 an election for membership on the board of directors
13 of 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
20 vote of a plurality of the shares represented at
21 a 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
10 effect, within a reasonable period
11 of time, as established by the
12 Commission; and

13 “(cc) make the date under
14 item (bb) public within a reason-
15 able period of time, as estab-
16 lished by the Commission; or

17 “(II) shall, upon a unanimous
18 vote of the board, decline to accept
19 the resignation and, not later than 30
20 days after the date of the vote (or
21 within such shorter period as the
22 Commission may establish), make
23 public, together with a discussion of
24 the analysis used in reaching the con-
25 clusion, the 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
5 the 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
12 Commission 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
22 materials supplied by an issuer of securities for the pur-
23 pose of nominating individuals to membership on the
24 board of directors of the issuer, under such terms and con-

1 ditions as the Commission determines are in the interests
 2 of shareholders 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
 14 the board of directors and chief executive officer (or
 15 in equivalent positions); or

16 “(2) different individuals to serve as chairman
 17 of the board of directors and chief executive officer
 18 (or 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
 23 DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of
 24 the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a))
 25 is 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 re-
7 spect to municipal financial products or the
8 issuance of municipal securities, or to under-
9 take a solicitation of a municipal entity or obli-
10 gated person, unless the municipal advisor is
11 registered in accordance 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
19 municipal securities dealer or class of brokers, deal-
20 ers, or municipal securities dealers” and inserting
21 “dealer, municipal securities dealer, or municipal ad-
22 visor, or class of brokers, dealers, municipal securi-
23 ties dealers, 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
8 municipal entity or obligated person, in connection
9 with which such municipal advisor engages in any
10 fraudulent, deceptive, or manipulative act or prac-
11 tice.”.

12 (b) MUNICIPAL SECURITIES RULEMAKING BOARD.—
13 Section 15B(b) of the Securities Exchange Act of 1934
14 (15 U.S.C. 78o–4(b)) is amended—

15 (1) in paragraph (1)—

16 (A) in the first sentence, by striking “Not
17 later than” and all that follows through “ap-
18 pointed by the Commission” and inserting “The
19 Municipal Securities Rulemaking Board shall be
20 composed of 15 members, or such other number
21 of members as specified by rules of the Board
22 pursuant to paragraph (2)(B),”;

23 (B) by striking the second sentence and in-
24 serting the following: “The members of the
25 Board shall serve as members for a term of 3

1 years or for such other terms as specified by
2 rules of the Board pursuant to paragraph
3 (2)(B), and shall consist of (A) 8 individuals
4 who are not associated with any broker, dealer,
5 municipal securities dealer, or municipal advisor
6 (other than by reason of being under common
7 control with, or indirectly controlling, any
8 broker or dealer which is not a municipal secu-
9 rities broker or municipal securities dealer), at
10 least 1 of whom shall be representative of insti-
11 tutional or retail investors in municipal securi-
12 ties, at least 1 of whom shall be representative
13 of municipal entities, and at least 1 of whom
14 shall be a member of the public with knowledge
15 of or experience in the municipal industry
16 (which members are hereinafter referred to as
17 ‘public representatives’); and (B) 7 individuals
18 who are associated with a broker, dealer, mu-
19 nicipal securities dealer, or municipal advisor,
20 including at least 1 individual who is associated
21 with and representative of brokers, dealers, or
22 municipal securities dealers that are not banks
23 or subsidiaries or departments or divisions of
24 banks (which members are hereinafter referred
25 to as ‘broker-dealer representatives’), at least 1

1 individual who is associated with and represent-
2 ative of municipal securities dealers which are
3 banks or subsidiaries or departments or divi-
4 sions of banks (which members are hereinafter
5 referred to as ‘bank representatives’), and at
6 least 1 individual who is associated with a mu-
7 nicipal advisor (which member is hereinafter re-
8 ferred to as the ‘advisor representative’).”;

9 (C) in the third sentence, by striking “ini-
10 tial”;

11 (2) in paragraph (2)—

12 (A) in the matter preceding subparagraph
13 (A)—

14 (i) by inserting before the period at
15 the end of the first sentence the following:
16 “and advice provided to or on behalf of
17 municipal entities or obligated persons by
18 brokers, dealers, municipal securities deal-
19 ers, and municipal advisors with respect to
20 municipal financial products, the issuance
21 of municipal securities, or participation in
22 the issuance of municipal securities, and
23 solicitations of municipal entities or obli-
24 gated persons undertaken by brokers, deal-

1 ers, municipal securities dealers, and mu-
2 nicipal advisors”; and

3 (ii) by striking the second sentence;

4 (B) in subparagraph (A)—

5 (i) in the matter preceding clause

6 (i)—

7 (I) by inserting “, and no broker,

8 dealer, municipal securities dealer, or

9 municipal advisor shall provide advice

10 to or on behalf of a municipal entity

11 or obligated person with respect to

12 municipal financial products, the

13 issuance of municipal securities, or

14 participation in the issuance of munic-

15 ipal securities” after “sale of, any mu-

16 nicipal security”; and

17 (II) by inserting “and municipal

18 entities or obligated persons” after

19 “protection of investors”;

20 (ii) in clause (i), by striking “munic-

21 ipal securities brokers and municipal secu-

22 rities dealers” each place that term ap-

23 pears and inserting “municipal securities

24 brokers, municipal securities dealers, and

25 municipal advisors”;

1 (iii) in clause (ii), by adding “and” at
2 the end;

3 (iv) in clause (iii), by striking “; and”
4 and inserting a period; and

5 (v) by striking clause (iv);

6 (C) in subparagraph (B), by striking
7 “nominations and elections” and all that follows
8 through “specify” and inserting “nominations
9 and elections of public representatives, broker-
10 dealer representatives, bank representatives,
11 and advisor representatives. Such rules shall
12 provide that the membership of the Board shall
13 at all times be as evenly divided in number as
14 possible between entities or individuals who are
15 subject to regulation by the Board and entities
16 or individuals not subject to regulation by the
17 Board, provided, however, that a majority of
18 the members of the Board shall at all times be
19 public representatives. Such rules shall also
20 specify”;

21 (D) in subparagraph (C)—

22 (i) by inserting “and municipal finan-
23 cial products” after “municipal securities”
24 the first two times that term appears;

1 (ii) by inserting “, municipal entities,
2 obligated persons,” before “and the public
3 interest”;

4 (iii) by striking “between” and insert-
5 ing “among”;

6 (iv) by striking “issuers, municipal se-
7 curities brokers, or municipal securities
8 dealers, to fix” and inserting “municipal
9 entities, obligated persons, municipal secu-
10 rities brokers, municipal securities dealers,
11 or municipal advisors, to fix”; and

12 (v) by striking “brokers or municipal
13 securities dealers, to regulate” and insert-
14 ing “brokers, municipal securities dealers,
15 or municipal advisors, to regulate”;

16 (E) in subparagraph (D)—

17 (i) by inserting “and advice con-
18 cerning municipal financial products” after
19 “transactions in municipal securities”;

20 (ii) by striking “That no” and insert-
21 ing “that no”;

22 (iii) by inserting “municipal advisor,”
23 before “or person associated”; and

24 (iv) by striking “a municipal securi-
25 ties broker or municipal securities dealer

1 may be compelled” and inserting “a mu-
2 nicipal securities broker, municipal securi-
3 ties dealer, or municipal advisor may be
4 compelled”;

5 (F) in subparagraph (E)—

6 (i) by striking “municipal securities
7 brokers and municipal securities dealers”
8 and inserting “municipal securities bro-
9 kers, municipal securities dealers, and mu-
10 nicipal advisors”; and

11 (ii) by striking “municipal securities
12 broker or municipal securities dealer” and
13 inserting “municipal securities broker, mu-
14 nicipal securities dealer, or municipal advi-
15 sor”;

16 (G) in subparagraph (G), by striking “mu-
17 nicipal securities brokers and municipal securi-
18 ties dealers” and inserting “municipal securities
19 brokers, municipal securities dealers, and mu-
20 nicipal advisors”;

21 (H) in subparagraph (J)—

22 (i) by striking “municipal securities
23 broker and each municipal securities deal-
24 er” and inserting “municipal securities

1 broker, municipal securities dealer, and
2 municipal advisor”; and

3 (ii) by striking the period at the end
4 of the second sentence and inserting “,
5 which may include charges for failure to
6 submit to the Board required information
7 or documents to any information system
8 operated by the Board in a full, accurate,
9 or timely manner, or any other failure to
10 comply with the rules of the Board.”;

11 (I) in subparagraph (K)—

12 (i) by inserting “broker, dealer, or”
13 before “municipal securities dealer” each
14 place that term appears; and

15 (ii) by striking “municipal securities
16 investment portfolio” and inserting “re-
17 lated account of a broker, dealer, or mu-
18 nicipal securities dealer”; and

19 (J) by adding at the end the following:

20 “(L) provide continuing education require-
21 ments for municipal advisors.

22 “(M) provide professional standards.

23 “(N) not impose a regulatory burden on
24 small municipal advisors that is not necessary
25 or appropriate in the public interest and for the

1 protection of investors, municipal entities, and
2 obligated persons.”;

3 (3) by redesignating paragraph (3) as para-
4 graph (7); and

5 (4) by inserting after paragraph (2) the fol-
6 lowing:

7 “(3) The Board, in conjunction with or on be-
8 half of any Federal financial regulator or self-regu-
9 latory organization, may—

10 “(A) establish information systems; and

11 “(B) assess such reasonable fees and
12 charges for the submission of information to, or
13 the receipt of information from, such systems
14 from any persons which systems may be devel-
15 oped for the purposes of serving as a repository
16 of information from municipal market partici-
17 pants or otherwise in furtherance of the pur-
18 poses of the Board, a Federal financial regu-
19 lator, or a self-regulatory organization.

20 “(4) The Board shall provide guidance and as-
21 sistance in the enforcement of, and examination for,
22 compliance with the rules of the Board to the Com-
23 mission, a registered securities association under
24 section 15A, or any other appropriate regulatory
25 agency, as applicable.”.

1 (c) DISCIPLINE OF DEALERS AND MUNICIPAL ADVI-
2 SORS AND OTHER MATTERS.—Section 15B(c) of the Se-
3 curities Exchange Act of 1934 (15 U.S.C. 78o–4(c)) is
4 amended—

5 (1) in paragraph (1), by inserting “, and no
6 broker, dealer, municipal securities dealer, or munic-
7 ipal advisor shall make use of the mails or any
8 means or instrumentality of interstate commerce to
9 provide advice to or on behalf of a municipal entity
10 or obligated person with respect to municipal finan-
11 cial products, the issuance of municipal securities, or
12 participation in the issuance of municipal securities,
13 or to undertake a solicitation of a municipal entity
14 or obligated person,” after “any municipal security”;

15 (2) in paragraph (2), by inserting “or municipal
16 advisor” after “municipal securities dealer” each
17 place that term appears;

18 (3) in paragraph (3)—

19 (A) by inserting “or municipal entities or
20 obligated person” after “protection of inves-
21 tors” each place that term appears; and

22 (B) by inserting “or municipal advisor”
23 after “municipal securities dealer” each place
24 that term appears;

1 (4) in paragraph (4), by inserting “or municipal
2 advisor” after “municipal securities dealer or obli-
3 gated person” each place that term appears;

4 (5) in paragraph (6)(B), by inserting “or mu-
5 nicipal entities” after “protection of investors”;

6 (6) in paragraph (7)—

7 (A) in subparagraph (A)—

8 (i) in clause (i), by striking “; and”
9 and inserting a semicolon;

10 (ii) in clause (ii), by striking the pe-
11 riod and inserting “; and”; and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(iii) the Commission, or its designee,
15 in the case of municipal advisors.”.

16 (B) in subparagraph (B), by inserting “or
17 municipal entities or obligated person” after
18 “protection of investors”; and

19 (7) by adding at the end the following:

20 “(9)(A) Fines collected by the Commission for
21 violations of the rules of the Board shall be equally
22 divided between the Commission and the Board.

23 “(B) Fines collected by a registered securities
24 association under section 15A(7) with respect to vio-
25 lations of the rules of the Board shall be accounted

1 for by such registered securities association sepa-
2 rately from other fines collected under section
3 15A(7) and shall be allocated between such reg-
4 istered securities association and the Board at the
5 direction of the Commission.”.

6 (d) ISSUANCE OF MUNICIPAL SECURITIES.—Section
7 15B(d)(2) of the Securities Exchange Act of 1934 (15
8 U.S.C. 78o–4(d)) is amended—

9 (1) by striking “through a municipal securities
10 broker or municipal securities dealer or otherwise”
11 and inserting “through a municipal securities
12 broker, municipal securities dealer, municipal advi-
13 sor, or otherwise”; and

14 (2) by inserting “or municipal advisors” before
15 “to furnish”.

16 (e) DEFINITIONS.—Section 15B of the Securities Ex-
17 change Act of 1934 (15 U.S.C. 78o–4) is amended by add-
18 ing at the end the following:

19 “(e) DEFINITIONS.—For purposes of this section—

20 “(1) the term ‘Board’ means the Municipal Se-
21 curities Rulemaking Board established under sub-
22 section (b)(1);

23 “(2) the term ‘guaranteed investment contract’
24 includes any investment that has specified with-
25 drawal or reinvestment provisions and a specifically

1 negotiated or bid interest rate, and also includes any
2 agreement to supply investments on 2 or more fu-
3 ture dates, such as a forward supply contract;

4 “(3) the term ‘investment strategies’ includes
5 plans or programs for the investment of the proceeds
6 of municipal securities that are not municipal de-
7 rivatives, guaranteed investment contracts, and the
8 recommendation of and brokerage of municipal es-
9 crow investments;

10 “(4) the term ‘municipal advisor’—

11 “(A) means a person (who is not a munic-
12 ipal entity or an employee of a municipal enti-
13 ty) that—

14 “(i) provides advice to or on behalf of
15 a municipal entity or obligated person with
16 respect to municipal financial products or
17 the issuance of municipal securities, in-
18 cluding advice with respect to the struc-
19 ture, timing, terms, and other similar mat-
20 ters concerning such financial products or
21 issues;

22 “(ii) participates in the issuance of
23 municipal securities; or

24 “(iii) undertakes a solicitation of a
25 municipal entity;

1 “(B) includes financial advisors, guaran-
2 teed investment contract brokers, third-party
3 marketers, placement agents, solicitors, finders,
4 and swap advisors, if such persons are de-
5 scribed in any of clauses (i) through (iii) of sub-
6 paragraph (A); and

7 “(C) does not include a broker, dealer, or
8 municipal securities dealer serving as an under-
9 writer (as defined in section 2(a)(11) of the Se-
10 curities Act of 1933) (15 U.S.C. 77b(a)(11)),
11 any investment adviser registered under the In-
12 vestment Advisers Act of 1940, or persons asso-
13 ciated with such investment advisers who are
14 providing investment advice, attorneys offering
15 legal advice or providing services that are of a
16 traditional legal nature, or engineers providing
17 engineering advice;

18 “(5) the term ‘municipal derivative’ means any
19 financial instrument or contract designed to hedge a
20 risk (including interest rate swaps, basis swaps,
21 credit default swaps, caps, floors, and collars);

22 “(6) the term ‘municipal financial product’
23 means municipal derivatives, guaranteed investment
24 contracts, and investment strategies;

1 “(7) the term ‘rules of the Board’ means the
2 rules proposed and adopted by the Board under sub-
3 section (b)(2);

4 “(8) the term ‘person associated with a munic-
5 ipal advisor’ or ‘associated person of an advisor’
6 means—

7 “(A) any partner, officer, director, or
8 branch manager of such municipal advisor (or
9 any person occupying a similar status or per-
10 forming similar functions);

11 “(B) any other employee of such municipal
12 advisor who is engaged in the management, di-
13 rection, supervision, or performance of any ac-
14 tivities relating to the provision of advice to or
15 on behalf of a municipal entity or obligated per-
16 son with respect to municipal financial prod-
17 ucts, the issuance of municipal securities, or
18 participation in the issuance of municipal secu-
19 rities; and

20 “(C) any person directly or indirectly con-
21 trolling, controlled by, or under common control
22 with such municipal advisor;

23 “(9) the term ‘municipal entity’ means any
24 State, political subdivision of a State, or municipal
25 corporate instrumentality of a State, including—

1 “(A) any agency, authority, or instrumen-
2 tality of the State, political subdivision, or mu-
3 nicipal corporate instrumentality;

4 “(B) any plan, program, or pool of assets
5 sponsored or established by the State, political
6 subdivision, or municipal corporate instrumen-
7 tality or any agency, authority, or instrumen-
8 tality thereof; and

9 “(C) any other issuer of municipal securi-
10 ties;

11 “(10) the term ‘solicitation of a municipal enti-
12 ty or obligated person’ means a direct or indirect
13 communication with a municipal entity or obligated
14 person made by a person, for direct or indirect com-
15 pensation, on behalf of a broker, dealer, municipal
16 securities dealer, municipal advisor, or investment
17 adviser (as defined in section 202 of the Investment
18 Advisers Act of 1940) that does not control, is not
19 controlled by, or is not under common control with
20 the person undertaking such solicitation for the pur-
21 pose of obtaining or retaining an engagement by a
22 municipal entity or obligated person of a broker,
23 dealer, municipal securities dealer, or municipal ad-
24 visor for or in connection with municipal financial
25 products, the issuance of municipal securities, or

1 participation in the issuance of municipal securities,
 2 or of an investment adviser to provide investment
 3 advisory services to or on behalf of a municipal enti-
 4 ty; and

5 “(11) the term ‘obligated person’ means any
 6 person, including an issuer of municipal securities,
 7 who is either generally or through an enterprise,
 8 fund, or account of such person, committed by con-
 9 tract or other arrangement to support the payment
 10 of all or part of the obligations on the municipal se-
 11 curities to be sold in an offering of municipal securi-
 12 ties.”.

13 (f) REGISTERED SECURITIES ASSOCIATION.—Section
 14 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C.
 15 78o–3(b)) is amended by adding at the end the following:

16 “(15) The rules of the association provide that
 17 the association shall—

18 “(A) request guidance from the Municipal
 19 Securities Rulemaking Board in interpretation
 20 of the rules of the Municipal Securities Rule-
 21 making Board; and

22 “(B) provide information to the Municipal
 23 Securities Rulemaking Board about the enforce-
 24 ment actions and examinations of the associa-

1 tion under section 15B(b)(2)(E), so that the
 2 Municipal Securities Rulemaking Board may—
 3 “(i) assist in such enforcement actions
 4 and examinations; and
 5 “(ii) evaluate the ongoing effective-
 6 ness of the rules of the Board.”.

7 (g) REGISTRATION AND REGULATION OF BROKERS
 8 AND DEALERS.—Section 15 of the Securities Exchange
 9 Act of 1934 is amended—

10 (1) in subsection (b)(4), by inserting “munic-
 11 ipal advisor,” after “municipal securities dealer”
 12 each place that term appears; and

13 (2) in subsection (c), by inserting “broker, deal-
 14 er, or” before “municipal securities dealer” each
 15 place that term appears.

16 (h) ACCOUNTS AND RECORDS, REPORTS, EXAMINA-
 17 TIONS OF EXCHANGES, MEMBERS, AND OTHERS.—Sec-
 18 tion 17(a)(1) of the Securities Exchange Act of 1934 is
 19 amended by inserting “municipal advisor,” after “munic-
 20 ipal securities dealer”.

21 (i) SAVINGS CLAUSE.—Notwithstanding any provi-
 22 sion of the Over-the-Counter Derivatives Markets Act of
 23 2010, or any amendment made pursuant to such Act, the
 24 provisions of this section, and the amendments made pur-

1 suant to this section, shall apply to any municipal deriva-
2 tive.

3 (j) EFFECTIVE DATE.—This section, and the amend-
4 ments made by this section, shall take effect on October
5 1, 2010.

6 **SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
7 **OF INCREASED DISCLOSURE TO INVESTORS.**

8 (a) STUDY.—The Comptroller General of the United
9 States shall conduct a study and review of the disclosure
10 required to be made by issuers of municipal securities.

11 (b) SUBJECTS FOR EVALUATION.—In conducting the
12 study under subsection (a), the Comptroller General of the
13 United States shall—

14 (1) broadly describe—

15 (A) the size of the municipal securities
16 markets and the issuers and investors; and

17 (B) the disclosures provided by issuers to
18 investors;

19 (2) compare the amount, frequency, and quality
20 of disclosures that issuers of municipal securities are
21 required by law to provide for the benefit of munic-
22 ipal securities holders, including the amount of and
23 frequency of disclosures actually provided by issuers
24 of municipal securities, with the amount of and fre-
25 quency of disclosures that issuers of corporate secu-

1 rities provide for the benefit of corporate securities
2 holders, taking into account the differences between
3 issuers of municipal securities and issuers of cor-
4 porate securities;

5 (3) evaluate the costs and benefits to various
6 types of issuers of municipal securities of requiring
7 issuers of municipal bonds to provide additional fi-
8 nancial disclosures for the benefit of investors;

9 (4) evaluate the potential benefit to investors
10 from additional financial disclosures by issuers of
11 municipal bonds; and

12 (5) make recommendations relating to disclo-
13 sure requirements for municipal issuers, including
14 the advisability of the repeal or retention of section
15 15B(d) of the Securities Exchange Act of 1934 (15
16 U.S.C. 78o-4(d)) (commonly known as the “Tower
17 Amendment”).

18 (c) REPORT.—Not later than 1 year after the date
19 of enactment of this Act, the Comptroller General of the
20 United States shall submit a report to Congress on the
21 results of the study conducted under subsection (a), in-
22 cluding recommendations for how to improve disclosure by
23 issuers of municipal securities.

1 **SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **ON THE MUNICIPAL SECURITIES MARKETS.**

3 (a) STUDY.—The Comptroller General of the United
4 States shall conduct a study of the municipal securities
5 markets.

6 (b) REPORT.—Not later than 180 days after the date
7 of enactment of this Act, the Comptroller General of the
8 United States shall submit a report to the Committee on
9 Banking, Housing, and Urban Affairs of the Senate, and
10 the Committee on Financial Services of the House of Rep-
11 resentatives, with copies to the Special Committee on
12 Aging of the Senate and the Commission, on the results
13 of the study conducted under subsection (a), including—

14 (1) an analysis of the mechanisms for trading,
15 quality of trade executions, market transparency,
16 trade reporting, price discovery, settlement clearing,
17 and credit enhancements;

18 (2) the needs of the markets and investors and
19 the impact of recent innovations;

20 (3) recommendations for how to improve the
21 transparency, efficiency, fairness, and liquidity of
22 trading in the municipal securities markets, includ-
23 ing with reference to items listed in paragraph (1);
24 and

25 (4) potential uses of derivatives in the munic-
26 ipal securities markets.

1 (c) RESPONSES.—Not later than 180 days after re-
2 ceipt of the report required under subsection (b), the Com-
3 mission shall submit a response to the Committee on
4 Banking, Housing, and Urban Affairs of the Senate, and
5 the Committee on Financial Services of the House of Rep-
6 resentatives, with a copy to the Special Committee on
7 Aging of the Senate, stating the actions the Commission
8 has taken in response to the recommendations contained
9 in such report.

10 **SEC. 978. STUDY OF FUNDING FOR GOVERNMENT AC-**
11 **COUNTING STANDARDS BOARD.**

12 (a) STUDY.—The Commission shall conduct a study
13 that evaluates—

14 (1) the role and importance of the Government
15 Accounting Standards Board in the municipal secu-
16 rities markets;

17 (2) the manner in which the Government Ac-
18 counting Standards Board is funded, and how such
19 manner of funding affects the financial information
20 available to securities investors;

21 (3) the advisability of changes to the manner in
22 which the Government Accounting Standards Board
23 is funded; and

24 (4) whether legislative changes to the manner
25 in which the Government Accounting Standards

1 Board is funded are necessary for the benefit of in-
2 vestors and in the public interest.

3 (b) CONSULTATION.—In conducting the study re-
4 quired under subsection (a), the Commission shall consult
5 with State and local government financial officers.

6 (c) REPORT.—Not later than 270 days after the date
7 of enactment of this Act, the Commission shall submit to
8 the Committee on Banking, Housing, and Urban Affairs
9 of the Senate and the Committee on Financial Services
10 of the House of Representatives a report on the study re-
11 quired under subsection (a).

12 **SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.**

13 (a) IN GENERAL.—There shall be in the Commission
14 an Office of Municipal Securities, which shall—

15 (1) administer the rules of the Commission with
16 respect to the practices of municipal securities bro-
17 kers and dealers, municipal securities advisors, mu-
18 nicipal securities investors, and municipal securities
19 issuers; and

20 (2) coordinate with the Municipal Securities
21 Rulemaking Board for rulemaking and enforcement
22 actions as required by law.

23 (b) DIRECTOR OF THE OFFICE.—The head of the Of-
24 fice of Municipal Securities shall be the Director, who
25 shall report to the Chairman.

1 (c) STAFFING.—

2 (1) IN GENERAL.—The Office of Municipal Se-
3 curities shall be staffed sufficiently to carry out the
4 requirements of this section.

5 (2) REQUIREMENT.—The staff of the Office of
6 Municipal Securities shall include individuals with
7 knowledge of and expertise in municipal finance.

8 **Subtitle I—Public Company Ac-**
9 **counting Oversight Board, Port-**
10 **folio Margining, and Other Mat-**
11 **ters**

12 **SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION**
13 **WITH FOREIGN AUTHORITIES.**

14 (a) DEFINITION.—Section 2(a) of the Sarbanes-
15 Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by
16 adding at the end the following:

17 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-
18 ITY.—The term ‘foreign auditor oversight authority’
19 means any governmental body or other entity em-
20 powered by a foreign government to conduct inspec-
21 tions of public accounting firms or otherwise to ad-
22 minister or enforce laws related to the regulation of
23 public accounting firms.”.

24 (b) AVAILABILITY TO SHARE INFORMATION.—Sec-
25 tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15

1 U.S.C. 7215(b)(5)) is amended by adding at the end the
2 following:

3 “(C) AVAILABILITY TO FOREIGN OVER-
4 SIGHT AUTHORITIES.—Without the loss of its
5 status as confidential and privileged in the
6 hands of the Board, all information referred to
7 in subparagraph (A) that relates to a public ac-
8 counting firm that a foreign government has
9 empowered a foreign auditor oversight authority
10 to inspect or otherwise enforce laws with re-
11 spect to, may, at the discretion of the Board, be
12 made available to the foreign auditor oversight
13 authority, if—

14 “(i) the Board finds that it is nec-
15 essary to accomplish the purposes of this
16 Act or to protect investors;

17 “(ii) the foreign auditor oversight au-
18 thority provides—

19 “(I) such assurances of confiden-
20 tiality as the Board may request;

21 “(II) a description of the applica-
22 ble information systems and controls
23 of the foreign auditor oversight au-
24 thority; and

1 “(III) a description of the laws
 2 and regulations of the foreign govern-
 3 ment of the foreign auditor oversight
 4 authority that are relevant to informa-
 5 tion access; and

6 “(iii) the Board determines that it is
 7 appropriate to share such information.”.

8 (c) CONFORMING AMENDMENT.—Section
 9 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15
 10 U.S.C. 7215(b)(5)(A)) is amended by striking “subpara-
 11 graph (B)” and inserting “subparagraphs (B) and (C)”.

12 **SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.**

13 (a) DEFINITIONS.—

14 (1) DEFINITIONS AMENDED.—Title I of the
 15 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et
 16 seq.) is amended by adding at the end the following
 17 new section:

18 **“SEC. 110. DEFINITIONS.**

19 “For the purposes of this title, the following defini-
 20 tions shall apply:

21 “(1) AUDIT.—The term ‘audit’ means an exam-
 22 ination of the financial statements, reports, docu-
 23 ments, procedures, controls, or notices of any issuer,
 24 broker, or dealer by an independent public account-
 25 ing firm in accordance with the rules of the Board

1 or the Commission, for the purpose of expressing an
2 opinion on the financial statements or providing an
3 audit report.

4 “(2) AUDIT REPORT.—The term ‘audit report’
5 means a document, report, notice, or other record—

6 “(A) prepared following an audit per-
7 formed for purposes of compliance by an issuer,
8 broker, or dealer with the requirements of the
9 securities laws; and

10 “(B) in which a public accounting firm ei-
11 ther—

12 “(i) sets forth the opinion of that firm
13 regarding a financial statement, report, no-
14 tice, or other document, procedures, or
15 controls; or

16 “(ii) asserts that no such opinion can
17 be expressed.

18 “(3) BROKER.—The term ‘broker’ means a
19 broker (as such term is defined in section 3(a)(4) of
20 the Securities Exchange Act of 1934 (15 U.S.C.
21 78c(a)(4))) that is required to file a balance sheet,
22 income statement, or other financial statement
23 under section 17(e)(1)(A) of such Act (15 U.S.C.
24 78q(e)(1)(A)), where such balance sheet, income

1 statement, or financial statement is required to be
2 certified by a registered public accounting firm.

3 “(4) DEALER.—The term ‘dealer’ means a
4 dealer (as such term is defined in section 3(a)(5) of
5 the Securities Exchange Act of 1934 (15 U.S.C.
6 78c(a)(5))) that is required to file a balance sheet,
7 income statement, or other financial statement
8 under section 17(e)(1)(A) of such Act (15 U.S.C.
9 78q(e)(1)(A)), where such balance sheet, income
10 statement, or financial statement is required to be
11 certified by a registered public accounting firm.

12 “(5) PROFESSIONAL STANDARDS.—The term
13 ‘professional standards’ means—

14 “(A) accounting principles that are—

15 “(i) established by the standard set-
16 ting body described in section 19(b) of the
17 Securities Act of 1933, as amended by this
18 Act, or prescribed by the Commission
19 under section 19(a) of that Act (15 U.S.C.
20 17a(s)) or section 13(b) of the Securities
21 Exchange Act of 1934 (15 U.S.C. 78a(m));
22 and

23 “(ii) relevant to audit reports for par-
24 ticular issuers, brokers, or dealers, or dealt
25 with in the quality control system of a par-

1 ticular registered public accounting firm;
2 and

3 “(B) auditing standards, standards for at-
4 testation engagements, quality control policies
5 and procedures, ethical and competency stand-
6 ards, and independence standards (including
7 rules implementing title II) that the Board or
8 the Commission determines—

9 “(i) relate to the preparation or
10 issuance of audit reports for issuers, bro-
11 kers, or dealers; and

12 “(ii) are established or adopted by the
13 Board under section 103(a), or are pro-
14 mulgated as rules of the Commission.

15 “(6) SELF-REGULATORY ORGANIZATION.—The
16 term ‘self-regulatory organization’ has the same
17 meaning as in section 3(a) of the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78c(a)).”.

19 (2) CONFORMING AMENDMENT.—Section 2(a)
20 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
21 7201(a)) is amended in the matter preceding para-
22 graph (1), by striking “In this” and inserting “Ex-
23 cept as otherwise specifically provided in this Act, in
24 this”.

1 (b) ESTABLISHMENT AND ADMINISTRATION OF THE
2 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
3 Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
4 7211) is amended—

5 (1) by striking “issuers” each place that term
6 appears and inserting “issuers, brokers, and deal-
7 ers”; and

8 (2) in subsection (a)—

9 (A) by striking “public companies” and in-
10 serting “companies”; and

11 (B) by striking “for companies the securi-
12 ties of which are sold to, and held by and for,
13 public investors”.

14 (c) REGISTRATION WITH THE BOARD.—Section 102
15 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is
16 amended—

17 (1) in subsection (a)—

18 (A) by striking “Beginning 180” and all
19 that follows through “101(d), it” and inserting
20 “It”; and

21 (B) by striking “issuer” and inserting
22 “issuer, broker, or dealer”;

23 (2) in subsection (b)—

1 (A) in paragraph (2)(A), by striking
2 “issuers” and inserting “issuers, brokers, and
3 dealers”; and

4 (B) by striking “issuer” each place that
5 term appears and inserting “issuer, broker, or
6 dealer”.

7 (d) AUDITING AND INDEPENDENCE.—Section 103(a)
8 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a))
9 is amended—

10 (1) in paragraph (1), by striking “and such eth-
11 ics standards” and inserting “such ethics standards,
12 and such independence standards”;

13 (2) in paragraph (2)(A)(iii), by striking “de-
14 scribe in each audit report” and inserting “in each
15 audit report for an issuer, describe”; and

16 (3) in paragraph (2)(B)(i), by striking
17 “issuers” and inserting “issuers, brokers, and deal-
18 ers”.

19 (e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-
20 ING FIRMS.—Section 104 of the Sarbanes-Oxley Act of
21 2002 (15 U.S.C. 7214) is amended—

22 (1) in subsection (a), by striking “issuers” and
23 inserting “issuers, brokers, and dealers”; and

24 (2) in subsection (b)(1)—

1 (A) by striking “audit reports for” each
 2 place that term appears and inserting “audit
 3 reports on annual financial statements for”;

4 (B) in subparagraph (A), by striking
 5 “and” at the end;

6 (C) in subparagraph (B), by striking the
 7 period at the end and inserting “; and”; and

8 (D) by adding at the end the following:

9 “(C) with respect to each registered public
 10 accounting firm that regularly provides audit
 11 reports and that is not described in subpara-
 12 graph (A) or (B), on a basis determined by the
 13 Board, by rule, that is consistent with the pub-
 14 lic interest and protection of investors.”.

15 (f) INVESTIGATIONS AND DISCIPLINARY PRO-
 16 CEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley
 17 Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

18 (1) in the subparagraph heading, by inserting
 19 “, BROKER, OR DEALER” after “ISSUER”;

20 (2) by striking “any issuer” each place that
 21 term appears and inserting “any issuer, broker, or
 22 dealer”; and

23 (3) by striking “an issuer under this sub-
 24 section” and inserting “a registered public account-
 25 ing firm under this subsection”.

1 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
2 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
3 7216(a)) is amended—

4 (1) in paragraph (1), by striking “issuer” and
5 inserting “issuer, broker, or dealer”; and

6 (2) in paragraph (2), by striking “issuers” and
7 inserting “issuers, brokers, or dealers”.

8 (h) FUNDING.—Section 109 of the Sarbanes-Oxley
9 Act of 2002 (15 U.S.C. 7219) is amended—

10 (1) in subsection (c)(2), by striking “subsection
11 (i)” and inserting “subsection (j)”;

12 (2) in subsection (d)—

13 (A) in paragraph (2), by striking “allowing
14 for differentiation among classes of issuers, as
15 appropriate” and inserting “and among brokers
16 and dealers, in accordance with subsection (h),
17 and allowing for differentiation among classes
18 of issuers, brokers and dealers, as appropriate”;
19 and

20 (B) by adding at the end the following:

21 “(3) BROKERS AND DEALERS.—The Board
22 shall begin the allocation, assessment, and collection
23 of fees under paragraph (2) with respect to brokers
24 and dealers with the payment of support fees to

1 fund the first full fiscal year beginning after the ef-
2 fective date of this paragraph.”;

3 (3) by redesignating subsections (h), (i), and (j)
4 as subsections (i), (j), and (k), respectively; and

5 (4) by inserting after subsection (g) the fol-
6 lowing:

7 “(h) ALLOCATION OF ACCOUNTING SUPPORT FEES
8 AMONG BROKERS AND DEALERS.—

9 “(1) OBLIGATION TO PAY.—Each broker or
10 dealer shall pay to the Board the annual accounting
11 support fee allocated to such broker or dealer under
12 this section.

13 “(2) ALLOCATION.—Any amount due from a
14 broker or dealer (or from a particular class of bro-
15 kers and dealers) under this section shall be allo-
16 cated among brokers and dealers and payable by the
17 broker or dealer (or the brokers and dealers in the
18 particular class, as applicable).

19 “(3) PROPORTIONALITY.—The amount due
20 from a broker or dealer shall be in proportion to the
21 net capital of the broker or dealer, compared to the
22 total net capital of all brokers and dealers, in ac-
23 cordance with rules issued by the Board.”.

24 (i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-
25 LATORY ORGANIZATION.—Section 105(b)(4)(B) of the

1 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B))
2 is amended—

3 (1) by redesignating clauses (ii) and (iii) as
4 clauses (iii) and (iv), respectively; and

5 (2) by inserting after clause (i) the following:

6 “(ii) to a self-regulatory organization,
7 in the case of an investigation that con-
8 cerns an audit report for a broker or deal-
9 er that is under the jurisdiction of such
10 self-regulatory organization;”.

11 (j) USE OF DOCUMENTS RELATED TO AN INSPEC-
12 TION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of the
13 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii))
14 is amended—

15 (1) in subclause (III), by striking “and” at the
16 end;

17 (2) in subclause (IV), by striking the comma
18 and inserting “; and”; and

19 (3) by inserting after subclause (IV) the fol-
20 lowing:

21 “(V) a self-regulatory organiza-
22 tion, with respect to an audit report
23 for a broker or dealer that is under
24 the jurisdiction of such self-regulatory
25 organization;”.

1 (k) EFFECTIVE DATE.—The amendments made by
 2 this section shall take effect 180 days after the date of
 3 enactment of this Act.

4 **SEC. 983. PORTFOLIO MARGINING.**

5 (a) ADVANCES.—Section 9(a)(1) of the Securities In-
 6 vestor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(1))
 7 is amended by inserting “or options on commodity futures
 8 contracts” after “claim for securities”.

9 (b) DEFINITIONS.—Section 16 of the Securities In-
 10 vestor Protection Act of 1970 (15 U.S.C. 78lll) is amend-
 11 ed—

12 (1) by striking paragraph (2) and inserting the
 13 following:

14 “(2) CUSTOMER.—

15 “(A) IN GENERAL.—The term ‘customer’
 16 of a debtor means any person (including any
 17 person with whom the debtor deals as principal
 18 or agent) who has a claim on account of securi-
 19 ties received, acquired, or held by the debtor in
 20 the ordinary course of its business as a broker
 21 or dealer from or for the securities accounts of
 22 such person for safekeeping, with a view to sale,
 23 to cover consummated sales, pursuant to pur-
 24 chases, as collateral, security, or for purposes of
 25 effecting transfer.

1 “(B) INCLUDED PERSONS.—The term
2 ‘customer’ includes—

3 “(i) any person who has deposited
4 cash with the debtor for the purpose of
5 purchasing securities;

6 “(ii) any person who has a claim
7 against the debtor for cash, securities, fu-
8 tures contracts, or options on futures con-
9 tracts received, acquired, or held in a port-
10 folio margining account carried as a secu-
11 rities account pursuant to a portfolio mar-
12 gining program approved by the Commis-
13 sion; and

14 “(iii) any person who has a claim
15 against the debtor arising out of sales or
16 conversions of such securities.

17 “(C) EXCLUDED PERSONS.—The term
18 ‘customer’ does not include any person, to the
19 extent that—

20 “(i) the claim of such person arises
21 out of transactions with a foreign sub-
22 sidiary of a member of SIPC; or

23 “(ii) such person has a claim for cash
24 or securities which by contract, agreement,
25 or understanding, or by operation of law,

1 is part of the capital of the debtor, or is
2 subordinated to the claims of any or all
3 creditors of the debtor, notwithstanding
4 that some ground exists for declaring such
5 contract, agreement, or understanding void
6 or voidable in a suit between the claimant
7 and the debtor.”;

8 (2) in paragraph (4)—

9 (A) in subparagraph (C), by striking
10 “and” at the end;

11 (B) by redesignating subparagraph (D) as
12 subparagraph (E); and

13 (C) by inserting after subparagraph (C)
14 the following:

15 “(D) in the case of a portfolio margining
16 account of a customer that is carried as a secu-
17 rities account pursuant to a portfolio margining
18 program approved by the Commission, a futures
19 contract or an option on a futures contract re-
20 ceived, acquired, or held by or for the account
21 of a debtor from or for such portfolio margining
22 account, and the proceeds thereof; and”;

23 (3) in paragraph (9), in the matter following
24 subparagraph (L), by inserting after “Such term”
25 the following: “includes revenues earned by a broker

1 or dealer in connection with a transaction in the
2 portfolio margining account of a customer carried as
3 securities accounts pursuant to a portfolio margining
4 program approved by the Commission. Such term”;
5 and

6 (4) in paragraph (11)—

7 (A) in subparagraph (A)—

8 (i) by striking “filing date, all” and
9 all that follows through the end of the sub-
10 paragraph and inserting the following: “fil-
11 ing date—

12 “(i) all securities positions of such
13 customer (other than customer name secu-
14 rities reclaimed by such customer); and

15 “(ii) all positions in futures contracts
16 and options on futures contracts held in a
17 portfolio margining account carried as a
18 securities account pursuant to a portfolio
19 margining program approved by the Com-
20 mission, including all property
21 collateralizing such positions, to the extent
22 that such property is not otherwise in-
23 cluded herein; minus”; and

24 (B) in the matter following subparagraph

25 (C), by striking “In determining” and inserting

1 the following: “A claim for a commodity futures
2 contract received, acquired, or held in a port-
3 folio margining account pursuant to a portfolio
4 margining program approved by the Commis-
5 sion or a claim for a security futures contract,
6 shall be deemed to be a claim with respect to
7 such contract as of the filing date, and such
8 claim shall be treated as a claim for cash. In
9 determining”.

10 **SEC. 984. LOAN OR BORROWING OF SECURITIES.**

11 (a) RULEMAKING AUTHORITY.—Section 10 of the Se-
12 curities Exchange Act of 1934 (15 U.S.C. 78j) is amended
13 by adding at the end the following:

14 “(c)(1) To effect, accept, or facilitate a trans-
15 action involving the loan or borrowing of securities
16 in contravention of such rules and regulations as the
17 Commission may prescribe as necessary or appro-
18 priate in the public interest or for the protection of
19 investors.

20 “(2) Nothing in paragraph (1) may be con-
21 strued to limit the authority of the appropriate Fed-
22 eral banking agency (as defined in section 3(q) of
23 the Federal Deposit Insurance Act (12 U.S.C.
24 1813(q))), the National Credit Union Administra-
25 tion, or any other Federal department or agency

1 having a responsibility under Federal law to pre-
 2 scribe rules or regulations restricting transactions
 3 involving the loan or borrowing of securities in order
 4 to protect the safety and soundness of a financial in-
 5 stitution or to protect the financial system from sys-
 6 temic risk.”.

7 (b) RULEMAKING REQUIRED.—Not later than 2
 8 years after the date of enactment of this Act, the Commis-
 9 sion shall promulgate rules that are designed to increase
 10 the transparency of information available to brokers, deal-
 11 ers, and investors, with respect to the loan or borrowing
 12 of securities.

13 **SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURI-**
 14 **TIES LAWS.**

15 (a) SECURITIES ACT OF 1933.—The Securities Act
 16 of 1933 (15 U.S.C. 77a et seq.) is amended—

17 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
 18 striking “individual;” and inserting “individual;”;

19 (2) in section 18 (15 U.S.C. 77r)—

20 (A) in subsection (b)(1)(C), by striking “is
 21 a security” and inserting “a security”; and

22 (B) in subsection (c)(2)(B)(i), by striking
 23 “State, or” and inserting “State or”;

1 (3) in section 19(d)(6)(A) (15 U.S.C.
2 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
3 and inserting “in paragraph (1) or (3)”; and

4 (4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–
5 2(c)(1)(B)(ii)), by striking “business entity;” and in-
6 serting “business entity,”.

7 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
8 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
9 is amended—

10 (1) in section 2 (15 U.S.C. 78b), by striking
11 “affected” and inserting “effected”;

12 (2) in section 3 (15 U.S.C. 78c)—

13 (A) in subsection (a)(55)(A), by striking
14 “section 3(a)(12) of the Securities Exchange
15 Act of 1934” and inserting “section 3(a)(12) of
16 this title”; and

17 (B) in subsection (g), by striking “com-
18 pany, account person, or entity” and inserting
19 “company, account, person, or entity”;

20 (3) in section 10A(i)(1)(B) (15 U.S.C. 78j–
21 1(i)(1)(B))—

22 (A) in the subparagraph heading, by strik-
23 ing “MINIMUS” and inserting “MINIMIS”; and

24 (B) in clause (i), by striking “nonaudit”
25 and inserting “non-audit”;

1 (4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
2 by striking “earning statement” and inserting
3 “earnings statement”;

4 (5) in section 15 (15 U.S.C. 78o)—

5 (A) in subsection (b)(1)—

6 (i) in subparagraph (B), by striking
7 “The order granting” and all that follows
8 through “from such membership.”; and

9 (ii) in the undesignated matter imme-
10 diately following subparagraph (B), by in-
11 serting after the first sentence the fol-
12 lowing: “The order granting registration
13 shall not be effective until such broker or
14 dealer has become a member of a reg-
15 istered securities association, or until such
16 broker or dealer has become a member of
17 a national securities exchange, if such
18 broker or dealer effects transactions solely
19 on that exchange, unless the Commission
20 has exempted such broker or dealer, by
21 rule or order, from such membership.”;

22 (6) in section 15C(a)(2) (15 U.S.C. 78o-
23 5(a)(2))—

24 (A) by redesignating clauses (i) and (ii) as
25 subparagraphs (A) and (B), respectively, and

1 adjusting the subparagraph margins accord-
2 ingly;

3 (B) in subparagraph (B), as so redesign-
4 nated, by striking “The order granting” and all
5 that follows through “from such membership.”;
6 and

7 (C) in the matter following subparagraph
8 (B), as so redesignated, by inserting after the
9 first sentence the following: “The order grant-
10 ing registration shall not be effective until such
11 government securities broker or government se-
12 curities dealer has become a member of a na-
13 tional securities exchange registered under sec-
14 tion 6 of this title, or a securities association
15 registered under section 15A of this title, unless
16 the Commission has exempted such government
17 securities broker or government securities deal-
18 er, by rule or order, from such membership.”;

19 (7) in section 17(b)(1)(B) (15 U.S.C.
20 78q(b)(1)(B)), by striking “15A(k) gives” and in-
21 serting “15A(k), give”; and

22 (8) in section 21C(c)(2) (15 U.S.C. 78u-
23 3(c)(2)), by striking “paragraph (1) subsection” and
24 inserting “Paragraph (1)”.

1 (c) TRUST INDENTURE ACT OF 1939.—The Trust
2 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
3 amended—

4 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
5 striking “section 2 of such Act” and inserting “sec-
6 tion 2(a) of such Act”; and

7 (2) in section 317(a)(1) (15 U.S.C.
8 77qqq(a)(1)), by striking “, in the” and inserting
9 “in the”.

10 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
11 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
12 is amended—

13 (1) in section 2(a)(19) (15 U.S.C. 80a–
14 2(a)(19)), in the matter following subparagraph
15 (B)(vii)—

16 (A) by striking “clause (vi)” each place
17 that term appears and inserting “clause (vii)”;
18 and

19 (B) in each of subparagraphs (A)(vi) and
20 (B)(vi), by adding “and” at the end of sub-
21 clause (III);

22 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
23 9(b)(4)(B)), by adding “or” after the semicolon at
24 the end;

1 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
 2 12(d)(1)(J)), by striking “any provision of this sub-
 3 section” and inserting “any provision of this para-
 4 graph”;

5 (4) in section 17(f) (15 U.S.C. 80a–17(f))—

6 (A) in paragraph (4), by striking “No such
 7 member” and inserting “No member of a na-
 8 tional securities exchange”; and

9 (B) in paragraph (6), by striking “com-
 10 pany may serve” and inserting “company, may
 11 serve”; and

12 (5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
 13 60(a)(3)(B)(iii))—

14 (A) by striking “paragraph (1) of section
 15 205” and inserting “section 205(a)(1)”; and

16 (B) by striking “clause (A) or (B) of that
 17 section” and inserting “paragraph (1) or (2) of
 18 section 205(b)”.

19 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
 20 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
 21 is amended—

22 (1) in section 203 (15 U.S.C. 80b–3)—

23 (A) in subsection (c)(1)(A), by striking
 24 “principal business office and” and inserting

1 “principal office, principal place of business,
2 and”; and

3 (B) in subsection (k)(4)(B), in the matter
4 following clause (ii), by striking “principal place
5 of business” and inserting “principal office or
6 place of business”;

7 (2) in section 206(3) (15 U.S.C. 80b–6(3)), by
8 adding “or” after the semicolon at the end;

9 (3) in section 213(a) (15 U.S.C. 80b–13(a)), by
10 striking “principal place of business” and inserting
11 “principal office or place of business”; and

12 (4) in section 222 (15 U.S.C. 80b–18a), by
13 striking “principal place of business” each place that
14 term appears and inserting “principal office and
15 place of business”.

16 **SEC. 986. CONFORMING AMENDMENTS RELATING TO RE-**
17 **PEAL OF THE PUBLIC UTILITY HOLDING**
18 **COMPANY ACT OF 1935.**

19 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
20 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
21 amended—

22 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
23 by striking “the Public Utility Holding Company
24 Act of 1935 (15 U.S.C. 79a et seq.),”;

1 (2) in section 12(k) (15 U.S.C. 78l(k)), by
2 amending paragraph (7) to read as follows:

3 “(7) DEFINITION.—For purposes of this sub-
4 section, the term ‘emergency’ means—

5 “(A) a major market disturbance charac-
6 terized by or constituting—

7 “(i) sudden and excessive fluctuations
8 of securities prices generally, or a substan-
9 tial threat thereof, that threaten fair and
10 orderly markets; or

11 “(ii) a substantial disruption of the
12 safe or efficient operation of the national
13 system for clearance and settlement of
14 transactions in securities, or a substantial
15 threat thereof; or

16 “(B) a major disturbance that substan-
17 tially disrupts, or threatens to substantially dis-
18 rupt—

19 “(i) the functioning of securities mar-
20 kets, investment companies, or any other
21 significant portion or segment of the secu-
22 rities markets; or

23 “(ii) the transmission or processing of
24 securities transactions.”; and

1 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),
2 by striking “section 18(c) of the Public Utility Hold-
3 ing Company Act of 1935,”.

4 (b) TRUST INDENTURE ACT OF 1939.—The Trust
5 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
6 amended—

7 (1) in section 303 (15 U.S.C. 77ccc), by strik-
8 ing paragraph (17) and inserting the following:

9 “(17) The terms ‘Securities Act of 1933’ and
10 ‘Securities Exchange Act of 1934’ shall be deemed
11 to refer, respectively, to such Acts, as amended,
12 whether amended prior to or after the enactment of
13 this title.”;

14 (2) in section 308 (15 U.S.C. 77hhh), by strik-
15 ing “Securities Act of 1933, the Securities Exchange
16 Act of 1934, or the Public Utility Holding Company
17 Act of 1935” each place that term appears and in-
18 serting “Securities Act of 1933 or the Securities Ex-
19 change Act of 1934”;

20 (3) in section 310 (15 U.S.C. 77jjj), by striking
21 subsection (c);

22 (4) in section 311 (15 U.S.C. 77kkk), by strik-
23 ing subsection (c);

24 (5) in section 323(b) (15 U.S.C. 77www(b)), by
25 striking “Securities Act of 1933, or the Securities

1 Exchange Act of 1934, or the Public Utility Holding
2 Company Act of 1935” and inserting “Securities Act
3 of 1933 or the Securities Exchange Act of 1934”;
4 and

5 (6) in section 326 (15 U.S.C. 77zzz), by strik-
6 ing “Securities Act of 1933, or the Securities Ex-
7 change Act of 1934, or the Public Utility Holding
8 Company Act of 1935,” and inserting “Securities
9 Act of 1933 or the Securities Exchange Act of
10 1934”.

11 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
12 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
13 is amended—

14 (1) in section 2(a)(44) (15 U.S.C. 80a–
15 2(a)(44)), by striking “‘Public Utility Holding Com-
16 pany Act of 1935’,”;

17 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
18 striking paragraph (8) and inserting the following:

19 “(8) [Repealed]”;

20 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
21 striking “the Public Utility Holding Company Act of
22 1935,”; and

23 (4) in section 50 (15 U.S.C. 80a–49), by strik-
24 ing “the Public Utility Holding Company Act of
25 1935,”.

1 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
 2 202(a)(21) of the Investment Advisers Act of 1940 (15
 3 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
 4 Utility Holding Company Act of 1935’,”.

5 **SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
 6 **AND NONMATERIAL LOSSES TO THE DEPOSIT**
 7 **INSURANCE FUND FOR PURPOSES OF IN-**
 8 **SPECTOR GENERAL REVIEWS.**

9 (a) IN GENERAL.—Section 38(k) of the Federal De-
 10 posit Insurance Act (U.S.C. 1831o(k)) is amended—

11 (1) in paragraph (2), by striking subparagraph
 12 (B) and inserting the following:

13 “(B) MATERIAL LOSS DEFINED.—The
 14 term ‘material loss’ means any estimated loss in
 15 excess of—

16 “(i) \$100,000,000, if the loss occurs
 17 during the period beginning on September
 18 30, 2009, and ending on December 31,
 19 2010;

20 “(ii) \$75,000,000, if the loss occurs
 21 during the period beginning on January 1,
 22 2011, and ending on December 31, 2011;
 23 and

24 “(iii) \$50,000,000, if the loss occurs
 25 on or after January 1, 2012.”;

1 (2) in paragraph (4)(A) by striking “the re-
2 port” and inserting “any report on losses required
3 under this subsection,”;

4 (3) by striking paragraph (6);

5 (4) by redesignating paragraph (5) as para-
6 graph (6); and

7 (5) by inserting after paragraph (4) the fol-
8 lowing:

9 “(5) LOSSES THAT ARE NOT MATERIAL.—

10 “(A) SEMIANNUAL REPORT.—For the 6-
11 month period ending on March 31, 2010, and
12 each 6-month period thereafter, the Inspector
13 General of each Federal banking agency shall—

14 “(i) identify losses that the Inspector
15 General estimates have been incurred by
16 the Deposit Insurance Fund during that 6-
17 month period, with respect to the insured
18 depository institutions supervised by the
19 Federal banking agency;

20 “(ii) for each loss incurred by the De-
21 posit Insurance Fund that is not a mate-
22 rial loss, determine—

23 “(I) the grounds identified by the
24 Federal banking agency or State bank
25 supervisor for appointing the Corpora-

1 tion as receiver under section
2 11(c)(5); and

3 “(II) whether any unusual cir-
4 cumstances exist that might warrant
5 an in-depth review of the loss; and

6 “(iii) prepare and submit a written re-
7 port to the appropriate Federal banking
8 agency and to Congress on the results of
9 any determination by the Inspector Gen-
10 eral, including—

11 “(I) an identification of any loss
12 that warrants an in-depth review, to-
13 gether with the reasons why such re-
14 view is warranted, or, if the Inspector
15 General determines that no review is
16 warranted, an explanation of such de-
17 termination; and

18 “(II) for each loss identified
19 under subclause (I) that warrants an
20 in-depth review, the date by which
21 such review, and a report on such re-
22 view prepared in a manner consistent
23 with reports under paragraph (1)(A),
24 will be completed and submitted to

1 the Federal banking agency and Con-
2 gress.

3 “(B) DEADLINE FOR SEMIANNUAL RE-
4 PORT.—The Inspector General of each Federal
5 banking agency shall—

6 “(i) submit each report required
7 under paragraph (A) expeditiously, and not
8 later than 90 days after the end of the 6-
9 month period covered by the report; and

10 “(ii) provide a copy of the report re-
11 quired under paragraph (A) to any Mem-
12 ber of Congress, upon request.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
14 The heading for subsection (k) of section 38 of the Fed-
15 eral Deposit Insurance Act (U.S.C. 1831o(k)) is amended
16 to read as follows:

17 “(k) REVIEWS REQUIRED WHEN DEPOSIT INSUR-
18 ANCE 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
 7 Credit Union Act (12 U.S.C. 1790d(j)) is amended to read
 8 as follows:

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
 21 in 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
 25 subparagraph (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,
8 upon request.

9 “(2) MATERIAL LOSS DEFINED.—For purposes
10 of determining whether the Fund has incurred a ma-
11 terial 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 re-
21 quest under section 552 of title 5, United
22 States Code, without excising—

23 “(i) any portion under section
24 552(b)(5) of title 5, United States Code; or

1 “(ii) any information about the in-
2 sured credit union (other than trade se-
3 crets) under section 552(b)(8) of title 5,
4 United States Code.

5 “(B) RULE OF CONSTRUCTION.—Subpara-
6 graph (A) may not be construed as requiring
7 the agency to disclose the name of any cus-
8 tomer of the insured credit union (other than
9 an institution-affiliated party), or information
10 from which the identity of such customer could
11 reasonably be 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 In-
18 spector General estimates were incurred by
19 the Fund during such 6-month period,
20 with respect 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
9 results of the determinations of the Inspec-
10 tor 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
21 prepared in a manner consistent with
22 reports under paragraph (1)(A), will
23 be completed.

1 “(B) DEADLINE FOR SEMIANNUAL RE-
2 PORT.—The Inspector General of the Board
3 shall—

4 “(i) submit each report required
5 under subparagraph (A) expeditiously, and
6 not later than 90 days after the end of the
7 6-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
12 of the United States shall, under such conditions as
13 the Comptroller General determines to be appro-
14 priate—

15 “(A) review each report made under para-
16 graph (1), including the extent to which the In-
17 specter General of the Board complied with the
18 requirements under section 8L of the Inspector
19 General Act of 1978 (5 U.S.C. App.) with re-
20 spect to each such report; and

21 “(B) recommend improvements to the su-
22 pervision of insured credit unions (including im-
23 provements relating to the implementation of
24 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 Com-
11 pany 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;
14 and

15 (2) the term “proprietary trading” means the
16 act of a covered entity investing as a principal in se-
17 curities, commodities, derivatives, hedge funds, pri-
18 vate equity firms, or such other financial products or
19 entities as the Comptroller General may determine.

20 (b) STUDY.—

21 (1) IN GENERAL.—The Comptroller General of
22 the United States shall conduct a study regarding
23 the risks and conflicts associated with proprietary
24 trading by and within covered entities, including an
25 evaluation of—

1 (A) whether proprietary trading presents a
2 material systemic risk to the stability of the
3 United States financial system, and if so, the
4 costs and benefits of options for mitigating such
5 systemic risk;

6 (B) whether proprietary trading presents
7 material risks to the safety and soundness of
8 the covered entities that engage in such activi-
9 ties, and if so, the costs and benefits of options
10 for mitigating such risks;

11 (C) whether proprietary trading presents
12 material conflicts of interest between covered
13 entities that engage in proprietary trading and
14 the clients of the institutions who use the firm
15 to execute trades or who rely on the firm to
16 manage assets, and if so, the costs and benefits
17 of options for mitigating such conflicts of inter-
18 est;

19 (D) whether adequate disclosure regarding
20 the risks and conflicts of proprietary trading is
21 provided to the depositors, trading and asset
22 management clients, and investors of covered
23 entities that engage in proprietary trading, and
24 if not, the costs and benefits of options for the
25 improvement of such disclosure; and

1 (E) whether the banking, securities, and
2 commodities regulators of institutions that en-
3 gage in proprietary trading have in place ade-
4 quate systems and controls to monitor and con-
5 tain any risks and conflicts of interest related
6 to proprietary trading, and if not, the costs and
7 benefits of options for the improvement of such
8 systems and controls.

9 (2) CONSIDERATIONS.—In carrying out the
10 study required under paragraph (1), the Comptroller
11 General shall consider—

12 (A) current practice relating to proprietary
13 trading;

14 (B) the advisability of a complete ban on
15 proprietary trading;

16 (C) limitations on the scope of activities
17 that covered entities may engage in with respect
18 to proprietary trading;

19 (D) the advisability of additional capital
20 requirements for covered entities that engage in
21 proprietary trading;

22 (E) enhanced restrictions on transactions
23 between affiliates related to proprietary trading;

24 (F) enhanced accounting disclosures relat-
25 ing to proprietary trading;

1 (G) enhanced public disclosure relating to
2 proprietary trading; and

3 (H) any other options the Comptroller
4 General deems appropriate.

5 (c) REPORT TO CONGRESS.—Not later than 15
6 months after the date of enactment of this Act, the Comp-
7 troller General shall submit a report to Congress on the
8 results of the study conducted under subsection (b).

9 (d) ACCESS BY COMPTROLLER GENERAL.—For pur-
10 poses of conducting the study required under subsection
11 (b), the Comptroller General shall have access, upon re-
12 quest, to any information, data, schedules, books, ac-
13 counts, financial records, reports, files, electronic commu-
14 nications, or other papers, things, or property belonging
15 to or in use by a covered entity that engages in proprietary
16 trading, and to the officers, directors, employees, inde-
17 pendent public accountants, financial advisors, staff, and
18 agents and representatives of a covered entity (as related
19 to the activities of the agent or representative on behalf
20 of the covered entity), at such reasonable times as the
21 Comptroller General may request. The Comptroller Gen-
22 eral may make and retain copies of books, records, ac-
23 counts, and other records, as the Comptroller General
24 deems appropriate.

25 (e) CONFIDENTIALITY OF REPORTS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the Comptroller General may not disclose
3 information regarding—

4 (A) any proprietary trading activity of a
5 covered entity, unless such information is dis-
6 closed at a level of generality that does not re-
7 veal the investment or trading position or strat-
8 egy of the covered entity for any specific secu-
9 rity, commodity, derivative, or other investment
10 or financial product; or

11 (B) any individual interviewed by the
12 Comptroller General for purposes of the study
13 under subsection (b), unless such information is
14 disclosed at a level of generality that does not
15 reveal—

16 (i) the name of or identifying details
17 relating to such individual; or

18 (ii) in the case of an individual who is
19 an employee of a third party that provides
20 professional services to a covered entity be-
21 lieved to be engaged in proprietary trading,
22 the name of or any identifying details re-
23 lating to such third party.

1 (2) EXCEPTIONS.—The Comptroller General
 2 may disclose the information described in paragraph
 3 (1)—

4 (A) to a department, agency, or official of
 5 the Federal Government, for official use, upon
 6 request;

7 (B) to a committee of Congress, upon re-
 8 quest; and

9 (C) to a court, upon an order of such
 10 court.

11 **SEC. 989A. SENIOR INVESTOR PROTECTIONS.**

12 (a) DEFINITIONS.—As used in this section—

13 (1) the term “eligible entity” means—

14 (A) a securities commission (or any agency
 15 or office performing like functions) of a State
 16 that the Office determines has adopted rules on
 17 the appropriate use of designations in the offer
 18 or sale of securities or investment advice that
 19 meet or exceed the minimum requirements of
 20 the NASAA Model Rule on the Use of Senior-
 21 Specific Certifications and Professional Des-
 22 ignations (or any successor thereto);

23 (B) the insurance commission (or any
 24 agency or office performing like functions) of
 25 any State that the Office determines has—

1 (i) adopted rules on the appropriate
2 use of designations in the sale of insurance
3 products that, to the extent practicable,
4 conform to the minimum requirements of
5 the National Association of Insurance
6 Commissioners Model Regulation on the
7 Use of Senior-Specific Certifications and
8 Professional Designations in the Sale of
9 Life Insurance and Annuities (or any suc-
10 cessor thereto); and

11 (ii) adopted rules with respect to fidu-
12 ciary or suitability requirements in the sale
13 of annuities that meet or exceed the min-
14 imum requirements established by the
15 Suitability in Annuity Transactions Model
16 Regulation of the National Association of
17 Insurance Commissioners (or any successor
18 thereto); or

19 (C) a consumer protection agency of any
20 State, if—

21 (i) the securities commission (or any
22 agency or office performing like functions)
23 of the State is eligible under subparagraph
24 (A); or

1 (ii) the insurance commission (or any
2 agency or office performing like functions)
3 of the State is eligible under subparagraph
4 (B);

5 (2) the term “financial product” means a secu-
6 rity, an insurance product (including an insurance
7 product that pays a return, whether fixed or vari-
8 able), a bank product, and a loan product;

9 (3) the term “misleading designation”—

10 (A) means a certification, professional des-
11 ignation, or other purported credential that in-
12 dicates or implies that a salesperson or adviser
13 has special certification or training in advising
14 or servicing seniors; and

15 (B) does not include a certification, profes-
16 sional designation, license, or other credential
17 that—

18 (i) was issued by or obtained from an
19 academic institution having regional ac-
20 creditation;

21 (ii) meets the standards for certifi-
22 cations, licenses, and professional designa-
23 tions outlined by the NASAA Model Rule
24 on the Use of Senior-Specific Certifications
25 and Professional Designations in the Sale

1 of Life Insurance and Annuities, adopted
2 by the National Association of Insurance
3 Commissioners (or any successor thereto);
4 or

5 (iii) was issued by or obtained from a
6 State;

7 (4) the term “misleading or fraudulent mar-
8 keting” means the use of a misleading designation
9 by a person that sells to or advises a senior in con-
10 nection with the sale of a financial product;

11 (5) the term “NASAA” means the North Amer-
12 ican Securities Administrators Association;

13 (6) the term “Office” means the Office of Fi-
14 nancial Literacy of the Bureau; and

15 (7) the term “senior” means any individual who
16 has attained the age of 62 years or older.

17 (b) GRANTS TO STATES FOR ENHANCED PROTEC-
18 TION OF SENIORS FROM BEING MISLED BY FALSE DES-
19 IGNATIONS.—The Office shall establish a program under
20 which the Office may make grants to States or eligible
21 entities—

22 (1) to hire staff to identify, investigate, and
23 prosecute (through civil, administrative, or criminal
24 enforcement actions) cases involving misleading or
25 fraudulent marketing;

1 (2) to fund technology, equipment, and training
2 for regulators, prosecutors, and law enforcement of-
3 ficers, in order to identify salespersons and advisers
4 who target seniors through the use of misleading
5 designations;

6 (3) to fund technology, equipment, and training
7 for prosecutors to increase the successful prosecution
8 of salespersons and advisers who target seniors with
9 the use of misleading designations;

10 (4) to provide educational materials and train-
11 ing to regulators on the appropriateness of the use
12 of designations by salespersons and advisers in con-
13 nection with the sale and marketing of financial
14 products;

15 (5) to provide educational materials and train-
16 ing to seniors to increase awareness and under-
17 standing of misleading or fraudulent marketing;

18 (6) to develop comprehensive plans to combat
19 misleading or fraudulent marketing of financial
20 products to seniors; and

21 (7) to enhance provisions of State law to pro-
22 vide protection for seniors against misleading or
23 fraudulent marketing.

24 (c) APPLICATIONS.—A State or eligible entity desir-
25 ing a grant under this section shall submit an application

1 to the Office, in such form and in such a manner as the
2 Office may determine, that includes—

3 (1) a proposal for activities to protect seniors
4 from misleading or fraudulent marketing that are
5 proposed to be funded using a grant under this sec-
6 tion, including—

7 (A) an identification of the scope of the
8 problem of misleading or fraudulent marketing
9 in the State;

10 (B) a description of how the proposed ac-
11 tivities would—

12 (i) protect seniors from misleading or
13 fraudulent marketing in the sale of finan-
14 cial products, including by proactively iden-
15 tifying victims of misleading and fraudu-
16 lent marketing who are seniors;

17 (ii) assist in the investigation and
18 prosecution of those using misleading or
19 fraudulent marketing; and

20 (iii) discourage and reduce cases of
21 misleading or fraudulent marketing; and

22 (C) a description of how the proposed ac-
23 tivities would be coordinated with other State
24 efforts; and

1 (2) any other information, as the Office deter-
2 mines is appropriate.

3 (d) PERFORMANCE OBJECTIVES AND REPORTING
4 REQUIREMENTS.—The Office may establish such perform-
5 ance objectives and reporting requirements for States and
6 eligible entities receiving a grant under this section as the
7 Office determines are necessary to carry out and assess
8 the effectiveness of the program under this section.

9 (e) MAXIMUM AMOUNT.—The amount of a grant
10 under this section may not exceed—

11 (1) \$500,000 for each of 3 consecutive fiscal
12 years, if the recipient is a State, or an eligible entity
13 of a State, that has adopted rules—

14 (A) on the appropriate use of designations
15 in the offer or sale of securities or investment
16 advice that meet or exceed the minimum re-
17 quirements of the NASAA Model Rule on the
18 Use of Senior-Specific Certifications and Pro-
19 fessional Designations (or any successor there-
20 to);

21 (B) on the appropriate use of designations
22 in the sale of insurance products that, to the
23 extent practicable, conform to the minimum re-
24 quirements of the National Association of In-
25 surance Commissioners Model Regulation on

1 the Use of Senior-Specific Certifications and
2 Professional Designations in the Sale of Life
3 Insurance and Annuities (or any successor
4 thereto); and

5 (C) with respect to fiduciary or suitability
6 requirements in the sale of annuities that meet
7 or exceed the minimum requirements estab-
8 lished by the Suitability in Annuity Trans-
9 actions Model Regulation of the National Asso-
10 ciation of Insurance Commissioners (or any
11 successor thereto); and

12 (2) \$100,000 for each of 3 consecutive fiscal
13 years, if the recipient is a State, or an eligible entity
14 of a State, that has adopted—

15 (A) rules on the appropriate use of des-
16 ignations in the offer or sale of securities or in-
17 vestment advice that meet or exceed the min-
18 imum requirements of the NASAA Model Rule
19 on the Use of Senior-Specific Certifications and
20 Professional Designations (or any successor
21 thereto); or

22 (B) rules—

23 (i) on the appropriate use of designa-
24 tions in the sale of insurance products
25 that, to the extent practicable, conform to

1 the minimum requirements of the National
2 Association of Insurance Commissioners
3 Model Regulation on the Use of Senior-
4 Specific Certifications and Professional
5 Designations in the Sale of Life Insurance
6 and Annuities (or any successor thereto);
7 and

8 (ii) with respect to fiduciary or suit-
9 ability requirements in the sale of annu-
10 ities that meet or exceed the minimum re-
11 quirements established by the Suitability in
12 Annuity Transactions Model Regulation of
13 the National Association of Insurance
14 Commissioners (or any successor thereto).

15 (f) SUBGRANTS.—A State or eligible entity that re-
16 ceives a grant under this section may make a subgrant,
17 as the State or eligible entity determines is necessary to
18 carry out the activities funded using a grant under this
19 section.

20 (g) REAPPLICATION.—A State or eligible entity that
21 receives a grant under this section may reapply for a grant
22 under this section, notwithstanding the limitations on
23 grant amounts under subsection (e).

1 (h) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated to carry out this section,
 3 \$8,000,000 for each of fiscal years 2011 through 2015.

4 **SEC. 989B. CHANGES IN APPOINTMENT OF CERTAIN IN-**
 5 **SPECTORS GENERAL.**

6 (a) ELEVATION OF CERTAIN INSPECTORS GENERAL
 7 TO APPOINTMENT PURSUANT TO SECTION 3 OF THE IN-
 8 SPECTOR GENERAL ACT OF 1978.—

9 (1) INCLUSION IN CERTAIN DEFINITIONS.—Sec-
 10 tion 12 of the Inspector General Act of 1978 (5
 11 U.S.C. App.) is amended—

12 (A) in paragraph (1), by striking “or the
 13 Federal Cochairpersons of the Commissions es-
 14 tablished under section 15301 of title 40,
 15 United States Code;” and inserting “the Fed-
 16 eral Cochairpersons of the Commissions estab-
 17 lished under section 15301 of title 40, United
 18 States Code; the Chairman of the Board of
 19 Governors of the Federal Reserve System; the
 20 Chairman of the Commodity Futures Trading
 21 Commission; the Chairman of the National
 22 Credit Union Administration; the Chairman of
 23 the Board of Directors of the Pension Benefit
 24 Guaranty Corporation; the Chairman of the Se-
 25 curities and Exchange Commission; or the Di-

1 rector of the Bureau of Consumer Financial
2 Protection;” and

3 (B) in paragraph (2), by striking “or the
4 Commissions established under section 15301
5 of title 40, United States Code,” and inserting
6 “the Commissions established under section
7 15301 of title 40, United States Code, the
8 Board of Governors of the Federal Reserve Sys-
9 tem, the Commodity Futures Trading Commis-
10 sion, the National Credit Union Administration,
11 the Pension Benefit Guaranty Corporation, the
12 Securities and Exchange Commission, or the
13 Director of the Bureau of Consumer Financial
14 Protection,”.

15 (2) EXCLUSION FROM DEFINITION OF DES-
16 IGNATED FEDERAL ENTITY.—Section 8G(a)(2) of
17 the Inspector General Act of 1978 (5 U.S.C. App.)
18 is amended—

19 (A) by striking “the Board of Governors of
20 the Federal Reserve System,”;

21 (B) by striking “the Commodity Futures
22 Trading Commission,”;

23 (C) by striking “the National Credit Union
24 Administration,”; and

1 (D) by striking “the Pension Benefit
 2 Guaranty Corporation, the Securities and Ex-
 3 change Commission,”.

4 (b) CONTINUATION OF PROVISIONS RELATING TO
 5 PERSONNEL.—

6 (1) IN GENERAL.—The Inspector General Act
 7 of 1978 (5 U.S.C. App.) is amended by inserting
 8 after section 8L the following:

9 **“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**
 10 **TABLISHMENTS.**

11 “(a) DEFINITION.—For purposes of this section, the
 12 term ‘covered establishment’ means the Board of Gov-
 13 ernors of the Federal Reserve System, the Commodity Fu-
 14 tures Trading Commission, the National Credit Union Ad-
 15 ministration, the Pension Benefit Guaranty Corporation,
 16 and the Securities and Exchange Commission.

17 “(b) PROVISIONS RELATING TO ALL COVERED ES-
 18 TABLISHMENTS.—

19 “(1) PROVISIONS RELATING TO INSPECTORS
 20 GENERAL.—In the case of the Inspector General of
 21 a covered establishment, subsections (b) and (c) of
 22 section 4 of the Inspector General Reform Act of
 23 2008 (Public Law 110–409; 122 Stat. 4304) shall
 24 apply in the same manner as if such covered estab-
 25 lishment were a designated Federal entity under sec-

1 tion 8G of this Act. An Inspector General who is
2 subject to the preceding sentence shall not be sub-
3 ject to section 3(e) of this Act.

4 “(2) PROVISIONS RELATING TO OTHER PER-
5 SONNEL.—Notwithstanding paragraphs (7) and (8)
6 of section 6(a), the Inspector General of a covered
7 establishment may select, appoint, and employ such
8 officers and employees as may be necessary for car-
9 rying out the functions, powers, and duties of the
10 Office of Inspector General of the covered establish-
11 ment and to obtain the temporary or intermittent
12 services of experts or consultants or an organization
13 of experts or consultants, subject to the applicable
14 laws and regulations that govern such selections, ap-
15 pointments, and employment, and the obtaining of
16 such services, within the covered establishment.

17 “(c) PROVISION RELATING TO THE BOARD OF GOV-
18 ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-
19 visions of subsection (a) of section 8D (other than the pro-
20 visions of subparagraphs (A), (B), (C), and (E) of para-
21 graph (1) of such subsection (a)) shall apply to the Inspec-
22 tor General of the Board of Governors of the Federal Re-
23 serve System and the Chairman of the Board of Governors
24 of the Federal Reserve System in the same manner as
25 such provisions apply to the Inspector General of the De-

1 partment of the Treasury and the Secretary of the Treas-
2 ury, respectively.”.

3 (2) CONFORMING AMENDMENT.—Paragraph (3)
4 of section 8G(g) of the Inspector General Act of
5 1978 (5 U.S.C. App.) is repealed.

6 (c) CORRECTIVE RESPONSES BY HEADS OF CERTAIN
7 ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY IN-
8 SPECTORS GENERAL.—The Chairman of the Board of
9 Governors, the Chairman of the Commodity Futures
10 Trading Commission, the Chairman of the National Credit
11 Union Administration, the Chairman of the Board of Di-
12 rectors of the Pension Benefit Guaranty Corporation, and
13 the Chairman of the Commission shall each—

14 (1) take action to address deficiencies identified
15 by a report or investigation of the Inspector General
16 of the establishment concerned; or

17 (2) certify to the Senate and the House of Rep-
18 resentatives that no action is necessary or appro-
19 priate in connection with a deficiency described in
20 paragraph (1).

21 (d) EFFECTIVE DATE; TRANSITION RULE.—

22 (1) EFFECTIVE DATE.—This section and the
23 amendments made by this section shall take effect
24 30 days after the date of enactment of this Act.

1 (2) TRANSITION RULE.—An individual serving
2 as Inspector General of the Board of Governors, the
3 Commodity Futures Trading Commission, the Na-
4 tional Credit Union Administration, the Pension
5 Benefit Guaranty Corporation, or the Commission
6 on the effective date of this section pursuant to an
7 appointment made under section 8G of the Inspector
8 General Act of 1978 (5 U.S.C. App.)—

9 (A) may continue so serving until the
10 President makes an appointment under section
11 3(a) of such Act with respect to the Board of
12 Governors, the Commodity Futures Trading
13 Commission, the National Credit Union Admin-
14 istration, the Pension Benefit Guaranty Cor-
15 poration, or the Commission, as the case may
16 be, consistent with the amendments made by
17 subsection (a); and

18 (B) shall, while serving under subpara-
19 graph (A)—

20 (i) remain subject to the provisions of
21 section 8G of such Act that applied with
22 respect to the Inspector General of the
23 Board of Governors, the Commodity Fu-
24 tures Trading Commission, the National
25 Credit Union Administration, the Pension

1 Benefit Guaranty Corporation, or the
 2 Commission, as the case may be, on the
 3 day before the effective date of this sec-
 4 tion; and

5 (ii) suffer no reduction in pay.

6 **Subtitle J—Self-funding of the Se-**
 7 **curities and Exchange Commis-**
 8 **sion**

9 **SEC. 991. SECURITIES AND EXCHANGE COMMISSION SELF-**
 10 **FUNDING.**

11 (a) SELF-FUNDING AUTHORITY.—Section 4 of the
 12 Securities Exchange Act of 1934 (15 U.S.C. 78d) is
 13 amended—

14 (1) in subsection (c), in the second sentence, by
 15 striking “credited to the appropriated funds of the
 16 Commission” and inserting “deposited in the ac-
 17 count described in subsection (i)(4)”;

18 (2) in subsection (f), in the second sentence, by
 19 striking “considered a reimbursement to the appro-
 20 priated funds of the Commission” and inserting “de-
 21 posited in the account described in subsection
 22 (i)(4)”;

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

24 “(i) FUNDING OF THE COMMISSION.—

1 “(1) BUDGET.—For each fiscal year, the Chair-
2 man of the Commission shall prepare and submit to
3 Congress a budget to Congress. Such budget shall be
4 submitted at the same time the President submits a
5 budget of the United States to Congress for such
6 fiscal year. The budget submitted by the Chairman
7 of the Commission pursuant to this paragraph shall
8 not be considered a request for appropriations.

9 “(2) TREASURY PAYMENT.—

10 “(A) On the first day of each fiscal year,
11 the Treasury shall pay into the account de-
12 scribed in paragraph (4) an amount equal to
13 the budget submitted by the Chairman of the
14 Commission pursuant to paragraph (1) for such
15 fiscal year.

16 “(B) At or prior to the end of each fiscal
17 year, the Commission shall pay to the Treasury
18 from fees and assessments deposited in the ac-
19 count described in paragraph (4) an amount
20 equal to the amount paid by the Treasury pur-
21 suant to subparagraph (A) for such fiscal year,
22 unless there are not sufficient fees and assess-
23 ments deposited in such account at or prior to
24 the end of the fiscal year to make such pay-

1 ment, in which case the Commission shall make
2 such payment in a subsequent fiscal year.

3 “(3) OBLIGATIONS AND EXPENSES.—

4 “(A) IN GENERAL.—The Commission shall
5 determine and prescribe the manner in which—

6 “(i) the obligations of the Commission
7 shall be incurred; and

8 “(ii) the disbursements and expenses
9 of the Commission allowed and paid.

10 “(B) INSUFFICIENT FUNDS.—If, in the
11 course of any fiscal year, the Chairman of the
12 Commission determines that, due to unforeseen
13 circumstances, the obligations of the Commis-
14 sion will exceed those provided for in the budget
15 submitted under paragraph (1), the Chairman
16 of the Commission may notify Congress of the
17 amount and expected uses of the additional ob-
18 ligations.

19 “(C) AUTHORITY TO INCUR EXCESS OBLI-
20 GATIONS.—The Commission may incur obliga-
21 tions in excess of the budget submitted under
22 paragraph (1) from amounts available in the
23 account described in paragraph (4).

1 “(D) RULE OF CONSTRUCTION.—Any noti-
2 fication to Congress under this paragraph shall
3 not be considered a request for appropriations.

4 “(4) ACCOUNT.—

5 “(A) ESTABLISHMENT.—Fees and assess-
6 ments collected under this title, section 6(b) of
7 the Securities Act of 1933 (15 U.S.C. 77f(b)),
8 and section 24(f) of the Investment Company
9 Act of 1940 (15 U.S.C. 80a–24(f)) and pay-
10 ments made by the Treasury pursuant to para-
11 graph (2)(A) for any fiscal year shall be depos-
12 ited into an account established at any regular
13 Government depository or any State or national
14 bank.

15 “(B) RULE OF CONSTRUCTION.—Any
16 amounts deposited into the account established
17 under subparagraph (A) shall not be construed
18 to be Government funds or appropriated mon-
19 ies.

20 “(C) NO APPORTIONMENT.—Any amounts
21 deposited into the account established under
22 subparagraph (A) shall not be subject to appor-
23 tionment for the purpose of chapter 15 of title
24 31, United States Code, or under any other au-
25 thority.

1 “(5) USE OF ACCOUNT FUNDS.—

2 “(A) PERMISSIBLE USES.—Amounts avail-
3 able in the account described in paragraph (4)
4 may be withdrawn by the Commission and used
5 for the purposes described in paragraphs (2)
6 and (3).

7 “(B) IMPERMISSIBLE USE.—Except as
8 provided in paragraph (6), no amounts available
9 in the account described in paragraph (4) shall
10 be deposited and credited as general revenue of
11 the Treasury.

12 “(6) EXCESS FUNDS.—If, at the end of any fis-
13 cal year and after all payments have been made to
14 the Treasury pursuant to paragraph (2)(B) for such
15 fiscal year and all prior fiscal years, the balance of
16 the account described in paragraph (4) exceeds 25
17 percent of the budget of the Commission for the fol-
18 lowing fiscal year, the amount by which the balance
19 exceeds 25 percent of such budget shall be credited
20 as general revenue of the Treasury.”.

21 (b) CONFORMING AMENDMENTS TO TRANSACTION
22 FEE PROVISIONS.—Section 31 of the Securities Exchange
23 Act of 1934 (15 U.S.C. 78ee) is amended—

24 (1) by amending subsection (a) to read as fol-
25 lows:

1 “(a) RECOVERY OF COSTS AND EXPENSES.—

2 “(1) IN GENERAL.—The Commission shall, in
3 accordance with this section, collect transaction fees
4 and assessments that are designed—

5 “(A) to recover the reasonable costs and
6 expenses of the Commission, as set forth in the
7 annual budget of the Commission; and

8 “(B) to provide funds necessary to main-
9 tain a reserve.

10 “(2) OVERPAYMENTS.—The authority to collect
11 transaction fees and assessments in accordance with
12 this section shall include the authority to offset from
13 such collection any overpayment of transaction fees
14 or assessments, regardless of the fiscal year in which
15 such overpayment is made.”;

16 (2) in subsection (e)(2), by striking “September
17 30” and inserting “September 25”;

18 (3) in subsection (g), by striking “April 30”
19 and inserting “August 31”;

20 (4) by amending subsection (i) to read as fol-
21 lows:

22 “(i) FEE COLLECTIONS.—Fees and assessments col-
23 lected pursuant to this section shall be deposited and cred-
24 ited in accordance with section 4(g) of this title.”;

1 (5) by amending subsection (j) to read as fol-
2 lows:

3 “(j) ADJUSTMENTS TO TRANSACTION FEE RATES.—

4 “(1) ANNUAL ADJUSTMENT.—For each fiscal
5 year, the Commission shall by order adjust each of
6 the rates applicable under subsections (b) and (c)
7 for such fiscal year to a uniform adjusted rate that,
8 when applied to the baseline estimate of the aggre-
9 gate dollar amount of sales for such fiscal year, is
10 reasonably likely to produce aggregate fee collections
11 under this section (including assessments collected
12 under subsection (d)) that are equal to the budget
13 of the Commission for such fiscal year, plus amounts
14 necessary to maintain a reserve.

15 “(2) MID-YEAR ADJUSTMENT.—For each fiscal
16 year, the Commission shall determine, by March 1 of
17 such fiscal year, whether, based on the actual aggre-
18 gate dollar volume of sales during the first 4 months
19 of such fiscal year, the baseline estimate of the ag-
20 gregate dollar volume of sales used under paragraph
21 (1) for such fiscal year is reasonably likely to be 10
22 percent (or more) greater or less than the actual ag-
23 gregate dollar volume of sales for such fiscal year.
24 If the Commission so determines, the Commission
25 shall by order, not later than March 1, adjust each

1 of the rates applicable under subsections (b) and (c)
2 for such fiscal year to a uniform adjusted rate that,
3 when applied to the revised estimate of the aggregate
4 dollar amount of sales for the remainder of
5 such fiscal year, is reasonably likely to produce aggregate
6 fee collections under this section (including
7 fees estimated to be collected under subsections (b)
8 and (c) during such fiscal year prior to the effective
9 date of the new uniform adjusted rate and assessments
10 collected under subsection (d)) that are equal
11 to the budget of the Commission for such fiscal year,
12 plus amounts necessary to maintain a reserve. In
13 making such revised estimate, the Commission shall,
14 after consultation with the Congressional Budget Office
15 and the Office of Management and Budget, use
16 the same methodology required by paragraph (4).

17 “(3) REVIEW AND EFFECTIVE DATE.—In exercising
18 its authority under this subsection, the Commission
19 shall not be required to comply with the provisions
20 of section 553 of title 5 United States Code. An
21 adjusted rate prescribed under paragraph (1) or
22 (2) and published under subsection (g) shall not be
23 subject to judicial review. An adjusted rate prescribed
24 under paragraph (1) shall take effect on the
25 first day of the fiscal year to which such rate ap-

1 plies. An adjusted rate prescribed under paragraph
2 (2) shall take effect on April 1 of the fiscal year to
3 which such rate applies.

4 “(4) BASELINE ESTIMATE OF THE AGGREGATE
5 DOLLAR AMOUNT OF SALES.—For purposes of this
6 subsection, the baseline estimate of the aggregate
7 dollar amount of sales for any fiscal year is the
8 baseline estimate of the aggregate dollar amount of
9 sales of securities (other than bonds, debentures,
10 other evidences of indebtedness, security futures
11 products, and options on securities indexes excluding
12 a narrow-based security index) to be transacted on
13 each national securities exchange and by or through
14 any member of each national securities association
15 (otherwise than on a national securities exchange)
16 during such fiscal year as determined by the Com-
17 mission, after consultation with the Congressional
18 Budget Office and the Office of Management and
19 Budget, using the methodology required for making
20 projections pursuant to section 907 of title 2.”; and

21 (6) by striking subsections (k) and (l).

22 (c) CONFORMING AMENDMENTS TO REGISTRATION
23 FEE PROVISIONS.—

1 (1) SECTION 6(B) OF THE SECURITIES ACT OF
2 1933.—Section 6(b) of the Securities Act of 1933
3 (15 U.S.C. 77f(b)) is amended—

4 (A) by striking “offsetting” each place that
5 term appears and inserting “fee”;

6 (B) in paragraph (3), in the paragraph
7 heading, by striking “OFFSETTING” and insert-
8 ing “FEE”;

9 (C) in paragraph (11)(A), in the subpara-
10 graph heading, by striking “OFFSETTING” and
11 inserting “FEE”;

12 (D) by striking paragraphs (1), (3), (4),
13 (6), (8), and (9);

14 (E) by redesignating paragraph (2) as
15 paragraph (1);

16 (F) in paragraph (1), as so redesignated,
17 by striking “(5) or (6)” and inserting “(3)”;

18 (G) by inserting after paragraph (1), as so
19 redesignated, the following:

20 “(2) FEE COLLECTIONS.—Fees collected pursu-
21 ant to this subsection shall be deposited and credited
22 in accordance with section 4(i) of the Securities Ex-
23 change Act of 1934.”;

24 (H) by redesignating paragraph (5) as
25 paragraph (3);

1 (I) in paragraph (3), as redesignated—

2 (i) by striking “of the fiscal years
3 2003 through 2011” and inserting “fiscal
4 year”; and

5 (ii) by striking “paragraph (2)” and
6 inserting “paragraph (1)”;

7 (J) by redesignating paragraph (7) as
8 paragraph (4);

9 (K) by inserting after paragraph (4), as so
10 redesignated, the following:

11 “(5) REVIEW AND EFFECTIVE DATE.—In exer-
12 cising its authority under this subsection, the Com-
13 mission shall not be required to comply with the pro-
14 visions of section 553 of title 5, United States Code.
15 An adjusted rate prescribed under paragraph (3)
16 and published under paragraph (6) shall not be sub-
17 ject to judicial review. An adjusted rate prescribed
18 under paragraph (3) shall take effect on the first
19 day of the fiscal year to which such rate applies.”;

20 (L) by redesignating paragraphs (10) and
21 (11), as paragraphs (6) and (7);

22 (M) in paragraph (6), as redesignated, by
23 striking “April 30” and inserting “August 31”;
24 and

25 (N) in paragraph (7), as redesignated—

1 (i) by striking “of the fiscal years
2 2002 through 2011” and inserting “fiscal
3 year”; and

4 (ii) by inserting at the end of the
5 table 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. |
|---|---|

6 (2) SECTION 13(E) OF THE SECURITIES EX-
7 CHANGE ACT OF 1934.—Section 13(e) of the Securi-
8 ties Exchange Act of 1934 (15 U.S.C. 78m(e)) is
9 amended—

10 (A) by striking “offsetting” each place that
11 term appears and inserting “fee”;

12 (B) in paragraph (3) by striking “para-
13 graphs (5) and (6)” and inserting “paragraph
14 (5)”;

15 (C) by amending paragraph (4) to read as
16 follows:

17 “(4) FEE COLLECTIONS.—Fees collected pursu-
18 ant to this subsection shall be deposited and credited
19 in accordance with section 4(g) of this title.”;

1 (D) in paragraph (5), by striking “of the
2 fiscal years 2003 through 2011” and inserting
3 “fiscal year”;

4 (E) by striking paragraphs (6), (7), and
5 (8);

6 (F) by redesignating paragraph (7) as
7 paragraph (6);

8 (G) by inserting after paragraph (6), as so
9 redesignated, the following:

10 “(7) REVIEW AND EFFECTIVE DATE.—In exer-
11 cising its authority under this subsection, the Com-
12 mission shall not be required to comply with the pro-
13 visions of section 553 of title 5. An adjusted rate
14 prescribed under paragraph (5) and published under
15 paragraph (8) shall not be subject to judicial review.
16 An adjusted rate prescribed under paragraph (5)
17 shall take effect on the first day of the fiscal year
18 to which such rate applies.”;

19 (H) by striking paragraph (9);

20 (I) by redesignating paragraph (10) as
21 paragraph (8); and

22 (J) in paragraph (8), as so redesignated,
23 by striking “6(b)(10)” and inserting “6(b)(6)”.

24 (3) SECTION 14 OF THE SECURITIES EXCHANGE
25 ACT OF 1934.—Section 14(g) of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78n(g)) is amend-
2 ed—

3 (A) by striking the word “offsetting” each
4 time that it appears and inserting in its place
5 the word “fee”;

6 (B) in paragraph (1)(A), by striking
7 “paragraphs (5) and (6)” each time it appears
8 and inserting “paragraph (5)”;

9 (C) in paragraph (3), by striking “para-
10 graphs (5) and (6)” and inserting “paragraph
11 (5)”;

12 (D) by amending paragraph (4) to read as
13 follows:

14 “(4) FEE COLLECTIONS.—Fees collected pursu-
15 ant to this subsection shall be deposited and credited
16 in accordance with section 4(g) of this title.”;

17 (E) in paragraph (5), by striking “of the
18 fiscal years 2003 through 2011” and inserting
19 “fiscal year”;

20 (F) by striking paragraphs (6), (8), and
21 (9);

22 (G) by redesignating paragraph (7) as
23 paragraph (6);

24 (H) by inserting after paragraph (6), as so
25 redesignated, the following:

1 “(7) REVIEW AND EFFECTIVE DATE.—In exer-
 2 cising its authority under this subsection, the Com-
 3 mission shall not be required to comply with the pro-
 4 visions of section 553 of title 5. An adjusted rate
 5 prescribed under paragraph (5) and published under
 6 paragraph (8) shall not be subject to judicial review.
 7 An adjusted rate prescribed under paragraph (5)
 8 shall take effect on the first day of the fiscal year
 9 to which such rate applies.”;

10 (I) by redesignating paragraphs (10) and
 11 (11) as paragraphs (8) and (9), respectively;
 12 and

13 (J) in paragraph (9), as so redesignated,
 14 by striking “6(b)(10)” and inserting “6(b)(7)”.

15 (d) REPEAL OF AUTHORIZATION OF APPROPRIA-
 16 TIONS.—Section 35 of the Securities Exchange Act of
 17 1934 (15 U.S.C. 78kk) is repealed.

18 (e) EFFECTIVE DATE AND TRANSITION PROVI-
 19 SIONS.—

20 (1) IN GENERAL.—Except as provided in para-
 21 graphs (2) and (3), the amendments made by this
 22 section shall be effective on the first day of the fiscal
 23 year following the fiscal year in which this Act is en-
 24 acted.

1 (2) TRANSITION PERIOD.—For the fiscal year
2 following the fiscal year in which this Act is enacted,
3 the budget of the Commission shall be deemed to be
4 the budget submitted by the Chairman of the Com-
5 mission to the President for such fiscal year in ac-
6 cordance with the provisions of section 1108 of title
7 31, United States Code.

8 (3) OTHER PROVISIONS.—The amendments
9 made by this section to subsections (g) and (j)(1) of
10 section 31 of the Securities Exchange Act of 1934
11 (15 U.S.C. 78ee) shall be effective on the date of en-
12 actment of this Act, and shall require the Commis-
13 sion to make and publish an annual adjustment to
14 the fee rates applicable under subsections (b) and
15 (c) of section 31 of the Securities Exchange Act of
16 1934 (15 U.S.C. 78ee) for the fiscal year following
17 the fiscal year in which this Act is enacted. The ad-
18 justed rate described in the preceding sentence shall
19 supersede any previously published adjusted rate ap-
20 plicable under subsections (b) and (c) of section 31
21 of the Securities Exchange Act of 1934 for the fiscal
22 year following the fiscal year in which this Act is en-
23 acted and shall take effect on the first day of the fis-
24 cal year following the fiscal year in which this Act
25 is enacted, except that, if this Act is enacted on or

1 after August 31 and on or prior to September 30,
 2 the adjusted rate described in the first sentence shall
 3 be published not later than 15 days after the date
 4 of enactment of this Act and take effect 30 days
 5 thereafter, and the Commission shall continue to col-
 6 lect fees under subsections (b) and (c) of section 31
 7 of the Securities Exchange Act of 1934 at the rate
 8 in effect during the preceding fiscal year until the
 9 adjusted rate is effective.

10 **TITLE X—BUREAU OF CON-** 11 **SUMER FINANCIAL PROTEC-** 12 **TION**

13 **SEC. 1001. SHORT TITLE.**

14 This title may be cited as the “Consumer Financial
 15 Protection Act of 2010”.

16 **SEC. 1002. DEFINITIONS.**

17 Except as otherwise provided in this title, for pur-
 18 poses of this title, the following definitions shall apply:

19 (1) **AFFILIATE.**—The term “affiliate” means
 20 any person that controls, is controlled by, or is
 21 under common control with another person.

22 (2) **BUREAU.**—The term “Bureau” means the
 23 Bureau of Consumer Financial Protection.

24 (3) **BUSINESS OF INSURANCE.**—The term
 25 “business of insurance” means the writing of insur-

1 ance or the reinsuring of risks by an insurer, includ-
2 ing all acts necessary to such writing or reinsuring
3 and the activities relating to the writing of insurance
4 or the reinsuring of risks conducted by persons who
5 act as, or are, officers, directors, agents, or employ-
6 ees of insurers or who are other persons authorized
7 to act on behalf of such persons.

8 (4) CONSUMER.—The term “consumer” means
9 an individual or an agent, trustee, or representative
10 acting on behalf of an individual.

11 (5) CONSUMER FINANCIAL PRODUCT OR SERV-
12 ICE.—The term “consumer financial product or
13 service” means any financial product or service that
14 is described in one or more categories under—

15 (A) paragraph (13) and is offered or pro-
16 vided for use by consumers primarily for per-
17 sonal, family, or household purposes; or

18 (B) clause (i), (iii), (ix), or (x) of para-
19 graph (13)(A), and is delivered, offered, or pro-
20 vided in connection with a consumer financial
21 product or service referred to in subparagraph
22 (A).

23 (6) COVERED PERSON.—The term “covered
24 person” means—

1 (A) any person that engages in offering or
2 providing a consumer financial product or serv-
3 ice; and

4 (B) any affiliate of a person described in
5 subparagraph (A) if such affiliate acts as a
6 service provider to such person.

7 (7) CREDIT.—The term “credit” means the
8 right granted by a person to a consumer to defer
9 payment of a debt, incur debt and defer its payment,
10 or purchase property or services and defer payment
11 for such purchase.

12 (8) DEPOSIT-TAKING ACTIVITY.—The term “de-
13 posit-taking activity” means—

14 (A) the acceptance of deposits, mainte-
15 nance of deposit accounts, or the provision of
16 services related to the acceptance of deposits or
17 the maintenance of deposit accounts;

18 (B) the acceptance of funds, the provision
19 of other services related to the acceptance of
20 funds, or the maintenance of member share ac-
21 counts by a credit union; or

22 (C) the receipt of funds or the equivalent
23 thereof, as the Bureau may determine by rule
24 or order, received or held by a covered person
25 (or an agent for a covered person) for the pur-

1 pose of facilitating a payment or transferring
2 funds or value of funds between a consumer
3 and a third party.

4 (9) DESIGNATED TRANSFER DATE.—The term
5 “designated transfer date” means the date estab-
6 lished under section 1062.

7 (10) DIRECTOR.—The term “Director” means
8 the Director of the Bureau.

9 (11) ENUMERATED CONSUMER LAWS.—The
10 term “enumerated consumer laws” means—

11 (A) the Alternative Mortgage Transaction
12 Parity Act of 1982 (12 U.S.C. 3801 et seq.);

13 (B) the Consumer Leasing Act of 1976
14 (15 U.S.C. 1667 et seq.);

15 (C) the Electronic Fund Transfer Act (15
16 U.S.C. 1693 et seq.);

17 (D) the Equal Credit Opportunity Act (15
18 U.S.C. 1691 et seq.);

19 (E) the Fair Credit Billing Act (15 U.S.C.
20 1666 et seq.);

21 (F) the Fair Credit Reporting Act (15
22 U.S.C. 1681 et seq.), except with respect to sec-
23 tions 615(e) and 628 of that Act (15 U.S.C.
24 1681m(e), 1681w);

1 (G) the Home Owners Protection Act of
2 1998 (12 U.S.C. 4901 et seq.);

3 (H) the Fair Debt Collection Practices Act
4 (15 U.S.C. 1692 et seq.);

5 (I) subsections (c) through (f) of section
6 43 of the Federal Deposit Insurance Act (12
7 U.S.C. 1831t(c)–(f));

8 (J) sections 502 through 509 of the
9 Gramm-Leach-Bliley Act (15 U.S.C. 6802–
10 6809);

11 (K) the Home Mortgage Disclosure Act of
12 1975 (12 U.S.C. 2801 et seq.);

13 (L) the Home Ownership and Equity Pro-
14 tection Act of 1994 (15 U.S.C. 1601 note);

15 (M) the Real Estate Settlement Procedures
16 Act of 1974 (12 U.S.C. 2601 et seq.);

17 (N) the S.A.F.E. Mortgage Licensing Act
18 of 2008 (12 U.S.C. 5101 et seq.);

19 (O) the Truth in Lending Act (15 U.S.C.
20 1601 et seq.); and

21 (P) the Truth in Savings Act (12 U.S.C.
22 4301 et seq.).

23 (12) FEDERAL CONSUMER FINANCIAL LAW.—
24 The term “Federal consumer financial law” means
25 the provisions of this title, the enumerated consumer

1 laws, the laws for which authorities are transferred
2 under subtitles F and H, and any rule or order pre-
3 scribed by the Bureau under this title, an enumer-
4 ated consumer law, or pursuant to the authorities
5 transferred under subtitles F and H.

6 (13) FINANCIAL PRODUCT OR SERVICE.—The
7 term “financial product or service”—

8 (A) means—

9 (i) extending credit and servicing
10 loans, including acquiring, purchasing, sell-
11 ing, brokering, or other extensions of credit
12 (other than solely extending commercial
13 credit to a person who originates consumer
14 credit transactions);

15 (ii) extending or brokering leases of
16 personal or real property that are the func-
17 tional equivalent of purchase finance ar-
18 rangements, if—

19 (I) the lease is on a non-oper-
20 ating basis;

21 (II) the initial term of the lease
22 is at least 90 days; and

23 (III) in the case of a lease involv-
24 ing real property, at the inception of
25 the initial lease, the transaction is in-

1 tended to result in ownership of the
2 leased property to be transferred to
3 the lessee, subject to standards pre-
4 scribed by the Bureau;

5 (iii) providing real estate settlement
6 services or performing appraisals of real
7 estate or personal property;

8 (iv) engaging in deposit-taking activi-
9 ties, transmitting or exchanging funds, or
10 otherwise acting as a custodian of funds or
11 any financial instrument for use by or on
12 behalf of a consumer;

13 (v) selling, providing, or issuing stored
14 value or payment instruments, except that,
15 in the case of a sale of, or transaction to
16 reload, stored value, only if the seller exer-
17 cises substantial control over the terms or
18 conditions of the stored value provided to
19 the consumer where, for purposes of this
20 clause—

21 (I) a seller shall not be found to
22 exercise substantial control over the
23 terms or conditions of the stored value
24 if the seller is not a party to the con-
25 tract with the consumer for the stored

1 value product, and another person is
2 principally responsible for establishing
3 the terms or conditions of the stored
4 value; and

5 (II) advertising the nonfinancial
6 goods or services of the seller on the
7 stored value card or device is not in
8 itself an exercise of substantial control
9 over the terms or conditions;

10 (vi) providing check cashing, check
11 collection, or check guaranty services;

12 (vii) providing payments or other fi-
13 nancial data processing products or serv-
14 ices to a consumer by any technological
15 means, including processing or storing fi-
16 nancial or banking data for any payment
17 instrument, or through any payments sys-
18 tems or network used for processing pay-
19 ments data, including payments made
20 through an online banking system or mo-
21 bile telecommunications network, except
22 that a person shall not be deemed to be a
23 covered person with respect to financial
24 data processing solely because the per-
25 son—

1 (I) unknowingly or incidentally
2 processes, stores, or transmits over
3 the Internet, telephone line, mobile
4 network, or any other mode of trans-
5 mission, as part of a stream of other
6 types of data, financial data in a man-
7 ner that such data is undifferentiated
8 from other types of data of the same
9 form that the person processes, stores,
10 or transmits;

11 (II) is a merchant, retailer, or
12 seller of any nonfinancial good or
13 service who engages in financial data
14 processing by transmitting or storing
15 payments data about a consumer ex-
16 clusively for purpose of initiating pay-
17 ments instructions by the consumer to
18 pay such person for the purchase of,
19 or to complete a commercial trans-
20 action for, such nonfinancial good or
21 service sold directly by such person to
22 the consumer; or

23 (III) provides access to a host
24 server to a person for purposes of en-

1 abling that person to establish and
2 maintain a website;

3 (viii) providing financial advisory serv-
4 ices to consumers on individual financial
5 matters or relating to proprietary financial
6 products or services (other than by pub-
7 lishing any bona fide newspaper, news
8 magazine, or business or financial publica-
9 tion of general and regular circulation, in-
10 cluding publishing market data, news, or
11 data analytics or investment information or
12 recommendations that are not tailored to
13 the individual needs of a particular con-
14 sumer), including—

15 (I) providing credit counseling to
16 any consumer; and

17 (II) providing services to assist a
18 consumer with debt management or
19 debt settlement, modifying the terms
20 of any extension of credit, or avoiding
21 foreclosure;

22 (ix) collecting, analyzing, maintaining,
23 or providing consumer report information
24 or other account information, including in-
25 formation relating to the credit history of

1 consumers, used or expected to be used in
2 connection with any decision regarding the
3 offering or provision of a consumer finan-
4 cial product or service, except to the extent
5 that—

6 (I) a person—

7 (aa) collects, analyzes, or
8 maintains information that re-
9 lates solely to the transactions
10 between a consumer and such
11 person; or

12 (bb) provides the informa-
13 tion described in item (aa) to an
14 affiliate of such person; and

15 (II) the information described in
16 subclause (I)(aa) is not used by such
17 person or affiliate in connection with
18 any decision regarding the offering or
19 provision of a consumer financial
20 product or service to the consumer,
21 other than credit described in section
22 1027(a)(2)(A);

23 (x) collecting debt related to any con-
24 sumer financial product or service; and

1 (xi) such other financial product or
2 service as may be defined by the Bureau,
3 by regulation, for purposes of this title, if
4 the Bureau finds that such financial prod-
5 uct or service is—

6 (I) entered into or conducted as
7 a subterfuge or with a purpose to
8 evade any Federal consumer financial
9 law; or

10 (II) permissible for a bank or for
11 a financial holding company to offer
12 or to provide under any provision of a
13 Federal law or regulation applicable
14 to a bank or a financial holding com-
15 pany, and has, or likely will have, a
16 material impact on consumers; and

17 (B) does not include the business of insur-
18 ance.

19 (14) FOREIGN EXCHANGE.—The term “foreign
20 exchange” means the exchange, for compensation, of
21 currency of the United States or of a foreign govern-
22 ment for currency of another government.

23 (15) INSURED CREDIT UNION.—The term “in-
24 sured credit union” has the same meaning as in sec-

1 tion 101 of the Federal Credit Union Act (12 U.S.C.
2 1752).

3 (16) PAYMENT INSTRUMENT.—The term “pay-
4 ment instrument” means a check, draft, warrant,
5 money order, traveler’s check, electronic instrument,
6 or other instrument, payment of funds, or monetary
7 value (other than currency).

8 (17) PERSON.—The term “person” means an
9 individual, partnership, company, corporation, asso-
10 ciation (incorporated or unincorporated), trust, es-
11 tate, cooperative organization, or other entity.

12 (18) PERSON REGULATED BY THE COMMODITY
13 FUTURES TRADING COMMISSION.—The term “person
14 regulated by the Commodity Futures Trading Com-
15 mission” means any person that is registered, or re-
16 quired by statute or regulation to be registered, with
17 the Commodity Futures Trading Commission, but
18 only to the extent that the activities of such person
19 are subject to the jurisdiction of the Commodity Fu-
20 tures Trading Commission under the Commodity
21 Exchange Act.

22 (19) PERSON REGULATED BY THE COMMIS-
23 SION.—The term “person regulated by the Commis-
24 sion” means a person who is—

1 (A) a broker or dealer that is required to
2 be registered under the Securities Exchange Act
3 of 1934;

4 (B) an investment adviser that is reg-
5 istered under the Investment Advisers Act of
6 1940;

7 (C) an investment company that is re-
8 quired to be registered under the Investment
9 Company Act of 1940, and any company that
10 has elected to be regulated as a business devel-
11 opment company under that Act;

12 (D) a national securities exchange that is
13 required to be registered under the Securities
14 Exchange Act of 1934;

15 (E) a transfer agent that is required to be
16 registered under the Securities Exchange Act of
17 1934;

18 (F) a clearing corporation that is required
19 to be registered under the Securities Exchange
20 Act of 1934;

21 (G) any self-regulatory organization that is
22 required to be registered with the Commission;

23 (H) any nationally recognized statistical
24 rating organization that is required to be reg-
25 istered with the Commission;

1 (I) any securities information processor
2 that is required to be registered with the Com-
3 mission;

4 (J) any municipal securities dealer that is
5 required to be registered with the Commission;

6 (K) any other person that is required to be
7 registered with the Commission under the Secu-
8 rities Exchange Act of 1934; and

9 (L) any employee, agent, or contractor act-
10 ing on behalf of, registered with, or providing
11 services to, any person described in any of sub-
12 paragraphs (A) through (K), but only to the ex-
13 tent that any person described in any of sub-
14 paragraphs (A) through (K), or the employee,
15 agent, or contractor of such person, acts in a
16 regulated capacity.

17 (20) PERSON REGULATED BY A STATE INSUR-
18 ANCE REGULATOR.—The term “person regulated by
19 a State insurance regulator” means any person that
20 is engaged in the business of insurance and subject
21 to regulation by any State insurance regulator, but
22 only to the extent that such person acts in such ca-
23 pacity.

24 (21) PERSON THAT PERFORMS INCOME TAX
25 PREPARATION ACTIVITIES FOR CONSUMERS.—The

1 term “person that performs income tax preparation
2 activities for consumers” means—

3 (A) any tax return preparer (as defined in
4 section 7701(a)(36) of the Internal Revenue
5 Code of 1986), regardless of whether com-
6 pensated, but only to the extent that the person
7 acts in such capacity;

8 (B) any person regulated by the Secretary
9 under section 330 of title 31, United States
10 Code, but only to the extent that the person
11 acts in such capacity; and

12 (C) any authorized IRS e-file Providers (as
13 defined for purposes of section 7216 of the In-
14 ternal Revenue Code of 1986), but only to the
15 extent that the person acts in such capacity.

16 (22) PRUDENTIAL REGULATOR.—The term
17 “prudential regulator” means—

18 (A) in the case of an insured depository in-
19 stitution, the appropriate Federal banking
20 agency, as that term is defined in section 3 of
21 the Federal Deposit Insurance Act; and

22 (B) in the case of an insured credit union,
23 the National Credit Union Administration.

24 (23) RELATED PERSON.—The term “related
25 person”—

1 (A) shall apply only with respect to a cov-
2 ered person that is not a bank holding company
3 (as that term is defined in section 2 of the
4 Bank Holding Company Act of 1956), credit
5 union, or depository institution;

6 (B) shall be deemed to mean a covered
7 person for all purposes of any provision of Fed-
8 eral consumer financial law; and

9 (C) means—

10 (i) any director, officer, or employee
11 charged with managerial responsibility for,
12 or controlling shareholder of, or agent for,
13 such covered person;

14 (ii) any shareholder, consultant, joint
15 venture partner, or other person, as deter-
16 mined by the Bureau (by rule or on a case-
17 by-case basis) who materially participates
18 in the conduct of the affairs of such cov-
19 ered person; and

20 (iii) any independent contractor (in-
21 cluding any attorney, appraiser, or ac-
22 countant) who knowingly or recklessly par-
23 ticipates in any—

24 (I) violation of any provision of
25 law or regulation; or

1 (II) breach of a fiduciary duty.

2 (24) SERVICE PROVIDER.—

3 (A) IN GENERAL.—The term “service pro-
4 vider” means any person that provides a mate-
5 rial service to a covered person in connection
6 with the offering or provision by such covered
7 person of a consumer financial product or serv-
8 ice, including a person that—

9 (i) participates in designing, oper-
10 ating, or maintaining the consumer finan-
11 cial product or service; or

12 (ii) processes transactions relating to
13 the consumer financial product or service
14 (other than unknowingly or incidentally
15 transmitting or processing financial data in
16 a manner that such data is undifferen-
17 tiated from other types of data of the same
18 form as the person transmits or processes).

19 (B) EXCEPTIONS.—The term “service pro-
20 vider” does not include a person solely by virtue
21 of such person offering or providing to a cov-
22 ered person—

23 (i) a support service of a type pro-
24 vided to businesses generally or a similar
25 ministerial service; or

1 (ii) time or space for an advertisement
2 for a consumer financial product or service
3 through print, newspaper, or electronic
4 media.

5 (C) RULE OF CONSTRUCTION.—A person
6 that is a service provider shall be deemed to be
7 a covered person to the extent that such person
8 engages in the offering or provision of its own
9 consumer financial product or service.

10 (25) STATE.—The term “State” means any
11 State, territory, or possession of the United States,
12 the District of Columbia, the Commonwealth of
13 Puerto Rico, the Commonwealth of the Northern
14 Mariana Islands, Guam, American Samoa, or the
15 United States Virgin Islands or any federally recog-
16 nized Indian tribe, as defined by the Secretary of the
17 Interior under section 104(a) of the Federally Rec-
18 ognized Indian Tribe List Act of 1994 (25 U.S.C.
19 479a–1(a)).

20 (26) STORED VALUE.—The term “stored value”
21 means funds or monetary value represented in any
22 electronic format, whether or not specially encrypted,
23 and stored or capable of storage on electronic media
24 in such a way as to be retrievable and transferred
25 electronically, and includes a prepaid debit card or

1 product, or any other similar product, regardless of
2 whether the amount of the funds or monetary value
3 may be increased or reloaded.

4 (27) TRANSMITTING OR EXCHANGING FUNDS.—

5 The term “transmitting or exchanging funds” means
6 receiving currency, monetary value, or payment in-
7 struments from a consumer for the purpose of ex-
8 changing or transmitting the same by any means,
9 including transmission by wire, facsimile, electronic
10 transfer, courier, the Internet, or through bill pay-
11 ment services or through other businesses that facili-
12 tate third-party transfers within the United States
13 or to or from the United States.

14 **Subtitle A—Bureau of Consumer**
15 **Financial Protection**

16 **SEC. 1011. ESTABLISHMENT OF THE BUREAU.**

17 (a) BUREAU ESTABLISHED.—There is established in
18 the Federal Reserve System the Bureau of Consumer Fi-
19 nancial Protection, which shall regulate the offering and
20 provision of consumer financial products or services under
21 the Federal consumer financial laws.

22 (b) DIRECTOR AND DEPUTY DIRECTOR.—

23 (1) IN GENERAL.—There is established the po-
24 sition of the Director, who shall serve as the head
25 of the Bureau.

1 (2) APPOINTMENT.—Subject to paragraph (3),
2 the Director shall be appointed by the President, by
3 and with the advice and consent of the Senate.

4 (3) QUALIFICATION.—The President shall
5 nominate the Director from among individuals who
6 are citizens of the United States.

7 (4) COMPENSATION.—The Director shall be
8 compensated at the rate prescribed for level II of the
9 Executive Schedule under section 5313 of title 5,
10 United States Code.

11 (5) DEPUTY DIRECTOR.—There is established
12 the position of Deputy Director, who shall—

13 (A) be appointed by the Director; and

14 (B) serve as acting Director in the absence
15 or unavailability of the Director.

16 (c) TERM.—

17 (1) IN GENERAL.—The Director shall serve for
18 a term of 5 years.

19 (2) EXPIRATION OF TERM.—An individual may
20 serve as Director after the expiration of the term for
21 which appointed, until a successor has been ap-
22 pointed and qualified.

23 (3) REMOVAL FOR CAUSE.—The President may
24 remove the Director for inefficiency, neglect of duty,
25 or malfeasance in office.

1 (d) SERVICE RESTRICTION.—No Director or Deputy
2 Director may hold any office, position, or employment in
3 any Federal reserve bank, Federal home loan bank, cov-
4 ered person, or service provider during the period of serv-
5 ice of such person as Director or Deputy Director.

6 (e) OFFICES.—The principal office of the Bureau
7 shall be in the District of Columbia. The Director may
8 establish regional offices of the Bureau, including in cities
9 in which the Federal reserve banks, or branches of such
10 banks, are located, in order to carry out the responsibil-
11 ities assigned to the Bureau under the Federal consumer
12 financial laws.

13 **SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.**

14 (a) POWERS OF THE BUREAU.—The Bureau is au-
15 thorized to establish the general policies of the Bureau
16 with respect to all executive and administrative functions,
17 including—

18 (1) the establishment of rules for conducting
19 the general business of the Bureau, in a manner not
20 inconsistent with this title;

21 (2) to bind the Bureau and enter into con-
22 tracts;

23 (3) directing the establishment and mainte-
24 nance of divisions or other offices within the Bureau,
25 in order to carry out the responsibilities under the

1 Federal consumer financial laws, and to satisfy the
2 requirements of other applicable law;

3 (4) to coordinate and oversee the operation of
4 all administrative, enforcement, and research activi-
5 ties of the Bureau;

6 (5) to adopt and use a seal;

7 (6) to determine the character of and the neces-
8 sity for the obligations and expenditures of the Bu-
9 reau;

10 (7) the appointment and supervision of per-
11 sonnel employed by the Bureau;

12 (8) the distribution of business among per-
13 sonnel appointed and supervised by the Director and
14 among administrative units of the Bureau;

15 (9) the use and expenditure of funds;

16 (10) implementing the Federal consumer finan-
17 cial laws through rules, orders, guidance, interpreta-
18 tions, statements of policy, examinations, and en-
19 forcement actions; and

20 (11) performing such other functions as may be
21 authorized or required by law.

22 (b) DELEGATION OF AUTHORITY.—The Director of
23 the Bureau may delegate to any duly authorized employee,
24 representative, or agent any power vested in the Bureau
25 by law.

1 (c) AUTONOMY OF THE BUREAU.—

2 (1) COORDINATION WITH THE BOARD OF GOV-
3 ERNORS.—Notwithstanding section 18 of the Fed-
4 eral Trade Commission Act (15 U.S.C. 57a) and any
5 other provision of law applicable to the supervision
6 or examination of persons with respect to Federal
7 consumer financial laws, the Board of Governors
8 may delegate to the Bureau the authorities to exam-
9 ine persons subject to the jurisdiction of the Board
10 of Governors for compliance with the Federal con-
11 sumer financial laws.

12 (2) AUTONOMY.—Notwithstanding the authori-
13 ties granted to the Board of Governors under the
14 Federal Reserve Act, the Board of Governors may
15 not—

16 (A) intervene in any matter or proceeding
17 before the Director, including examinations or
18 enforcement actions, unless otherwise specifi-
19 cally provided by law;

20 (B) appoint, direct, or remove any officer
21 or employee of the Bureau; or

22 (C) merge or consolidate the Bureau, or
23 any of the functions or responsibilities of the
24 Bureau, with any division or office of the Board
25 of Governors or the Federal reserve banks.

1 (3) RULES AND ORDERS.—No rule or order of
2 the Bureau shall be subject to approval or review by
3 the Board of Governors. The Board of Governors
4 may not delay or prevent the issuance of any rule
5 or order of the Bureau.

6 (4) RECOMMENDATIONS AND TESTIMONY.—No
7 officer or agency of the United States shall have any
8 authority to require the Director or any other officer
9 of the Bureau to submit legislative recommenda-
10 tions, or testimony or comments on legislation, to
11 any officer or agency of the United States for ap-
12 proval, comments, or review prior to the submission
13 of such recommendations, testimony, or comments to
14 the Congress, if such recommendations, testimony,
15 or comments to the Congress include a statement in-
16 dicating that the views expressed therein are those
17 of the Director or such officer, and do not nec-
18 essarily reflect the views of the Board of Governors
19 or the President.

20 **SEC. 1013. ADMINISTRATION.**

21 (a) PERSONNEL.—

22 (1) APPOINTMENT.—

23 (A) IN GENERAL.—The Director may fix
24 the number of, and appoint and direct, all em-
25 ployees of the Bureau.

1 (B) EMPLOYEES OF THE BUREAU.—The
2 Director is authorized to employ attorneys,
3 compliance examiners, compliance supervision
4 analysts, economists, statisticians, and other
5 employees as may be deemed necessary to con-
6 duct the business of the Bureau. Notwith-
7 standing any other provision of law, all such
8 employees shall be appointed and compensated
9 on terms and conditions that are consistent
10 with the terms and conditions set forth in sec-
11 tion 11(l) of the Federal Reserve Act (12
12 U.S.C. 248(l)).

13 (2) COMPENSATION.—The Director shall at all
14 times provide compensation and benefits to each
15 class of employees that, at a minimum, are equiva-
16 lent to the compensation and benefits then being
17 provided by the Board of Governors for the cor-
18 responding class of employees.

19 (b) SPECIFIC FUNCTIONAL UNITS.—

20 (1) RESEARCH.—The Director shall establish a
21 unit whose functions shall include researching, ana-
22 lyzing, and reporting on—

23 (A) developments in markets for consumer
24 financial products or services, including market
25 areas of alternative consumer financial products

1 or services with high growth rates and areas of
2 risk to consumers;

3 (B) access to fair and affordable credit for
4 traditionally underserved communities;

5 (C) consumer awareness, understanding,
6 and use of disclosures and communications re-
7 garding consumer financial products or services;

8 (D) consumer awareness and under-
9 standing of costs, risks, and benefits of con-
10 sumer financial products or services; and

11 (E) consumer behavior with respect to con-
12 sumer financial products or services.

13 (2) COMMUNITY AFFAIRS.—The Director shall
14 establish a unit whose functions shall include pro-
15 viding information, guidance, and technical assist-
16 ance regarding the offering and provision of con-
17 sumer financial products or services to traditionally
18 underserved consumers and communities.

19 (3) COLLECTING AND TRACKING COM-
20 PLAINTS.—

21 (A) IN GENERAL.—The Director shall es-
22 tablish a unit whose functions shall include es-
23 tablishing a single, toll-free telephone number, a
24 website, and a database to facilitate the central-
25 ized collection of, monitoring of, and response

1 to consumer complaints regarding consumer fi-
2 nancial products or services. The Director shall
3 coordinate with other Federal agencies to route
4 complaints to other Federal regulators, where
5 appropriate.

6 (B) ROUTING CALLS TO STATES.—To the
7 extent practicable, State agencies may receive
8 appropriate complaints from the systems estab-
9 lished under subparagraph (A), if—

10 (i) the State agency system has the
11 functional capacity to receive calls or elec-
12 tronic reports routed by the Bureau sys-
13 tems; and

14 (ii) the State agency has satisfied any
15 conditions of participation in the system
16 that the Bureau may establish, including
17 treatment of personally identifiable infor-
18 mation and sharing of information on com-
19 plaint resolution or related compliance pro-
20 cedures and resources.

21 (C) REPORTS TO THE CONGRESS.—The
22 Director shall present an annual report to Con-
23 gress not later than March 31 of each year on
24 the complaints received by the Bureau in the
25 prior year regarding consumer financial prod-

1 ucts and services. Such report shall include in-
2 formation and analysis about complaint num-
3 bers, complaint types, and, where applicable, in-
4 formation about resolution of complaints.

5 (D) DATA SHARING REQUIRED.—To facili-
6 tate preparation of the reports required under
7 subparagraph (C), supervision and enforcement
8 activities, and monitoring of the market for
9 consumer financial products and services, the
10 Bureau shall share consumer complaint infor-
11 mation with prudential regulators, other Fed-
12 eral agencies, and State agencies, consistent
13 with Federal law applicable to personally identi-
14 fiable information. The prudential regulators
15 and other Federal agencies shall share data re-
16 lating to consumer complaints regarding con-
17 sumer financial products and services with the
18 Bureau, consistent with Federal law applicable
19 to personally identifiable information.

20 (c) OFFICE OF FAIR LENDING AND EQUAL OPPOR-
21 TUNITY.—

22 (1) ESTABLISHMENT.—The Director shall es-
23 tablish within the Bureau the Office of Fair Lending
24 and Equal Opportunity.

1 (2) FUNCTIONS.—The Office of Fair Lending
2 and Equal Opportunity shall have such powers and
3 duties as the Director may delegate to the Office, in-
4 cluding—

5 (A) providing oversight and enforcement of
6 Federal laws intended to ensure the fair, equi-
7 table, and nondiscriminatory access to credit for
8 both individuals and communities that are en-
9 forced by the Bureau, including the Equal
10 Credit Opportunity Act and the Home Mort-
11 gage Disclosure Act;

12 (B) coordinating fair lending and fair
13 housing efforts of the Bureau with other Fed-
14 eral agencies and State regulators, as appro-
15 priate, to promote consistent, efficient, and ef-
16 fective enforcement of Federal fair lending laws;

17 (C) working with private industry, fair
18 lending, civil rights, consumer and community
19 advocates on the promotion of fair lending com-
20 pliance and education; and

21 (D) providing annual reports to Congress
22 on the efforts of the Bureau to fulfill its fair
23 lending mandate.

24 (3) ADMINISTRATION OF OFFICE.—There is es-
25 tablished the position of Assistant Director of the

1 Bureau for Fair Lending and Equal Opportunity,
2 who—

3 (A) shall be appointed by the Director; and

4 (B) shall carry out such duties as the Di-
5 rector may delegate to such Assistant Director.

6 (d) OFFICE OF FINANCIAL LITERACY.—

7 (1) ESTABLISHMENT.—The Director shall es-
8 tablish an Office of Financial Literacy, which shall
9 be responsible for developing and implementing ini-
10 tiatives intended to educate and empower consumers
11 to make better informed financial decisions.

12 (2) OTHER DUTIES.—The Office of Financial
13 Literacy shall develop and implement a strategy to
14 improve the financial literacy of consumers that in-
15 cludes measurable goals and objectives, in consulta-
16 tion with the Financial Literacy and Education
17 Commission, consistent with the National Strategy
18 for Financial Education, through activities including
19 providing opportunities for consumers to access—

20 (A) financial counseling;

21 (B) information to assist with the evalua-
22 tion of credit products and the understanding
23 of credit histories and scores;

24 (C) savings, borrowing, and other services
25 found at mainstream financial institutions;

1 (D) activities intended to—

2 (i) prepare the consumer for edu-
3 cational expenses and the submission of fi-
4 nancial aid applications, and other major
5 purchases;

6 (ii) reduce debt; and

7 (iii) improve the financial situation of
8 the consumer;

9 (E) assistance in developing long-term sav-
10 ings strategies; and

11 (F) wealth building and financial services
12 during the preparation process to claim earned
13 income tax credits and Federal benefits.

14 (3) COORDINATION.—The Office of Financial
15 Literacy shall coordinate with other units within the
16 Bureau in carrying out its functions, including—

17 (A) working with the Community Affairs
18 Office to implement the strategy to improve fi-
19 nancial literacy of consumers; and

20 (B) working with the research unit estab-
21 lished by the Director to conduct research re-
22 lated to consumer financial education and coun-
23 seling.

24 (4) REPORT.—Not later than 24 months after
25 the designated transfer date, and annually there-

1 after, the Director shall submit a report on its finan-
2 cial literacy activities and strategy to improve finan-
3 cial literacy of consumers to—

4 (A) the Committee on Banking, Housing,
5 and Urban Affairs of the Senate; and

6 (B) the Committee on Financial Services
7 of the House of Representatives.

8 (5) MEMBERSHIP IN FINANCIAL LITERACY AND
9 EDUCATION COMMISSION.—Section 513(c)(1) of the
10 Financial Literacy and Education Improvement Act
11 (20 U.S.C. 9702(c)(1)) is amended—

12 (A) in subparagraph (B), by striking
13 “and” at the end;

14 (B) by redesignating subparagraph (C) as
15 subparagraph (D); and

16 (C) by inserting after subparagraph (B)
17 the following new subparagraph:

18 “(C) the Director of the Bureau of Con-
19 sumer Financial Protection; and”.

20 (6) CONFORMING AMENDMENT.—Section
21 513(d) of the Financial Literacy and Education Im-
22 provement Act (20 U.S.C. 9702(d)) is amended by
23 adding at the end the following: “The Director of
24 the Bureau of Consumer Financial Protection shall
25 serve as the Vice Chairman.”.

1 **SEC. 1014. CONSUMER ADVISORY BOARD.**

2 (a) ESTABLISHMENT REQUIRED.—The Director shall
3 establish a Consumer Advisory Board to advise and con-
4 sult with the Bureau in the exercise of its functions under
5 the Federal consumer financial laws, and to provide infor-
6 mation on emerging practices in the consumer financial
7 products or services industry, including regional trends,
8 concerns, and other relevant information.

9 (b) MEMBERSHIP.—In appointing the members of
10 the Consumer Advisory Board, the Director shall seek to
11 assemble experts in consumer protection, financial serv-
12 ices, community development, fair lending, and consumer
13 financial products or services and seek representation of
14 the interests of covered persons and consumers, without
15 regard to party affiliation. Not fewer than 6 members
16 shall be appointed upon the recommendation of the re-
17 gional Federal Reserve Bank Presidents, on a rotating
18 basis.

19 (c) MEETINGS.—The Consumer Advisory Board shall
20 meet from time to time at the call of the Director, but,
21 at a minimum, shall meet at least twice in each year.

22 (d) COMPENSATION AND TRAVEL EXPENSES.—Mem-
23 bers of the Consumer Advisory Board who are not full-
24 time employees of the United States shall—

25 (1) be entitled to receive compensation at a rate
26 fixed by the Director while attending meetings of the

1 Consumer Advisory Board, including travel time;
2 and

3 (2) be allowed travel expenses, including trans-
4 portation and subsistence, while away from their
5 homes or regular places of business.

6 **SEC. 1015. COORDINATION.**

7 The Bureau shall coordinate with the Commission,
8 the Commodity Futures Trading Commission, and other
9 Federal agencies and State regulators, as appropriate, to
10 promote consistent regulatory treatment of consumer fi-
11 nancial and investment products and services.

12 **SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CON-**
13 **GRESS.**

14 (a) APPEARANCES BEFORE CONGRESS.—The Direc-
15 tor of the Bureau shall appear before the Committee on
16 Banking, Housing, and Urban Affairs of the Senate and
17 the Committee on Financial Services of the House of Rep-
18 resentatives at semi-annual hearings regarding the reports
19 required under subsection (b).

20 (b) REPORTS REQUIRED.—The Bureau shall, concur-
21 rent with each semi-annual hearing referred to in sub-
22 section (a), prepare and submit to the President and to
23 the Committee on Banking, Housing, and Urban Affairs
24 of the Senate and the Committee on Financial Services

1 of the House of Representatives, a report, beginning with
2 the session following the designated transfer date.

3 (c) CONTENTS.—The reports required by subsection
4 (b) shall include—

5 (1) a discussion of the significant problems
6 faced by consumers in shopping for or obtaining
7 consumer financial products or services;

8 (2) a justification of the budget request of the
9 previous year;

10 (3) a list of the significant rules and orders
11 adopted by the Bureau, as well as other significant
12 initiatives conducted by the Bureau, during the pre-
13 ceding year and the plan of the Bureau for rules, or-
14 ders, or other initiatives to be undertaken during the
15 upcoming period;

16 (4) an analysis of complaints about consumer
17 financial products or services that the Bureau has
18 received and collected in its central database on
19 complaints during the preceding year;

20 (5) a list, with a brief statement of the issues,
21 of the public supervisory and enforcement actions to
22 which the Bureau was a party during the preceding
23 year;

24 (6) the actions taken regarding rules, orders,
25 and supervisory actions with respect to covered per-

1 sons which are not credit unions or depository insti-
2 tutions;

3 (7) an assessment of significant actions by
4 State attorneys general or State regulators relating
5 to Federal consumer financial law; and

6 (8) an analysis of the efforts of the Bureau to
7 fulfill the fair lending mission of the Bureau.

8 **SEC. 1017. FUNDING; PENALTIES AND FINES.**

9 (a) TRANSFER OF FUNDS FROM BOARD OF GOV-
10 ERNORS.—

11 (1) IN GENERAL.—Each year (or quarter of
12 such year), beginning on the designated transfer
13 date, and each quarter thereafter, the Board of Gov-
14 ernors shall transfer to the Bureau from the com-
15 bined earnings of the Federal Reserve System, the
16 amount determined by the Director to be reasonably
17 necessary to carry out the authorities of the Bureau
18 under Federal consumer financial law, taking into
19 account such other sums made available to the Bu-
20 reau from the preceding year (or quarter of such
21 year).

22 (2) FUNDING CAP.—

23 (A) IN GENERAL.—Notwithstanding para-
24 graph (1), and in accordance with this para-
25 graph, the amount that shall be transferred to

1 the Bureau in each fiscal year shall not exceed
 2 a fixed percentage of the total operating ex-
 3 penses of the Federal Reserve System, as re-
 4 ported in the Annual Report, 2009, of the
 5 Board of Governors, equal to—

6 (i) 10 percent of such expenses in fis-
 7 cal year 2011;

8 (ii) 11 percent of such expenses in fis-
 9 cal year 2012; and

10 (iii) 12 percent of such expenses in
 11 fiscal year 2013, and in each year there-
 12 after.

13 (B) AMOUNT ADJUSTED FOR INFLA-
 14 TION.—The dollar amount referred to in sub-
 15 paragraph (A)(iii) shall be adjusted annually,
 16 using the percent by which the average urban
 17 consumer price index for the quarter preceding
 18 the date of the payment differs from the aver-
 19 age of that index for the same quarter in the
 20 prior year.

21 (3) TRANSITION PERIOD.—Beginning on the
 22 date of enactment of this Act and until the des-
 23 ignated transfer date, the Board of Governors shall
 24 transfer to the Bureau the amount estimated by the
 25 Secretary needed to carry out the authorities grant-

1 ed to the Bureau under Federal consumer financial
 2 law, from the date of enactment of this Act until the
 3 designated transfer date.

4 (4) BUDGET AND FINANCIAL MANAGEMENT.—

5 (A) FINANCIAL OPERATING PLANS AND
 6 FORECASTS.—The Director shall provide to the
 7 Director of the Office of Management and
 8 Budget copies of the financial operating plans
 9 and forecasts of the Director, as prepared by
 10 the Director in the ordinary course of the oper-
 11 ations of the Bureau, and copies of the quar-
 12 terly reports of the financial condition and re-
 13 sults of operations of the Bureau, as prepared
 14 by the Director in the ordinary course of the
 15 operations of the Bureau.

16 (B) FINANCIAL STATEMENTS.—The Bu-
 17 reau shall prepare annually a statement of—

- 18 (i) assets and liabilities and surplus or
- 19 deficit;
- 20 (ii) income and expenses; and
- 21 (iii) sources and application of funds.

22 (C) FINANCIAL MANAGEMENT SYSTEMS.—
 23 The Bureau shall implement and maintain fi-
 24 nancial management systems that comply sub-
 25 stantially with Federal financial management

1 systems requirements and applicable Federal
2 accounting standards.

3 (D) ASSERTION OF INTERNAL CON-
4 TROLS.—The Director shall provide to the
5 Comptroller General of the United States an as-
6 sertion as to the effectiveness of the internal
7 controls that apply to financial reporting by the
8 Bureau, using the standards established in sec-
9 tion 3512(c) of title 31, United States Code.

10 (E) RULE OF CONSTRUCTION.—This sub-
11 section may not be construed as implying any
12 obligation on the part of the Director to consult
13 with or obtain the consent or approval of the
14 Director of the Office of Management and
15 Budget with respect to any report, plan, fore-
16 cast, or other information referred to in sub-
17 paragraph (A) or any jurisdiction or oversight
18 over the affairs or operations of the Bureau.

19 (5) AUDIT OF THE BUREAU.—

20 (A) IN GENERAL.—The Comptroller Gen-
21 eral shall annually audit the financial trans-
22 actions of the Bureau in accordance with the
23 United States generally accepted government
24 auditing standards, as may be prescribed by the
25 Comptroller General of the United States. The

1 audit shall be conducted at the place or places
2 where accounts of the Bureau are normally
3 kept. The representatives of the Government
4 Accountability Office shall have access to the
5 personnel and to all books, accounts, docu-
6 ments, papers, records (including electronic
7 records), reports, files, and all other papers,
8 automated data, things, or property belonging
9 to or under the control of or used or employed
10 by the Bureau pertaining to its financial trans-
11 actions and necessary to facilitate the audit,
12 and such representatives shall be afforded full
13 facilities for verifying transactions with the bal-
14 ances or securities held by depositories, fiscal
15 agents, and custodians. All such books, ac-
16 counts, documents, records, reports, files, pa-
17 pers, and property of the Bureau shall remain
18 in possession and custody of the Bureau. The
19 Comptroller General may obtain and duplicate
20 any such books, accounts, documents, records,
21 working papers, automated data and files, or
22 other information relevant to such audit with-
23 out cost to the Comptroller General, and the
24 right of access of the Comptroller General to
25 such information shall be enforceable pursuant

1 to section 716(c) of title 31, United States
2 Code.

3 (B) REPORT.—The Comptroller General
4 shall submit to the Congress a report of each
5 annual audit conducted under this subsection.
6 The report to the Congress shall set forth the
7 scope of the audit and shall include the state-
8 ment of assets and liabilities and surplus or
9 deficit, the statement of income and expenses,
10 the statement of sources and application of
11 funds, and such comments and information as
12 may be deemed necessary to inform Congress of
13 the financial operations and condition of the
14 Bureau, together with such recommendations
15 with respect thereto as the Comptroller General
16 may deem advisable. A copy of each report shall
17 be furnished to the President and to the Bu-
18 reau at the time submitted to the Congress.

19 (C) ASSISTANCE AND COSTS.—For the
20 purpose of conducting an audit under this sub-
21 section, the Comptroller General may, in the
22 discretion of the Comptroller General, employ
23 by contract, without regard to section 3709 of
24 the Revised Statutes of the United States (41
25 U.S.C. 5), professional services of firms and or-

ganizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(b) CONSUMER FINANCIAL PROTECTION FUND.—

(1) SEPARATE FUND IN FEDERAL RESERVE BOARD ESTABLISHED.—There is established in the Federal Reserve Board a separate fund, to be known as the “Consumer Financial Protection Fund” (referred to in this section as the “Bureau Fund”).

(2) FUND RECEIPTS.—All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

(3) INVESTMENT AUTHORITY.—

1 (A) AMOUNTS IN BUREAU FUND MAY BE
2 INVESTED.—The Bureau may request the
3 Board of Governors to invest the portion of the
4 Bureau Fund that is not, in the judgment of
5 the Bureau, required to meet the current needs
6 of the Bureau.

7 (B) ELIGIBLE INVESTMENTS.—Invest-
8 ments authorized by this paragraph shall be
9 made by the Board of Governors in obligations
10 of the United States or obligations that are
11 guaranteed as to principal and interest by the
12 United States, with maturities suitable to the
13 needs of the Bureau Fund, as determined by
14 the Bureau.

15 (C) INTEREST AND PROCEEDS CRED-
16 ITED.—The interest on, and the proceeds from
17 the sale or redemption of, any obligations held
18 in the Bureau Fund shall be credited to the
19 Bureau Fund.

20 (c) USE OF FUNDS.—

21 (1) IN GENERAL.—Funds obtained by, trans-
22 ferred to, or credited to the Bureau Fund shall be
23 immediately available to the Bureau and under the
24 control of the Director, and shall remain available
25 until expended, to pay the expenses of the Bureau

1 in carrying out its duties and responsibilities. The
2 compensation of the Director and other employees of
3 the Bureau and all other expenses thereof may be
4 paid from, obtained by, transferred to, or credited to
5 the Bureau Fund under this section.

6 (2) FUNDS THAT ARE NOT GOVERNMENT
7 FUNDS.—Funds obtained by or transferred to the
8 Bureau Fund shall not be construed to be Govern-
9 ment funds or appropriated monies.

10 (3) AMOUNTS NOT SUBJECT TO APPORTION-
11 MENT.—Notwithstanding any other provision of law,
12 amounts in the Bureau Fund and in the Civil Pen-
13 alty Fund established under subsection (d) shall not
14 be subject to apportionment for purposes of chapter
15 15 of title 31, United States Code, or under any
16 other authority.

17 (d) PENALTIES AND FINES.—

18 (1) ESTABLISHMENT OF VICTIMS RELIEF
19 FUND.—There is established in the Federal Reserve
20 Board a fund to be known as the “Consumer Finan-
21 cial Protection Civil Penalty Fund” (referred to in
22 this subsection as the “Civil Penalty Fund”). If the
23 Bureau obtains a civil penalty against any person in
24 any judicial or administrative action under Federal
25 consumer financial laws, the Bureau shall deposit

1 into the Civil Penalty Fund, the amount of the pen-
2 alty collected.

3 (2) PAYMENT TO VICTIMS.—Amounts in the
4 Civil Penalty Fund shall be available to the Bureau,
5 without fiscal year limitation, for payments to the
6 victims of activities for which civil penalties have
7 been imposed under the Federal consumer financial
8 laws. To the extent such victims cannot be located
9 or such payments are otherwise not practicable, the
10 Bureau may use such funds for the purpose of con-
11 sumer education and financial literacy programs.

12 **SEC. 1018. EFFECTIVE DATE.**

13 This subtitle shall become effective on the date of en-
14 actment of this Act.

15 **Subtitle B—General Powers of the**
16 **Bureau**

17 **SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.**

18 (a) PURPOSE.—The Bureau shall seek to implement
19 and, where applicable, enforce Federal consumer financial
20 law consistently for the purpose of ensuring that markets
21 for consumer financial products and services are fair,
22 transparent, and competitive.

23 (b) OBJECTIVES.—The Bureau is authorized to exer-
24 cise its authorities under Federal consumer financial law

1 for the purposes of ensuring that, with respect to con-
2 sumer financial products and services—

3 (1) consumers are provided with timely and un-
4 derstandable information to make responsible deci-
5 sions about financial transactions;

6 (2) consumers are protected from unfair, decep-
7 tive, or abusive acts and practices and from dis-
8 crimination;

9 (3) outdated, unnecessary, or unduly burden-
10 some regulations are regularly identified and ad-
11 dressed in order to reduce unwarranted regulatory
12 burdens;

13 (4) Federal consumer financial law is enforced
14 consistently, without regard to the status of a person
15 as a depository institution, in order to promote fair
16 competition; and

17 (5) markets for consumer financial products
18 and services operate transparently and efficiently to
19 facilitate access and innovation.

20 (c) FUNCTIONS.—The primary functions of the Bu-
21 reau are—

22 (1) conducting financial education programs;

23 (2) collecting, investigating, and responding to
24 consumer complaints;

1 (3) collecting, researching, monitoring, and
2 publishing information relevant to the functioning of
3 markets for consumer financial products and serv-
4 ices to identify risks to consumers and the proper
5 functioning of such markets;

6 (4) subject to sections 1024 through 1026, su-
7 pervising covered persons for compliance with Fed-
8 eral consumer financial law, and taking appropriate
9 enforcement action to address violations of Federal
10 consumer financial law;

11 (5) issuing rules, orders, and guidance imple-
12 menting Federal consumer financial law; and

13 (6) performing such support activities as may
14 be necessary or useful to facilitate the other func-
15 tions of the Bureau.

16 **SEC. 1022. RULEMAKING AUTHORITY.**

17 (a) IN GENERAL.—The Bureau is authorized to exer-
18 cise its authorities under Federal consumer financial law
19 to administer, enforce, and otherwise implement the provi-
20 sions of Federal consumer financial law.

21 (b) RULEMAKING, ORDERS, AND GUIDANCE.—

22 (1) GENERAL AUTHORITY.—The Director may
23 prescribe rules and issue orders and guidance, as
24 may be necessary or appropriate to enable the Bu-
25 reau to administer and carry out the purposes and

1 objectives of the Federal consumer financial laws,
2 and to prevent evasions thereof.

3 (2) STANDARDS FOR RULEMAKING.—In pre-
4 scribing a rule under the Federal consumer financial
5 laws—

6 (A) the Bureau shall consider the potential
7 benefits and costs to consumers and covered
8 persons, including the potential reduction of ac-
9 cess by consumers to consumer financial prod-
10 ucts or services resulting from such rule;

11 (B) the Bureau shall consult with the ap-
12 propriate prudential regulators or other Federal
13 agencies prior to proposing a rule and during
14 the comment process regarding consistency with
15 prudential, market, or systemic objectives ad-
16 ministered by such agencies; and

17 (C) if, during the consultation process de-
18 scribed in subparagraph (B), a prudential regu-
19 lator provides the Bureau with a written objec-
20 tion to the proposed rule of the Bureau or a
21 portion thereof, the Bureau shall include in the
22 adopting release a description of the objection
23 and the basis for the Bureau decision, if any,
24 regarding such objection, except that nothing in
25 this clause shall be construed as altering or lim-

1 iting the procedures under section 1023 that
2 may apply to any rule prescribed by the Bu-
3 reau.

4 (3) EXEMPTIONS.—

5 (A) IN GENERAL.—The Bureau, by rule,
6 may conditionally or unconditionally exempt
7 any class of covered persons, service providers,
8 or consumer financial products or services, from
9 any provision of this title, or from any rule
10 issued under this title, as the Bureau deter-
11 mines necessary or appropriate to carry out the
12 purposes and objectives of this title, taking into
13 consideration the factors in subparagraph (B).

14 (B) FACTORS.—In issuing an exemption,
15 as permitted under subparagraph (A), the Bu-
16 reau shall, as appropriate, take into consider-
17 ation—

18 (i) the total assets of the class of cov-
19 ered persons;

20 (ii) the volume of transactions involv-
21 ing consumer financial products or services
22 in which the class of covered persons en-
23 gages; and

24 (iii) existing provisions of law which
25 are applicable to the consumer financial

1 product or service and the extent to which
2 such provisions provide consumers with
3 adequate protections.

4 (4) EXCLUSIVE RULEMAKING AUTHORITY.—
5 Notwithstanding any other provisions of Federal
6 law, to the extent that a provision of Federal con-
7 sumer financial law authorizes the Bureau and an-
8 other Federal agency to issue regulations under that
9 provision of law for purposes of assuring compliance
10 with Federal consumer financial law and any regula-
11 tions thereunder, the Bureau shall have the exclusive
12 authority to prescribe rules subject to those provi-
13 sions of law.

14 (c) MONITORING.—

15 (1) IN GENERAL.—In order to support its rule-
16 making and other functions, the Bureau shall mon-
17 itor for risks to consumers in the offering or provi-
18 sion of consumer financial products or services, in-
19 cluding developments in markets for such products
20 or services.

21 (2) CONSIDERATIONS.—In allocating its re-
22 sources to perform the monitoring required by this
23 section, the Bureau may consider, among other fac-
24 tors—

1 (A) likely risks and costs to consumers as-
2 sociated with buying or using a type of con-
3 sumer financial product or service;

4 (B) understanding by consumers of the
5 risks of a type of consumer financial product or
6 service;

7 (C) the legal protections applicable to the
8 offering or provision of a consumer financial
9 product or service, including the extent to which
10 the law is likely to adequately protect con-
11 sumers;

12 (D) rates of growth in the offering or pro-
13 vision of a consumer financial product or serv-
14 ice;

15 (E) the extent, if any, to which the risks
16 of a consumer financial product or service may
17 disproportionately affect traditionally under-
18 served consumers; or

19 (F) the types, number, and other pertinent
20 characteristics of covered persons that offer or
21 provide the consumer financial product or serv-
22 ice.

23 (3) REPORTS.—The Bureau shall publish not
24 fewer than 1 report of significant findings of its
25 monitoring required by this subsection in each cal-

1 endar year, beginning with the first calendar year
2 that begins at least 1 year after the designated
3 transfer date.

4 (4) COLLECTION OF INFORMATION.—In con-
5 ducting research on the offering and provision of
6 consumer financial products or services, the Bureau
7 shall have the authority to gather information from
8 time to time regarding the organization, business
9 conduct, markets, and activities of persons operating
10 in consumer financial services markets. In order to
11 gather such information, the Bureau may—

12 (A) gather and compile information from
13 examination reports concerning covered persons
14 or service providers, assessment of consumer
15 complaints, surveys, and interviews of covered
16 persons and consumers, and review of available
17 databases;

18 (B) require persons to file with the Bu-
19 reau, under oath or otherwise, in such form and
20 within such reasonable period of time as the
21 Bureau may prescribe, by rule or order, annual
22 or special reports, or answers in writing to spe-
23 cific questions, furnishing such information as
24 the Bureau may require; and

1 (C) make public such information obtained
2 by the Bureau under this section, as is in the
3 public interest in reports or otherwise in the
4 manner best suited for public information and
5 use.

6 (5) CONFIDENTIALITY RULES.—The Bureau
7 shall prescribe rules regarding the confidential treat-
8 ment of information obtained from persons in con-
9 nection with the exercise of its authorities under
10 Federal consumer financial law.

11 (A) ACCESS BY THE BUREAU TO REPORTS
12 OF OTHER REGULATORS.—

13 (i) EXAMINATION AND FINANCIAL
14 CONDITION REPORTS.—Upon providing
15 reasonable assurances of confidentiality,
16 the Bureau shall have access to any report
17 of examination or financial condition made
18 by a prudential regulator or other Federal
19 agency having jurisdiction over a covered
20 person or service provider, and to all revi-
21 sions made to any such report.

22 (ii) PROVISION OF OTHER REPORTS
23 TO THE BUREAU.—In addition to the re-
24 ports described in clause (i), a prudential
25 regulator or other Federal agency having

1 jurisdiction over a covered person or serv-
2 ice provider may, in its discretion, furnish
3 to the Bureau any other report or other
4 confidential supervisory information con-
5 cerning any insured depository institution,
6 credit union, or other entity examined by
7 such agency under authority of any provi-
8 sion of Federal law.

9 (B) ACCESS BY OTHER REGULATORS TO
10 REPORTS OF THE BUREAU.—

11 (i) EXAMINATION REPORTS.—Upon
12 providing reasonable assurances of con-
13 fidentiality, a prudential regulator, a State
14 regulator, or any other Federal agency
15 having jurisdiction over a covered person
16 or service provider shall have access to any
17 report of examination made by the Bureau
18 with respect to such person, and to all re-
19 visions made to any such report.

20 (ii) PROVISION OF OTHER REPORTS
21 TO OTHER REGULATORS.—In addition to
22 the reports described in clause (i), the Bu-
23 reau may, in its discretion, furnish to a
24 prudential regulator or other agency hav-
25 ing jurisdiction over a covered person or

1 service provider any other report or other
2 confidential supervisory information con-
3 cerning such person examined by the Bu-
4 reau under the authority of any other pro-
5 vision of Federal law.

6 (6) PRIVACY CONSIDERATIONS.—In collecting
7 information from any person, publicly releasing in-
8 formation held by the Bureau, or requiring covered
9 persons to publicly report information, the Bureau
10 shall take steps to ensure that proprietary, personal,
11 or confidential consumer information that is pro-
12 tected from public disclosure under section 552(b) or
13 552a of title 5, United States Code, or any other
14 provision of law, is not made public under this title.

15 (d) ASSESSMENT OF SIGNIFICANT RULES.—

16 (1) IN GENERAL.—The Bureau shall conduct
17 an assessment of each significant rule or order
18 adopted by the Bureau under Federal consumer fi-
19 nancial law. The assessment shall address, among
20 other relevant factors, the effectiveness of the rule or
21 order in meeting the purposes and objectives of this
22 title and the specific goals stated by the Bureau.
23 The assessment shall reflect available evidence and
24 any data that the Bureau reasonably may collect.

1 (2) REPORTS.—The Bureau shall publish a re-
2 port of its assessment under this subsection not
3 later than 5 years after the effective date of the sub-
4 ject rule or order.

5 (3) PUBLIC COMMENT REQUIRED.—Before pub-
6 lishing a report of its assessment, the Bureau shall
7 invite public comment on recommendations for modi-
8 fying, expanding, or eliminating the newly adopted
9 significant rule or order.

10 (e) INFORMATION GATHERING.—In conducting any
11 monitoring or assessment required by this section, the Bu-
12 reau may gather information through a variety of meth-
13 ods, including by conducting surveys or interviews of con-
14 sumers.

15 **SEC. 1023. REVIEW OF BUREAU REGULATIONS.**

16 (a) REVIEW OF BUREAU REGULATIONS.—On the pe-
17 tition of a member agency of the Council, the Council may
18 set aside a final regulation prescribed by the Bureau, or
19 any provision thereof, if the Council decides, in accordance
20 with subsection (c), that the regulation or provision would
21 put the safety and soundness of the United States banking
22 system or the stability of the financial system of the
23 United States at risk.

24 (b) PETITION.—

1 (1) PROCEDURE.—An agency represented by a
2 member of the Council may petition the Council, in
3 writing, and in accordance with rules prescribed pur-
4 suant to subsection (f), to stay the effectiveness of,
5 or set aside, a regulation if the member agency filing
6 the petition—

7 (A) has in good faith attempted to work
8 with the Bureau to resolve concerns regarding
9 the effect of the rule on the safety and sound-
10 ness of the United States banking system or
11 the stability of the financial system of the
12 United States; and

13 (B) files the petition with the Council not
14 later than 10 days after the date on which the
15 regulation has be

16 (C) en published in the Federal Register.

17 (2) PUBLICATION.—Any petition filed with the
18 Council under this section shall be published in the
19 Federal Register and transmitted contemporaneously
20 with filing to the Committee on Banking, Housing,
21 and Urban Affairs of the Senate and the Committee
22 on Financial Services of the House of Representa-
23 tives.

24 (c) STAYS AND SET ASIDES.—

25 (1) STAY.—

1 (A) IN GENERAL.—Upon the request of
 2 any member agency, the Chairperson of the
 3 Council may stay the effectiveness of a regula-
 4 tion for the purpose of allowing appropriate
 5 consideration of the petition by the Council.

6 (B) EXPIRATION.—A stay issued under
 7 this paragraph shall expire on the earlier of—

8 (i) 90 days after the date of filing of
 9 the petition under subsection (b); or

10 (ii) the date on which the Council
 11 makes a decision under paragraph (3).

12 (2) NO ADVERSE INFERENCE.—After the expi-
 13 ration of any stay imposed under this section, no in-
 14 ference shall be drawn regarding the validity or en-
 15 forceability of a regulation which was the subject of
 16 the petition.

17 (3) VOTE.—

18 (A) IN GENERAL.—The decision to issue a
 19 stay of, or set aside, any regulation under this
 20 section shall be made only with the affirmative
 21 vote in accordance with subparagraph (B) of $\frac{2}{3}$
 22 of the members of the Council then serving.

23 (B) AUTHORIZATION TO VOTE.—A member
 24 of the Council may vote to stay the effectiveness
 25 of, or set aside, a final regulation prescribed by

1 the Bureau only if the agency or department
2 represented by that member has—

3 (i) considered any relevant informa-
4 tion provided by the agency submitting the
5 petition and by the Bureau; and

6 (ii) made an official determination, at
7 a public meeting where applicable, that the
8 regulation which is the subject of the peti-
9 tion would put the safety and soundness of
10 the United States banking system or the
11 stability of the financial system of the
12 United States at risk.

13 (4) DECISIONS TO SET ASIDE.—

14 (A) EFFECT OF DECISION.—A decision by
15 the Council to set aside a regulation prescribed
16 by the Bureau, or provision thereof, shall
17 render such regulation, or provision thereof, un-
18 enforceable.

19 (B) TIMELY ACTION REQUIRED.—The
20 Council may not issue a decision to set aside a
21 regulation, or provision thereof, which is the
22 subject of a petition under this section after the
23 expiration of the later of—

1 (i) 45 days following the date of filing
2 of the petition, unless a stay is issued
3 under paragraph (1); or

4 (ii) the expiration of a stay issued by
5 the Council under this section.

6 (C) SEPARATE AUTHORITY.—The issuance
7 of a stay under this section does not affect the
8 authority of the Council to set aside a regula-
9 tion.

10 (5) DISMISSAL DUE TO INACTION.—A petition
11 under this section shall be deemed dismissed if the
12 Council has not issued a decision to set aside a regu-
13 lation, or provision thereof, within the period for
14 timely action under paragraph (4)(B).

15 (6) PUBLICATION OF DECISION.—Any decision
16 under this subsection to issue a stay of, or set aside,
17 a regulation or provision thereof shall be published
18 by the Council in the Federal Register as soon as
19 practicable after the decision is made, with an expla-
20 nation of the reasons for the decision.

21 (7) RULEMAKING PROCEDURES INAPPLI-
22 CABLE.—The notice and comment procedures under
23 section 553 of title 5, United States Code, shall not
24 apply to any decision under this section of the Coun-
25 cil to issue a stay of, or set aside, a regulation.

1 (8) JUDICIAL REVIEW OF DECISIONS BY THE
2 COUNCIL.—A decision by the Council to set aside a
3 regulation prescribed by the Bureau, or provision
4 thereof, shall be subject to review under chapter 7
5 of title 5, United States Code.

6 (d) APPLICATION OF OTHER LAW.—Nothing in this
7 section shall be construed as altering, limiting, or restrict-
8 ing the application of any other provision of law, except
9 as otherwise specifically provided in this section, including
10 chapter 5 and chapter 7 of title 5, United States Code,
11 to a regulation which is the subject of a petition filed
12 under this section.

13 (e) SAVINGS CLAUSE.—Nothing in this section shall
14 be construed as limiting or restricting the Bureau from
15 engaging in a rulemaking in accordance with applicable
16 law.

17 (f) IMPLEMENTING RULES.—The Council shall pre-
18 scribe procedural rules to implement this section.

19 **SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED**
20 **PERSONS.**

21 (a) SCOPE OF COVERAGE.—

22 (1) APPLICABILITY.—Notwithstanding any
23 other provision of this title, and except as provided
24 in paragraph (3), this section shall apply to any cov-
25 ered person who—

1 (A) offers or provides origination, broker-
2 age, or servicing of loans secured by real estate
3 for use by consumers primarily for personal,
4 family, or household purposes, or loan modifica-
5 tion or foreclosure relief services in connection
6 with such loans; or

7 (B) is a larger participant of a market for
8 other consumer financial products or services,
9 as defined by rule in accordance with paragraph
10 (2).

11 (2) RULEMAKING TO DEFINE COVERED PER-
12 SONS SUBJECT TO THIS SECTION.—The Bureau
13 shall consult with the Federal Trade Commission
14 prior to issuing a rule to define covered persons sub-
15 ject to this section, in accordance with paragraph
16 (1)(B). The Bureau shall issue its initial rule within
17 1 year of the designated transfer date.

18 (3) RULES OF CONSTRUCTION.—

19 (A) CERTAIN PERSONS EXCLUDED.—This
20 section shall not apply to persons described in
21 section 1025(a) or 1026(a).

22 (B) ACTIVITY LEVELS.—For purposes of
23 computing activity levels under paragraph (1)
24 or rules issued thereunder, activities of affili-
25 ated companies (other than insured depository

1 institutions or insured credit unions) shall be
2 aggregated.

3 (b) SUPERVISION.—

4 (1) IN GENERAL.—The Bureau shall require re-
5 ports and conduct examinations on a periodic basis
6 of persons described in subsection (a) for purposes
7 of—

8 (A) assessing compliance with the require-
9 ments of Federal consumer financial law;

10 (B) obtaining information about the activi-
11 ties and compliance systems or procedures of
12 such person; and

13 (C) detecting and assessing risks to con-
14 sumers and to markets for consumer financial
15 products and services.

16 (2) RISK-BASED SUPERVISION PROGRAM.—The
17 Bureau shall exercise its authority under paragraph
18 (1) in a manner designed to ensure that such exer-
19 cise, with respect to persons described in subsection
20 (a), is based on the assessment by the Bureau of the
21 risks posed to consumers in the relevant product
22 markets and geographic markets, and taking into
23 consideration, as applicable—

24 (A) the asset size of the covered person;

1 (B) the volume of transactions involving
2 consumer financial products or services in
3 which the covered person engages;

4 (C) the risks to consumers created by the
5 provision of such consumer financial products
6 or services;

7 (D) the extent to which such institutions
8 are subject to oversight by State authorities for
9 consumer protection; and

10 (E) any other factors that the Bureau de-
11 termines to be relevant to a class of covered
12 persons.

13 (3) COORDINATION.—To minimize regulatory
14 burden, the Bureau shall coordinate its supervisory
15 activities with the supervisory activities conducted by
16 prudential regulators and the State bank regulatory
17 authorities, including establishing their respective
18 schedules for examining persons described in sub-
19 section (a) and requirements regarding reports to be
20 submitted by such persons.

21 (4) USE OF EXISTING REPORTS.—The Bureau
22 shall, to the fullest extent possible, use—

23 (A) reports pertaining to persons described
24 in subsection (a) that have been provided or re-

1 quired to have been provided to a Federal or
2 State agency; and

3 (B) information that has been reported
4 publicly.

5 (5) PRESERVATION OF AUTHORITY.—Nothing
6 in this title may be construed as limiting the author-
7 ity of the Director to require reports from persons
8 described in subsection (a), as permitted under para-
9 graph (1), regarding information owned or under the
10 control of such person, regardless of whether such
11 information is maintained, stored, or processed by
12 another person.

13 (6) REPORTS OF TAX LAW NONCOMPLIANCE.—
14 The Bureau shall provide the Commissioner of In-
15 ternal Revenue with any report of examination or re-
16 lated information identifying possible tax law non-
17 compliance.

18 (7) REGISTRATION, RECORDKEEPING, AND
19 OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

20 (A) IN GENERAL.—The Bureau shall pre-
21 scribe rules to facilitate supervision of persons
22 described in subsection (a) and assessment and
23 detection of risks to consumers.

24 (B) REGISTRATION.—

1 (i) IN GENERAL.—The Bureau shall
2 prescribe rules regarding registration re-
3 quirements for persons described in sub-
4 section (a).

5 (ii) EXCEPTION FOR RELATED PER-
6 SONS.—The Bureau may not impose re-
7 quirements under this section regarding
8 the registration of a related person.

9 (iii) REGISTRATION INFORMATION.—
10 Subject to rules prescribed by the Bureau,
11 the Bureau shall publicly disclose the reg-
12 istration information about persons de-
13 scribed in subsection (a) to facilitate the
14 ability of consumers to identify persons de-
15 scribed in subsection (a) registered with
16 the Bureau.

17 (C) RECORDKEEPING.—The Bureau may
18 require a person described in subsection (a), to
19 generate, provide, or retain records for the pur-
20 poses of facilitating supervision of such persons
21 and assessing and detecting risks to consumers.

22 (D) REQUIREMENTS CONCERNING OBLIGA-
23 TIONS.—The Bureau may prescribe rules re-
24 garding a person described in subsection (a), to
25 ensure that such persons are legitimate entities

1 and are able to perform their obligations to con-
2 sumers. Such requirements may include back-
3 ground checks for principals, officers, directors,
4 or key personnel and bonding or other appro-
5 priate financial requirements.

6 (E) CONSULTATION WITH STATE AGEN-
7 CIES.—In developing and implementing require-
8 ments under this paragraph, the Bureau shall
9 consult with State agencies regarding require-
10 ments or systems (including coordinated or
11 combined systems for registration), where ap-
12 propriate.

13 (c) EXCLUSIVE ENFORCEMENT AUTHORITY.—

14 (1) THE BUREAU TO HAVE EXCLUSIVE EN-
15 FORCEMENT AUTHORITY.—To the extent that Fed-
16 eral law authorizes the Bureau and another Federal
17 agency to enforce Federal consumer financial law,
18 the Bureau shall have exclusive authority to enforce
19 that Federal consumer financial law with respect to
20 any person described in subsection (a)(1)(B).

21 (2) REFERRAL.—Any Federal agency author-
22 ized to enforce a Federal consumer financial law de-
23 scribed in paragraph (1) may recommend in writing
24 to the Bureau that the Bureau initiate an enforce-

1 ment proceeding, as the Bureau is authorized by
2 that Federal law or by this title.

3 (3) COORDINATION WITH THE FEDERAL TRADE
4 COMMISSION.—

5 (A) IN GENERAL.—The Bureau and the
6 Federal Trade Commission shall coordinate en-
7 forcement actions for violations of Federal law
8 regarding the offering or provision of consumer
9 financial products or services by any covered
10 person that is described in subsection (a)(1)(A),
11 or service providers thereto. In carrying out this
12 subparagraph, the agencies shall negotiate an
13 agreement to establish procedures for such co-
14 ordination, including procedures for notice to
15 the other agency, where feasible, prior to initi-
16 ating a civil action to enforce a Federal law re-
17 garding the offering or provision of consumer
18 financial products or services.

19 (B) CIVIL ACTIONS.—Whenever a civil ac-
20 tion has been filed by, or on behalf of, the Bu-
21 reau or the Federal Trade Commission for any
22 violation of any provision of Federal law de-
23 scribed in subparagraph (A), or any regulation
24 prescribed under such provision of law—

1 (i) the other agency may not, during
2 the pendency of that action, institute a
3 civil action under such provision of law
4 against any defendant named in the com-
5 plaint in such pending action for any viola-
6 tion alleged in the complaint; and

7 (ii) the Bureau or the Federal Trade
8 Commission may intervene as a party in
9 any such action brought by the other agen-
10 cy, and, upon intervening—

11 (I) be heard on all matters aris-
12 ing in such enforcement action; and

13 (II) file petitions for appeal in
14 such actions.

15 (C) AGREEMENT TERMS.—The terms of
16 any agreement negotiated under subparagraph
17 (A) may modify or supersede the provisions of
18 subparagraph (B).

19 (D) DEADLINE.—The agencies shall reach
20 the agreement required under subparagraph (A)
21 not later than 6 months after the designated
22 transfer date.

23 (d) EXCLUSIVE RULEMAKING AND EXAMINATION
24 AUTHORITY.—Notwithstanding any other provision of
25 Federal law, to the extent that Federal law authorizes the

1 Bureau and another Federal agency to issue regulations
2 or guidance, conduct examinations, or require reports
3 from a person described in subsection (a) under such law
4 for purposes of assuring compliance with Federal con-
5 sumer financial law and any regulations thereunder, the
6 Bureau shall have the exclusive authority to prescribe
7 rules, issue guidance, conduct examinations, require re-
8 ports, or issue exemptions with regard to a person de-
9 scribed in subsection (a), subject to those provisions of
10 law.

11 (e) SERVICE PROVIDERS.—A service provider to a
12 person described in subsection (a) shall be subject to the
13 authority of the Bureau under this section, to the same
14 extent as if such service provider were engaged in a service
15 relationship with a bank, and the Bureau were an appro-
16 priate Federal banking agency under section 7(c) of the
17 Bank Service Company Act (12 U.S.C. 1867(c)). In con-
18 ducting any examination or requiring any report from a
19 service provider subject to this subsection, the Bureau
20 shall coordinate with the appropriate prudential regulator,
21 as applicable.

22 (f) PRESERVATION OF FARM CREDIT ADMINISTRA-
23 TION AUTHORITY.—No provision of this title may be con-
24 strued as modifying, limiting, or otherwise affecting the
25 authority of the Farm Credit Administration.

1 **SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS**
2 **ASSOCIATIONS, AND CREDIT UNIONS.**

3 (a) SCOPE OF COVERAGE.—

4 (1) APPLICABILITY.—This section shall apply
5 to any covered person that is—

6 (A) an insured depository institution with
7 total assets of more than \$10,000,000,000 and
8 any affiliate thereof; or

9 (B) an insured credit union with total as-
10 sets of more than \$10,000,000,000 and any af-
11 filiate thereof.

12 (2) RULE OF CONSTRUCTION.—For purposes of
13 determining total assets under this section and sec-
14 tion 1026, the Bureau shall rely on the same regula-
15 tions and interim methodologies specified in section
16 312(e).

17 (b) SUPERVISION.—

18 (1) IN GENERAL.—The Bureau shall require re-
19 ports and conduct examinations on a periodic basis
20 of persons described in subsection (a) for purposes
21 of—

22 (A) assessing compliance with the require-
23 ments of Federal consumer financial laws;

24 (B) obtaining information about the activi-
25 ties and compliance systems or procedures of
26 such persons; and

1 (C) detecting and assessing risks to con-
2 sumers and to markets for consumer financial
3 products and services.

4 (2) COORDINATION.—To minimize regulatory
5 burden, the Bureau shall coordinate its supervisory
6 activities with the supervisory activities conducted by
7 prudential regulators and the State bank regulatory
8 authorities, including establishing their respective
9 schedules for examining such persons described in
10 subsection (a) and requirements regarding reports to
11 be submitted by such persons.

12 (3) USE OF EXISTING REPORTS.—The Bureau
13 shall, to the fullest extent possible, use—

14 (A) reports pertaining to a person de-
15 scribed in subsection (a) that have been pro-
16 vided or required to have been provided to a
17 Federal or State agency; and

18 (B) information that has been reported
19 publicly.

20 (4) PRESERVATION OF AUTHORITY.—Nothing
21 in this title may be construed as limiting the author-
22 ity of the Director to require reports from a person
23 described in subsection (a), as permitted under para-
24 graph (1), regarding information owned or under the
25 control of such person, regardless of whether such

1 information is maintained, stored, or processed by
2 another person.

3 (5) REPORTS OF TAX LAW NONCOMPLIANCE.—

4 The Bureau shall provide the Commissioner of In-
5 ternal Revenue with any report of examination or re-
6 lated information identifying possible tax law non-
7 compliance.

8 (c) PRIMARY ENFORCEMENT AUTHORITY.—

9 (1) THE BUREAU TO HAVE PRIMARY ENFORCE-
10 MENT AUTHORITY.—To the extent that the Bureau
11 and another Federal agency are authorized to en-
12 force a Federal consumer financial law, the Bureau
13 shall have primary authority to enforce that Federal
14 consumer financial law with respect to any person
15 described in subsection (a).

16 (2) REFERRAL.—Any Federal agency, other
17 than the Federal Trade Commission, that is author-
18 ized to enforce a Federal consumer financial law
19 may recommend, in writing, to the Bureau that the
20 Bureau initiate an enforcement proceeding with re-
21 spect to a person described in subsection (a), as the
22 Bureau is authorized to do by that Federal con-
23 sumer financial law.

24 (3) BACKUP ENFORCEMENT AUTHORITY OF
25 OTHER FEDERAL AGENCY.—If the Bureau does not,

1 before the end of the 120-day period beginning on
2 the date on which the Bureau receives a rec-
3 ommendation under paragraph (2), initiate an en-
4 forcement proceeding, the other agency referred to
5 in paragraph (2) may initiate an enforcement pro-
6 ceeding, as permitted by the subject provision of
7 Federal law.

8 (d) SERVICE PROVIDERS.—A service provider to a
9 person described in subsection (a) shall be subject to the
10 authority of the Bureau under this section, to the same
11 extent as if the Bureau were an appropriate Federal bank-
12 ing agency under section 7(c) of the Bank Service Com-
13 pany Act 12 U.S.C. 1867(c). In conducting any examina-
14 tion or requiring any report from a service provider sub-
15 ject to this subsection, the Bureau shall coordinate with
16 the appropriate prudential regulator.

17 (e) SIMULTANEOUS AND COORDINATED SUPER-
18 VISORY ACTION.—

19 (1) EXAMINATIONS.—A prudential regulator
20 and the Bureau shall, with respect to each insured
21 depository institution, insured credit union, or other
22 covered person described in subsection (a) that is su-
23 pervised by the prudential regulator and the Bureau,
24 respectively—

1 (A) coordinate the scheduling of examina-
2 tions of the insured depository institution, in-
3 sured credit union, or other covered person de-
4 scribed in subsection (a);

5 (B) conduct simultaneous examinations of
6 each insured depository institution, insured
7 credit union, or other covered person described
8 in subsection (a), unless such institution re-
9 quests examinations to be conducted separately;

10 (C) share each draft report of examination
11 with the other agency and permit the receiving
12 agency a reasonable opportunity (which shall
13 not be less than a period of 30 days after the
14 date of receipt) to comment on the draft report
15 before such report is made final; and

16 (D) prior to issuing a final report of exam-
17 ination or taking supervisory action, take into
18 consideration concerns, if any, raised in the
19 comments made by the other agency.

20 (2) COORDINATION WITH STATE BANK SUPER-
21 VISORS.—The Bureau shall pursue arrangements
22 and agreements with State bank supervisors to co-
23 ordinate examinations, consistent with paragraph
24 (1).

1 (3) AVOIDANCE OF CONFLICT IN SUPER-
2 VISION.—

3 (A) REQUEST.—If the proposed super-
4 visory determinations of the Bureau and a pru-
5 dential regulator (in this section referred to col-
6 lectively as the “agencies”) are conflicting, an
7 insured depository institution, insured credit
8 union, or other covered person described in sub-
9 section (a) may request the agencies to coordi-
10 nate and present a joint statement of coordi-
11 nated supervisory action.

12 (B) JOINT STATEMENT.—The agencies
13 shall provide a joint statement under subpara-
14 graph (A), not later than 30 days after the date
15 of receipt of the request of the insured deposi-
16 tory institution, credit union, or covered person
17 described in subsection (a).

18 (4) APPEALS TO GOVERNING PANEL.—

19 (A) IN GENERAL.—If the agencies do not
20 resolve the conflict or issue a joint statement
21 required by subparagraph (B), or if either of
22 the agencies takes or attempts to take any su-
23 pervisory action relating to the request for the
24 joint statement without the consent of the other
25 agency, an insured depository institution, in-

1 sured credit union, or other covered person de-
2 scribed in subsection (a) may institute an ap-
3 peal to a governing panel, as provided in this
4 subsection, not later than 30 days after the ex-
5 piration of the period during which a joint
6 statement is required to be filed under para-
7 graph (3)(B).

8 (B) COMPOSITION OF GOVERNING
9 PANEL.—The governing panel for an appeal
10 under this paragraph shall be composed of—

11 (i) a representative from the Bureau
12 and a representative of the prudential reg-
13 ulator, both of whom—

14 (I) have not participated in the
15 material supervisory determinations
16 under appeal; and

17 (II) do not directly or indirectly
18 report to the person who participated
19 materially in the supervisory deter-
20 minations under appeal; and

21 (ii) one individual representative, to
22 be determined on a rotating basis, from
23 among the Board of Governors, the Cor-
24 poration, the National Credit Union Ad-
25 ministration, and the Office of the Comp-

1 troller of the Currency, other than any
2 agency involved in the subject dispute.

3 (C) CONDUCT OF APPEAL.—In an appeal
4 under this paragraph—

5 (i) the insured depository institution,
6 insured credit union, or other covered per-
7 son described in subsection (a)—

8 (I) shall include in its appeal all
9 the facts and legal arguments per-
10 taining to the matter; and

11 (II) may, through counsel, em-
12 ployees, or representatives, appear be-
13 fore the governing panel in person or
14 by telephone; and

15 (ii) the governing panel—

16 (I) may request the insured de-
17 pository institution, insured credit
18 union, or other covered person de-
19 scribed in subsection (a), the Bureau,
20 or the prudential regulator to produce
21 additional information relevant to the
22 appeal; and

23 (II) by a majority vote of its
24 members, shall provide a final deter-
25 mination, in writing, not later than 30

1 days after the date of filing of an
2 informationally complete appeal, or
3 such longer period as the panel and
4 the insured depository institution, in-
5 sured credit union, or other covered
6 person described in subsection (a)
7 may jointly agree.

8 (D) PUBLIC AVAILABILITY OF DETERMINA-
9 TIONS.—A governing panel shall publish all in-
10 formation contained in a determination by the
11 governing panel, with appropriate redactions of
12 information that would be subject to an exemp-
13 tion from disclosure under section 552 of title
14 5, United States Code.

15 (E) PROHIBITION AGAINST RETALIA-
16 TION.—The Bureau and the prudential regu-
17 lators shall prescribe rules to provide safe-
18 guards from retaliation against the insured de-
19 pository institution, insured credit union, or
20 other covered person described in subsection (a)
21 instituting an appeal under this paragraph, as
22 well as their officers and employees.

23 (F) LIMITATION.—The process provided in
24 this paragraph shall not apply to a determina-
25 tion by a prudential regulator to appoint a con-

servator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) or section 212 of the Federal Credit Union Act (112 U.S.C. 1790a), as applicable.

(G) EFFECT ON OTHER AUTHORITY.—

Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law.

SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of \$10,000,000,000 or less; or

(2) an insured credit union with total assets of \$10,000,000,000 or less.

(b) REPORTS.—The Director may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to support its examination activi-

1 ties under subsection (c), and to assess and detect risks
2 to consumers and consumer financial markets.

3 (1) USE OF EXISTING REPORTS.—The Bureau
4 shall, to the fullest extent possible, use—

5 (A) reports pertaining to a person de-
6 scribed in subsection (a) that have been pro-
7 vided or required to have been provided to a
8 Federal or State agency; and

9 (B) information that has been reported
10 publicly.

11 (2) PRESERVATION OF AUTHORITY.—Nothing
12 in this subsection may be construed as limiting the
13 authority of the Director from requiring from a per-
14 son described in subsection (a), as permitted under
15 paragraph (1), information owned or under the con-
16 trol of such person, regardless of whether such infor-
17 mation is maintained, stored, or processed by an-
18 other person.

19 (3) REPORTS OF TAX LAW NONCOMPLIANCE.—
20 The Bureau shall provide the Commissioner of In-
21 ternal Revenue with any report of examination or re-
22 lated information identifying possible tax law non-
23 compliance.

24 (c) EXAMINATIONS.—

1 (1) IN GENERAL.—The Bureau may, at its dis-
2 cretion, include examiners on a sampling basis of the
3 examinations performed by the prudential regulator
4 of persons described in subsection (a).

5 (2) AGENCY COORDINATION.—The prudential
6 regulator shall—

7 (A) provide all reports, records, and docu-
8 mentation related to the examination process
9 for any institution included in the sample re-
10 ferred to in paragraph (1) to the Bureau on a
11 timely and continual basis;

12 (B) involve such Bureau examiner in the
13 entire examination process for such person; and

14 (C) consider input of the Bureau con-
15 cerning the scope of an examination, conduct of
16 the examination, the contents of the examina-
17 tion report, the designation of matters requiring
18 attention, and examination ratings.

19 (d) ENFORCEMENT.—

20 (1) IN GENERAL.—Except for requiring reports
21 under subsection (b), the prudential regulator shall
22 have exclusive authority to enforce compliance with
23 respect to a person described in subsection (a).

24 (2) COORDINATION WITH PRUDENTIAL REGU-
25 LATOR.—

1 (A) REFERRAL.—When the Bureau has
2 reason to believe that a person described in sub-
3 section (a) has engaged in a material violation
4 of a Federal consumer financial law, the Bu-
5 reau shall notify the prudential regulator in
6 writing and recommend appropriate action to
7 respond.

8 (B) RESPONSE.—Upon receiving a rec-
9 ommendation under subparagraph (A), the pru-
10 dential regulator shall provide a written re-
11 sponse to the Bureau not later than 60 days
12 thereafter.

13 (e) SERVICE PROVIDERS.—A service provider to a
14 substantial number of persons described in subsection (a)
15 shall be subject to the authority of the Bureau under sec-
16 tion 1025 to the same extent as if the Bureau were an
17 appropriate Federal bank agency under section 7(c) of the
18 Bank Service Company Act (12 U.S.C. 1867(c)). When
19 conducting any examination or requiring any report from
20 a service provider subject to this subsection, the Bureau
21 shall coordinate with the appropriate prudential regulator.

1 **SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU;**
2 **PRESERVATION OF AUTHORITIES.**

3 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND
4 OTHER SELLERS OF NONFINANCIAL GOODS OR SERV-
5 ICES.—

6 (1) SALE OR BROKERAGE OF NONFINANCIAL
7 GOOD OR SERVICE.—The Bureau may not exercise
8 any rulemaking, supervisory, enforcement or other
9 authority under this title with respect to a person
10 who is a merchant, retailer, or seller of any non-
11 financial good or service and is engaged in the sale
12 or brokerage of such nonfinancial good or service,
13 except to the extent that such person is engaged in
14 offering or providing any consumer financial product
15 or service, or is otherwise subject to any enumerated
16 consumer law or any law for which authorities are
17 transferred under subtitle F or H.

18 (2) OFFERING OR PROVISION OF CERTAIN CON-
19 SUMER FINANCIAL PRODUCTS OR SERVICES IN CON-
20 NECTION WITH THE SALE OR BROKERAGE OF NON-
21 FINANCIAL GOOD OR SERVICE.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), and subject to subparagraph
24 (C), the Bureau may not exercise any rule-
25 making, supervisory, enforcement, or other au-
26 thority under this title with respect to a mer-

chant, retailer, or seller of nonfinancial goods or services who—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) APPLICABILITY.—Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C), arising from a transaction described in subparagraph (A)—

(i) in which the merchant, retailer, or seller of nonfinancial goods or services as-

1 signs, sells or otherwise conveys to another
 2 person such debt owed by the consumer
 3 (except for a sale of debt that is delinquent
 4 or otherwise in default, as described in
 5 subparagraph (A)(iii));

6 (ii) in which the credit extended ex-
 7 ceeds the market value of the nonfinancial
 8 good or service provided, or the Bureau
 9 otherwise finds that the sale of the non-
 10 financial good or service is done as a sub-
 11 terfuge, so as to evade or circumvent the
 12 provisions of this title; or

13 (iii) in which the merchant, retailer,
 14 or seller of nonfinancial goods or services
 15 regularly extends credit and the credit is—

16 (I) subject to a finance charge; or

17 (II) payable by written agree-
 18 ment in more than 4 installments.

19 (C) LIMITATION.—Notwithstanding sub-
 20 paragraph (B), the Bureau may not exercise
 21 any rulemaking, supervisory, enforcement, or
 22 other authority under this title with respect to
 23 a merchant, retailer, or seller of nonfinancial
 24 goods or services that is not engaged signifi-

1 cantly in offering or providing consumer finan-
2 cial products or services.

3 (D) RULE OF CONSTRUCTION.—No provi-
4 sion of this title may be construed as modifying,
5 limiting, or superseding the supervisory or en-
6 forcement authority of the Federal Trade Com-
7 mission or any other agency (other than the
8 Bureau) with respect to credit extended, or the
9 collection of debt arising from such extension,
10 directly by a merchant or retailer to a consumer
11 exclusively for the purpose of enabling that con-
12 sumer to purchase nonfinancial goods or serv-
13 ices directly from the merchant or retailer.

14 (b) EXCLUSION FOR REAL ESTATE BROKERAGE AC-
15 TIVITIES.—

16 (1) REAL ESTATE BROKERAGE ACTIVITIES EX-
17 CLUDED.—Without limiting subsection (a), and ex-
18 cept as permitted in paragraph (2), the Bureau may
19 not exercise any rulemaking, supervisory, enforce-
20 ment, or other authority under this title with respect
21 to a person that is licensed or registered as a real
22 estate broker or real estate agent, in accordance
23 with State law, to the extent that such person—

1 (A) acts as a real estate agent or broker
2 for a buyer, seller, lessor, or lessee of real prop-
3 erty;

4 (B) brings together parties interested in
5 the sale, purchase, lease, rental, or exchange of
6 real property;

7 (C) negotiates, on behalf of any party, any
8 portion of a contract relating to the sale, pur-
9 chase, lease, rental, or exchange of real prop-
10 erty (other than in connection with the provi-
11 sion of financing with respect to any such
12 transaction); or

13 (D) offers to engage in any activity, or act
14 in any capacity, described in subparagraph (A),
15 (B), or (C).

16 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
17 (1) shall not apply to any person to the extent that
18 such person is engaged in the offering or provision
19 of any consumer financial product or service or is
20 otherwise subject to any enumerated consumer law
21 or any law for which authorities are transferred
22 under subtitle F or H.

23 (c) EXCLUSION FOR MANUFACTURED HOME RETAIL-
24 ERS AND MODULAR HOME RETAILERS.—

1 (1) IN GENERAL.—The Director may not exer-
2 cise any rulemaking, supervisory, enforcement, or
3 other authority over a person to the extent that—

4 (A) such person is not described in para-
5 graph (2); and

6 (B) such person—

7 (i) acts as an agent or broker for a
8 buyer or seller of a manufactured home or
9 a modular home;

10 (ii) facilitates the purchase by a con-
11 sumer of a manufactured home or modular
12 home, by negotiating the purchase price or
13 terms of the sales contract (other than
14 providing financing with respect to such
15 transaction); or

16 (iii) offers to engage in any activity
17 described in clause (i) or (ii).

18 (2) DESCRIPTION OF ACTIVITIES.—A person is
19 described in this paragraph to the extent that such
20 person is engaged in the offering or provision of any
21 consumer financial product or service or is otherwise
22 subject to any enumerated consumer law or any law
23 for which authorities are transferred under subtitle
24 F or H.

1 (3) DEFINITIONS.—For purposes of this sub-
2 section, the following definitions shall apply:

3 (A) MANUFACTURED HOME.—The term
4 “manufactured home” has the same meaning as
5 in section 603 of the National Manufactured
6 Housing Construction and Safety Standards
7 Act of 1974 (42 U.S.C. 5402).

8 (B) MODULAR HOME.—The term “mod-
9 ular home” means a house built in a factory in
10 2 or more modules that meet the State or local
11 building codes where the house will be located,
12 and where such modules are transported to the
13 building site, installed on foundations, and com-
14 pleted.

15 (d) EXCLUSION FOR ACCOUNTANTS AND TAX PRE-
16 PARERS.—

17 (1) IN GENERAL.—Except as permitted in para-
18 graph (2), the Bureau may not exercise any rule-
19 making, supervisory, enforcement, or other authority
20 over—

21 (A) any person that is a certified public ac-
22 countant, permitted to practice as a certified
23 public accounting firm, or certified or licensed
24 for such purpose by a State, or any individual
25 who is employed by or holds an ownership inter-

1 est with respect to a person described in this
2 subparagraph, when such person is performing
3 or offering to perform—

4 (i) customary and usual accounting
5 activities, including the provision of ac-
6 counting, tax, advisory, or other services
7 that are subject to the regulatory authority
8 of a State board of accountancy or a Fed-
9 eral authority; or

10 (ii) other services that are incidental
11 to such customary and usual accounting
12 activities, to the extent that such incidental
13 services are not offered or provided—

14 (I) by the person separate and
15 apart from such customary and usual
16 accounting activities; or

17 (II) to consumers who are not re-
18 ceiving such customary and usual ac-
19 counting activities; or

20 (B) any person, other than a person de-
21 scribed in subparagraph (A) that performs in-
22 come tax preparation activities for consumers.

23 (2) DESCRIPTION OF ACTIVITIES.—

24 (A) IN GENERAL.—Paragraph (1) shall not
25 apply to any person described in paragraph

1 (1)(A) or (1)(B) to the extent that such person
2 is engaged in any activity which is not a cus-
3 tomary and usual accounting activity described
4 in paragraph (1)(A) or incidental thereto but
5 which is the offering or provision of any con-
6 sumer financial product or service, except to the
7 extent that a person described in paragraph
8 (1)(A) is engaged in an activity which is a cus-
9 tomary and usual accounting activity described
10 in paragraph (1)(A), or incidental thereto.

11 (B) NOT A CUSTOMARY AND USUAL AC-
12 COUNTING ACTIVITY.—For purposes of this
13 subsection, extending or brokering credit is not
14 a customary and usual accounting activity, or
15 incidental thereto.

16 (C) RULE OF CONSTRUCTION.—For pur-
17 poses of subparagraphs (A) and (B), a person
18 described in paragraph (1)(A) shall not be
19 deemed to be extending credit, if such person is
20 only extending credit directly to a consumer, ex-
21 clusively for the purpose of enabling such con-
22 sumer to purchase services described in clause
23 (i) or (ii) of paragraph (1)(A) directly from
24 such person, and such credit is—

1 (i) not subject to a finance charge;

2 and

3 (ii) not payable by written agreement

4 in more than 4 installments.

5 (D) OTHER LIMITATIONS.—Paragraph (1)

6 does not apply to any person described in para-

7 graph (1)(A) or (1)(B) that is otherwise subject

8 to any enumerated consumer law or any law for

9 which authorities are transferred under subtitle

10 F or H.

11 (e) EXCLUSION FOR ATTORNEYS.—

12 (1) IN GENERAL.—The Bureau may not exer-

13 cise any authority to conduct examinations of an at-

14 torney licensed by a State, to the extent that the at-

15 torney is engaged in the practice of law under the

16 laws of such State.

17 (2) EXCEPTION FOR ENUMERATED CONSUMER

18 LAWS AND TRANSFERRED AUTHORITIES.—Para-

19 graph (1) shall not apply to an attorney who is en-

20 gaged in the offering or provision of any consumer

21 financial product or service, or is otherwise subject

22 to any enumerated consumer law or any law for

23 which authorities are transferred under subtitle F or

24 H.

1 (f) EXCLUSION FOR PERSONS REGULATED BY A
2 STATE INSURANCE REGULATOR.—

3 (1) IN GENERAL.—No provision of this title
4 shall be construed as altering, amending, or affect-
5 ing the authority of any State insurance regulator to
6 adopt rules, initiate enforcement proceedings, or
7 take any other action with respect to a person regu-
8 lated by a State insurance regulator. Except as pro-
9 vided in paragraph (2), the Bureau shall have no au-
10 thority to exercise any power to enforce this title
11 with respect to a person regulated by a State insur-
12 ance regulator.

13 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
14 (1) does not apply to any person described in such
15 paragraph to the extent that such person is engaged
16 in the offering or provision of any consumer finan-
17 cial product or service or is otherwise subject to any
18 enumerated consumer law or any law for which au-
19 thorities are transferred under subtitle F or H.

20 (g) EXCLUSION FOR EMPLOYEE BENEFIT AND COM-
21 PENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS
22 UNDER THE INTERNAL REVENUE CODE OF 1986.—

23 (1) PRESERVATION OF AUTHORITY OF OTHER
24 AGENCIES.—No provision of this title shall be con-
25 strued as altering, amending, or affecting the au-

1 thority of the Secretary of the Treasury, the Sec-
2 retary of Labor, or the Commissioner of Internal
3 Revenue to adopt regulations, initiate enforcement
4 proceedings, or take any actions with respect to any
5 specified plan or arrangement.

6 (2) ACTIVITIES NOT CONSTITUTING THE OF-
7 FERING OR PROVISION OF ANY CONSUMER FINAN-
8 CIAL PRODUCT OR SERVICE.—For purposes of this
9 title, a person shall not be treated as having engaged
10 in the offering or provision of any consumer finan-
11 cial product or service solely because such person is
12 a specified plan or arrangement, or is engaged in the
13 activity of establishing or maintaining, for the ben-
14 efit of employees of such person (or for members of
15 an employee organization), any specified plan or ar-
16 rangement.

17 (3) LIMITATION ON BUREAU AUTHORITY.—

18 (A) IN GENERAL.—Except as provided
19 under subparagraphs (B) and (C), the Bureau
20 may not exercise any rulemaking or enforce-
21 ment authority with respect to products or serv-
22 ices that relate to any specified plan or arrange-
23 ment.

24 (B) BUREAU ACTION ONLY PURSUANT TO
25 AGENCY REQUEST.—The Secretary and the Sec-

1 retary of Labor may jointly issue a written re-
2 quest to the Bureau regarding implementation
3 of appropriate consumer protection standards
4 under this title with respect to the provision of
5 services relating to any specified plan or ar-
6 rangement. Subject to a request made under
7 this subparagraph, the Bureau may exercise
8 rulemaking authority, and may act to enforce a
9 rule prescribed pursuant to such request, in ac-
10 cordance with the provisions of this title. A re-
11 quest made by the Secretary and the Secretary
12 of Labor under this subparagraph shall describe
13 the basis for, and scope of, appropriate con-
14 sumer protection standards to be implemented
15 under this title with respect to the provision of
16 services relating to any specified plan or ar-
17 rangement.

18 (C) DESCRIPTION OF PRODUCTS OR SERV-
19 ICES.—To the extent that a person engaged in
20 providing products or services relating to any
21 specified plan or arrangement is subject to any
22 enumerated consumer law or any law for which
23 authorities are transferred under subtitle F or
24 H, subparagraph (A) shall not apply with re-
25 spect to that law.

1 (4) SPECIFIED PLAN OR ARRANGEMENT.—For
2 purposes of this subsection, the term “specified plan
3 or arrangement” means any plan, account, or ar-
4 rangement described in section 220, 223, 401(a),
5 403(a), 403(b), 408, 408A, 529, or 530 of the Inter-
6 nal Revenue Code of 1986, or any employee benefit
7 or compensation plan or arrangement, including a
8 plan that is subject to title I of the Employee Retirement
9 Income Security Act of 1974.

10 (h) PERSONS REGULATED BY A STATE SECURITIES
11 COMMISSION.—

12 (1) IN GENERAL.—No provision of this title
13 shall be construed as altering, amending, or affect-
14 ing the authority of any securities commission (or
15 any agency or office performing like functions) of
16 any State to adopt rules, initiate enforcement pro-
17 ceedings, or take any other action with respect to a
18 person regulated by any securities commission (or
19 any agency or office performing like functions) of
20 any State. Except as permitted in paragraph (2) and
21 subsection (f), the Bureau shall have no authority to
22 exercise any power to enforce this title with respect
23 to a person regulated by any securities commission
24 (or any agency or office performing like functions)

1 of any State, but only to the extent that the person
2 acts in such regulated capacity.

3 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
4 (1) shall not apply to any person to the extent such
5 person is engaged in the offering or provision of any
6 consumer financial product or service, or is other-
7 wise subject to any enumerated consumer law or any
8 law for which authorities are transferred under sub-
9 title F or H.

10 (i) EXCLUSION FOR PERSONS REGULATED BY THE
11 COMMISSION.—

12 (1) IN GENERAL.—No provision of this title
13 may be construed as altering, amending, or affecting
14 the authority of the Commission to adopt rules, ini-
15 tiate enforcement proceedings, or take any other ac-
16 tion with respect to a person regulated by the Com-
17 mission. The Bureau shall have no authority to exer-
18 cise any power to enforce this title with respect to
19 a person regulated by the Commission.

20 (2) CONSULTATION AND COORDINATION.—Not-
21 withstanding paragraph (1), the Commission shall
22 consult and coordinate, where feasible, with the Bu-
23 reau with respect to any rule (including any advance
24 notice of proposed rulemaking) regarding an invest-
25 ment product or service that is the same type of

1 product as, or that competes directly with, a con-
2 sumer financial product or service that is subject to
3 the jurisdiction of the Bureau under this title or
4 under any other law. In carrying out this paragraph,
5 the agencies shall negotiate an agreement to estab-
6 lish procedures for such coordination, including pro-
7 cedures for providing advance notice to the Bureau
8 when the Commission is initiating a rulemaking.

9 (j) EXCLUSION FOR PERSONS REGULATED BY THE
10 COMMODITY FUTURES TRADING COMMISSION.—

11 (1) IN GENERAL.—No provision of this title
12 shall be construed as altering, amending, or affect-
13 ing the authority of the Commodity Futures Trading
14 Commission to adopt rules, initiate enforcement pro-
15 ceedings, or take any other action with respect to a
16 person regulated by the Commodity Futures Trading
17 Commission. The Bureau shall have no authority to
18 exercise any power to enforce this title with respect
19 to a person regulated by the Commodity Futures
20 Trading Commission.

21 (2) CONSULTATION AND COORDINATION.—Not-
22 withstanding paragraph (1), the Commodity Futures
23 Trading Commission shall consult and coordinate
24 with the Bureau with respect to any rule (including
25 any advance notice of proposed rulemaking) regard-

1 ing a product or service that is the same type of
 2 product as, or that competes directly with, a con-
 3 sumer financial product or service that is subject to
 4 the jurisdiction of the Bureau under this title or
 5 under any other law.

6 (k) EXCLUSION FOR PERSONS REGULATED BY THE
 7 FARM CREDIT ADMINISTRATION.—

8 (1) IN GENERAL.—No provision of this title
 9 shall be construed as altering, amending, or affect-
 10 ing the authority of the Farm Credit Administration
 11 to adopt rules, initiate enforcement proceedings, or
 12 take any other action with respect to a person regu-
 13 lated by the Farm Credit Administration. The Bu-
 14 reau shall have no authority to exercise any power
 15 to enforce this title with respect to a person regu-
 16 lated by the Farm Credit Administration.

17 (2) DEFINITION.—For purposes of this sub-
 18 section, the term “person regulated by the Farm
 19 Credit Administration” means any Farm Credit Sys-
 20 tem institution that is chartered and subject to the
 21 provisions of the Farm Credit Act of 1971 (12
 22 U.S.C. 2001 et seq.).

23 (l) EXCLUSION FOR ACTIVITIES RELATING TO CHAR-
 24 ITABLE CONTRIBUTIONS.—

1 (1) IN GENERAL.—The Director and the Bu-
2 reau may not exercise any rulemaking, supervisory,
3 enforcement, or other authority, including authority
4 to order penalties, over any activities related to the
5 solicitation or making of voluntary contributions to
6 a tax-exempt organization as recognized by the In-
7 ternal Revenue Service, by any agent, volunteer, or
8 representative of such organizations to the extent
9 the organization, agent, volunteer, or representative
10 thereof is soliciting or providing advice, information,
11 education, or instruction to any donor or potential
12 donor relating to a contribution to the organization.

13 (2) LIMITATION.—The exclusion in paragraph
14 (1) does not apply to other activities not described
15 in paragraph (1) that are the offering or provision
16 of any consumer financial product or service, or are
17 otherwise subject to any enumerated consumer law
18 or any law for which authorities are transferred
19 under subtitle F or H.

20 (m) INSURANCE.—The Bureau may not define as a
21 financial product or service, by regulation or otherwise,
22 engaging in the business of insurance.

23 (n) LIMITED AUTHORITY OF THE BUREAU.—Not-
24 withstanding subsections (a) through (h) and (l), a person

1 subject to or described in one or more of such sub-
2 sections—

3 (1) may be a service provider; and

4 (2) may be subject to requests from, or require-
5 ments imposed by, the Bureau regarding informa-
6 tion in order to carry out the responsibilities and
7 functions of the Bureau and in accordance with sec-
8 tion 1022, 1052, or 1053.

9 (o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No
10 provision of this title shall be construed as conferring au-
11 thority on the Bureau to establish a usury limit applicable
12 to an extension of credit offered or made by a covered per-
13 son to a consumer, unless explicitly authorized by law.

14 (p) ATTORNEY GENERAL.—No provision of this title,
15 including section 1024(c)(1), shall affect the authorities
16 of the Attorney General under otherwise applicable provi-
17 sions of law.

18 (q) SECRETARY OF THE TREASURY.—No provision of
19 this title shall affect the authorities of the Secretary, in-
20 cluding with respect to prescribing rules, initiating en-
21 forcement proceedings, or taking other actions with re-
22 spect to a person that performs income tax preparation
23 activities for consumers.

24 (r) DEPOSIT INSURANCE AND SHARE INSURANCE.—
25 Nothing in this title shall affect the authority of the Cor-

1 poration under the Federal Deposit Insurance Act or the
2 National Credit Union Administration Board under the
3 Federal Credit Union Act as to matters related to deposit
4 insurance and share insurance, respectively.

5 **SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
6 **PUTE ARBITRATION.**

7 (a) STUDY AND REPORT.—The Bureau shall conduct
8 a study of, and shall provide a report to Congress con-
9 cerning, the use of agreements providing for arbitration
10 of any future dispute between covered persons and con-
11 sumers in connection with the offering or providing of con-
12 sumer financial products or services.

13 (b) FURTHER AUTHORITY.—The Bureau, by regula-
14 tion, may prohibit or impose conditions or limitations on
15 the use of an agreement between a covered person and
16 a consumer for a consumer financial product or service
17 providing for arbitration of any future dispute between the
18 parties, if the Bureau finds that such a prohibition or im-
19 position of conditions or limitations is in the public inter-
20 est and for the protection of consumers. The findings in
21 such rule shall be consistent with the study conducted
22 under subsection (a).

23 (c) LIMITATION.—The authority described in sub-
24 section (b) may not be construed to prohibit or restrict
25 a consumer from entering into a voluntary arbitration

1 agreement with a covered person after a dispute has arisen.
2 en.

3 (d) EFFECTIVE DATE.—Notwithstanding any other
4 provision of law, any regulation prescribed by the Bureau
5 under subsection (a) shall apply, consistent with the terms
6 of the regulation, to any agreement between a consumer
7 and a covered person entered into after the end of the
8 180-day period beginning on the effective date of the regulation,
9 as established by the Bureau.

10 **SEC. 1029. EFFECTIVE DATE.**

11 This subtitle shall become effective on the designated
12 transfer date.

13 **Subtitle C—Specific Bureau**
14 **Authorities**

15 **SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**
16 **ACTS OR PRACTICES.**

17 (a) IN GENERAL.—The Bureau may take any action
18 authorized under subtitle E to prevent a covered person
19 or service provider from committing or engaging in an unfair,
20 deceptive, or abusive act or practice under Federal
21 law in connection with any transaction with a consumer
22 for a consumer financial product or service, or the offering
23 of a consumer financial product or service.

24 (b) RULEMAKING.—The Bureau may prescribe rules
25 applicable to a covered person or service provider identi-

1 fying as unlawful unfair, deceptive, or abusive acts or
2 practices in connection with any transaction with a con-
3 sumer for a consumer financial product or service, or the
4 offering of a consumer financial product or service. Rules
5 under this section may include requirements for the pur-
6 pose of preventing such acts or practices.

7 (c) UNFAIRNESS.—

8 (1) IN GENERAL.—The Bureau shall have no
9 authority under this section to declare an act or
10 practice in connection with a transaction with a con-
11 sumer for a consumer financial product or service,
12 or the offering of a consumer financial product or
13 service, to be unlawful on the grounds that such act
14 or practice is unfair, unless the Bureau has a rea-
15 sonable basis to conclude that—

16 (A) the act or practice causes or is likely
17 to cause substantial injury to consumers which
18 is not reasonably avoidable by consumers; and

19 (B) such substantial injury is not out-
20 weighed by countervailing benefits to consumers
21 or to competition.

22 (2) CONSIDERATION OF PUBLIC POLICIES.—In
23 determining whether an act or practice is unfair, the
24 Bureau may consider established public policies as
25 evidence to be considered with all other evidence.

1 Such public policy considerations may not serve as
2 a primary basis for such determination.

3 (d) ABUSIVE.—The Bureau shall have no authority
4 under this section to declare an act or practice abusive
5 in connection with the provision of a consumer financial
6 product or service, unless the act or practice—

7 (1) materially interferes with the ability of a
8 consumer to understand a term or condition of a
9 consumer financial product or service; or

10 (2) takes unreasonable advantage of—

11 (A) a lack of understanding on the part of
12 the consumer of the material risks, costs, or
13 conditions of the product or service;

14 (B) the inability of the consumer to protect
15 the interests of the consumer in selecting or
16 using a consumer financial product or service;
17 or

18 (C) the reasonable reliance by the con-
19 sumer on a covered person to act in the inter-
20 ests of the consumer.

21 (e) CONSULTATION.—In prescribing rules under this
22 section, the Bureau shall consult with the Federal banking
23 agencies, or other Federal agencies, as appropriate, con-
24 cerning the consistency of the proposed rule with pruden-

1 tial, market, or systemic objectives administered by such
2 agencies.

3 **SEC. 1032. DISCLOSURES.**

4 (a) IN GENERAL.—The Bureau may prescribe rules
5 to ensure that the features of any consumer financial
6 product or service, both initially and over the term of the
7 product or service, are fully, accurately, and effectively
8 disclosed to consumers in a manner that permits con-
9 sumers to understand the costs, benefits, and risks associ-
10 ated with the product or service, in light of the facts and
11 circumstances.

12 (b) MODEL DISCLOSURES.—

13 (1) IN GENERAL.—Any final rule prescribed by
14 the Bureau under this section requiring disclosures
15 may include a model form that may be used at the
16 option of the covered person for provision of the re-
17 quired disclosures.

18 (2) FORMAT.—A model form issued pursuant to
19 paragraph (1) shall contain a clear and conspicuous
20 disclosure that, at a minimum—

21 (A) uses plain language comprehensible to
22 consumers;

23 (B) contains a clear format and design,
24 such as an easily readable type font; and

1 (C) succinctly explains the information
2 that must be communicated to the consumer.

3 (3) CONSUMER TESTING.—Any model form
4 issued pursuant to this subsection shall be validated
5 through consumer testing.

6 (c) BASIS FOR RULEMAKING.—In prescribing rules
7 under this section, the Bureau shall consider available evi-
8 dence about consumer awareness, understanding of, and
9 responses to disclosures or communications about the
10 risks, costs, and benefits of consumer financial products
11 or services.

12 (d) SAFE HARBOR.—Any covered person that uses a
13 model form included with a rule issued under this section
14 shall be deemed to be in compliance with the disclosure
15 requirements of this section with respect to such model
16 form.

17 (e) TRIAL DISCLOSURE PROGRAMS.—

18 (1) IN GENERAL.—The Bureau may permit a
19 covered person to conduct a trial program that is
20 limited in time and scope, subject to specified stand-
21 ards and procedures, for the purpose of providing
22 trial disclosures to consumers that are designed to
23 improve upon any model form issued pursuant to
24 subsection (b)(1), or any other model form issued to
25 implement an enumerated statute, as applicable.

1 (2) SAFE HARBOR.—The standards and proce-
2 dures issued by the Bureau shall be designed to en-
3 courage covered persons to conduct trial disclosure
4 programs. For the purposes of administering this
5 subsection, the Bureau may establish a limited pe-
6 riod during which a covered person conducting a
7 trial disclosure program shall be deemed to be in
8 compliance with, or may be exempted from, a re-
9 quirement of a rule or an enumerated consumer law.

10 (3) PUBLIC DISCLOSURE.—The rules of the Bu-
11 reau shall provide for public disclosure of trial dis-
12 closure programs, which public disclosure may be
13 limited, to the extent necessary to encourage covered
14 persons to conduct effective trials.

15 (f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not
16 later than 1 year after the designated transfer date, the
17 Bureau shall propose for public comment rules and model
18 disclosures that combine the disclosures required under
19 the Truth in Lending Act and the Real Estate Settlement
20 Procedures Act of 1974, into a single, integrated disclo-
21 sure for mortgage loan transactions covered by those laws,
22 unless the Bureau determines that any proposal issued by
23 the Board of Governors and the Secretary of Housing and
24 Urban Development carries out the same purpose.

1 **SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.**

2 (a) IN GENERAL.—Subject to rules prescribed by the
3 Bureau, a covered person shall make available to a con-
4 sumer, upon request, information in the control or posses-
5 sion of the covered person concerning the consumer finan-
6 cial product or service that the consumer obtained from
7 such covered person, including information relating to any
8 transaction, series of transactions, or to the account in-
9 cluding costs, charges and usage data. The information
10 shall be made available in an electronic form usable by
11 consumers.

12 (b) EXCEPTIONS.—A covered person may not be re-
13 quired by this section to make available to the consumer—

14 (1) any confidential commercial information, in-
15 cluding an algorithm used to derive credit scores or
16 other risk scores or predictors;

17 (2) any information collected by the covered
18 person for the purpose of preventing fraud or money
19 laundering, or detecting, or making any report re-
20 garding other unlawful or potentially unlawful con-
21 duct;

22 (3) any information required to be kept con-
23 fidential by any other provision of law; or

24 (4) any information that the covered person
25 cannot retrieve in the ordinary course of its business
26 with respect to that information.

1 (c) NO DUTY TO MAINTAIN RECORDS.—Nothing in
2 this section shall be construed to impose any duty on a
3 covered person to maintain or keep any information about
4 a consumer.

5 (d) STANDARDIZED FORMATS FOR DATA.—The Bu-
6 reau, by rule, shall prescribe standards applicable to cov-
7 ered persons to promote the development and use of stand-
8 ardized formats for information, including through the use
9 of machine readable files, to be made available to con-
10 sumers under this section.

11 (e) CONSULTATION.—The Bureau shall, when pre-
12 scribing any rule under this section, consult with the Fed-
13 eral banking agencies and the Federal Trade Commission
14 to ensure that the rules—

15 (1) impose substantively similar requirements
16 on covered persons;

17 (2) take into account conditions under which
18 covered persons do business both in the United
19 States and in other countries; and

20 (3) do not require or promote the use of any
21 particular technology in order to develop systems for
22 compliance.

1 **SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND IN-**
2 **QUIRIES.**

3 (a) **TIMELY REGULATOR RESPONSE TO CON-**
4 **SUMERS.**—The Bureau shall establish, in consultation
5 with the appropriate Federal regulatory agencies, reason-
6 able procedures to provide a timely response to consumers,
7 in writing where appropriate, to complaints against, or in-
8 quiries concerning, a covered person, including—

9 (1) all steps that have been taken by the regu-
10 lator in response to the complaint or inquiry of the
11 consumer;

12 (2) any responses received by the regulator
13 from the covered person; and

14 (3) any follow-up actions or planned follow-up
15 actions by the regulator in response to the complaint
16 or inquiry of the consumer.

17 (b) **TIMELY RESPONSE TO REGULATOR BY COVERED**
18 **PERSON.**—A covered person subject to supervision and
19 primary enforcement by the Bureau pursuant to section
20 1025 shall provide a timely response, in writing where ap-
21 propriate, to the Bureau, the prudential regulators, and
22 any other agency having jurisdiction over such covered
23 person concerning a consumer complaint or inquiry, in-
24 cluding—

1 (1) steps that have been taken by the covered
2 person to respond to the complaint or inquiry of the
3 consumer;

4 (2) responses received by the covered person
5 from the consumer; and

6 (3) follow-up actions or planned follow-up ac-
7 tions by the covered person to respond to the com-
8 plaint or inquiry of the consumer.

9 (c) PROVISION OF INFORMATION TO CONSUMERS.—

10 (1) IN GENERAL.—A covered person subject to
11 supervision and primary enforcement by the Bureau
12 pursuant to section 1025 shall, in a timely manner,
13 comply with a consumer request for information in
14 the control or possession of such covered person con-
15 cerning the consumer financial product or service
16 that the consumer obtained from such covered per-
17 son, including supporting written documentation,
18 concerning the account of the consumer.

19 (2) EXCEPTIONS.—A covered person subject to
20 supervision and primary enforcement by the Bureau
21 pursuant to section 1025, a prudential regulator,
22 and any other agency having jurisdiction over a cov-
23 ered person subject to supervision and primary en-
24 forcement by the Bureau pursuant to section 1025

1 may not be required by this section to make avail-
2 able to the consumer—

3 (A) any confidential commercial informa-
4 tion, including an algorithm used to derive cred-
5 it scores or other risk scores or predictors;

6 (B) any information collected by the cov-
7 ered person for the purpose of preventing fraud
8 or money laundering, or detecting or making
9 any report regarding other unlawful or poten-
10 tially unlawful conduct;

11 (C) any information required to be kept
12 confidential by any other provision of law; or

13 (D) any nonpublic or confidential informa-
14 tion, including confidential supervisory informa-
15 tion.

16 (d) AGREEMENTS WITH OTHER AGENCIES.—The
17 Bureau shall enter into a memorandum of understanding
18 with any affected Federal regulatory agency to establish
19 procedures by which any covered person, and the pruden-
20 tial regulators, and any other agency having jurisdiction
21 over a covered person, including the Secretary of the De-
22 partment of Housing and Urban Development and the
23 Secretary of Education, shall comply with this section.

1 **SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.**

2 (a) ESTABLISHMENT.—The Secretary, in consulta-
3 tion with the Director, shall designate a Private Education
4 Loan Ombudsman (in this section referred to as the “Om-
5 budsman”) within the Bureau, to provide timely assist-
6 ance to borrowers of private education loans.

7 (b) PUBLIC INFORMATION.—The Secretary and the
8 Director shall disseminate information about the avail-
9 ability and functions of the Ombudsman to borrowers and
10 potential borrowers, as well as institutions of higher edu-
11 cation, lenders, guaranty agencies, loan servicers, and
12 other participants in private education student loan pro-
13 grams.

14 (c) FUNCTIONS OF OMBUDSMAN.—The Ombudsman
15 designated under this subsection shall—

16 (1) in accordance with regulations of the Direc-
17 tor, receive, review, and attempt to resolve infor-
18 mally complaints from borrowers of loans described
19 in subsection (a), including, as appropriate, attempts
20 to resolve such complaints in collaboration with the
21 Department of Education and with institutions of
22 higher education, lenders, guaranty agencies, loan
23 servicers, and other participants in private education
24 loan programs;

25 (2) not later than 90 days after the designated
26 transfer date, establish a memorandum of under-

1 standing with the student loan ombudsman estab-
2 lished under section 141(f) of the Higher Education
3 Act of 1965 (20 U.S.C. 1018(f)), to ensure coordi-
4 nation in providing assistance to and serving bor-
5 rowers seeking to resolve complaints related to their
6 private education or Federal student loans;

7 (3) compile and analyze data on borrower com-
8 plaints regarding private education loans; and

9 (4) make appropriate recommendations to the
10 Director, the Secretary, the Secretary of Education,
11 the Committee on Banking, Housing, and Urban Af-
12 fairs and the Committee on Health, Education,
13 Labor, and Pensions of the Senate and the Com-
14 mittee on Financial Services and the Committee on
15 Education and Labor of the House of Representa-
16 tives.

17 (d) ANNUAL REPORTS.—

18 (1) IN GENERAL.—The Ombudsman shall pre-
19 pare an annual report that describes the activities,
20 and evaluates the effectiveness of the Ombudsman
21 during the preceding year.

22 (2) SUBMISSION.—The report required by para-
23 graph (1) shall be submitted on the same date annu-
24 ally to the Secretary, the Secretary of Education,
25 the Committee on Banking, Housing, and Urban Af-

1 fairs and the Committee on Health, Education,
2 Labor, and Pensions of the Senate and the Com-
3 mittee on Financial Services and the Committee on
4 Education and Labor of the House of Representa-
5 tives.

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 agree-
20 ment), or impose, or attempt to impose, any fee
21 or charge on a consumer in connection with a
22 consumer financial product or service that is
23 not in conformity with this title or applicable
24 rules or orders issued by the Bureau; or

1 (C) engage in any unfair, deceptive, or
2 abusive 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 substan-
16 tial assistance to another person in violation of the
17 provisions of section 1031, or any rule or order
18 issued thereunder, and notwithstanding any provi-
19 sion of this title, the provider of such substantial as-
20 sistance shall be deemed to be in violation of that
21 section to the same extent as the person to whom
22 such assistance is provided.

23 **SEC. 1037. EFFECTIVE DATE.**

24 This subtitle shall take effect on the designated
25 transfer 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 ex-
8 empting any person subject to the provisions of this
9 title from complying with, the statutes, regulations,
10 orders, or interpretations in effect in any State, ex-
11 cept to the extent that any such provision of law is
12 inconsistent with the provisions of this title, and
13 then only to the extent of the inconsistency.

14 (2) GREATER PROTECTION UNDER STATE
15 LAW.—For purposes of this subsection, a statute,
16 regulation, order, or interpretation in effect in any
17 State is not inconsistent with the provisions of this
18 title if the protection that such statute, regulation,
19 order, or interpretation affords to consumers is
20 greater than the protection provided under this title.
21 A determination regarding whether a statute, regu-
22 lation, order, or interpretation in effect in any State
23 is inconsistent with the provisions of this title may
24 be made by the Bureau on its own motion or in re-

1 sponse to a nonfrivolous petition initiated by any in-
2 terested person.

3 (b) RELATION TO OTHER PROVISIONS OF ENUMER-
4 ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—

5 No provision of this title, except as provided in section
6 1083, shall be construed as modifying, limiting, or super-
7 seding the operation of any provision of an enumerated
8 consumer law that relates to the application of a law in
9 effect in any State with respect to such Federal law.

10 (c) ADDITIONAL CONSUMER PROTECTION REGULA-
11 TIONS IN RESPONSE TO STATE ACTION.—

12 (1) NOTICE OF PROPOSED RULE REQUIRED.—

13 The Bureau shall issue a notice of proposed rule-
14 making whenever a majority of the States has en-
15 acted a resolution in support of the establishment or
16 modification of a consumer protection regulation by
17 the Bureau.

18 (2) BUREAU CONSIDERATIONS REQUIRED FOR
19 ISSUANCE OF FINAL REGULATION.—Before pre-
20 scribing a final regulation based upon a notice
21 issued pursuant to paragraph (1), the Bureau shall
22 take into account whether—

23 (A) the proposed regulation would afford
24 greater protection to consumers than any exist-
25 ing regulation;

1 (B) the intended benefits of the proposed
2 regulation for consumers would outweigh any
3 increased costs or inconveniences for con-
4 sumers, and would not discriminate unfairly
5 against any category or class of consumers; and

6 (C) a Federal banking agency has advised
7 that the proposed regulation is likely to present
8 an unacceptable safety and soundness risk to
9 insured depository institutions.

10 (3) EXPLANATION OF CONSIDERATIONS.—The
11 Bureau—

12 (A) shall include a discussion of the con-
13 siderations required in paragraph (2) in the
14 Federal Register notice of a final regulation
15 prescribed pursuant to this subsection; and

16 (B) whenever the Bureau determines not
17 to prescribe a final regulation, shall publish an
18 explanation of such determination in the Fed-
19 eral Register, and provide a copy of such expla-
20 nation to each State that enacted a resolution
21 in support of the proposed regulation, the Com-
22 mittee on Financial Services of the House of
23 Representatives, and the Committee on Bank-
24 ing, Housing, and Urban Affairs of the Senate.

1 (4) RESERVATION OF AUTHORITY.—No provi-
 2 sion of this subsection shall be construed as limiting
 3 or restricting the authority of the Bureau to enhance
 4 consumer protection standards established pursuant
 5 to this title in response to its own motion or in re-
 6 sponse to a request by any other interested person.

7 (5) RULE OF CONSTRUCTION.—No provision of
 8 this subsection shall be construed as exempting the
 9 Bureau from complying with subchapter II of chap-
 10 ter 5 of title 5, United States Code.

11 (6) DEFINITION.—For purposes of this sub-
 12 section, the term “consumer protection regulation”
 13 means a regulation that the Bureau is authorized to
 14 prescribe under the Federal consumer financial laws.

15 **SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF**
 16 **STATES.**

17 (a) IN GENERAL.—

18 (1) ACTION BY STATE.—The attorney general
 19 (or the equivalent thereof) of any State may bring
 20 a civil action in the name of such State, as *parens*
 21 *patriae* on behalf of natural persons residing in such
 22 State, in any district court of the United States in
 23 that State or in State court having jurisdiction over
 24 the defendant, to enforce provisions of this title or
 25 regulations issued thereunder and to secure remedies

1 under provisions of this title or remedies otherwise
2 provided under other law. A State regulator may
3 bring a civil action or other appropriate proceeding
4 to enforce the provisions of this title or regulations
5 issued thereunder with respect to any entity that is
6 State-chartered, incorporated, licensed, or otherwise
7 authorized to do business under State law, and to
8 secure remedies under provisions of this title or rem-
9 edies otherwise provided under other provisions of
10 law with respect to a State-chartered entity.

11 (2) RULE OF CONSTRUCTION.—No provision of
12 this title shall be construed as modifying, limiting,
13 or superseding the operation of any provision of an
14 enumerated consumer law that relates to the author-
15 ity of a State attorney general or State regulator to
16 enforce such Federal law.

17 (b) CONSULTATION REQUIRED.—

18 (1) NOTICE.—

19 (A) IN GENERAL.—Before initiating any
20 action in a court or other administrative or reg-
21 ulatory proceeding against any covered person
22 to enforce any provision of this title, including
23 any regulation prescribed by the Director under
24 this title, a State attorney general or State reg-
25 ulator shall timely provide a copy of the com-

1 plete complaint to be filed and written notice
2 describing such action or proceeding to the Bu-
3 reau and the prudential regulator, if any, or the
4 designee thereof.

5 (B) EMERGENCY ACTION.—If prior notice
6 is not practicable, the State attorney general or
7 State regulator shall provide a copy of the com-
8 plete complaint and the notice to the Bureau
9 and the prudential regulator, if any, imme-
10 diately upon instituting the action or pro-
11 ceeding.

12 (C) CONTENTS OF NOTICE.—The notifica-
13 tion required under this paragraph shall, at a
14 minimum, describe—

15 (i) the identity of the parties;

16 (ii) the alleged facts underlying the
17 proceeding; and

18 (iii) whether there may be a need to
19 coordinate the prosecution of the pro-
20 ceeding so as not to interfere with any ac-
21 tion, including any rulemaking, undertaken
22 by the Director, a prudential regulator, or
23 another Federal agency.

24 (2) BUREAU RESPONSE.—In any action de-
25 scribed in paragraph (1), the Bureau may—

1 (A) intervene in the action as a party;

2 (B) upon intervening—

3 (i) remove the action to the appro-
4 priate United States district court, if the
5 action was not originally brought there;
6 and

7 (ii) be heard on all matters arising in
8 the action; and

9 (C) appeal any order or judgment, to the
10 same extent as any other party in the pro-
11 ceeding may.

12 (c) REGULATIONS.—The Director shall prescribe reg-
13 ulations to implement the requirements of this section
14 and, from time to time, provide guidance in order to fur-
15 ther coordinate actions with the State attorneys general
16 and other regulators.

17 (d) PRESERVATION OF STATE AUTHORITY.—

18 (1) STATE CLAIMS.—No provision of this sec-
19 tion shall be construed as altering, limiting, or af-
20 fecting the authority of a State attorney general or
21 any other regulatory or enforcement agency or au-
22 thority to bring an action or other regulatory pro-
23 ceeding arising solely under the law in effect in that
24 State.

1 (2) STATE SECURITIES REGULATORS.—No pro-
2 vision of this title shall be construed as altering, lim-
3 iting, or affecting the authority of a State securities
4 commission (or any agency or office performing like
5 functions) under State law to adopt rules, initiate
6 enforcement proceedings, or take any other action
7 with respect to a person regulated by such commis-
8 sion or authority.

9 (3) STATE INSURANCE REGULATORS.—No pro-
10 vision of this title shall be construed as altering, lim-
11 iting, or affecting the authority of a State insurance
12 commission or State insurance regulator under State
13 law to adopt rules, initiate enforcement proceedings,
14 or take any other action with respect to a person
15 regulated by such commission or regulator.

16 **SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.**

17 This title, and regulations, orders, guidance, and in-
18 terpretations prescribed, issued, or established by the Bu-
19 reau, shall not be construed to alter or affect the applica-
20 bility of any regulation, order, guidance, or interpretation
21 prescribed, issued, and established by the Comptroller of
22 the Currency or the Director of the Office of Thrift Super-
23 vision regarding the applicability of State law under Fed-
24 eral banking law to any contract entered into on or before
25 the date of the enactment of this title, by national banks,

1 Federal savings associations, or subsidiaries thereof that
 2 are regulated and supervised by the Comptroller of the
 3 Currency or the Director of the Office of Thrift Super-
 4 vision, respectively.

5 **SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NA-**
 6 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
 7 **FIED.**

8 (a) IN GENERAL.—Chapter one of title LXII of the
 9 Revised Statutes of the United States (12 U.S.C. 21 et
 10 seq.) is amended by inserting after section 5136B the fol-
 11 lowing new section:

12 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
 13 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
 14 **FIED.**

15 “(a) DEFINITIONS.—For purposes of this section, the
 16 following definitions shall apply:

17 “(1) NATIONAL BANK.—The term ‘national
 18 bank’ includes—

19 “(A) any bank organized under the laws of
 20 the United States; and

21 “(B) any Federal branch established in ac-
 22 cordance with the International Banking Act of
 23 1978.

24 “(2) STATE CONSUMER FINANCIAL LAWS.—The
 25 term ‘State consumer financial law’ means a State

1 law that does not directly or indirectly discriminate
2 against national banks and that directly and specifi-
3 cally regulates the manner, content, or terms and
4 conditions of any financial transaction (as may be
5 authorized for national banks to engage in), or any
6 account related thereto, with respect to a consumer.

7 “(3) OTHER DEFINITIONS.—The terms ‘affil-
8 iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the
9 same meanings as in section 3 of the Federal De-
10 posit Insurance Act.

11 “(b) PREEMPTION STANDARD.—

12 “(1) IN GENERAL.—State consumer financial
13 laws are preempted, only if—

14 “(A) application of a State consumer fi-
15 nancial law would have a discriminatory effect
16 on national banks, in comparison with the effect
17 of the law on a bank chartered by that State;

18 “(B) the preemption of the State consumer
19 financial law is in accordance with the legal
20 standard of the decision of the Supreme Court
21 of the United States in *Barnett Bank of Mar-*
22 *ion County, N.A. v. Nelson, Florida Insurance*
23 *Commissioner, et al*, 517 U.S. 25 (1996), and
24 a preemption determination under this subpara-
25 graph may be made by a court or by regulation

1 or order of the Comptroller of the Currency, in
2 accordance with applicable law, on a case-by-
3 case basis, and any such determination by a
4 court shall comply with the standards set forth
5 in subsection (d), with the court making the
6 finding under subsection (d), de novo; or

7 “(C) the State consumer financial law is
8 preempted by a provision of Federal law other
9 than this title.

10 “(2) SAVINGS CLAUSE.—This title does not pre-
11 empt, annul, or affect the applicability of any State
12 law to any subsidiary or affiliate of a national bank
13 (other than a subsidiary or affiliate that is chartered
14 as a national bank).

15 “(3) CASE-BY-CASE BASIS.—

16 “(A) DEFINITION.—As used in this section
17 the term ‘case-by-case basis’ refers to a deter-
18 mination pursuant to this section made by the
19 Comptroller concerning the impact of a par-
20 ticular State consumer financial law on any na-
21 tional bank that is subject to that law, or the
22 law of any other State with substantively equiv-
23 alent terms.

24 “(B) CONSULTATION.—When making a
25 determination on a case-by-case basis that a

1 State consumer financial law of another State
2 has substantively equivalent terms as one that
3 the Comptroller is preempting, the Comptroller
4 shall first consult with the Bureau of Consumer
5 Financial Protection and shall take the views of
6 the Bureau into account when making the de-
7 termination.

8 “(4) RULE OF CONSTRUCTION.—This title does
9 not occupy the field in any area of State law.

10 “(5) STANDARDS OF REVIEW.—

11 “(A) PREEMPTION.—A court reviewing
12 any determinations made by the Comptroller re-
13 garding preemption of a State law by this title
14 shall assess the validity of such determinations,
15 depending upon the thoroughness evident in the
16 consideration of the agency, the validity of the
17 reasoning of the agency, the consistency with
18 other valid determinations made by the agency,
19 and other factors which the court finds persua-
20 sive and relevant to its decision.

21 “(B) SAVINGS CLAUSE.—Except as pro-
22 vided in subparagraph (A), nothing in this sec-
23 tion shall affect the deference that a court may
24 afford to the Comptroller in making determina-
25 tions regarding the meaning or interpretation of

1 title LXII of the Revised Statutes of the United
2 States or other Federal laws.

3 “(6) COMPTROLLER DETERMINATION NOT DEL-
4 EGABLE.—Any regulation, order, or determination
5 made by the Comptroller of the Currency under
6 paragraph (1)(B) shall be made by the Comptroller,
7 and shall not be delegable to another officer or em-
8 ployee of the Comptroller of the Currency.

9 “(c) SUBSTANTIAL EVIDENCE.—No regulation or
10 order of the Comptroller of the Currency prescribed under
11 subsection (b)(1)(B), shall be interpreted or applied so as
12 to invalidate, or otherwise declare inapplicable to a na-
13 tional bank, the provision of the State consumer financial
14 law, unless substantial evidence, made on the record of
15 the proceeding, supports the specific finding regarding the
16 preemption of such provision in accordance with the legal
17 standard of the decision of the Supreme Court of the
18 United States in *Barnett Bank of Marion County, N.A.*
19 *v. Nelson*, Florida Insurance Commissioner, et al., 517
20 U.S. 25 (1996).

21 “(d) OTHER FEDERAL LAWS.—Notwithstanding any
22 other provision of law, the Comptroller of the Currency
23 may not prescribe a regulation or order pursuant to sub-
24 section (b)(1)(B) until the Comptroller of the Currency,
25 after consultation with the Director of the Bureau of Con-

1 sumer Financial Protection, makes a finding, in writing,
2 that a Federal law provides a substantive standard, appli-
3 cable to a national bank, which regulates the particular
4 conduct, activity, or authority that is subject to such pro-
5 vision of the State consumer financial law.

6 “(e) PERIODIC REVIEW OF PREEMPTION DETER-
7 MINATIONS.—

8 “(1) IN GENERAL.—The Comptroller of the
9 Currency shall periodically conduct a review,
10 through notice and public comment, of each deter-
11 mination that a provision of Federal law preempts a
12 State consumer financial law. The agency shall con-
13 duct such review within the 5-year period after pre-
14 scribing or otherwise issuing such determination,
15 and at least once during each 5-year period there-
16 after. After conducting the review of, and inspecting
17 the comments made on, the determination, the agen-
18 cy shall publish a notice in the Federal Register an-
19 nouncing the decision to continue or rescind the de-
20 termination or a proposal to amend the determina-
21 tion. Any such notice of a proposal to amend a de-
22 termination and the subsequent resolution of such
23 proposal shall comply with the procedures set forth
24 in subsections (a) and (b) of section 5244 of the Re-

1 vised Statutes of the United States (12 U.S.C. 43
2 (a), (b)).

3 “(2) REPORTS TO CONGRESS.—At the time of
4 issuing a review conducted under paragraph (1), the
5 Comptroller of the Currency shall submit a report
6 regarding such review to the Committee on Finan-
7 cial Services of the House of Representatives and
8 the Committee on Banking, Housing, and Urban Af-
9 fairs of the Senate. The report submitted to the re-
10 spective committees shall address whether the agen-
11 cy intends to continue, rescind, or propose to amend
12 any determination that a provision of Federal law
13 preempts a State consumer financial law, and the
14 reasons therefor.

15 “(f) APPLICATION OF STATE CONSUMER FINANCIAL
16 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
17 standing any provision of this title, a State consumer fi-
18 nancial law shall apply to a subsidiary or affiliate of a
19 national bank (other than a subsidiary or affiliate that is
20 chartered as a national bank) to the same extent that the
21 State consumer financial law applies to any person, cor-
22 poration, or other entity subject to such State law.

23 “(g) PRESERVATION OF POWERS RELATED TO
24 CHARGING INTEREST.—No provision of this title shall be
25 construed as altering or otherwise affecting the authority

1 conferred by section 5197 of the Revised Statutes of the
 2 United States (12 U.S.C. 85) for the charging of interest
 3 by a national bank at the rate allowed by the laws of the
 4 State, territory, or district where the bank is located, in-
 5 cluding with respect to the meaning of ‘interest’ under
 6 such provision.

7 “(h) TRANSPARENCY OF OCC PREEMPTION DETER-
 8 MINATIONS.—The Comptroller of the Currency shall pub-
 9 lish and update no less frequently than quarterly, a list
 10 of preemption determinations by the Comptroller of the
 11 Currency then in effect that identifies the activities and
 12 practices covered by each determination and the require-
 13 ments and constraints determined to be preempted.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 for chapter one of title LXII of the Revised Statutes of
 16 the United States is amended by inserting after the item
 17 relating to section 5136B the following new item:

“Sec. 5136C. State law preemption standards for national banks and subsidi-
 aries clarified.”.

18 **SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NON-**
 19 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

20 Section 5136C of the Revised Statutes of the United
 21 States (as added by this subtitle) is amended by adding
 22 at the end the following:

1 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
 2 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
 3 ATES OF NATIONAL BANKS.—

4 “(1) DEFINITIONS.—For purposes of this sub-
 5 section, the terms ‘depository institution’, ‘sub-
 6 sidiary’, and ‘affiliate’ have the same meanings as in
 7 section 3 of the Federal Deposit Insurance Act.

8 “(2) RULE OF CONSTRUCTION.—No provision
 9 of this title shall be construed as preempting, annul-
 10 ling, or affecting the applicability of State law to
 11 any subsidiary, affiliate, or agent of a national bank
 12 (other than a subsidiary, affiliate, or agent that is
 13 chartered as a national bank).”.

14 **SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FED-**
 15 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**
 16 **ARIES CLARIFIED.**

17 (a) IN GENERAL.—The Home Owners’ Loan Act (12
 18 U.S.C. 1461 et seq.) is amended by inserting after section
 19 5 the following new section:

20 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
 21 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

22 “(a) IN GENERAL.—Any determination by a court or
 23 by the Director or any successor officer or agency regard-
 24 ing the relation of State law to a provision of this Act
 25 or any regulation or order prescribed under this Act shall

1 be made in accordance with the laws and legal standards
 2 applicable to national banks regarding the preemption of
 3 State law.

4 “(b) PRINCIPLES OF CONFLICT PREEMPTION APPLI-
 5 CABLE.—Notwithstanding the authorities granted under
 6 sections 4 and 5, this Act does not occupy the field in
 7 any area of State law.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
 9 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)
 10 is amended by striking the item relating to section 6 and
 11 inserting the following new item:

“Sec. 6.. State law preemption standards for Federal savings associations
 and subsidiaries clarified.”.

12 **SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS**
 13 **AND SAVINGS ASSOCIATIONS.**

14 (a) NATIONAL BANKS.—Section 5136C of the Re-
 15 vised Statutes of the United States (as added by this sub-
 16 title) is amended by adding at the end the following:

17 “(j) VISITORIAL POWERS.—

18 “(1) IN GENERAL.—No provision of this title
 19 which relates to visitorial powers to which any na-
 20 tional bank is subject shall be construed as limiting
 21 or restricting the authority of any attorney general
 22 (or other chief law enforcement officer) of any State
 23 to bring any action in any court of appropriate juris-
 24 diction, as authorized under section 5240(a)—

1 “(A) to enforce any applicable provision of
2 Federal or State law, as authorized by such
3 law; or

4 “(B) on behalf of residents of such State,
5 to enforce any applicable provision of any Fed-
6 eral or nonpreempted State law against a na-
7 tional bank, as authorized by such law, or to
8 seek relief for such residents from any violation
9 of any such law by any national bank.

10 “(2) PRIOR CONSULTATION WITH OCC RE-
11 QUIRED.—The attorney general (or other chief law
12 enforcement officer) of any State shall consult with
13 the Comptroller of the Currency before acting under
14 paragraph (1).

15 “(k) ENFORCEMENT ACTIONS.—The ability of the
16 Comptroller of the Currency to bring an enforcement ac-
17 tion under this title or section 5 of the Federal Trade
18 Commission Act does not preclude any private party from
19 enforcing rights granted under Federal or State law in the
20 courts.”.

21 (b) SAVINGS ASSOCIATIONS.—Section 6 of the Home
22 Owners’ Loan Act (as added by this title) is amended by
23 adding at the end the following:

24 “(c) VISITORIAL POWERS.—

1 “(1) IN GENERAL.—No provision of this Act
2 shall be construed as limiting or restricting the au-
3 thority of any attorney general (or other chief law
4 enforcement officer) of any State to bring any action
5 in any court of appropriate jurisdiction—

6 “(A) to enforce any applicable provision of
7 Federal or State law, as authorized by such
8 law; or

9 “(B) on behalf of residents of such State,
10 to enforce any applicable provision of any Fed-
11 eral or nonpreempted State law against a Fed-
12 eral savings association, as authorized by such
13 law, or to seek relief for such residents from
14 any violation of any such law by any Federal
15 savings association.

16 “(2) PRIOR CONSULTATION WITH OCC RE-
17 QUIRED.—The attorney general (or other chief law
18 enforcement officer) of any State shall consult with
19 the Comptroller of the Currency before acting under
20 paragraph (1).

21 “(d) ENFORCEMENT ACTIONS.—The ability of the
22 Comptroller of the Currency to bring an enforcement ac-
23 tion under this Act or section 5 of the Federal Trade Com-
24 mission Act does not preclude any private party from en-

1 forcing rights granted under Federal or State law in the
2 courts.”.

3 **SEC. 1048. EFFECTIVE DATE.**

4 This subtitle shall become effective on the designated
5 transfer date.

6 **Subtitle E—Enforcement Powers**

7 **SEC. 1051. DEFINITIONS.**

8 For purposes of this subtitle, the following definitions
9 shall apply:

10 (1) BUREAU INVESTIGATION.—The term “Bu-
11 reau investigation” means any inquiry conducted by
12 a Bureau investigator for the purpose of
13 ascertaining whether any person is or has been en-
14 gaged in any conduct that is a violation, as defined
15 in this section.

16 (2) BUREAU INVESTIGATOR.—The term “Bu-
17 reau investigator” means any attorney or investi-
18 gator employed by the Bureau who is charged with
19 the duty of enforcing or carrying into effect any
20 Federal consumer financial law.

21 (3) CIVIL INVESTIGATIVE DEMAND AND DE-
22 MAND.—The terms “civil investigative demand” and
23 “demand” mean any demand issued by the Bureau.

1 (4) CUSTODIAN.—The term “custodian” means
2 the custodian or any deputy custodian designated by
3 the Bureau.

4 (5) DOCUMENTARY MATERIAL.—The term
5 “documentary material” includes the original or any
6 copy of any book, document, record, report, memo-
7 randum, paper, communication, tabulation, chart,
8 logs, electronic files, or other data or data compila-
9 tions stored in any medium.

10 (6) VIOLATION.—The term “violation” means
11 any act or omission that, if proved, would constitute
12 a violation of any provision of Federal consumer fi-
13 nancial law.

14 **SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DIS-**
15 **COVERY.**

16 (a) JOINT INVESTIGATIONS.—

17 (1) IN GENERAL.—The Bureau or, where ap-
18 propriate, a Bureau investigator, may engage in
19 joint investigations and requests for information, as
20 authorized under this title.

21 (2) FAIR LENDING.—The authority under para-
22 graph (1) includes matters relating to fair lending,
23 and where appropriate, joint investigations with, and
24 requests for information from, the Secretary of

1 Housing and Urban Development, the Attorney Gen-
2 eral of the United States, or both.

3 (b) SUBPOENAS.—

4 (1) IN GENERAL.—The Bureau or a Bureau in-
5 vestigator may issue subpoenas for the attendance
6 and testimony of witnesses and the production of
7 relevant papers, books, documents, or other material
8 in connection with hearings under this title.

9 (2) FAILURE TO OBEY.—In the case of contu-
10 macy or refusal to obey a subpoena issued pursuant
11 to this paragraph and served upon any person, the
12 district court of the United States for any district in
13 which such person is found, resides, or transacts
14 business, upon application by the Bureau or a Bu-
15 reau investigator and after notice to such person,
16 may issue an order requiring such person to appear
17 and give testimony or to appear and produce docu-
18 ments or other material.

19 (3) CONTEMPT.—Any failure to obey an order
20 of the court under this subsection may be punished
21 by the court as a contempt thereof.

22 (c) DEMANDS.—

23 (1) IN GENERAL.—Whenever the Bureau has
24 reason to believe that any person may be in posses-
25 sion, custody, or control of any documentary mate-

1 rial or tangible things, or may have any information,
2 relevant to a violation, the Bureau may, before the
3 institution of any proceedings under the Federal
4 consumer financial law, issue in writing, and cause
5 to be served upon such person, a civil investigative
6 demand requiring such person to—

7 (A) produce such documentary material for
8 inspection and copying or reproduction in the
9 form or medium requested by the Bureau;

10 (B) submit such tangible things;

11 (C) file written reports or answers to ques-
12 tions;

13 (D) give oral testimony concerning docu-
14 mentary material, tangible things, or other in-
15 formation; or

16 (E) furnish any combination of such mate-
17 rial, answers, or testimony.

18 (2) REQUIREMENTS.—Each civil investigative
19 demand shall state the nature of the conduct consti-
20 tuting the alleged violation which is under investiga-
21 tion and the provision of law applicable to such vio-
22 lation.

23 (3) PRODUCTION OF DOCUMENTS.—Each civil
24 investigative demand for the production of documen-
25 tary material shall—

1 (A) describe each class of documentary
2 material to be produced under the demand with
3 such definiteness and certainty as to permit
4 such material 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 material so demanded may be assem-
8 bled and made available for inspection and
9 copying or reproduction; and

10 (C) identify the custodian to whom such
11 material shall be made available.

12 (4) PRODUCTION OF THINGS.—Each civil inves-
13 tigative demand for the submission of tangible
14 things shall—

15 (A) describe each class of tangible things
16 to be submitted under the demand with such
17 definiteness and certainty as to permit such
18 things to be fairly identified;

19 (B) prescribe a return date or dates which
20 will provide a reasonable period of time within
21 which the things so demanded may be assem-
22 bled and submitted; and

23 (C) identify the custodian to whom such
24 things shall be submitted.

1 (5) DEMAND FOR WRITTEN REPORTS OR AN-
2 SWERS.—Each civil investigative demand for written
3 reports or answers to questions shall—

4 (A) propound with definiteness and cer-
5 tainty the reports to be produced or the ques-
6 tions to be answered;

7 (B) prescribe a date or dates at which time
8 written reports or answers to questions shall be
9 submitted; and

10 (C) identify the custodian to whom such
11 reports or answers shall be submitted.

12 (6) ORAL TESTIMONY.—Each civil investigative
13 demand for the giving of oral testimony shall—

14 (A) prescribe a date, time, and place at
15 which oral testimony shall be commenced; and

16 (B) identify a Bureau investigator who
17 shall conduct the investigation and the custo-
18 dian to whom the transcript of such investiga-
19 tion shall be submitted.

20 (7) SERVICE.—Any civil investigative demand
21 and any enforcement petition filed under this section
22 may be served—

23 (A) by any Bureau investigator at any
24 place within the territorial jurisdiction of any
25 court of the United States; and

1 (B) upon any person who is not found
2 within the territorial jurisdiction of any court of
3 the United States—

4 (i) in such manner as the Federal
5 Rules of Civil Procedure prescribe for serv-
6 ice in a foreign nation; and

7 (ii) to the extent that the courts of
8 the United States have authority to assert
9 jurisdiction over such person, consistent
10 with due process, the United States Dis-
11 trict Court for the District of Columbia
12 shall have the same jurisdiction to take
13 any action respecting compliance with this
14 section by such person that such district
15 court would have if such person were per-
16 sonally within the jurisdiction of such dis-
17 trict court.

18 (8) METHOD OF SERVICE.—Service of any civil
19 investigative demand or any enforcement petition
20 filed under this section may be made upon a person,
21 including any legal entity, by—

22 (A) delivering a duly executed copy of such
23 demand or petition to the individual or to any
24 partner, executive officer, managing agent, or
25 general agent of such person, or to any agent

1 of such person authorized by appointment or by
2 law to receive service of process on behalf of
3 such person;

4 (B) delivering a duly executed copy of such
5 demand or petition to the principal office or
6 place of business of the person to be served; or

7 (C) depositing a duly executed copy in the
8 United States mails, by registered or certified
9 mail, return receipt requested, duly addressed
10 to such person at the principal office or place
11 of business of such person.

12 (9) PROOF OF SERVICE.—

13 (A) IN GENERAL.—A verified return by the
14 individual serving any civil investigative demand
15 or any enforcement petition filed under this sec-
16 tion setting forth the manner of such service
17 shall be proof of such service.

18 (B) RETURN RECEIPTS.—In the case of
19 service by registered or certified mail, such re-
20 turn shall be accompanied by the return post
21 office receipt of delivery of such demand or en-
22 forcement petition.

23 (10) PRODUCTION OF DOCUMENTARY MATE-
24 RIAL.—The production of documentary material in
25 response to a civil investigative demand shall be

1 made under a sworn certificate, in such form as the
2 demand designates, by the person, if a natural per-
3 son, to whom the demand is directed or, if not a
4 natural person, by any person having knowledge of
5 the facts and circumstances relating to such produc-
6 tion, to the effect that all of the documentary mate-
7 rial required by the demand and in the possession,
8 custody, or control of the person to whom the de-
9 mand is directed has been produced and made avail-
10 able to the custodian.

11 (11) SUBMISSION OF TANGIBLE THINGS.—The
12 submission of tangible things in response to a civil
13 investigative demand shall be made under a sworn
14 certificate, in such form as the demand designates,
15 by the person to whom the demand is directed or,
16 if not a natural person, by any person having knowl-
17 edge of the facts and circumstances relating to such
18 production, to the effect that all of the tangible
19 things required by the demand and in the posses-
20 sion, custody, or control of the person to whom the
21 demand is directed have been submitted to the cus-
22 todian.

23 (12) SEPARATE ANSWERS.—Each reporting re-
24 quirement or question in a civil investigative demand
25 shall be answered separately and fully in writing

1 under oath, unless it is objected to, in which event
2 the reasons for the objection shall be stated in lieu
3 of an answer, and it shall be submitted under a
4 sworn certificate, in such form as the demand des-
5 ignates, by the person, if a natural person, to whom
6 the demand is directed or, if not a natural person,
7 by any person responsible for answering each report-
8 ing requirement or question, to the effect that all in-
9 formation required by the demand and in the posses-
10 sion, custody, control, or knowledge of the person to
11 whom the demand is directed has been submitted.

12 (13) TESTIMONY.—

13 (A) IN GENERAL.—

14 (i) OATH OR AFFIRMATION.—Any Bu-
15 reau investigator before whom oral testi-
16 mony is to be taken shall put the witness
17 under oath or affirmation, and shall per-
18 sonally, or by any individual acting under
19 the direction of and in the presence of the
20 Bureau investigator, record the testimony
21 of the witness.

22 (ii) TRANSCRIPTION.—The testimony
23 shall be taken stenographically and tran-
24 scribed.

1 (iii) TRANSMISSION TO CUSTODIAN.—

2 After the testimony is fully transcribed,
3 the Bureau investigator before whom the
4 testimony is taken shall promptly transmit
5 a copy of the transcript of the testimony to
6 the custodian.

7 (B) PARTIES PRESENT.—Any Bureau in-
8 vestigator before whom oral testimony is to be
9 taken shall exclude from the place where the
10 testimony is to be taken all other persons, ex-
11 cept the person giving the testimony, the attor-
12 ney of that person, the officer before whom the
13 testimony is to be taken, and any stenographer
14 taking such testimony.

15 (C) LOCATION.—The oral testimony of any
16 person taken pursuant to a civil investigative
17 demand shall be taken in the judicial district of
18 the United States in which such person resides,
19 is found, or transacts business, or in such other
20 place as may be agreed upon by the Bureau in-
21 vestigator before whom the oral testimony of
22 such person is to be taken and such person.

23 (D) ATTORNEY REPRESENTATION.—

24 (i) IN GENERAL.—Any person com-
25 pelled to appear under a civil investigative

1 demand for oral testimony pursuant to this
2 section may be accompanied, represented,
3 and advised by an attorney.

4 (ii) AUTHORITY.—The attorney may
5 advise a person described in clause (i), in
6 confidence, either upon the request of such
7 person or upon the initiative of the attor-
8 ney, with respect to any question asked of
9 such person.

10 (iii) OBJECTIONS.—A person de-
11 scribed in clause (i), or the attorney for
12 that person, may object on the record to
13 any question, in whole or in part, and such
14 person shall briefly state for the record the
15 reason for the objection. An objection may
16 properly be made, received, and entered
17 upon the record when it is claimed that
18 such person is entitled to refuse to answer
19 the question on grounds of any constitu-
20 tional or other legal right or privilege, in-
21 cluding the privilege against self-incrimina-
22 tion, but such person shall not otherwise
23 object to or refuse to answer any question,
24 and such person or attorney shall not oth-
25 erwise interrupt the oral examination.

1 (iv) REFUSAL TO ANSWER.—If a per-
2 son described in clause (i) refuses to an-
3 swer any question—

4 (I) the Bureau may petition the
5 district court of the United States
6 pursuant to this section for an order
7 compelling such person to answer
8 such question; and

9 (II) on grounds of the privilege
10 against self-incrimination, the testi-
11 mony of such person may be com-
12 pelled in accordance with the provi-
13 sions of section 6004 of title 18,
14 United States Code.

15 (E) TRANSCRIPTS.—For purposes of this
16 subsection—

17 (i) after the testimony of any witness
18 is fully transcribed, the Bureau investi-
19 gator shall afford the witness (who may be
20 accompanied by an attorney) a reasonable
21 opportunity to examine the transcript;

22 (ii) the transcript shall be read to or
23 by the witness, unless such examination
24 and reading are waived by the witness;

1 (iii) any changes in form or substance
2 which the witness desires to make shall be
3 entered and identified upon the transcript
4 by the Bureau investigator, with a state-
5 ment of the reasons given by the witness
6 for making such changes;

7 (iv) the transcript shall be signed by
8 the witness, unless the witness in writing
9 waives the signing, is ill, cannot be found,
10 or refuses to sign; and

11 (v) if the transcript is not signed by
12 the witness during the 30-day period fol-
13 lowing the date on which the witness is
14 first afforded a reasonable opportunity to
15 examine the transcript, the Bureau investi-
16 gator shall sign the transcript and state on
17 the record the fact of the waiver, illness,
18 absence of the witness, or the refusal to
19 sign, together with any reasons given for
20 the failure to sign.

21 (F) CERTIFICATION BY INVESTIGATOR.—

22 The Bureau investigator shall certify on the
23 transcript that the witness was duly sworn by
24 him or her and that the transcript is a true
25 record of the testimony given by the witness,

1 and the Bureau investigator shall promptly de-
2 liver the transcript or send it by registered or
3 certified mail to the custodian.

4 (G) COPY OF TRANSCRIPT.—The Bureau
5 investigator shall furnish a copy of the tran-
6 script (upon payment of reasonable charges for
7 the transcript) to the witness only, except that
8 the Bureau may for good cause limit such wit-
9 ness to inspection of the official transcript of
10 his testimony.

11 (H) WITNESS FEES.—Any witness appear-
12 ing for the taking of oral testimony pursuant to
13 a civil investigative demand shall be entitled to
14 the same fees and mileage which are paid to
15 witnesses in the district courts of the United
16 States.

17 (d) CONFIDENTIAL TREATMENT OF DEMAND MATE-
18 RIAL.—

19 (1) IN GENERAL.—Documentary materials and
20 tangible things received as a result of a civil inves-
21 tigative demand shall be subject to requirements and
22 procedures regarding confidentiality, in accordance
23 with rules established by the Bureau.

24 (2) DISCLOSURE TO CONGRESS.—No rule es-
25 tablished by the Bureau regarding the confidentiality

1 of materials submitted to, or otherwise obtained by,
2 the Bureau shall be intended to prevent disclosure to
3 either House of Congress or to an appropriate com-
4 mittee of the Congress, except that the Bureau is
5 permitted to adopt rules allowing prior notice to any
6 party that owns or otherwise provided the material
7 to the Bureau and had designated such material as
8 confidential.

9 (e) PETITION FOR ENFORCEMENT.—

10 (1) IN GENERAL.—Whenever any person fails
11 to comply with any civil investigative demand duly
12 served upon him under this section, or whenever sat-
13 isfactory copying or reproduction of material re-
14 quested pursuant to the demand cannot be accom-
15 plished and such person refuses to surrender such
16 material, the Bureau, through such officers or attor-
17 neys as it may designate, may file, in the district
18 court of the United States for any judicial district
19 in which such person resides, is found, or transacts
20 business, and serve upon such person, a petition for
21 an order of such court for the enforcement of this
22 section.

23 (2) SERVICE OF PROCESS.—All process of any
24 court to which application may be made as provided

1 in this subsection may be served in any judicial dis-
2 trict.

3 (f) PETITION FOR ORDER MODIFYING OR SETTING
4 ASIDE DEMAND.—

5 (1) IN GENERAL.—Not later than 20 days after
6 the service of any civil investigative demand upon
7 any person under subsection (b), or at any time be-
8 fore the return date specified in the demand, which-
9 ever period is shorter, or within such period exceed-
10 ing 20 days after service or in excess of such return
11 date as may be prescribed in writing, subsequent to
12 service, by any Bureau investigator named in the de-
13 mand, such person may file with the Bureau a peti-
14 tion for an order by the Bureau modifying or setting
15 aside the demand.

16 (2) COMPLIANCE DURING PENDENCY.—The
17 time permitted for compliance with the demand in
18 whole or in part, as determined proper and ordered
19 by the Bureau, shall not run during the pendency of
20 a petition under paragraph (1) at the Bureau, ex-
21 cept that such person shall comply with any portions
22 of the demand not sought to be modified or set
23 aside.

24 (3) SPECIFIC GROUNDS.—A petition under
25 paragraph (1) shall specify each ground upon which

1 the petitioner relies in seeking relief, and may be
2 based upon any failure of the demand to comply
3 with the provisions of this section, or upon any con-
4 stitutional or other legal right or privilege of such
5 person.

6 (g) CUSTODIAL CONTROL.—At any time during
7 which any custodian is in custody or control of any docu-
8 mentary material, tangible things, reports, answers to
9 questions, or transcripts of oral testimony given by any
10 person in compliance with any civil investigative demand,
11 such person may file, in the district court of the United
12 States for the judicial district within which the office of
13 such custodian is situated, and serve upon such custodian,
14 a petition for an order of such court requiring the per-
15 formance by such custodian of any duty imposed upon him
16 by this section or rule promulgated by the Bureau.

17 (h) JURISDICTION OF COURT.—

18 (1) IN GENERAL.—Whenever any petition is
19 filed in any district court of the United States under
20 this section, such court shall have jurisdiction to
21 hear and determine the matter so presented, and to
22 enter such order or orders as may be required to
23 carry out the provisions of this section.

24 (2) APPEAL.—Any final order entered as de-
25 scribed in paragraph (1) shall be subject to appeal

1 pursuant to section 1291 of title 28, United States
2 Code.

3 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

4 (a) IN GENERAL.—The Bureau is authorized to con-
5 duct hearings and adjudication proceedings with respect
6 to any person in the manner prescribed by chapter 5 of
7 title 5, United States Code in order to ensure or enforce
8 compliance with—

9 (1) the provisions of this title, including any
10 rules prescribed by the Bureau under this title; and

11 (2) any other Federal law that the Bureau is
12 authorized to enforce, including an enumerated con-
13 sumer law, and any regulations or order prescribed
14 thereunder, unless such Federal law specifically lim-
15 its the Bureau from conducting a hearing or adju-
16 dication proceeding and only to the extent of such
17 limitation.

18 (b) SPECIAL RULES FOR CEASE-AND-DESIST PRO-
19 CEEDINGS.—

20 (1) ORDERS AUTHORIZED.—

21 (A) IN GENERAL.—If, in the opinion of the
22 Bureau, any covered person or service provider
23 is engaging or has engaged in an activity that
24 violates a law, rule, or any condition imposed in
25 writing on the person by the Bureau, the Bu-

1 reau may, subject to sections 1024, 1025, and
2 1026, issue and serve upon the covered person
3 or service provider a notice of charges in re-
4 spect thereof.

5 (B) CONTENT OF NOTICE.—The notice
6 under subparagraph (A) shall contain a state-
7 ment of the facts constituting the alleged viola-
8 tion or violations, and shall fix a time and place
9 at which a hearing will be held to determine
10 whether an order to cease and desist should
11 issue against the covered person or service pro-
12 vider, such hearing to be held not earlier than
13 30 days nor later than 60 days after the date
14 of service of such notice, unless an earlier or a
15 later date is set by the Bureau, at the request
16 of any party so served.

17 (C) CONSENT.—Unless the party or par-
18 ties served under subparagraph (B) appear at
19 the hearing personally or by a duly authorized
20 representative, such person shall be deemed to
21 have consented to the issuance of the cease-and-
22 desist order.

23 (D) PROCEDURE.—In the event of consent
24 under subparagraph (C), or if, upon the record,
25 made at any such hearing, the Bureau finds

1 that any violation specified in the notice of
2 charges has been established, the Bureau may
3 issue and serve upon the covered person or
4 service provider an order to cease and desist
5 from the violation or practice. Such order may,
6 by provisions which may be mandatory or other-
7 wise, require the covered person or service pro-
8 vider to cease and desist from the subject activ-
9 ity, and to take affirmative action to correct the
10 conditions resulting from any such violation.

11 (2) EFFECTIVENESS OF ORDER.—A cease-and-
12 desist order shall become effective at the expiration
13 of 30 days after the date of service of an order
14 under paragraph (1) upon the covered person or
15 service provider concerned (except in the case of a
16 cease-and-desist order issued upon consent, which
17 shall become effective at the time specified therein),
18 and shall remain effective and enforceable as pro-
19 vided therein, except to such extent as the order is
20 stayed, modified, terminated, or set aside by action
21 of the Bureau or a reviewing court.

22 (3) DECISION AND APPEAL.—Any hearing pro-
23 vided for in this subsection shall be held in the Fed-
24 eral judicial district or in the territory in which the
25 residence or principal office or place of business of

1 the person is located unless the person consents to
2 another place, and shall be conducted in accordance
3 with the provisions of chapter 5 of title 5 of the
4 United States Code. After such hearing, and within
5 90 days after the Bureau has notified the parties
6 that the case has been submitted to the Bureau for
7 final decision, the Bureau shall render its decision
8 (which shall include findings of fact upon which its
9 decision is predicated) and shall issue and serve
10 upon each party to the proceeding an order or or-
11 ders consistent with the provisions of this section.
12 Judicial review of any such order shall be exclusively
13 as provided in this subsection. Unless a petition for
14 review is timely filed in a court of appeals of the
15 United States, as provided in paragraph (4), and
16 thereafter until the record in the proceeding has
17 been filed as provided in paragraph (4), the Bureau
18 may at any time, upon such notice and in such man-
19 ner as the Bureau shall determine proper, modify,
20 terminate, or set aside any such order. Upon filing
21 of the record as provided, the Bureau may modify,
22 terminate, or set aside any such order with permis-
23 sion of the court.

24 (4) APPEAL TO COURT OF APPEALS.—Any
25 party to any proceeding under this subsection may

1 obtain a review of any order served pursuant to this
2 subsection (other than an order issued with the con-
3 sent of the person concerned) by the filing in the
4 court of appeals of the United States for the circuit
5 in which the principal office of the covered person is
6 located, or in the United States Court of Appeals for
7 the District of Columbia Circuit, within 30 days
8 after the date of service of such order, a written pe-
9 tition praying that the order of the Bureau be modi-
10 fied, terminated, or set aside. A copy of such peti-
11 tion shall be forthwith transmitted by the clerk of
12 the court to the Bureau, and thereupon the Bureau
13 shall file in the court the record in the proceeding,
14 as provided in section 2112 of title 28 of the United
15 States Code. Upon the filing of such petition, such
16 court shall have jurisdiction, which upon the filing of
17 the record shall except as provided in the last sen-
18 tence of paragraph (3) be exclusive, to affirm, mod-
19 ify, terminate, or set aside, in whole or in part, the
20 order of the Bureau. Review of such proceedings
21 shall be had as provided in chapter 7 of title 5 of
22 the United States Code. The judgment and decree of
23 the court shall be final, except that the same shall
24 be subject to review by the Supreme Court of the

1 United States, upon certiorari, as provided in section
2 1254 of title 28 of the United States Code.

3 (5) NO STAY.—The commencement of pro-
4 ceedings for judicial review under paragraph (4)
5 shall not, unless specifically ordered by the court,
6 operate as a stay of any order issued by the Bureau.

7 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-
8 DESIST PROCEEDINGS.—

9 (1) IN GENERAL.—Whenever the Bureau deter-
10 mines that the violation specified in the notice of
11 charges served upon a person, including a service
12 provider, pursuant to subsection (b), or the continu-
13 ation thereof, is likely to cause the person to be in-
14 solvent or otherwise prejudice the interests of con-
15 sumers before the completion of the proceedings con-
16 ducted pursuant to subsection (b), the Bureau may
17 issue a temporary order requiring the person to
18 cease and desist from any such violation or practice
19 and to take affirmative action to prevent or remedy
20 such insolvency or other condition pending comple-
21 tion of such proceedings. Such order may include
22 any requirement authorized under this subtitle. Such
23 order shall become effective upon service upon the
24 person and, unless set aside, limited, or suspended
25 by a court in proceedings authorized by paragraph

1 (2), shall remain effective and enforceable pending
2 the completion of the administrative proceedings
3 pursuant to such notice and until such time as the
4 Bureau shall dismiss the charges specified in such
5 notice, or if a cease-and-desist order is issued
6 against the person, until the effective date of such
7 order.

8 (2) APPEAL.—Not later than 10 days after the
9 covered person or service provider concerned has
10 been served with a temporary cease-and-desist order,
11 the person may apply to the United States district
12 court for the judicial district in which the residence
13 or principal office or place of business of the person
14 is located, or the United States District Court for
15 the District of Columbia, for an injunction setting
16 aside, limiting, or suspending the enforcement, oper-
17 ation, or effectiveness of such order pending the
18 completion of the administrative proceedings pursu-
19 ant to the notice of charges served upon the person
20 under subsection (b), and such court shall have ju-
21 risdiction to issue such injunction.

22 (3) INCOMPLETE OR INACCURATE RECORDS.—

23 (A) TEMPORARY ORDER.—If a notice of
24 charges served under subsection (b) specifies,
25 on the basis of particular facts and cir-

1 cumstances, that the books and records of a
2 covered person or service provider are so incom-
3 plete or inaccurate that the Bureau is unable to
4 determine the financial condition of that person
5 or the details or purpose of any transaction or
6 transactions that may have a material effect on
7 the financial condition of that person, the Bu-
8 reau may issue a temporary order requiring—

9 (i) the cessation of any activity or
10 practice which gave rise, whether in whole
11 or in part, to the incomplete or inaccurate
12 state of the books or records; or

13 (ii) affirmative action to restore such
14 books or records to a complete and accu-
15 rate state, until the completion of the pro-
16 ceedings under subsection (b)(1).

17 (B) EFFECTIVE PERIOD.—Any temporary
18 order issued under subparagraph (A)—

19 (i) shall become effective upon service;
20 and

21 (ii) unless set aside, limited, or sus-
22 pended by a court in proceedings under
23 paragraph (2), shall remain in effect and
24 enforceable until the earlier of—

1 (I) the completion of the pro-
2 ceeding initiated under subsection (b)
3 in connection with the notice of
4 charges; or

5 (II) the date the Bureau deter-
6 mines, by examination or otherwise,
7 that the books and records of the cov-
8 ered person or service provider are ac-
9 curate and reflect the financial condi-
10 tion thereof.

11 (d) SPECIAL RULES FOR ENFORCEMENT OF OR-
12 DERS.—

13 (1) IN GENERAL.—The Bureau may in its dis-
14 cretion apply to the United States district court
15 within the jurisdiction of which the principal office
16 or place of business of the person is located, for the
17 enforcement of any effective and outstanding notice
18 or order issued under this section, and such court
19 shall have jurisdiction and power to order and re-
20 quire compliance herewith.

21 (2) EXCEPTION.—Except as otherwise provided
22 in this subsection, no court shall have jurisdiction to
23 affect by injunction or otherwise the issuance or en-
24 forcement of any notice or order or to review, mod-

1 ify, suspend, terminate, or set aside any such notice
2 or order.

3 (e) RULES.—The Bureau shall prescribe rules estab-
4 lishing such procedures as may be necessary to carry out
5 this section.

6 **SEC. 1054. LITIGATION AUTHORITY.**

7 (a) IN GENERAL.—If any person violates a Federal
8 consumer financial law, the Bureau may, subject to sec-
9 tions 1024, 1025, and 1026, commence a civil action
10 against such person to impose a civil penalty or to seek
11 all appropriate legal and equitable relief including a per-
12 manent or temporary injunction as permitted by law.

13 (b) REPRESENTATION.—The Bureau may act in its
14 own name and through its own attorneys in enforcing any
15 provision of this title, rules thereunder, or any other law
16 or regulation, or in any action, suit, or proceeding to which
17 the Bureau is a party.

18 (c) COMPROMISE OF ACTIONS.—The Bureau may
19 compromise or settle any action if such compromise is ap-
20 proved by the court.

21 (d) NOTICE TO THE ATTORNEY GENERAL.—When
22 commencing a civil action under Federal consumer finan-
23 cial law, or any rule thereunder, the Bureau shall notify
24 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
6 the Bureau makes a written request to the Attorney Gen-
7 eral within the 10-day period which begins on the date
8 of entry of the judgment which would permit any party
9 to file a petition for writ of certiorari, and the Attorney
10 General concurs with such request or fails to take action
11 within 60 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
14 any court of competent jurisdiction of a state in a district
15 in which the defendant is located or resides or is doing
16 business, and such court shall have jurisdiction to enjoin
17 such person and to require compliance with any Federal
18 consumer financial law.

19 (g) TIME FOR BRINGING ACTION.—

20 (1) IN GENERAL.—Except as otherwise per-
21 mitted by law or equity, no action may be brought
22 under this title more than 3 years after the date of
23 discovery of the violation to which an action relates.

24 (2) LIMITATIONS UNDER OTHER FEDERAL
25 LAWS.—

1 (A) IN GENERAL.—For purposes of this
2 subsection, an action arising under this title
3 does not include claims arising solely under
4 enumerated consumer laws.

5 (B) BUREAU AUTHORITY.—In any action
6 arising solely under an enumerated consumer
7 law, the Bureau may commence, defend, or in-
8 tervene 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,
22 as 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 mone-
13 tary 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
19 more 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 regu-

1 lator to enforce any Federal consumer financial law, the
2 Bureau, the State attorney general, or the State regulator
3 may recover its costs in connection with prosecuting such
4 action if the Bureau, the State attorney general, or the
5 State regulator 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 Fed-
10 eral consumer financial law shall forfeit and pay a
11 civil 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
19 paragraph (A), for any person that recklessly
20 engages in a violation of a Federal consumer fi-
21 nancial law, a civil penalty may not exceed
22 \$25,000 for each day during which such viola-
23 tion continues.

24 (C) THIRD TIER.—Notwithstanding sub-
25 paragraphs (A) and (B), for any person that

1 knowingly violates a Federal consumer financial
2 law, a civil penalty may not exceed \$1,000,000
3 for each day during which such violation con-
4 tinues.

5 (3) MITIGATING FACTORS.—In determining the
6 amount of any penalty assessed under paragraph
7 (2), the Bureau or the court shall take into account
8 the appropriateness of the penalty with respect to—

9 (A) the size of financial resources and good
10 faith of the person charged;

11 (B) the gravity of the violation or failure
12 to pay;

13 (C) the severity of the risks to or losses of
14 the consumer, which may take into account the
15 number of products or services sold or provided;

16 (D) the history of previous violations; and

17 (E) such other matters as justice may re-
18 quire.

19 (4) AUTHORITY TO MODIFY OR REMIT PEN-
20 ALTY.—The Bureau may compromise, modify, or
21 remit any penalty which may be assessed or had al-
22 ready been assessed under paragraph (2). The
23 amount of such penalty, when finally determined,
24 shall be exclusive of any sums owed by the person
25 to the United States in connection with the costs of

1 the proceeding, and may be deducted from any sums
2 owing by the United States to the person charged.

3 (5) NOTICE AND HEARING.—No civil penalty
4 may be assessed under this subsection with respect
5 to 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
9 the violation; or

10 (B) the appropriate court has ordered such
11 assessment and entered judgment in favor of
12 the Bureau.

13 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

14 If the Bureau obtains evidence that any person, do-
15 mestic or foreign, has engaged in conduct that may con-
16 stitute a violation of Federal criminal law, the Bureau
17 shall have the power to transmit such evidence to the At-
18 torney General of the United States, who may institute
19 criminal proceedings under appropriate law. Nothing in
20 this section affects any other authority of the Bureau to
21 disclose information.

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

1 against, any covered employee or any authorized rep-
2 resentative of covered employees by reason of the fact that
3 such employee or representative, whether at the initiative
4 of the employee or in the ordinary course of the duties
5 of the employee (or any person acting pursuant to a re-
6 quest of the employee), has—

7 (1) provided, caused to be provided, or is about
8 to provide or cause to be provided, information to
9 the employer, the Bureau, or any other State, local,
10 or Federal, government authority or law enforce-
11 ment agency relating to any violation of, or any act
12 or omission that the employee reasonably believes to
13 be a violation of, any provision of this title or any
14 other provision of law that is subject to the jurisdic-
15 tion of the Bureau, or any rule, order, standard, or
16 prohibition 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 pre-
22 scribed by the Bureau;

23 (3) filed, instituted, or caused to be filed or in-
24 stituted any proceeding under any Federal consumer
25 financial 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
 4 to be in violation of any law, rule, order, standard,
 5 or prohibition, subject to the jurisdiction of, or en-
 6 forceable by, the Bureau.

7 (b) DEFINITION OF COVERED EMPLOYEE.—For the
 8 purposes of this section, the term “covered employee”
 9 means any individual performing tasks related to the of-
 10 fering or provision of a consumer financial product or
 11 service.

12 (c) PROCEDURES AND TIMETABLES.—

13 (1) COMPLAINT.—

14 (A) IN GENERAL.—A person who believes
 15 that he or she has been discharged or otherwise
 16 discriminated against by any person in violation
 17 of subsection (a) may, not later than 180 days
 18 after the date on which such alleged violation
 19 occurs, file (or have any person file on his or
 20 her behalf) a complaint with the Secretary of
 21 Labor alleging such discharge or discrimination
 22 and identifying the person responsible for such
 23 act.

24 (B) ACTIONS OF SECRETARY OF LABOR.—

25 Upon receipt of such a complaint, the Secretary

1 of Labor shall notify, in writing, the person
2 named in the complaint who is alleged to have
3 committed the violation, of —

4 (i) the filing of the complaint;

5 (ii) the allegations contained in the
6 complaint;

7 (iii) the substance of evidence sup-
8 porting the complaint; and

9 (iv) opportunities that will be afforded
10 to such person under paragraph (2).

11 (2) INVESTIGATION BY SECRETARY OF
12 LABOR.—

13 (A) IN GENERAL.—Not later than 60 days
14 after the date of receipt of a complaint filed
15 under paragraph (1), and after affording the
16 complainant and the person named in the com-
17 plaint who is alleged to have committed the vio-
18 lation that is the basis for the complaint an op-
19 portunity to submit to the Secretary of Labor
20 a written response to the complaint and an op-
21 portunity to meet with a representative of the
22 Secretary of Labor to present statements from
23 witnesses, the Secretary of Labor shall—

1 (i) initiate an investigation and deter-
2 mine whether there is reasonable cause to
3 believe that the complaint has merit; and

4 (ii) notify the complainant and the
5 person alleged to have committed the viola-
6 tion of subsection (a), in writing, of such
7 determination.

8 (B) NOTICE OF RELIEF AVAILABLE.—If
9 the Secretary of Labor concludes that there is
10 reasonable cause to believe that a violation of
11 subsection (a) has occurred, the Secretary of
12 Labor shall, together with the notice under sub-
13 paragraph (A)(ii), issue a preliminary order
14 providing the relief prescribed by paragraph
15 (4)(B).

16 (C) REQUEST FOR HEARING.—Not later
17 than 30 days after the date of receipt of notifi-
18 cation of a determination of the Secretary of
19 Labor under this paragraph, either the person
20 alleged to have committed the violation or the
21 complainant may file objections to the findings
22 or preliminary order, or both, and request a
23 hearing on the record. The filing of such objec-
24 tions shall not operate to stay any reinstate-
25 ment remedy contained in the preliminary

1 order. Any such hearing shall be conducted ex-
2 peditiously, and if a hearing is not requested in
3 such 30-day period, the preliminary order shall
4 be deemed a final order that is not subject to
5 judicial review.

6 (3) GROUNDS FOR DETERMINATION OF COM-
7 PLAINTS.—

8 (A) IN GENERAL.—The Secretary of Labor
9 shall dismiss a complaint filed under this sub-
10 section, and shall not conduct an investigation
11 otherwise required under paragraph (2), unless
12 the complainant makes a prima facie showing
13 that any behavior described in paragraphs (1)
14 through (4) of subsection (a) was a contrib-
15 uting factor in the unfavorable personnel action
16 alleged in the complaint.

17 (B) REBUTTAL EVIDENCE.—Notwith-
18 standing a finding by the Secretary of Labor
19 that the complainant has made the showing re-
20 quired under subparagraph (A), no investiga-
21 tion otherwise required under paragraph (2)
22 shall be conducted, if the employer dem-
23 onstrates, by clear and convincing evidence,
24 that the employer would have taken the same

1 unfavorable personnel action in the absence of
2 that behavior.

3 (C) EVIDENTIARY STANDARDS.—The Sec-
4 retary of Labor may determine that a violation
5 of subsection (a) has occurred only if the com-
6 plainant demonstrates that any behavior de-
7 scribed in paragraphs (1) through (4) of sub-
8 section (a) was a contributing factor in the un-
9 favorable personnel action alleged in the com-
10 plaint. Relief may not be ordered under sub-
11 paragraph (A) if the employer demonstrates by
12 clear and convincing evidence that the employer
13 would have taken the same unfavorable per-
14 sonnel action in the absence of that behavior.

15 (4) ISSUANCE OF FINAL ORDERS; REVIEW PRO-
16 CEDURES.—

17 (A) TIMING.—Not later than 120 days
18 after the date of conclusion of any hearing
19 under paragraph (2), the Secretary of Labor
20 shall issue a final order providing the relief pre-
21 scribed by this paragraph or denying the com-
22 plaint. At any time before issuance of a final
23 order, a proceeding under this subsection may
24 be terminated on the basis of a settlement
25 agreement entered into by the Secretary of

1 Labor, the complainant, and the person alleged
2 to have committed the violation.

3 (B) PENALTIES.—

4 (i) ORDER OF SECRETARY OF
5 LABOR.—If, in response to a complaint
6 filed under paragraph (1), the Secretary of
7 Labor determines that a violation of sub-
8 section (a) has occurred, the Secretary of
9 Labor shall order the person who com-
10 mitted such violation—

11 (I) to take affirmative action to
12 abate the violation;

13 (II) to reinstate the complainant
14 to his or her former position, together
15 with compensation (including back
16 pay) and restore the terms, condi-
17 tions, and privileges associated with
18 his or her employment; and

19 (III) to provide compensatory
20 damages to the complainant.

21 (ii) PENALTY.—If an order is issued
22 under clause (i), the Secretary of Labor, at
23 the request of the complainant, shall assess
24 against the person against whom the order
25 is issued, a sum equal to the aggregate

1 amount of all costs and expenses (includ-
2 ing attorney fees and expert witness fees)
3 reasonably incurred, as determined by the
4 Secretary of Labor, by the complainant
5 for, or in connection with, the bringing of
6 the complaint upon which the order was
7 issued.

8 (C) PENALTY FOR FRIVOLOUS CLAIMS.—If
9 the Secretary of Labor finds that a complaint
10 under paragraph (1) is frivolous or has been
11 brought in bad faith, the Secretary of Labor
12 may award to the prevailing employer a reason-
13 able attorney fee, not exceeding \$1,000, to be
14 paid by the complainant.

15 (D) DE NOVO REVIEW.—

16 (i) FAILURE OF THE SECRETARY TO
17 ACT.—If the Secretary of Labor has not
18 issued a final order within 210 days after
19 the date of filing of a complaint under this
20 subsection, or within 90 days after the
21 date of receipt of a written determination,
22 the complainant may bring an action at
23 law or equity for de novo review in the ap-
24 propriate district court of the United
25 States having jurisdiction, which shall have

1 jurisdiction over such an action without re-
2 gard to the amount in controversy, and
3 which action shall, at the request of either
4 party to such action, be tried by the court
5 with a jury.

6 (ii) PROCEDURES.—A proceeding
7 under clause (i) shall be governed by the
8 same legal burdens of proof specified in
9 paragraph (3). The court shall have juris-
10 diction to grant all relief necessary to
11 make the employee whole, including injunc-
12 tive relief and compensatory damages, in-
13 cluding—

14 (I) reinstatement with the same
15 seniority status that the employee
16 would have had, but for the discharge
17 or discrimination;

18 (II) the amount of back pay, with
19 interest; and

20 (III) compensation for any spe-
21 cial damages sustained as a result of
22 the discharge or discrimination, in-
23 cluding litigation costs, expert witness
24 fees, and reasonable attorney fees.

1 (E) OTHER APPEALS.—Unless the com-
2 plainant brings an action under subparagraph
3 (D), any person adversely affected or aggrieved
4 by a final order issued under subparagraph (A)
5 may file a petition for review of the order in the
6 United States Court of Appeals for the circuit
7 in which the violation with respect to which the
8 order was issued, allegedly occurred or the cir-
9 cuit in which the complainant resided on the
10 date of such violation, not later than 60 days
11 after the date of the issuance of the final order
12 of the Secretary of Labor under subparagraph
13 (A). Review shall conform to chapter 7 of title
14 5, United States Code. The commencement of
15 proceedings under this subparagraph shall not,
16 unless ordered by the court, operate as a stay
17 of the order. An order of the Secretary of
18 Labor with respect to which review could have
19 been obtained under this subparagraph shall
20 not be subject to judicial review in any criminal
21 or other civil proceeding.

22 (5) FAILURE TO COMPLY WITH ORDER.—

23 (A) ACTIONS BY THE SECRETARY.—If any
24 person has failed to comply with a final order
25 issued under paragraph (4), the Secretary of

1 Labor may file a civil action in the United
2 States district court for the district in which
3 the violation was found to have occurred, or in
4 the United States district court for the District
5 of Columbia, to enforce such order. In actions
6 brought under this paragraph, the district
7 courts shall have jurisdiction to grant all appro-
8 priate relief including injunctive relief and com-
9 pensatory damages.

10 (B) CIVIL ACTIONS TO COMPEL COMPLI-
11 ANCE.—A person on whose behalf an order was
12 issued under paragraph (4) may commence a
13 civil action against the person to whom such
14 order was issued to require compliance with
15 such order. The appropriate United States dis-
16 trict court shall have jurisdiction, without re-
17 gard to the amount in controversy or the citi-
18 zenship of the parties, to enforce such order.

19 (C) AWARD OF COSTS AUTHORIZED.—The
20 court, in issuing any final order under this
21 paragraph, may award costs of litigation (in-
22 cluding reasonable attorney and expert witness
23 fees) to any party, whenever the court deter-
24 mines such award is appropriate.

1 (D) MANDAMUS PROCEEDINGS.—Any non-
2 discretionary duty imposed by this section shall
3 be enforceable in a mandamus proceeding
4 brought under section 1361 of title 28, United
5 States Code.

6 (d) UNENFORCEABILITY OF CERTAIN AGREE-
7 MENTS.—

8 (1) NO WAIVER OF RIGHTS AND REMEDIES.—
9 Except as provided under paragraph (3), and not-
10 withstanding any other provision of law, the rights
11 and remedies provided for in this section may not be
12 waived by any agreement, policy, form, or condition
13 of employment, including by any predispute arbitra-
14 tion agreement.

15 (2) NO PREDISPUTE ARBITRATION AGREE-
16 MENTS.—Except as provided under paragraph (3),
17 and notwithstanding any other provision of law, no
18 predispute arbitration agreement shall be valid or
19 enforceable to the extent that it requires arbitration
20 of a dispute arising under this section.

21 (3) EXCEPTION.—Notwithstanding paragraphs
22 (1) and (2), an arbitration provision in a collective
23 bargaining agreement shall be enforceable as to dis-
24 putes arising under subsection (a)(4), unless the Bu-

1 reau determines, by rule, that such provision is in-
 2 consistent with the purposes of this title.

3 **SEC. 1058. EFFECTIVE DATE.**

4 This subtitle shall become effective on the designated
 5 transfer date.

6 **Subtitle F—Transfer of Functions**
 7 **and Personnel; Transitional**
 8 **Provisions**

9 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**
 10 **TION FUNCTIONS.**

11 (a) **DEFINED TERMS.**—For purposes of this sub-
 12 title—

13 (1) the term “consumer financial protection
 14 functions” means research, rulemaking, issuance of
 15 orders or guidance, supervision, examination, and
 16 enforcement activities, powers, and duties relating to
 17 the offering or provision of consumer financial prod-
 18 ucts or services; and

19 (2) the terms “transferor agency” and “trans-
 20 feror agencies” mean, respectively—

21 (A) the Board of Governors (and any Fed-
 22 eral reserve bank, as the context requires), the
 23 Federal Deposit Insurance Corporation, the
 24 Federal Trade Commission, the National Credit
 25 Union Administration, the Office of the Comp-

1 troller of the Currency, the Office of Thrift Su-
2 pervision, and the Department of Housing and
3 Urban Development, and the heads of those
4 agencies; and

5 (B) the agencies listed in subparagraph
6 (A), collectively.

7 (b) IN GENERAL.—Except as provided in subsection
8 (c), consumer financial protection functions are trans-
9 ferred as follows:

10 (1) BOARD OF GOVERNORS.—

11 (A) TRANSFER OF FUNCTIONS.—All con-
12 sumer financial protection functions of the
13 Board of Governors are transferred to the Bu-
14 reau.

15 (B) BOARD OF GOVERNORS AUTHORITY.—
16 The Bureau shall have all powers and duties
17 that were vested in the Board of Governors, re-
18 lating to consumer financial protection func-
19 tions, on the day before the designated transfer
20 date.

21 (2) COMPTROLLER OF THE CURRENCY.—

22 (A) TRANSFER OF FUNCTIONS.—All con-
23 sumer financial protection functions of the
24 Comptroller of the Currency are transferred to
25 the Bureau.

1 (B) COMPTROLLER AUTHORITY.—The Bu-
2 reau shall have all powers and duties that were
3 vested in the Comptroller of the Currency, re-
4 lating to consumer financial protection func-
5 tions, on the day before the designated transfer
6 date.

7 (3) DIRECTOR OF THE OFFICE OF THRIFT SU-
8 PERVISION.—

9 (A) TRANSFER OF FUNCTIONS.—All con-
10 sumer financial protection functions of the Di-
11 rector of the Office of Thrift Supervision are
12 transferred to the Bureau.

13 (B) DIRECTOR AUTHORITY.—The Bureau
14 shall have all powers and duties that were vest-
15 ed in the Director of the Office of Thrift Super-
16 vision, relating to consumer financial protection
17 functions, on the day before the designated
18 transfer date.

19 (4) FEDERAL DEPOSIT INSURANCE CORPORA-
20 TION.—

21 (A) TRANSFER OF FUNCTIONS.—All con-
22 sumer financial protection functions of the Fed-
23 eral Deposit Insurance Corporation are trans-
24 ferred to the Bureau.

1 (B) CORPORATION AUTHORITY.—The Bu-
2 reau shall have all powers and duties that were
3 vested in the Federal Deposit Insurance Cor-
4 poration, relating to consumer financial protec-
5 tion functions, on the day before the designated
6 transfer date.

7 (5) FEDERAL TRADE COMMISSION.—

8 (A) TRANSFER OF FUNCTIONS.—Except as
9 provided in subparagraph (C), all consumer fi-
10 nancial protection functions of the Federal
11 Trade Commission are transferred to the Bu-
12 reau.

13 (B) COMMISSION AUTHORITY.—Except as
14 provided in subparagraph (C), the Bureau shall
15 have all powers and duties that were vested in
16 the Federal Trade Commission relating to con-
17 sumer financial protection functions on the day
18 before the designated transfer date.

19 (C) CONTINUATION OF CERTAIN COMMIS-
20 SION AUTHORITIES.—Notwithstanding subpara-
21 graphs (A) and (B), the Federal Trade Com-
22 mission shall continue to have authority to en-
23 force, and issue rules with respect to—

24 (i) the Credit Repair Organizations
25 Act (15 U.S.C. 1679 et seq.);

1 (ii) section 5 of the Federal Trade
2 Commission Act (15 U.S.C. 45); and

3 (iii) the Telemarketing and Consumer
4 Fraud and Abuse Prevention Act (15
5 U.S.C. 6101 et seq.).

6 (6) NATIONAL CREDIT UNION ADMINISTRA-
7 TION.—

8 (A) TRANSFER OF FUNCTIONS.—All con-
9 sumer financial protection functions of the Na-
10 tional Credit Union Administration are trans-
11 ferred to the Bureau.

12 (B) NATIONAL CREDIT UNION ADMINIS-
13 TRATION AUTHORITY.—The Bureau shall have
14 all powers and duties that were vested in the
15 National Credit Union Administration, relating
16 to consumer financial protection functions, on
17 the day before the designated transfer date.

18 (7) DEPARTMENT OF HOUSING AND URBAN DE-
19 VELOPMENT.—

20 (A) TRANSFER OF FUNCTIONS.—All con-
21 sumer protection functions of the Secretary of
22 the Department of Housing and Urban Devel-
23 opment relating to the Real Estate Settlement
24 Procedures Act of 1974 (12 U.S.C. 2601 et
25 seq.) and the Secure and Fair Enforcement for

1 Mortgage Licensing Act of 2008 (12 U.S.C.
2 5102 et seq.) are transferred to the Bureau.

3 (B) AUTHORITY OF THE DEPARTMENT OF
4 HOUSING AND URBAN DEVELOPMENT.—The
5 Bureau shall have all powers and duties that
6 were vested in the Secretary of the Department
7 of Housing and Urban Development relating to
8 the Real Estate Settlement Procedures Act of
9 1974 (12 U.S.C. 2601 et seq.), and the Secure
10 and Fair Enforcement for Mortgage Licensing
11 Act of 2008 (12 U.S.C. 5101 et seq.), on the
12 day before the designated transfer date.

13 (c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAM-
14 INATION AND ENFORCEMENT AUTHORITY REMAINING
15 WITH TRANSFEROR AGENCIES.—The transfers of func-
16 tions in subsection (b) do not affect the authority of the
17 agencies identified in subsection (b) from conducting ex-
18 aminations or initiating and maintaining enforcement pro-
19 ceedings, including performing appropriate supervisory
20 and support functions relating thereto, in accordance with
21 sections 1024, 1025, and 1026.

22 (d) EFFECTIVE DATE.—Subsections (b) and (c) shall
23 become effective on the designated transfer date.

1 **SEC. 1062. DESIGNATED TRANSFER DATE.**

2 (a) IN GENERAL.—Not later than 60 days after the
3 date of enactment of this Act, the Secretary shall—

4 (1) in consultation with the Chairman of the
5 Board of Governors, the Chairperson of the Cor-
6 poration, the Chairman of the Federal Trade Com-
7 mission, the Chairman of the National Credit Union
8 Administration Board, the Comptroller of the Cur-
9 rency, the Director of the Office of Thrift Super-
10 vision, the Secretary of the Department of Housing
11 and Urban Development, and the Director of the Of-
12 fice of Management and Budget, designate a single
13 calendar date for the transfer of functions to the
14 Bureau under section 1061; and

15 (2) publish notice of that designated date in the
16 Federal Register.

17 (b) CHANGING DESIGNATION.—The Secretary—

18 (1) may, in consultation with the Chairman of
19 the Board of Governors, the Chairperson of the Fed-
20 eral Deposit Insurance Corporation, the Chairman
21 of the Federal Trade Commission, the Chairman of
22 the National Credit Union Administration Board,
23 the Comptroller of the Currency, the Director of the
24 Office of Thrift Supervision, the Secretary of the
25 Department of Housing and Urban Development,
26 and the Director of the Office of Management and

1 Budget, change the date designated under sub-
2 section (a); and

3 (2) shall publish notice of any changed des-
4 ignated date in the Federal Register.

5 (c) PERMISSIBLE DATES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), any date designated under this section
8 shall be not earlier than 180 days, nor later than 18
9 months, after the date of enactment of this Act.

10 (2) EXTENSION OF TIME.—The Secretary may
11 designate a date that is later than 18 months after
12 the date of enactment of this Act if the Secretary
13 transmits to appropriate committees of Congress—

14 (A) a written determination that orderly
15 implementation of this title is not feasible be-
16 fore the date that is 18 months after the date
17 of enactment of this Act;

18 (B) an explanation of why an extension is
19 necessary for the orderly implementation of this
20 title; and

21 (C) a description of the steps that will be
22 taken to effect an orderly and timely implemen-
23 tation of this title within the extended time pe-
24 riod.

1 (3) EXTENSION LIMITED.—In no case may any
2 date designated under this section be later than 24
3 months after the date of enactment of this Act.

4 **SEC. 1063. SAVINGS PROVISIONS.**

5 (a) BOARD OF GOVERNORS.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
7 TIONS NOT AFFECTED.—Section 1061(b)(1) does
8 not affect the validity of any right, duty, or obliga-
9 tion of the United States, the Board of Governors
10 (or any Federal reserve bank), or any other person
11 that—

12 (A) arises under any provision of law relat-
13 ing to any consumer financial protection func-
14 tion of the Board of Governors transferred to
15 the Bureau by this title; and

16 (B) existed on the day before the des-
17 ignated transfer date.

18 (2) CONTINUATION OF SUITS.—No provision of
19 this Act shall abate any proceeding commenced by
20 or against the Board of Governors (or any Federal
21 reserve bank) before the designated transfer date
22 with respect to any consumer financial protection
23 function of the Board of Governors (or any Federal
24 reserve bank) transferred to the Bureau by this title,
25 except that the Bureau, subject to sections 1024,

1 1025, and 1026, shall be substituted for the Board
 2 of Governors (or Federal reserve bank) as a party
 3 to any such proceeding as of the designated transfer
 4 date.

5 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
 7 TIONS NOT AFFECTED.—Section 1061(b)(4) does
 8 not affect the validity of any right, duty, or obliga-
 9 tion of the United States, the Federal Deposit In-
 10 surance Corporation, the Board of Directors of that
 11 Corporation, or any other person, that—

12 (A) arises under any provision of law relat-
 13 ing to any consumer financial protection func-
 14 tion of the Federal Deposit Insurance Corpora-
 15 tion transferred to the Bureau by this title; and

16 (B) existed on the day before the des-
 17 ignated transfer date.

18 (2) CONTINUATION OF SUITS.—No provision of
 19 this Act shall abate any proceeding commenced by
 20 or against the Federal Deposit Insurance Corpora-
 21 tion (or the Board of Directors of that Corporation)
 22 before the designated transfer date with respect to
 23 any consumer financial protection function of the
 24 Federal Deposit Insurance Corporation transferred
 25 to the Bureau by this title, except that the Bureau,

1 subject to sections 1024, 1025, and 1026, shall be
2 substituted for the Federal Deposit Insurance Cor-
3 poration (or Board of Directors) as a party to any
4 such proceeding as of the designated transfer date.

5 (c) FEDERAL TRADE COMMISSION.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
7 TIONS NOT AFFECTED.—Section 1061(b)(5) does
8 not affect the validity of any right, duty, or obliga-
9 tion of the United States, the Federal Trade Com-
10 mission, or any other person, that—

11 (A) arises under any provision of law relat-
12 ing to any consumer financial protection func-
13 tion of the Federal Trade Commission trans-
14 ferred to the Bureau by this title; and

15 (B) existed on the day before the des-
16 ignated transfer date.

17 (2) CONTINUATION OF SUITS.—No provision of
18 this Act shall abate any proceeding commenced by
19 or against the Federal Trade Commission before the
20 designated transfer date with respect to any con-
21 sumer financial protection function of the Federal
22 Trade Commission transferred to the Bureau by this
23 title, except that the Bureau, subject to sections
24 1024, 1025, and 1026, shall be substituted for the

1 Federal Trade Commission as a party to any such
2 proceeding as of the designated transfer date.

3 (d) NATIONAL CREDIT UNION ADMINISTRATION.—

4 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
5 TIONS NOT AFFECTED.—Section 1061(b)(6) does
6 not affect the validity of any right, duty, or obliga-
7 tion of the United States, the National Credit Union
8 Administration, the National Credit Union Adminis-
9 tration Board, or any other person, that—

10 (A) arises under any provision of law relat-
11 ing to any consumer financial protection func-
12 tion of the National Credit Union Administra-
13 tion transferred to the Bureau by this title; and

14 (B) existed on the day before the des-
15 ignated transfer date.

16 (2) CONTINUATION OF SUITS.—No provision of
17 this Act shall abate any proceeding commenced by
18 or against the National Credit Union Administration
19 (or the National Credit Union Administration
20 Board) before the designated transfer date with re-
21 spect to any consumer financial protection function
22 of the National Credit Union Administration trans-
23 ferred to the Bureau by this title, except that the
24 Bureau, subject to sections 1024, 1025, and 1026,
25 shall be substituted for the National Credit Union

1 Administration (or National Credit Union Adminis-
 2 tration Board) as a party to any such proceeding as
 3 of the designated transfer date.

4 (e) OFFICE OF THE COMPTROLLER OF THE CUR-
 5 RENCY.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
 7 TIONS NOT AFFECTED.—Section 1061(b)(2) does
 8 not affect the validity of any right, duty, or obliga-
 9 tion of the United States, the Comptroller of the
 10 Currency, the Office of the Comptroller of the Cur-
 11 rency, or any other person, that—

12 (A) arises under any provision of law relat-
 13 ing to any consumer financial protection func-
 14 tion of the Comptroller of the Currency trans-
 15 ferred to the Bureau by this title; and

16 (B) existed on the day before the des-
 17 ignated transfer date.

18 (2) CONTINUATION OF SUITS.—No provision of
 19 this Act shall abate any proceeding commenced by
 20 or against the Comptroller of the Currency (or the
 21 Office of the Comptroller of the Currency) with re-
 22 spect to any consumer financial protection function
 23 of the Comptroller of the Currency transferred to
 24 the Bureau by this title before the designated trans-
 25 fer date, except that the Bureau, subject to sections

1 1024, 1025, and 1026, shall be substituted for the
 2 Comptroller of the Currency (or the Office of the
 3 Comptroller of the Currency) as a party to any such
 4 proceeding as of the designated transfer date.

5 (f) OFFICE OF THRIFT SUPERVISION.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
 7 TIONS NOT AFFECTED.—Section 1061(b)(3) does
 8 not affect the validity of any right, duty, or obliga-
 9 tion of the United States, the Director of the Office
 10 of Thrift Supervision, the Office of Thrift Super-
 11 vision, or any other person, that—

12 (A) arises under any provision of law relat-
 13 ing to any consumer financial protection func-
 14 tion of the Director of the Office of Thrift Su-
 15 pervision transferred to the Bureau by this
 16 title; and

17 (B) that existed on the day before the des-
 18 ignated transfer date.

19 (2) CONTINUATION OF SUITS.—No provision of
 20 this Act shall abate any proceeding commenced by
 21 or against the Director of the Office of Thrift Su-
 22 pervision (or the Office of Thrift Supervision) with
 23 respect to any consumer financial protection func-
 24 tion of the Director of the Office of Thrift Super-
 25 vision transferred to the Bureau by this title before

1 the designated transfer date, except that the Bu-
2 reau, subject to sections 1024, 1025, and 1026,
3 shall be substituted for the Director (or the Office
4 of Thrift Supervision) as a party to any such pro-
5 ceeding as of the designated transfer date.

6 (g) DEPARTMENT OF HOUSING AND URBAN DEVEL-
7 OPMENT.—

8 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
9 TIONS NOT AFFECTED.—Section 1061(b)(7) shall
10 not affect the validity of any right, duty, or obliga-
11 tion of the United States, the Secretary of the De-
12 partment of Housing and Urban Development (or
13 the Department of Housing and Urban Develop-
14 ment), or any other person, that—

15 (A) arises under any provision of law relat-
16 ing to any function of the Secretary of the De-
17 partment of Housing and Urban Development
18 with respect to the Real Estate Settlement Pro-
19 cedures Act of 1974 (12 U.S.C. 2601 et seq.)
20 or the Secure and Fair Enforcement for Mort-
21 gage Licensing Act of 2008 (12 U.S.C. 5102 et
22 seq.) transferred to the Bureau by this title;
23 and

24 (B) existed on the day before the des-
25 ignated transfer date.

1 (2) CONTINUATION OF SUITS.—This title shall
2 not abate any proceeding commenced by or against
3 the Secretary of the Department of Housing and
4 Urban Development (or the Department of Housing
5 and Urban Development) with respect to any con-
6 sumer financial protection function of the Secretary
7 of the Department of Housing and Urban Develop-
8 ment transferred to the Bureau by this title before
9 the designated transfer date, except that the Bu-
10 reau, subject to sections 1024, 1025, and 1026,
11 shall be substituted for the Secretary of the Depart-
12 ment of Housing and Urban Development (or the
13 Department of Housing and Urban Development) as
14 a party to any such proceeding as of the designated
15 transfer date.

16 (h) CONTINUATION OF EXISTING ORDERS, RULES,
17 DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—
18 All orders, resolutions, determinations, agreements, and
19 rules that have been issued, made, prescribed, or allowed
20 to become effective by any transferor agency or by a court
21 of competent jurisdiction, in the performance of consumer
22 financial protection functions that are transferred by this
23 title and that are in effect on the day before the designated
24 transfer date, shall continue in effect according to the
25 terms of those orders, resolutions, determinations, agree-

1 ments, and rules, and shall not be enforceable by or
2 against the Bureau.

3 (i) IDENTIFICATION OF RULES CONTINUED.—Not
4 later than the designated transfer date, the Bureau—

5 (1) shall, after consultation with the head of
6 each transferor agency, identify the rules continued
7 under subsection (h) that will be enforced by the
8 Bureau; and

9 (2) shall publish a list of such rules in the Fed-
10 eral Register.

11 (j) STATUS OF RULES PROPOSED OR NOT YET EF-
12 FECTIVE.—

13 (1) PROPOSED RULES.—Any proposed rule of a
14 transferor agency which that agency, in performing
15 consumer financial protection functions transferred
16 by this title, has proposed before the designated
17 transfer date, but has not been published as a final
18 rule before that date, shall be deemed to be a pro-
19 posed rule of the Bureau.

20 (2) RULES NOT YET EFFECTIVE.—Any interim
21 or final rule of a transferor agency which that agen-
22 cy, in performing consumer financial protection
23 functions transferred by this title, has published be-
24 fore the designated transfer date, but which has not

1 become effective before that date, shall become effective as a rule of the Bureau according to its terms.

3 **SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.**

4 (a) IN GENERAL.—

5 (1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

7 (A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Governors shall—

10 (i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Bureau by this title; and

16 (ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Bureau, in a manner that the Bureau and the Board of Governors, in their sole discretion, determine equitable.

22 (B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors 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
9 Board of Governors for purposes of subpara-
10 graphs (A) and (B).

11 (2) CERTAIN FDIC EMPLOYEES TRANS-
12 FERRED.—

13 (A) IDENTIFYING EMPLOYEES FOR TRANS-
14 FER.—The Bureau and the Board of Directors
15 of the Federal Deposit Insurance Corporation
16 shall—

17 (i) jointly determine the number of
18 employees of that Corporation necessary to
19 perform or support the consumer financial
20 protection functions of the Corporation
21 that are transferred to the Bureau by this
22 title; and

23 (ii) consistent with the number deter-
24 mined under clause (i), jointly identify em-
25 ployees of the Corporation for transfer to

1 the Bureau, in a manner that the Bureau
2 and the Board of Directors of the Corpora-
3 tion, in their sole discretion, determine eq-
4 uitable.

5 (B) IDENTIFIED EMPLOYEES TRANS-
6 FERRED.—All employees of the Corporation
7 identified under subparagraph (A)(ii) shall be
8 transferred to the Bureau for employment.

9 (3) CERTAIN NCUA EMPLOYEES TRANS-
10 FERRED.—

11 (A) IDENTIFYING EMPLOYEES FOR TRANS-
12 FER.—The Bureau and the National Credit
13 Union Administration Board shall—

14 (i) jointly determine the number of
15 employees of the National Credit Union
16 Administration necessary to perform or
17 support the consumer financial protection
18 functions of the National Credit Union Ad-
19 ministration that are transferred to the
20 Bureau by this title; and

21 (ii) consistent with the number deter-
22 mined under clause (i), jointly identify em-
23 ployees of the National Credit Union Ad-
24 ministration for transfer to the Bureau, in
25 a manner that the Bureau and the Na-

1 tional Credit Union Administration Board,
2 in their sole discretion, determine equi-
3 table.

4 (B) IDENTIFIED EMPLOYEES TRANS-
5 FERRED.—All employees of the National Credit
6 Union Administration identified under subpara-
7 graph (A)(ii) shall be transferred to the Bureau
8 for employment.

9 (4) CERTAIN OFFICE OF THE COMPTROLLER OF
10 THE CURRENCY EMPLOYEES TRANSFERRED.—

11 (A) IDENTIFYING EMPLOYEES FOR TRANS-
12 FER.—The Bureau and the Comptroller of the
13 Currency shall—

14 (i) jointly determine the number of
15 employees of the Office of the Comptroller
16 of the Currency necessary to perform or
17 support the consumer financial protection
18 functions of the Office of the Comptroller
19 of the Currency that are transferred to the
20 Bureau by this title; and

21 (ii) consistent with the number deter-
22 mined under clause (i), jointly identify em-
23 ployees of the Office of the Comptroller of
24 the Currency for transfer to the Bureau, in
25 a manner that the Bureau and the Office

1 of the Comptroller of the Currency, in
2 their sole discretion, determine equitable.

3 (B) IDENTIFIED EMPLOYEES TRANS-
4 FERRED.—All employees of the Office of the
5 Comptroller of the Currency identified under
6 subparagraph (A)(ii) shall be transferred to the
7 Bureau for employment.

8 (5) CERTAIN OFFICE OF THRIFT SUPERVISION
9 EMPLOYEES TRANSFERRED.—

10 (A) IDENTIFYING EMPLOYEES FOR TRANS-
11 FER.—The Bureau and the Director of the Of-
12 fice of Thrift Supervision shall—

13 (i) jointly determine the number of
14 employees of the Office of Thrift Super-
15 vision necessary to perform or support the
16 consumer financial protection functions of
17 the Office of Thrift Supervision that are
18 transferred to the Bureau by this title; and

19 (ii) consistent with the number deter-
20 mined under clause (i), jointly identify em-
21 ployees of the Office of Thrift Supervision
22 for transfer to the Bureau, in a manner
23 that the Bureau and the Office of Thrift
24 Supervision, in their sole discretion, deter-
25 mine equitable.

1 (B) IDENTIFIED EMPLOYEES TRANS-
2 FERRED.—All employees of the Office of Thrift
3 Supervision identified under subparagraph
4 (A)(ii) shall be transferred to the Bureau for
5 employment.

6 (6) CERTAIN EMPLOYEES OF DEPARTMENT OF
7 HOUSING AND URBAN DEVELOPMENT TRANS-
8 FERRED.—

9 (A) IDENTIFYING EMPLOYEES FOR TRANS-
10 FER.—The Bureau and the Secretary of the
11 Department of Housing and Urban Develop-
12 ment shall—

13 (i) jointly determine the number of
14 employees of the Department of Housing
15 and Urban Development necessary to per-
16 form or support the consumer protection
17 functions of the Department that are
18 transferred to the Bureau by this title; and

19 (ii) consistent with the number deter-
20 mined under clause (i), jointly identify em-
21 ployees of the Department of Housing and
22 Urban Development for transfer to the Bu-
23 reau in a manner that the Bureau and the
24 Secretary of the Department of Housing

1 and Urban Development, in their sole dis-
2 cretion, deem equitable.

3 (B) IDENTIFIED EMPLOYEES TRANS-
4 FERRED.—All employees of the Department of
5 Housing and Urban Development identified
6 under subparagraph (A)(ii) shall be transferred
7 to the Bureau for employment.

8 (7) APPOINTMENT AUTHORITY FOR EXCEPTED
9 SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-
10 FERRED.—

11 (A) IN GENERAL.—In the case of an em-
12 ployee occupying a position in the excepted
13 service or the Senior Executive Service, any ap-
14 pointment authority established pursuant to law
15 or regulations of the Office of Personnel Man-
16 agement for filling such positions shall be
17 transferred, subject to subparagraph (B).

18 (B) DECLINING TRANSFERS ALLOWED.—
19 An agency or entity may decline to make a
20 transfer of authority under subparagraph (A)
21 (and the employees appointed pursuant thereto)
22 to the extent that such authority relates to posi-
23 tions excepted from the competitive service be-
24 cause of their confidential, policy-making, pol-
25 icy-determining, or policy-advocating character,

1 and non-career positions in the Senior Execu-
2 tive Service (within the meaning of section
3 3132(a)(7) of title 5, United States Code).

4 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
5 MENTS.—Each employee to be transferred under this sec-
6 tion shall—

7 (1) be transferred not later than 90 days after
8 the designated transfer date; and

9 (2) receive notice of a position assignment not
10 later than 120 days after the effective date of his or
11 her transfer.

12 (c) TRANSFER OF FUNCTION.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of law, the transfer of employees shall be
15 deemed a transfer of functions for the purpose of
16 section 3503 of title 5, United States Code.

17 (2) PRIORITY OF THIS TITLE.—If any provi-
18 sions of this title conflict with any protection pro-
19 vided to transferred employees under section 3503 of
20 title 5, United States Code, the provisions of this
21 title shall control.

22 (d) EQUAL STATUS AND TENURE POSITIONS.—

23 (1) EMPLOYEES TRANSFERRED FROM FDIC,
24 FTC, HUD, NCUA, OCC, AND OTS.—Each employee
25 transferred from the Federal Deposit Insurance Cor-

poration, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Department of Housing and Urban Development shall be placed in a position at the Bureau with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE
FEDERAL RESERVE SYSTEM.—

(A) COMPARABILITY.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of an employee transferring to the Bureau from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS
LIMITED.—Examiners transferred to the Bureau are not

1 subject to any additional certification requirements before
2 being placed in a comparable examiner position at the Bu-
3 reau examining the same types of institutions as they ex-
4 amined before they were transferred.

5 (f) PERSONNEL ACTIONS LIMITED.—

6 (1) 2-YEAR PROTECTION.—Except as provided
7 in paragraph (2), each transferred employee holding
8 a permanent position on the day before the des-
9 ignated transfer date may not, during the 2-year pe-
10 riod beginning on the designated transfer date, be
11 involuntarily separated, or involuntarily reassigned
12 outside his or her locality pay area, as defined by
13 the Office of Personnel Management.

14 (2) EXCEPTIONS.—Paragraph (1) does not
15 limit the right of the Bureau—

16 (A) to separate an employee for cause or
17 for unacceptable performance;

18 (B) to terminate an appointment to a posi-
19 tion excepted from the competitive service be-
20 cause of its confidential policy-making, policy-
21 determining, or policy-advocating character; or

22 (C) to reassign a supervisory employee out-
23 side his or her locality pay area, as defined by
24 the Office of Personnel Management, when the
25 Bureau determines that the reassignment is

1 necessary for the efficient operation of the Bu-
2 reau.

3 (g) PAY.—

4 (1) 2-YEAR PROTECTION.—Except as provided
5 in paragraph (2), each transferred employee shall,
6 during the 2-year period beginning on the des-
7 ignated transfer date, receive pay at a rate equal to
8 not less than the basic rate of pay (including any ge-
9 ographic differential) that the employee received
10 during the pay period immediately preceding the
11 date of transfer.

12 (2) EXCEPTIONS.—Paragraph (1) does not
13 limit the right of the Bureau to reduce the rate of
14 basic pay of a transferred employee—

15 (A) for cause;

16 (B) for unacceptable performance; or

17 (C) with the consent of the employee.

18 (3) PROTECTION ONLY WHILE EMPLOYED.—
19 Paragraph (1) applies to a transferred employee
20 only while that employee remains employed by the
21 Bureau.

22 (4) PAY INCREASES PERMITTED.—Paragraph
23 (1) does not limit the authority of the Bureau to in-
24 crease the pay of a transferred employee.

25 (h) REORGANIZATION.—

1 (1) BETWEEN 1ST AND 3RD YEAR.—

2 (A) IN GENERAL.—If the Bureau deter-
3 mines, during the 2-year period beginning 1
4 year after the designated transfer date, that a
5 reorganization of the staff of the Bureau is re-
6 quired—

7 (i) that reorganization shall be
8 deemed a “major reorganization” for pur-
9 poses of affording affected employees re-
10 tirement under section 8336(d)(2) or
11 8414(b)(1)(B) of title 5, United States
12 Code;

13 (ii) before the reorganization occurs,
14 all employees in the same locality pay area
15 as defined by the Office of Personnel Man-
16 agement shall be placed in a uniform posi-
17 tion classification system; and

18 (iii) any resulting reduction in force
19 shall be governed by the provisions of
20 chapter 35 of title 5, United States Code,
21 except that the Bureau shall—

22 (I) establish competitive areas
23 (as that term is defined in regulations
24 issued by the Office of Personnel
25 Management) to include at a min-

1 imum all employees in the same local-
2 ity pay area as defined by the Office
3 of Personnel Management;

4 (II) establish competitive levels
5 (as that term is defined in regulations
6 issued by the Office of Personnel
7 Management) without regard to
8 whether the particular employees have
9 been appointed to positions in the
10 competitive service or the excepted
11 service; and

12 (III) afford employees appointed
13 to positions in the excepted service
14 (other than to a position excepted
15 from the competitive service because
16 of its confidential policy-making, pol-
17 icy-determining, or policy-advocating
18 character) the same assignment rights
19 to positions within the Bureau as em-
20 ployees appointed to positions in the
21 competitive service.

22 (B) SERVICE CREDIT FOR REDUCTIONS IN
23 FORCE.—For purposes of this paragraph, peri-
24 ods of service with a Federal home loan bank,
25 a joint office of the Federal home loan banks,

1 the Board of Governors, a Federal reserve
2 bank, the Federal Deposit Insurance Corpora-
3 tion, or the National Credit Union Administra-
4 tion shall be credited as periods of service with
5 a Federal agency.

6 (2) AFTER 3RD YEAR.—

7 (A) IN GENERAL.—If the Bureau deter-
8 mines, at any time after the 3-year period be-
9 ginning on the designated transfer date, that a
10 reorganization of the staff of the Bureau is re-
11 quired, any resulting reduction in force shall be
12 governed by the provisions of chapter 35 of title
13 5, United States Code, except that the Bureau
14 shall establish competitive levels (as that term
15 is defined in regulations issued by the Office of
16 Personnel Management) without regard to
17 types of appointment held by particular employ-
18 ees transferred under this section.

19 (B) SERVICE CREDIT FOR REDUCTIONS IN
20 FORCE.—For purposes of this paragraph, peri-
21 ods of service with a Federal home loan bank,
22 a joint office of the Federal home loan banks,
23 the Board of Governors, a Federal reserve
24 bank, the Federal Deposit Insurance Corpora-
25 tion, or the National Credit Union Administra-

1 tion shall be credited as periods of service with
2 a Federal agency.

3 (i) BENEFITS.—

4 (1) RETIREMENT BENEFITS FOR TRANSFERRED
5 EMPLOYEES.—

6 (A) IN GENERAL.—

7 (i) CONTINUATION OF EXISTING RE-
8 TIREMENT PLAN.—Except as provided in
9 subparagraph (B), each transferred em-
10 ployee shall remain enrolled in his or her
11 existing retirement plan, through any pe-
12 riod of continuous employment with the
13 Bureau.

14 (ii) EMPLOYER CONTRIBUTION.—The
15 Bureau shall pay any employer contribu-
16 tions to the existing retirement plan of
17 each transferred employee, as required
18 under that plan.

19 (B) OPTION FOR EMPLOYEES TRANS-
20 FERRED FROM FEDERAL RESERVE SYSTEM TO
21 BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-
22 MENT PROGRAM.—

23 (i) ELECTION.—Any transferred em-
24 ployee who was enrolled in a Federal Re-
25 serve System retirement plan on the day

1 before his or her transfer to the Bureau
 2 may, during the 1-year period beginning 6
 3 months after the designated transfer date,
 4 elect to be subject to the Federal employee
 5 retirement program.

6 (ii) EFFECTIVE DATE OF COV-
 7 ERAGE.—For any employee making an
 8 election under clause (i), coverage by the
 9 Federal employee retirement program shall
 10 begin 1 year after the designated transfer
 11 date.

12 (C) BUREAU PARTICIPATION IN FEDERAL
 13 RESERVE SYSTEM RETIREMENT PLAN.—

14 (i) SEPARATE ACCOUNT IN FEDERAL
 15 RESERVE SYSTEM RETIREMENT PLAN ES-
 16 TABLISHED.—Notwithstanding any other
 17 provision of law, and subject to the terms
 18 and conditions of this section, a separate
 19 account in the Federal Reserve System re-
 20 tirement plan shall be established for Bu-
 21 reau employees who do not make the elec-
 22 tion under subparagraph (B).

23 (ii) FUNDS ATTRIBUTABLE TO TRANS-
 24 FERRED EMPLOYEES REMAINING IN FED-
 25 ERAL RESERVE SYSTEM RETIREMENT

1 PLAN TRANSFERRED.—The proportionate
2 share of funds in the Federal Reserve Sys-
3 tem retirement plan, including the propor-
4 tionate share of any funding surplus in
5 that plan, attributable to a transferred em-
6 ployee who does not make the election
7 under subparagraph (B), shall be trans-
8 ferred to the account established under
9 clause (i).

10 (iii) EMPLOYER CONTRIBUTIONS DE-
11 POSITED.—The Bureau shall deposit into
12 the account established under clause (i)
13 the employer contributions that the Bu-
14 reau makes on behalf of employees who do
15 not make the election under subparagraph
16 (B).

17 (iv) ACCOUNT ADMINISTRATION.—The
18 Bureau shall administer the account estab-
19 lished under clause (i) as a participating
20 employer in the Federal Reserve System
21 retirement plan.

22 (D) DEFINITIONS.—For purposes of this
23 paragraph—

24 (i) the term “existing retirement
25 plan” means, with respect to any employee

transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, in which the employee was enrolled on the day before the designated transfer date; and

(ii) the term “Federal employee retirement program” means the retirement program for Federal employees established by chapter 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—

Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long term care, or life insurance program, to which the employee belonged

1 on the day before the designated transfer
2 date.

3 (ii) EMPLOYER CONTRIBUTION.—The
4 Bureau shall reimburse the agency or bank
5 from which an employee was transferred
6 for any cost incurred by that agency or
7 bank in continuing to extend coverage in
8 the benefit program to the employee, as re-
9 quired under that program or negotiated
10 agreements.

11 (B) DENTAL, VISION, OR LIFE INSURANCE
12 AFTER 1ST YEAR.—If, after the 1-year period
13 beginning on the designated transfer date, the
14 Bureau decides not to continue participation in
15 any dental, vision, or life insurance program of
16 an agency or bank from which an employee
17 transferred, a transferred employee who is a
18 member of such a program may, before the de-
19 cision of the Bureau takes effect, elect to enroll,
20 without regard to any regularly scheduled open
21 season, in—

22 (i) the enhanced dental benefits estab-
23 lished by chapter 89A of title 5, United
24 States Code;

1 (ii) the enhanced vision benefits estab-
2 lished by chapter 89B of title 5, United
3 States Code; or

4 (iii) the Federal Employees Group
5 Life Insurance Program established by
6 chapter 87 of title 5, United States Code,
7 without regard to any requirement of in-
8 surability.

9 (C) LONG TERM CARE INSURANCE AFTER
10 1ST YEAR.—If, after the 1-year period begin-
11 ning on the designated transfer date, the Bu-
12 reau decides not to continue participation in
13 any long term care insurance program of an
14 agency or bank from which an employee trans-
15 ferred, a transferred employee who is a member
16 of such a program may, before the decision of
17 the Bureau takes effect, elect to apply for cov-
18 erage under the Federal Long Term Care In-
19 surance Program established by chapter 90 of
20 title 5, United States Code, under the under-
21 writing requirements applicable to a new active
22 workforce member (as defined in part 875, title
23 5, Code of Federal Regulations).

24 (D) EMPLOYEE CONTRIBUTION.—An indi-
25 vidual enrolled in the Federal Employees

1 Health Benefits program shall pay any em-
2 ployee contribution required by the plan.

3 (E) ADDITIONAL FUNDING.—The Bureau
4 shall transfer to the Federal Employees Health
5 Benefits Fund established under section 8909
6 of title 5, United States Code, an amount deter-
7 mined by the Director of the Office of Per-
8 sonnel Management, after consultation with the
9 Bureau and the Office of Management and
10 Budget, to be necessary to reimburse the Fund
11 for the cost to the Fund of providing benefits
12 under this paragraph.

13 (F) CREDIT FOR TIME ENROLLED IN
14 OTHER PLANS.—For employees transferred
15 under this title, enrollment in a health benefits
16 plan administered by a transferor agency or a
17 Federal reserve bank, as the case may be, im-
18 mediately before enrollment in a health benefits
19 plan under chapter 89 of title 5, United States
20 Code, shall be considered as enrollment in a
21 health benefits plan under that chapter for pur-
22 poses of section 8905(b)(1)(A) of title 5, United
23 States Code.

24 (G) SPECIAL PROVISIONS TO ENSURE CON-
25 TINUATION OF LIFE INSURANCE BENEFITS.—

1 (i) IN GENERAL.—An annuitant (as
2 defined in section 8901(3) of title 5,
3 United States Code) who is enrolled in a
4 life insurance plan administered by a
5 transferor agency on the day before the
6 designated transfer date shall be eligible
7 for coverage by a life insurance plan under
8 sections 8706(b), 8714a, 8714b, and
9 8714c of title 5, United States Code, or in
10 a life insurance plan established by the
11 Bureau, without regard to any regularly
12 scheduled open season and requirement of
13 insurability.

14 (ii) EMPLOYEE CONTRIBUTION.—An
15 individual enrolled in a life insurance plan
16 under this subparagraph shall pay any em-
17 ployee contribution required by the plan.

18 (iii) ADDITIONAL FUNDING.—The Bu-
19 reau shall transfer to the Employees' Life
20 Insurance Fund established under section
21 8714 of title 5, United States Code, an
22 amount determined by the Director of the
23 Office of Personnel Management, after
24 consultation with the Bureau and the Of-
25 fice of Management and Budget, to be nec-

1 essary to reimburse the Fund for the cost
2 to the Fund of providing benefits under
3 this subparagraph not otherwise paid for
4 by the employee under clause (ii).

5 (iv) CREDIT FOR TIME ENROLLED IN
6 OTHER PLANS.—For employees transferred
7 under this title, enrollment in a life insur-
8 ance plan administered by a transferor
9 agency immediately before enrollment in a
10 life insurance plan under chapter 87 of
11 title 5, United States Code, shall be con-
12 sidered as enrollment in a life insurance
13 plan under that chapter for purposes of
14 section 8706(b)(1)(A) of title 5, United
15 States Code.

16 (3) OPM RULES.—The Office of Personnel
17 Management shall issue such rules as are necessary
18 to carry out this subsection.

19 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
20 FICATION SYSTEM.—Not later than 2 years after the des-
21 ignated transfer date, the Bureau shall implement a uni-
22 form pay and classification system for all employees trans-
23 ferred under this title.

24 (k) EQUITABLE TREATMENT.—In administering the
25 provisions of this section, the Bureau—

1 (1) shall take no action that would unfairly dis-
2 advantage transferred employees relative to each
3 other based on their prior employment by the Board
4 of Governors, the Federal Deposit Insurance Cor-
5 poration, the Federal Trade Commission, the Na-
6 tional Credit Union Administration, the Office of the
7 Comptroller of the Currency, the Office of Thrift
8 Supervision, a Federal reserve bank, a Federal home
9 loan bank, or a joint office of the Federal home loan
10 banks; and

11 (2) may take such action as is appropriate in
12 individual cases so that employees transferred under
13 this section receive equitable treatment, with respect
14 to the status, tenure, pay, benefits (other than bene-
15 fits under programs administered by the Office of
16 Personnel Management), and accrued leave or vaca-
17 tion time of those employees, for prior periods of
18 service with any Federal agency, including the
19 Board of Governors, the Corporation, the Federal
20 Trade Commission, the National Credit Union Ad-
21 ministration, the Office of the Comptroller of the
22 Currency, the Office of Thrift Supervision, a Federal
23 reserve bank, a Federal home loan bank, or a joint
24 office of the Federal home loan banks.

1 (l) IMPLEMENTATION.—In implementing the provi-
2 sions of this section, the Bureau shall coordinate with the
3 Office of Personnel Management and other entities having
4 expertise in matters related to employment to ensure a
5 fair and orderly transition for affected employees.

6 **SEC. 1065. INCIDENTAL TRANSFERS.**

7 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Di-
8 rector of the Office of Management and Budget, in con-
9 sultation with the Secretary, shall make such additional
10 incidental transfers and dispositions of assets and liabil-
11 ities held, used, arising from, available, or to be made
12 available, in connection with the functions transferred by
13 this title, as the Director may determine necessary to ac-
14 complish the purposes of this title.

15 (b) SUNSET.—The authority provided in this section
16 shall terminate 5 years after the date of enactment of this
17 Act.

18 **SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.**

19 (a) IN GENERAL.—The Secretary is authorized to
20 perform the functions of the Bureau under this subtitle
21 until the Director of the Bureau is confirmed by the Sen-
22 ate in accordance with section 1011.

23 (b) INTERIM ADMINISTRATIVE SERVICES BY THE
24 DEPARTMENT OF THE TREASURY.—The Department of
25 the Treasury may provide administrative services nec-

1 essary to support the Bureau before the designated trans-
2 fer date.

3 **SEC. 1067. TRANSITION OVERSIGHT.**

4 (a) PURPOSE.—The purpose of this section is to en-
5 sure that the Bureau—

6 (1) has an orderly and organized startup;

7 (2) attracts and retains a qualified workforce;

8 and

9 (3) establishes comprehensive employee training
10 and benefits programs.

11 (b) REPORTING REQUIREMENT.—

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

18 (2) PLANS.—The plans described in this para-
19 graph are as follows:

20 (A) TRAINING AND WORKFORCE DEVELOP-
21 MENT PLAN.—The Bureau shall submit a train-
22 ing and workforce development plan that in-
23 cludes, to the extent practicable—

1 (i) identification of skill and technical
2 expertise needs and actions taken to meet
3 those requirements;

4 (ii) steps taken to foster innovation
5 and creativity;

6 (iii) leadership development and suc-
7 cession planning; and

8 (iv) effective use of technology by em-
9 ployees.

10 (B) WORKPLACE FLEXIBILITIES PLAN.—

11 The Bureau shall submit a workforce flexibility
12 plan that includes, to the extent practicable—

13 (i) telework;

14 (ii) flexible work schedules;

15 (iii) phased retirement;

16 (iv) reemployed annuitants;

17 (v) part-time work;

18 (vi) job sharing;

19 (vii) parental leave benefits and
20 childcare assistance;

21 (viii) domestic partner benefits;

22 (ix) other workplace flexibilities; or

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

1 (C) RECRUITMENT AND RETENTION
2 PLAN.—The Bureau shall submit a recruitment
3 and retention plan that includes, to the extent
4 practicable, provisions relating to—

5 (i) the steps necessary to target highly
6 qualified applicant pools with diverse back-
7 grounds;

8 (ii) streamlined employment applica-
9 tion processes;

10 (iii) the provision of timely notifica-
11 tion of the status of employment applica-
12 tions to applicants; and

13 (iv) the collection of information to
14 measure indicators of hiring effectiveness.

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

18 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion may be construed to affect—

20 (1) a collective bargaining agreement, as that
21 term is defined in section 7103(a)(8) of title 5,
22 United States Code, that is in effect on the date of
23 enactment of this Act; or

24 (2) the rights of employees under chapter 71 of
25 title 5, United States Code.

Subtitle G—Regulatory Improvements

3 SEC. 1071. COLLECTION OF DEPOSIT ACCOUNT DATA.

4 (a) PURPOSE.—The purpose of this section is to pro-
5 mote awareness and understanding of the access of indi-
6 viduals and communities to financial services, and to iden-
7 tify business and community development needs and op-
8 portunities.

9 (b) IN GENERAL.—

10 (1) RECORDS REQUIRED.—For each branch,
11 automated teller machine at which deposits are ac-
12 cepted, and other deposit taking service facility with
13 respect to any financial institution, the financial in-
14 stitution shall maintain a record of the number and
15 dollar amounts of the deposit accounts of customers.

16 (2) GEO-CODED ADDRESSES OF DEPOSITORS.—
17 Customer addresses shall be geo-coded for the collec-
18 tion of data regarding the census tracts of the resi-
19 dences or business locations of customers.

20 (3) IDENTIFICATION OF DEPOSITOR TYPE.—In
21 maintaining records on any deposit account under
22 this section, the financial institution shall record
23 whether the deposit account is for a residential or
24 commercial customer.

25 (4) PUBLIC AVAILABILITY.—

1 (A) IN GENERAL.—Each financial institu-
2 tion shall make publicly available on an annual
3 basis, from information collected under this sec-
4 tion—

5 (i) the address and census tract of
6 each branch, automated teller machine at
7 which deposits are accepted, and other de-
8 posit taking service facility with respect to
9 the financial institution;

10 (ii) the type of deposit account, in-
11 cluding whether the account was a check-
12 ing or savings account; and

13 (iii) data on the number and dollar
14 amount of the accounts, presented by cen-
15 sus tract location of the residential and
16 commercial customer.

17 (B) PROTECTION OF IDENTITY.—In mak-
18 ing data publicly available, any personally iden-
19 tifiable data element shall be removed so as to
20 protect the identities of the commercial and res-
21 idential customers.

22 (c) AVAILABILITY OF INFORMATION.—

23 (1) SUBMISSION TO AGENCIES.—The data re-
24 quired to be compiled and maintained under this
25 section by any financial institution shall be sub-

1 mitted annually to the Bureau, or to a Federal
2 banking agency, in accordance with rules prescribed
3 by the Bureau.

4 (2) AVAILABILITY OF INFORMATION.—Informa-
5 tion compiled and maintained under this section
6 shall be retained for not less than 3 years after the
7 date of preparation and shall be made available to
8 the public, upon request, in the form required under
9 rules prescribed by the Bureau.

10 (d) BUREAU USE.—The Bureau—

11 (1) shall use the data on branches and deposit
12 accounts acquired under this section as part of the
13 examination of a covered person as part of an exam-
14 ination under this title;

15 (2) shall assess the distribution of residential
16 and commercial accounts at such financial institu-
17 tion across income and minority level of census
18 tracts; and

19 (3) may use the data for any other purpose as
20 permitted by law.

21 (e) RULES AND GUIDANCE.—The Bureau shall pre-
22 scribe such rules and issue guidance as may be necessary
23 to carry out, enforce, and compile data pursuant to this
24 section. The Bureau shall prescribe rules regarding the
25 provision of data compiled under this section to the Fed-

1 eral banking agencies to carry out the purposes of this
 2 section, and shall issue guidance to financial institutions
 3 regarding measures to facilitate compliance with this sec-
 4 tion and the requirements of rules prescribed thereunder.

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

7 (1) DEPOSIT ACCOUNT.—The term “deposit ac-
 8 count” includes any checking account, savings ac-
 9 count, credit union share account, and other types of
 10 accounts, as defined by the Bureau.

11 (2) FINANCIAL INSTITUTION.—The term “fi-
 12 nancial institution”—

13 (A) has the meaning given to the term “in-
 14 sured depository institution” in section 3(c)(2)
 15 of the Federal Deposit Insurance Act; and

16 (B) includes any credit union.

17 (g) EFFECTIVE DATE.—This section shall become ef-
 18 fective on the designated transfer date.

19 **SEC. 1072. SMALL BUSINESS DATA COLLECTION.**

20 (a) IN GENERAL.—The Equal Credit Opportunity
 21 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
 22 section 704A the following:

23 **“SEC. 740B. SMALL BUSINESS LOAN DATA COLLECTION.**

24 “(a) PURPOSE.—The purpose of this section is to fa-
 25 cilitate enforcement of fair lending laws and enable com-

1 munities, governmental entities, and creditors to identify
2 business and community development needs and opportu-
3 nities of women-owned and minority-owned small busi-
4 nesses.

5 “(b) INFORMATION GATHERING.—Subject to the re-
6 quirements of this section, in the case of any application
7 to a financial institution for credit for a small business,
8 the financial institution shall—

9 “(1) inquire whether the small business is a
10 women- or minority-owned small business, without
11 regard to whether such application is received in
12 person, by mail, by telephone, by electronic mail or
13 other form of electronic transmission, or by any
14 other means, and whether or not such application is
15 in response to a solicitation by the financial institu-
16 tion; and

17 “(2) maintain a record of the responses to such
18 inquiry, separate from the application and accom-
19 panying information.

20 “(c) RIGHT TO REFUSE.—Any applicant for credit
21 may refuse to provide any information requested pursuant
22 to subsection (b) in connection with any application for
23 credit.

24 “(d) NO ACCESS BY UNDERWRITERS.—

1 “(1) LIMITATION.—Where feasible, no loan un-
2 derwriter or other officer or employee of a financial
3 institution, or any affiliate of a financial institution,
4 involved in making any determination concerning an
5 application for credit shall have access to any infor-
6 mation provided by the applicant pursuant to a re-
7 quest under subsection (b) in connection with such
8 application.

9 “(2) LIMITED ACCESS.—If a financial institu-
10 tion determines that a loan underwriter or other of-
11 ficer or employee of a financial institution, or any
12 affiliate of a financial institution, involved in making
13 any determination concerning an application for
14 credit should have access to any information pro-
15 vided by the applicant pursuant to a request under
16 subsection (b), the financial institution shall provide
17 notice to the applicant of the access of the under-
18 writer to such information, along with notice that
19 the financial institution may not discriminate on the
20 basis of such information.

21 “(e) FORM AND MANNER OF INFORMATION.—

22 “(1) IN GENERAL.—Each financial institution
23 shall compile and maintain, in accordance with regu-
24 lations of the Bureau, a record of the information

1 provided by any loan applicant pursuant to a request
2 under subsection (b).

3 “(2) ITEMIZATION.—Information compiled and
4 maintained under paragraph (1) shall be itemized in
5 order to clearly and conspicuously disclose—

6 “(A) the number of the application and the
7 date on which the application was received;

8 “(B) the type and purpose of the loan or
9 other credit being applied for;

10 “(C) the amount of the credit or credit
11 limit applied for, and the amount of the credit
12 transaction or the credit limit approved for such
13 applicant;

14 “(D) the type of action taken with respect
15 to such application, and the date of such action;

16 “(E) the census tract in which is located
17 the principal place of business of the small busi-
18 ness loan applicant;

19 “(F) the gross annual revenue of the busi-
20 ness in the last fiscal year of the small business
21 loan applicant preceding the date of the appli-
22 cation;

23 “(G) the race and ethnicity of the principal
24 owners of the business; and

1 “(H) any additional data that the Bureau
2 determines would aid in fulfilling the purposes
3 of this section.

4 “(3) NO PERSONALLY IDENTIFIABLE INFORMA-
5 TION.—In compiling and maintaining any record of
6 information under this section, a financial institution
7 may not include in such record the name, specific
8 address (other than the census tract required under
9 paragraph (1)(E)), telephone number, electronic
10 mail address, or any other personally identifiable in-
11 formation concerning any individual who is, or is
12 connected with, the small business loan applicant.

13 “(4) DISCRETION TO DELETE OR MODIFY PUB-
14 LICLY AVAILABLE DATA.—The Bureau may, at its
15 discretion, delete or modify data collected under this
16 section which is or will be available to the public, if
17 the Bureau determines that the deletion or modifica-
18 tion of the data would advance a compelling privacy
19 interest.

20 “(f) AVAILABILITY OF INFORMATION.—

21 “(1) SUBMISSION TO BUREAU.—The data re-
22 quired to be compiled and maintained under this
23 section by any financial institution shall be sub-
24 mitted annually to the Bureau.

1 “(2) AVAILABILITY OF INFORMATION.—Infor-
2 mation compiled and maintained under this section
3 shall be—

4 “(A) retained for not less than 3 years
5 after the date of preparation;

6 “(B) made available to any member of the
7 public, upon request, in the form required
8 under regulations prescribed by the Bureau;

9 “(C) annually made available to the public
10 generally by the Bureau, in such form and in
11 such manner as is determined appropriate by
12 the Bureau.

13 “(3) COMPILATION OF AGGREGATE DATA.—The
14 Bureau may, at its discretion—

15 “(A) compile and aggregate data collected
16 under this section for its own use; and

17 “(B) make public such compilations of ag-
18 gregate data.

19 “(g) BUREAU ACTION.—

20 “(1) IN GENERAL.—The Bureau shall prescribe
21 such rules and issue such guidance as may be nec-
22 essary to carry out, enforce, and compile data pursu-
23 ant to this section.

24 “(2) EXCEPTIONS.—The Bureau, by rule or
25 order, may adopt exceptions to any requirement of

1 this section and may, conditionally or uncondition-
2 ally, exempt any financial institution or class of fi-
3 nancial institutions from the requirements of this
4 section, as the Bureau deems necessary or appro-
5 priate to carry out the purposes of this section.

6 “(3) GUIDANCE.—The Bureau shall issue guid-
7 ance designed to facilitate compliance with the re-
8 quirements of this section, including assisting finan-
9 cial institutions in working with applicants to deter-
10 mine whether the applicants are women- or minor-
11 ity-owned for purposes of this section.

12 “(h) DEFINITIONS.—For purposes of this section, the
13 following definitions shall apply:

14 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
15 nancial institution’ means any partnership, com-
16 pany, corporation, association (incorporated or unin-
17 corporated), trust, estate, cooperative organization,
18 or other entity that engages in any financial activity.

19 “(2) MINORITY.—The term ‘minority’ has the
20 same meaning as in section 1204(c)(3) of the Finan-
21 cial Institutions Reform, Recovery, and Enforcement
22 Act of 1989.

23 “(3) MINORITY-OWNED SMALL BUSINESS.—The
24 term ‘minority-owned small business’ means a small
25 business—

1 “(A) more than 50 percent of the owner-
2 ship or control of which is held by 1 or more
3 minority individuals; and

4 “(B) more than 50 percent of the net prof-
5 it or loss of which accrues to 1 or more minor-
6 ity individuals.

7 “(4) SMALL BUSINESS LOAN.—The term ‘small
8 business loan’ shall be defined by the Bureau, which
9 may take into account—

10 “(A) the gross revenues of the borrower;

11 “(B) the total number of employees of the
12 borrower;

13 “(C) the industry in which the borrower
14 has its primary operations; and

15 “(D) the size of the loan.

16 “(5) WOMEN-OWNED SMALL BUSINESS.—The
17 term ‘women-owned small business’ means a busi-
18 ness—

19 “(A) more than 50 percent of the owner-
20 ship or control of which is held by 1 or more
21 women; and

22 “(B) more than 50 percent of the net prof-
23 it or loss of which accrues to 1 or more
24 women.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

2 Section 701(b) of the Equal Credit Opportunity Act (15
3 U.S.C. 1691(b)) is amended—

4 (1) in paragraph (3), by striking “or” at the
5 end;

6 (2) in paragraph (4), by striking the period at
7 the end and inserting “; or”; and

8 (3) by inserting after paragraph (4), the fol-
9 lowing:

10 “(5) to make an inquiry under section 704B, in
11 accordance with the requirements of that section.”.

12 (c) CLERICAL AMENDMENT.—The table of sections
13 for title VII of the Consumer Credit Protection Act is
14 amended by inserting after the item relating to section
15 704A the following new item:

“704B. Small business loan data collection.”.

16 (d) EFFECTIVE DATE.—This section shall become ef-
17 fective on the designated transfer date.

18 **SEC. 1073. GAO STUDY ON THE EFFECTIVENESS AND IM-**
19 **PACT OF VARIOUS APPRAISAL METHODS.**

20 (a) IN GENERAL.—The Government Accountability
21 Office shall conduct a study on the effectiveness and im-
22 pact of various appraisal methods, including the cost ap-
23 proach, the comparative sales approach, the income ap-
24 proach, and others that may be available.

25 (b) STUDY.—Not later than—

1 (1) 1 year after the date of enactment of this
2 Act, the Government Accountability Office shall sub-
3 mit a study to the Committee on Banking, Housing,
4 and Urban Affairs of the Senate and the Committee
5 on Financial Services of the House of Representa-
6 tives;

7 (2) 90 days after the date of enactment of this
8 Act, the Government Accountability Office shall pro-
9 vide a report on the status of the study and any pre-
10 liminary findings to the Committee on Banking,
11 Housing, and Urban Affairs of the Senate and the
12 Committee on Financial Services of the House of
13 Representatives.

14 (c) CONTENT OF STUDY.—The study required by this
15 section shall include an examination of—

16 (1) the prevalence, alone or in combination, of
17 these approaches in purchase-money and refinance
18 mortgage transactions;

19 (2) the accuracy of the various approaches in
20 assessing the property as collateral;

21 (3) whether and how the approaches contrib-
22 uted to price speculation in the previous cycle;

23 (4) the costs to consumers of these approaches;

24 (5) the disclosure of fees to consumers in the
25 appraisal process;

1 (6) to what extent such approaches may be in-
 2 fluenced by a conflict of interest between the mort-
 3 gage lender and the appraiser and the mechanism by
 4 which the lender selects and compensates the ap-
 5 praiser; and

6 (7) the suitability of appraisal approaches in
 7 rural versus urban areas.

8 **SEC. 1074. PROHIBITION ON CERTAIN PREPAYMENT PEN-**
 9 **ALTIES.**

10 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 11 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
 12 after section 129A (15 U.S.C. 1639a) the following new
 13 section:

14 **“SEC. 129B. PROHIBITION ON CERTAIN PREPAYMENT PEN-**
 15 **ALTIES.**

16 “(a) PROHIBITED ON CERTAIN LOANS.—A residen-
 17 tial mortgage loan that is not a qualified mortgage may
 18 not contain terms under which a consumer is required to
 19 pay a prepayment penalty for paying all or part of the
 20 principal after the loan is consummated.

21 “(b) PHASED-OUT PENALTIES ON QUALIFIED MORT-
 22 GAGES.—

23 “(1) IN GENERAL.—A qualified mortgage may
 24 not contain terms under which a consumer is re-
 25 quired to pay a prepayment penalty for paying all or

1 part of the principal after the loan is consummated
2 in excess of—

3 “(A) during the 1-year period beginning on
4 the date on which the loan is consummated, an
5 amount equal to 3 percent of the outstanding
6 balance on the loan;

7 “(B) during the 1-year period beginning
8 immediately after the end of the period de-
9 scribed in subparagraph (A), an amount equal
10 to 2 percent of the outstanding balance on the
11 loan; and

12 “(C) during the 1-year period beginning
13 immediately after the end of the 1-year period
14 described in subparagraph (B), an amount
15 equal to 1 percent of the outstanding balance
16 on the loan.

17 “(2) PROHIBITION.—After the end of the 3-
18 year period beginning on the date on which the loan
19 is consummated, no prepayment penalty may be im-
20 posed on a qualified mortgage.

21 “(c) OPTION FOR NO PREPAYMENT PENALTY RE-
22 QUIRED.—A creditor may not offer a consumer a residen-
23 tial mortgage loan product that has a prepayment penalty
24 for paying all or part of the principal after the loan is
25 consummated as a term of the loan, without offering to

1 the consumer a residential mortgage loan product that
 2 does not have a prepayment penalty as a term of the loan.

3 “(d) PROHIBITIONS ON EVASIONS, STRUCTURING OF
 4 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A
 5 creditor may not take any action in connection with a resi-
 6 dential mortgage loan—

7 “(1) to structure a loan transaction as an open
 8 end consumer credit plan or another form of loan for
 9 the purpose and with the intent of evading the provi-
 10 sions of this section; or

11 “(2) to divide any loan transaction into sepa-
 12 rate parts for the purpose and with the intent of
 13 evading provisions of this section.

14 “(e) PUBLICATION OF AVERAGE PRIME OFFER RATE
 15 AND APR THRESHOLDS.—The Board—

16 “(1) shall publish, and update at least weekly,
 17 average prime offer rates;

18 “(2) may publish multiple rates based on vary-
 19 ing types of mortgage transactions; and

20 “(3) shall adjust the thresholds of 1.50 percent-
 21 age points in subsection (g)(3)(A)(v)(I), 2.50 per-
 22 centage points in subsection (g)(3)(A)(v)(II), and
 23 3.50 percentage points in subsection
 24 (g)(3)(A)(v)(III), as necessary to reflect significant

1 changes in market conditions and to effectuate the
2 purposes of this section.

3 “(f) REGULATIONS.—

4 “(1) IN GENERAL.—The Bureau shall prescribe
5 regulations to carry out this section.

6 “(2) REVISION OF SAFE HARBOR CRITERIA.—

7 The Bureau may prescribe regulations that revise,
8 add to, or subtract from the criteria that define a
9 qualified mortgage, upon a finding that such regula-
10 tions are necessary or appropriate—

11 “(A) to ensure that responsible, affordable
12 mortgage credit remains available to consumers
13 in a manner consistent with the purposes of
14 this section;

15 “(B) to effectuate the purposes of this sec-
16 tion;

17 “(C) to prevent circumvention or evasion
18 thereof; or

19 “(D) to facilitate compliance with this sec-
20 tion.

21 “(3) INTERAGENCY HARMONIZATION.—

22 “(A) DETERMINATION OF QUALIFYING
23 MORTGAGE TREATMENT.—The agencies and of-
24 ficials described in subparagraph (B) shall, in
25 consultation with the Bureau, prescribe rules

1 defining the types of loans they insure, guar-
2 antee, or administer, as the case may be, that
3 are qualified mortgages for purposes of this sec-
4 tion, upon a finding that such rules are con-
5 sistent with the purposes of this section or are
6 appropriate to prevent circumvention or evasion
7 thereof or to facilitate compliance with this sec-
8 tion.

9 “(B) AGENCIES AND OFFICIALS.—The
10 agencies and officials described in this subpara-
11 graph are—

12 “(i) the Secretary of the Department
13 of Housing and Urban Development, with
14 regard to mortgages insured under title II
15 of the National Housing Act (12 U.S.C.
16 1707 et seq.);

17 “(ii) the Secretary of Veterans Af-
18 fairs, with regard to a loan made or guar-
19 anteed by the Secretary of Veterans Af-
20 fairs;

21 “(iii) the Secretary of Agriculture,
22 with regard to loans guaranteed by the
23 Secretary of Agriculture pursuant to sec-
24 tion 502 of the Housing Act of 1949 (42
25 U.S.C. 1472(h));

1 “(iv) the Federal Housing Finance
 2 Agency, with regard to loans meeting the
 3 conforming loan standards of the Federal
 4 National Mortgage Association or the Fed-
 5 eral Home Loan Mortgage Corporation;
 6 and

7 “(v) the Rural Housing Service, with
 8 regard to loans insured by the Rural Hous-
 9 ing Service.

10 “(4) IMPLEMENTATION.—Regulations required
 11 or authorized to be prescribed under this sub-
 12 section—

13 “(A) shall be prescribed in final form be-
 14 fore the end of the 12-month period beginning
 15 on the date of enactment of this section; and

16 “(B) shall take effect not later than 18
 17 months after the date of enactment of this sec-
 18 tion.

19 “(g) DEFINITIONS.—For purposes of this section, the
 20 following definitions shall apply:

21 “(1) AVERAGE PRIME OFFER RATE.—The term
 22 ‘average prime offer rate’ means an annual percent-
 23 age rate that is derived from average interest rates,
 24 points, and other loan pricing terms currently of-
 25 fered to consumers by a representative sample of

creditors for mortgage transactions that have low-risk pricing characteristics.

“(2) PREPAYMENT PENALTY.—The term ‘prepayment penalty’ means any penalty for paying all or part of the principal on an extension of credit before the date on which the principal is due, including a computation of a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined in section 933(d) of the Housing and Community Development Act of 1992 (15 U.S.C. 1615(d)).

“(3) QUALIFIED MORTGAGE.—The term ‘qualified mortgage’ means—

“(A) any residential mortgage loan—

“(i) that does not have an adjustable rate;

“(ii) that does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a ‘non-traditional mortgage’ under guidance, advisories, or regulations prescribed by the Bureau;

“(iii) that does not provide for a repayment schedule that results in negative amortization at any time;

1 “(iv) for which the terms are fully
2 amortizing and which does not result in a
3 balloon payment, where a ‘balloon pay-
4 ment’ is a scheduled payment that is more
5 than twice as large as the average of ear-
6 lier scheduled payments;

7 “(v) which has an annual percentage
8 rate that does not exceed the average
9 prime offer rate for a comparable trans-
10 action, as of the date on which the interest
11 rate is set—

12 “(I) by 1.5 or more percentage
13 points, in the case of a first lien resi-
14 dential mortgage loan having an origi-
15 nal principal obligation amount that is
16 equal to or less than the amount of
17 the maximum limitation on the origi-
18 nal principal obligation of a mortgage
19 in effect for a residence of the appli-
20 cable size, as of the date on which
21 such interest rate is set, pursuant to
22 the sixth sentence of section 305(a)(2)
23 of the Federal Home Loan Mortgage
24 Corporation Act (12 U.S.C.
25 1454(a)(2));

1 “(II) by 2.5 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 is
5 more than the amount of the max-
6 imum limitation on the original prin-
7 cipal obligation of a mortgage in ef-
8 fect for a residence of the applicable
9 size, as of the date on which such in-
10 terest rate is set, pursuant to the
11 sixth sentence of section 305(a)(2) of
12 the Federal Home Loan Mortgage
13 Corporation Act (12 U.S.C.
14 1454(a)(2)); or

15 “(III) by 3.5 or more percentage
16 points, in the case of a subordinate
17 lien residential mortgage loan;

18 “(vi) for which the income and finan-
19 cial resources relied upon to qualify the ob-
20 ligors on the loan are verified and docu-
21 mented;

22 “(vii) for which the underwriting proc-
23 ess is based on a payment schedule that
24 fully amortizes the loan over the loan term

1 and takes into account all applicable taxes,
2 insurance, and assessments;

3 “(viii) that does not cause the total
4 monthly debts of the consumer, including
5 amounts under the loan, to exceed a per-
6 centage established by regulation of the
7 monthly gross income of the consumer, or
8 such other maximum percentage of such
9 income, as may be prescribed by regulation
10 under subsection (g), which rules shall
11 take into consideration the income of the
12 consumer available to pay regular expenses
13 after payment of all installment and revolv-
14 ing debt;

15 “(ix) for which the total points and
16 fees payable in connection with the loan do
17 not exceed 2 percent of the total loan
18 amount, where the term ‘points and fees’
19 means points and fees as defined by Sec-
20 tion 103(aa)(4) of the Truth in Lending
21 Act (15 U.S.C. 1602(aa)(4)); and

22 “(x) for which the term of the loan
23 does not exceed 30 years, except as such
24 term may be extended under subsection
25 (g); and

1 “(B) any reverse mortgage that is insured
2 by the Federal Housing Administration or com-
3 plies with the condition established in subpara-
4 graph (A)(v).

5 “(4) RESIDENTIAL MORTGAGE LOAN.—The
6 term ‘residential mortgage loan’ means any con-
7 sumer credit transaction that is secured by a mort-
8 gage, deed of trust, or other equivalent consensual
9 security interest on a dwelling or on residential real
10 property that includes a dwelling, other than a con-
11 sumer credit transaction under an open end credit
12 plan or an extension of credit relating to a plan de-
13 scribed in section 101(53D) of title 11, United
14 States Code.”.

15 (b) CONFORMING AMENDMENTS.—Section 129(c) of
16 the Truth in Lending Act (15 U.S.C. 1639(c)) is amend-
17 ed—

18 (1) by striking paragraph (2);
19 (2) by striking “(1) IN GENERAL.—”; and
20 (3) by redesignating subparagraphs (A) and
21 (B) as paragraphs (1) and (2), respectively.

1 **SEC. 1075. ASSISTANCE FOR ECONOMICALLY VULNERABLE**
2 **INDIVIDUALS AND FAMILIES.**

3 (a) HERA AMENDMENTS.—Section 1132 of the
4 Housing and Economic Recovery Act of 2008 (12 U.S.C.
5 1701x note) is amended—

6 (1) in subsection (a), by inserting in each of
7 paragraphs (1), (2), (3), and (4) “or economically
8 vulnerable individuals and families” after “home-
9 buyers” each place that term appears;

10 (2) in subsection (b)(1), by inserting “or eco-
11 nomically vulnerable individuals and families” after
12 “homebuyers”;

13 (3) in subsection (c)(1)—

14 (A) in subparagraph (A), by striking “or”
15 at the end;

16 (B) in subparagraph (B), by striking the
17 period at the end and inserting “; or”; and

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

19 “(C) a nonprofit corporation that—

20 “(i) is exempt from taxation under
21 section 501(c)(3) of the Internal Revenue
22 Code of 1986; and

23 “(ii) specializes or has expertise in
24 working with economically vulnerable indi-
25 viduals and families, but whose primary

1 purpose is not provision of credit coun-
 2 seling services.”; and

3 (4) in subsection (d)(1), by striking “not more
 4 than 5”.

5 (b) APPLICABILITY.—Amendments made by sub-
 6 section (a) shall not apply to programs authorized by sec-
 7 tion 1132 of the Housing and Economic Recovery Act of
 8 2008 (12 U.S.C. 1701x note) that are funded with appro-
 9 priations prior to fiscal year 2011.

10 **SEC. 1076. REMITTANCE TRANSFERS.**

11 (a) TREATMENT OF REMITTANCE TRANSFERS.—The
 12 Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.)
 13 is amended—

14 (1) in section 902(b) (15 U.S.C. 1693(b)), by
 15 inserting “and remittance” after “electronic fund”;

16 (2) by redesignating sections 919, 920, 921,
 17 and 922 as sections 920, 921, 922, and 923, respec-
 18 tively; and

19 (3) by inserting after section 918 the following:

20 **“SEC. 919. REMITTANCE TRANSFERS.**

21 “(a) DISCLOSURES REQUIRED FOR REMITTANCE
 22 TRANSFERS.—

23 “(1) IN GENERAL.—Each remittance transfer
 24 provider shall make disclosures as required under

1 this section and in accordance with rules prescribed
2 by the Board.

3 “(2) STOREFRONT DISCLOSURES.—

4 “(A) IN GENERAL.—At every physical
5 storefront location owned or controlled by a re-
6 mittance transfer provider (with respect to re-
7 mittance transfer activities), the remittance
8 transfer provider shall prominently post, and
9 update daily, a notice describing a model trans-
10 fer for the amounts of \$100 and \$200 (in
11 United States dollars) showing the amount of
12 currency that will be received by the designated
13 recipient, using the values of the currency into
14 which the funds will be exchanged for the 3
15 currencies to which that particular storefront
16 sends the greatest number of remittance trans-
17 fer payments, measured irrespective of the
18 value of such payments. The values shall in-
19 clude all fees charged by the remittance trans-
20 fer provider, taken out of the \$100 and \$200
21 amounts.

22 “(B) ELECTRONIC DISCLOSURE.—Subject
23 to the rules prescribed by the Board, a remit-
24 tance transfer provider shall prominently post,
25 and update daily, a notice describing a model

1 transfer, as described in subparagraph (A), on
2 the Internet site owned or controlled by the re-
3 mittance transfer provider which senders use to
4 electronically conduct remittance transfer trans-
5 actions.

6 “(3) SPECIFIC DISCLOSURES.—In addition to
7 any other disclosures applicable under this title, and
8 subject to paragraph (4), a remittance transfer pro-
9 vider shall provide, in writing and in a form that the
10 sender may keep, to each sender requesting a remit-
11 tance transfer, as applicable to the transaction—

12 “(A) at the time at which the sender re-
13 quests a remittance transfer to be initiated, and
14 prior to the sender making any payment in con-
15 nection with the remittance transfer, a disclo-
16 sure describing the amount of currency that will
17 be sent to the designated recipient, using the
18 values of the currency into which the funds will
19 be exchanged; and

20 “(B) at the time at which the sender
21 makes payment in connection with the remit-
22 tance transfer—

23 “(i) a receipt showing—

24 “(I) the information described in
25 subparagraph (A);

1 “(II) the promised date of deliv-
2 ery to the designated recipient; and

3 “(III) the name and either the
4 telephone number or the address of
5 the designated recipient; and

6 “(ii) a statement containing—

7 “(I) information about the rights
8 of the sender under this section re-
9 garding the resolution of errors; and

10 “(II) appropriate contact infor-
11 mation for—

12 “(aa) the remittance trans-
13 fer provider; and

14 “(bb) each State or Federal
15 agency supervising the remit-
16 tance transfer provider, including
17 its State licensing authority or
18 Federal regulator, as applicable.

19 “(4) REQUIREMENTS RELATING TO DISCLO-
20 SURES.—With respect to each disclosure required to
21 be provided under paragraph (3), and subject to
22 paragraph (5), a remittance transfer provider
23 shall—

24 “(A) provide an initial notice and receipt,
25 as required by subparagraphs (A) and (B) of

1 paragraph (3), and an error resolution state-
2 ment, as required by subsection (c), that clearly
3 and conspicuously describe the information re-
4 quired to be disclosed therein; and

5 “(B) with respect to any transaction that
6 a sender conducts electronically, comply with
7 the Electronic Signatures in Global and Na-
8 tional Commerce Act (15 U.S.C. 7001 et seq.).

9 “(5) EXEMPTION AUTHORITY.—The Board
10 may, by rule, permit a remittance transfer provider
11 to satisfy the requirements of—

12 “(A) paragraph (3)(A) orally, if the trans-
13 action is conducted entirely by telephone;

14 “(B) paragraph (3)(B), by mailing the
15 documents required under such subparagraph
16 to the sender, not later than 1 business day
17 after the date on which the transaction is con-
18 ducted, if the transaction is conducted entirely
19 by telephone;

20 “(C) subparagraphs (A) and (B) of para-
21 graph (3) together in one written disclosure,
22 but only to the extent that the information pro-
23 vided in accordance with paragraph (3)(A) is
24 accurate at the time at which payment is made

1 in connection with the subject remittance trans-
2 fer;

3 “(D) paragraph (3)(A), if a sender initi-
4 ates a transaction to one of those countries dis-
5 played, in the exact amount of the transfers
6 displayed pursuant to paragraph (2), if the
7 Board finds it to be appropriate; and

8 “(E) paragraph (3)(A), without compliance
9 with section 101(c) of the Electronic Signatures
10 in Global Commerce Act, if a sender initiates
11 the transaction electronically and the informa-
12 tion is displayed electronically in a manner that
13 the sender can keep.

14 “(b) FOREIGN LANGUAGE DISCLOSURES.—

15 “(1) IN GENERAL.—The disclosures required
16 under this section shall be made in English and in
17 each of the same foreign languages principally used
18 by the remittance transfer provider, or any of its
19 agents, to advertise, solicit, or market, either orally
20 or in writing, at that office.

21 “(2) ACCOUNTS.—In the case of a sender who
22 holds a demand deposit, savings deposit, or other
23 asset account with the remittance transfer provider
24 (other than an occasional or incidental credit bal-
25 ance under an open end credit plan, as defined in

1 section 103(i) of the Truth in Lending Act), the dis-
2 closures required under this section shall be made in
3 the language or languages principally used by the re-
4 mittance transfer provider to communicate to the
5 sender with respect to the account.

6 “(c) REMITTANCE TRANSFER ERRORS.—

7 “(1) ERROR RESOLUTION.—

8 “(A) IN GENERAL.—If a remittance trans-
9 fer provider receives oral or written notice from
10 the sender within 180 days of the promised
11 date of delivery that an error occurred with re-
12 spect to a remittance transfer, including the
13 amount of currency designated in subsection
14 (a)(3)(A) that was to be sent to the designated
15 recipient of the remittance transfer, using the
16 values of the currency into which the funds
17 should have been exchanged, but was not made
18 available to the designated recipient in the for-
19 eign country, the remittance transfer provider
20 shall resolve the error pursuant to this sub-
21 section and investigate the reason for the error.

22 “(B) REMEDIES.—Not later than 90 days
23 after the date of receipt of a notice from the
24 sender pursuant to subparagraph (A), the re-

1 mittance transfer provider shall, as applicable
2 to the error and as designated by the sender—

3 “(i) refund to the sender the total
4 amount of funds tendered by the sender in
5 connection with the remittance transfer
6 which was not properly transmitted;

7 “(ii) make available to the designated
8 recipient, without additional cost to the
9 designated recipient or to the sender, the
10 amount appropriate to resolve the error;

11 “(iii) provide such other remedy, as
12 determined appropriate by rule of the
13 Board for the protection of senders; or

14 “(iv) provide written notice to the
15 sender that there was no error with an ex-
16 planation responding to the specific com-
17 plaint of the sender.

18 “(2) RULES.—The Board shall establish, by
19 rule issued not later than 1 calendar year after the
20 date of enactment of the Restoring American Finan-
21 cial Stability Act of 2010, clear and appropriate
22 standards for remittance transfer providers with re-
23 spect to error resolution relating to remittance
24 transfers, to protect senders from such errors.
25 Standards prescribed under this paragraph shall in-

1 clude appropriate standards regarding record keep-
2 ing, as required, including documentation—

3 “(A) of the complaint of the sender;

4 “(B) that the sender provides the remit-
5 tance transfer provider with respect to the al-
6 leged error; and

7 “(C) of the findings of the remittance
8 transfer provider regarding the investigation of
9 the alleged error that the sender brought to
10 their attention.

11 “(d) APPLICABILITY OF THIS TITLE.—

12 “(1) IN GENERAL.—A remittance transfer that
13 is not an electronic fund transfer, as defined in sec-
14 tion 903, shall not be subject to any of the provi-
15 sions of sections 905 through 913. A remittance
16 transfer that is an electronic fund transfer, as de-
17 fined in section 903, shall be subject to all provisions
18 of this title, except for section 908, that are other-
19 wise applicable to electronic fund transfers under
20 this title.

21 “(2) RULE OF CONSTRUCTION.—Nothing in
22 this section shall be construed—

23 “(A) to affect the application to any trans-
24 action, to any remittance provider, or to any
25 other person of any of the provisions of sub-

chapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), or any regulations promulgated thereunder; or

“(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

“(e) ACTS OF AGENTS.—A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

“(f) DEFINITIONS.—As used in this section—

“(1) the term ‘designated recipient’ means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not

1 be deemed to be a consumer for purposes of this
2 Act;

3 “(2) the term ‘remittance transfer’ means the
4 electronic (as defined in section 106(2) of the Elec-
5 tronic Signatures in Global and National Commerce
6 Act (15 U.S.C. 7006(2))) transfer of funds re-
7 quested by a sender located in any State to a des-
8 ignated recipient that is initiated by a remittance
9 transfer provider, whether or not the sender holds
10 an account with the remittance transfer provider or
11 whether or not the remittance transfer is also an
12 electronic fund transfer, as defined in section 903;

13 “(3) the term ‘remittance transfer provider’
14 means any person or financial institution that pro-
15 vides remittance transfers for a consumer in the nor-
16 mal course of its business, whether or not the con-
17 sumer holds an account with such person or finan-
18 cial institution; and

19 “(4) the term ‘sender’ means a consumer who
20 requests a remittance provider to send a remittance
21 transfer for the consumer to a designated recipi-
22 ent.”.

23 (b) AUTOMATED CLEARINGHOUSE SYSTEM.—

24 (1) EXPANSION OF SYSTEM.—The Board of
25 Governors shall work with the Federal reserve banks

1 to expand the use of the automated clearinghouse
2 system for remittance transfers to foreign countries,
3 with a focus on countries that receive significant re-
4 mittance transfers from the United States, based
5 on—

6 (A) the number, volume, and size of such
7 transfers;

8 (B) the significance of the volume of such
9 transfers relative to the external financial flows
10 of the receiving country, including—

11 (i) the total amount transferred; and

12 (ii) the total volume of payments
13 made by United States Government agen-
14 cies to beneficiaries and retirees living
15 abroad;

16 (C) the feasibility of such an expansion;
17 and

18 (D) the ability of the Federal Reserve Sys-
19 tem to establish payment gateways in different
20 geographic regions and currency zones to re-
21 ceive remittance transfers and route them
22 through the payments systems in the destina-
23 tion countries.

24 (2) REPORT TO CONGRESS.—Not later than one
25 calendar year after the date of enactment of this

1 Act, and on April 30 biennially thereafter during the
2 10-year period beginning on that date of enactment,
3 the Board of Governors shall submit a report to the
4 Committee on Banking, Housing, and Urban Affairs
5 of the Senate and the Committee on Financial Serv-
6 ices of the House of Representatives on the status
7 of the automated clearinghouse system and its
8 progress in complying with the requirements of this
9 subsection. The report shall include an analysis of
10 adoption rates of International ACH Transactions
11 rules and formats, the efficacy of increasing adop-
12 tion rates, and potential recommendations to in-
13 crease adoption.

14 (c) EXPANSION OF FINANCIAL INSTITUTION PROVI-
15 SION OF REMITTANCE TRANSFERS.—

16 (1) PROVISION OF GUIDELINES TO INSTITU-
17 TIONS.—Each of the Federal banking agencies and
18 the National Credit Union Administration shall pro-
19 vide guidelines to financial institutions under the ju-
20 risdiction of the agency regarding the offering of
21 low-cost remittance transfers and no-cost or low-cost
22 basic consumer accounts, as well as agency services
23 to remittance transfer providers.

24 (2) ASSISTANCE TO FINANCIAL LITERACY COM-
25 MISSION.—As part of its duties as members of the

1 Financial Literacy and Education Commission, the
2 Bureau, the Federal banking agencies, and the Na-
3 tional Credit Union Administration shall assist the
4 Financial Literacy and Education Commission in
5 executing the Strategy for Assuring Financial Em-
6 powerment (or the “SAFE Strategy”), as it relates
7 to remittances.

8 (d) FEDERAL CREDIT UNION ACT CONFORMING
9 AMENDMENT.—Paragraph (12) of section 107 of the Fed-
10 eral Credit Union Act (12 U.S.C. 1757) is amended to
11 read as follows:

12 “(12) in accordance with regulations prescribed
13 by the Board—

14 “(A) to sell, to persons in the field of
15 membership, negotiable checks (including trav-
16 elers checks), money orders, and other similar
17 money transfer instruments (including inter-
18 national and domestic electronic fund trans-
19 fers);

20 “(B) to provide remittance transfers, as
21 defined in section 919 of the Electronic Fund
22 Transfer Act, to persons in the field of member-
23 ship; and

24 “(C) to cash checks and money orders for
25 persons in the field of membership for a fee;”.

Subtitle H—Conforming Amendments

SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL ACT.

Effective on the date of enactment of this Act, the Inspector General Act of 1978 (5 U.S.C. App. 3) is amended—

(1) in section 8G(a)(2), by inserting “and the Bureau of Consumer Financial Protection” after “Board of Governors of the Federal Reserve System”;

(2) in section 8G(c), by adding at the end the following: “For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System.”; and

1 (3) in section 8G(g)(3), by inserting “and the
 2 Bureau of Consumer Financial Protection” after
 3 “Board of Governors of the Federal Reserve Sys-
 4 tem” the first place that term appears.

5 **SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

6 Effective on the date of enactment of this Act, section
 7 552a of title 5, United States Code, is amended by adding
 8 at the end the following:

9 “(w) APPLICABILITY TO BUREAU OF CONSUMER FI-
 10 NANCIAL PROTECTION.—Except as provided in the Con-
 11 sumer Financial Protection Act of 2010, this section shall
 12 apply with respect to the Bureau of Consumer Financial
 13 Protection.”.

14 **SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORT-**
 15 **GAGE TRANSACTION PARITY ACT OF 1982.**

16 (a) IN GENERAL.—The Alternative Mortgage Trans-
 17 action Parity Act of 1982 (12 U.S.C. 3801 et seq.) is
 18 amended—

19 (1) in section 803 (12 U.S.C. 3802(1)), by
 20 striking “1974” and all that follows through “de-
 21 scribed and defined” and inserting the following:
 22 “1974), in which the interest rate or finance charge
 23 may be adjusted or renegotiated, described and de-
 24 fined”; and

25 (2) in section 804 (12 U.S.C. 3803)—

1 (A) in subsection (a)—

2 (i) in each of paragraphs (1), (2), and
3 (3), by inserting after “transactions made”
4 each place that term appears “on or before
5 the designated transfer date, as deter-
6 mined under section 1062 of the Consumer
7 Financial Protection Act of 2010,”;

8 (ii) in paragraph (2), by striking
9 “and” at the end;

10 (iii) in paragraph (3), by striking the
11 period at the end and inserting “; and”;
12 and

13 (iv) by adding at the end the following
14 new paragraph:

15 “(4) with respect to transactions made after the
16 designated transfer date, only in accordance with
17 regulations governing alternative mortgage trans-
18 actions, as issued by the Bureau of Consumer Fi-
19 nancial Protection for federally chartered housing
20 creditors, in accordance with the rulemaking author-
21 ity granted to the Bureau of Consumer Financial
22 Protection with regard to federally chartered hous-
23 ing creditors under provisions of law other than this
24 section.”;

1 (B) by striking subsection (c) and insert-
2 ing the following:

3 “(c) PREEMPTION OF STATE LAW.—An alternative
4 mortgage transaction may be made by a housing creditor
5 in accordance with this section, notwithstanding any State
6 constitution, law, or regulation that prohibits an alter-
7 native mortgage transaction. For purposes of this sub-
8 section, a State constitution, law, or regulation that pro-
9 hibits an alternative mortgage transaction does not in-
10 clude any State constitution, law, or regulation that regu-
11 lates mortgage transactions generally, including any re-
12 striction on prepayment penalties or late charges.”; and

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

14 “(d) BUREAU ACTIONS.—The Bureau of Consumer
15 Financial Protection shall—

16 “(1) review the regulations identified by the
17 Comptroller of the Currency and the National Credit
18 Union Administration, (as those rules exist on the
19 designated transfer date), as applicable under para-
20 graphs (1) through (3) of subsection (a);

21 “(2) determine whether such regulations are
22 fair and not deceptive and otherwise meet the objec-
23 tives of the Consumer Financial Protection Act of
24 2010; and

1 “(3) promulgate regulations under subsection
2 (a)(4) after the designated transfer date.

3 “(e) DESIGNATED TRANSFER DATE.—As used in
4 this section, the term ‘designated transfer date’ means the
5 date determined under section 1062 of the Consumer Fi-
6 nancial Protection Act of 2010.”.

7 (b) EFFECTIVE DATE.—This section and the amend-
8 ments made by this section shall become effective on the
9 designated transfer date.

10 (c) RULE OF CONSTRUCTION.—The amendments
11 made by subsection (a) shall not affect any transaction
12 covered by the Alternative Mortgage Transaction Parity
13 Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on
14 or before the designated transfer date.

15 **SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND**
16 **TRANSFER ACT.**

17 The Electronic Fund Transfer Act (15 U.S.C. 1693
18 et seq.) is amended—

19 (1) by striking “Board” each place that term
20 appears and inserting “Bureau”, except in section
21 918 (as so designated by the Credit Card Act of
22 2009) (15 U.S.C. 1693o);

23 (2) in section 903 (15 U.S.C. 1693a), by strik-
24 ing paragraph (3) and inserting the following:

1 “(3) the term ‘Bureau’ means the Bureau of
2 Consumer Financial Protection;”;

3 (3) in section 916(d) (as so designated by sec-
4 tion 401 of the Credit CARD Act of 2009) (15
5 U.S.C. 1693m)—

6 (A) by striking “FEDERAL RESERVE SYS-
7 TEM” and inserting “BUREAU OF CONSUMER
8 FINANCIAL PROTECTION”; and

9 (B) by striking “Federal Reserve System”
10 and inserting “Bureau of Consumer Financial
11 Protection”; and

12 (4) in section 918 (as so designated by the
13 Credit CARD Act of 2009) (15 U.S.C. 1693o)—

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 Financial Pro-
18 tection Act of 2010, compliance”; 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 insert-
24 ing the following:

1 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
2 FEDERAL TRADE COMMISSION.—Except to the extent
3 that enforcement of the requirements imposed under this
4 title is specifically committed to some other Government
5 agency under subsection (a), and subject to subtitle B of
6 the Consumer Financial Protection Act of 2010, the Fed-
7 eral Trade Commission shall enforce such requirements.
8 For the purpose of the exercise by the Federal Trade
9 Commission of its functions and powers under the Federal
10 Trade Commission Act, a violation of any requirement im-
11 posed under this title shall be deemed a violation of a re-
12 quirement imposed under that Act. All of the functions
13 and powers of the Federal Trade Commission under the
14 Federal Trade Commission Act are available to the Fed-
15 eral Trade Commission to enforce compliance by any per-
16 son subject to the jurisdiction of the Federal Trade Com-
17 mission with the requirements imposed under this title,
18 irrespective of whether that person is engaged in com-
19 merce or meets any other jurisdictional tests under the
20 Federal Trade Commission Act.”.

21 **SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
22 **TUNITY ACT.**

23 The Equal Credit Opportunity Act (15 U.S.C. 1691
24 et seq.) is amended—

1 (1) by striking “Board” each place that term
 2 appears and inserting “Bureau”;

3 (2) in section 702 (15 U.S.C. 1691a), by strik-
 4 ing subsection (c) and inserting the following:

5 “(c) The term ‘Bureau’ means the Bureau of Con-
 6 sumer Financial Protection.”;

7 (3) in section 703 (15 U.S.C. 1691b)—

8 (A) by striking the section heading and in-
 9 serting the following:

10 **“SEC. 703. PROMULGATION OF REGULATIONS BY THE BU-**
 11 **REAU.”;**

12 (B) by striking “(a) REGULATIONS.—”;

13 (C) by striking subsection (b);

14 (D) by redesignating paragraphs (1)
 15 through (5) as subsections (a) through (e), re-
 16 spectively; and

17 (E) in subsection (e), as so redesignated,
 18 by striking “paragraph (2)” and inserting “sub-
 19 section (b)”;

20 (4) in section 704 (15 U.S.C. 1691c)—

21 (A) in subsection (a)—

22 (i) by striking “Compliance” and in-
 23 serting “Except as otherwise provided by
 24 subtitle B of the Consumer Protection Fi-
 25 nancial Protection Act of 2010”; and

1 (ii) by striking paragraph (2) and in-
2 serting the following:

3 “(2) Subtitle E of the Consumer Financial Pro-
4 tection Act of 2010, by the Bureau.”;

5 (B) by striking subsection (c) and insert-
6 ing the following:

7 “(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
8 ERAL TRADE COMMISSION.—Except to the extent that en-
9 forcement of the requirements imposed under this title is
10 specifically committed to some other Government agency
11 under subsection (a), and subject to subtitle B of the Con-
12 sumer Financial Protection Act of 2010, the Federal
13 Trade Commission shall enforce such requirements. For
14 the purpose of the exercise by the Federal Trade Commis-
15 sion of its functions and powers under the Federal Trade
16 Commission Act (15 U.S.C. 41 et seq.), a violation of any
17 requirement imposed under this subchapter shall be
18 deemed a violation of a requirement imposed under that
19 Act. All of the functions and powers of the Federal Trade
20 Commission under the Federal Trade Commission Act are
21 available to the Federal Trade Commission to enforce
22 compliance by any person with the requirements imposed
23 under this title, irrespective of whether that person is en-
24 gaged in commerce or meets any other jurisdictional tests
25 under the Federal Trade Commission Act, including the

1 power to enforce any rule prescribed by the Bureau under
 2 this title in the same manner as if the violation had been
 3 a violation of a Federal Trade Commission trade regula-
 4 tion rule.”; and

5 (C) in subsection (d), by striking “Board”
 6 and inserting “Bureau”; and

7 (5) in section 706(e) (15 U.S.C. 1691e(e))—

8 (A) in the subsection heading—

9 (i) by striking “BOARD” each place
 10 that term appears and inserting “BU-
 11 REAU”; and

12 (ii) by striking “FEDERAL RESERVE
 13 SYSTEM” and inserting “BUREAU OF CON-
 14 SUMER FINANCIAL PROTECTION”; and

15 (B) by striking “Federal Reserve System”
 16 and inserting “Bureau of Consumer Financial
 17 Protection”.

18 **SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS**

19 **AVAILABILITY ACT.**

20 (a) AMENDMENT TO SECTION 603.—Section
 21 603(d)(1) of the Expedited Funds Availability Act (12
 22 U.S.C. 4002) is amended by inserting after “Board” the
 23 following “, jointly with the Director of the Bureau of
 24 Consumer Financial Protection,”.

1 (b) AMENDMENTS TO SECTION 604.—Section 604 of
2 the Expedited Funds Availability Act (12 U.S.C. 4003)
3 is amended—

4 (1) by inserting after “Board” each place that
5 term appears, other than in subsection (f), the fol-
6 lowing: “, jointly with the Director of the Bureau of
7 Consumer Financial Protection,”; and

8 (2) in subsection (f), by striking “Board.” each
9 place that term appears and inserting the following:
10 “Board, jointly with the Director of the Bureau of
11 Consumer Financial Protection.”.

12 (c) AMENDMENTS TO SECTION 605.—Section 605 of
13 the Expedited Funds Availability Act (12 U.S.C. 4004)
14 is amended—

15 (1) by inserting after “Board” each place that
16 term appears, other than in the heading for section
17 605(f)(1), the following: “, jointly with the Director
18 of the Bureau of Consumer Financial Protection,”;
19 and

20 (2) in subsection (f)(1), in the paragraph head-
21 ing, by inserting “AND BUREAU” after “BOARD”.

22 (d) AMENDMENTS TO SECTION 609.—Section 609 of
23 the Expedited Funds Availability Act (12 U.S.C. 4008)
24 is amended:

1 (1) in subsection (a), by inserting after
 2 “Board” the following “, jointly with the Director of
 3 the Bureau of Consumer Financial Protection,”; and

4 (2) by striking subsection (e) and inserting the
 5 following:

6 “(e) CONSULTATIONS.—In prescribing regulations
 7 under subsections (a) and (b), the Board and the Director
 8 of the Bureau of Consumer Financial Protection, in the
 9 case of subsection (a), and the Board, in the case of sub-
 10 section (b), shall consult with the Comptroller of the Cur-
 11 rency, the Board of Directors of the Federal Deposit In-
 12 surance Corporation, and the National Credit Union Ad-
 13 ministration Board.”.

14 (e) EXPEDITED FUNDS AVAILABILITY IMPROVE-
 15 MENTS.—Section 603 of the Expedited Funds Availability
 16 Act (12 U.S.C. 4002) is amended—

17 (1) in subsection (a)(2)(D), by striking “\$100”
 18 and inserting “\$200”; and

19 (2) in subsection (b)(3)(C), in the subpara-
 20 graph heading, by striking “\$100” and inserting
 21 “\$200”; and

22 (3) in subsection (c)(1)(B)(iii), in the clause
 23 heading, by striking “\$100” and inserting “\$200”.

24 (f) REGULAR ADJUSTMENTS FOR INFLATION.—Sec-
 25 tion 607 of the Expedited Funds Availability Act (12

1 U.S.C. 4006) is amended by adding at the end the fol-
 2 lowing:

3 “(f) ADJUSTMENTS TO DOLLAR AMOUNTS FOR IN-
 4 FLATION.—The dollar amounts under this title shall be
 5 adjusted every 5 years after December 31, 2011, by the
 6 annual percentage increase in the Consumer Price Index
 7 for Urban Wage Earners and Clerical Workers, as pub-
 8 lished by the Bureau of Labor Statistics, rounded to the
 9 nearest multiple of \$25.”.

10 **SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING**
 11 **ACT.**

12 The Fair Credit Billing Act (15 U.S.C. 1666–1666j)
 13 is amended by striking “Board” each place that term ap-
 14 pears and inserting “Bureau”.

15 **SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING**
 16 **ACT AND THE FAIR AND ACCURATE CREDIT**
 17 **TRANSACTIONS ACT.**

18 (a) FAIR CREDIT REPORTING ACT.—The Fair Credit
 19 Reporting Act (15 U.S.C. 1681 et seq.) is amended—

20 (1) in section 603 (15 U.S.C. 1681a)—

21 (A) by redesignating subsections (w) and
 22 (x) as subsections (x) and (y), respectively; and

23 (B) by inserting after subsection (v) the
 24 following:

1 “(w) The term ‘Bureau’ means the Bureau of Con-
2 sumer Financial Protection.”; and

3 (2) except as otherwise specifically provided in
4 this subsection—

5 (A) by striking “Federal Trade Commis-
6 sion” each place that term appears and insert-
7 ing “Bureau”;

8 (B) by striking “FTC” each place that
9 term appears and inserting “Bureau”;

10 (C) by striking “the Commission” each
11 place that term appears and inserting “the Bu-
12 reau”; and

13 (D) by striking “The Federal banking
14 agencies, the National Credit Union Adminis-
15 tration, and the Commission shall jointly” each
16 place that term appears and inserting “The Bu-
17 reau shall”;

18 (3) in section 603(k)(2) (15 U.S.C.
19 1681a(k)(2)), by striking “Board of Governors of
20 the Federal Reserve System” and inserting “Bu-
21 reau”;

22 (4) in section 604(g) (15 U.S.C. 1681b(g))—

23 (A) in paragraph (3), by striking subpara-
24 graph (C) and inserting the following:

1 “(C) as otherwise determined to be nec-
2 essary and appropriate, by regulation or order,
3 by the Bureau (consistent with the enforcement
4 authorities prescribed under section 621(b)), or
5 the applicable State insurance authority (with
6 respect to any person engaged in providing in-
7 surance or annuities).”;

8 (B) by striking paragraph (5) and insert-
9 ing the following:

10 “(5) REGULATIONS AND EFFECTIVE DATE FOR
11 PARAGRAPH (2).—

12 “(A) REGULATIONS REQUIRED.—The Bu-
13 reau may, after notice and opportunity for com-
14 ment, prescribe regulations that permit trans-
15 actions under paragraph (2) that are deter-
16 mined to be necessary and appropriate to pro-
17 tect legitimate operational, transactional, risk,
18 consumer, and other needs (and which shall in-
19 clude permitting actions necessary for adminis-
20 trative verification purposes), consistent with
21 the intent of paragraph (2) to restrict the use
22 of medical information for inappropriate pur-
23 poses.”; and

24 (C) by striking paragraph (6);

1 (5) in section 611(e)(2) (15 U.S.C. 1681i(e)),
 2 by striking paragraph (2) and inserting the fol-
 3 lowing:

4 “(2) EXCLUSION.—Complaints received or ob-
 5 tained by the Bureau pursuant to its investigative
 6 authority under the Consumer Financial Protection
 7 Act of 2010 shall not be subject to paragraph (1).”;

8 (6) in section 615(h)(6) (15 U.S.C.
 9 1681m(h)(6)), by striking subparagraph (A) and in-
 10 serting the following:

11 “(A) RULES REQUIRED.—The Bureau
 12 shall prescribe rules to carry out this sub-
 13 section.”;

14 (7) in section 621 (15 U.S.C. 1681s)—

15 (A) by striking subsection (a) and insert-
 16 ing the following:

17 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
 18 SION.—

19 “(1) IN GENERAL.—Except as otherwise pro-
 20 vided by subtitle B of the Consumer Financial Pro-
 21 tection Act of 2010, compliance with the require-
 22 ments imposed under this title shall be enforced
 23 under the Federal Trade Commission Act (15
 24 U.S.C. 41 et seq.) by the Federal Trade Commis-
 25 sion, with respect to consumer reporting agencies

1 and all other persons subject thereto, except to the
2 extent that enforcement of the requirements imposed
3 under this title is specifically committed to some
4 other Government agency under subsection (b). For
5 the purpose of the exercise by the Federal Trade
6 Commission of its functions and powers under the
7 Federal Trade Commission Act, a violation of any
8 requirement or prohibition imposed under this title
9 shall constitute an unfair or deceptive act or practice
10 in commerce, in violation of section 5(a) of the Fed-
11 eral Trade Commission Act (15 U.S.C. 45(a)), and
12 shall be subject to enforcement by the Federal Trade
13 Commission under section 5(b) of that Act with re-
14 spect to any consumer reporting agency or person
15 that is subject to enforcement by the Federal Trade
16 Commission pursuant to this subsection, irrespective
17 of whether that person is engaged in commerce or
18 meets any other jurisdictional tests under the Fed-
19 eral Trade Commission Act. The Federal Trade
20 Commission shall have such procedural, investiga-
21 tive, and enforcement powers (except as otherwise
22 provided by subtitle B of the Consumer Financial
23 Protection Act of 2010), including the power to
24 issue procedural rules in enforcing compliance with
25 the requirements imposed under this title and to re-

1 quire the filing of reports, the production of docu-
2 ments, and the appearance of witnesses, as though
3 the applicable terms and conditions of the Federal
4 Trade Commission Act were part of this title. Any
5 person violating any of the provisions of this title
6 shall be subject to the penalties and entitled to the
7 privileges and immunities provided in the Federal
8 Trade Commission Act as though the applicable
9 terms and provisions of such Act are part of this
10 title.

11 “(2) PENALTIES.—

12 “(A) KNOWING VIOLATIONS.—Except as
13 otherwise provided by subtitle B of the Con-
14 sumer Financial Protection Act of 2010, in the
15 event of a knowing violation, which constitutes
16 a pattern or practice of violations of this title,
17 the Federal Trade Commission may commence
18 a civil action to recover a civil penalty in a dis-
19 trict court of the United States against any
20 person that violates this title. In such action,
21 such person shall be liable for a civil penalty of
22 not more than \$2,500 per violation.

23 “(B) DETERMINING PENALTY AMOUNT.—

24 In determining the amount of a civil penalty
25 under subparagraph (A), the court shall take

1 into account the degree of culpability, any his-
2 tory of such prior conduct, ability to pay, effect
3 on ability to continue to do business, and such
4 other matters as justice may require.

5 “(C) LIMITATION.—Notwithstanding para-
6 graph (2), a court may not impose any civil
7 penalty on a person for a violation of section
8 623(a)(1), unless the person has been enjoined
9 from committing the violation, or ordered not to
10 commit the violation, in an action or proceeding
11 brought by or on behalf of the Federal Trade
12 Commission, and has violated the injunction or
13 order, and the court may not impose any civil
14 penalty for any violation occurring before the
15 date of the violation of the injunction or
16 order.”;

17 (8) by striking subsection (b) and inserting the
18 following:

19 “(b) ENFORCEMENT BY OTHER AGENCIES.—

20 “(1) IN GENERAL.—Except as otherwise pro-
21 vided by subtitle B of the Consumer Financial Pro-
22 tection Act of 2010, compliance with the require-
23 ments imposed under this title with respect to con-
24 sumer reporting agencies, persons who use consumer
25 reports from such agencies, persons who furnish in-

1 formation to such agencies, and users of information
2 that are subject to section 615(d) shall be enforced
3 under—

4 “(A) section 8 of the Federal Deposit In-
5 surance Act (12 U.S.C. 1818), in the case of—

6 “(i) any national bank, and any Fed-
7 eral branch or Federal agency of a foreign
8 bank, by the Office of the Comptroller of
9 the Currency;

10 “(ii) any member bank of the Federal
11 Reserve System (other than a national
12 bank), a branch or agency of a foreign
13 bank (other than a Federal branch, Fed-
14 eral agency, or insured State branch of a
15 foreign bank), a commercial lending com-
16 pany owned or controlled by a foreign
17 bank, and any organization operating
18 under section 25 or 25A of the Federal
19 Reserve Act, by the Board of Governors of
20 the Federal Reserve System; and

21 “(iii) any bank insured by the Federal
22 Deposit Insurance Corporation (other than
23 a member of the Federal Reserve System)
24 and any insured State branch of a foreign

1 bank, by the Board of Directors of the
2 Federal Deposit Insurance Corporation;

3 “(B) subtitle E of the Consumer Financial
4 Protection Act of 2010, by the Bureau;

5 “(C) the Federal Credit Union Act (12
6 U.S.C. 1751 et seq.), by the Administrator of
7 the National Credit Union Administration with
8 respect to any Federal credit union;

9 “(D) subtitle IV of title 49, United States
10 Code, by the Secretary of Transportation, with
11 respect to all carriers subject to the jurisdiction
12 of the Surface Transportation Board;

13 “(E) the Federal Aviation Act of 1958 (49
14 U.S.C. App. 1301 et seq.), by the Secretary of
15 Transportation, with respect to any air carrier
16 or foreign air carrier subject to that Act;

17 “(F) the Packers and Stockyards Act,
18 1921 (7 U.S.C. 181 et seq.) (except as provided
19 in section 406 of that Act), by the Secretary of
20 Agriculture, with respect to any activities sub-
21 ject to that Act;

22 “(G) the Commodity Exchange Act, with
23 respect to a person subject to the jurisdiction of
24 the Commodity Futures Trading Commission;
25 and

1 “(H) the Federal securities laws, and any
2 other laws that are subject to the jurisdiction of
3 the Securities and Exchange Commission, with
4 respect to a person that is subject to the juris-
5 diction of the Securities and Exchange Commis-
6 sion.

7 “(2) INCORPORATED DEFINITIONS.—The terms
8 used in paragraph (1) that are not defined in this
9 title or otherwise defined in section 3(s) of the Fed-
10 eral Deposit Insurance Act (12 U.S.C. 1813(s)) have
11 the same meanings as in section 1(b) of the Inter-
12 national Banking Act of 1978 (12 U.S.C. 3101).”;

13 (9) by striking subsection (e) and inserting the
14 following:

15 “(e) REGULATORY AUTHORITY.—The Bureau shall
16 prescribe such regulations as are necessary to carry out
17 the purposes of this Act. The regulations prescribed by
18 the Bureau under this subsection shall apply to any person
19 that is subject to this Act, notwithstanding the enforce-
20 ment authorities granted to other agencies under this sec-
21 tion.”; and

22 (10) in section 623 (15 U.S.C. 1681s-2)—

23 (A) in subsection (a)(7), by striking sub-
24 paragraph (D) and inserting the following:

25 “(D) MODEL DISCLOSURE.—

1 “(i) DUTY OF BUREAU.—The Bureau
 2 shall prescribe a brief model disclosure
 3 that a financial institution may use to
 4 comply with subparagraph (A), which shall
 5 not exceed 30 words.

6 “(ii) USE OF MODEL NOT RE-
 7 QUIRED.—No provision of this paragraph
 8 may be construed to require a financial in-
 9 stitution to use any such model form pre-
 10 scribed by the Bureau.

11 “(iii) COMPLIANCE USING MODEL.—A
 12 financial institution shall be deemed to be
 13 in compliance with subparagraph (A) if the
 14 financial institution uses any model form
 15 prescribed by the Bureau under this sub-
 16 paragraph, or the financial institution uses
 17 any such model form and rearranges its
 18 format.”; and

19 (B) by striking subsection (e) and insert-
 20 ing the following:

21 “(e) ACCURACY GUIDELINES AND REGULATIONS RE-
 22 QUIRED.—

23 “(1) GUIDELINES.—The Bureau shall, with re-
 24 spect to persons or entities that are subject to the

1 enforcement authority of the Bureau under section
2 621—

3 “(A) establish and maintain guidelines for
4 use by each person that furnishes information
5 to a consumer reporting agency regarding the
6 accuracy and integrity of the information relat-
7 ing to consumers that such entities furnish to
8 consumer reporting agencies, and update such
9 guidelines as often as necessary; and

10 “(B) prescribe regulations requiring each
11 person that furnishes information to a con-
12 sumer reporting agency to establish reasonable
13 policies and procedures for implementing the
14 guidelines established pursuant to subpara-
15 graph (A).

16 “(2) CRITERIA.—In developing the guidelines
17 required by paragraph (1)(A), the Bureau shall—

18 “(A) identify patterns, practices, and spe-
19 cific forms of activity that can compromise the
20 accuracy and integrity of information furnished
21 to consumer reporting agencies;

22 “(B) review the methods (including techno-
23 logical means) used to furnish information re-
24 lating to consumers to consumer reporting
25 agencies;

1 “(C) determine whether persons that fur-
2 nish information to consumer reporting agen-
3 cies maintain and enforce policies to ensure the
4 accuracy and integrity of information furnished
5 to consumer reporting agencies; and

6 “(D) examine the policies and processes
7 that persons that furnish information to con-
8 sumer reporting agencies employ to conduct re-
9 investigations and correct inaccurate informa-
10 tion relating to consumers that has been fur-
11 nished to consumer reporting agencies.”.

12 (b) FAIR AND ACCURATE CREDIT TRANSACTIONS
13 ACT OF 2003.—Section 214(b)(1) of the Fair and Accu-
14 rate Credit Transactions Act of 2003 (15 U.S.C. 1681s–
15 3 note) is amended by striking paragraph (1) and insert-
16 ing the following:

17 “(1) IN GENERAL.—Regulations to carry out
18 section 624 of the Fair Credit Reporting Act (15
19 U.S.C. 1681s–3), shall be prescribed, as described in
20 paragraph (2), by—

21 “(A) the Commodity Futures Trading
22 Commission, with respect to entities subject to
23 its enforcement authorities;

1 “(B) the Securities and Exchange Commis-
 2 sion, with respect to entities subject to its en-
 3 forcement authorities; and

4 “(C) the Bureau, with respect to other en-
 5 tities subject to this Act.”.

6 **SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION**
 7 **PRACTICES ACT.**

8 The Fair Debt Collection Practices Act (15 U.S.C.
 9 1692 et seq.) is amended—

10 (1) by striking “Commission” each place that
 11 term appears and inserting “Bureau”;

12 (2) in section 803 (15 U.S.C. 1692a)—

13 (A) by striking paragraph (1) and insert-
 14 ing the following:

15 “(1) The term ‘Bureau’ means the Bureau of
 16 Consumer Financial Protection.”;

17 (3) in section 814 (15 U.S.C. 1692l)—

18 (A) by striking subsection (a) and insert-
 19 ing the following:

20 “(a) FEDERAL TRADE COMMISSION.—Except as oth-
 21 erwise provided by subtitle B of the Consumer Financial
 22 Protection Act of 2010, compliance with this title shall
 23 be enforced by the Federal Trade Commission, except to
 24 the extent that enforcement of the requirements imposed
 25 under this title is specifically committed to another Gov-

1 ernment agency under subsection (b). For purpose of the
2 exercise by the Federal Trade Commission of its functions
3 and powers under the Federal Trade Commission Act (15
4 U.S.C. 41 et seq.), a violation of this title shall be deemed
5 an unfair or deceptive act or practice in violation of that
6 Act. All of the functions and powers of the Federal Trade
7 Commission under the Federal Trade Commission Act are
8 available to the Federal Trade Commission to enforce
9 compliance by any person with this title, irrespective of
10 whether that person is engaged in commerce or meets any
11 other jurisdictional tests under the Federal Trade Com-
12 mission Act, including the power to enforce the provisions
13 of this title, in the same manner as if the violation had
14 been a violation of a Federal Trade Commission trade reg-
15 ulation rule.”; and

16 (B) in subsection (b)—

17 (i) by striking “Compliance” and in-
18 serting “Except as otherwise provided by
19 subtitle B of the Consumer Financial Pro-
20 tection Act of 2010, compliance”; and

21 (ii) by striking paragraph (2) and in-
22 serting the following:

23 “(2) subtitle E of the Consumer Financial Pro-
24 tection Act of 2010, by the Bureau;”; and

1 (4) in subsection (d), by striking “Neither the
 2 Commission” and all that follows through the end of
 3 the subsection and inserting the following: “The Bu-
 4 reau may prescribe rules with respect to the collec-
 5 tion of debts by debt collectors, as defined in this
 6 Act.”.

7 **SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
 8 **SURANCE ACT.**

9 The Federal Deposit Insurance Act (12 U.S.C. 1811
 10 et seq.) is amended—

11 (1) in section 8(t) (12 U.S.C. 1818(t)), by add-
 12 ing at the end the following:

13 “(6) REFERRAL TO BUREAU OF CONSUMER FI-
 14 NANCIAL PROTECTION.—Subject to subtitle B of the
 15 Consumer Financial Protection Act of 2010, each
 16 appropriate Federal banking agency shall make a re-
 17 ferral to the Bureau of Consumer Financial Protec-
 18 tion when the Federal banking agency has a reason-
 19 able belief that a violation of an enumerated con-
 20 sumer law, as defined in the Consumer Financial
 21 Protection Act of 2010, has been committed by any
 22 insured depository institution or institution-affiliated
 23 party within the jurisdiction of that appropriate
 24 Federal banking agency.”; and

25 (2) in section 43 (12 U.S.C. 1831t)—

1 (A) in subsection (c), by striking “Federal
2 Trade Commission” and inserting “Bureau”;

3 (B) in subsection (d), by striking “Federal
4 Trade Commission” and inserting “Bureau”;

5 (C) in subsection (e)—

6 (i) in paragraph (2), by striking
7 “Federal Trade Commission” and insert-
8 ing “Bureau”; and

9 (ii) by adding at the end the following
10 new paragraph:

11 “(5) BUREAU.—The term ‘Bureau’ means the
12 Bureau of Consumer Financial Protection.”; and

13 (D) in subsection (f)—

14 (i) by striking paragraph (1) and in-
15 serting the following:

16 “(1) LIMITED ENFORCEMENT AUTHORITY.—

17 Compliance with the requirements of subsections (b),
18 (c), and (e), and any regulation prescribed or order
19 issued under such subsection, shall be enforced
20 under the Consumer Financial Protection Act of
21 2010, by the Bureau, subject to subtitle B of the
22 Consumer Financial Protection Act of 2010, and
23 under the Federal Trade Commission Act (15
24 U.S.C. 41 et seq.) by the Federal Trade Commis-
25 sion.”; and

1 (ii) in paragraph (2), by striking sub-
 2 paragraph (C) and inserting the following:

3 “(C) LIMITATION ON STATE ACTION
 4 WHILE FEDERAL ACTION PENDING.—If the Bu-
 5 reau or Federal Trade Commission has insti-
 6 tuted an enforcement action for a violation of
 7 this section, no appropriate State supervisory
 8 agency may, during the pendency of such ac-
 9 tion, bring an action under this section against
 10 any defendant named in the complaint of the
 11 Bureau or Federal Trade Commission for any
 12 violation of this section that is alleged in that
 13 complaint.”.

14 **SEC. 1091. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
 15 **ACT.**

16 Title V of the Gramm-Leach-Bliley Act (15 U.S.C.
 17 6801 et seq.) is amended—

18 (1) in section 504(a)(1) (15 U.S.C.
 19 6804(a)(1))—

20 (A) by striking “The Federal banking
 21 agencies, the National Credit Union Adminis-
 22 tration, the Secretary of the Treasury,” and in-
 23 serting “The Bureau of Consumer Financial
 24 Protection and”; and

1 (B) by striking “, and the Federal Trade
2 Commission”;

3 (2) in section 505(a) (15 U.S.C. 6805(a))—

4 (A) by striking “This subtitle” and all that
5 follows through “as follows:” and inserting
6 “Except as otherwise provided by subtitle B of
7 the Consumer Financial Protection Act of
8 2010, this subtitle and the regulations pre-
9 scribed thereunder shall be enforced by the Bu-
10 reau of Consumer Financial Protection, the
11 Federal functional regulators, the State insur-
12 ance authorities, and the Federal Trade Com-
13 mission with respect to financial institutions
14 and other persons subject to their jurisdiction
15 under applicable law, as follows:”;

16 (B) in paragraph (1)—

17 (i) in subparagraph (B), by inserting
18 “and” after the semicolon;

19 (ii) in subparagraph (C), by striking
20 “; and” and inserting a period; and

21 (iii) by striking subparagraph (D);
22 and

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

24 “(8) Under the Consumer Financial Protection
25 Act of 2010, by the Bureau of Consumer Financial

1 Protection, in the case of any financial institution
 2 and other covered person or service provider that is
 3 subject to the jurisdiction of the Bureau under that
 4 Act, but not with respect to the standards under sec-
 5 tion 501.”; and

6 (3) in section 505(b)(1) (15 U.S.C.
 7 6805(b)(1)), by inserting “, other than the Bureau
 8 of Consumer Financial Protection,” after “sub-
 9 section (a)”.

10 **SEC. 1092. AMENDMENTS TO THE HOME MORTGAGE DIS-**
 11 **CLOSURE ACT.**

12 The Home Mortgage Disclosure Act of 1975 (12
 13 U.S.C. 2801 et seq.) is amended—

14 (1) except as otherwise specifically provided in
 15 this section, by striking “Board” each place that
 16 term appears and inserting “Bureau”;

17 (2) in section 303 (12 U.S.C. 2802)—

18 (A) by redesignating paragraphs (1)
 19 through (6) as paragraphs (2) through (7), re-
 20 spectively; and

21 (B) by inserting before paragraph (2) the
 22 following:

23 “(1) the term ‘Bureau’ means the Bureau of
 24 Consumer Financial Protection;”;

25 (3) in section 304 (12 U.S.C. 2803)—

1 (A) in subsection (b)—

2 (i) in paragraph (4), by inserting
3 “age,” before “and gender”;

4 (ii) in paragraph (3), by striking
5 “and” at the end;

6 (iii) in paragraph (4), by striking the
7 period at the end and inserting a semi-
8 colon; and

9 (iv) by adding at the end the fol-
10 lowing:

11 “(5) the number and dollar amount of mort-
12 gage loans grouped according to measurements of—

13 “(A) the total points and fees payable at
14 origination in connection with the mortgage as
15 determined by the Bureau, taking into account
16 15 U.S.C. 1602(aa)(4);

17 “(B) the difference between the annual
18 percentage rate associated with the loan and a
19 benchmark rate or rates for all loans;

20 “(C) the term in months of any prepay-
21 ment penalty or other fee or charge payable on
22 repayment of some portion of principal or the
23 entire principal in advance of scheduled pay-
24 ments; and

1 “(D) such other information as the Bureau
2 may require; and

3 “(6) the number and dollar amount of mort-
4 gage loans and completed applications grouped ac-
5 cording to measurements of—

6 “(A) the value of the real property pledged
7 or proposed to be pledged as collateral;

8 “(B) the actual or proposed term in
9 months of any introductory period after which
10 the rate of interest may change;

11 “(C) the presence of contractual terms or
12 proposed contractual terms that would allow the
13 mortgagor or applicant to make payments other
14 than fully amortizing payments during any por-
15 tion of the loan term;

16 “(D) the actual or proposed term in
17 months of the mortgage loan;

18 “(E) the channel through which applica-
19 tion was made, including retail, broker, and
20 other relevant categories;

21 “(F) as the Bureau may determine to be
22 appropriate, a unique identifier that identifies
23 the loan originator as set forth in section 1503
24 of the S.A.F.E. Mortgage Licensing Act of
25 2008;

1 “(G) as the Bureau may determine to be
2 appropriate, a universal loan identifier;

3 “(H) as the Bureau may determine to be
4 appropriate, the parcel number that cor-
5 responds to the real property pledged or pro-
6 posed to be pledged as collateral;

7 “(I) the credit score of mortgage appli-
8 cants and mortgagors, in such form as the Bu-
9 reau may prescribe, except that the Bureau
10 shall modify or require modification of credit
11 score data that is or will be available to the
12 public to protect the compelling privacy interest
13 of the mortgage applicant or mortgagors; and

14 “(J) such other information as the Bureau
15 may require.”;

16 (B) in subsection (i), by striking “sub-
17 section (b)(4)” and inserting “subsections
18 (b)(4), (b)(5), and (b)(6)”;

19 (C) in subsection (j)—

20 (i) in paragraph (1), by striking “(as”
21 and inserting “(containing loan-level and
22 application-level information relating to
23 disclosures required under subsections (a)
24 and (b) and as otherwise”;

1 (ii) by striking paragraph (3) and in-
2 serting the following:

3 “(3) CHANGE OF FORM NOT REQUIRED.—A de-
4 pository institution meets the disclosure requirement
5 of paragraph (1) if the institution provides the infor-
6 mation required under such paragraph in such for-
7 mats as the Bureau may require”; and

8 (iii) in paragraph (2)(A), by striking
9 “in the format in which such information
10 is maintained by the institution” and in-
11 serting “in such formats as the Bureau
12 may require”;

13 (D) in subsection (m), by striking para-
14 graph (2) and inserting the following:

15 “(2) FORM OF INFORMATION.—In complying
16 with paragraph (1), a depository institution shall
17 provide the person requesting the information with
18 a copy of the information requested in such formats
19 as the Bureau may require”;

20 (E) by striking subsection (h) and insert-
21 ing the following:

22 “(h) SUBMISSION TO AGENCIES.—

23 “(1) IN GENERAL.—The data required to be
24 disclosed under subsection (b) shall be submitted to
25 the Bureau or to the appropriate agency for the in-

stitution reporting under this title, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in cooperation with other appropriate regulators described in paragraph (2), shall develop regulations that—

“(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public;

“(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title;

“(C) require disclosure of the class of the purchaser of such loans; and

“(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.

“(2) OTHER APPROPRIATE AGENCIES.—The appropriate regulators described in this paragraph are—

1 “(A) the Office of the Comptroller of the
 2 Currency (hereafter referred to in this Act as
 3 ‘Comptroller’) for national banks and Federal
 4 branches, Federal agencies of foreign banks,
 5 and savings associations;

6 “(B) the Federal Deposit Insurance Cor-
 7 poration for banks insured by the Federal De-
 8 posit Insurance Corporation (other than mem-
 9 bers of the Federal Reserve System), mutual
 10 savings banks, insured State branches of for-
 11 eign banks, and any other depository institution
 12 described in section 303(2)(A) which is not oth-
 13 erwise referred to in this paragraph;

14 “(C) the National Credit Union Adminis-
 15 tration Board for credit unions; and

16 “(D) the Secretary of Housing and Urban
 17 Development for other lending institutions not
 18 regulated by the agencies referred to in sub-
 19 paragraphs (A) through (C).”; and

20 (F) by adding at the end the following:

21 “(n) TIMING OF CERTAIN DISCLOSURES.—The data
 22 required to be disclosed under subsection (b) shall be sub-
 23 mitted to the Bureau or to the appropriate agency for any
 24 institution reporting under this title, in accordance with
 25 regulations prescribed by the Bureau. Institutions shall

1 not be required to report new data under paragraph (5)
 2 or (6) of subsection (b) before the first January 1 that
 3 occurs after the end of the 9-month period beginning on
 4 the date on which regulations are issued by the Bureau
 5 in final form with respect to such disclosures.”;

6 (4) in section 305 (12 U.S.C. 2804)—

7 (A) by striking subsection (b) and insert-
 8 ing the following:

9 “(b) POWERS OF CERTAIN OTHER AGENCIES.—

10 “(1) IN GENERAL.—Except as otherwise pro-
 11 vided by subtitle B of the Consumer Financial Pro-
 12 tection Act of 2010, compliance with the require-
 13 ments of this title shall be enforced—

14 “(A) under section 8 of the Federal De-
 15 posit Insurance Act, in the case of—

16 “(i) any national bank, and any Fed-
 17 eral branch or Federal agency of a foreign
 18 bank, by the Office of the Comptroller of
 19 the Currency;

20 “(ii) any member bank of the Federal
 21 Reserve System (other than a national
 22 bank), branch or agency of a foreign bank
 23 (other than a Federal branch, Federal
 24 agency, and insured State branch of a for-
 25 eign bank), commercial lending company

1 owned or controlled by a foreign bank, and
2 any organization operating under section
3 25 or 25(a) of the Federal Reserve Act, by
4 the Board; and

5 “(iii) any bank insured by the Federal
6 Deposit Insurance Corporation (other than
7 a member of the Federal Reserve System),
8 any mutual savings bank as, defined in
9 section 3(f) of the Federal Deposit Insur-
10 ance Act (12 U.S.C. 1813(f)), any insured
11 State branch of a foreign bank, and any
12 other depository institution not referred to
13 in this paragraph or subparagraph (B) or
14 (C), by the Federal Deposit Insurance Cor-
15 poration;

16 “(B) under subtitle E of the Consumer Fi-
17 nancial Protection Act of 2010, by the Bureau;

18 “(C) under the Federal Credit Union Act,
19 by the Administrator of the National Credit
20 Union Administration with respect to any in-
21 sured credit union; and

22 “(D) with respect to other lending institu-
23 tions, by the Secretary of Housing and Urban
24 Development.

1 “(2) INCORPORATED DEFINITIONS.—The terms
2 used in paragraph (1) that are not defined in this
3 title or otherwise defined in section 3(s) of the Fed-
4 eral Deposit Insurance Act (12 U.S.C. 1813(s))
5 shall have the same meanings as in section 1(b) of
6 the International Banking Act of 1978 (12 U.S.C.
7 3101).”; and

8 (B) by adding at the end the following:

9 “(d) OVERALL ENFORCEMENT AUTHORITY OF THE
10 BUREAU OF CONSUMER FINANCIAL PROTECTION.—Sub-
11 ject to subtitle B of the Consumer Financial Protection
12 Act of 2010, enforcement of the requirements imposed
13 under this title is committed to each of the agencies under
14 subsection (b). The Bureau may exercise its authorities
15 under the Consumer Financial Protection Act of 2010 to
16 exercise principal authority to examine and enforce com-
17 pliance by any person with the requirements of this title.”;

18 (5) in section 306 (12 U.S.C. 2805(b)), by
19 striking subsection (b) and inserting the following:

20 “(b) EXEMPTION AUTHORITY.—The Bureau may, by
21 regulation, exempt from the requirements of this title any
22 State-chartered depository institution within any State or
23 subdivision thereof, if the agency determines that, under
24 the law of such State or subdivision, that institution is
25 subject to requirements that are substantially similar to

1 those imposed under this title, and that such law contains
2 adequate provisions for enforcement. Notwithstanding any
3 other provision of this subsection, compliance with the re-
4 quirements imposed under this subsection shall be en-
5 forced by the Office of the Comptroller of the Currency
6 under section 8 of the Federal Deposit Insurance Act, in
7 the case of national banks and savings associations, the
8 deposits of which are insured by the Federal Deposit In-
9 surance Corporation.”; and

10 (6) by striking section 307 (12 U.S.C. 2806)

11 and inserting the following:

12 **“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.**

13 “(a) IN GENERAL.—

14 “(1) CONSULTATION REQUIRED.—The Director
15 of the Bureau of Consumer Financial Protection,
16 with the assistance of the Secretary, the Director of
17 the Bureau of the Census, the Board of Governors
18 of the Federal Reserve System, the Federal Deposit
19 Insurance Corporation, and such other persons as
20 the Bureau deems appropriate, shall develop or as-
21 sist in the improvement of, methods of matching ad-
22 dresses and census tracts to facilitate compliance by
23 depository institutions in as economical a manner as
24 possible with the requirements of this title.

1 “(2) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated, such sums
3 as may be necessary to carry out this subsection.

4 “(3) CONTRACTING AUTHORITY.—The Director
5 of the Bureau of Consumer Financial Protection is
6 authorized to utilize, contract with, act through, or
7 compensate any person or agency in order to carry
8 out this subsection.

9 “(b) RECOMMENDATIONS TO CONGRESS.—The Di-
10 rector of the Bureau of Consumer Financial Protection
11 shall recommend to the Committee on Banking, Housing,
12 and Urban Affairs of the Senate and the Committee on
13 Financial Services of the House of Representatives, such
14 additional legislation as the Director of the Bureau of
15 Consumer Financial Protection deems appropriate to
16 carry out the purpose of this title.”.

17 **SEC. 1093. AMENDMENTS TO THE HOMEOWNERS PROTEC-**
18 **TION ACT OF 1998.**

19 Section 10 of the Homeowners Protection Act of
20 1998 (12 U.S.C. 4909) is amended—

21 (1) in subsection (a)—

22 (A) by striking “Compliance” and insert-
23 ing “Except as otherwise provided by subtitle B
24 of the Consumer Financial Protection Act of
25 2010, compliance”;

1 (B) in paragraph (2), by striking “and” at
 2 the end;

3 (C) in paragraph (3), by striking the pe-
 4 riod at the end and inserting “; and”; and

5 (D) by adding at the end the following:

6 “(4) subtitle E of the Consumer Financial Pro-
 7 tection Act of 2010, by the Bureau of Consumer Fi-
 8 nancial Protection.”; and

9 (2) in subsection (b)(2), by inserting before the
 10 period at the end the following: “, subject to subtitle
 11 B of the Consumer Financial Protection Act of
 12 2010”.

13 **SEC. 1094. AMENDMENTS TO THE HOME OWNERSHIP AND**
 14 **EQUITY PROTECTION ACT OF 1994.**

15 The Home Ownership and Equity Protection Act of
 16 1994 (15 U.S.C. 1601 note) is amended—

17 (1) in section 158(a), by striking “Consumer
 18 Advisory Council of the Board” and inserting “Advi-
 19 sory Board to the Bureau”; and

20 (2) by striking “Board” each place that term
 21 appears and inserting “Bureau”.

22 **SEC. 1095. AMENDMENTS TO THE OMNIBUS APPROPRIA-**
 23 **TIONS ACT, 2009.**

24 Section 626 of the Omnibus Appropriations Act,
 25 2009 (15 U.S.C. 1638 note) is amended—

1 (1) by striking subsection (a) and inserting the
2 following:

3 “(a)(1) The Bureau of Consumer Financial Protec-
4 tion shall have authority to prescribe rules with respect
5 to mortgage loans in accordance with section 553 of title
6 5, United States Code. Such rulemaking shall relate to
7 unfair or deceptive acts or practices regarding mortgage
8 loans, which may include unfair or deceptive acts or prac-
9 tices involving loan modification and foreclosure rescue
10 services. Any violation of a rule prescribed under this
11 paragraph shall be treated as a violation of a rule prohib-
12 iting unfair, deceptive, or abusive acts or practices under
13 the Consumer Financial Protection Act of 2010 and a vio-
14 lation of a rule under section 18 of the Federal Trade
15 Commission Act (15 U.S.C. 57a) regarding unfair or de-
16 ceptive acts or practices.

17 “(2) The Bureau of Consumer Financial Protection
18 shall enforce the rules issued under paragraph (1) in the
19 same manner, by the same means, and with the same ju-
20 risdiction, powers, and duties, as though all applicable
21 terms and provisions of the Consumer Financial Protec-
22 tion Act of 2010 were incorporated into and made part
23 of this subsection.”; and

24 (2) in subsection (b)—

1 (A) by striking paragraph (1) and insert-
2 ing the following:

3 “(1) Except as provided in paragraph (6), in
4 any case in which the attorney general of a State
5 has reason to believe that an interest of the resi-
6 dents of the State has been or is threatened or ad-
7 versely affected by the engagement of any person
8 subject to a rule prescribed under subsection (a) in
9 practices that violate such rule, the State, as *parens*
10 *patriae*, may bring a civil action on behalf of its resi-
11 dents in an appropriate district court of the United
12 States or other court of competent jurisdiction—

13 “(A) to enjoin that practice;

14 “(B) to enforce compliance with the rule;

15 “(C) to obtain damages, restitution, or
16 other compensation on behalf of the residents of
17 the State; or

18 “(D) to obtain penalties and relief provided
19 under the Consumer Financial Protection Act
20 of 2010, the Federal Trade Commission Act,
21 and such other relief as the court deems appro-
22 priate.”;

23 (B) in paragraphs (2) and (3), by striking
24 “the primary Federal regulator” each time the
25 term appears and inserting “the Bureau of

1 Consumer Financial Protection or the Commis-
 2 sion, as appropriate”;

3 (C) in paragraph (3), by inserting “and
 4 subject to subtitle B of the Consumer Financial
 5 Protection Act of 2010,” after “paragraph
 6 (2),”; and

7 (D) in paragraph (6), by striking “the pri-
 8 mary Federal regulator” each place that term
 9 appears and inserting “the Bureau of Con-
 10 sumer Financial Protection or the Commis-
 11 sion”.

12 **SEC. 1096. AMENDMENTS TO THE REAL ESTATE SETTLE-**
 13 **MENT PROCEDURES ACT.**

14 The Real Estate Settlement Procedures Act of 1974
 15 (12 U.S.C. 2601 et seq.) is amended—

16 (1) in section 3 (12 U.S.C. 2602)—

17 (A) in paragraph (7), by striking “and” at
 18 the end;

19 (B) in paragraph (8), by striking the pe-
 20 riod at the end and inserting “; and”; and

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

22 “(9) the term ‘Bureau’ means the Bureau of
 23 Consumer Financial Protection.”;

24 (2) in section 4 (12 U.S.C. 2603)—

1 (A) in subsection (a), by striking the first
2 sentence and inserting the following: “The Bu-
3 reau shall publish a single, integrated disclosure
4 for mortgage loan transactions (including real
5 estate settlement cost statements) which in-
6 cludes the disclosure requirements of this title,
7 in conjunction with the disclosure requirements
8 of the Truth in Lending Act that, taken to-
9 gether, may apply to a transaction that is sub-
10 ject to both or either provisions of law. The
11 purpose of such model disclosure shall be to fa-
12 cilitate compliance with the disclosure require-
13 ments of this title and the Truth in Lending
14 Act, and to aid the borrower or lessee in under-
15 standing the transaction by utilizing readily un-
16 derstandable language to simplify the technical
17 nature of the disclosures.”;

18 (B) by striking “Secretary” each place
19 that term appears and inserting “Bureau”; and

20 (C) by striking “form” each place that
21 term appears and inserting “forms”;

22 (3) in section 5 (12 U.S.C. 2604)—

23 (A) by striking “Secretary” each place that
24 term appears and inserting “Bureau”; and

1 (B) in subsection (a), by striking the first
 2 sentence and inserting the following: “The Bu-
 3 reau shall prepare and distribute booklets joint-
 4 ly addressing compliance with the requirements
 5 of the Truth in Lending Act and the provisions
 6 of this title, in order to help persons borrowing
 7 money to finance the purchase of residential
 8 real estate better to understand the nature and
 9 costs of real estate settlement services.”;

10 (4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

11 (A) by striking “Secretary” and inserting
 12 “Bureau”; and

13 (B) by striking “, by regulations that shall
 14 take effect not later than April 20, 1991,”;

15 (5) in section 7(b) (12 U.S.C. 2606(b)) by
 16 striking “Secretary” and inserting “Bureau”;

17 (6) in section 8(d) (12 U.S.C. 2607(d))—

18 (A) in the subsection heading, by inserting
 19 “BUREAU AND” before “SECRETARY”; and

20 (B) by striking paragraph (4), and insert-
 21 ing the following:

22 “(4) The Bureau, the Secretary, or the attorney
 23 general or the insurance commissioner of any State
 24 may bring an action to enjoin violations of this sec-
 25 tion. Except, to the extent that a person is subject

1 to the jurisdiction of the Bureau, the Secretary, or
2 the attorney general or the insurance commissioner
3 of any State, the Bureau shall have primary author-
4 ity to enforce or administer this section, subject to
5 subtitle B of the Consumer Financial Protection Act
6 of 2010.”.

7 (7) in section 10(c) (12 U.S.C. 2609(c) and
8 (d)), by striking “Secretary” and inserting “Bu-
9 reau”;

10 (8) in section 16 (12 U.S.C. 2614), by inserting
11 “the Bureau,” before “the Secretary”;

12 (9) in section 18 (12 U.S.C. 2616), by striking
13 “Secretary” each place that term appears and in-
14 serting “Bureau”; and

15 (10) in section 19 (12 U.S.C. 2617)—

16 (A) in the section heading by striking
17 “**SECRETARY**” and inserting “**BUREAU**”;

18 (B) by striking “Secretary” each place
19 that term appears and inserting “Bureau”;

20 (C) in subsection (b), by inserting “the
21 Bureau” before “the Secretary”; and

22 (D) in subsection (c), by inserting “or the
23 Bureau” after “the Secretary” each time that
24 term appears.

1 **SEC. 1097. AMENDMENTS TO THE RIGHT TO FINANCIAL**
2 **PRIVACY ACT OF 1978.**

3 The Right to Financial Privacy Act of 1978 (12
4 U.S.C. 3401 et seq.) is amended—

5 (1) in section 1101—

6 (A) in paragraph (6)—

7 (i) in subparagraph (A), by inserting
8 “and” after the semicolon;

9 (ii) in subparagraph (B), by striking
10 “and” at the end; and

11 (iii) by striking subparagraph (C);
12 and

13 (B) in paragraph (7), by striking subpara-
14 graph (E), and inserting the following:

15 “(E) the Bureau of Consumer Financial
16 Protection;”;

17 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
18 striking “and the Commodity Futures Trading Com-
19 mission is permitted” and inserting “the Commodity
20 Futures Trading Commission, and the Bureau of
21 Consumer Financial Protection is permitted”; and

22 (3) in section 1113 (12 U.S.C. 3413), by add-
23 ing at the end the following new subsection:

24 “(r) DISCLOSURE TO THE BUREAU OF CONSUMER
25 FINANCIAL PROTECTION.—Nothing in this title shall
26 apply to the examination by or disclosure to the Bureau

1 of Consumer Financial Protection of financial records or
 2 information in the exercise of its authority with respect
 3 to a financial institution.”.

4 **SEC. 1098. AMENDMENTS TO THE SECURE AND FAIR EN-**
 5 **FORCEMENT FOR MORTGAGE LICENSING ACT**
 6 **OF 2008.**

7 The S.A.F.E. Mortgage Licensing Act of 2008 (12
 8 U.S.C. 5101 et seq.) is amended—

9 (1) by striking “a Federal banking agency”
 10 each place that term appears, other than in para-
 11 graphs (7) and (11) of section 1503 and section
 12 1507(a)(1), and inserting “the Bureau”;

13 (2) by striking “Federal banking agencies”
 14 each place that term appears and inserting “Bu-
 15 reau”; and

16 (3) by striking “Secretary” each place that
 17 term appears and inserting “Director”;

18 (4) in section 1503 (12 U.S.C. 5102)—

19 (A) by redesignating paragraphs (2)
 20 through (12) as (3) through (13), respectively;

21 (B) by striking paragraph (1) and insert-
 22 ing the following:

23 “(1) BUREAU.—The term ‘Bureau’ means the
 24 Bureau of Consumer Financial Protection.

1 “(2) FEDERAL BANKING AGENCY.—The term
 2 ‘Federal banking agency’ means the Board of Gov-
 3 ernors of the Federal Reserve System, the Office of
 4 the Comptroller of the Currency, the National Credit
 5 Union Administration, and the Federal Deposit In-
 6 surance Corporation.”; and

7 (C) by striking paragraph (10), as so des-
 8 ignated by this section, and inserting the fol-
 9 lowing:

10 “(10) DIRECTOR.—The term ‘Director’ means
 11 the Director of the Bureau of Consumer Financial
 12 Protection.”; and

13 (5) in section 1507 (12 U.S.C. 5106)—

14 (A) in subsection (a)—

15 (i) by striking paragraph (1) and in-
 16 serting the following:

17 “(1) IN GENERAL.—The Bureau shall develop
 18 and maintain a system for registering employees of
 19 a depository institution, employees of a subsidiary
 20 that is owned and controlled by a depository institu-
 21 tion and regulated by a Federal banking agency, or
 22 employees of an institution regulated by the Farm
 23 Credit Administration, as registered loan originators
 24 with the Nationwide Mortgage Licensing System and
 25 Registry. The system shall be implemented before

1 the end of the 1-year period beginning on the date
 2 of enactment of the Consumer Financial Protection
 3 Act of 2010.”; and

4 (ii) in paragraph (2)—

5 (I) by striking “appropriate Fed-
 6 eral banking agency and the Farm
 7 Credit Administration” and inserting
 8 “Bureau”; and

9 (II) by striking “employees’s
 10 identity” and inserting “identity of
 11 the employee”; and

12 (B) in subsection (b), by striking “through
 13 the Financial Institutions Examination Council,
 14 and the Farm Credit Administration”, and in-
 15 serting “and the Bureau of Consumer Financial
 16 Protection”;

17 (6) in section 1508 (12 U.S.C. 5107)—

18 (A) by striking the section heading and in-
 19 serting the following: “**SEC. 1508. BUREAU OF**
 20 **CONSUMER FINANCIAL PROTECTION**
 21 **BACKUP AUTHORITY TO ESTABLISH LOAN**
 22 **ORIGINATOR LICENSING SYSTEM.**”; and

23 (B) by adding at the end the following:

24 “(f) REGULATION AUTHORITY.—

1 “(1) IN GENERAL.—The Bureau is authorized
2 to promulgate regulations setting minimum net
3 worth or surety bond requirements for residential
4 mortgage loan originators and minimum require-
5 ments for recovery funds paid into by loan origina-
6 tors.

7 “(2) CONSIDERATIONS.—In issuing regulations
8 under paragraph (1), the Bureau shall take into ac-
9 count the need to provide originators adequate in-
10 centives to originate affordable and sustainable
11 mortgage loans, as well as the need to ensure a com-
12 petitive origination market that maximizes consumer
13 access to affordable and sustainable mortgage
14 loans.”;

15 (7) by striking section 1510 (12 U.S.C. 5109)
16 and inserting the following:

17 **“SEC. 1510. FEES.**

18 “The Bureau, the Farm Credit Administration, and
19 the Nationwide Mortgage Licensing System and Registry
20 may charge reasonable fees to cover the costs of maintain-
21 ing and providing access to information from the Nation-
22 wide Mortgage Licensing System and Registry, to the ex-
23 tent that such fees are not charged to consumers for ac-
24 cess to such system and registry.”;

1 (8) by striking section 1513 (12 U.S.C. 5112)
2 and inserting the following:

3 **“SEC. 1513. LIABILITY PROVISIONS.**

4 “The Bureau, any State official or agency, or any or-
5 ganization serving as the administrator of the Nationwide
6 Mortgage Licensing System and Registry or a system es-
7 tablished by the Director under section 1509, or any offi-
8 cer or employee of any such entity, shall not be subject
9 to any civil action or proceeding for monetary damages
10 by reason of the good faith action or omission of any offi-
11 cer or employee of any such entity, while acting within
12 the scope of office or employment, relating to the collec-
13 tion, furnishing, or dissemination of information con-
14 cerning persons who are loan originators or are applying
15 for licensing or registration as loan originators.”; and

16 (9) in section 1514 (12 U.S.C. 5113) in the
17 section heading, by striking “**UNDER HUD BACKUP**
18 **LICENSING SYSTEM**” and inserting “**BY THE BU-**
19 **REAU**”.

20 **SEC. 1099. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

21 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
22 is amended—

23 (1) in section 103 (5 U.S.C. 1602)—

1 (A) by redesignating subsections (b)
2 through (bb) as subsections (c) through (cc),
3 respectively; and

4 (B) by inserting after subsection (a) the
5 following:

6 “(b) BUREAU.—The term ‘Bureau’ means the Bu-
7 reau of Consumer Financial Protection.”;

8 (2) by striking “Board” each place that term
9 appears, other than in section 140(d) and section
10 108(a), as amended by this section, and inserting
11 “Bureau”;

12 (3) by striking “Federal Trade Commission”
13 each place that term appears, other than in section
14 108(c) and section 129(m), as amended by this Act,
15 and other than in the context of a reference to the
16 Federal Trade Commission Act, and inserting “Bu-
17 reau”;

18 (4) in section 105(a) (15 U.S.C. 1604(a)), in
19 the second sentence—

20 (A) by striking “Except in the case of a
21 mortgage referred to in section 103(aa), these
22 regulations may contain such” and inserting
23 “Except with respect to the provisions of sec-
24 tion 129 that apply to a mortgage referred to

1 in section 103(aa), such regulations may con-
2 tain such additional requirements,”; and

3 (B) by inserting “all or” after “exceptions
4 for”;

5 (5) in section 105(b) (15 U.S.C. 1604(b)), by
6 striking the first sentence and inserting the fol-
7 lowing: “The Bureau shall publish a single, inte-
8 grated disclosure for mortgage loan transactions (in-
9 cluding real estate settlement cost statements) which
10 includes the disclosure requirements of this title in
11 conjunction with the disclosure requirements of the
12 Real Estate Settlement Procedures Act of 1974
13 that, taken together, may apply to a transaction that
14 is subject to both or either provisions of law. The
15 purpose of such model disclosure shall be to facili-
16 tate compliance with the disclosure requirements of
17 this title and the Real Estate Settlement Procedures
18 Act of 1974, and to aid the borrower or lessee in un-
19 derstanding the transaction by utilizing readily un-
20 derstandable language to simplify the technical na-
21 ture of the disclosures.”;

22 (6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)),
23 by inserting “all or” after “from all or part of this
24 title”;

25 (7) in section 108 (15 U.S.C. 1607)—

1 (A) by striking subsection (a) and insert-
2 ing the following:

3 “(a) ENFORCING AGENCIES.—Except as otherwise
4 provided in subtitle B of the Consumer Financial Protec-
5 tion Act of 2010, compliance with the requirements im-
6 posed under this title shall be enforced under—

7 “(1) section 8 of the Federal Deposit Insurance
8 Act, in the case of—

9 “(A) any national bank, and Federal
10 branch or Federal agency of a foreign bank, by
11 the Office of the Comptroller of the Currency;

12 “(B) any member bank of the Federal Re-
13 serve System (other than a national bank), any
14 branch or agency of a foreign bank (other than
15 a Federal branch, Federal agency, or insured
16 State branch of a foreign bank), any commer-
17 cial lending company owned or controlled by a
18 foreign bank, and organizations operating
19 under section 25 or 25(a) of the Federal Re-
20 serve Act, by the Board; and

21 “(C) any bank insured by the Federal De-
22 posit Insurance Corporation (other than a
23 member of the Federal Reserve System) and an
24 insured State branch of a foreign bank, by the

1 Board of Directors of the Federal Deposit In-
2 surance Corporation;

3 “(2) subtitle E of the Consumer Financial Pro-
4 tection Act of 2010, by the Bureau;

5 “(3) the Federal Credit Union Act, by the Di-
6 rector of the National Credit Union Administration,
7 with respect to any Federal credit union;

8 “(4) the Federal Aviation Act of 1958, by the
9 Secretary of Transportation, with respect to any air
10 carrier or foreign air carrier subject to that Act;

11 “(5) the Packers and Stockyards Act, 1921 (ex-
12 cept as provided in section 406 of that Act), by the
13 Secretary of Agriculture, with respect to any activi-
14 ties subject to that Act; and

15 “(6) the Farm Credit Act of 1971, by the Farm
16 Credit Administration with respect to any Federal
17 land bank, Federal land bank association, Federal
18 intermediate credit bank, or production credit asso-
19 ciation.”; and

20 (B) by striking subsection (c) and insert-
21 ing the following:

22 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
23 FEDERAL TRADE COMMISSION.—Except to the extent
24 that enforcement of the requirements imposed under this
25 title is specifically committed to some other Government

1 agency under subsection (a), and subject to subtitle B of
2 the Consumer Financial Protection Act of 2010, the Fed-
3 eral Trade Commission shall enforce such requirements.
4 For the purpose of the exercise by the Federal Trade
5 Commission of its functions and powers under the Federal
6 Trade Commission Act, a violation of any requirement im-
7 posed under this title shall be deemed a violation of a re-
8 quirement imposed under that Act. All of the functions
9 and powers of the Federal Trade Commission under the
10 Federal Trade Commission Act are available to the Fed-
11 eral Trade Commission to enforce compliance by any per-
12 son with the requirements under this title, irrespective of
13 whether that person is engaged in commerce or meets any
14 other jurisdictional tests under the Federal Trade Com-
15 mission Act.”;

16 (8) in section 129 (15 U.S.C. 1639), by striking
17 subsection (m) and inserting the following:

18 “(m) CIVIL PENALTIES IN FEDERAL TRADE COM-
19 MISSION ENFORCEMENT ACTIONS.—For purposes of en-
20 forcement by the Federal Trade Commission, any violation
21 of a regulation issued by the Bureau pursuant to sub-
22 section (l)(2) shall be treated as a violation of a rule pro-
23 mulgated under section 18 of the Federal Trade Commis-
24 sion Act (15 U.S.C. 57a) regarding unfair or deceptive
25 acts or practices.”; and

1 (9) in chapter 5 (15 U.S.C. 1667 et seq.)—

2 (A) by striking “the Board” each place
3 that term appears and inserting “the Bureau”;
4 and

5 (B) by striking “The Board” each place
6 that term appears and inserting “The Bureau”.

7 **SEC. 1100. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

8 The Truth in Savings Act (12 U.S.C. 4301 et seq.)
9 is amended—

10 (1) by striking “Board” each place that term
11 appears and inserting “Bureau”;

12 (2) in section 270(a) (12 U.S.C. 4309)—

13 (A) by striking “Compliance” and insert-
14 ing “Except as otherwise provided in subtitle B
15 of the Consumer Financial Protection Act of
16 2010, compliance”;

17 (B) in paragraph (1)—

18 (i) in subparagraph (B), by striking
19 “and” at the end; and

20 (ii) by striking subparagraph (C);

21 (C) in paragraph (2), by striking the pe-
22 riod at the end and inserting “; and”; and

23 (D) by adding at the end the following:

24 “(3) subtitle E of the Consumer Financial Pro-
25 tection Act of 2010, by the Bureau.”;

1 (3) in section 272(b) (12 U.S.C. 4311(b)), by
 2 striking “regulation prescribed by the Board” each
 3 place that term appears and inserting “regulation
 4 prescribed by the Bureau”; and

5 (4) in section 274 (12 U.S.C. 4313), by striking
 6 paragraph (4) and inserting the following:

7 “(4) BUREAU.—The term ‘Bureau’ means the
 8 Bureau of Consumer Financial Protection.”.

9 **SEC. 1101. AMENDMENTS TO THE TELEMARKETING AND**
 10 **CONSUMER FRAUD AND ABUSE PREVENTION**
 11 **ACT.**

12 (a) AMENDMENTS TO SECTION 3.—Section 3 of the
 13 Telemarketing and Consumer Fraud and Abuse Preven-
 14 tion Act (15 U.S.C. 6102) is amended by striking sub-
 15 sections (b) and (c) and inserting the following:

16 “(b) RULEMAKING AUTHORITY.—The Commission
 17 shall have authority to prescribe rules under subsection
 18 (a), in accordance with section 553 of title 5, United
 19 States Code. In prescribing a rule under this section that
 20 relates to the provision of a consumer financial product
 21 or service that is subject to the Consumer Financial Pro-
 22 tection Act of 2010, including any enumerated consumer
 23 law thereunder, the Commission shall consult with the Bu-
 24 reau of Consumer Financial Protection regarding the con-
 25 sistency of a proposed rule with standards, purposes, or

1 objectives administered by the Bureau of Consumer Fi-
2 nancial Protection.

3 “(c) VIOLATIONS.—Any violation of any rule pre-
4 scribed under subsection (a)—

5 “(1) shall be treated as a violation of a rule
6 under section 18 of the Federal Trade Commission
7 Act regarding unfair or deceptive acts or practices;
8 and

9 “(2) that is committed by a person subject to
10 the Consumer Financial Protection Act of 2010
11 shall be treated as a violation of a rule under section
12 1031 of that Act regarding unfair, deceptive, or abu-
13 sive acts or practices.”.

14 (b) AMENDMENTS TO SECTION 4.—Section 4(d) of
15 the Telemarketing and Consumer Fraud and Abuse Pre-
16 vention Act (15 U.S.C. 6103(d)) is amended by inserting
17 after “Commission” each place that term appears the fol-
18 lowing: “or the Bureau of Consumer Financial Protec-
19 tion”.

20 (c) AMENDMENTS TO SECTION 5.—Section 5(c) of
21 the Telemarketing and Consumer Fraud and Abuse Pre-
22 vention Act (15 U.S.C. 6104(c)) is amended by inserting
23 after “Commission” each place that term appears the fol-
24 lowing: “or the Bureau of Consumer Financial Protec-
25 tion”.

1 (d) AMENDMENT TO SECTION 6.—Section 6 of the
 2 Telemarketing and Consumer Fraud and Abuse Preven-
 3 tion Act (15 U.S.C. 6105) is amended by adding at the
 4 end the following:

5 “(d) ENFORCEMENT BY BUREAU OF CONSUMER FI-
 6 NANCIAL PROTECTION.—Except as otherwise provided in
 7 sections 3(d), 3(e), 4, and 5, and subject to subtitle B
 8 of the Consumer Financial Protection Act of 2010, this
 9 Act shall be enforced by the Bureau of Consumer Finan-
 10 cial Protection under subtitle E of the Consumer Finan-
 11 cial Protection Act of 2010.”.

12 **SEC. 1102. AMENDMENTS TO THE PAPERWORK REDUCTION**
 13 **ACT.**

14 (a) DESIGNATION AS AN INDEPENDENT AGENCY.—
 15 Section 2(5) of the Paperwork Reduction Act (44 U.S.C.
 16 3502(5)) is amended by inserting “the Bureau of Con-
 17 sumer Financial Protection, the Office of Financial Re-
 18 search,” after “the Securities and Exchange Commis-
 19 sion,”.

20 (b) COMPARABLE TREATMENT.—Section 3513 of
 21 title 44, United States Code, is amended by adding at the
 22 end the following:

23 “(c) COMPARABLE TREATMENT.—Notwithstanding
 24 any other provision of law, the Director shall treat or re-
 25 view a rule or order prescribed or proposed by the Director

1 of the Bureau of Consumer Financial Protection on the
2 same terms and conditions as apply to any rule or order
3 prescribed or proposed by the Board of Governors of the
4 Federal Reserve System.”.

5 **SEC. 1103. ADJUSTMENTS FOR INFLATION IN THE TRUTH**
6 **IN LENDING ACT.**

7 (a) CAPS.—

8 (1) CREDIT TRANSACTIONS.—Section 104(3) of
9 the Truth in Lending Act (15 U.S.C. 1603(3)) is
10 amended by striking “\$25,000” and inserting
11 “\$50,000”.

12 (2) CONSUMER LEASES.—Section 181(1) of the
13 Truth in Lending Act (15 U.S.C. 1667(1)) is
14 amended by striking “\$25,000” and inserting
15 “\$50,000”.

16 (b) ADJUSTMENTS FOR INFLATION.—On and after
17 December 31, 2011, the Bureau may adjust annually the
18 dollar amounts described in sections 104(3) and 181(1)
19 of the Truth in Lending Act (as amended by this section),
20 by the annual percentage increase in the Consumer Price
21 Index for Urban Wage Earners and Clerical Workers, as
22 published by the Bureau of Labor Statistics, rounded to
23 the nearest multiple of \$100, or \$1,000, as applicable.

1 **SEC. 1104. EFFECTIVE DATE.**

2 Except as otherwise provided in this subtitle and the
3 amendments made by this subtitle, this subtitle and the
4 amendments made by this subtitle, other than sections
5 1081 and 1082, shall become effective on the designated
6 transfer date.

7 **TITLE XI—FEDERAL RESERVE**
8 **SYSTEM PROVISIONS**

9 **SEC. 1151. FEDERAL RESERVE ACT AMENDMENTS ON**
10 **EMERGENCY LENDING AUTHORITY.**

11 The third undesignated paragraph of section 13 of
12 the Federal Reserve Act (12 U.S.C. 343) (relating to
13 emergency lending authority) is amended—

14 (1) by inserting “(3)(A)” before “In unusual”;

15 (2) by striking “individual, partnership, or cor-
16 poration” the first place that term appears and in-
17 serting the following: “participant in any program or
18 facility with broad-based eligibility”;

19 (3) by striking “exchange for an individual or
20 a partnership or corporation” and inserting “ex-
21 change,”;

22 (4) by striking “such individual, partnership, or
23 corporation” and inserting the following: “such par-
24 ticipant in any program or facility with broad-based
25 eligibility”;

1 (5) by striking “for individuals, partnerships,
2 corporations” and inserting “for any participant in
3 any program or facility with broad-based eligibility”;

4 (6) by striking “may prescribe.” and inserting
5 the following: “may prescribe.

6 “(B)(i) As soon as is practicable after the
7 date of enactment of this subparagraph, the
8 Board shall establish, by regulation, in con-
9 sultation with the Secretary of the Treasury,
10 the policies and procedures governing emer-
11 gency lending under this paragraph. Such poli-
12 cies and procedures shall be designed to ensure
13 that any emergency lending program or facility
14 is for the purpose of providing liquidity to the
15 financial system, and not to aid a failing finan-
16 cial company, and that the collateral for emer-
17 gency loans is of sufficient quality to protect
18 taxpayers from losses.

19 “(ii) The Board may not establish any pro-
20 gram or facility under this paragraph without
21 the prior approval of the Secretary of the
22 Treasury.

23 “(C) The Board shall provide to the Com-
24 mittee on Banking, Housing, and Urban Affairs

1 of the Senate and the Committee on Financial
2 Services of the House of Representatives—

3 “(i) not later than 7 days after pro-
4 viding any loan or other financial assist-
5 ance under this paragraph, a report that
6 includes—

7 “(I) the justification for the exer-
8 cise of authority to provide such as-
9 sistance;

10 “(II) the identity of the recipi-
11 ents of such assistance, subject to
12 subparagraph (D);

13 “(III) the date and amount of
14 the assistance, and form in which the
15 assistance was provided; and

16 “(IV) the material terms of the
17 assistance, including—

18 “(aa) duration;

19 “(bb) collateral pledged and
20 the value thereof;

21 “(cc) all interest, fees, and
22 other revenue or items of value to
23 be received in exchange for the
24 assistance;

1 “(dd) any requirements im-
2 posed on the recipient with re-
3 spect to employee compensation,
4 distribution of dividends, or any
5 other corporate decision in ex-
6 change for the assistance; and

7 “(ee) the expected costs to
8 the taxpayers of such assistance;
9 and

10 “(ii) once every 30 days, with respect
11 to any outstanding loan or other financial
12 assistance under this paragraph, written
13 updates on—

14 “(I) the value of collateral;

15 “(II) the amount of interest,
16 fees, and other revenue or items of
17 value received in exchange for the as-
18 sistance; and

19 “(III) the expected or final cost
20 to the taxpayers of such assistance.

21 “(D)(i) The Board shall disclose, not later
22 than 1 year after the date on which assistance
23 was first received under the program or facility,
24 unless the Board determines that such disclo-
25 sure likely would reduce the effectiveness of the

1 program or facility in addressing or mitigating
2 the financial market disruptions, financial mar-
3 ket conditions, or other unusual and exigent cir-
4 cumstances sought to be addressed or mitigated
5 by the program or facility, or would otherwise
6 have a significant effect on economic or finan-
7 cial market conditions—

8 “(I) the identity of the participants in
9 an emergency lending program or facility
10 commenced under this paragraph;

11 “(II) the amounts borrowed by each
12 participant in any such program or facility;
13 and

14 “(III) identifying details concerning
15 the assets or collateral held by, under, or
16 in connection with such a program or facil-
17 ity within 1 year of the date on which as-
18 sistance was first received under the pro-
19 gram or facility.

20 “(ii) If the Board determines not to make
21 the disclosures required by clause (i) within 1
22 year of the date on which a participant first re-
23 ceived assistance under a program or facility,
24 the Board shall—

1 “(I) provide to the Committee on
2 Banking, Housing, and Urban Affairs of
3 the Senate and the Committee on Finan-
4 cial Services of the House of Representa-
5 tives a written report explaining the rea-
6 sons for delaying the disclosures about
7 such program or facility not later than 30
8 days after making such determination; and

9 “(II) provide to the Committee on
10 Banking, Housing, and Urban Affairs of
11 the Senate and the Committee on Finan-
12 cial Services of the House of Representa-
13 tives each year thereafter a written report
14 explaining the reasons for continuing to
15 delay disclosure, until the disclosures are
16 complete.

17 “(iii) The disclosures required by clause (i)
18 shall be made not later than 12 months after
19 the effective date of the termination of the facil-
20 ity by the Board.

21 “(iv) If the Board determines not to make
22 the disclosures required by clause (i), the
23 Comptroller General of the United States shall
24 issue a report to the Committee on Banking,
25 Housing, and Urban Affairs of the Senate and

1 the Committee on Financial Services of the
 2 House of Representatives evaluating whether
 3 that determination is reasonable.”.

4 **SEC. 1152. REVIEWS OF SPECIAL FEDERAL RESERVE CRED-**
 5 **IT FACILITIES.**

6 (a) REVIEWS.—Section 714 of title 31, United States
 7 Code, is amended by adding at the end the following:

8 “(f) REVIEWS OF CREDIT FACILITIES OF THE FED-
 9 ERAL RESERVE SYSTEM.—

10 “(1) DEFINITION.—In this subsection, the term
 11 ‘credit facility’ means a program or facility, includ-
 12 ing any special purpose vehicle or other entity estab-
 13 lished by or on behalf of the Board of Governors of
 14 the Federal Reserve System or a Federal reserve
 15 bank, authorized by the Board of Governors under
 16 the third undesignated paragraph of section 13 of
 17 the Federal Reserve Act (12 U.S.C. 343), that is not
 18 subject to audit under subsection (e), including—

19 “(A) the Asset-Backed Commercial Paper
 20 Money Market Mutual Fund Liquidity Facility;

21 “(B) the Term Asset-Backed Securities
 22 Loan Facility;

23 “(C) the Primary Dealer Credit Facility;

24 “(D) the Commercial Paper Funding Fa-
 25 cility; and

1 “(E) the Term Securities Lending Facility.

2 “(2) AUTHORITY FOR REVIEWS AND EXAMINA-
3 TIONS.—Subject to paragraph (3), and notwith-
4 standing any limitation in subsection (b) on the au-
5 diting and oversight of certain functions of the
6 Board of Governors of the Federal Reserve System
7 or any Federal reserve bank, the Comptroller Gen-
8 eral of the United States may conduct reviews, in-
9 cluding onsite examinations, of the Board of Gov-
10 ernors, a Federal reserve bank, or a credit facility,
11 if the Comptroller General determines that such re-
12 views are appropriate, solely for the purposes of as-
13 sessing, with respect to a credit facility—

14 “(A) the operational integrity, accounting,
15 financial reporting, and internal controls of the
16 credit facility;

17 “(B) the effectiveness of the collateral poli-
18 cies established for the facility in mitigating
19 risk to the relevant Federal reserve bank and
20 taxpayers;

21 “(C) whether the credit facility inappropri-
22 ately favors one or more specific participants
23 over other institutions eligible to utilize the fa-
24 cility; and

1 “(D) the policies governing the use, selec-
2 tion, or payment of third-party contractors by
3 or for any credit facility.

4 “(3) REPORTS AND DELAYED DISCLOSURE.—

5 “(A) REPORTS REQUIRED.—A report on
6 each review conducted under paragraph (2)
7 shall be submitted by the Comptroller General
8 to the Congress before the end of the 90-day
9 period beginning on the date on which such re-
10 view is completed.

11 “(B) CONTENTS.—The report under sub-
12 paragraph (A) shall include a detailed descrip-
13 tion of the findings and conclusions of the
14 Comptroller General with respect to the matters
15 described in paragraph (2) that were reviewed
16 and are the subject of the report, together with
17 such recommendations for legislative or admin-
18 istrative action relating to such matters as the
19 Comptroller General may determine to be ap-
20 propriate.

21 “(C) DELAYED RELEASE OF CERTAIN IN-
22 FORMATION.—

23 “(i) IN GENERAL.—The Comptroller
24 General shall not disclose to any person or
25 entity, including to Congress, the names or

1 identifying details of specific participants
2 in any credit facility, the amounts bor-
3 rowed by specific participants in any credit
4 facility, or identifying details regarding as-
5 sets or collateral held by, under, or in con-
6 nection with any credit facility, and any re-
7 port provided under subparagraph (A)
8 shall be redacted to ensure that such
9 names and details are not disclosed.

10 “(ii) DELAYED RELEASE.—The non-
11 disclosure obligation under clause (i) shall
12 expire with respect to any participant on
13 the date on which the Board of Governors,
14 directly or through a Federal reserve bank,
15 publicly discloses the identity of the subject
16 participant or the identifying details of the
17 subject assets or collateral.

18 “(iii) GENERAL RELEASE.—The
19 Comptroller General shall release a non-
20 redacted version of any report on a credit
21 facility 1 year after the effective date of
22 the termination by the Board of Governors
23 of the authorization for the credit facility.
24 For purposes of this clause, a credit facil-
25 ity shall be deemed to have terminated 24

1 months after the date on which the credit
 2 facility ceases to make extensions of credit
 3 and loans, unless the credit facility is oth-
 4 erwise terminated by the Board of Gov-
 5 ernors.

6 “(iv) EXCEPTIONS.—The nondislo-
 7 sure obligation under clause (i) shall not
 8 apply to the credit facilities Maiden Lane,
 9 Maiden Lane II, and Maiden Lane III.”.

10 (b) ACCESS TO RECORDS.—Section 714(d) of title
 11 31, United States Code, is amended—

12 (1) in paragraph (2), by inserting “or any per-
 13 son or entity described in paragraph (3)(A)” after
 14 “used by an agency”;

15 (2) in paragraph (3), by inserting “or (f)” after
 16 “subsection (e)” each place that term appears; and

17 (3) in paragraph (3)(B), by adding at the end
 18 the following: “The Comptroller General may make
 19 and retain copies of books, accounts, and other
 20 records provided under subparagraph (A) as the
 21 Comptroller General deems appropriate. The Comp-
 22 troller General shall provide to any person or entity
 23 described in subparagraph (A) a current list of offi-
 24 cers and employees to whom, with proper identifica-
 25 tion, records and property may be made available,

1 and who may make notes or copies necessary to
2 carry out a review or examination under this sub-
3 section.”.

4 **SEC. 1153. PUBLIC ACCESS TO INFORMATION.**

5 Section 2B of the Federal Reserve Act (12 U.S.C.
6 225b) is amended by adding at the end the following:

7 “(c) PUBLIC ACCESS TO INFORMATION.—The Board
8 shall place on its home Internet website, a link entitled
9 ‘Audit’, which shall link to a webpage that shall serve as
10 a repository of information made available to the public
11 for a reasonable period of time, not less than 6 months
12 following the date of release of the relevant information,
13 including—

14 “(1) the reports prepared by the Comptroller
15 General under section 714 of title 31, United States
16 Code;

17 “(2) the annual financial statements prepared
18 by an independent auditor for the Board in accord-
19 ance with section 11B;

20 “(3) the reports to the Committee on Banking,
21 Housing, and Urban Affairs of the Senate required
22 under the third undesignated paragraph of section
23 13 (relating to emergency lending authority); and

24 “(4) such other information as the Board rea-
25 sonably believes is necessary or helpful to the public

1 in understanding the accounting, financial reporting,
2 and internal controls of the Board and the Federal
3 reserve banks.”.

4 **SEC. 1154. LIQUIDITY EVENT DETERMINATION.**

5 (a) DETERMINATION AND WRITTEN RECOMMENDA-
6 TION.—

7 (1) DETERMINATION REQUEST.—The Secretary
8 may request the Corporation and the Board of Gov-
9 ernors to determine whether a liquidity event exists
10 that warrants use of the guarantee program author-
11 ized under section 1155.

12 (2) REQUIREMENTS OF DETERMINATION.—Any
13 determination pursuant to paragraph (1) shall—

14 (A) be written; and

15 (B) contain an evaluation of the evidence
16 that—

17 (i) a liquidity event exists;

18 (ii) failure to take action would have
19 serious adverse effects on financial stability
20 or economic conditions in the United
21 States; and

22 (iii) actions authorized under section
23 1155 are needed to avoid or mitigate po-
24 tential adverse effects on the United States
25 financial system or economic conditions.

1 (b) PROCEDURES.—Notwithstanding any other provi-
2 sion of Federal or State law, upon the determination of
3 both the Corporation (upon a vote of not fewer than $\frac{2}{3}$
4 of the members of the Corporation then serving) and the
5 Board of Governors (upon a vote of not fewer than $\frac{2}{3}$
6 of the members of the Board of Governors then serving)
7 under subsection (a) that a liquidity event exists that war-
8 rants use of the guarantee program authorized under sec-
9 tion 1155, and with the written consent of the Secretary—

10 (1) the Corporation shall take action in accord-
11 ance with section 1155(a); and

12 (2) the Secretary (in consultation with the
13 President) shall take action in accordance with sec-
14 tion 1155(c).

15 (c) DOCUMENTATION AND REVIEW.—

16 (1) DOCUMENTATION.—The Secretary shall—

17 (A) maintain the written documentation of
18 each determination of the Corporation and the
19 Board of Governors under this section; and

20 (B) provide the documentation for review
21 under paragraph (2).

22 (2) GAO REVIEW.—The Comptroller General of
23 the United States shall review and report to Con-
24 gress on any determination of the Corporation and

1 the Board of Governors under subsection (a), includ-
2 ing—

3 (A) the basis for the determination; and

4 (B) the likely effect of the actions taken.

5 (d) REPORT TO CONGRESS.—On the earlier of the
6 date of a submission made to Congress under section
7 1155(c), or within 30 days of the date of a determination
8 under subsection (a), the Secretary shall provide written
9 notice of the determination of the Corporation and the
10 Board of Governors to the Committee on Banking, Hous-
11 ing, and Urban Affairs of the Senate and the Committee
12 on Financial Services of the House of Representatives, in-
13 cluding a description of the basis for the determination.

14 **SEC. 1155. EMERGENCY FINANCIAL STABILIZATION.**

15 (a) IN GENERAL.—Upon the written determination
16 of the Corporation and the Board of Governors under sec-
17 tion 1154, the Corporation shall create a widely available
18 program to guarantee obligations of solvent insured depos-
19 itory institutions or solvent depository institution holding
20 companies (including any affiliates thereof) during times
21 of severe economic distress, except that a guarantee of ob-
22 ligations under this section may not include the provision
23 of equity in any form.

24 (b) RULEMAKING AND TERMS AND CONDITIONS.—

1 (1) POLICIES AND PROCEDURES.—As soon as is
2 practicable after the date of enactment of this Act,
3 the Corporation shall establish, by regulation, and in
4 consultation with the Secretary, policies and proce-
5 dures governing the issuance of guarantees author-
6 ized by this section. Such policies and procedures
7 may include a requirement of collateral as a condi-
8 tion of any such guarantee.

9 (2) TERMS AND CONDITIONS.—The terms and
10 conditions of any guarantee program shall be estab-
11 lished by the Corporation, with the concurrence of
12 the Secretary.

13 (c) DETERMINATION OF GUARANTEED AMOUNT.—

14 (1) IN GENERAL.—In connection with any pro-
15 gram established pursuant to subsection (a) and
16 subject to paragraph (2) of this subsection, the Sec-
17 retary (in consultation with the President) shall de-
18 termine the maximum amount of debt outstanding
19 that the Corporation may guarantee under this sec-
20 tion, and the President may transmit to Congress a
21 written report on the plan of the Corporation to ex-
22 ercise the authority under this section to issue guar-
23 antees up to that maximum amount. Upon the expi-
24 ration of the 5-calendar-day period beginning on the
25 date on which Congress receives the report on the

1 plan of the Corporation, the Corporation may exer-
2 cise the authority under this section to issue guaran-
3 tees up to that specified maximum amount, unless
4 there is enacted, within that 5-calendar-day period,
5 a joint resolution disapproving such report, as pro-
6 vided in subsection (d).

7 (2) ADDITIONAL DEBT GUARANTEE AUTHOR-
8 ITY.—If the Secretary (in consultation with the
9 President) determines, after a submission to Con-
10 gress under paragraph (1), that the maximum guar-
11 antee amount should be raised, and the Council con-
12 curs with that determination, the President may
13 transmit to Congress a written report on the plan of
14 the Corporation to exercise the authority under this
15 section to issue guarantees up to the increased max-
16 imum debt guarantee amount. Upon the expiration
17 of the 5-calendar-day period beginning on the date
18 on which Congress receives the report on the plan of
19 the Corporation, the Corporation may exercise the
20 authority under this section to issue guarantees up
21 to that specified maximum amount, unless there is
22 enacted, within that 5-calendar-day period, a joint
23 resolution disapproving such report, as provided in
24 subsection (d).

25 (d) JOINT RESOLUTION.—

1 (1) FAST TRACK CONSIDERATION IN HOUSE OF
2 REPRESENTATIVES.—

3 (A) CONTENTS OF JOINT RESOLUTION.—

4 For purposes of this section, the term “joint
5 resolution” means only a joint resolution—

6 (i) that is introduced not later than 3
7 calendar days after the date on which the
8 report of the Secretary referred to in sec-
9 tion 1154(d) is received by Congress;

10 (ii) that does not have a preamble;

11 (iii) the title of which is as follows:

12 “Joint resolution relating to the dis-
13 approval of a plan to guarantee obligations
14 under section 1155 of the Restoring Amer-
15 ican Financial Stability Act of 2010”; and

16 (iv) the matter after the resolving
17 clause of which is as follows: “That Con-
18 gress disapproves the obligation of any
19 amount described in section 1155(c) of the
20 Restoring American Financial Stability Act
21 of 2010.”.

22 (B) RECONVENING.—Upon receipt of a re-
23 port under subsection (c), the Speaker, if the
24 House of Representatives would otherwise be
25 adjourned, shall notify the Members of the

1 House of Representatives that, pursuant to this
2 section, the House of Representatives shall con-
3 vene not later than the second calendar day
4 after the date of receipt of such report.

5 (C) REPORTING AND DISCHARGE.—Any
6 committee of the House of Representatives to
7 which a joint resolution is referred shall report
8 it to the House of Representatives not later
9 than 4 calendar days after the date of receipt
10 of the report under subsection (c). If a com-
11 mittee fails to report the joint resolution within
12 that period, the committee shall be discharged
13 from further consideration of the joint resolu-
14 tion and the joint resolution shall be referred to
15 the appropriate calendar.

16 (D) PROCEEDING TO CONSIDERATION.—
17 After each committee authorized to consider a
18 joint resolution reports it to the House of Rep-
19 resentatives or has been discharged from its
20 consideration, it shall be in order, not later
21 than the 5th day after Congress receives the re-
22 port under subsection (c), to move to proceed to
23 consider the joint resolution in the House of
24 Representatives. All points of order against the
25 motion are waived. Such a motion shall not be

1 in order after the House of Representatives has
2 disposed of a motion to proceed on the joint
3 resolution. The previous question shall be con-
4 sidered as ordered on the motion to its adoption
5 without intervening motion. The motion shall
6 not be debatable. A motion to reconsider the
7 vote by which the motion is disposed of shall
8 not be in order.

9 (E) CONSIDERATION.—The joint resolution
10 shall be considered as read. All points of order
11 against the joint resolution and against its con-
12 sideration are waived. The previous question
13 shall be considered as ordered on the joint reso-
14 lution to its passage without intervening motion
15 except 2 hours of debate equally divided and
16 controlled by the proponent and an opponent. A
17 motion to reconsider the vote on passage of the
18 joint resolution shall not be in order.

19 (2) FAST TRACK CONSIDERATION IN SENATE.—

20 (A) RECONVENING.—Upon receipt of a re-
21 port under subsection (c), if the Senate has ad-
22 journed or recessed for more than 2 days, the
23 majority leader of the Senate, after consultation
24 with the minority leader of the Senate, shall no-
25 tify the Members of the Senate that, pursuant

1 to this section, the Senate shall convene not
2 later than the second calendar day after receipt
3 of such message.

4 (B) PLACEMENT ON CALENDAR.—Upon in-
5 troduction in the Senate, the joint resolution
6 shall be placed immediately on the calendar.

7 (C) FLOOR CONSIDERATION.—

8 (i) IN GENERAL.—Notwithstanding
9 Rule XXII of the Standing Rules of the
10 Senate, it is in order at any time during
11 the period beginning on the 4th day after
12 the date on which Congress receives a re-
13 port under subsection (c), and ending on
14 the 5th day after the date on which Con-
15 gress receives a report under subsection (c)
16 (even though a previous motion to the
17 same effect has been disagreed to) to move
18 to proceed to the consideration of the joint
19 resolution, and all points of order against
20 the joint resolution (and against consider-
21 ation of the joint resolution) are waived.
22 The motion to proceed is not debatable.
23 The motion is not subject to a motion to
24 postpone. A motion to reconsider the vote
25 by which the motion is agreed to or dis-

1 agreed to shall not be in order. If a motion
2 to proceed to the consideration of the reso-
3 lution is agreed to, the joint resolution
4 shall remain the unfinished business until
5 disposed of.

6 (ii) DEBATE.—Debate on the joint
7 resolution, and on all debatable motions
8 and appeals in connection therewith, shall
9 be limited to not more than 10 hours,
10 which shall be divided equally between the
11 majority and minority leaders or their des-
12 ignees. A motion further to limit debate is
13 in order and not debatable. An amendment
14 to, or a motion to postpone, or a motion to
15 proceed to the consideration of other busi-
16 ness, or a motion to recommit the joint
17 resolution is not in order.

18 (iii) VOTE ON PASSAGE.—The vote on
19 passage shall occur immediately following
20 the conclusion of the debate on the joint
21 resolution, and a single quorum call at the
22 conclusion of the debate if requested in ac-
23 cordance with the rules of the Senate.

24 (iv) RULINGS OF THE CHAIR ON PRO-
25 CEDURE.—Appeals from the decisions of

1 the Chair relating to the application of the
2 rules of the Senate, as the case may be, to
3 the procedure relating to a joint resolution
4 shall be decided without debate.

5 (3) RULES RELATING TO SENATE AND HOUSE
6 OF REPRESENTATIVES.—

7 (A) COORDINATION WITH ACTION BY
8 OTHER HOUSE.—If, before the passage by one
9 House of a joint resolution of that House, that
10 House receives from the other House a joint
11 resolution, then the following procedures shall
12 apply:

13 (i) The joint resolution of the other
14 House shall not be referred to a com-
15 mittee.

16 (ii) With respect to a joint resolution
17 of the House receiving the resolution—

18 (I) the procedure in that House
19 shall be the same as if no joint resolu-
20 tion had been received from the other
21 House; but

22 (II) the vote on passage shall be
23 on the joint resolution of the other
24 House.

1 (B) TREATMENT OF JOINT RESOLUTION
2 OF OTHER HOUSE.—If one House fails to intro-
3 duce or consider a joint resolution under this
4 section, the joint resolution of the other House
5 shall be entitled to expedited floor procedures
6 under this section.

7 (C) TREATMENT OF COMPANION MEAS-
8 URES.—If, following passage of the joint resolu-
9 tion in the Senate, the Senate then receives the
10 companion measure from the House of Rep-
11 resentatives, the companion measure shall not
12 be debatable.

13 (D) CONSIDERATION AFTER PASSAGE.—

14 (i) IN GENERAL.—If Congress passes
15 a joint resolution, the period beginning on
16 the date the President is presented with
17 the joint resolution and ending on the date
18 the President takes action with respect to
19 the joint resolution shall be disregarded in
20 computing the 5-day period described in
21 subsection (c).

22 (ii) VETOES.—If the President vetoes
23 the joint resolution—

24 (I) the period beginning on the
25 date the President vetoes the joint

1 resolution and ending on the date the
2 Congress receives the veto message
3 with respect to the joint resolution
4 shall be disregarded in computing the
5 5-day period described in subsection
6 (c); and

7 (II) debate on a veto message in
8 the Senate under this section shall be
9 1 hour equally divided between the
10 majority and minority leaders or their
11 designees.

12 (E) RULES OF HOUSE OF REPRESENTA-
13 TIVES AND SENATE.—This subsection is en-
14 acted by Congress—

15 (i) as an exercise of the rulemaking
16 power of the Senate and House of Rep-
17 resentatives, respectively, and as such it is
18 deemed a part of the rules of each House,
19 respectively, but applicable only with re-
20 spect to the procedure to be followed in
21 that House in the case of a joint resolu-
22 tion, and it supersedes other rules only to
23 the extent that it is inconsistent with such
24 rules; and

1 (ii) with full recognition of the con-
2 stitutional right of either House to change
3 the rules (so far as relating to the proce-
4 dure of that House) at any time, in the
5 same manner, and to the same extent as in
6 the case of any other rule of that House.

7 (e) FUNDING.—

8 (1) FEES AND OTHER CHARGES.—The Corpora-
9 tion shall charge fees and other assessments to all
10 participants in the program established pursuant to
11 this section, in such amounts as are necessary to off-
12 set projected losses and administrative expenses, in-
13 cluding amounts borrowed pursuant to paragraph
14 (3), and such amounts shall be available to the Cor-
15 poration.

16 (2) EXCESS FUNDS.—If, at the conclusion of
17 the program established under this section, there are
18 any excess funds collected from the fees associated
19 with such program, the funds shall be deposited in
20 the General Fund of the Treasury.

21 (3) AUTHORITY OF CORPORATION.—The Cor-
22 poration—

23 (A) may borrow funds from the Secretary
24 of the Treasury and issue obligations of the
25 Corporation to the Secretary for amounts bor-

1 rowed, and the amounts borrowed shall be
2 available to the Corporation for purposes of car-
3 rying out a program established pursuant to
4 this section, including the payment of reason-
5 able costs of administering the program, and
6 the obligations issued shall be repaid in full
7 with interest through fees and charges paid by
8 participants in accordance with paragraphs (1)
9 and (4), as applicable; and

10 (B) may not borrow funds from the De-
11 posit Insurance Fund established pursuant to
12 section 11(a)(4) of the Federal Deposit Insur-
13 ance Act.

14 (4) BACKUP SPECIAL ASSESSMENTS.—To the
15 extent that the funds collected pursuant to para-
16 graph (1) are insufficient to cover any losses or ex-
17 penses, including amounts borrowed pursuant to
18 paragraph (3), arising from a program established
19 pursuant to this section, the Corporation shall im-
20 pose a special assessment solely on participants in
21 the program, in amounts necessary to address such
22 insufficiency, and which shall be available to the
23 Corporation to cover such losses or expenses.

24 (5) AUTHORITY OF THE SECRETARY.—The Sec-
25 retary may purchase any obligations issued under

1 paragraph (3)(A). For such purpose, the Secretary
2 may use the proceeds of the sale of any securities
3 issued under chapter 31 of title 31, United States
4 Code, and the purposes for which securities may be
5 issued under that chapter 31 are extended to include
6 such purchases, and the amount of any securities
7 issued under that chapter 31 for such purpose shall
8 be treated in the same manner as securities issued
9 under section 208(n)(3)(B).

10 (f) RULE OF CONSTRUCTION.—For purposes of this
11 section, a guarantee of deposits held by insured depository
12 institutions shall not be treated as a debt guarantee pro-
13 gram.

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

16 (1) COMPANY.—The term “company” means
17 any entity other than a natural person that is incor-
18 porated or organized under Federal law or the laws
19 of any State.

20 (2) DEPOSITORY INSTITUTION HOLDING COM-
21 PANY.—The term “depository institution holding
22 company” has the same meaning as in section 3 of
23 the Federal Deposit Insurance Act (12 U.S.C.
24 1813).

1 (3) LIQUIDITY EVENT.—The term “liquidity
2 event” means—

3 (A) a reduction in the usual ability of fi-
4 nancial market participants—

5 (i) to sell a type of financial asset,
6 without a significant reduction in price; or

7 (ii) to borrow using that type of asset
8 as collateral without a significant increase
9 in margin; or

10 (B) a significant reduction in the usual
11 ability of financial and nonfinancial market par-
12 ticipants to obtain unsecured credit.

13 (4) SOLVENT.—The term “solvent” means that
14 the value of the assets of an entity exceed its obliga-
15 tions to creditors.

16 **SEC. 1156. ADDITIONAL RELATED AMENDMENTS.**

17 (a) SUSPENSION OF PARALLEL FEDERAL DEPOSIT
18 INSURANCE ACT AUTHORITY.—Effective upon the date of
19 enactment of this section, the Corporation may not exer-
20 cise its authority under section 13(c)(4)(G)(i) of the Fed-
21 eral Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i))
22 to establish any widely available debt guarantee program
23 for which section 1155 would provide authority.

24 (b) MITIGATION.—Section 13(c)(4)(G)(i) of the Fed-
25 eral Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i))

1 is amended by striking “such effects.” and inserting “such
2 effects, provided the insured depository institution has
3 been placed in receivership.”.

4 (c) EFFECT OF DEFAULT ON AN FDIC GUAR-
5 ANTEE.—If an insured depository institution or depository
6 institution holding company (as those terms are defined
7 in section 3 of the Federal Deposit Insurance Act) partici-
8 pating in a program under section 1155, or any partici-
9 pant in a debt guarantee program established pursuant
10 to section 13(c)(4)(G)(i) of the Federal Deposit Insurance
11 Act defaults on any obligation guaranteed by the Corpora-
12 tion after the date of enactment of this Act, the Corpora-
13 tion shall—

14 (1) appoint itself as receiver for the insured de-
15 pository institution that defaults; and

16 (2) with respect to any other participating com-
17 pany that is not an insured depository institution
18 that defaults—

19 (A) require—

20 (i) consideration of whether a deter-
21 mination shall be made, as provided in sec-
22 tion 202 to resolve the company under sec-
23 tion 203; and

24 (ii) the company to file a petition for
25 bankruptcy under section 301 of title 11,

1 United States Code, if the Corporation is
 2 not appointed receiver pursuant to section
 3 203 within 30 days of the date of default;
 4 or

5 (B) file a petition for involuntary bank-
 6 ruptcy on behalf of the company under section
 7 303 of title 11, United States Code.

8 **SEC. 1157. FEDERAL RESERVE ACT AMENDMENTS ON FED-**
 9 **ERAL RESERVE BANK GOVERNANCE.**

10 The Federal Reserve Act (12 U.S.C. 221 et seq.) is
 11 amended in section 4 by adding at the end the following:

12 “(25) SELECTION OF THE PRESIDENT OF THE
 13 FEDERAL RESERVE BANK OF NEW YORK.—Notwith-
 14 standing any other provision of this section, after
 15 the date of enactment of the Restoring American Fi-
 16 nancial Stability Act of 2010, the president of the
 17 Federal Reserve Bank of New York shall be ap-
 18 pointed by the President, by and with the advice and
 19 consent of the Senate, for terms of 5 years.

20 “(26) LIMITATION ON ELIGIBILITY TO VOTE
 21 FOR OR SERVE AS A FEDERAL RESERVE BANK DI-
 22 RECTOR.—Notwithstanding any other provision of
 23 this section, after the date of enactment of the Re-
 24 storing American Financial Stability Act of 2010, no
 25 company, or subsidiary or affiliate of a company

1 that is supervised by the Board, may vote for mem-
 2 bers of the board of directors of a Federal reserve
 3 bank, and no past or current officer, director, or em-
 4 ployee of such company, or subsidiary or affiliate of
 5 such company, may serve as a member of the board
 6 of directors of a Federal reserve bank.”.

7 **SEC. 1158. AMENDMENTS TO THE FEDERAL RESERVE ACT**
 8 **RELATING TO SUPERVISION AND REGULA-**
 9 **TION POLICY.**

10 (a) ESTABLISHMENT OF THE POSITION OF VICE
 11 CHAIRMAN FOR SUPERVISION.—

12 (1) POSITION ESTABLISHED.—The second un-
 13 designated paragraph of section 10 of the Federal
 14 Reserve Act (12 U.S.C. 242) (relating to the Chair-
 15 man and Vice Chairman of the Board) is amended
 16 by striking the third sentence and inserting the fol-
 17 lowing: “Of the persons thus appointed, 1 shall be
 18 designated by the President, by and with the advice
 19 and consent of the Senate, to serve as Chairman of
 20 the Board for a term of 4 years, and 2 shall be des-
 21 ignated by the President, by and with the advice and
 22 consent of the Senate, to serve as Vice Chairmen of
 23 the Board, each for a term of 4 years, 1 of whom
 24 shall serve in the absence of the Chairman, as pro-
 25 vided in the fourth undesignated paragraph of this

1 section, and 1 of whom shall be designated Vice
2 Chairman for Supervision. The Vice Chairman for
3 Supervision shall develop policy recommendations for
4 the Board regarding supervision and regulation of
5 depository institution holding companies and other
6 financial firms supervised by the Board, and shall
7 oversee the supervision and regulation of such
8 firms.”.

9 (2) EFFECTIVE DATE.—The amendment made
10 by subsection (a) takes effect on the date of enact-
11 ment of this title and applies to individuals who are
12 designated by the President on or after that date to
13 serve as Vice Chairman of Supervision.

14 (b) FINANCIAL STABILITY AS BOARD FUNCTION.—
15 Section 10 of the Federal Reserve Act (12 U.S.C. 241)
16 is amended by adding at the end the following:

17 “(11) FINANCIAL STABILITY FUNCTION.—The
18 Board of Governors shall identify, measure, monitor,
19 and mitigate risks to the financial stability of the
20 United States.”.

21 (c) APPEARANCES BEFORE CONGRESS.—Section 10
22 of the Federal Reserve Act (12 U.S.C. 241) is amended
23 by adding at the end the following:

24 “(12) APPEARANCES BEFORE CONGRESS.—The
25 Vice Chairman for Supervision shall appear before

1 the Committee on Banking, Housing, and Urban Af-
 2 fairs of the Senate and the Committee on Financial
 3 Services of the House of Representatives and at
 4 semi-annual hearings regarding the efforts, activi-
 5 ties, objectives, and plans of the Board with respect
 6 to the conduct of supervision and regulation of de-
 7 pository institution holding companies and other fi-
 8 nancial firms supervised by the Board.”.

9 (d) BOARD RESPONSIBILITY TO SET SUPERVISION
 10 AND REGULATORY POLICY.—Section 11 of the Federal
 11 Reserve Act (12 U.S.C. 248) (relating to enumerated pow-
 12 ers of the Board) is amended by adding at the end of sub-
 13 section (k) (relating to delegation) the following: “The
 14 Board of Governors may not delegate to a Federal reserve
 15 bank its functions for the establishment of policies for the
 16 supervision and regulation of depository institution hold-
 17 ing companies and other financial firms supervised by the
 18 Board of Governors.”.

19 **TITLE XII—IMPROVING ACCESS**
 20 **TO MAINSTREAM FINANCIAL**
 21 **INSTITUTIONS**

22 **SECTION 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
3 for financial products and services that are appropriate
4 and accessible for millions of Americans who are not fully
5 incorporated 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 en-
10 tity 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
13 account (including a money market savings ac-
14 count), an account for a closed-end loan, and other
15 products or services, as the Secretary deems appro-
16 priate.

17 (2) **COMMUNITY DEVELOPMENT FINANCIAL IN-**
18 **STITUTION.**—The term “community development fi-
19 nancial institution” has the same meaning as in sec-
20 tion 103(5) of the Community Development Banking
21 and Financial Institutions Act of 1994 (12 U.S.C.
22 4702(5)).

23 (3) **ELIGIBLE ENTITY.**—The term “eligible enti-
24 ty” means—

25 (A) an organization described in section
26 501(c)(3) of the Internal Revenue Code of

1 1986, and exempt from tax under section
2 501(a) of 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 Sec-
13 retary under this title.

14 (4) **FEDERALLY INSURED DEPOSITORY INSTI-**
15 **TUTION.**—The term “federally insured depository in-
16 stitution” means any insured depository institution
17 (as that term is defined in section 3 of the Federal
18 Deposit Insurance Act (12 U.S.C. 1813)) and any
19 insured credit union (as that term is defined in sec-
20 tion 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
 2 the consumer, in the amount of the advance
 3 plus a fee, where presentment or negotiation of
 4 such check or share draft is deferred by agree-
 5 ment of the parties until a designated future
 6 date; or

7 (B) the authorization of the consumer to
 8 debit the transaction account or share draft ac-
 9 count of the consumer, in the amount of the ad-
 10 vance plus a fee, where such account will be
 11 debited on or after a designated future date.

12 **SEC. 1204. EXPANDED ACCESS TO MAINSTREAM FINANCIAL**
 13 **INSTITUTIONS.**

14 (a) IN GENERAL.—The Secretary is authorized to es-
 15 tablish a multiyear program of grants, cooperative agree-
 16 ments, financial agency agreements, and similar contracts
 17 or undertakings to promote initiatives designed—

18 (1) to enable low- and moderate-income individ-
 19 uals to establish one or more accounts in a federally
 20 insured depository institution that are appropriate to
 21 meet the financial needs of such individuals; and

22 (2) to improve access to the provision of ac-
 23 counts, on reasonable terms, for low- and moderate-
 24 income individuals.

25 (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 regula-
4 tions prescribed by the Secretary under this title, 1
5 or more eligible entities may participate in 1 or sev-
6 eral programs established under subsection (a).

7 (2) ACCOUNT ACTIVITIES.—Subject to regula-
8 tions prescribed by the Secretary, an eligible entity
9 may, in participating in a program established under
10 subsection (a), offer or provide to low- and mod-
11 erate-income individuals products and services relat-
12 ing to accounts, 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
22 eligible entities to provide low-cost, small loans to con-
23 sumers that will provide alternatives to more costly payday
24 loans.

25 (b) TERMS AND CONDITIONS.—

1 (1) IN GENERAL.—Loans under this section
2 shall be made on terms and conditions, and pursu-
3 ant to lending practices, that are reasonable for con-
4 sumers.

5 (2) FINANCIAL LITERACY AND EDUCATION OP-
6 PORTUNITIES.—

7 (A) IN GENERAL.—Each eligible entity
8 awarded a grant under this section shall pro-
9 mote and take appropriate steps to ensure the
10 provision of financial literacy and education op-
11 portunities, such as relevant counseling services,
12 educational courses, or wealth building pro-
13 grams, to each consumer provided with a loan
14 pursuant to this section.

15 (B) AUTHORITY TO EXPAND ACCESS.—As
16 part of the grants, agreements, and under-
17 takings established under this section, the Sec-
18 retary may implement reasonable measures or
19 programs designed to expand access to financial
20 literacy and education opportunities, including
21 relevant counseling services, educational
22 courses, or wealth building programs to be pro-
23 vided to individuals who obtain loans from eligi-
24 ble entities 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
5 amended 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
11 financial 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
15 of the losses on such small dollar loan programs;
16 and

17 “(2) to encourage community development fi-
18 nancial institutions to establish and maintain small
19 dollar loan programs that would help give consumers
20 access to mainstream financial institutions and com-
21 bat payday lending.

22 “(b) GRANTS.—

23 “(1) LOAN-LOSS RESERVE FUND GRANTS.—The
24 Fund shall make grants to community development
25 financial institutions or to any partnership between
26 such community development financial institutions

1 and any other federally insured depository institu-
2 tion with a primary mission to serve targeted invest-
3 ment areas, as such areas are defined under section
4 103(16), to enable such institutions or any partner-
5 ship of such institutions to establish a loan-loss re-
6 serve fund in order to defray the costs of a small
7 dollar loan program established or maintained by
8 such institution.

9 “(2) MATCHING REQUIREMENT.—A community
10 development financial institution or any partnership
11 of institutions established pursuant to paragraph (1)
12 shall provide non-Federal matching funds in an
13 amount equal to 50 percent of the amount of any
14 grant received under this section.

15 “(3) USE OF FUNDS.—Any grant amounts re-
16 ceived by a community development financial institu-
17 tion or any partnership between or among such in-
18 stitutions under paragraph (1)—

19 “(A) may not be used by such institution
20 to provide direct loans to consumers;

21 “(B) may be used by such institution to
22 help recapture a portion or all of a defaulted
23 loan made under the small dollar loan program
24 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
17 term in section 603(p) of the Fair Credit Reporting
18 Act (15 U.S.C. 1681a(p)); and

19 “(2) the term ‘small dollar loan program’
20 means a loan program wherein a community devel-
21 opment financial institution or any partnership be-
22 tween or among such institutions offers loans to con-
23 sumers 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 pay-
4 ments regarding the loan to at least 1 of the
5 consumer reporting agencies that compiles and
6 maintains files on consumers on a nationwide
7 basis; and

8 “(E) meet any other affordability require-
9 ments as may be established by the Adminis-
10 trator.”.

11 **SEC. 1207. PROCEDURAL PROVISIONS.**

12 An eligible entity desiring to participate in a program
13 or obtain a grant under this title shall submit an applica-
14 tion to the Secretary, in such form and containing such
15 information as the Secretary may require.

16 **SEC. 1208. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) AUTHORIZATION TO THE SECRETARY.—There
18 are authorized to be appropriated to the Secretary, such
19 sums as are necessary to both administer and fund the
20 programs and projects authorized by this title, to remain
21 available until expended.

22 (b) AUTHORIZATION TO THE FUND.—There is au-
23 thorized to be appropriated to the Fund for each fiscal
24 year beginning in fiscal year 2010, an amount equal to
25 the amount of the administrative costs of the Fund for

1 the operation of the grant program established under this
2 title.

3 **SEC. 1209. REGULATIONS.**

4 (a) IN GENERAL.—The Secretary is authorized to
5 promulgate regulations to implement and administer the
6 grant programs and undertakings authorized by this title.

7 (b) REGULATORY AUTHORITY.—Regulations pre-
8 scribed under this section may contain such classifications,
9 differentiations, or other provisions, and may provide for
10 such adjustments and exceptions for any class of grant
11 programs, undertakings, or eligible entities, as, in the
12 judgment of the Secretary, are necessary or proper to ef-
13 fectuate the purposes of this title, to prevent circumven-
14 tion or evasion of this title, or to facilitate compliance with
15 this title.

16 **SEC. 1210. EVALUATION AND REPORTS TO CONGRESS.**

17 For each fiscal year in which a program or project
18 is carried out under this Title, the Secretary shall submit
19 a report to the Committee on Banking, Housing, and
20 Urban Affairs of the Senate and the Committee on Finan-
21 cial Services of the House of Representatives containing
22 a description of the activities funded, amounts distributed,
23 and measurable results, as appropriate and available.

Amendment No. 3739

S. 3217